



Lawgics

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Section 62 of CGST Act, 2017



62. Assessment of non-filers of returns.

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, 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, 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 and issue an assessment order 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.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

Rule 100: Assessment in certain cases

Rule
100(1)

The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.

Our Interpretation

Section 62(1)
read with
Rule 100(1)

Assessment of non-filer of Returns

If a Registered taxpayer do not file return u/s 39 (regular return) or return u/s 45 (final return), then proper officer shall serve a notice u/s 46 in GSTR-3A giving him 15 days' time to furnish the due return.

Section	Rule	Form Number	Tax Payer
39 (1)	61	GSTR-3B	Regular Tax Payer
39 (2)	62	CMP-08 & GSTR-4	Composition Dealer
39 (3)	66	GSTR-7	TDS Return
39 (4)	65	GSTR-6	Input Service Distributor
39 (5)	63	GSTR-5	Non-Resident Taxable Person
45	81	GSTR-10	Final Return to be furnished after cancellation of the registration

Thus, notice u/s 46 is mandatory pre-requisite for Assessment under section 62.

	<p>In spite of serving the notice, if the taxpayer fails to furnish the due returns, then, the proper officer may proceed for Assessment u/s 62 to the best of his judgement on the basis of information available with him. The proper officer shall issue an assessment order in ASMT-13 within 5 years from the last date of furnishing annual return for such financial year and a summary of demand shall be uploaded electronically in DRC-07 on GST Portal.</p>
Section 62(2)	<p><u>Withdrawal of assessment order in ASMT-13</u></p> <p>If such registered person furnishes a valid return electronically on common portal within 30 days of service of such order in ASMT-13, then such assessment order in ASMT-13 would be deemed as withdrawn but the liability of payment of interest u/s 50(1) @18% p.a. and applicable late fees u/s 47 shall continue.</p>
Circular No. 129/48/2019-GST dated 24.12.2019	<p><u>CBIC has issued a Standard Operating Procedure to be followed in case of non-filers of returns:</u></p> <ul style="list-style-type: none"> • The department shall issue system generated SMS to all the taxpayers, 3 days prior to the due date of filing the returns. • Once the due date for furnishing the return under section 39 is over, a system generated mail / message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc. • 5 days after the due date of furnishing the return, a notice in GSTR-3A shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within 15 days. • In case the said return is still not filed by the defaulter within 15 days of the said notice, 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 and would issue order in ASMT-13. The proper officer would then be required to upload the summary thereof in DRC-07. • For the purpose of assessment of tax liability, the proper officer may take into account the details of outward supplies available in the statement furnished under section 37 (GSTR-1), details of supplies auto-populated in GSTR-2A/2B, information available from e-way bills, or any other information available from any other source, including from inspection under section 71. • In case the defaulter furnishes a valid return within 30 days of the service of assessment order in ASMT-13, the said assessment order shall be deemed to have been withdrawn. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in ASMT-13, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

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