

Overview of ASMT-10, DRC-01A, DRC-01, GST Audit by Authorities, Summons etc

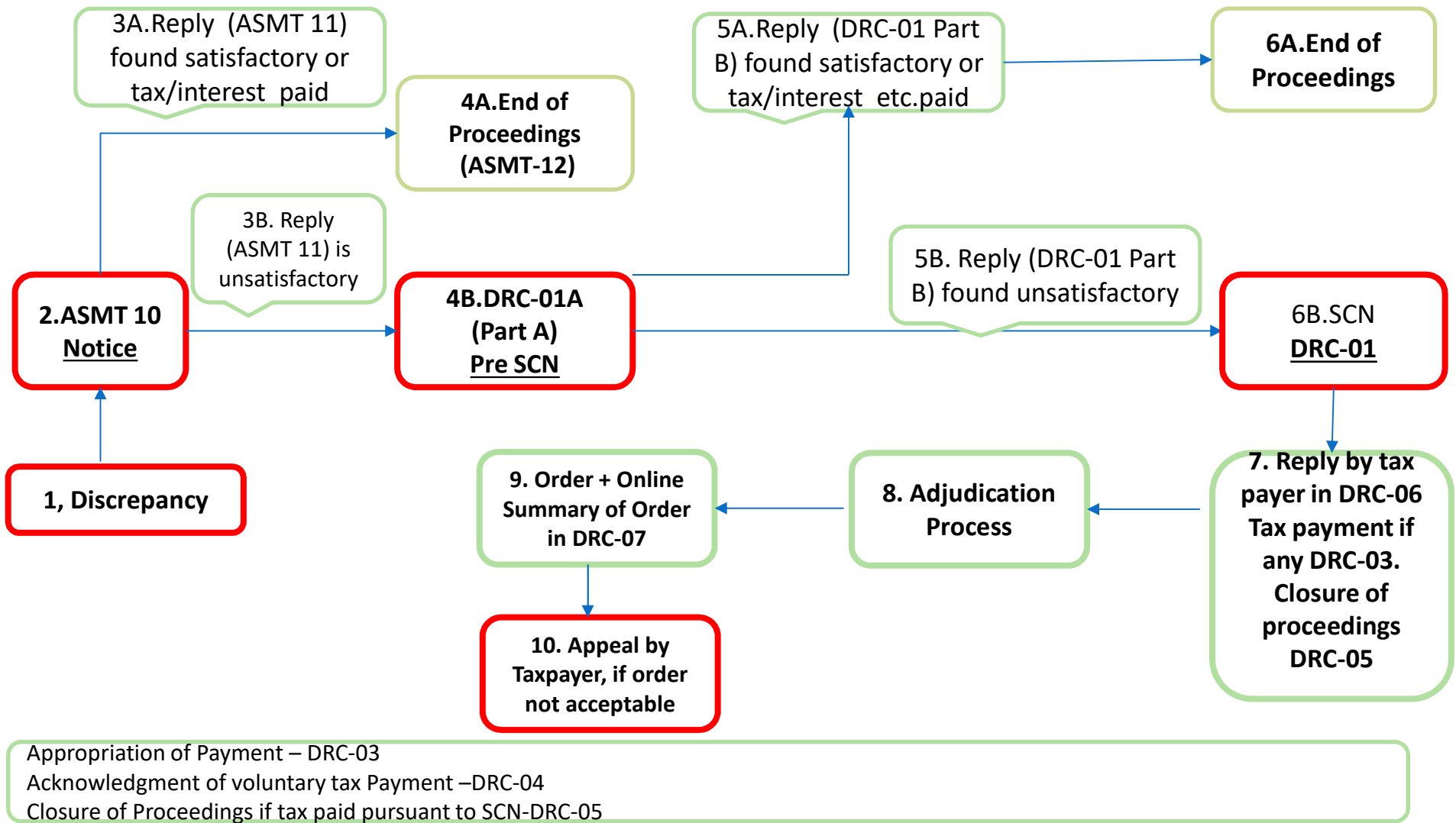
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Scrutiny of Returns – ASMT-10

CA Jignesh Kansara

Scrutiny of Returns– Graphical presentation



Legislative Power for Scrutiny of Returns

Section 61 - Scrutiny of Returns : Section 61(1)

Powers	The proper officer may scrutinize the Return and related particulars furnished by the registered person
Purpose	to verify the correctness of the return and inform him of the discrepancies noticed, if any
Procedure	in such manner as may be prescribed and seek his explanation thereto

Definition of Return : Section 2(97)

Return means **any return** prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder

Rule 99 - Scrutiny of Returns: Rule 99(1)

Process	Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him (DGARM,ADVAIT, Eway Bill, E Invoice etc)
Form for issuing Notice	In case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto

Process for Scrutiny of Returns

Time limit to reply	within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him
Quantification	and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy

Options available with Taxpayers : Rule 99(2)

Option 1	The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and arising from such discrepancy and inform the same OR
Option 2	furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

How to intimate about payment made to Proper Officer?

DRC-03 + ASMT 11	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement. R.142(2)
DRC-04	Acknowledgement of acceptance of payment made voluntarily. R.142(2)

Process for Scrutiny of Returns

Obligation of Proper Officer :Rule 99(3)

Situation #1	Where the explanation furnished by the registered person OR
Situation # 2	the information submitted under sub-rule (2) is found to be acceptable ,
Obligation	the proper officer shall inform him accordingly in FORM GST ASMT-12 .

S.61(3) – Negative Consequences of non compliance

Situation # 1	In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him OR
Situation # 2	where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted

Negative Consequences - Precursor

S.61(3) – Negative Consequences of non compliance

Consequences	<ul style="list-style-type: none">• the proper officer may initiate appropriate action including those under• Section 65 or• Section 66 or• Section 67, or• proceed to determine the tax and other dues under section 73 or section 74.
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Section	Powers
# 65	Audit by Tax Authorities
# 66	Special Audit
# 67	Power of Inspection, search and seizure.
# 73 & 74	Initiate SCN proceeding for determination of tax and other dues

Instruction No. 02/2022-GST dated 22nd March 2022

CBIC Instructions No. 02/2022-GST dated 22nd March 2022 - Extract

- Standard Operating Procedure (SOP) for Scrutiny of returns for FY 2017-18 and 2018-19
- Interim SOP
- Directorate General of Analytics and Risk Management (DGARM) to select the GSTINs registered with Central tax authorities, whose returns are to be scrutinized
- DGARM would provide some relevant data (along with likely revenue implication) pertaining to the returns to be scrutinized
- Proper officer? : Scrutiny of returns of a taxpayer may be conducted by **Superintendent of Central Tax** in-charge of the jurisdictional range of the said taxpayer

Instruction No. 02/2022-GST dated 22nd March 2022

- The proper officer shall conduct scrutiny of returns pertaining to **minimum of 3 GSTINs** per month.
- Scrutiny of returns of one GSTIN shall mean **scrutiny of all returns pertaining to a financial year** for which the said GSTIN has been identified for scrutiny
- Payments made through **FORM GST DRC-03** may also be taken into consideration while communicating discrepancies to the taxpayer in FORM GST ASMT-10
- For proceeding under section 73 or section 74, monetary limits as specified in Circular No. 31/05/2018-GST dated 9th February 2018 shall be adhered to (**Who can issue SCN?**)
- if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then **he may refer the matter** to the jurisdictional Principal Commissioner/Commissioner through the divisional Assistant/Deputy Commissioner, for the decision whether the matter needs to be referred to Audit Commissionerate or Anti-evasion Wing of the Commissionerate, as the case may be

Timelines –ASMT 10 (as per CBIC Instructions)

- ☞ DGARM to periodically select cases for Issuance of Notice in ASMT-10
- ☞ DGRAM to inform selected GSTIN to nodal officers
- ☞ Nodal officer to inform to Superintendent within 3 days
- ☞ Superintendent to finalise scrutiny schedule within 7 days
- ☞ Superintendent to issue Notice to taxpayer in ASMT-10
- ☞ Reply by taxpayer – Within 30 days or such extended period (ASMT-11)
- ☞ Order Accepting reply filed by taxpayer - ASMT-12 within 30 days of reply in ASMT-11
- ☞ No reply furnished within 30 days/extended period : SCN in 73 or 74 within 15 days from expiry of 30 days/extended time limits

Timelines ASMT-10 (as per CBIC Instructions)

- ☞ Reply filed by taxpayer but found satisfactory : SCN in 73 or 74 within 30 days from reply filed in ASMT-11
- ☞ Reference for Department Audit / Investigation etc
 - No reply case : within 45 days from date of issuance of ASMT-10
 - Reply filed case : within 30 days from receipt of reply in ASMT-11

DIN as per the guidelines mentioned in the Circular No. 122/41/2019-GST dated 5th November 2019

Likely Discrepancies

- ☞ Taxable Supply as per R-1 > Taxable Supply as per 3-B
- ☞ Forward charge ITC as per 3B is not matching with ITC as per 2A – **Whether mandatory till 09/10/2019?**
- ☞ IGST availed on Import (3B/GSTR-9) not matching with 2A (**courier bill of entry?**)
- ☞ 16(4) violation- Suppliers have filed Return after due date of filing Return of September of Next FY (**Is this fair?**)
- ☞ RCM liability as per 3B not matching GSTR-2A. (**TOS??**)
- ☞ Delayed payment interest not paid (Net liability, **ITC availed and not utilised**)
- ☞ Blocked Credits availed and not reversed
- ☞ Other ITC Reversal not carried out (Rule 42/43)

Likely Discrepancies

- ☞ ITC claim - Registration of vendor cancelled retrospectively.
- ☞ ITC claim - supplier has not furnished Form GSTR-3B
- ☞ Outward supply in R-1 vs Outward supply in EWB
- ☞ Turnover in GSTR-9 vs 26AS statement vs ITR
- ☞ ISD ITC availed in Table 4A.4 vs appearing in 2A
- ☞ Value of outward supply declared in 3B < Value of TDS and TCS furnished by the corresponding deductors or E-Commerce Operators in their Form GSTR-7 (**Supply vs payment**)

Time limit
to issue
notice?
Penalty ?

Opportunity
of being
heard in
person?

Non reflection in GSTR-2A – Whether ITC to be reversed?

- ❑ No mechanism to rectify defects – No Online ledger confirmation

- ❑ **Madras High Court in D.Y. Beathel Enterprises v. STO**

- ❑ **Hon'ble Madras High Court held that first the recovery action should be initiated against the seller and only in exceptional cases** (e.g missing dealer, closure of business by the seller or the seller not having adequate assets etc.) **department should proceed against the purchasers for reversal of credit availed.** [2021] 127 taxmann.com 80/86 GST 400 (Mad.)

- ❑ **Allahabad High Court in Jai Maa Jwalamukhi Iron Scrap Supplier Vs State of U.P**

- ❑ **Hon'ble Allahabad High court held that the invoice is primary evidence of the transaction. Unless the revenue authority disputes its genuineness, it cannot be lightly overlooked.** Further, Hon'ble court observed that mere existence of some discrepancies may not have ever led the revenue authority to the conclusion that tax had been evaded or the transaction had not been disclosed. [2021] 127 taxmann.com 474 (Allahabad)

Non reflection in GSTR-2A – Whether ITC to be reversed?

- ❑ **Chhattisgarh High Court, in Bharat Aluminium Company Ltd (BALCO) vs. Union of India Ors. – Interim Order**
- ❑ Hon'ble Chhattisgarh High Court has granted interim stay on Recovery Order denying Input Tax Credit (ITC) due to mismatch GSTR-2A and Form GSTR-3B, on a condition of deposit of 5% of the demand by the company

- ❑ **Sahil Enterprises v. Union of India [2021] 129 taxmann.com 233 (Tripura)**
- ❑ Petitioner contended that after paying taxes to the seller at the time of purchases, the Petitioner has no control over the seller to ensure that such tax is deposited with the Government. **Denying ITC to the Petitioner where they have already paid tax would amount to double taxation.** The Hon'ble High Court held that the issue needs consideration and notice was issued to the Union of India.

Non reflection in GSTR-2A – Whether ITC to be reversed?

❑ **Bharti Airtel (SC)**

- ❑ It is imperative upon a registered person to maintain records regarding transactions between suppliers and the recipients based on their agreements, invoices and books of accounts, either manually or electronically.
- ❑ Registered person has been provided with a common electronic portal or tax electronic portal, which is only an enabler and a facilitator in bringing on board all the registered persons which include the supplier, recipient, registered person and other recipients. The efficacy of common electronic portal or so to say malfunctioning thereof, does not extricate the registered person from the primary obligation of self-assessment of tax liability as predicated in section 16 of the 2017 Act.

Whether factual or legal grounds are more appropriate at ASMT 10 stage?

CBIC Press Release, dated October 18, 2018

Section 16(4) – Sowing Seed for litigation?

Mr. X has purchased goods from Mr. Y in April 2020. Mr. X has actually received goods, is in possession of invoice and consideration along with tax has been paid to Mr. Y. Mr. Y has not filed GSTR-1 of 20-21 till October 2021 and after lot of persuasion filed R-1 and made tax payment in November 2021. Whether 16(4) is applicable in given case?

16(4)

A registered person **shall not be entitled to take** *the input tax credit in respect of any invoice or debit note for the supply of goods or services or both after the due date of furnishing of the **return under section 39** for the month of September following the end of the financial year to which such invoice or pertains or furnishing of the relevant annual return, whichever is earlier*

Interest – Perplexity continues !!!

Mr. X, RTP has carried out self assessment and accordingly in GSTR-3B of December 2021, tax liability works out to Rs. 5 Lakh. Due to paucity of funds, tax were paid as under :

- Rs. 2,00,000 on 20-01-2022
- Rs. 50,000 on 25-01-2022
- Rs. 1,50,000 on 26-01-2022
- Rs. 1,00,000 on 27-01-2022
- GSTR-3B was filed on 28-01-2022 along with late fees.
- Whether X is liable to pay interest on Rs 5 Lakhs for 8 days delay ?
- Whether X has option of carrying out offset of tax paid on daily basis?
- Whether X can file GSTR-3B showing dues payable?

ASMT-10 - Action points

- Periodically check Notices at portal – **(in anticipation of notice)**
- Reply within time limit prescribed or ask for an extension
- Burden to explain discrepancies is on the tax payer
- Genuine error – Payments of Tax + Interest **(before issuance of SCN)**
- Explain facts. Submit relevant documents.
- Online reply –ASMT-11
- Keep in mind – could be Precursor to SCN



Voluntary payments – DRC-03

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Relevant provision for voluntary payments

- **Voluntary payment?** Any voluntary payment made by tax payer including payment made after issuance of ASMT-10 or DRC-01A but before issuance of SCN.
- **S.73(5)** - The person chargeable with tax may, **before service of notice (SCN)** under sub-section(1) or, as the case may be, the **statement** under sub-section (3), **pay the amount of tax along with interest payable thereon under section 50** on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and **inform** the proper officer in writing of such payment.
- **S.73(6)** - The proper officer, on receipt of such information, **shall not serve** any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), **in respect of the tax so paid or any penalty payable** under the provisions of this Act or the rules made thereunder.
- **S.73(7)** - Where the proper officer is of the opinion that the amount paid under sub-section(5) **falls short** of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

Relevant provision for voluntary payments

R.142(2)

- Where, before the service of notice or statement,
 - the person chargeable with tax makes payment of the **tax and interest** in accordance with the provisions of sub-section (5) of section 73 or,
 - as the case may be, **tax, interest and penalty** in accordance with the provisions of sub-section (5) of section 74, or
 - where any person makes payment of **tax, interest, penalty or any other amount due** in accordance with the provisions of the Act [whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A) – (Pre SCN),]
- he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.



Pre-Show Cause Notice- DRC-01A

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Pre Show Cause Notice – Legal provisions

- Rule 142(1A)/(2A) : Similar to Pre SCN (Excise and Service Tax)
- Inserted w.e.f 9th Oct 2019
- **R.142(1A) - Obligation of Proper Officer to issue Pre SCN**
- The proper officer **may** (~~shall~~), before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of section 73 or sub-section (1) of section 74, as the case may be, ~~shall~~ communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.
- **Rule 142(2A) – Reply by taxpayer**
- Where the person referred to in sub-rule (1A) has made **partial payment** of the amount communicated to him **or desires to file any submissions** against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A**. (online)

“May” v/s “Shall”?

Opportunity
of being
heard in
person?

Technical
issue in DRC-
01 module



Show Cause Notice- DRC-01/02

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Show Cause Notice – what is Fine line of difference? - Mens rea

Section 73(1) – Normal SCN	Section 74(1) – Fraud/Suppression SCN
<p>Where it appears to the proper officer that</p> <ul style="list-style-type: none">• any tax has not been paid or• any tax has been short paid or• any tax has been erroneously refunded, or• where input tax credit has been wrongly availed or• where input tax credit has been wrongly utilised <p>for any reason, <u>other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax</u></p>	<p>Where it appears to the proper officer that</p> <ul style="list-style-type: none">• any tax has not been paid or• any tax has been short paid or• any tax has been erroneously refunded, or• where input tax credit has been wrongly availed or• where input tax credit has been wrongly utilised <p><u>by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax</u></p>

What is SCN?

When SCN can be issued?

Suppression – Meaning

Explanation 2.—

For the purposes of this Act, the expression —suppression shall mean **non-declaration of facts or information which a taxable person is required to declare in the return**, statement, report or any other document furnished under this Act or the rules made thereunder, **or failure to furnish any information on being asked for, in writing, by the proper officer.**

Time barring date for Issue of SCN/Orders – Normal SCN

#	Nature of Case	Time limit for issuance of Notice	Time limit for issuance of Adjudication Order
1	Normal Cases	<p><u>For tax not paid or short paid or ITC wrongly availed or utilized</u></p> <p>Within 2 years and 9 months from the due date of filing of Annual Return for the financial year to which such tax or ITC relates (excl period of stay)</p> <p><u>For Erroneous Refund</u></p> <p>Within 2 years and 9 months from date of erroneous refund.</p> <p>Section 73(2) CGST Act</p>	<p><u>For tax not paid or short paid or ITC wrongly availed or utilized</u></p> <p>Within 3 (Three) years from the due date of filing of Annual Return for the financial year to which such tax or ITC relates (excl period of stay)</p> <p><u>For Erroneous Refund</u></p> <p>Within 3 (Three) years from the date of erroneous refund.</p> <p>Section 73(10) CGST Act</p>

Time barring date for Issue of SCN/Orders – Fraud, Suppression etc

#	Nature of Case	Time limit for issuance of Notice	Time limit for issuance of Adjudication Order
2	Fraud/Suppression Cases	<p><u>For tax not paid or short paid or ITC wrongly availed or Utilized</u></p> <p>Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which such Tax or ITC relates (excl period of stay)</p> <p>For Erroneous Refund</p> <p>Within 4 years and 6 months from date of erroneous refund.</p> <p>Section 74(2) CGST</p>	<p><u>For tax not paid or short paid or ITC wrongly availed or Utilized</u></p> <p>Within 5 (Five) years from the due date of filing of Annual Return for the Financial Year to which such Tax or ITC relates (excl period of stay)</p> <p>For Erroneous Refund</p> <p>Within 5 (Five) years from the date of erroneous refund.</p> <p>Section 74(10) CGST</p>

SCN – Relevant forms

SCN for new issue – Section 73(1)

R.142(1)(a) - The proper officer shall serve, along with the Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, **a summary thereof electronically in FORM GST DRC-01**.

SCN for recurring issues/periodical SCN –

S.73(3) - Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section(1), on the person chargeable with tax.

S.73(4) - The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the **grounds relied upon for such tax periods other than those covered under sub-section (1) are the same** as are mentioned in the earlier notice.

R.142(1)(b) - The proper officer shall serve, along with the Notice statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

Penalty consequences under different situations

If Tax and Interest is paid	Penalty for Normal Case / No Fraud Case (Section 73 CGST)	Penalty for Fraud Case /Mens rea (Section 74 CGST)
Before issue of show cause notice (DRC-01)	<p>No Penalty and No SCN will be issued.</p> <p>Section 73(6) CGST Act</p>	<p>15% of Tax Amount and No SCN will be issued.</p> <p>Section 74(5) CGST Act</p>
Within 30 days from issue of show cause notice	<p>No Penalty. All proceedings deemed to be concluded</p> <p>Section 73(8) CGST Act</p>	<p>25% of Tax Amount. All proceedings deemed to be concluded. Section 74(8)</p>
Within 30 days from issue of order	<p>10% of Tax or Rs. 10000 whichever is higher</p> <p>Section 73(9)</p>	<p>50% of Tax Amount</p> <p>Section 74(11) CGST Act.</p>
After 30 days from issue of Order	<p>10% of Tax or Rs. 10000 whichever is higher</p> <p>Section 73(11)</p>	<p>100% of Tax Amount</p>

Penalty only if Tax demand sustain

Reply to SCN

- **S.73(9)** - The proper officer **shall, after considering the representation**, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty **equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher**, due from such person and issue an order.
- **S.74(9)** The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and **penalty due** from such person and issue an order
- **R.142(4)** The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in **FORM GST DRC-06**.
- Time limit to reply SCN: Generally 30 days
- DRC-06: Reply to the Show Cause Notice (online)

Full / Part Payment pursuant to SCN

- **S. 73(8)** - Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the **said tax along with the interest payable** under section 50 **within thirty days** of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
- **S.74(8)** - Where any person chargeable with tax under sub-section (1) pays the **said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax** **within thirty days** of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.
- **R.142(3)** - Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 **within thirty days of the service of a notice** under sub-rule (1), or, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in **FORM GST DRC-05 concluding the proceedings in respect of the said notice.**
- Form DRC-05: Intimation of conclusion of proceedings

Time limit Adjudication/Order

S.73(10) - The proper officer **shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return** for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

S.74(10) - The proper officer **shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return** for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund

Adjudication/Order

R.142(5) - A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

R. 142(6) - The order referred to in sub-rule (5) shall be treated as the notice for recovery.

FORM GST DRC-07 : Summary of the Order

Rectification of Order/Notice etc

S.161. Rectification of errors **apparent on the face of record.**—

- any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify
- **any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document
- either on its own motion or where such error is brought to its notice by any officer or by the affected person
- **within a period of three months** from the date of issue of such decision or order or notice or certificate or any other document
- Provided, **no such rectification shall be done after a period of six months** from the date of issue of such decision or order or notice or certificate or any other document
- said period of six months shall not apply where the rectification is purely in the **nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:**
- For adverse rectification, principles of natural justice shall be followed by the authority carrying out such rectification

Rectification of Order/Notice etc

R.142(7) - Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**.

What if Tribunal/Court takes a view against Extended period SCN?

S.75(2).Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

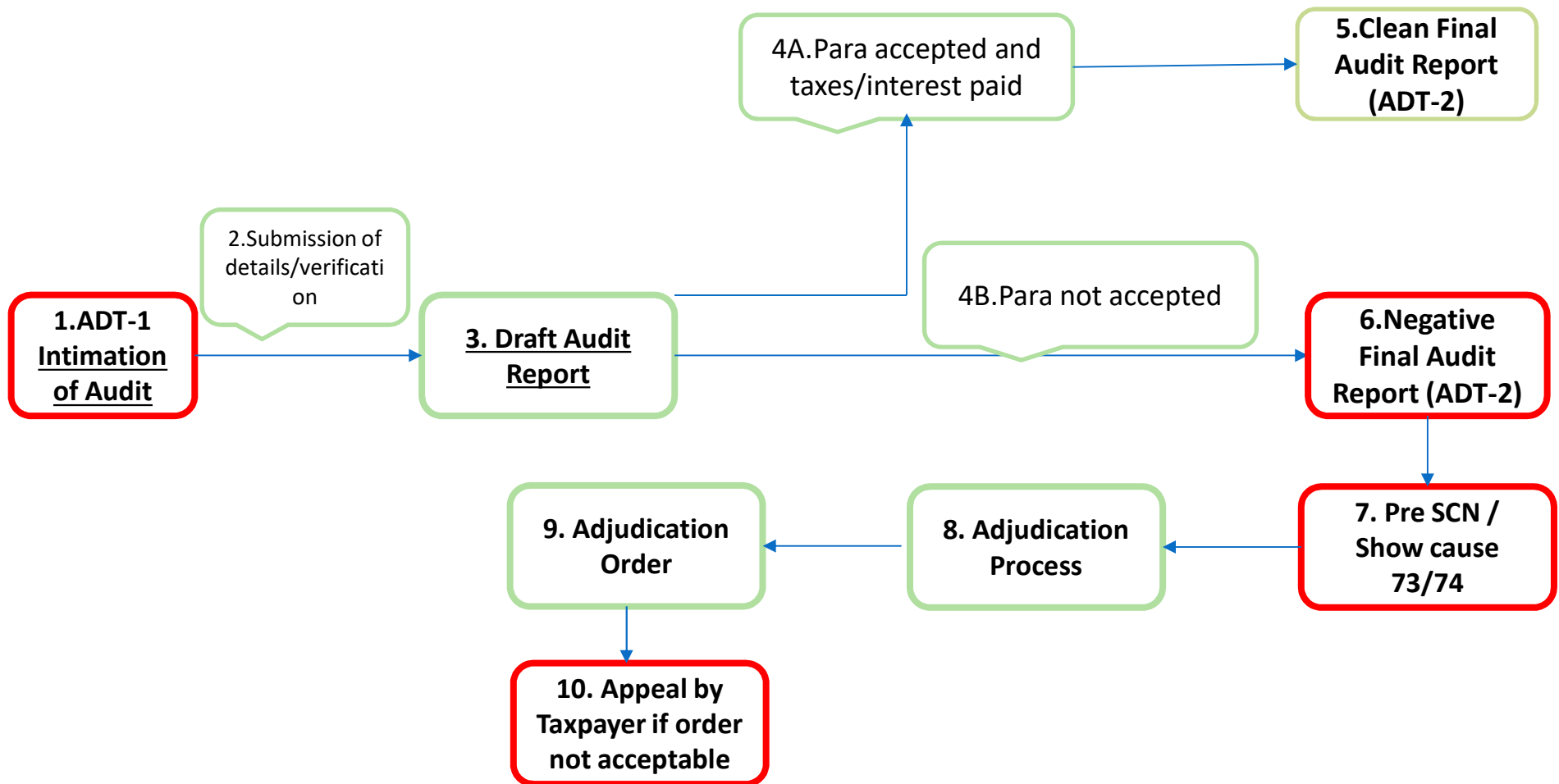
Demand can be raised for normal period SCN within 2 years from receipt of such order.



Audit by Authorities

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Audit by Departmental authorities



Audit by Tax Authorities – Statutory power

Power to carry out Audit : Section 65(1)

Authority	The Commissioner or any officer authorised by him , by way of a general or a specific order, may undertake audit of any registered person
Period and Manner	for such period, at such frequency and in such manner as may be prescribed.

Prescribed period : Rule 101(1)

The period of audit to be conducted under sub-section (1) of section 65 shall be a **financial year or part thereof or multiples thereof**.

Where Audit will be conducted? Section 65(2)

The officers referred to in sub-section (1) **may** conduct audit at the place of business of the registered person **or** in their office.

Frequency:

As per the GST Audit Manual issued by CBIC- a taxpayer should normally be audited **only after 3 years from the date of last audit**

Intimation of Audit by Tax Authorities

How and when tax payer will be intimated about selection of case for audit?

- Section 65(3) - The registered person shall be informed **by way of a notice not less than fifteen working days** prior to the conduct of audit in such manner as may be prescribed
- R 101(2) - Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in **FORM GST ADT-01** in accordance with the provisions of sub-section (3) of the said section

Specimen Notice for conducting audit –ADT-01

Whereas it has been decided to undertake audit of your books of account and records for the **financial year(s)..... to** in accordance with the provisions of section 65. I propose to conduct the said audit at **my office/at your place** of business on -----.

And whereas you are required to:-

- (i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and
- (ii) furnish such information as may be required and render assistance for timely completion of the audit.
- (iii) You are hereby directed to attend in person or through an authorised representative on (date) at.....(place)** before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.
- (iv) In case of failure** to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Time limit for completion of Audit

Time limit for completion of Audit : Section 65(4) of CGST Act

Time limit	The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit
Extension	Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing , extend the period by a further period not exceeding six months .
Commencement ?	Explanation.—For the purposes of this sub-section, the expression —commencement of audit shall mean the date on which the records and other documents, called for by the tax authorities , are made available by the registered person or the actual institution of audit at the place of business, whichever is later

Records :
Rule 56

Obligation of Taxpayers selected for Audit

Obligation of Tax payer : Section 65(5)

During the course of audit, the authorised officer may require the registered person,—

(i) to afford him the **necessary facility to verify the books of account or other documents** as he may require;

(ii) to **furnish such information** as he may require and render assistance for timely completion of the audit.

Who will carry out audit? Rule 101(3)

The **proper officer** authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him.

Scope of Audit by Authorities

Scope of Audit by Authorities : Rule 101 (3)

Verify

- **documents** on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder **AND**
- **correctness** of
 - ✓ the turnover,
 - ✓ exemptions and
 - ✓ deductions claimed,
 - ✓ the rate of tax applied in respect of the supply of goods or services or both,
 - ✓ the input tax credit availed and utilised,
 - ✓ refund claimed, and other relevant issues **AND**
- **record the observations** in his audit note

Final leg of Audit Process - Report

Intimation of Deficiencies : Rule 101 (4)

- The proper officer **may** inform the registered person of the discrepancies noticed, **if any**, as observed in the audit and the said person **may file his reply** and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished. – **Draft Audit Report / Audit Para**

Report by Authorities : Section 65(6)

- On conclusion of audit, the proper officer shall, **within thirty days**, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

Rule 101(5) :

- On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM **GST ADT-02. - Final Audit Report (FAR)**

Specimen Audit Report under Section 65(6) – ADT-02 -FAR

Your books of account and records for the F.Y..... has been examined and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of	IGST	CGST	SGST	CESS
Tax				
Interest				
Any Other Amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

A copy of the FAR, even if it is a NIL report, should be sent to the registered person

Adverse ADT-02, what next ?

Where the audit conducted under sub-section (1) results in detection of

- tax not paid or
- short paid or
- erroneously refunded, or
- input tax credit wrongly availed or utilised,

the proper officer may initiate action under section 73 or section 74. (Demand cum SCN)

Reply to ADT-02 by either paying tax/interest/penalty and appropriate in DRC-03 or deny allegations made in ADT-02

Details/documents to be kept ready by the taxpayer: Indicative list

As per CBIC audit manual

- GSTR-1, GSTR-2A, GSTR-3B, GSTR-9 and GSTR-9C and their reconciliations
- GST Registration Certificate
- Copies of Annual Report, Auditor's Report, Trial Balance
- Income Tax Returns, Form 3CA/ 3CD and 3CEB if applicable
- Returns if submitted to Banks/ Financial Institutions e.g. Stock report
- Cost Audit and Internal Audit reports
- Electronic Credit and Cash Ledger

Details/documents to be kept ready by the taxpayer: Indicative list

- Abstract of output invoices of taxable, NIL Rated, exempted and zero rated supplies, wherever applicable for the audit period (Outward Supply Register)
- Abstract of input invoices for the audit period (ITC Register)
- Contract/ agreements for the audit period
- Duly filled in GSTAM (GST Audit Manual) Annexure-I/V and VI
- Copy of last audit report, if any
- **Any other details depending on facts and nature of transaction of the taxpayer.**

Indicative duration of Audit Process

- CBIC Audit Manual
- Inclusive of desk review, preparation and approval of audit plan, actual audit and preparation of audit report

Type of Tax payer	Time limit for 1 year audit
Large taxpayers	6 to 8 working days
Medium taxpayers	4 to 6 working days.
Small taxpayers	2 to 4 working days

- 25% increase of working days for every additional year of coverage.
- In exceptional cases, the aforesaid period may be extended with the approval of Deputy/Assistant Commissioner of the Circle

Backend Process during GST audit (CGST Team)

- Intimation to the Registered Person (GST ADT-01)
- Reviewing the taxpayer data - Tax Payer at a Glance (TAG), Registration, Returns, Payments, Audit Report Utility, E-way bills & Third Party data if available.
- Conducting desk review in offline / online mode (wherever available) and uploading the result of desk review.
- Preparing the audit plan in offline / online mode (wherever available) and uploading the audit plan.
- Carrying out verification/Audit
- Uploading the verification report, within twenty four hours of completion of audit.
- Uploading the draft audit report (DAR) for the MCM (monitoring committee meetings), within 10 - 15 days

Backend Process during GST audit (CGST Team)

- Examining the audit paras in MCM
- Uploading the minutes of the monthly (MCM) within twenty four hours of the meeting.
- Uploading final audit report, within thirty days of the Meeting.
- Communicating the audit report to taxpayer (ADT-02).
- Communicating to the Registered Person the future course of action in case of contested paras.

Annexures to Audit Manual – CBIC

Annexure	Form Description	Remark
GSTAM – I	Registered person's Master file	To be filled by taxpayer and submitted before commencement of audit
GSTAM-II	ADT-01	Audit Intimation
GSTAM – III	Illustrative list of important documents for scrutiny at desk review stage	For internal verification of Audit team (i) Director's Report (ii) Statutory Auditor's Report (iii) CARO report (iv) Balance sheet and Profit & Loss Account (v) Notes to Accounts (vi) Trial Balance (vii) Cost Audit report (viii) Tax Audit report (ix) TDS certificate (x) Financial statements of subsidiary companies, if any
GSTAM – IV	Ratio Analysis Of Database	For internal purpose of audit team

Annexures to Audit Manual - CBIC

Annexure	Form Description	Remark
GSTAM –V	Comparative chart of items from financial statement to be drawn for reconciling the data	To be filled by taxpayer and submitted before commencement of Audit. GSTR-9 Vs Cost Audit report vs Income Tax Audit report Vs Trial balance Vs Financials Vs ITR 6
GSTAM–VI	Questionnaire for review of internal control system and walk through.	To be filled by taxpayer and submitted before commencement of Audit
GSTAM-VII	Audit Plan	Audit plan prepared by authorities
GSTAM-VIII	Working Papers	To be prepared and retained by Authorities
GSTAM-IX	Records to be verified during audit process	For internal use of audit team.
GSTAM-X	Format of letter to be written by the Registered Person u/s 73 (6) of Act	To be submitted by taxpayer for drop SCN proceedings
GSTAM-XI	GST ADT-02	Final Audit report

GSTAM-X

Section 73(5)

The person chargeable with tax may, **before service of notice** under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of **tax along with interest payable** thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer **and inform the proper officer in writing of such payment.**

Section 73(6)

The proper officer, on receipt of such information, shall not serve any notice under subsection (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder

ANNEXURE – GSTAM- X - Extract

“We request that the above issues may be treated as closed with this letter since we have complied with the provisions of the GST law. It is hereby confirmed that this amount is paid voluntarily and no appeal will be filed against such payment or we will not claim any refund in future”

Local Risk Parameters – Annexure XII

Few important parameters for selection of case for Department audit – CBIC audit manual

- The Taxpayer was not previously audited
- The Taxpayer is newly registered
- Length of time since last audit
- The size of the Taxpayer's refund, if any
- The size of income from high risk activities (e.g., real estate income)
- The Taxpayers files inconsistently
- The Taxpayer's return was previously investigated for evasion
- The Taxpayer's returns is prepared by questionable accountants

Local Risk Parameters – Annexure XII

- The specific sector, in which the Taxpayer operates (e.g., typical high-risk activities include restaurants and hotels, apartment rentals, professionals, car rental, spare parts for vehicles, chemicals, telecommunications, retail)
- The Taxpayer has multiple branches
- Audit differences (past audit assessments)
- The Taxpayer has applied for surrender of its registration
- Where there is increase in ratio of Exempted Supplies / Total supplies of a Taxpayer over time
- Where higher incidence of supplies without issuance of e-way Bills have been noticed
- The Taxpayer whose turnover increased substantially after enactment of GST.

Local Risk Parameters – Annexure XII

- The Taxpayer who is not filing GSTR – 3B but in their electronic cash ledger, amount of TDS is reflected.
- The size of exemptions, if any
- The Taxpayer has supplied goods on which there has been reduction in rate of duty, in order to examine the possibility of profiteering under Section 171 of the CGST Act, 2017
- The Taxpayer who was not audited in the pre-GST era for the last 4 – 5 years

Trade Circular on Audit by Maharashtra State – Important Excerpts

- Trade Circular No. 13T of 2020 dated 21-12-2020
- Audit to be carried out at the **POB** of taxpayer only in exceptional cases after initial visit at POB, verification can be done at office of AO
- **Allied Act** – Profession Tax
- In discharging the function of audit, wherever warranted, the AO can use the powers delegated to him by the Commissioner under **Section 70** of the MGST Act. By taking recourse to section 70, the AO can use all the powers of Civil Court for the purposes of proof of facts by affidavit, summoning and enforcing the attendance of any person and examining on oath of affirmation, compelling production of documents, etc. The powers would be utilised by the AO only in circumstances where use of such powers becomes necessary for achieving the purpose of audit, and wherever the information sought is not coming forward voluntarily.
- The AO can verify stock of goods, and ask for clarification if there is any discrepancy. It is however, made clear that the AO on no account shall remove or cause to be removed from the place of business any books of accounts, other documents or any cash or stock. **AO on no account can carry out search of premises of RTP.**

Trade Circular on Audit by Maharashtra State – Important Excerpts

Indicative List of documents to be submitted / to be kept ready for verification by dealer as per GST -ADT-01

- Financial statements and reports- Balance Sheet, Tax Audit Report, Annual Financial Statement, Cost Audit Report, Trial Balance
- Inward —Outward supply summary statement
- RCM ledger and supportive documents
- Inward —Outward supply invoices
- Cancelled invoices due to any reason
- Goods return (inward and outward supply) register along with credit note / debit note details
- Inward supply Register (soft copy)
- Outward Supply register (soft copy)

Trade Circular on Audit by Maharashtra State – Important Excerpts

Indicative List of documents to be submitted / to be kept ready for verification by dealer as per GST -ADT-01

- Zero rated supply register and supportive documents (commercial invoice, shipping bill, EGM , Bank realization certificate or Inward remittance certificate etc)
- Details of Exempted supply / Supply to SEZ dealer
- Refund claim / availment details if any (export of good and services, inverted duty structure etc or any type of refund claimed by dealer)
- TDS payment transactions if any
- TRAN-1 details (details regarding credit carried forwarded from previous Act to GST Act)
- GSTR 2A-Mismatch, unmatched transactions details

Trade Circular on Audit by Maharashtra State – Important Excerpts

Indicative List of documents to be submitted / to be kept ready for verification by dealer as per GST -ADT-01

- E-way bill transactions month wise summary statement and corresponding register
- In case of services, FIRC (Foreign Inward Remittances), corresponding agreements, invoices, Annual Maintenance Contract copies and corresponding invoices if any
- Details of advances received and tax payment for the same
- Other Income/ misc. income
- Reversal / reduction of ITC
- Scrap sales
- Details of exempted outward supply
- Details of zero rated supply

Trade Circular on Audit by Maharashtra State – Important Excerpts

Indicative List of documents to be submitted / to be kept ready for verification by dealer as per GST -ADT-01

- Non-GST supply
- Job work details (inward and outward side)
- Credit ledger /Input tax credit availment summary (for Capital asset, liability, Refund claim, any other deduction)
- Cash ledger availment summary (for liability, RCM, any other deduction)
- Reversal of ITC within 180 days due to non-payment in 180 days

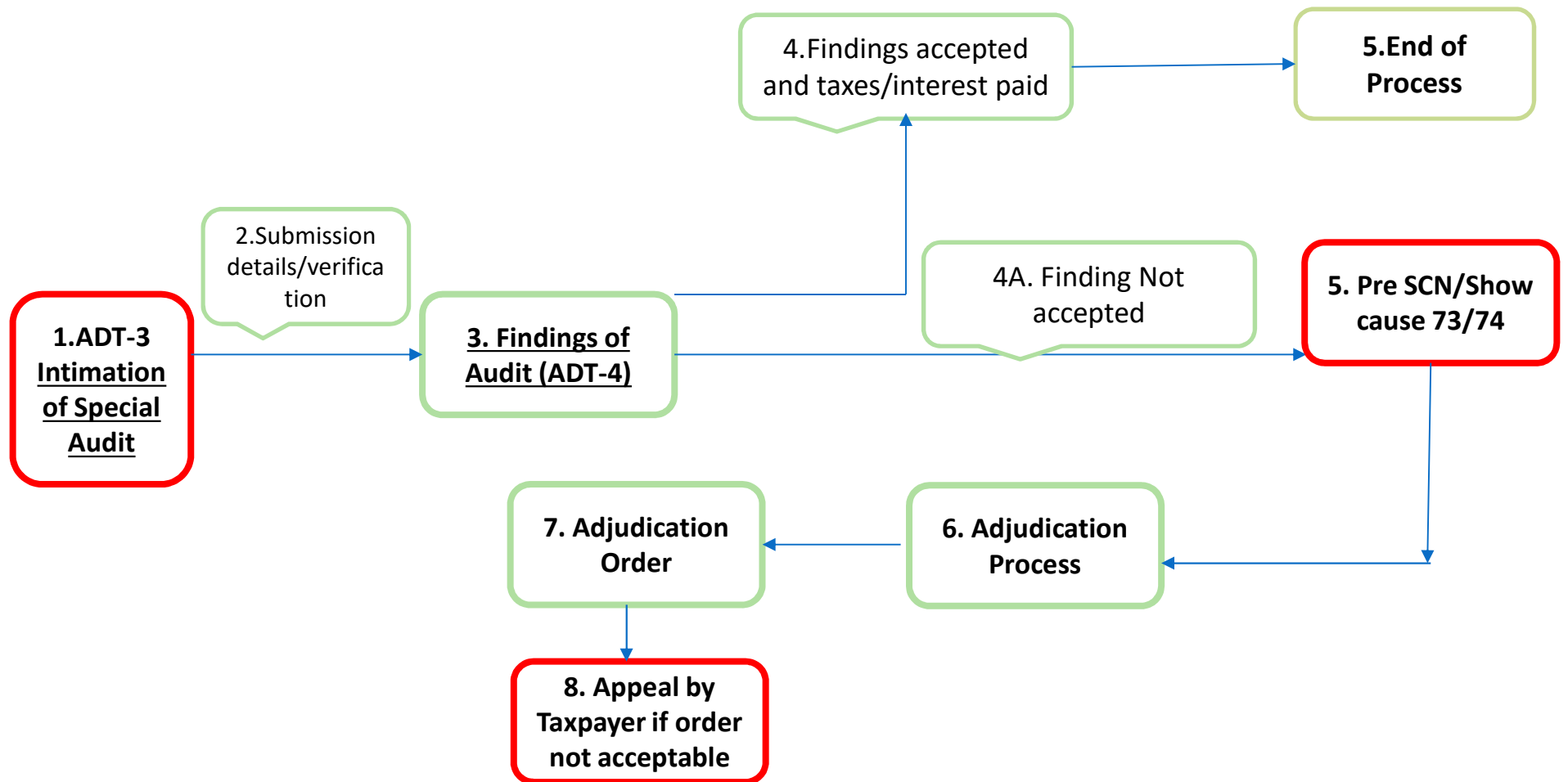
The above documents may vary from case to case depending on the volume, gravity, complexity, etc of the each individual case.



Special Audit

CA Jignesh Kansara

Special Audit



Special Audit

Power to direct Special Audit : Section 66(1)

When	If at any stage of scrutiny, inquiry, investigation or any other proceedings before him
Who	any officer not below the rank of Assistant Commissioner,
Factors	having regard to the nature and complexity of the case and the interest of revenue
Basis	is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits
Approval	he may, with the prior approval of the Commissioner
Directions	direct such registered person by a communication in writing to get his records including books of account examined and audited
By	by a chartered accountant or a cost accountant as may be nominated by the Commissioner

Rule 102(1)

Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in **FORM GST ADT-03** to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.

Time limit for completion of Special Audit

Time limit for completion of Special Audit : Section 66(2) of CGST Act

Time limit	The chartered accountant or cost accountant so nominated shall, within the period of ninety days , submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified
Extension	Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days .

102(2) : Findings of Special Audit report

On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in **FORM GST ADT-04**

Overriding Powers: 66(3)

The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

Special Audit – Other provisions

Section 66(4) of CGST Act – Principal of Natural Justice

- The registered person shall be given an **opportunity of being heard** in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

Who will bear the cost of Special Audit?

- Section 66(5) of the CGST Act
- The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final

Way forward

- Section 66(6) of the CGST Act
- Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.



Summons under GST

CA Jignesh Kansara

Summons – Legal Provision

Section 70 : Power to summon persons to give evidence and produce documents

(1) **The proper officer** under this Act shall have power to summon **any person** whose attendance he considers necessary **either to give evidence or to produce a document or any other thing** in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

Who is Proper Officer?

Circular No. 3/3/2017-GST dated July 05, 2017, Superintendent of Central Team is the PO under sub-section (1) of Section 70 of the CGST Act.

NN 14/2017 Central Tax dated 01.07.2017 Senior Intelligence Officer, GST Intelligence or Superintendent, GST Audit

Summons – CBIC Guidelines

Obligation of Person so summoned

- A person who is summoned, legally **bound to attend either in person or by an authorized representative**
- He is bound to **state the truth** on the subject matter of examination and to produce such documents and other things as may be required

Guidelines for issue of summons: [CBIC FAQ's and F. No. 207/07/2014-CX-6 dated January 20, 2015]

- Summon is to be issued as a **last resort** where assesses are not co-operating;
- Language of the summons **should not be harsh** and legal which causes unnecessary mental stress and embarrassment to the receiver;
- Summons by Superintendents should be issued **only after obtaining prior written permission** from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

Summons – CBIC Guidelines

Guidelines for issue of summons: [CBIC FAQ's and F. No. 207/07/2014-CX-6 dated January 20, 2015]

- Where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity
- In all cases, where summons is issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;
- **Senior management officials** such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking *should not generally be issued summons at the first instance*. They should be summoned only when there are indications in the investigation of their involvement in the decision-making process which led to loss of revenue.
- **Summons should not be issued repeatedly**. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearance

Summons

Retraction and its impact:

Apex Court in Commissioner versus Shakti Zarda Factory (I) (P) Limited 2015 (321) E.L.T. A210 (SC), held retracted statement is not admissible in evidence in absence of independent reliable evidence to corroborate the same.

Presence of Lawyers / CA etc:

Presence of lawyer cannot be allowed at the time of questioning or examination of a person by the officers under the GST provisions

Sudhir Kumar Aggarwal Vs Directorate General of GST Intelligence (Delhi High Court)

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Thanks for your time!

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