

## Chapter 25: Audit

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#### 25.0 Introduction

"Audit" has been defined in section 2(13) of the CGST Act, 2017 and it means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of the GST Acts or the rules made thereunder.

#### 25.1 Types of Audit

GST envisages three types of Audit.

1. By a Chartered Accountant or a Cost Accountant.
2. By Tax Authorities
3. Special Audit

##### *1. Audit by Chartered Accountant or a Cost Accountant*

Every registered person whose aggregate turnover during a financial year exceeds two crore rupees has to get his accounts audited by a Chartered Accountant or a Cost Accountant and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C.

Notification No. 16/2020-CT, dated 23.03.2020: Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Rule 80(3) of CGST Rules, 2017 (*vide* Notification No.79/2020-Central Tax dated 15th October, 2020):

"Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C** for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

##### *2. By Tax Authorities (section 65 of the CGST Act, 2017)*

The Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as maybe prescribed.

Section 65(3) of the CGST Act, 2017 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.

Section 65(4) of the CGST Act, 2017 the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

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.

*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.

**Example:** X Pvt Ltd., received a notice under Section 65(3) of the CGST Act, 2017 on 15th November 2017.

Date on which documents required	1st December 2017
Date on which documents made available to the Department	15th December 2017
Date of actual institution of audit at X Pvt Ltd., premises	5th January 2018

Find the following:

- Date of commencement of audit?
- Date by which audit should be completed in normal course?
- Date by which audit should be completed (including extended period)?

**Answer:**

Particulars	Date	Remarks
(a) Date of commencement of Audit	5th January 2018	Date on which documents made available to the Department (i.e. 15th December 2017) or Date on actual institution of audit at the place of business (i.e. 5th January 2018), whichever is later
(b) Date by which audit should be completed in normal course	4th April 2018	Section 65(4) of the CGST Act, 2017 the audit under sub-section (1) shall be completed within a period of 3 months from the date of commencement of the audit.
(c) Date by which audit should be completed (including extended period)	4th October 2018	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.

Section 65(5) of the CGST Act, 2017 during the course of audit, the authorised officer may require the registered person,—

- to afford him the necessary facility to verify the books of account or other documents as he may require;
- to furnish such information as he may require and render assistance for timely completion of the audit.

Section 65(6) of the CGST Act, 2017 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.

Section 65(7) of the CGST Act, 2017 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.

### 3. Special Audit Section 66 of the CGST Act, 2017

Special Audit the registered person can be directed to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case.

#### 25.2 Procedure

During the scrutiny, inquiry, investigation or any other proceedings of a registered person, the Assistant Commissioner or any officer senior to him, having regard to the nature and complexity of the case and the interest of revenue, might be of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

In such cases, with the prior approval of the Commissioner, the Assistant Commissioner or any officer senior to him can direct the registered person in FORM GST ADT-03 to get his records including books of account examined and audited by a specified chartered accountant or a cost accountant. The chartered accountant or a cost accountant will be nominated by the Commissioner.

The Chartered Accountant or Cost Accountant so nominated has to submit a report of such audit within the period of ninety days, duly signed and certified by him to the Assistant Commissioner.

On an application made by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, the Assistant Commissioner can extend the said period by a further period of ninety days.

The provisions of special audit shall have effect even if the accounts of the registered person have been audited under any other provisions of the GST Act or any other law for the time being in force.

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

The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner.

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

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the process of demand and recovery will be initiated against the registered person.

#### Practical theory:

Example: Assessee accounts have already been audited under Income-tax Act, 1961 by a Chartered Accountant, and thus, do not require any other audit under Section 66 of the CGST Act, 2017.

Answer:

Section 66 of the CGST Act, 2017 provides that Commissioner may order such special audit even if the accounts of such person have been audited under any other law for the time being in force.

Therefore, the fact that assesses accounts have been audited under Income-tax Act, 1961 will not have any bearing on special audit ordered under Section 66 of the CGST Act, 2017.

#### Case Law:

**A.C.L. Education Centre (P) Ltd. v UOI 2014 (33) S.T.R. 609 (All.)**

Facts of the case: Central Tax Department of GST issued intimation under Section 65(3) of the CGST Act, 2017, demanding necessary documents from the petitioners for making a reference to conduct an audit. The petitioners objected and also challenged the vires of Section 65(3) of the CGST Act, 2017, inter alia, on the ground that the provisions of Section 65 of the CGST Act, 2017 are contrary to the provisions of section 66 of the CGST Act, 2017.

**Decision:** In the light of the aforesaid discussion, the High Court held that Section 65 of the CGST Act, 2017. It is in consonance with section 66 of the CGST Act, 2017.

#### Summary:

Difference between the two audits Section 65 and 66 of the CGST Act, 2017:

Issue	Audit under Section 65	Audit under Section 66
Purpose	General audit; audit of business transactions, no specific reason to be cited	Nature and complexity of case, interest of revenue, incorrect value of supply or abnormal availment of credit.
Nature of audit	Departmental Audit	Special Audit
Conducted by	Officers of department authorized by Commissioner	Chartered Accountant/Cost Accountant appointed by Commissioner
Frequency	Discretionary	Discretionary
Prior notice to auditee	Yes. 15 days' notice is required	No such notice/intimation envisaged
Time for conclusion of audit	3 months, further extension of 6 months allowed	90 days, further extension of 90 days allowed
Audit Report	To be intimated soon on completion of audit to Commissioner	Report to Deputy/Assistant Commissioner
Intimation to auditee	Conclusion of audit, the proper officer shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.	On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.
Audit expenses	Borne by department	Borne by department
Opportunity of being heard	No specific provision	Yes. Where material gathered during audit is to be used in any proceedings against the auditee.
Action based on report	Yes. Adjudicating Authority can issue show cause notice under Sec. 73 or Sec. 74	Yes. Adjudicating Authority can issue show cause notice under Sec. 73 or Sec. 74