

# Assessment and Demands

**Knowledge Partner:**

**N. H. Singhal & Associates**

*Chartered Accountants*



**NUMMUS**  
CONSULTANTS

# CONTENT

1. Scrutiny (Sec 61)
2. Audit (Sec 65)
3. Determination of Tax (Sec 73 & 74)

*Assessment means determination of tax liability under the Act. Self-Assessment is determination of tax liability by the registered person himself for each tax period. GST act is primarily based on the principle of self assessment by the registered person.*



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**Assessment**

# SELF ASSESSMENT (Section 59)

“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”- Section 59



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# Scrutiny of Returns

(Sec 61; Rule 99)

The PO, using his discretionary powers may scrutinize and verify the correctness of any return and any discrepancies noticed will be communicated to registered person.

In case

- i. Satisfactory explanation is not obtained within 30 days of being informed or,
- ii. Corrective action is not taken in the return of the month where discrepancy is accepted;

PO may take recourse after issuance of notice to any of the following provisions;

- a. Audit by Tax Authorities
- b. Direct Special Audit from CA
- c. Undertake procedures of Inspection search and seizure
- d. Proceed to determine tax and dues under the act.



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# Scrutiny of Returns

(Sec 61; Rule 99)

- ✓ Returns are selected for scrutiny on test basis generally based on pre-established criteria. Scrutiny assessment is done only of the selected returns by the proper officer and any discrepancies noticed are informed to the registered person.
- ✓ The PO is expected to rely upon the information available with him or with the department. As far as possible, scrutiny of returns should have minimal interface between the proper officer and the registered person and, there should normally not be any need for seeking documents/ records from the taxpayers before issuance of FORM GST ASMT-10.
- ✓ It may also be ensured that the discrepancies so communicated may, as far as possible, be specific in nature and not vague or general. There may be cases where the registered person may already have made additional payment of tax, cess, etc., after filing of the returns for the relevant tax period, through FORM GST DRC-03.
- ✓ For each GSTIN identified for scrutiny for a financial year, the proper officer is required to scrutinize all the returns pertaining to the corresponding Financial Year under consideration and a single compiled notice in FORM GST ASMT-10 may be issued to the taxpayer for that financial year.

**SOP Instruction No. 2/2022-GST, & INSTRUCTION NO. 2/2023-GST**



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<b>Scrutiny of Returns</b>	<b>Rule 99 (1) Sec 61(1)</b>	<b>Notice for intimating discrepancies in the return after scrutiny</b>	<b>ASMT 10</b>	<b>Superintendent of CT</b>
	Rule 99 (2)	Reply to the notice issued under section 61 intimating discrepancies in the return	ASMT 11	
	Rule 99(3)	Order of acceptance of reply against the notice issued under section 61	ASMT 12	
	Sec 61(3)	Initiation of proceedings u/s 65, 66, 67, 73 or 74	As Applicable	



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Audit



# Audit u/s 65

“audit” means the examination of ;

- a. records,
- b. returns and
- c. other documents

maintained or furnished by the registered person under this Act or the rules made there under or under any other law for the time being in force to verify the correctness of

- 1. turnover declared,
- 2. taxes paid,
- 3. refund claimed and
- 4. input tax credit availed, and to

✓ assess his compliance with the provisions of this Act or the rules made there under;



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# Audit by Tax Authorities

[Section 65; Rule 101]

1. The Commissioner or the authorized officer thereof may by general or specific order undertake audit of any REGISTERED PERSON for period, manner and frequency as may be prescribed.
2. May be conducted at place or business of registered person or in their office.
3. At least 15 working days notice shall be given in the manner prescribed.
4. Shall be completed within the period of 3 months from the commencement date. (may be extended for further 6 months with reasons to be recorded for not completing in 3 months period)
5. The finding of the audit shall be communicated to the registered person within 30 days of conclusion of Audit.
6. Any finding adverse to the revenue shall be liable for penal action under the act.
7. The period of Audit under sub-section (1) of Section 65 shall be financial year or multiples thereof.



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# AUDIT U/S 65

Audit by Tax Authorities	Rule 101(2)	Notice to undertake audit	ADT 01	Deputy or Assistant Commissioner of CT
	Rule 101(3)	Conduct of Audit	-	
	Rule 101(4)	Communication of Audit findings	-	
	Sec 65(6) Rule 101(5)	Final Audit Report	ADT 02	
	Sec 65(7)	Initiation of Proceedings u/s 73 or 74	-	Superintendent of CT



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- **Sec 71 Access to Business Premises**

*In charge of place shall, on demand, make available to the officer (including audit party)*

- (i) *such records as prepared or maintained by the registered person*
- (ii) *trial balance or its equivalent;*
- (iii) *statements of annual financial accounts, duly audited, wherever required;*
- (iv) *cost audit report,*
- (v) *the income-tax audit report, and*
- (vi) *any other relevant record,*

*for the scrutiny by the officer or audit party within a period not exceeding **fifteen working days** from the day when such demand is made, or such further period as may be allowed by the said officer.*

- **Draft Audit Report**

- Drawing up a DAR containing the observations made in the course of audit after considering explanations & documents provided by the auditee in respect of such discrepancies and approval of the same by the appropriate higher authority.
- After approval of the DAR by the appropriate authority, the FAR shall be issued to the auditee preferably through system / electronically to the auditee within 30 (thirty) working days of approval. (ADT 02)
- It is the administrative decision of the respective State whether the audit officer will subsequently adjudicate or that will be done by a separate officer.
- Whatever may be the arrangement, it is desirable that the adjudicating officers carefully consider the findings as noted in the Final Audit Report and take subsequent actions independently.

- **Model All India GST Manual 2023**

- GST audit is not restricted to the reconciliation of only the tax liability & payment of tax by a taxable person, but its scope is also extended to assessment with reference to the provisions of GST laws.

- Proper officer in relation to provisions of Demands and Recoveries as provided by Circular No.- 3/3/2017-GST read with Circular No.- 31/05/2018-GST; dated 09/02/2018



# DETERMINATION OF TAX

## Sec 73 or 74



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# Determination of Tax Sec 73

✓ Adjudication proceedings under Section 73 can be initiated when proper officer has **reasons to believe** that:

- any tax has not been paid or
- tax has been short paid or
- erroneously refunded or
- input tax credit has been wrongly availed or utilised

by reasons other than fraud, wilful-misstatement or suppression of facts to evade tax

✓ The proper officer shall serve notice electronically in **FORM GST DRC-01** on the taxable person.

✓ The proper officer may serve a statement under section 73(3) along with a summary electronically in **Form GST DRC-02** for any other period not covered by DRC 01 if the grounds relied upon for such periods are the same.



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# Determination of Tax Sec 74

- ✓ Adjudication proceedings under Section 74 can be initiated when proper officer has reasons to believe that:
  - any tax has not been paid or
  - tax has been short paid or
  - erroneously refunded or
  - input tax credit has been wrongly availed or utilised

**by reason of fraud, wilful-misstatement or suppression of facts to evade tax**
- ✓ The proper officer shall serve notice electronically in **FORM GST DRC-01** on the taxable person.
- ✓ The proper officer may serve a statement under section 74(3) along with a summary electronically in **Form GST DRC-02** for any other period not covered by DRC 01 if the grounds relied upon for such periods are the same.

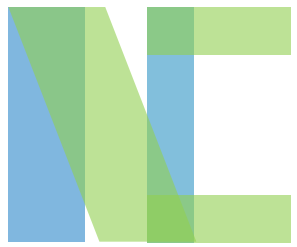


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# Mens Rea

- ✓ The determination of tax in all cases where there is an element of mens rea has to be done under section 74 and in all other cases the determination has to be done under section 73 of the Act. In order to distinguish whether mens rea is present, an intent to evade tax by way of fraud or through willful misstatement or through suppression of facts, has to be established. In this regard, the Explanation 2 given in section 74 may be given due attention. Explanation 2 is as follows:
- ✓ "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. "



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# Penalty u/s 73 or 74

Sr. No.	Tax amount, along with the interest, paid	Amount of Penalty payable— Normal Cases	Amount of Penalty payable — Fraud Cases	Remarks
1.	<b>Before issuance of Notice</b>	No Penalty and no Notice shall be issued	15% of the Tax amount and no Notice shall be issued	The penalty shall also be not chargeable in cases where the self assessed tax or any amount collected as tax is paid (with interest) within 30 days from the due date of payment
2.	<b>Within 30 days of issuance of Notice</b>	No Penalty. All proceedings deemed to be concluded	25% of the Tax amount. All proceedings deemed to be concluded	
3.	<b>Within 30 days of communication of Order</b>	10% of the Tax amount or Rs. 10,000/- whichever is higher	50% of the Tax amount. All proceedings deemed to be concluded	
4.	<b>After 30 days of communication of Order</b>	10% of the Tax amount or Rs. 10,000/- whichever is higher	100% of the Tax amount	



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# Section 73 Time limit

S. No.	Financial Year	Annual Return Due Date	Time for issuance of Notice (3 Months)	Time for issuance of Order (3 Years)
1.	<b>2017-18</b>  Extension due to COVID Notification No. 13/2022-C T; 5 July 2022  Extension Notification No. 09/2023- CT; 31 March 23	5 Feb 2020	5 Nov 2022  30 June 2023  <b>30 Sep 2023</b>	4 Feb 2023  30 Sep 2023  <b>31 Dec 2023</b>
2.	<b>2018-19</b>  Extension Notification No. 09/2023- CT; 31 March 23  Extension Notification No. 09/2023- CT; 31 March 23	31 Dec 2020	30 Sep 2023  31 Dec 2023  <b>31 Jan 2024</b>	30 Dec 2023  31 March 2024  <b>30 April 2024</b>
3.	<b>2019-20</b>  Extension Notification No. 09/2023- CT; 31 March 23  Extension Notification No. 09/2023- CT; 31 March 23	31 Mar 2021	31 Dec 2023  30 March 2024  <b>31 May 2024</b>	30 Mar 2024  30 June 2024  <b>31 Aug 2024</b>
4.	<b>2020-21</b>	28 Feb 2022	28 Nov 2024	27 Feb 2025
5	<b>2021-22</b>	31 Dec 2022	30 Sep 2025	30 Dec 2025



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# Section 74 Time limit



S. No.	Financial Year	Annual Return Due Date	Time for issuance of Notice (6 Months)	Time for issuance of Order (5 Years)
1.	2017-18	5 Feb 2020	5 Aug 2025	4 Feb 2025
2.	2018-19	31 Dec 2020	30 June 2025	30 Dec 2025
3.	2019-20	31 Mar 2021	30 Sep 2026	30 Mar 2026
4.	2020-21	28 Feb 2022	28 Aug 2027	27 Feb 2027
5	2021-22	31 Dec 2022	30 June 2027	30 Dec 2027

SCN gives an opportunity to the Department of leading evidence in support of its allegations and equally it gives an opportunity to the taxpayer, to make representation and adduce evidence against the allegations or charges made out against them.



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# ELEMENTS OF SCN

- ✓ The Show Cause Notice should be issued only after proper inquiry/investigation i.e. when the facts used are ascertained and allegations are justified. Thus, SCN must be preceded by Scrutiny, Audit or enforcement proceedings. **(Reason to Believe)**
- ✓ It should be clear on facts and legal provisions. Violation of the provisions of law should be clearly brought out in the Show Cause Notice. **(Cause of Action)**
- ✓ Copies of the **relied upon documents** should be listed in *seriatim* as per the references made in the Show Cause Notice and given as Annexures to the Notice.
- ✓ The proper officer *may*, before issue of notice in form GST DRC-01, communicate details of tax, interest and penalty ascertained by tax officer in part A of form GST DRC-01A. The provision of **pre-notice** is optional w.e.f. 15-10-2020 and not mandatory and hence is not likely to be used much by department.
- ✓ Demand for **interest or penalty alone** cannot be issued under section 73 or 74 since tax outstanding is NIL and such cases are not covered under the specified five actionable causes.
- ✓ The summary of notice shall be in form GST DRC-01 generated **electronically**, along with show cause notice.



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# IMPORTANT POINTS FOR ADJUDICATION ORDERS

- ✓ Summary of Order passed to be uploaded in form GST-DRC-7, along with **reasoned Order**.
- ✓ The proper officer shall pass **speaking order** setting out the relevant facts and the **basis of his decision**- section 75(6) of CGST Act.
- ✓ Section 75(4) mandates that an **opportunity of hearing** shall be granted to the person chargeable with tax where a request is received or where any adverse decision is contemplated
- ✓ The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be **confirmed on grounds other than the grounds specified in the notice**- section 75(7) of CGST Act.
- ✓ **Interest** on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability - - section 75(9) of CGST Act.
- ✓ Where any penalty is imposed under section 73 or section 74, **no penalty for the same act** or omission shall be imposed on the same person under any other provision of this Act - section 75(12) of CGST Act.
- ✓ The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has **already been acted upon by the person** to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication - section 160(2) of CGST Act.
- ✓ The time period between the issuance of SCN and the issuance of the order has to be construed as a minimum of three-month period. Sec 73(2). Further, to calculate the time limit of three months, the date of service of SCN and the date of issuance of the Order has to be applied.



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# Burden of Proof

- Section 155 places burden of proof on taxpayer in respect of eligibility to input tax credit availed.
- In all other matters, principles of evidence act are applicable as under:
- Undisputed facts stated in the SCN do not require proof (Section 58).
- Person who makes any assertion bears the burden to prove the truth accuracy and reliability of said assertion. (Section 101).
- When new material or information is introduced 'Onus of proof' shifts to person, introducing such materials (Section 102).
- Claim of exemption or exclusion from levy lies on the person making such claim (Section 103).
- Statement recorded 'on oath' containing any admission or confession, raise a presumption in favor of revenue, when it relates to facts, But not when it relates interpretation of those facts, especially interpretation to tax laws. (Section 24 to 32).



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# thank you

We will be extremely happy to answer all your queries now...

Knowledge Partner:

**N. H. Singhal & Associates**  
*Chartered Accountants*

**Hemant Singhal**  
(CA, CS, LLB, B Com)

+91 99172 11511

**Head Office:**

B 11 Sector 19, Noida 201301

**Rudrapur Branch:**

1st Floor, MRF Building, Plot No. 22,  
Haldwani Road,  
Rudrapur 263153, Uttarakhand

[Ca.hsinghal@gmail.com](mailto:Ca.hsinghal@gmail.com)  
[www.nummusconsultants.com](http://www.nummusconsultants.com)  
[www.onlinetaxupdate.com](http://www.onlinetaxupdate.com)



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