

Kottayam Branch of ICAI of

The Institute
of Chartered Accountants of
India



TAX

AUDIT AND APPEAL
MECHANISM

CA. AKHIL
VARGHESE

AGENDA

- ASSESSMENTS
- AUDIT
- DEMANDS
- APPEAL MECHANISM

Various stages of Litigation

Stage 1

- Self Assessment

Stage 2

- Assessment | Audit | Investigation

Stage 3

- Determination of tax liability

Stage 4

- Pre-Show Cause Notice

Stage 5

- Show Cause Notice

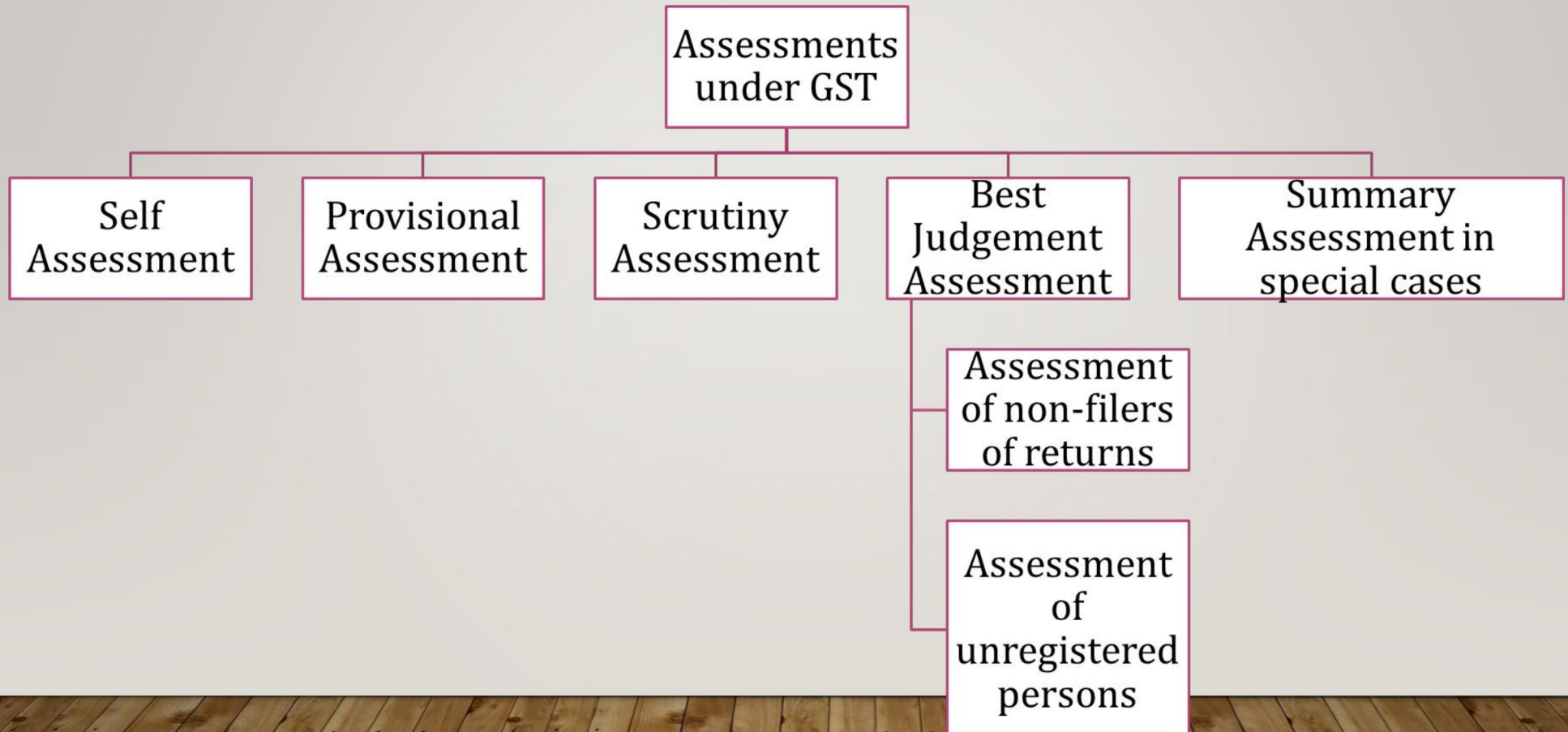
Stage 6

- Order

Stage 7

- Appeal | Recovery

Assessments Under GST Law



Provisional Assessment – Sec. 60

- ☐ **Reason** - Tax payer is unable to determine value and rate of tax of goods and services.
- ☐ Request the proper officer – Form ASMT-01
- ☐ Notice by the proper officer in Form ASMT-02 requiring for additional documents and reply by taxpayer in Form ASMT-03
- ☐ Order should be passed within 90 days. – Form ASMT-04
- ☐ Provisional tax allowed - if taxable person executes bond and security to the extent of 25% of bond value.
- ☐ Final assessment passed by proper officer in Form ASMT-07 - within 6 months from order

Scrutiny of returns – Sec. 61



Scrutiny of returns – Sec. 61 – Related case

laws

❑ **Sri Ram Stone Works v. State of Jharkhand**

Issuance of notices by comparing taxable value of supply disclosed by Petitioners in their returns with that of market price of goods, is beyond the scope of Section 61 of the Act.

❑ **Radiant Cash Management Services Ltd - Madras HC**

Upon issuance of an order in Form ASMT-12 recording that no further action is required, the continuation of proceedings culminating in the impugned assessment order levying interest and penalty after dropping of proceedings in ASMT-12 is unsustainable.

❑ **Mandarina Apartment Owners Welfare Association – Madras HC**

***Issue -** Whether communication of discrepancies in returns by issuing Form GST ASMT-10 is mandatory before issuance of show cause notice under section 73 of CGST Act and non-issuance of such notice vitiates the subsequent adjudication proceedings ?*

***Held –** Not a mandatory pre-requisite*

Best Judgement Assessment

Assessment of Non-filers of returns – Sec 62

Assessment of Unregistered persons – Sec 63

Not filed the GST returns even after notice in Form GSTR-3A

1. Not obtained registration even though liable.
2. Registration has been cancelled but liable to pay tax.

Limitation period for Assessment Order – 5 years from the due of Annual return

Order to be withdrawn – if returns furnished within 60 days – Additional 60 days on payment of additional late fee

Limitation period for Assessment Order – 5 years from the due of Annual return

Parallel Proceedings – State and Central

Issue:

Whether CGST department can initiate proceedings against the tax payer where SGST department already undertaken the exercise on the same tax payer?

GST provision:

Sec. 6(2)(b) - where a proper officer under the SGST Act or the UGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

- ❑ **Huida Sanitaryware India (P) Limited – Karnataka HC** - the initiation of parallel proceedings by the CGST Authorities under Section 122 of the CGST Act, after the initiation of proceedings by the State GST Authorities, is barred under Section 6(2)(b) of the CGST Act.

Parallel Proceedings – Related Case Laws

- ❑ **K.T. Saidalavi Proprietor, M/S Tip Top Furniture Mart, Kottakkal – Kerala HC** - the term 'initiation of proceedings' in Section 6(2)(b) refers to the issuance of a notice under the provisions of the Act. The initiation of an enquiry or the issuance of summons under Section 70 cannot be deemed to be the initiation of proceedings for the purpose of Section 6(2)(b) of the Act – Relying on the judgment of the *Allahabad High Court in G.K Trading Company*, it is held that the State Tax Authority was within its rights to initiate proceedings under Section 74 even though the Central Tax Authority had earlier initiated an enquiry under Section 70. (**similar view in M/s. Kota Metals by Rajasthan HC**).
- ❑ **Bipin Kumar Agarwal – Orissa HC** – CGST dept issued summons u/s 70. After that SGST department conducted audit and issued Audit report. The registered person accepted certain demands pointed out during audit by SGST dept. and paid the tax. Thereafter, CGST department issued SCN u/s 74 & Order. The HC held quashed the Order.

AUDIT UNDER THE GST LAW

(13)

- means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force
 - to verify the correctness of turnover declared,
 - taxes paid,
 - refund claimed
 - input tax credit availed,
 - to assess his compliance with the provisions of this Act or the rules made thereunder

Audit by tax authorities – Sec. 65

Commissioner or any officer authorized by him, to undertake audit.

- The same must be undertaken by way of a general or specific order.
- At the place of business of the registered person or in their office.

Intimation to the registered person.

- By way of a notice in Form ADT-01 not less than 15 working days prior to audit.

During the course of audit

- Registered person to provide the necessary facility to verify the books of account or other documents or furnish such information as required.

Completion of Audit

- 3 months from the date of commencement of the audit.
- If not, Commissioner to extend the period by a further period not more than 6 months. (Reason to be recorded in writing).

Upon conclusion of audit

- Findings to be informed to the registered person within 30 days by way of Final audit report in Form ADT-02.

Special Audit – Sec. 66

Audit by a Chartered Accountant or Cost Accountant

- If at **any stage** of inquiry or investigation, any officer not below Assistant Commissioner, is of the opinion that the value has been declared incorrectly or credit not availed within time, he may seek for the person's books of account as examined and audited by a CA.
- Prior approval of Commissioner is required.

Submission of report

- CA nominated to submit report of such audit duly certified by him to the said Assistant Commissioner, within 90 days. (Time period extendable further by 90 days)
- Findings to be communicated in ADT-04.

To be heard

- Opportunity of a hearing to be provided to the registered person.

Audit expenses

The expenses of the examination and audit of records to be determined and paid by the Commissioner.

VARIOUS CHECK LIST BEFORE GST AUDIT

CHECK LIST

Eligibility of ITC
availed

Valuation of taxable
supplies

Related party
transactions

Taxability of
business
transaction

Correctness of
Reversal of ITC

Correctness of
exemptions claimed

Correctness of
refund claimed

Determination of
time of supply

CHECK LIST

Determination of
place of supply

Correctness of RCM
liability paid

Reporting of
transactions in
GSTR-1/GSTR-
3B/GSTR-9 etc.

Preparation of
various
reconciliation
statements

Correctness of
classification of
goods / services
adopted

Credit notes and
debit notes

E-way bill

Impact of various
advance rulings, HC
and SC decisions
related to business

ADJUDICATION UNDER THE GST LAW

PRE-SHOW CAUSE NOTICE – MANDATORY?

- ❑ Rule 142(1A) – Provides for communication of details of tax, interest and penalty before issuance of SCN – Form DRC-01A.
- ❑ Prior to 15.10.2020 - proper officer shall before service of notice
- ❑ ‘May’ vs. ‘Shall’ – Notification No. 79/2020 dated 15.10.2020
- ❑ ***Vishaka Exports - MADRAS HIGH COURT***

SHOW CAUSE NOTICES – Up to FY 23-24 transactions

Where it appears to the proper officer that tax not paid or short paid or erroneously refunded or ITC wrongly availed or wrongly utilised

SCN u/s 73

For any reason, other than fraud or willful-misstatement or suppression of facts

SCN u/s 74

By reason of fraud or willful-misstatement or suppression of facts to evade tax

SCN u/s 73 – Applicable up to FY 2023-24

Time limit to issue Order

- within 3 years from the due date of filing of annual return

Time limit to issue SCN

- at least three months prior to the time limit specified for issuance of Order i.e. 2 years 9 months

Penalty payable

- 10% of the tax or Rs. 10,000/- whichever is higher

No penalty

- If tax along with interest paid before issuance of SCN or within 30 days of issue of SCN. [exceptions are (i) Self-assessed Tax and (ii) Tax collected but not paid]

SCN u/s 74 – Applicable up to FY 2023-24

Time limit to issue Order

- within 5 years from the due date of filing of annual return

Time limit to issue SCN

- at least six months prior to the time limit specified for issuance of Order i.e. 4 years 6 months

Penalty payable u/s 74(1)

- Penalty equivalent to tax specified in the notice i.e., 100% of tax.

Option to pay reduced penalty

- 15% penalty - If tax along with interest and 15% of tax as penalty paid before issuance of SCN.
- 25% penalty - If tax along with interest and 25% of tax as penalty paid within 30 days of issuance of SCN.
- 50% penalty - If tax along with interest and 50% of tax as penalty paid within 30 days of issuance of Order.

Time limit to issue SCN and Order

	Section 73		Section 74	
Year	Time limit to issue SCN	Time limit to issue Order	Time limit to issue SCN	Time limit to issue Order
2017-2018	30.09.2023	31.12.2023 (NN. 9/2023)	07.08.2024	07.02.2025
2018-2019	31.01.2024	30.04.2024(NN. 56/2023)	30.06.2025	31.12.2025
2019-2020	31.05.2024	31.08.2024 (NN. 56/2023)	30.09.2025	31.03.2026
2020-2021	30.11.2024	28.02.2025	31.08.2026	28.02.2027
2021-2022	30.09.2025	31.12.2025	30.06.2027	31.12.2027

Insertion of Sec. 74A – Finance Act 2024

Applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

Time limit to issue SCN – 42 months from the due date of Annual Return

Time limit to issue Order - within 12 months from the date of issuance of SCN (Extendable to further 6 months)

Separate Penalty for fraud and non-fraud cases.



Penalty u/s 74A

Penalty	<u>Fraud Cases</u> 100% of the tax due		<u>Other than fraud</u> 10% of the tax due or Rs. 10,000, higher	
Reduction in penalty if the demand along with interest is paid	Before SCN	15% Penalty payable	Before SCN	No Penalty payable
	Within 60 days of issue of SCN	25% Penalty payable	Within 60 days of issue of SCN	No Penalty payable
	Within 60 days of communication of Order	50% Penalty payable	After passing of the Order	No reduction
	After 60 days of communication of Order	100% penalty payable		

Section 75 – other points to be noted

PH should be granted on a written request/adverse action is contemplated against such person.

Maximum 3 adjournments has to be granted.



Order should set out the relevant facts and the basis of the decision (Speaking Order)

The amount of tax, interest and penalty in the order should not be more than the SCN and no new grounds can be taken in the Order



Where any penalty is imposed under section 73 or section 74 or section 74A, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act
self-assessed tax under section 39 remains unpaid, or any amount of interest payable on such tax

Reply to SCN – Points to be noted

- All facts should be captured along with documentary support
- Detailed analysis of the issue.
- All possible grounds with case laws, notifications and circulars
- Check quantification of demand is correct
- Reply to be paginated and annexures should be numbered
- Prayer sheet to be signed by authorised signatory along with company seal.

Personal Hearing – Points to be noted



Reply along with Authorization, should be filed before the personal hearing.



If PH has to be adjourned, provide written request 2 days prior to the date and get the acknowledgment.



Ensure no more than 3 adjournments sought by the Assessee.



Short brief synopsis of the reply can be provided.



Ensure important grounds are highlighted during PH.



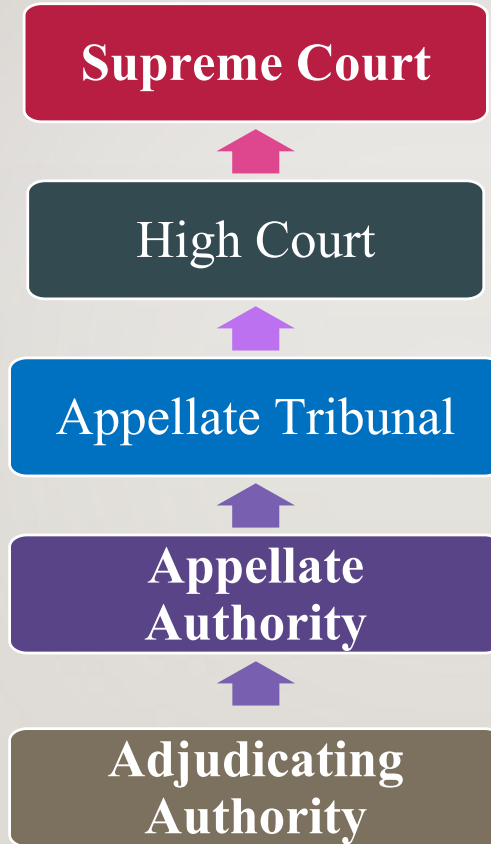
PH record should be obtained from the officer.

Section 161 – Rectification of Orders

- any authority, who has passed or issued any decision or order or notice or certificate or any other document
- rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document
- either on its own motion or where such error is brought to its notice by any officer appointed or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document

APPEALS UNDER THE GST LAW

Appeals structure under the GST Law



Appeals structure under the GST Law

Appeal against Order passed by	Appeal lies before the following authority	Appeal Level	Relevant section
Adjudicating Authority	First Appellate Authority	1 st	107
First Appellate Authority	Appellate Tribunal	2 nd	112
Appellate Tribunal	High Court	3 rd	117
High Court	Supreme Court	3 rd & 4 th	118

Appeals to Appellate Authority – Sec. 107

Particulars	Provisions
Time Limit	<ul style="list-style-type: none"> • 3 months from the date of communication of order (for assessee) – Form APL-01 • 6 months from the date of communication of order (for department)
Condonation period	<ul style="list-style-type: none"> • Delay of up to 1 month may be condoned by the Authority if he is satisfied that the Appellant had sufficient cause preventing him from filing the Appeal.
Pre-deposit	<ul style="list-style-type: none"> • Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and • Sum equal to 10% of remaining amount of tax in dispute (subject to a maximum of Rs. 20 crore under CGST – Total Rs. 40 crore under CGST & SGST). • Order demanding penalty alone – 10% of the penalty – Yet to Notified. • In case of appeal against an order issued under Section 129(3), pre-deposit required is 25% of the penalty has been paid by the appellant – Substituted as above yet to be notified.
Adjournments	<ul style="list-style-type: none"> • Not more than three times to a party during hearing of the appeal.
Personal hearing	<ul style="list-style-type: none"> • Opportunity for hearing to be provided. • The Appellate Authority may allow Appellant to add additional ground not specified in the grounds of appeal, if it is satisfied that the omission of the same was not willful or unreasonable. <p>(Appellate Authority can either confirm or modify or annul the order <u>but cannot refer the case</u></p>

Pre-deposit – Using cash or credit ledger?

Pre-deposit can be made using Credit ledger	Pre-deposit cannot be made using Credit ledger
<ul style="list-style-type: none">• Oasis Realty – 2023 (71) G.S.T.L. 158 (Bom.)	<ul style="list-style-type: none">• Jyoti Construction – 2021 (54) GSTL 279 (Ori.)
<ul style="list-style-type: none">• Shiv Crackers - 2024 (86) G.S.T.L. 220 (Guj.)	<ul style="list-style-type: none">• Flipkart Internet Private Limited - 2024 (80) G.S.T.L. 257 (Pat.)
<ul style="list-style-type: none">• Yasho Industries Ltd – 2024-VIL-1156-Guj	

Issue finally decided by Supreme Court in
Yasho Industries Ltd.

Appeal to Appellate Tribunal – Sec. 112

Particulars	Provisions
Time Limit	<ul style="list-style-type: none"> • 3 months from the date of communicated of order or date notified by the Government, whichever is later (for assessee) – Form APL-05. • 6 months from the date of communication of order or date notified by the Government, whichever is later (for department).
Condonation period	<ul style="list-style-type: none"> • Delay of up to 3 month may be condoned by the Tribunal if it is satisfied that the Appellant had sufficient cause preventing him from filing the Appeal.
Memorandum of cross-objections	<ul style="list-style-type: none"> • To be filed within 45 days of the receipt of Notice. (Form APL-06)
Pre-deposit	<ul style="list-style-type: none"> • Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and • Pre-deposit of sum equal to 10% of remaining amount of tax in dispute (subject to a maximum of Rs. 20 crore under CGST – Total Rs. 40 crore under CGST & SGST). • Order demanding penalty alone – 10% of the penalty – Yet to Notified
Adjournments	<ul style="list-style-type: none"> • Not more than three times to a party during hearing of the appeal.
Decision of Appellate Tribunal	<ul style="list-style-type: none"> • confirm, modify or annul the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority for fresh adjudication

Appeal to High Court – Sec. 117

Particulars	Provisions
Applicability	<ul style="list-style-type: none"> Any person aggrieved by any order passed by the State Benches of the Appellate Tribunal. The case should involve substantial question of law.
Time Limit	<ul style="list-style-type: none"> within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person. (Form APL-08).
Condonation period	<ul style="list-style-type: none"> Will condone the delay if High Court is satisfied that there was sufficient cause for not filing the appeal within 180 days.
Other points	<ul style="list-style-type: none"> High court formulates substantial question of law. Appeal shall be heard only on the question. Respondents shall be allowed to argue that the case does not involve such question.
	<p>The High Court may determine any issue which</p> <p>(a) has not been determined by the State Bench; or</p> <p>(b) has been wrongly determined by the State Bench, by reason of a decision on such question of law.</p>

Appeal to Supreme Court – Sec. 118

An appeal shall lie to the Supreme Court

from any order passed
by the Principal
Bench of the Appellate
Tribunal

judgment or order
passed by the High
Court in an appeal u/s
117

Monetary limits for filing appeals or applications by the Department

APPELLATE FORUM	MONETARY LIMIT FOR FILING APPEAL/SLP BY THE DEPARTMENT (AMOUNT INVOLVED IN RS.)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

Circular No. 207/1/2024-GST

Exclusions:

- Provision of the GST Act/ Rules has been held to be *ultra vires* to the Constitution of India;
- Notification or circular has been held to be *ultra vires* to the Constitution of India;
- Matter is related to valuation, classification, refunds, place of supply or Any other issue which is recurring in nature or involves interpretation

THANK YOU!

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