ASSESMENT, DEMAND, RECOVERY under GST

- CA Akbar Basha

Assessment

"**Assessment**" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary and best judgment assessment

Self Assessment-

Every regd. person shall self assess the tax payable & furnish return for each tax period

Provisional Assessment

Provisional Assessment-

- The taxable person unable to determine
  - **value of G/S** or
  - **rate of taxes**
- May request proper officer in writing giving reasons for paying taxes in provisional basis
- Proper officer shall pass an order within a period not later than 90 days – from the date of such request allowing payment of tax on provisional basis at rates / value specified by him

Provisional Assessment

- The payment of tax on provisional basis may be allowed,
  - executes a bond as may be prescribed with such surety or security as the proper officer may deem fit
  - Payment of the difference b/w the amt of tax as may be finally assessed and the amount of tax provisionally assessed

- Proper officer shall within **6 months** from the date of communication of such order issued & pass final assessment order- after taking into account such info as may be required for finalizing assessment
- If sufficient cause shown in writing the 6 months may be further extended to
  - **6 months -** by Joint Commissioner / Addl. Commissioner &
  - **4 years -** by Commissioner

Interest on Differential Tax

- Assesse to pay 18% interest from due date till date of payment.
- If assesee is to get refund- To be prescribed – 6% May be

Assessment (Contd...)

Scrutiny of Returns-

- Proper Officer may scrutinize the return & related particulars furnished by the regd. person to verify the correctness of the return &
- If any discrepancies noticed - inform regd person
- In such manner as may be prescribed & seek his explanation thereto

- If explanation found **acceptable** – informed to regd. person **& no further action shall be taken**

- In case no satisfactory explanation is furnished within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action
- Including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Assessment (Contd...)

Assessment of non-filers of returns-

- Where a regd. person fails to furnish returns even after receiving the service of notice
- Proper officer may proceed to assess the tax liability of said person to best of his judgment
- taking into a/c of all the relevant material which is available
- He has gathered & issue assessment order within 5 yrs from the date specified U/S 44 for furnishing annual return for the FY to which the tax period relates

- Regd. taxable person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn.
- Liability for payment of interest / payment of late fee shall continue

Assessment (Contd...)

Assessment of unregistered person-

- A TP liable for registration fails obtain registration or
- Registration cancelled
- But liable to pay tax
- The proper officer may proceed to assess the tax liability of such TP
- To the best of his judgment for relevant tax periods &
- Issue an assessment order within **5 years** from the date specified for furnishing Annual return for the FY to which the tax period not relates

- No assessment order shall be passed without giving the person an opportunity of being heard

Draft Rules for Assessment

Particulars	Forms
Provisional Assessment	
1. Application	FORM GST ASMT-01
2. Req for Additional info by PO	FORM GST ASMT-02
3. Reply to Addl info	FORM GST ASMT- 03
4. Order for Rejection/ allowing to pay tax	FORM GST ASMT- 04
5. Regd person Execute bond	FORM GST ASMT-05
6. Notice for Info for finalization of Assessment by PO	FORM GST ASMT-06
7. Amt payble / refundable by regd person If any	FORM GST ASMT-07
8. Appln for release of scrutiny by Regd person	FORM GST ASMT- 08
9. PO release scrutiny (within 7 working days)	FORM GST ASMT–09
Scrutiny of Returns	
1. Notice issued by PO In case of any Discrepancy	FORM GST ASMT–10
2. Explanation for discrepancy	FORM GST ASMT–11
3. Explanation Acceptable PO issues explanation for discrepancy	FORM GST ASMT–12

Sec 65- Audit by Tax Authorities

- Commissioner CGST/SGST or his authorized officer by general or specific order undertake audit of any taxable person for specific period – as prescribed.
- Conduct of audit at place of biz of taxable person or office.
- Prior intimation of not less than 15 days in advance before audit
- Audit completion within 3 months from date of commencement.
- Subject to approval of commissioner in writing along with reasons, audit extension by further period not exceeding 6 months.

Sec 65- Audit by Tax Authorities

- Commencement of audit: Records/ documents made available by auditee
- Assesse to extent necessary facility/ assistance/ information to verify the books during the course of conduct of audit.
- Within 30 days of conclusion of audit, auditor to discuss the findings of the audit with the auditee along with reasons/ basis for such findings.
- Where audit results in unpaid /short tax payment or erroneous refund, or wrong credit availment action U/s 66 or 67

Sec 65 - Special Audit

- During scrutiny, enquiry, investigation – AC/DC -nature /complexity/interest of revenue with approval of Commissioner direct assesee for special audit by CA/ Cost A/c as nominated by Commissioner.
- Such CA/ Cost A/c within 90 days submit report certified by him
- With sufficient reasons, audit can be extended by additional 90 days.
- Special audit prevails over normal audit and it can not be avoided for the reason, department had already completed the audit for the said period.

Sec 65- Special Audit

» Assesee will be given opportunity of being heard wrt finding from special audit.

» Auditors remuneration, OPE determined by the Commissioner.

» Where audit results in unpaid /short tax payment or erroneous refund, or wrong credit availment action U/s 66 or 67

Sec 73 & 74- Demand & Recovery

Unpaid/ Short tax, erroneous refund/wrong credit availment, O/t fraud/ willfull mis-statement or suppression- Sec 73

- Issue SCN to pay the amount mentioned in notice along with int and penalty.
- Notice should be issued within 3 months prior to 3 years from due date of filing annual return, for the year of short coming.
- Eg FY 17-18 due date to file annual return Dec -18, notice should be issued within Sept -2021.
- For subsequent period on same issue, SOD can be issued.
- If tax and interest paid before issuance of notice- No notice to be issued.

Unpaid/ Short tax, erroneous refund/wrong credit availment, O/t fraud/ willfull mis-statement or suppression – Sec 66

- If there is short payment after making the payment, to such extent notice can be issued.
- If tax and interest paid within 30 days of SCN no penalty.
- If tax paid after adjudication, Max penalty 10% of tax or 10,000 WEH
- Adjudicating order to be passed within 3 years from the due date of filing annual return for the year to which issue pertains to. Else case gets closed.

Unpaid/ Short tax, erroneous refund/wrong credit availment - Fraud/ willfull Mis-statement or suppression- Sec 74

- Issue SCN to pay the amount mentioned in notice along with int and penalty equal to demand.
- Notice should be issued 6 months prior to 5 years from due date of filing annual return, for the year of short coming.
- Eg FY 17-18 due date to file annual return Dec -18, notice should be issued within June -2023.
- For subsequent period on same issue, SOD can be issued.
- If tax and interest paid and 15% of penalty is paid before issuance of notice- No notice to be issued. (Own ascertainment or by Dept)+ intimate in writing.

Unpaid/ Short tax, erroneous refund/wrong credit availment, With fraud/ willfull mis-statement or suppression – Sec 67

- If there is short payment after making the payment, to such extent notice can be issued.
- If tax and interest +25% of tax as penalty paid within 30 days of SCN, all proceeding concluded.
- If tax is not paid and contested by the assesee, case to be adjudicated on merits.
- Adjudicating order to be passed within 5 years from the due date of filing annual return for the year to which issue pertains to. Else case gets closed.

Unpaid/ Short tax, erroneous refund/wrong credit availment, With fraud/ willfull- Mis-statement or suppression – Sec 67

- On receipt of order, if demand is confirmed, on payment of tax + interest + 50% of penalty, within 30 days of communication of order, all proceeding shall be concluded.
- Suppression:
  - Non declaration of facts or information statutorily required to be declared in return, statement, report or in any document furnished under the Act or Rules.
  - Failure to furnish information on being asked in writing by proper officer.

General Provisions

- Where the notice or order is stayed by an order of court, such period of stay will be excluded in counting 3 / 5 years, and 3/6 months.
- If the Appellant authority, tribunal or court concluded extended period of limitation was not invokable, then by default tax will be demanded only for the normal period of 3 years.
- No demand can be confirmed on the grounds other than grounds specified in notice.
- Where tax amount is modified, by default interest and penalty stands modified.

General Provisions-

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue **in some other proceedings** and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court **is pending**, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

Personal Penalties

- When proceedings against the main appellant liable to pay tax is concluded, proceedings against the co-notiee's liable to pay penalty shall also conclude.
- If penalty U/s 66 or 67 is imposed no penalty for same act shall be imposed on the same person under any other provision.

Sec 69- Tax collected and not paid to exchequer

- Any tax collected irrespective of taxability on transaction or otherwise, tax collected should be deposited to exchequer.
- SCN to be issued for tax, interest and penalty equal to tax,
- Order to be passed within one year from the date of issue of SCN.
- If notice is stayed, period to stay to be excluded in counting one year.

Appeals

Sec 107- Appeal to first appellate authority

- Order of adjudicating authority to be appealed to First appellant authority. – 3 months from the date of service of order.
- Commissioner – by order direct GST officer to appeal to First appellant authority, within 6 months from the date of Commissioners review order.
- COD – one month from 3/6 months.- Sufficient cause should be established for causing delay.

Sec 107- Appeal to first appellate authority

» Pre-deposit- 100% admitted liability+ interest+ penalty and 10% of tax in dispute mentioned in order.

» ~~Dept can press for higher pre-deposit not exceeding 25% of amount of tax, in cases where commissioner considers it as serious case.~~

» ~~Serious case- Tax liability 25 Crores + extended period of limitation.~~

Sec 107 Appeal to first appellate authority

- Assesse permitted to go beyond grounds of appeal, provided such omission was not willful or unreasonable.
- First appellant authority shall not refer the case back to adjudicating authority that passed the order.
- First appellant authority to pass the order within one year from the date of filing the appeal, unless stayed by higher authorities.
- Period of one year to exclude the period of stay.

Sec 112-Appeal to Tribunal

- Appeal against the order of First appellant authority to tribunal within 3months from the date of Communication of order.
- Tribunal may refuse to admit the appeal if the tax, credit, diff tax is less than Rs 50,00/-.
- Department can file an appeal within 6 months from the date of order from committee of commissioner.
- ~~If the committee of Commissioner differ in its opinion, then it is deemed that the matter should be appealed to Tribunal~~.
- Upon filing of appeal by dept, assesse can file cross objection within 45 days from the date of receipt of notice or even thereafter with COD.

Sec 112-Appeal to Tribunal

» Pre-deposit- 100% admitted liability+ interest+ penalty and ~~10~~% 20%of tax in dispute mentioned in order, in addition to 10% paid before First appellant authority.

» ~~Dept can press for higher pre-deposit not exceeding 25% of amount of tax, in cases where commissioner considers it as serious case.~~

» ~~Serious case- Tax liability 25 Crores + extended period of limitation.~~

Appeal to High Court

- » If case involves substantial question of law,
- » Commissioner or Assesee can file an appeal to HC.
- » Appeal to be filed within 180 days from the date of Communication of order from CESTAT+ Appeal fee
- » COD if filed beyond 180 days
- » Hearing by division bench
- ~~» No appeal to HC -Where states or state and Centre have difference to view regarding treatment of transaction.~~
  - ~~• Being intra state or inter state.~~
  - ~~• Place of supply~~

Appeal to Supreme Court

- Appeals based on National Bench or Regional Bench of Tribunal
- Code of Civil Procedure relating to appeal to SC apply
- Sums due to be paid notwithstanding appeal
- Notwithstanding the appeal to HC or SC, based on order of tribunal, sum due to Govt as a result of decision of tribunal be payable.
- Board on recommendation of Council issue instructions or directions / fix monetary limit, and preclude department in filing appeal.

Questions ??

akbar@hiregange.com