

Goods & Services Tax

Central Goods & Services Tax Act, 2017

“Assessment, Audit & Demands”

ICAI, New Delhi

Sunday, 31st December, 2017

CA Rohit Vaswani,

B.Com, FCA, ACMA, LLB, DISA (ICAI)

Assessment, Audit & Demands

- Sec.
59-64

Assessment



- Sec.
65-66

Audit



- Sec.
73-77

Demands





Assessment

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Assessment

(Sec.59-64)

Self
Assessment

Provisional
Assessment

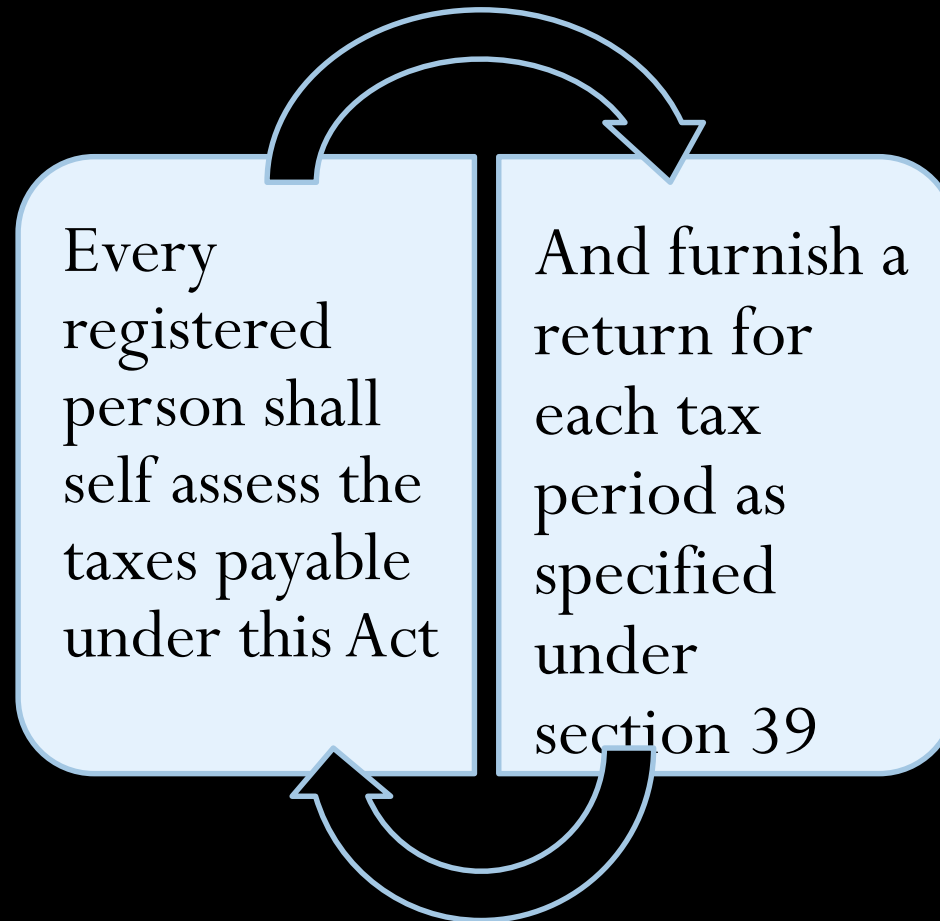
Scrutiny of
Returns

Best Judgment
Assessment

Summary
Assessment

Self Assessment

Sec.59



Provisional Assessment- Sec.60

where the taxable person is unable to determine the value of Supply

Unable to determine the rate of tax applicable

Request for payment of tax on provisional basis

Provisional Assessment- Sec.60/Rule.98

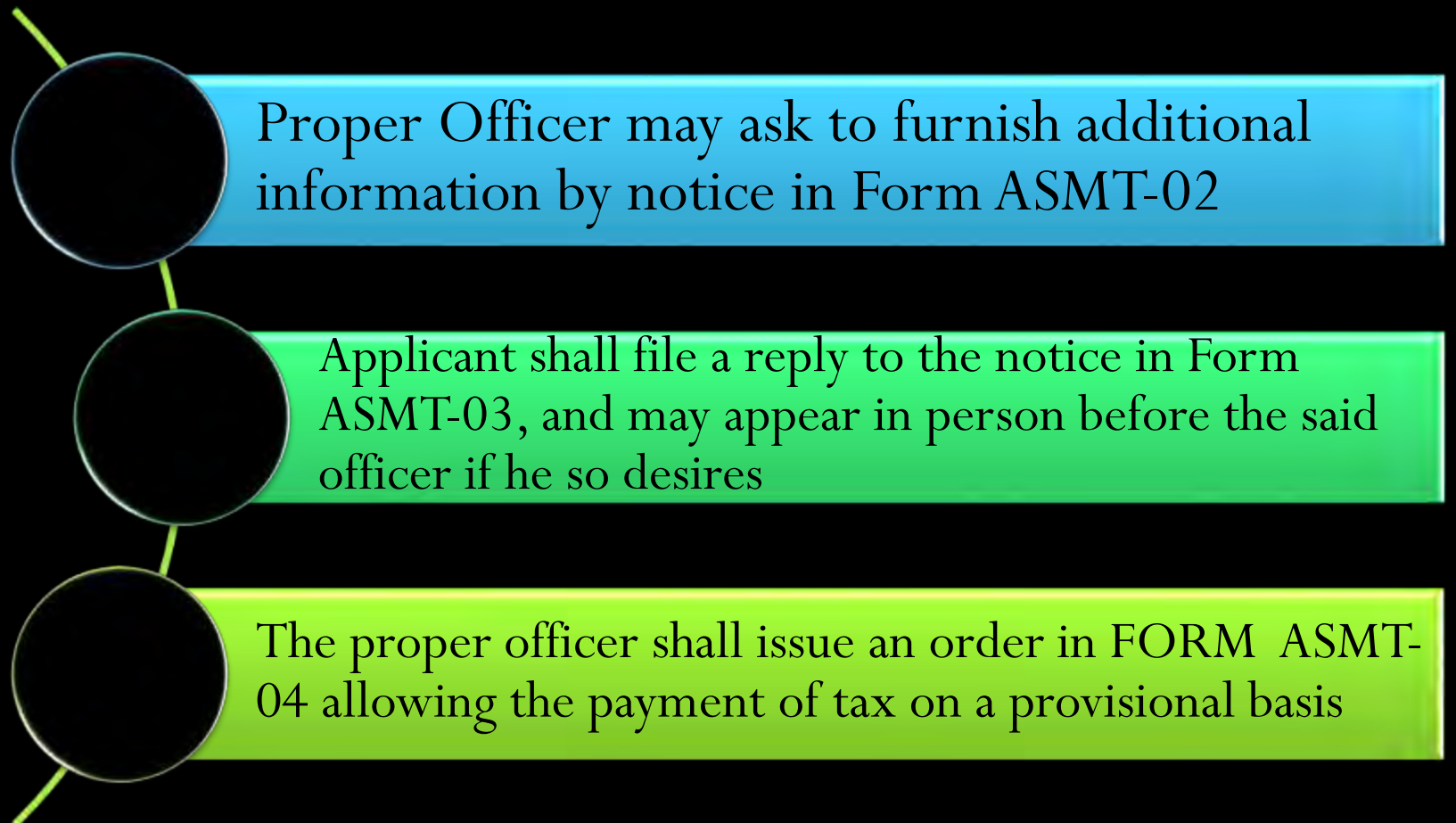


Request for provisional assessment to be made in Form ASMT-01 with supporting documents

Proper Officer to pass an order within 90 days of receipt of ASMT-01 with Allowed rate of Tax/Value

Taxable Person may be asked to furnish the Bond with Security (Up to 25%) for the difference of tax as may be finally assessed

Provisional Assessment- Sec.60/Rule.98




Proper Officer may ask to furnish additional information by notice in Form ASMT-02

Applicant shall file a reply to the notice in Form ASMT-03, and may appear in person before the said officer if he so desires


The proper officer shall issue an order in FORM ASMT-04 allowing the payment of tax on a provisional basis

Provisional Assessment- Sec.60/Rule.98

Registered person shall execute a bond in Form ASMT-05 along with security in Bank Guarantee as prescribed.




The proper officer shall pass the final assessment order within a period of 6 months (plus 6+4 months) from the date of passing of order for provisional assessment.




The proper officer shall issue a notice in Form ASMT-06, calling for information and records required for finalization of assessment

Provisional Assessment- Sec.60/Rule.98

The Proper Officer shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM ASMT-07





The registered person shall be liable for payment of interest on tax on provisional basis if not paid within the due date as per Sec.39(7), whether such tax is paid before of after the final assessment order.




Where the registered person is entitled to a refund consequent to the order of final assessment, interest shall be paid on such refund as provided in section 56

Provisional Assessment- Sec.60/Rule.98

- 
- The applicant may file an application in FORM GST ASMT- 08 for the release of the security furnished after the final assessment order has been issued.
- 
- The proper officer shall release the security furnished after ensuring that the applicant has paid the amount specified in final order and issue release order in Form ASMT-09 within 7 working days from receipt of ASMT-08

Scrutiny of Returns

Sec.61/Rule.99



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.

The proper officer shall issue a notice to the said person in FORM ASMT-10, informing him of such discrepancy and seeking his explanation

Scrutiny of Returns

Sec.61/Rule.99

Quantification of tax/interest

- An also where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy in ASMT-10

Acceptance by the registered person

- The registered person may accept the discrepancy mentioned in the notice and pay the tax/ interest accordingly

Explanation by the registered person

- The registered person may furnish an explanation for the discrepancy in FORM ASMT-11 to the proper officer

Scrutiny of Returns

Sec.61/Rule.99

Acceptance by
the proper
officer

- In case the explanation is found acceptable, the registered person shall be informed in Form ASMT-12

If no explanation
furnished in
allowed time

- In case no satisfactory explanation is furnished within time allowed, the proper officer may initiate appropriate action

If RP fails to take
corrective
measure

- where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return

Scrutiny of Returns

Sec.61/Rule.99



Best Judgment Assessment

Sec.62 & 63 / Rule.100

Assessment of non-filers of return

- where a registered person fails to furnish the return under section 39 or section 45
- even after the service of a notice under section 46
- Notwithstanding anything to the contrary contained in section 73 or section 74

Assessment of unregistered persons

- where a taxable person fails to obtain registration even though liable to do so
- or whose registration has been cancelled u/s 29 (2) but who was liable to pay tax
- Notwithstanding anything to the contrary contained in section 73 or section 74

Best Judgment Assessment

Sec.62 & 63 / Rule.100

Assessment of non-filers of return

- the proper officer may proceed to assess the tax liability of the said person to the best of his judgement
- taking into account all the relevant material which is available or which he has gathered

Assessment of unregistered persons

- the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order
- no such assessment order shall be passed without giving the person an opportunity of being heard

Best Judgment Assessment

Sec.62 & 63 / Rule.100

Assessment of non-filers of return

- Time Limit: within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates
- If valid return is furnished within 30 days from the date of order, the said assessment order shall be deemed to have been withdrawn
- Assessment Order in Form ASMT-13

Assessment of unregistered persons

- Time Limit: within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates
- ASMT-14 notice to be issued containing the grounds on which assessment is proposed
- Assessment Order in Form ASMT-15

Summary Assessment in certain special cases

Sec.64

To protect the interest of revenue

- If proper officer has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue

On any evidence showing a tax liability

- 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 (ASMT-16) the tax liability of such person

Summary Assessment in certain special cases

Sec.64

Where taxable person is not ascertainable for 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 etc.

Application to withdraw summary assessment (ASMT-17)

- On application by taxable person within 30 days from receipt of summary assessment order Or on his own motion the proper officer may withdraw such order and follow the procedure laid down in section 73 or section 74



“Audit”

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Audit

Sec.65 & 66

Sec.65

- Audit by Tax Authorities

Sec.66

- Special Audit
- By CA's/CMA's

Audit by Tax Authorities

Sec.65/Rule.101

Order for Audit

- 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 of Audit

- The period of audit to be conducted shall be a financial year or multiples thereof

Audit by Tax Authorities

Sec.65/Rule.101

Place of Audit

- The officer may conduct audit at the place of business of the registered person or in their office

Notice of Audit (ADT-01)

- The registered person shall be informed by way of a notice not less than 15 working days prior to the conduct of audit

Audit by Tax Authorities

Sec.65/Rule.101

Time Limit for conducting Audit

- The Audit shall be completed within a period of 3 months (further extendable for 6 months) from the date of commencement of the audit

Commencement of Audit

- “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

Audit by Tax Authorities

Sec.65/Rule.101

to afford the necessary facility to verify and furnish required information-

documents on the basis of
which the books of
account are maintained

the correctness of the
turnover, exemptions and
deductions claimed

the returns

statements
furnished

the rate of tax
applied/ITC/
Refund

Audit by Tax Authorities

Sec.65/Rule.101

Discrepancies noticed

- The proper officer may inform discrepancies noticed and the registered person may file his reply

Findings of the Audit

- On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in Form ADT-02 within 30 days from the conclusion of audit

Detection of tax liability

- 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

Special Audit

Sec.66/Rule.102

Who can
direct
special audit

- any officer not below the rank of Assistant Commissioner with the prior approval of the commissioner, shall issue a direction in Form ADT-03

Who can
conduct
special audit

- by a chartered accountant or a cost accountant as may be nominated by the Commissioner

Special Audit

Sec.66/Rule.102

When can Special Audit be directed ?

If at any stage of scrutiny, inquiry, investigation or any other proceedings before him

having regard to the nature and complexity of the case and the interest of revenue

is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits

Special Audit

Sec.66/Rule.102

Time Limit
for
conducting
special audit

- The CA/CMA shall within the period of 90 days (further 90 days), submit a report of such audit duly signed and certified by him

Intimation to
the
Registered
Person

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

Special Audit

Sec.66/Rule.102

Opportunity of being heard

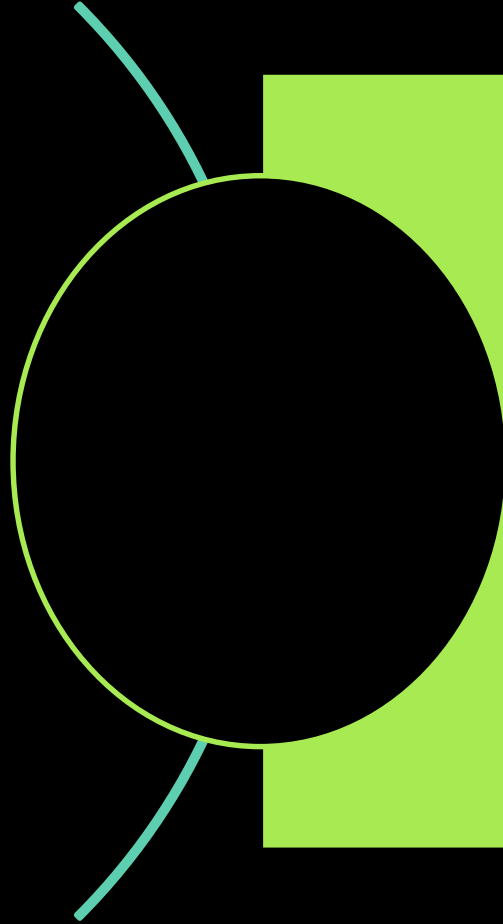
- in respect of any material gathered on the basis of special audit report which is proposed to be used in any proceedings against him

Fees of Special Audit

- The expenses of the examination and audit of records, including the remuneration of such CA or CMA, shall be determined and paid by the Commissioner and such determination shall be final

Special Audit

Sec.66/Rule.102



Where Special Audit conducted 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 & RECOVERY UNDER GST

“Adjudication of Demand”

CA Rohit Vaswani

Adjudication of Demand

Section-73

- For Reasons other than-
 - i. Fraud
 - ii. Any willful misstatement
 - iii. suppression of facts to evade tax

Section-74

- By reason of-
 - i. Fraud
 - ii. Any willful misstatement
 - iii. suppression of facts to evade tax

Reasons for issue of notice

Section-73-

- Where it appears to the proper officer that-
 - i. any tax has not been paid
 - ii. Short paid
 - iii. erroneously refunded
 - iv. ITC has been wrongly availed or utilised

Section-74

- Where it appears to the proper officer that-
 - i. any tax has not been paid
 - ii. Short paid
 - iii. erroneously refunded
 - iv. ITC has been wrongly availed or utilised

Show Cause Notice

Section-73-

- show cause as to why-
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty leviable under the provisions of this Act or the rules made thereunder

Section-74

- show cause as to why-
- he should not pay the amount specified in the notice
- along with interest payable thereon under section 50
- and a penalty equivalent to the tax specified in the notice

Time Limit for Issue of Notice

Section-73

- The proper officer shall issue the **notice** under sub-section (1) at least 3 months prior to the time limit specified in sub-section (10) for issuance of order

Section-74

- The proper officer shall issue the **notice** under sub-section (1) at least 6 months prior to the time limit specified in sub-section (10) for issuance of order

Time Limit for Issue of Order

Section-73

- The proper officer shall issue the Order within 3 years from the due date for furnishing of annual return for the relevant financial year

Section-74

- The proper officer shall issue the Order within 5 years from the due date for furnishing of annual return for the relevant financial year

Where show cause has been issued for earlier period

Section-73

- The proper officer may serve a **Statement** and shall be deemed to be Notice, subject to the condition that same grounds for the earlier period.

Section-74

- The proper officer may serve a **Statement** and shall be deemed to be Notice, subject to the condition that same grounds for the earlier period.

Where Tax has been paid before issue of show cause notice.

Section-73

- The person may pay the amount of tax along with interest 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-74

- The person may pay the amount of tax along with interest and a penalty equivalent to 15% of such tax 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

Where Tax has been paid within 30 days from issue of show cause notice

Section-73

- Where person pays the said tax along with interest within 30 days of issue of the notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded

Section-74

- Where person pays the said tax along with interest and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded

Adjudication Order

Section-73

- 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 10% of tax or ten thousand rupees, whichever is higher**, due from such person and **issue an order**

Section-74

- 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**

Special Provisions relating to Penalty

Section-73

- Even if tax has been paid before issue of notice OR within 30 days from issue of notice, Penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

Section-74

- Where any person served with an order issued under sub-section (9) pays the tax along with interest and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded

Explanation-1 (Section 73 & 74)

“All proceedings in respect of the said notice”

- the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132 (Prosecution)

Conclusion of proceedings against all the persons


- where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded

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.

Tax Collected by not paid to Government

Sec.76

- 
- every person who has collected from any other person any amount as representing the tax under this Act
 - and has not paid the said amount to the Government
 - shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not

Tax Collected by not paid to Government

Sec.76

- This Provision is applicable notwithstanding any thing contrary contained in:-
- any order or direction of any Appellate Authority or Appellate Tribunal or court
- or in any other provisions of this Act or the rules made thereunder
- or any other law for the time being in force

Tax Collected by not paid to Government

Sec.76

Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid-

the proper officer may serve on the person liable to pay such amount a notice (DRC-01) requiring him to show cause

as to why the said amount as specified in the notice, should not be paid by him to the Government

and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act

Tax Collected by not paid to Government

Sec.76

The proper officer shall determine the amount due from such person and thereupon such person shall pay the amount so determined

The person shall also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government

The proper officer shall issue an order within one year from the date of issue of the notice

Tax Collected by not paid to Government

Sec.76

Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year

Where any surplus is left after the adjustment, the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount

The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54

Tax wrongly collected and paid to government

Sec.77

Tax Paid as
Intra-State
wrongly

- Tax paid as Intra-state supply but which is subsequently held to be an inter-State supply, **shall be refunded** the amount of taxes so paid

Tax Paid as
Inter-State
wrongly

- Tax paid as inter-state supply but which is subsequently held to be an intra-State supply, **Shall not be required to pay any interest** on the amount of central tax and State tax

Disclaimer

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Thank You

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