

## **Mechanism of Audit by tax authorities under GST laws**

With GST laws being enforce for over a year and teething technical issues having been resolved to a large extent; the authorities may in the coming months choose to undertake greater scrutiny in the working of any registered person. Audit is one such mechanism through which a Commissioner or any person authorized by him (hereinafter referred to as 'proper officer') may look to deep dive in the books of accounts, workings of GST calculations and input credits of any registered person.

The GST laws prescribe that a registered person whose turnover during a financial year exceeds INR 2 crores is statutorily bound to get his accounts audited by a Chartered Accountant/ Cost Accountant. Irrespective of this, the tax authorities have the power to initiate the following audits:

- Audit by tax authorities
- Special Audit

### **Audit by tax authorities**

Section 65 of The Central Goods and Services Tax Act, 2017 (for short 'CGST Act') empowers the Commissioner or the proper officer to initiate and conduct audit of any registered person. A similar section is provided under the States/Union Territory Goods and Services Tax laws. Given this, Commissioner of Central Tax, Commissioner of State Tax/Union Territory and their respective proper officers have the power to conduct audits on any registered person.

For the present, the provisions given in the CGST Act are being analyzed; substance of which would equally apply to States/Union Territory Goods and Services Tax laws.

#### *Frequency of audit*

The CGST Act specifies that the Commissioner or the proper officer is entitled to undertake audit of any registered person by way of a general or a specific order for such period, at such frequency and in such manner, as may be prescribed. The Rule prescribes that the period of audit to be conducted shall be a financial year or multiples thereof [Rule 101(1) CGST Rules]. However, the said Rule does not prescribe the frequency with which an audit is to be conducted on any registered person.

It would have been apt to state the frequency with which an audit is to be conducted on any registered person. There were several instances in the erstwhile Indirect tax laws where an assessee was subject to multiple audit proceedings for the same assessment years at intermittent frequency and by different Indirect tax authorities. Given that experience, the frequency of audit should have been expressly prescribed in the Rules to provide absolute certainty to any registered person.

#### *Representation during audit*

An audit may be conducted at the place of business of the registered person or at the office of the GST authorities. Atleast, fifteen days prior to conducting of any audit, a registered person is to be informed about the same through a notice (Form GST ADT-01-notice for conducting audit). This notice given an option to the registered person to either participate in the audit proceeding in person or through an authorized representative.

In this manner, a registered person can choose to participate in audit proceedings either himself/ herself or through the regular employees or through an Advocate or any Chartered Accountant/ Cost Accountant/ Company Secretary holding a certificate of practice and not being debarred from practice. The GST laws therefore expressly permit an Advocate or any Chartered Accountant/ Cost Accountant/ Company Secretary to represent a registered person during audit proceedings. This is a welcome step as it permits the registered person to conduct its day to day activities, to some extent, unhindered by audit proceedings.

#### *Period of audit and conclusion of audit*

An audit is normally required to be completed within a period of three months from the date of commencement of audit. However, the Commissioner has the power to extend the period by a further period not exceeding six months.

During the course of audit, the proper officer and his team are entitled to verify the documents on the basis of which the books of accounts are maintained, entitled to verify the returns/ statements furnished under the GST laws, entitled to verify the correctness of the turnover, exemptions/ deductions claimed, rate of tax applied, input tax credit availed and utilized and other relevant issues, and record their observations in the audit notes.

The registered person is to be informed by the proper officer of any discrepancies noticed during the audit. The registered person is given an opportunity to furnish its reply to the said discrepancies. On conclusion of the audit and within thirty days, the proper officer finalizes the findings of the audit and informs the registered person of the same through an audit report (Form GST ADT-02).

#### *Commencement of adjudication process*

Where the audit results in detection of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized, the proper officer is entitled to initiate action under section 73 or section 74 CGST Act. Thus, the proper officer may issue a show cause notice to the registered person calling the registered person as to why the tax or erroneous refund or wrongful credit, etc. shall not be recovered.

It is seen that there is no time frame prescribed between issuance of an audit report and issuance of a show cause notice. The law merely entitles the proper officer to issue show cause notice within the time frame prescribed under the relevant sections (i.e. sections 73 or section 74 CGST Act). Thus, if an audit report is adverse to any registered person and the case is not one of fraud/ willful misstatement/ suppression of facts, the proper officer has time of two years and nine months from the date of furnishing annual return for the financial year to which the tax is not paid or short paid or input tax credit has been wrongly availed or utilized for issuing a show cause notice. However, if it is alleged that the case is one of fraud/ willful misstatement/ suppression of facts then proper officer has time of four years and six months from the date of furnishing annual return for the financial year to which the tax is not paid or short paid or input tax credit has been wrongly availed or utilized for issuing a show cause notice.

The above establishes that the proper officer has more than enough time to commence the adjudication process if an audit report is adverse to any registered person. Such long-time gaps for initiating the adjudication process only results in uncertainty to an assessee. This time gap between

an adverse audit report and issuance of a show cause notice could have been avoided in the legislation itself by giving a specific time frame (ex. fifteen days) in issuing a show cause notice from an adverse audit report; though the period of coverage of the show cause notice could still be as prescribed in sections 73/ 74 CGST Act.

### **Special Audit**

The Assistant Commissioner (or any other officer above in rank) with the prior approval of the Commissioner having regard to the complexity of the case and in the interest of revenue can direct a registered person to get his records including books of accounts audited by a Chartered Accountant or a Cost Accountant, nominated by the Commissioner. The nominated Chartered Accountant or Cost Accountant is required to submit a report within a period of ninety days to the Assistant Commissioner. This period of ninety days to submit the report can further be extended by the Assistant Commissioner for a further period of ninety days. The expenses of the examination and audit of records and remuneration of the Chartered Accountant or a Cost Accountant is determined and paid by the Commissioner.

The registered person is given an opportunity of being heard in respect of any material gathered in the Special Audit which could be used in any proceedings against the registered person.

If the Special Audit is adverse to any registered person, the proper officer is entitled to initiate action under sections 73 or 74 CGST Act.

### **Conclusion**

As is seen, provision of audit by tax authorities are quite detailed in GST laws. The Centre / State / Union Territory Commissioners and their proper officers are entitled to initiate and conduct audit proceedings. In terms of the provisions and the intention of GST laws, duplication of audit proceedings by these officers on the same registered person appear to be avoidable. However, it will have to be seen whether this translates into practice in the field.

It appears the law has not expressly laid down the frequency with which an audit will be conducted on any registered person by tax authorities. Given this, if any registered person gets subject to frequent/ multiple audit proceedings, this point of law may become matter of litigation. Lastly, the legislation could have fixed a specific time line between an adverse audit report and issuance of show cause notice, prior to *ipso facto* applying sections 73/74 CGST Act. This could have helped in unhindered functioning of the law and left no room for disparity, to all concerned.



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