

## Chapter 24: Assessment

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### 24.0 Introduction

Assessment means determination of tax liability and includes—

- self-assessment,
- final assessment,
- re-assessment,
- provisional assessment,
- summary assessment and
- best judgment assessment.

### 24.1 Self-Assessment (Section 59 of the CGST Act, 2017)

“Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39”.

The registered person is required to compute his output, take the available input credit and pay the balance amount and file the returns in the prescribed forms. Prima-Facie the department shall accept such self-assessed returns and declarations, subject to scrutiny and other modes of assessment in the selected cases and in the prescribed manner.

#### **Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation:**

Under CGST Act, 2017, the taxpayers have an option to make voluntary payment of tax through Form DRC-03. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where “recovery” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

The Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.

[Instruction No. 01/2022-23 [GST-Investigation], dated 25.05.2022]

## 24.2 Final Assessment

If the department accept the self-assessment it will become final assessment.

## 24.3 Re-assessment

If department noticed any discrepancies it will become re-assessment.

## 24.4 Provisional assessment (Section 60 of the CGST Act, 2017)

As per section 60(1) of the CGST Act, 2017 where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis.

The proper officer (i.e. The Asst. Commissioner/Dy. Commissioner of Central Tax) shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

The Asst. Commissioner/Dy. Commissioner of Central Tax provisionally determines the amount of tax payable by the supplier and is subject to final determination.

On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed. [Section 60(2) of the CGST Act, 2017]

### 24.4.1 Time limit to finalise provisional assessment [Section 60(3) of the CGST Act, 2017]

The proper officer shall, within a period not exceeding 6 months from the date of the communication of the order issued under section 60(1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

### 24.4.2 Extension of time limit

Proviso to section 60(3) of the CGST Act, 2017 on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding 6 months and by the Commissioner for such further period not exceeding 4 years.

On finalization of the provisional assessment, any amount that has been paid on the basis of such assessment is to be adjusted against the amount that has been finally determined as payable. In case of short payment, the same has to be paid with interest and in case of excess payment, the same will be refunded with interest. [Section 60(4)/(5) of the CGST Act, 2017]

### 24.4.3 Interest liability

In case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

**Example 1:** M/s Ram Ltd. manufactured and cleared goods under provisional assessment, in the month of July 2017, by paying tax of ₹50,000 on the 20th August 2017 [i.e. due date of filing GSTR-3], a further tax of ₹90,000 is paid on the 15th November, 2017, and on the same day the documents for final assessment are submitted by the assessee. Final assessment order is issued on the 18th November 2017, assessing the tax payable on goods as ₹1,50,000, and consequently the assessee paid a tax of ₹10,000 on the 30th November 2017. Find the total interest payable by the assessee?

**Answer:** No interest shall be payable on ₹50,000.

Interest shall be payable on ₹90,000 from the 21st August 2017 to 15th November 2017.

Therefore No. of days delay = 87 days.

Interest shall be payable on ₹10,000 from the 21st August 2017 to 30th November 2017 as due date for payment of tax of ₹1,50,000 is the 20th August 2017.

Therefore, No. of days delay = 102 days.

₹90,000 x 18/100 x 87/365 = ₹3,861

₹10,000 x 18/100 x 102/365 = ₹ 503

Total interest payable = ₹4,364

**Example 2:** Kulbhushan & Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12.01.20XX, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies both the consignments of goods on 25.01.20XX thereafter paying the tax on provisional basis in respect of both the consignments on 19.02.20XX.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21.03.20XX, a tax of ₹1,80,000 becomes due on 1st consignment whereas a tax of ₹4,20,000 becomes refundable on 2nd consignment.

Kulbhushan & Sons pays the tax due on 1st consignment on 09.04.20XX and applies for the refund of the tax on 2nd consignment same day. Tax was actually refunded to it on 05.06.20XX.

Determine the interest payable and receivable, if any, by Kulbhushan & Sons in the above case.

(CA Final IDT RTP Nov 2018)

**Answer:** In the given case, due date for payment of tax on goods cleared on 25.01.20XX under provisional assessment is 20.02.20XX.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of 1st consignment:

$$= ₹1,80,000 \times 18\% \times 48/365$$

$$= ₹4,261 \text{ (rounded off)}$$

Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

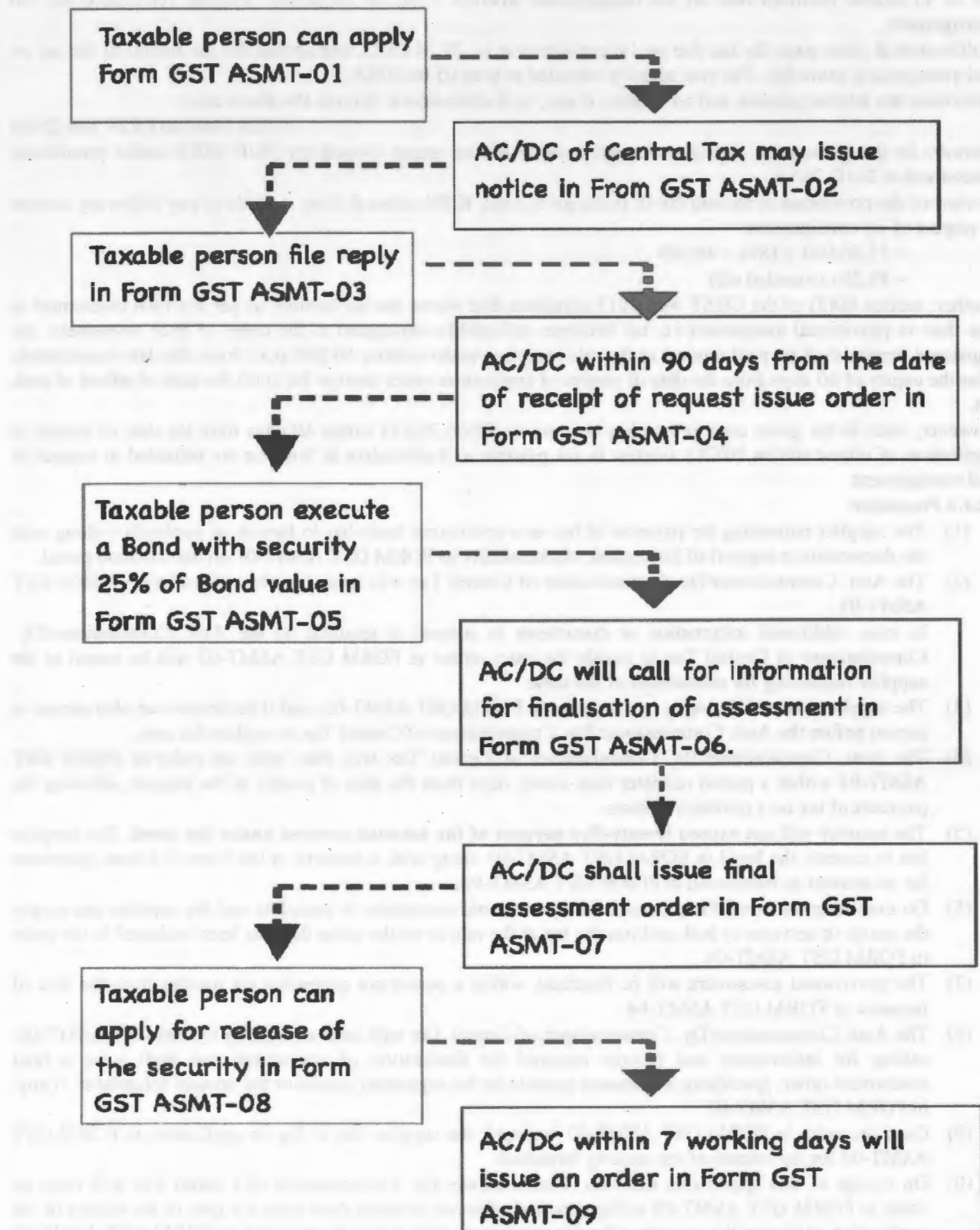
However, since in the given case, refund has been made (05.06.20XX) within 60 days from the date of receipt of application of refund (09.04.20XX), interest is not payable to Kulbhushan & Sons on tax refunded in respect of 2nd consignment.

#### 24.4.4 Procedure

- (1) The supplier requesting for payment of tax on a provisional basis has to furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal.
- (2) The Asst. Commissioner/Dy. Commissioner of Central Tax will scrutinize the application in FORM GST ASMT-01.  
In case, additional information or documents in support is required by the Asst. Commissioner/Dy. Commissioner of Central Tax to decide the case, notice in FORM GST ASMT-02 will be issued to the supplier requesting for submission of the same
- (3) The supplier has to file a reply to the notice in FORM GST ASMT-03, and if he desires can also appear in person before the Asst. Commissioner/Dy. Commissioner of Central Tax to explain his case.
- (4) The Asst. Commissioner/Dy. Commissioner of Central Tax will then issue an order in FORM GST ASMT-04 within a period not later than ninety days from the date of receipt of the request, allowing the payment of tax on a provisional basis.
- (5) The security will not exceed **twenty-five percent of the amount covered under the bond**. The supplier has to execute the bond in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as mentioned in FORM GST ASMT-04.
- (6) On executing the bond, the process of the provisional assessment is complete and the supplier can supply the goods or services or both and pay the tax at the rate or on the value that has been indicated in the order in FORM GST ASMT-04.
- (7) The provisional assessment will be finalized, within a period not exceeding six months from the date of issuance of FORM GST ASMT-04.
- (8) The Asst. Commissioner/Dy. Commissioner of Central Tax will issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.
- (9) Once the order in FORM GST ASMT-07 is issued, the supplier has to file an application in FORM GST ASMT-08 for the release of the security furnished.
- (10) On receipt of this application the Asst. Commissioner/Dy. Commissioner of Central Tax will issue an order in FORM GST ASMT-09 within a period of seven working days from the date of the receipt of the application, releasing the security after the amount payable if any as specified in FORM GST ASMT-07 has been paid.

## Summary:

## Provisional Assessment Procedure:



**Section 61 of CGST Act 2017: Scrutiny of Returns (CHAPTER XII – ASSESSMENT)**

- (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
- (2) In case the explanation is found acceptable, the registered person shall be informed accordingly, and no further action shall be taken in this regard.
- (3) 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 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, 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.

**24.5 Summary Assessment [Section 64 of the CGST Act, 2017]**

As per Section 64(1) of CGST Act, 2017, the proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

As per Section 64(2) of CGST Act, 2017, on an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

**Summary:**

Summary Assessment can be resorted to by proper officer on any evidence showing a tax liability of a person. A summary assessment can be passed if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of Revenue. The taxable person may file an application for withdrawal of the summary assessment, within 30 days of receipt of summary assessment order.

**Summary assessment in certain special cases (Section 64)**

*Example 1:* Whether proper officer can proceed suo-moto to assess the tax liability of any person on possession of relevant evidence?

**Ans.** No, the proper officer has to obtain prior permission of Additional/Joint Commissioner to proceed to assess the tax liability.

*Example 2:* Whether the summary assessment can be initiated based on mere change in opinion of proper officer?

**Ans.** No, mere change in opinion cannot be treated as evidence for initiation of summary assessment.

*Example 3:* Whether summary assessment can only be initiated on previously filed return (u/s 34 and u/s 40)?

**Ans.** Summary assessment can be initiated on any taxable person. Submission of return u/s 39 and u/s 45 is not prerequisite.

*Example 4:* Is there any form prescribed for order of summary assessment?

**Ans.** The order of summary assessment under Section 64(1) shall be issued in **FORM GST ASMT-16**.

*Example 5:* What is the remedy available to the taxable person if the order passed u/s 64 is erroneous?

**Ans.** On an application made in **FORM GST ASMT-17** within 30 days by taxable person from the date of receipt of order passed summary assessment order the Additional/Joint Commissioner may withdraw such order and follow the procedure laid down in Section 73 or 74 which provides for determination of tax liability on account of tax not paid other than fraud, willful mis-statement etc., or otherwise. (Sub-section 2)

*Example 6:* Whether the Additional/Joint Commissioner can withdraw the summary assessment order only on application by the taxable person?

**Ans.** The Additional/Joint Commissioner can, on his own motion may withdraw the summary assessment order in the event such order is erroneous and thereafter may follow the procedure laid down in Section 73 or 74 which provides for determination of tax liability on account of tax not paid other than fraud, willful mis-statement etc., or otherwise.

The order of withdrawal or, rejection of the application under Section 64(2) shall be issued in **FORM GST ASMT-18**.

**24.6 Best judgment assessment**

As per Section 62 of the CGST Act, 2017 (i.e. assessment of non-filers of return) provides for best judgment assessment where a registered person fails to furnish the return even after the service of a notice and pass order taking into account all the relevant material which is available or which he has gathered within a period of five years from the due date of filing annual return. Similar provision exists for unregistered persons under Section 63 of the CGST Act, 2017.