
GST AUDIT



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INTRODUCTION

While the GST regime emphasizes self-assessment processes, the complexities involved in it make one wary. At this juncture, it is clear that the GST law is not presently simple enough for an assessee to compute his total and taxable turnovers and duly report the same. In order to ensure effective compliance with the various GST provisions and to ensure performance of audits in a systematic, transparent and fair manner, audit provisions have been incorporated under the GST Acts(s)/Rules.

Definition of the term “Audit” – Section 2(13) of the CGST Act/SGST Act

“**Audit**” 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.

The following 3 types of audits are prescribed under the GST laws:

1. The 1st type of audit is to be done by a chartered accountant or a cost accountant;
2. 2nd type of audit is to be done by the commissioner or any officer authorised by him in terms of Section 65 and 66 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Section 2 of UTGST Act, 2017.
3. The 3rd type of audit is called the Special Audit and is to be conducted under the mandate of Section 66 of CGST Act, 2017 read with Rule 102 of CGST Rules, 2017.

Let's discuss one by one...

1. AUDIT BY A CHARTERED ACCOUNTANT OR A COST ACCOUNTANT- SECTION 35(5) OF THE CGST ACT/SGST ACT READ WITH RULE 80(3) OF THE CGST/SGST RULES, 2017

Every registered person whose **turnover** during a financial year exceeds the prescribed limit of **Rs. 2 Crore** shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

It is to be noted very carefully here that though in **Section 35(5)** the term “turnover” has been used, yet it shall mean “**aggregate turnover**”.

The term “aggregate turnover” has been defined as under vide **Section 2(6)** of the CGST Act/SGST Act:

*“Aggregate Turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but **excludes** central tax, State tax, Union territory tax, integrated tax and cess*

A careful perusal of above-definition reveals that first of all it is an exhaustive definition because the expression “**means**” [and not include] has been used.

Further, while computing the value of “Aggregate Turnover”, following **inclusions** shall be made:

- (1)** Value of all **Taxable Supplies**. The term “Taxable Supply” means a supply of goods or services or both which is leviable to tax under the GST Acts.
- (2)** Value of all **Exempt Supplies**. The term “Exempt Supply” means supply of any goods or services or both which attracts **nil rate of tax** or which may be **wholly exempt** from tax under Section 11 of the CGST Act/SGST Act or under section 6 of the Integrated Goods and Services Tax Act, **Examples** of “Exempt Supply” are - Live bovine animals, Live swine, Live Fish, Melons, Services by a Foreign Diplomatic Mission located in India, Services by way of admission to a Museum, National Park, Wildlife Sanctuary.

It is also worth highlighting here that the term “exempt supply” includes **non-taxable supply** also. The term “**Non-taxable Supply**” means a supply of goods or services or both which is not leviable to tax under the CGST Act/SGST Act or under the IGST Act. **Examples** of non-taxable supply are Alcoholic Liquor for Human Consumption and five specified Petroleum Products i.e. Petroleum Crude, Motor Spirit (Petrol), High Speed Diesel [HSD], Natural Gas and Aviation Turbine Fuel [ATF]

- (3)** Value of **Export of Goods or Services** or both; **and**
- (4)** Supplies to branches in other States having same Permanent Account Number [PAN]

However, following **Exclusions** shall be made while computing the Value of Aggregate Turnover:

- (i)** Value of Inward supplies on which tax is payable by a person on Reverse Charge basis. **Examples** of supplies subject to Reverse Charge are- Services provided by way of Sponsorship to any Body Corporate or Partnership Firm, Services supplied by a Director of a Company or Body Corporate to the said company or Body Corporate.
- (ii)** Central Tax, State Tax, Union territory Tax, Integrated Tax and Cess

Some Issues which need Departmental Clarifications

(1) Applicability of Turnover Limit for the period 01.07.2017 to 31.03.2018

GST has been implemented with effect from 01.07.2017. As a consequence, during the financial year 2017-18, GST remained in force only for a period of nine months from 01.07.2017 to 31.03.2018. Now, the question which arises here, is whether the above-mentioned annual turnover limit of **Rs. 2 crore** for audit purposes shall apply proportionately in the given case for a period of nine months or whether the foregoing limit shall apply as it is for a period of nine months ?. A suitable and immediate **clarification** from the Government(s) is required in this regard.

(2) Conduct of GST Audit State-Wise

It is worth emphasizing here that for audit purposes the turnover limit of **Rs. 2 Crore** shall be computed by including turnover in all the States or Union territories, as the case may be, i.e. on all India basis under same PAN. Furthermore, the foregoing threshold turnover limit of Rs. Two Crore is **same for assessees in all the States and Union Territories**. Thus, it can be safely inferred that **no separate threshold limit** has been specified for **Special Category States**. Since each of the State GST Acts also has the provisions relating to GST Audit, it appears that the GST audit shall be conducted state-wise. It also appears that only for the purpose of determining the eligibility of the assessee who is required to get its accounts audited by a Chartered Accountant or a Cost Accountant, the all India based turnover shall be considered. However, it shall be better if a suitable clarification from the Government(s) is issued in this regard at the earliest.

Statements and Documents to be submitted to the Proper Officer

It shall be necessary for the registered person to submit to the proper officer the following Statements and Documents:

- (a) A copy of the Audited Annual Accounts;
- (b) A Reconciliation Statement under **Section 44(2)** of the CGST Act/SGST Act i.e. a Statement reconciling the value of supplies declared in the Return furnished for the financial year with the audited Annual Financial Statements. Further, the aforesaid Reconciliation Statement shall be duly certified in **FORM GSTR-9C**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- (c) Other prescribed documents in the prescribed form and prescribed manner.

It is also to be borne in mind that the Government is yet to prescribe the format of the Audit Report and Annexures thereto. Further, it is also not yet clear, whether auditor is required to identify and report the discrepancies month-wise or annually.

Preparation for First GST Audit

GST had been implemented on 01.07.2017 and the first financial year in the GST Regime ended on 31.03.2018. Thus, it goes without saying that GST Audit shall be conducted for the first time. As a result, plenty of preparation is required both on the part of GST Auditor and GST Assessee. Besides, it is worth adding here that in case of Statutory Audit and Tax Audit (u/s 44AB of the Income Tax Act), the main thrust of the auditor is on the financial records. On the other hand, the scope of GST Audit is wider than scope of audit under Income Tax Act, 1961. Resultantly, it shall become obligatory on the part of the GST Auditor to have clear and precise understanding of various provisions of GST Acts/Rules made thereunder [including various mandatory records to be maintained] requirements of reporting and source of information, understanding the nature of business of the concerned assessee.

Following are the various steps which a GST Auditor may take in connection with the forthcoming first GST Audit in the year 2018:

1. GST Audit shall be new to everyone. Resultantly, a number of auditees who are required to be get their accounts audited may not have sufficient knowledge about the various applicable provisions of the GST Act(s)/Rules. Therefore, it becomes essential on the part of a Chartered Accountant or a Cost Accountant to inform the concerned auditees not only about the requirement of GST audit but also about the mandatory documents and other preparations to be done by them.
2. Confirm his eligibility to be the GST Auditor in accordance with provisions of Section 2(23) [which has defined the term "**Chartered Accountant**"] or Section 2(35) [which has defined the term "**Cost Accountant**"].
3. Understand the requirements of records to be maintained and advise the client to maintain the accounts and records so required.
4. Prepare the detailed Audit Programme as well as List of Records to be verified.
5. Prepare a detailed questionnaire to understand the operations/activities of the auditee.
6. Special attention must be paid to transactions not appearing in the Financial Accounts, but having GST implications.
7. Prepare various Reconciliation Statements

Appointing Authority of GST Auditor and Communication with Previous Auditor

In case of a **company** the appointment of the GST auditor shall be made by a resolution of the Board of Directors or by an officer of the company, if so authorized by the Board in this behalf. In case of a **partnership firm or proprietary concern**, the appointment can be made by a partner or the proprietor or a person authorized by the assessee. The acceptance of appointment by the proposed GST Auditor shall also be communicated in writing to the assessee.

Since the GST Audit is applicable for the first time for the financial year 2017-18, requirement of communication with the previous GST Auditor shall not arise. However, it is quite possible that in the pre-GST Regime, some assessee may be subject to VAT Audit, which was undertaken by an eligible auditor. However, GST Audit of the same assessee for the year 2017-18 may be allotted to a different Auditor. Now, the question arises is whether **the new GST Auditor is required to communicate with the VAT Auditor**. It is opined that since GST Acts are separate and independent Acts and the Audit specified therein is different VAT audit, there is no need for the GST Auditor to communicate with earlier VAT Auditor, before taking up the GST audit. However, in the subsequent years, in case of change in the GST Auditor, the new auditor shall communicate with the previous auditor as per the **provisions of the Chartered Accountants Act, 1949 or Cost and Works Accountants Act, 1959**.

General Checklist for a Chartered Accountant before Accepting the Appointment as an GST Auditor

1. Any **member in part-time practice** is not entitled to perform attest function. Only partners can perform attestation function.
2. In case of **Joint Audits**, all the auditors will have to sign the audit report. If the auditors have different opinion, then they should issue separate audit reports.
3. A chartered accountant having **substantial interest** in the assessee's business cannot take up the audit.
4. A chartered accountant who is **responsible for writing or the maintenance of books of account** of an assessee is not eligible for being appointed an auditor of the same assessee.
5. **Internal auditor** of an assessee cannot be appointed as his tax auditor.
6. A chartered accountant is not eligible to accept the GST Audit of a person to whom he is indebted for more than Rs. 10,000/-.
7. The restrictions applicable for appointment of statutory auditor where fee for other services are more than the statutory audit fee, in case of specified entities, is not applicable to GST auditors.

8. A chartered accountant cannot charge professional fees based on a percentage of profit or which are contingent upon the finding or the result of the professional employment.
9. In many cases, an assessee may be having his GST registrations in many States. The assessee may appoint single auditor for all his registered establishments. Accounts and records might have been kept in the local language of the State. It is suggested that in the normal course, the auditor should not accept the audit of accounts written in a language which he/his staff does not understand.

Furthermore, every auditor [including a GST Auditor] should keep in mind the following observations of **Lord Justice Lopes** in respect of an auditor's duty of care, in the landmark case of **Kingston Cotton Mills Co. (1896)**:

*"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably careful, cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said to approach his work with suspicion, or with a forgone conclusion that there is something wrong. **He is a watchdog, not a bloodhound.** He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest and rely upon their representations, provided he takes reasonable care."*

Removal of GST Auditor

Any resolution to remove a statutory auditor shall not be effective unless there are **good and substantial grounds** for the removal related to the conduct of the auditor with regard to the performance of his or her duties as auditor. However, the auditor cannot be removed on the ground that he has given an adverse or qualified Audit Report. In the event an auditor has been removed without any valid grounds, the Ethical Standards Board of ICAI or ICWAI, as the case may be, can intervene and it may direct the incoming auditor not to accept the audit assignment.

2. AUDIT BY DEPARTMENT - SECTION 65 OF THE CGST/SGST ACT

Tax liability on supply of goods or services or both is computed by a registered person under **self-assessment scheme** of the Act. In order to ensure whether the tax liability has been correctly computed and discharged by the registered person, it becomes essential for the Department to conduct an audit of Records maintained by the person.

The Commissioner or an officer authorised by him, may undertake audit of any registered person by issuing a general order or a special order. **General Order** shall specify the criteria and all the registered persons fulfilling that criteria shall get covered in the ambit of audit. On the other hand, **Special Order** for audit shall be issued in the name of a particular registered person and only such person shall be made subject to audit. Further, the authorised officer may conduct Audit **either at the place of business of the registered person or in his own office.**

It is worth emphasizing here that the authorized officer, **during the course of audit**, may require the registered person to:

- (i) Afford him necessary facility to verify the books of account or other documents required by him;
- (ii) Furnish such information as may be required by him for the conduct of audit, and to provide assistance for timely completion of audit.

It is also pertinent to add here that audit of a registered person shall be **completed within three months** from the date of commencement of audit. The expression '**commencement**' shall mean the date on which the books of account, records and other documents, asked for by the tax authorities, are made available by the registered person or the date of actual institution of audit at the place of business, whichever is later. However, if the Commissioner is satisfied that audit of the registered person cannot be completed within three months, he may **extend the time period for a further period not exceeding six months** after recording the reasons for doing so in writing.

Manner of Conducting Departmental Audit - Rule 101 of the CGST/SGST Rules, 2017

Audit of a registered person shall be conducted for a **period of a financial year or multiples thereof**. Thus, Audit cannot be conducted for a part of the Financial Year in normal circumstances. Period to be covered under the Audit can be a single financial year or two financial years or three and so on.

The registered person shall also be informed by way of notice in **FORM GST ADT-01** at least 15 days prior to the conduct of audit. Moreover, the proper officer who has been authorised to conduct the audit of the records and books of account of the registered person shall, with the assistance of his team of officers and officials, **verify the documents** on the basis of which the books of account are maintained, the returns and statements furnished by the registered person, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues and **record the observations** in his audit notes.

Furthermore, the proper officer may inform the registered person of the **discrepancies**, if any, noticed. The registered person may file his explanation to discrepancies in his reply. Thereafter, the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

Finally, **on 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 in **FORM GST ADT-02**.

3. SPECIAL AUDIT -SECTION 66 OF THE CGST/SGST ACT

If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, **any officer not below the rank of Assistant Commissioner**, 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**, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be **nominated by the Commissioner**.

The Chartered Accountant or Cost Accountant nominated by the Commissioner shall, within a **period of 90 days** from the date of his nomination, **furnish the Audit Report** to the Assistant Commissioner on whose direction audit is conducted. However, the aforesaid period of 90 days may be **extended** by the Assistant Commissioner on his own motion, or on an application made by the registered person or the Chartered Accountant or Cost Accountant nominated by the Commissioner, for material and sufficient reason.

It is also worth highlighting here that even if the accounts and records of the registered person are audited under any other provisions of the CGST Act/SGST Act or any other law in force [such as Companies Act, 2013 or Income Tax Act, 1961], the said registered person shall be required to get his records audited by a Special Auditor. Thus, provisions of Special Audit have an **Overriding Effect** on other Audit provisions of the CGST Act/SGST Act or of any other Act.

The Registered Person shall be **given an opportunity of being heard** where any material gathered on the basis of Special Audit under the CGST Act/SGST Act is proposed to be used against him in any proceedings under the Act as per the **Principle of Natural Justice**.

The **expenses of examination and audit** of records of the Registered Person by the Special Auditor [including the remuneration of the Special Auditor] shall be **determined and paid by the Commissioner**. And aforesaid determination of expenses shall be final which means that no appeal can be filed to any Authority against such determination.

It is also essential to note that if Special Audit of the records and documents of the Registered Person results in detection of tax not paid or short paid or tax erroneously refunded, or input tax credit wrongly availed or utilized by him, the proper officer may proceed to initiate action under Section 73 or Section 74 of the CGST Act/SGST Act. The Headings of foregoing Section 73 or Section 74 are given in the Table hereinbefore.

Procedure of ordering special Audit and submission of special audit report - Rule 102 of the CGST/SGST Rules, 2017:

Where special audit is required to be conducted under section 66 of CGST and SGST Act, 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 the chartered accountant or cost accountant specified in the said direction - Rule 102(1) of CGST and SGST Rules, 2017.

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