GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

KARNATAKA GST AUDIT MANUAL

Office of the Commissioner of Commercial Taxes,
"Vanijya Therige Karyalaya"
Bengaluru-560009

Taxation is a sovereign power exercised by the state to realise revenue to enable it to discharge its obligations.

HON'BLE SUPREME COURT OF INDIA
(Amrit Banaspati Co.Ltd.and Ors Vs State of Punjab and Ors
(AIR 1992 SC 1075)

Version-1

Dated:01.01.2021

FOREWORD

The GST is an integrated scheme of taxation of goods and services and is an efficient and harmonized consumption based tax system replacing a plethora of indirect taxes like VAT, Central Excise, Luxury Tax, Entry Tax, Entertainment Tax, Betting Tax and Cess and surcharges relating to supply of goods and services.

The Goods and Service Tax is a trust-based regime wherein the taxpayer is required to self-assess his tax liability and file the returns. To ensure whether the taxpayer has correctly self-assessed his tax liability, the concept of Audit has been incorporated under the GST Act. This involves examination of records, returns and other documents maintained by a registered taxable person.

The Audit involving scrutiny of financial statements and documents, therefore, forms an integral part of the work of the officers of the tax department. The objective of audit of taxpayers is to measure, improve and sustain the level of compliance in the light of the provisions of the KGST Act 2017 and the rules made there under.

Bringing out a manual on GST Audit is praise worthy initiative by the Commercial Taxes Department. The manual would be a comprehensive guide to conduct Audit under GST and would include the principles and policies of Audit under the Act. This hand book is an effort to equip the officers of the department with requisite skills in audit and scrutiny.

The purpose of this Audit manual is to outline the principles and policies of audit conducted under the KGST Act, 2017 and the rules made thereunder. Guidelines provided in the manual are intended to ensure that the audit of tax payers is carried out in a uniform, efficient and comprehensive manner adhering to the stipulated principles, policies and international practices. In addition there are also a few chapters towards the end which would be helpful to LGSTOs.

I do sincerely hope this effort of the Commercial Taxes Department is well received and the Officers and Officials of the Department benefit from it.

I.S.N. Prasad
Additional Chief Secretary,
Finance Department,
Government of Karnataka.

PREFACE

It is gratifying to note that the KGST Audit Manual has been prepared by the Commercial Taxes Department in a comprehensive, holistic manner. I am sure it will serve as a guide to the officers implementing the provisions of the GST law.

The Commercial Taxes Department in association with NIC, Karnataka has also implemented an online audit backed system called E-Shodane. This is keeping in line with the various e-initiatives of the department over the years.

This Manual will be regularly updated based on feedbacks, amendments of rules and processes as well as experience of audit under GST.

Srikar M .S
Commissioner of Commercial Taxes,
(Karnataka), Bangalore

DISCLAIMER

The Manual is just an effort to synchronize the audit/ scrutiny process. It is not a legal document conferring rights and not a source of legal interpretation. The manual does not deal with legal interpretations and rulings on GST matters. Future changes in the KGST Act, 2017 and the rules made thereunder, administrative policies and procedures may require changes to this manual. This is work of collation from different sources and is for educational and training purposes only. This is for internal use by the officers of the Department only.

TABLE OF CONTENTS

Chapter No.	CONTENT	Page No.
Chapter 1	**Introduction**	**1-3**
1.1	Preamble	
1.2	What is audit under GST	
1.3	Why audit under GST	
1.4	The purpose of audit manual	
1.5	Scope of the audit manual	
1.6	Amendments to the manual	
1.7	Removal of difficulty	
Chapter 2	**The Legal provisions**	**4-17**
2.1	Provision	
2.2	Analysis of Provisions, Rules and relevant forms	
2.3	Form GST ADT – 01	
2.4	Endorsement	
2.5	Notice seeking Additional information/ documents	
2.6	Notice after audit	
2.7	Form GST ADT - 02	
Chapter 3	GST Audit Administration	**18-30**
3.1	Introduction	
3.2	Management at apex level	
3.3	Role of Additional Commissioner of Commercial Taxes (Audit)	
3.4	Role of Joint Commissioners (Administration) DGSTO	
3.5	Functions of audit officers	
3.6	Role of audit review committee at DGSTO Level	
3.7	Staffing norms for Audit offices	
3.8	Audit officers - Their Profile, Deployment and Capacity Building	
3.9	Different steps in conducting Audit and Adjudication	
3.10	Recommendation for wild card cases for audit in DGSTO	
3.11	Verification Report	
Chapter 4	**Audit Officer's responsibility and authority**	**31-33**
4.1	Definition of Audit officer	
4.2	Role of audit officer	
4.3	Role of Audit officer in dealing with the Tax payer/assessee /public	
4.4	Authority for an Audit officer	
4.5	Summons	
4.6	Precautions while issuing summons	
Chapter 5	**Principles of audit**	**34-35**
5.1	Basic principles	
5.2	Standards for conduct of audit	
5.3	Period to be covered during audit	
5.4	Stage wise action for audit	
Chapter 6	**Selection of tax payers for audit**	**36-37**
6.1	Objective	
6.2	Method of selection based on risk assessment	
6.3	Preparation of audit schedule	
6.4	Theme based audit	

Chapter 7	**Audit preparation and verification**	**38-4**
7.1	Profiling of assessee / taxpayer	
7.2	Assessee Master File (AMF)	
7.3	Audit working papers	
7.4	Desk Review	
7.5	Reconciliation of data with third party information	
7.6	Trend analysis	
7.7	Gathering of information of the assesses/ taxpayer	
7.8	Evaluation of the internal control	
7.9	Techniques for evaluation of the Internal Controls	
7.10	Audit plan	
7.11	Audit verification steps	
7.12	Verification of points mentioned in the audit plan	
7.13	General steps in audit verification	
7.14	Apprising the assesses/ taxpayers of irregularities noticed and ascertaining his view point	
7.15	Suggestion to taxpayer /assesses for future compliance	
Chapter 8	**Preparation of Audit Report and Adjudication**	**47-58**
8.1	Follow up action and issue of show cause notice	
8.2	Pre-Notice consultation	
8.3	Show-cause Notice	
8.4	Communication and Service of Notice	
8.5	With this non-service cannot be challenged in appellate proceedings	
8.6	Speaking Order	
Chapter 9	**Special Provisions in GST**	**59-68**
9.1	Incorrect Notices	
9.2	Protective Notices	
9.3	Call-book cases	
9.4	Payment 'under protest'	
9.5	Collection in 'name' of tax	
9.6	Unjust enrichment	
9.7	Provisional bank attachment	
9.8	Demand of output tax	
9.9	Demand of Re-payment of Input Tax Credit	
9.10	Show-cause Notice under Section 73 or 74 or 76 of KGST Act	
9.11	Record of Personal Hearing	
9.12	Order of Adjudication	
Chapter 10	**Guide to GST Act Audit**	**69-138**
Chapter 11 - 17	**Guide to GST Act Procedures**	**139-162**
Web-links		**163**
ANNEXURE -1		**164-165**

KARNATAKA GST AUDIT MANUAL

CHAPTER-1
INTRODUCTION

1.1 Preamble:

Audit is a systematic and independent examination of books of accounts, statutory records, and documents as required by the relevant law applicable to the organisation. Audit by the tax authorities entails a deeper scrutiny of tax compliance by a tax payer from such examination and the effort is not only to ensure that the books of accounts and documents etc., of a tax payer are maintained as required under the law but they also reflect the correct liability and its compliance thereof. While the traditional tax systems relied on verification of tax compliance by every tax payer through tax assessment with varied approaches by the individual tax authorities, modern tax systems rely on a more uniform, systematic and information based approach involving selection of cases for audit, uniform audit procedure and standardised reporting of results of audit for analysis of such data to make changes in the approach and management of audit.

The objective of audit is not only to ensure uniform tax compliance but also to educate the tax payer and facilitate more voluntary compliance. It is critical and important to ensure compliance in tax administration and prevent revenue leakage and Audit is a mechanism in this direction.

The effective administration of this new technology based tax system requires standard operating systems and procedures at various levels of integrated administration i.e., at registration, return filing, assessment, audit, enforcement, recovery, appeal etc.

Since audit is an important departmental activity, there is a need for a standard audit manual for the same. The purpose of this audit manual is to outline the principles and policies of audits conducted under the KGST Act, 2017 and the Rules made thereunder. Guidelines provided herein are intended to ensure that the audit of taxpayers is carried out in a uniform, efficient and comprehensive manner adhering to the stipulated principles, policies and as per the best international practices. Hence, this manual is an effort to bring together various aspects of audit under the GST law for the benefit of departmental officers and staff.

1.2 What is audit under GST:

In terms of Section 2(13) of the KGST Act, 2017, *"audit" 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 and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.*

1.3 Why Audit under GST:

Tax liability of a registered person on supply of goods or services or both under GST Law is computed by himself under self-assessment scheme of the Act as provided u/s 59 of the KGST Act, 2017. However, the correctness of such self-assessment on the part of the taxpayer needs to be ensured by the Tax Authorities through periodical audit of books of account, returns and other documents maintained and furnished by such person to ensure the correctness of turnovers declared, tax liability, claim of input tax credits in the returns filed and also the payment of taxes.

As per the provisions of the GST Act such audit can be undertaken not only by an officer of the tax department but also by professionals in certain cases.

The major outcomes of Audit envisaged are;

- Verification of complete and correct recording/accounting of all transactions relating to supply of goods and services, their correct classification and their correct tax liability.
- Verification of the correctness of turnovers declared, taxes paid, refund claimed and input tax credit availed.
- Verify whether the taxpayers have applied the correct rates of taxes on supply of goods and services.
- Verification of compliance of relevant notifications, circulars, clarifications, Government Orders.
- Verification of compliance of the relevant judicial precedents applicable to the registered person.
- Data compilation relating to nature and patterns of incorrect claims of input tax /exemptions for taking corrective/preventive administrative/statutory measures,
- Identification and understanding of any suspected/doubtful tax management practices adopted by the registered persons.
- Facilitating better and improved tax compliance through tax payer education and bringing any changes /reforms required to make compliance simpler and easy.
- Audit results in facilitating better and improved tax compliance through tax payer education and bringing any changes/reforms required to make compliance simpler and easy.

1.4 The Purpose of Audit Manual:

The purpose of this manual is to outline the principles, policies, procedures and practices of audit conducted under the KGST Act, 2017 and the Rules made thereunder. It contains guidelines and operating procedures intended to ensure that the audit of taxpayer is carried out in a uniform, efficient and comprehensive manner, adhering to the stipulated principles, policies and procedures aimed in that direction.

- It provides members of the audit team with practical professional guidance, tools and information for conducting and managing the audit activity.
- It provides standard procedure for planning, conducting and reporting on audit work carried out.
- It helps to bring a systematic and disciplined approach to the audit by departmental authorities so as to enhance the quality and effectiveness of audit

by putting into practice standard procedures and processes that would help it conform to professional standards and best practices.

1.5 Scope of the Audit Manual:

The manual covers subjects that are related to principles, policies and other issues pertaining to conduct audit of taxpayers under KGST Act, 2017 and rules made there under. The manual does not deal with legal interpretations and rulings on GST matters. The guidelines provided in the manual are advisory and educative in nature and are not binding either on authorities or the tax payers. The relevant judgements of the honourable courts and tribunals applicable to the transactions of the tax payer should be kept in mind at the time of audit.

The manual does not contain answers to all the problems that may arise in the day-to-day audit work. In such cases, the audit officer/audit team has to apply his/their mind, keeping in view the spirit of the principles and policies outlined in the manual. If needed, he/they may seek guidance from the supervisory officer.

1.6 Amendments to the Manual:

Any future amendments to the KGST Act, 2017 and Rules made thereunder, Notifications, Circulars/Orders, administrative policies and procedures etc. may require changes to this Manual. Experience gained during the conduct of audit would also necessitate periodic updating of the manual to maintain its utility.

The users of this manual are requested to provide suggestions for the improvement of this Manual and to make its scheme, procedures and contents more useful. Suggestions may be forwarded to the Commissioner/ Additional Commissioner (Audit) through their Joint Commissioners or Additional Commissioners.

1.7 Removal of difficulty:

Difficulties faced, if any, in the implementation of guidelines and instructions contained in this manual may be brought to the notice of ADCOM (Audit) at an early date. The ADCOM (Audit) and Joint Commissioners of DGSTOs are authorized to issue appropriate instructions in certain cases which may be aligned with any subsequent modifications and changes made by the Commissioner to remove any difficulty in conduct of audits.

CHAPTER-2

THE LEGAL PROVISIONS: ANALYSIS OF PROVISIONS, RULES AND RELEVANT FORMS

2.1 Provision:

The legal provisions relating to audit by tax authorities under GST are contained in Section 65 of Chapter XIII under the heading Audit of the KGST Act/ CGST Act, 2017 and Rule 101 of Chapter XI under the heading Assessment and Audit of KGST/CGST Rules, 2017. The legal provisions are detailed as under:

As per Section 65(1) of the Act, the Commissioner or an officer authorized by him, may undertake audit of any registered person by issuing **a general or a special order.**

General Order shall specify the criteria and all the registered persons fulfilling that criteria shall get covered in the ambit of audit.

On the other hand, **Special Order** for audit shall be issued in the name of a particular registered person and only such person shall be subjected to audit.

As per Rule 101(1) the period of audit to be conducted under section 65(1) shall be **a financial year or part thereof or multiples thereof**. Thus, audit need not be conducted for a part of the Financial Year in normal circumstances. Period to be covered under the audit can be a single financial year or two financial years or three and so on.

As per Section 65(2) the authorized officer may conduct Audit either at the place of business of the registered person or in his own office.

As per Section 65(3) read with Rule 101(2), the registered person shall be informed by way of notice in **FORM GST ADT-01** at least 15 working days prior to the conduct of audit.

As per Section 65(4), audit of a registered person shall be completed **within three months** from the date of commencement of audit. However, if the Commissioner is satisfied that audit of the registered person cannot be completed within three months, he may extend the time period for a further period **not exceeding six months** after recording the reasons for doing so in writing.

The expression 'commencement' shall mean the date on which the books of account, records and other documents, asked for by the tax authorities, are made available by the registered person or the date of actual institution of audit at the place of business, whichever is later.

As per Section 65(5), the authorized officer, during the course of audit, may require the registered person to:

i. afford him necessary facility to verify the books of account or other documents required by him;
ii. furnish such information as may be required by him for the conduct of audit, and to provide assistance for timely completion of audit.

As per Rule 101(3), the proper officer who has been authorized to conduct the audit of the records and books of account of the registered person shall, with the assistance of his team of officers and officials, verify:

a) the documents on the basis of which the books of account are maintained,
b) the returns and statements furnished under the provisions of the Act & Rules,
c) the correctness of the turnover, exemptions and deductions claimed,
d) the correctness of rate of tax applied in respect of supply of goods or services or both,
e) the input tax credit availed and utilized,
f) the correctness of refund claimed, and
g) other relevant issues

and record the observations in his audit note.

As per Rule 101(4), the proper officer may inform the registered person of the discrepancies, if any, noticed. The registered person may file his explanation to discrepancies in his reply. Thereafter, the proper officer shall finalise the findings of the audit after due consideration of the reply furnished if any.

As per section 65(6) read with Rule 101(5), the proper officer, on conclusion of audit, shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings in **FORM GST ADT-02**.

As per Section 65(7), where audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action u/s 73 or 74.

Section 70. Power to summon persons to give evidence and produce documents. - (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code (Central Act 45 of 1860).

The audit officer shall exercise these powers judiciously and shall record reasons for issue of summons and draw proceedings relating to the subsequent appearance of such person or production of the documents sought.

Section 71: Access to business premises.- (1) Any officer under this Act, authorized by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (Central Act 18 of 2013);

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (Central Act 43 of 1961); and

(vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant 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 or the audit party or the chartered accountant or cost accountant.

The audit officer should draw appropriate proceedings relating to demand of any record, statement etc, and their production or otherwise. While non-production of any records etc sought may result in drawing adverse inference in appropriate cases, action to deal with such non-production may also be initiated.

Section 66. Special audit.- (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

(4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

(5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Rule 102. Special Audit-

(1) Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in **FORM GST ADT-03** to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.

(2) On conclusion of special audit, the registered person shall be informed of the findings of special audit in **FORM GST ADT-04.**

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1– For the purposes of section 73 and this section, —

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

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.

2.2 Analysis of provisions, rules and relevant forms:

Commissioner or an officer authorized by him may undertake audit of any registered person based on a general order or a special order issued by the Commissioner.

1. General Order shall specify the criteria and all the registered persons fulfilling that criteria shall get covered in the ambit of audit.
2. Special Order for audit shall be issued in the name of a particular registered person and only such person shall be subjected to audit.
3. Period of audit to be conducted shall be a financial year or part thereof or multiples thereof. Thus, audit need not be conducted for a part of the Financial Year in normal circumstances. Period to be covered under the audit can be a single financial year or two financial years or three and so on.
4. The authorized officer may conduct audit either at the place of business of the registered person or in his own office.
5. The registered person shall be informed by way of notice in **FORM GST ADT-01** at least 15 working days prior to the conduct of audit. [Section 65(3) read with Rule 101(2)]

2.3 Form GST ADT - 01

FORM GST ADT - 01
[See rule 101(2)]

Reference No.: Date:

To,----------

GSTIN……

Name……...

Address……
……..……..
…….

Period - F.Y.(s) -……..

Notice for conducting audit

Whereas it is proposed to undertake audit of your books of account and records for the tax periods of the financial year(s)……... to ……. in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on -------.

And whereas you are required to: -

(i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and

(ii) furnish such information as may be required and render assistance for timely completion of the audit.

You are hereby directed to attend in person or through an authorized representative on …….... (date) at……(place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.

In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature …….

Name ……

Designation …….

After service of FORM GST ADT 01 if the taxable person fails to comply with the terms of notice in FORM GST ADT 01 or seeks adjournment, further opportunity may be provided by issuing an endorsement as given in the below illustration:

2.4 Endorsement

OFFICIAL ROUND SEAL **FORMAT-A**

GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No: DGSTO-1/DC1.1/AUDIT-1/2019-20

Office of the Joint Commissioner of
Commercial Taxes (Admn), DGSTO-1,
TTMC, BMTC Building, 2nd Floor,
Yeshavanthapur, Bengaluru-560022.
Dated: XXXXXXX

ENDORSEMENT-1/2

Sub: Audit proceedings in the case of M/s ……..
(GSTIN……)……. Bengaluru for the Tax Periods of
July 2017 to March 2018 of Financial year……..

Ref: (1) Notice in FORM GST ADT-01 Dated……..
(2) Your representation dated……. for adjournment of Audit.

Please take notice that, you were issued notice in FORM GST ADT-01 dated….. for audit
and was called upon to appear in person or through an authorized representative on …….. (date) at……(place) before the undersigned and to produce your books of account and other records for the aforesaid tax periods of the financial year(s) as required for audit.

(a) and was intimated that audit will be taken at your place of business at……
on……(date)……at(place) and was intimated to produce your books of account and records for the aforesaid tax periods of the financial year(s) as required for audit.
(Choose (a) or (b)depending upon the notice for Desk Audit or Visit Audit)
2. As you have requested for adjournment vide your representation under reference (2), in the interest of natural justice your request for adjournment is considered and you are called upon to appear/ audit team will visit (choose the correct one depending up the notice for Desk Audit or Visit Audit) on on……(date)……at(place)……. All other intimations as per the notice under reference (1) above will be in force.
3. In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature
(Name)
Designation

To,
(GSTIN)
Name and Address of the Taxable person

2.5 Notice Seeking Additional Information/documents:

On verification of the books of accounts and documents produced for audit, if the audit officer requires any additional information/ documents the same may be sought by issuing a notice in the below illustrated format.

Date:

To

_____GSTIN

.....Name

_____(Address)

Assignment No. …… Dated …….

Notice Seeking Additional Information/documents

On verification of the books of accounts produced for Audit for the Tax Period _____, it has been found that the following information/documents are required for further verification: -

<<text>>

You are, therefore, requested to provide the information /documents within a period of<< 15 days>>from the date of service of this notice to enable this office to take a decision in the matter. Please note that in case no information is received by the stipulated date, audit will be concluded based on the available records,

Further, you are also requested to appear before the undersigned for personal hearing on << Date --- Time ---Venue >>.

Signature

Name

Designation

6. Audit of a registered person shall be completed **within three months** from the date of commencement of audit. However, if the Commissioner is satisfied that audit of the registered person cannot be completed within three months, he may extend the time period for a further period **not exceeding six months** after recording the reasons for doing so in writing. Maximum period available for completion of audit is nine months, subject to the extension of time by the Commissioner.
7. **'Commencement'** shall mean the date on which the books of account, records and other documents, asked for by the tax authorities, are made available by the

registered person or the date of actual institution of audit at the place of business, **whichever is later**.

8. Authorized officer, during the course of audit, may require the registered person to:
   i. Afford him necessary facility to verify the books of account or other documents required by him.
   ii. Furnish such information as may be required by him for the conduct of audit, and to provide assistance for timely completion of audit.

9. The proper officer who has been authorized to conduct the audit of the records and books of account of the registered person shall, with the assistance of his team of officers and officials, verify:
   a) the documents on the basis of which the books of account are maintained.
   b) the returns and statements furnished under the provisions of the Act & Rules.
   c) the correctness of the turnover, exemptions and deductions claimed.
   d) the correctness of rate of tax applied in respect of supply of goods or services or both.
   e) the input tax credit availed and utilized.
   f) the correctness of refund claimed and
   g) other relevant issues. **[Rule 101(3)]**

10. The proper officer shall record the observations in his audit notes.

11. The proper officer may inform the registered person of the discrepancies, if any, noticed.

2.6 Notice after audit:

SEAL **NOTICE AFTER AUDIT**

GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No. DGSTO-1/DC1.1/AUDIT-1/2019-20 Office of the Joint Commissioner of Commercial Taxes(Admn), DGSTO….,

1. Name of the Taxable Person: M/s. WWWWWWWWWW Limited No.XXXXX, GGGGGGGG road,

2. GSTIN	:	29&&&&&&&&&&&& / LGSTO---
3. Status	:	……..
4. Style of business	:	……..
5. Date of visit	:	0T.BB.2020
6. Tax periods	:	July-2017 to March-2018
7. Financial Year	:	2017-18
8. Represented by	:	Sri XZCXVXVB

OBSERVATIONS UNDER SECTION 65(6) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017 READ WITH RULE 101(4) OF THE KARNATAKA GOODS AND SERVICES TAX RULES, 2017

Dated

Present: ……

Designation:…….

M/s. WWWWWWWWWW, With GSTIN. XXXXX, GGGGGGGG having place of business at ……. road, Bengaluru-560YYY. is a registered taxable person under the provisions of the Karnataka Goods and Services Taxes Act, 2017. On audit of the books of accounts maintained and verification of other records and documents, the following discrepancy is noticed.

[Explain and analyze the para with supporting facts and law substantiating the point of observation including the liability of interest. Each issue may be discussed para-wise with facts and law and liability to be recorded. More than one issue may also be clubbed in the same notice]

2.
3.
4.
5.
6.

7. Details of the additional tax liability accruing out of the above observations made are as under,

Particulars	Integrated tax	Central tax	State/ UT tax	Cess
Tax				
Interest				
Penalty				
Fees				
Others				
Total				

8. Objections if any may be filed before this authority on or before ---------(date) along with evidences in support of such objections for the consideration in this audit. If no objections are filed, it shall be presumed that you do not have any objections to offer and the above para shall be incorporated in the audit report in FORM GST ADT-02, which may please be noted.

(WODHNCKFHNEY)
Deputy /Asst.Commissioner of Commercial Taxes/
Commercial Tax Officer
(Audit-), DGSTO-, Bengaluru.

12. The registered person may file his explanation to discrepancies in his reply.

13. Thereafter, the proper officer shall finalize the findings of the audit after due consideration of the reply furnished.**[Rule 101(4)**]

14. The proper officer, on conclusion of audit, shall, ***within 30 days, inform the registered person,*** whose records are audited, about the findings, his rights and obligations and the reasons for such findings in **FORM GST ADT-02**, along with the detailed report. **[Section 65(6) read with Rule 101(5)]** However the audit file of the proper officer should be preserved with the observations made and decisions taken after verifying the objections filed if any and such file may be called in a proceeding under Section 108 by the revision authority.

2.7 FORM GST ADT-02

Form GST ADT –02

[See rule 101(5)]

Reference No.: Date:

To,----------

GSTIN……..

Name…..……..

Address……..

Audit Report No…….. dated……..

Audit Report under section 65(6)

Your books of account and records for the F.Y…… has been examined and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made there under, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature ……..

Name ……

Designation ……..

15. If 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 may initiate action u/s 73 or 74 after obtaining the authorisation from the Commissioner or any other authorised officer. The authorising officer may give the authorisation to initiate action under Section 73 or 74 to the same officer who has audited or to a different officer.

CHAPTER-3
GST AUDIT ADMINISTRATION

3.1 Introduction:

As per the provisions of the GST Act, it is the Commissioner or his authorised officer who shall conduct the audit. As the Commissioner is the head of the department, he authorises other officers of the department as proper officers to conduct audit and conclude further proceedings as per the provisions of the KGST Act and rules made thereunder. The Audit wing headed by the Additional Commissioner of Commercial Taxes (Audit) in the office of the Commissioner of Commercial Taxes in Bengaluru and the officers and the staff working under him will assist the Commissioner with regard to policy, planning and execution of the audit process as mandated under the provisions. The Commissioner may also entrust these functions to any other officers so as to assist him. At the divisional level, it is Divisional GST Officer (DGSTO) in the cadre of Joint Commissioner of Commercial Taxes (Administration) who will monitor and supervise the audit work entrusted to Audit Officers. The functions of Audit, assessment and recovery proceedings which are related to the audit may be entrusted to officers of the department and these officers are called 'Audit Officers' for the sake of convenience.

3.2 Management at apex level:

The Additional Commissioner of Commercial Taxes (Audit) and Joint Commissioners (Administration) of each DGSTO are required to ensure efficient and effective implementation of the audit system based on this manual and also to evolve and improve audit techniques and procedures through a periodic review. With the help of DGSTOs, Additional Commissioner of Commercial Taxes (Audit) shall regularly monitor GST audits conducted by the audit officers/audit teams to ensure that the coverage of assessees / taxpayers is adequate in number and is reflective of their risk profile and to ensure that these audits are conducted in accordance with the letter and spirit of this manual and as per the established practices and policies. To achieve this, the ADCOM (Audit) needs to interact closely with DGSTOs to eliminate any deficiencies and to improve the audit performance of each division. He is required to suggest measures for improving tax compliance, to gauge the level of audit standards and to ascertain the views of the assessees / taxpayers on the existing audit system. He should also interact with select assessees / taxpayers to take a holistic view of the audit and to formulate proposals to remove any bottlenecks and prevent the scope of irregularities.

3.3 Role of Additional Commissioner of Commercial Taxes (Audit):

As the head of the Audit wing in the office of the Commissioner of Commercial Taxes (Karnataka) he will assist the Commissioner with regard to policy, planning and execution of the audit process as mandated under the provisions. He will coordinate with the DGSTOs as per the parameters fixed by the Commissioner of Commercial

Taxes from time to time. He supervises the working of audit system in the department and reports to the Commissioner.

Following are his main functions:

- Collection, compilation and analysis of the data received from DGSTOs.
- Review of the proposals for audit sent by the DGSTOs.
- Recommend to the Commissioner, the cases found fit for audit.
- After approval by the Commissioner, allots cases to the Audit Officers and informs the same to DGSTOs.
- Review the functioning of audit system periodically both at DGSTO and Audit Officers level and recommend to the Commissioner about any corrective actions required to be taken.
- Preparation of MIS reports with regard to audit.
- Recommend to the Commissioner about commonalities required to be adopted across the State through issuance of Circulars and instructions and proper communication with the approval of Commissioner if required.
- Recommend measures with regard to implementation of audit system at Divisional level
- Implementation of guidelines and circulars issued with regard to audit.
- Co-ordinate with concerned Additional Commissioner of Commercial Taxes with regard to training requirements of GST Audit for officers and staff.
- Coordinate with e-Governance wing with regard to Audit Module and its functionalities.
- Proper coordination of CAS (Comprehensive Audit System).

3.4 Role of Joint Commissioners (Administration) DGSTO:

- To review the performance of the Audit Officers.
- To assess the training needs of the Audit Officers and organize training programmes.
- To submit periodical reports to ADCOM (Audit)/ CCT
- To get prior approval of the Commissioner for special audit in terms of Section 66(1) of the KGST Act, 2017 on the basis of a reference received from the Audit Officers not below the rank of Assistant Commissioners.
- Co-ordination, planning and overall management of the audit including supervision of audit work.
- Recommend to the Commissioner, assignment for audit in respect of enforcement/ intelligence/ investigation reports received from enforcement/ vigilance wings and also from any other authorities including the reports received from central tax authorities.
- In such cases, where in his opinion he finds that the audit officer needs to be changed for the reasons to be stated, he may recommend to the Commissioner through the Additional Commissioner (Audit) for changing the assignment to another officer for fresh audit or continue the audit from the stage at which the audit is pending.

- To examine the cases recommended by the audit officers before they are recommended to the Commissioner for issuance of assignment for audit.
- To supervise timely completion of audit by the audit officers as per the time schedule prescribed under the statute.
- To ensure timely completion of adjudication proceedings u/s 73 or 74 of the KGST Act by the Audit Officers.
- Review the MIS reports sent by the audit officers before being compiled and sent to the Commissioner.
- Ensure other compliances and supervision with regard to the directions, instructions and circulars issued by the Commissioner.
- To examine whether any order passed by any officer in his division requires filing of appeal and ensuring the initiation of appropriate proceedings of appeal or revision, as the case may be.

3.5 Functions of audit officers

[Deputy Commissioners (DCs)/ Assistant Commissioners (ACs) / Commercial Tax Officers (CTOs)]:

- Audit work relating to his/her post.
- Maintenance of a Taxable person's Audit Master File.
- Issuance of notices with regard to desk audit or visit audit.
- To issue discrepancy notices to taxable persons with regard to audit.
- To issue final audit reports to the taxpayers
- Timely completion of assessment/adjudication proceedings of a taxpayer u/s 73 or 74 of the KGST Act, 2017.
- To send proposal to DGSTOs for special audit u/s 66(1) of KGST Act, 2017, if required.
- Recovery proceedings regarding the tax determined u/s 73 or 74 of the KGST Act, 2017.
- Other statutory functions relating to audit and assessment.
- Ensure filing of proper defence with regard to the proceedings before appellate authorities, tribunal, courts and other forums.
- To examine whether any order requires filing of appeal or revision, as the case may be and ensuring initiation of the appropriate proceedings of such appeal or revision.

3.6 Role of Audit Review Committee at DGSTO level:

i. This Committee shall consist of one DCCT, one ACCT and one CTO
ii. It shall verify and provide detailed comments with justification on the audit reports/assessment orders in the background of rules/ notifications/ circulars/ case laws (if any) or any point of law for recommending the same for appeal.
iii. It shall attend to any litigation after the adjudication proceedings and to defend the order before the Appellate–Authorities – viz., Joint Commissioner (Appeals)/ Tribunals/ Courts, with the help of inputs from Additional Commissioner (Audit), wherever required.
iv. It shall assist the Joint Commissioner in the revision proceedings
v. Any other work assigned by DGSTO/ADCOM/CCT

3.7 Staffing norms for Audit Offices:

- Audit Officers in the Administrative Division consisting of DCCTs, ACCTs and CTOs posted by the Government or Commissioner through transfer or OOD (Officer on Duty) shall exercise and perform assigned audit functions.
- Normally the Commissioner of Commercial Taxes will assign jurisdiction to take up audit only to the audit officers of the DGSTOs. It may not be assigned to the officers of other wings like enforcement wing or internal audit wing or officers who have been entrusted with administrative functions in the Head Office or DGSTOs. However, the Commissioner of Commercial Taxes may entrust jurisdiction in specific cases for audit.
- An audit office should comprise of staff consisting of a CTI, Typist/stenographer and case workers to assist the audit officer in the work relating to maintenance of Assessee Master Files, processing of show cause notices, assisting in conduct of audit, preparation of audit report, adjudication, recovery work, attending to follow up work etc.

3.8 Audit Offices - Their Profile, Deployment and Capacity Building

Profile of each audit officer should be available in the Audit Planning and Coordination Cell of DGSTO, in the following proforma.

i Name of the officer.
ii Designation.
iii Experience in the department.
iv Professional qualification, if any.
v. Whether undergone training in audit.
vii. Experience in audit wing.
viii. Number of major audit points raised by him on his own in his career.
ix. Amounts involved in such cases.
x Any commendation/awards, rewards, etc. received.

Each Audit Officer should furnish a self-appraising resume containing the above information immediately upon joining the audit section, which should be updated periodically as long as the officer continues to be posted in the Audit Offices.

Audit Officers' profiles facilitate their effective deployment, audit and assignment of cases by taking into account their skill levels, training, educational background etc.

The formation of audit office is a critical component of audit management. The cadre controlling authority shall ensure that the officers with the requisite skill and experience are posted to audit offices depending on availability and other administrative constraints. The Department should ensure that the skill and experience of audit officers/staff is evenly distributed across the audit offices/divisions based on following skills/parameters:

a. Educational background
b. Legal knowledge

c. Computer skills
d. Prior audit experience
e. Training in audit/assessment

Similarly, the skill sets and experience available with an audit office should govern the size and complexity of audits that it handles. For optimal results, there should be matching of these two factors.

While taking up of auditing of taxpayers engaged in supplying of services, assigning them to the officers with specialized skills in different services/ service streams like banking/financial, insurance, software, hardware, HRD/Manpower, works contract services, transport, etc. will help achieve better results. For the above purpose, such services may be grouped by aggregating similar services. This grouping would facilitate cultivating specialization amongst the Audit Officers and would also lead to uniformity in the type of discrepancies that are flagged/ identified to particular service sector. Based on the said grouping, the audit of services pertaining to particular group can be allocated to the specific team(s), depending upon the requirement so that the services of the team which has specialized skills can be optimally utilized. However, Audit teams can be reconstituted in accordance with the local needs.

Audit Officers, when posted to the audit offices for the first time, should invariably be trained in financial accounting so that they have the basic skills to handle audit work. Compulsory in-house training programmes could also be organized for the benefit of new entrants soon after the annual transfers.

The Head Office should also ensure to organize special training programmes on major services sectors and other specific areas periodically so that Audit officers/staff with the necessary knowledge and sufficient number of audit personnel specialized in major areas of business are available.

The audit officers, who have worked in audit wing earlier, should also be imparted with skill upgradation and refresher courses on the latest techniques of audit and changes in the statutory provisions.

3.9 Various steps in conducting audit and adjudication:

1. Risk parameters will be decided by the Commissioner of Commercial Taxes.
2. ADCOM (e-Gov.) will identify cases based on the risk parameters and provide the list of cases under different categories towards selection of cases for audit.
3. Identified cases in descending order of discrepancy value will be displayed to all the audit officers in their GST Pro login in the ratio of 2:3:4 for DCCT, ACCT and CTO.
4. At any given point of time only 10 cases will be there in DCCT login, 15 cases in ACCT login and 20 cases in CTOs login
5. Audit officers will have to select the cases for audit after thoroughly analysing the Taxpayer profile, preparing an assessee master file and then seek authorisation for fit cases.

6. For those cases in his login which are considered not fit for audit an assessee master file has to be prepared assigning specific reasons for non-selection of case for audit.
7. Each DGSTO will have a Audit Processing Cell (APC) consisting of one DCCT, ACCT and CTO of that division who are entrusted with audit work to recommend wild card cases based on intelligence/enforcement/vigilance reports, AG observations, internal audit observations and the like which are not included in the risk-based scrutiny. The cell will examine and record the proceedings in the following format. Such cases selected for wildcard entry shall be recommended through DGSTO login for approval under wildcard entry.
8. Every 15 days they will process potential cases for Audit under the chairmanship of DGSTO and will propose such cases to the Commissioner.

3.10 Recommendation for wild card cases for audit in DGSTO…… for the first/ second Fortnight of …. (month/year).

SL. No.	NAME OF THE Taxpayer	GSTIN	REASONS FOR SELECTION

9. Once cases are assigned for audit to the officers, they will initiate the audit proceedings.

10. Based on the requests, the Commissioner or the Officer authorised will assign the cases for audit. He may assign cases directly to the Audit Officers, if situation so warrants.

11. Once the Audit begins following procedure shall be followed:

    a. The proper officer who has been assigned the audit shall inform the registered person in the format FORM GST ADT-01 and fix up the date and time for visit/desk audit of the case.
    b. All the names and designations of the Proper Officer and other Officers and officials authorised to visit the place of business premises for audit shall be recorded in the proceedings sheet with date and time of visit and time of conclusion with signatures of the person representing the case on behalf of the registered person and also the signature of the proper officer who is conducting the audit.
    c. The details of the records verified shall be noted separately in the Verification Report (Format provided below)
    d. Proper officer shall record in the proceedings, the discrepancies noted in the records along with relevant provisions/rules/ notifications/orders and issue observations to the tax payer and these observations shall contain details of the tax and other liabilities which are noticed. The taxpayer must be allowed an opportunity to file his reply with regard to the discrepancies and liabilities accruing out of such discrepancies.

e. Proper Officer shall conclude the proceedings of audit after consideration of the reply filed. Principles of natural justice shall be followed before concluding the proceedings.

g. The proper officer, after conclusion of audit, shall inform the findings of audit to the registered person in FORM GST ADT-02 with the details of discrepancy, nature of lapse, if any, with reference to the provisions and quantum of liability along with interest and penalty.

h. Copy of the Audit report served on the registered person in FORM GST ADT-02 shall be forwarded to the Concerned DGSTO with the details of the Assignment No, file no, quantum of liability and nature of discrepancy etc.

3.11 Verification Report:

FORMAT

VERIFICATION REPORT

FILE NO. DGSTO-1/DC1.1/AUDIT-1/2019-20

AUDIT PERIOD AND YEAR……..

NAME OF THE OFFICER ……

DESIGNATION……

ASSIGNMENT NOTE NO…….

TEAM MEMBERS 1)……..

2)……..

[THIS VERIFICATION REPORT IS REQUIRED TO BE MAINTAINED IN DUPLICATE WHEREIN THE ORIGINAL IS TO BE RETAINED BY THE PROPER OFFICER AND THE COPY SHALL BE FURNISHED TO THE PERSON IN CHARGE OF THE BUSINESS PREMISES OR THE AUTHORISED REPRESENTATIVE WHO REPRESENTED THE TAXABLE PERSON]

A. GENERAL:

SL. NO.	DESCRIPTION	
1	GSTIN	
2	NAME	
3	ADDRESS	
4	STATUS	
5	REGISTRATION TYPE	
6	NATURE OF BUSINESS (Manufacturer, Whole seller, Retailer,	
7	COMMODITIES DEALT (Major Three)	
8	HSN/SS CODES (Major 3)	
9	DATE/S OF AUDIT	
10	TIME OF ENTRY TO THE BUSINESS PREMISES/ TIME OF COMMENCEMENT OF AUDIT	

B. DETAILS OF THE PERSON IN CHARGE OF THE BUSINESS PREMISES OR THE AUTHORISED REPRESENTATIVE WHO REPRESENTED THE TAXABLE PERSON:

SL. NO.	DETAILS OF THE PERSON APPEARED FOR AUDIT	
1	NAME OF THE PROPRIETOR/MANAGING PARTER/ MANAGING DIRECTOR, GSTP OR OTHERS	
2	DESIGNATION	
3	MOBILE NUMBER	
4	OFFICE PHONE NUMBER	
5	E-MAIL	
6	IF GSTP (GSTP ENROLLMENT NO.	
7	OTHER DETAILS	

C. OTHER PLACES OF BUSINESS OF THE TAXABLE PERSON:

SL. NO.	DETAILS	
1	NAME OF THE PROPRIETOR/MANAGING PARTER/ MANAGING DIRECTOR, GSTP OR OTHERS REPRESENTING THAT PLACE OF BUSINESS	
2	DESIGNATION	
3	MOBILE NUMBER	
4	OFFICE NUMBER	
5	E-MAIL	
6	IF GSTP (GSTP ENROLLMENT NO.	
7	OTHER DETAILS	
8	TURNOVERS FOR THE AUDIT PERIOD	
9	INPUT CREDIT AVAILED FOR THE AUDIT PERIOD	
10	OUTPUT PAID FOR THE AUDIT PERIOD	

[SEPARATE INFORMATION FOR EACH PLACE OF BUSINESS WITHIN THE STATE, OUTSIDE THE STATE OR OUTSIDE THE COUNTRY OR BUSINESS VERTICALS AS C1, C2, C3, C4,]

D. BOOKS OF ACCOUNTS AND DOCUMENTS VERIFIED

E.

SL. NO.	BOOKS OF ACCOUNTS AND DOCUMENTS PRODUCED	PRODUCED/ NOT PRODUCED (YES OR NO)
1	Day Book	
2	Ledger	
3	Journal	
4	Balance Sheet	
5	Inward supply register	
6	Outward supply register	
7	Register containing the details of tax payable, tax collected and paid including reverse charge mechanism input tax, input tax credit claimed, together with invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers including goods or services imported or exported or of supplies attracting payment of tax on reverse charge	
8	Accounts showing quantitative details of goods used in the provision of services, details of input services utilized and the services supplied in respect of service provider	

.

F. OPENING STOCK OF GOODS :(In Rs.)

Sl. No.	DESCRIPTION OF GOODS	IMPORTS	INTER STATE	WITHIN THE STATE (RPs)	WITHIN THE STATE (URPs)	OTHERS
1						
2						
3						
4						
5						
6						
7						
8						
TOTAL						

G. INWARD SUPPLIES OF GOODS: (In Rs.)

Sl. No.	DESCRIPTION OF GOODS	IMPORTS	INTER STATE	WITHIN THE STATE(RPs)	WITHIN THE STATE(URPs)	OTHERS
1						
2						
3						
4						
5						
6						
7						
8						
TOTAL						

H. INWARD SUPPLIES OF SERVICES: (In Rs.)

Sl. No.	DESCRIPTION OF SERVICES	IMPORTS	INTER STATE	WITHIN THE STATE(RPs)	WITHIN THE STATE(URPs)	OTHERS
1						
2						
3						
4						
5						
6						
7						
8						
TOTAL						

I. CLOSING STOCK OF GOODS :(In Rs.)

Sl. No.	DESCRIPTION OF GOODS	IMPORTS	INTER STATE	WITHIN THE STATE(RPs)	WITHIN THE STATE(URPs)	OTHERS
1						
2						
3						
4						
5						
6						
7						
8						
TOTAL						

A. INPUT TAX CREDIT DETAILS ON CAPITAL GOODS (in Rs.)

Sl. No.	DESCRIPTION OF CAPITAL GOODS	IGST	SGST	CGST	CESS	Others	TOTAL
1							
2							
3							
4							
5							
6							
7							
TOTAL							

B. INPUT TAX CREDIT DETAILS ON GOODS (in Rs.)

Sl. No.	DESCRIPTION OF GOODS	IGST	SGST	CGST	CESS	Others	TOTAL
1							
2							
3							
4							
5							
6							
7							
8							
TOTAL							

C. INPUT TAX CREDIT DETAIL ON SERVICES (in Rs.)

Sl. No.	DESCRIPTION OF SERVICES	IGST	SGST	CGST	CESS	OTHERS	TOTAL
1							
2							
3							
4							
5							
6							
7							
8							
TOTAL							

D. OUTPUT TAX DETAILS ON GOODS (in Rs.)

Sl. No.	DESCRIPTION OF GOODS	IGST	SGST	CGST	CESS	OTHERS	TOTAL
1							
2							
3							
4							
5							
6							
7							
8							
TOTAL							

E. OUTPUT TAX DETAILS ON SERVICES (in Rs.)

Sl. No.	DESCRIPTION OF SERVICES	IGST	SGST	CGST	CESS	OTHERS	TOTAL
1							
2							
3							
4							
5							
6							
7							
8							
TOTAL							

F. DESCRIPTION OF TRANSACTIONS:

a) **Regarding Transition Credit**
b) **Regarding opening stock of goods**
c) **Regarding closing stock of goods**
d) **Applicability of Reverse Charge Mechanism**
e) **Place of supply of Goods and Services**
f) **Utilisation of Input Tax Credit on Capital Goods**
g) **Utilisation of input credit relating to goods**
h) **Utilisation of input credit relating to services**
i) **Applicability of rate of tax with regard to supply of goods and services**
j) **Calculation of output tax with regard to supply of goods and services**
k) **Utilisation of input credit for discharging liabilities**
l) **Utilisation of E-way bills**
m) **Output tax paid**

TIMELY FILING OF ALL STATUTORY RETURNS UNDER GST. (YES OR NO) IF NO INTEREST AND LATE FEE DETAILS:

a. **GSTR3-B**
b. **GSTR-1**
c. **GSTR-4**
d. **GSTR-5**
e. **GSTR-6**
f. **GSTR-7**
g. **GSTR-9**
h. **GSTR-9A (if applicable)**
i. **GSTR-9B (if applicable)**
j. **GSTR-9C**
k. **GSTR-11**
l. **CMP-08**
m. **ITC-01**
n. **ITC--02**
o. **ITC_02A**
p. **ITC-03**
q. **ITC-04**

G. Observations on:

a. **GSTR1 vs GSTR3B**
b. **GSTR3B vs GSTR2A**
c. **Value in e-Way Bill vs Value in GSTR3B**
d. **Refund Claimed/Sanctioned under "Excess Balance in Cash Ledger"**
e. **Refund Claimed /Sanctioned under "Any Other" Category**

H. ANY INSPECTION OR AUDIT OR PENAL ACTIONS BY OTHER AUTHORITIES. IF SO, DETAILS:

a.
b.
c.

I. ATTESTATION OF THE BOOKS OF ACCOUNT PRODUCED WITH DETAILS:

a.
b.
c.

J. DOCUMENTS/ REPORTS FURNSIHED BY THE TAXABLE PERSON FOR FURTHER VERIFICATION:

a.

b.

c.

K. ANY OTHER INFORMATION, OBSERVATION OR ANY OTHER DETAILS OBSERVED AT THE TIME OF AUDIT OTHER THAN THE ABOVE :

……

……

SIGNATURE OF THE PROPER OFFICER (FULL NAME)
OFFICIAL DESIGNATION
OFFICIAL SEAL

PLACE
DATE & TIME

SIGNATURE OF THE PERSON IN CHARGE OF THE BUSINESS PREMISES OR THE AUTHORISED REPRESENTATIVE WHO REPRESENTED THE TAXABLE PERSON

L. NAMES, DESIGNATIONS AND SIGNATURES OF PERSONS WHO WERE PART OF THE AUDIT TEAM.

1.

2.

Officer Signature

DECLARATION OF THE TAXPAYER

I …… representing M/s……. for the audit do hereby state that, the audit proceedings were concluded in a fair and justifiable manner by the proper officer and his team and they were courteous during the proceedings. I hereby state that the details furnished and recorded above are true to the best of my knowledge and belief and do hereby acknowledge the receipt of the verification report as above.

PLACE
DATE
TIME

SIGNATURE OF THE PERSON IN CHARGE OF THE BUSINESS PREMISES OR THE AUTHORISED REPRESENTATIVE WHO REPRESENTED THE TAXABLE PERSON

List of Documents to be submitted /to be kept ready for verification by the tax payer as per GST-ADT-01 is enclosed as ANNEXURE-1 to this manual.

CHAPTER-4

AUDIT OFFICER'S RESPONSIBILITY AND AUTHORITY

4.1 Definition of Audit Officer:

Audit Officer means an officer entrusted with the responsibility of conducting an audit and also includes those who have been assigned the responsibility of assessment and recovery.

4.2 Role of the Audit Officer:

The Audit Officer is required to carry out his duties with utmost sincerity, integrity and diligence as he has immense responsibility in detection of non-compliance, procedural irregularities and leakage of revenue due to deliberate action or ignorance on the part of the assessee/taxpayer.

During audit, he should keep in view, the prevalent trade practices, the economic realities as also the industry and business environment in which the assessee/taxpayer operates. Therefore, the Audit Officer should take a balanced and rational approach while conducting audit.

Besides, the Audit Officer is expected to play a key role in promoting voluntary compliance by the assessees/taxpayers.

During the course of audit, if certain technical infractions, without any revenue implications, arising due to *bona fide* oversight or ignorance of the assessee/taxpayer, are noticed, the assessee/taxpayer should be guided for immediate correction. Such cases should also be mentioned in working papers.

The Audit Officer should also apprise the assessee/taxpayer of the provisions of the GST Act, 2017 relating to applicability of interest & penalty and encourage him to take notice of those provisions and in order to avoid disputes and litigation.

The Audit Officer should apprise the assessee/taxpayer of the provisions of Section 73 or 74 of the KGST Act, 2017 and encourage the assessee/tax payer to make payment of the tax and other amount due from him at the earliest opportunity, to take the benefit of reduced interest and penalty.

The audit process should be transparent and all the findings should be intimated to the assessee/taxpayer in writing and an opportunity should be given to the assessee/taxpayer to give his explanation before an observation is finalized and consequential action is initiated.

The Audit Officer should consider and examine the explanation of the assessee/taxpayer regarding all points of dispute, before taking the final view.

If necessary, the Audit Officer should discuss with his supervising JCCT/ADCOM to ensure that the views taken by him are consistent with the law and the latest instructions.

An Audit Officer is responsible for the orderly conduct of audit and should endeavour to take a final view on all issues raised by him during that audit. He shall be the team leader and ensure that all officers and the officials involved in the audit should be courteous and polite during the entire proceedings.

The Audit Officer should document all of his audit findings in the **working papers** so that a record of steps leading to an audit point is available.

The working papers for each step of audit should be properly documented as soon as that step is completed. The said papers shall clearly explain why a particular issue was included in the audit as well as the basis for every observation that goes into the audit report after audit verification. The documentary evidence which has been relied upon in arriving at certain conclusion should invariably be cited and included.

4.3 Role of Audit Officer in dealing with the Taxpayer/ assessee/ public:

- The objective of the tax department is to collect correct amount of revenue/taxes levied under the GST Law in a cost effective, responsive, fair and transparent manner and also to maintain public confidence in the system of tax collection. This should be reflected in the Audit Officer's conduct and attitude. The Audit Officer should bear in mind that he is one of the critical channels of communication between the department and the assessee/taxpayer.
- The Audit Officer should **establish and maintain a good professional relationship** with the assessee/taxpayer.
- The Audit Officer should **recognize the rights of the assessee/ taxpayer**, such as, the right to impartial, uniform and transparent application of law and the right to be treated with courtesy and consideration.
- The Audit Officer should **explain that tax compliant assessees/ taxpayers stand to gain f**rom such an audit in as much as:
    i. they will be better equipped to comply with the Laws and the relevant procedures;
    ii. the preparation of prescribed returns and self-assessment of GST will be better, correct and complete;
    iii. the scrutiny of business accounts and returns submitted to various agencies, made in the course of audit will bring to light any deficiencies in their accounting and internal control systems.
    iv. Minimising or eliminating disputes.

- The Audit Officer should be tactful to gain **the goodwill and confidence of the assessee/taxpayer**. Where there is lack of co-operation or deliberate failure to provide information and records by the assessee/taxpayer or in case of any other exigency, the Audit Officer should inform his superiors and follow it up by a written report, if necessary.
- **Confidentiality** should be maintained in respect of sensitive and confidential information furnished to an Audit Officer during the course of audit. All records submitted to the audit parties in an electronic or manual format, should be used only

for verification of tax liability or for verification of the tax compliance. These shall not be used for any other purposes without the written consent of the assessee. Maintaining the confidentiality is necessary to secure the trust and co-operation of the assessee/taxpayer.

4.4 Authority for an Audit Officer:

The departmental audit is conducted by the proper officers, i.e. State GST Officers who are designated the functions of audit and all the powers vested in the KGST Act, 2017 and Rules made thereunder are available to the officers conducting the audit. Thus, the Audit Officer is also a 'proper officer' as envisaged under the Act.

The Audit Officer, for conducting audit, has to mainly rely on the books of account and records maintained by the assessee / taxpayer in the ordinary course of business and also as per the provisions of Section 35 of the KGST Act and Rules 56 to 58 of the KGST Rules.

4.5 Summons:

The Audit Officer may issue summons u/s 70 of the KGST Act, 2017 for the purpose of obtaining records/documents which are necessary for conducting audit, where the assessee/ taxpayer is not volunteering to submit the same on the basis of letter issued by the Audit Officer.

However, where it is felt necessary that recording of the statement of the taxpayer/assessee is necessary, he may also issue summons.

4.6 Precautions while issuing summons:

The following precautions should generally be observed when summoning a person: -

i) A summons should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered absolutely necessary.

ii) Normally, summons should not be issued repeatedly. As far as practicable the statement of the assessee/ taxpayer/ witness should be recorded in minimum number of appearances. Repeated summons often leads to complaints of harassment and embarrassment before the Courts of Law.

iii) Respect the time of appearance given in the summons. No person should be made to wait for unreasonable time before his statement is recorded

iv) Preferably, statements should be recorded during office hours. However, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

v) Senior management officials such as Directors, CEO, CFO, and General Managers of a large company or a PSU should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision-making process which led to loss of revenue.

CHAPTER-5
PRINCIPLES OF AUDIT

The objective of audit of assessees/taxpayers is to measure the level of compliance of the assessee/ taxpayer in the light of the provisions of the GST Act, 2017 and the rules made thereunder. It should be consistent with departmental instructions and should make use of professional audit methodology and procedures.

5.1 The basic principles are:

i. The audit should be conducted in a systematic manner.
ii. Emphasis should be on the identified risk areas and on scrutiny of records maintained in the normal course of business.
iii. Audit efforts should be based on materiality and the degree of scrutiny will depend on the nature of risk factors identified.
iv. Recording of all checks and findings.
v. Audit should normally be distinct from enforcement activity in as much as it can detect irregularities only to the extent of their reflection in the books of accounts and other documents.

5.2 Standards for conduct of audit:

In keeping with the principles of audit outlined above, audit has to be conducted in a transparent and systematic manner with focus on business records of the assessee/taxpayer and according to the audit plan for each assessee/taxpayer.

The assessee/ taxpayer participation in the course of audit is also envisaged so that instead of raising purely technical discrepancies (without any revenue implications), substantive issues are focussed upon.

The Audit Officer should ensure that audit is conducted in a focussed manner with optimum utilization of time and resources available at hand. The Audit Officer must use his judgement and experience to determine the materiality of any discrepancies and/or irregularities observed and decide what action is necessary under the circumstance, for example,

i. Cumulative effect of small items: An error of one isolated item might be insignificant but the cumulative effect of many individually unimportant items would signify systemic failure. In fact, the relative materiality of an individual item has to be viewed against the net effect on over-all compliance and interest of revenue.
ii. General or Particular Items: An error made in a particular transaction may be an aberration if it is a stray, single instance but the effect may be material, if it is of recurring nature. Thus, frequency of error is of importance.
iii. Effect in relation to scale of operations of an assessee / taxpayer: An error may appear to be small in itself but may have sizable implication due to the huge scale of operations of an assessee/taxpayer.

5.3 Period to be covered during audit.

Audit may cover a particular financial year or part thereof or multiples thereof.

Duration of audit

Efforts should be made to complete each audit within the following *general* time limits:-

The indicative duration for conduct of audit that is inclusive of desk review, preparation of audit plan, actual audit and preparation of audit report wherever necessary, for each category would be as under:

i. Top taxpayers – 10-15 working days
ii. Middle taxpayers – 6 to 8 working days
iii. Other taxpayers – 2 to 5 working days

The above classification is based on the GST Pro portal and may be subjected to revision. The above-mentioned working days are indicative and applicable for conduct of GST audit covering a period of one financial year.

The duration, as above, covers the effective number of working days spent by the audit team for the audit of a particular assessee and taxpayer from desk review to preparation of audit report (i.e. days spent in office as well as at the assessee/ taxpayer premises).

5.4 Stage wise action for audit

i. Preparation/updating of assessee master file containing comprehensive assessee/taxpayer profile.
ii. Collection of all relevant documents, data reconciliation statement and preparation of questionnaire.
iii. Desk review on the basis of relevant documents.
iv. Formulation of audit plan based on Scrutiny/Desk Review.
v. Conducting audit on the basis of the audit plan.
vi. Raise Audit observation and obtain reply/explanation from taxpayer/ assessee
vii. Preparation and Issue of final audit report.
viii. Follow up action, for monitoring the compliance of various points.
ix. Adjudication/Assessment Proceedings under Section 73/74
x. Ensuring timely issuance of SCNs, wherever warranted.
xi. Recovery of revenue detected.

CHAPTER-6

SELECTION OF ASSESSEES/ TAXPAYERS FOR AUDIT

6.1 Objective:

Given the large number of registered taxpayers under GST, it is neither possible nor desirable to subject every assessee/taxpayer to audit each year with the available resources. Further, emphasis placed merely on coverage of more number of assessees and taxpayers would dilute the quality of audit and would be against the principles of GST, which is based on trust / voluntary compliance by the tax payers. Selection of taxpayers for audit in a scientific manner is extremely important as it permits the efficient use of audit resources viz. manpower and skills for achieving effective audit results.

These taxpayers should be selected on the basis of assessment of the risk to revenue. This process, which is an essential feature of audit selection, is known as '**Risk Evaluation'.** It involves the ranking and selection of taxpayers according to a quantitative indicator of risk known as a '**risk based scrutiny'**.

6.2 Method of selection based on risk assessment:

The selection of taxpayers would be done based on the risk evaluation and scrutiny method which would facilitate risk assessment and preparation of the list of assessees/taxpayers to be audited in the financial year.

Based on the risk and scrutiny methodology, a list of taxpayers will be communicated to the Audit Officers by the CCT/ADCOM (e-Governance/Audit), for the purpose of conducting audit for the audit year. The Audit Officers after reviewing the list forwarded to them by the CCT/ ADCOM (e-Governance/Audit) may select the units to be audited in a particular year in the context of local risk perceptions and parameters.

The Audit Officer may also select an assessee with low risk score compared to an assessee with relatively high risk score through wild card method. However, the reasons for such selection should be indicated which would be used as a feedback by the e-Governance wing for further improvisation of risk factors in future. The Audit Officers may also select a few units at random or based on local risk perception in each category. Feedback on such random selection and results of audit thereof would help in evaluation of parameters used for the process of selection.

6.3 Preparation of audit schedule: Annual plan for Audit Coverage

i) The ADCOM (Audit) would formulate an Annual plan by the end of January, indicating the names of assessees/taxpayers proposed to be audited during the course of the next financial year (period from 1st of April to 31st of March of the next financial year). The audit coverage (i.e. number of units selected for audit in a year) may be calibrated with the availability of manpower in the Divisions.

ii) In order to ensure adequate coverage, the assessees/taxpayers shall be categorized into three categories namely Top, Middle and Other taxpayers. In some large cases, a larger

team of audit officers may be required to assist the designated audit officer in carrying out the audit and the concerned DGSTO shall consider the constitution of the team and if required, may obtain officers from other wings to enable the effective conduct of audit.

iii) The indicative duration for conduct of audit that is inclusive of desk review, preparation of audit plan, actual audit and preparation of audit report wherever necessary, for each category is already discussed earlier.

iv) The Audit Officers shall also develop a plan of audit based on the cases available in their basket, so that the time available can be optimally utilised without seeking extension of time from the Commissioner.

v) Sometimes, a co-ordinated audit needs to be conducted especially in case of large taxable persons having multiple registrations and in such cases, audit assignments may have to be given to one officer irrespective of the division and in such cases special jurisdictional orders needs to be issued.

6.4 Theme based audits

Issue based audits at state level would be conducted by the concerned Audit Divisions in a co-ordinated manner. The issue would be selected at the ADCOM (Audit)/(e-Governance) level based on a systematic and methodical risk analysis of internal data of assessee/taxpayer, economic indicators, third party information from tax and other regulatory authorities and other relevant sources of data. The issue for the audit could be a sensitive commodity/Service or any transaction involved.

The Audit wing at HO level/ CCT would prepare detailed questionnaires to serve as guidance to the Audit parties. The selection of issue, coordination and dissemination would be done by CCT in consultation with the field formations.

CHAPTER-7
AUDIT - PREPARATION AND VERIFICATION

Audit examines the declarations of taxpayers to not only test the accuracy of the declaration and the accounting systems that produce the declared liability, but also evaluate the credibility of the declared or assessed tax liability. The tax payer's anticipation of such actions has preventive and deterrent effects. The deterrent effect is the extent to which audit actions discover and stop tax payers from continuing to under-declare or manipulate their tax liability. The preventive effect is the extent to which registered persons decide not to evade tax, because they are aware of audit activity and fear of detection by the tax auditors.

An effective audit program generally results in the discovery of under-declared liabilities either by omission, error or deliberate deception. The amount of additional revenue raised depends not only on the level of compliance by the taxpayers, but also on the effectiveness of the auditors and the audit planning and implementation. An efficient and effective audit system will assist the government in its pursuit of increasing taxpayer's voluntary compliance and facilitate the tax administration's aim of getting "the right tax at the right time."

7.1 Profiling of assessee/taxpayer:

Audit requires a strong database for profiling each assessee/taxpayer so that risk-factors relevant to an assessee/taxpayer may be identified in a scientific manner and audit is planned and executed accordingly. Some of the relevant data can be collected from the assessee/taxpayer during the course of audit, while the rest is to be extracted from the registration documents and returns filed by the assessee/taxpayer as well as from his annual report, reports/returns submitted to regulatory authorities or other agencies, Income Tax returns, contracts with his clients, audit reports of earlier periods as well as audits conducted by other agencies, internal audit reports etc.

A comprehensive database about an assessee/taxpayer to be audited is an essential pre - requisite for selection of cases and also the issues for undertaking preliminary desk review and effective conduct of audit.

7.2 Assessee Master File (AMF):

The first step towards an effective audit is to collect all relevant information about the assessee/taxpayer from various sources, arrange it in a systematic manner so that the audit can be planned in a result-oriented manner. The AMF should contain all the useful information about an assessee/taxpayer, in the form of statistical data as well as in narrative form. This file should be useful not only for the future audits, but also as a ready reckoner for other purposes, such as for reply to the L.A /L C Questions/Litigation Management and also generating Management Information System (MIS) reports.

The Audit Planning Cell of DGSTO/ HQ/ MIS section should collect all the relevant information and documents about the assessee/taxpayer from various sources (including the assessee/ taxpayer himself), arrange it methodically in the assessee master file and regularly update it.

The electronic data should be kept in a properly secured format so that it can be altered or modified only by an authorised officer of the audit group. This folder should be protected by a password and should be made available to the officers of audit only with the prior approval of the proper officer in writing. The data should, however, be accessible to all the concerned officers working in the audit wing.

It should be ensured that the AMFs are maintained under the direct control of the Audit Officer. On being transferred, he/she should handover all the master files to the new incumbent.

The master file should be updated periodically or after completion of each audit. The audit working papers, audit report along with the latest documents should be filed properly in a file and the same shall be attached to the Master file folder of the assessee/taxpayer. Scanned/soft copies of the relevant documents should also be kept in the AMF folder.

7.3 Audit Working Papers:

The working papers form the basis of audit observation. They also show the detailed steps undertaken by the Audit Officer during the preparation for and conduct of the audit. Therefore they should be documented and maintained carefully, giving observations and conclusions of the Audit Officer duly supported by evidences/documents, wherever required.

1. Each part of the working paper should be filed on completion of the relevant audit step. The date on which such part is completed and working paper filed in should be mentioned. The working papers should be in the custody of the audit officers and must not be shared with the assessee.
2. The completed working papers shall be the basis for Audit Report in FORM GST ADT -02.
3. Copies of supporting documents/ records/ evidences referred to in the working papers must be annexed at the end. Each copy should have a cross-reference to the relevant entry in the working paper.

7.4 Desk Review

The desk review lays emphasis on gathering data about the assessee/taxpayer, his operations, business practices and an understanding of the potential audit issues, understanding his financial and accounting system, studying the flow of materials, cash and documentation and run tests to evaluate the vulnerable areas. The preliminary review assists in development of a logical audit plan and focus on potential issues.

This is the first phase of the audit programme done in the office. The idea is to gather as much relevant information about the assessee/taxpayer and its operations, as much as possible, before visiting the premises. A good desk review is critical to the drawing up of good audit plan.

The Audit Officer should immediately refer to the AMFs of previous audit conducted on the same Taxpayer. Study of the AMF could throw up important points, which may

merit inclusion in the audit plan. In addition, the Audit Officer should also obtain the latest Balance Sheet, Tax Audit Report, Cost Audit Reports, Annual Financial Statement, Cost Audit Report or any such document prepared or published after the last updating of AMF. From the scrutiny of these documents, certain points may further emerge for inclusion in the audit plan. The Audit Officer should also incorporate the result of any parameters brought to light by risk analysis into the desk review for pinpointing specific issues for scrutiny during audit.

From the AMF, Annual Financial Statements (Profit & Loss Account and Balance Sheet) it is possible to work out important financial ratios. The said ratios should be compared with the ratios of earlier year and wherever significant variation is noticed, these areas may be selected for audit verification. It may be kept in mind that any adverse ratio is only an indicator for verification of such an area and there may be valid reasons for the same.

Further, any third party information available with the Department or in public domain, which may be helpful in the audit must be culled out and the same may be included in the Audit Plan. Further, the audit officers have to obtain industry/ sector specific data and information and compare with the taxpayer audited and any variations which need to be probed into must be included in the Audit Plan. Special emphasis may be laid on the financial ratios, manufacturing ratios etc. during the formulation of audit plan.

7.5 Reconciliation of data with third party information:

Tax payment shown in the GST returns can be reconciled with that shown in the financial accounts. Further, from the reconciled figure of GST payment, value of supplies can be worked out. This can then be compared with the supply figure shown in financial records. The difference, if any, must be analysed. The unit assessable value of the assessee/taxpayer can be compared with that of another assessee/taxpayer manufacturing/ supplying the same item. This method would give an idea whether the valuation system of the assessee/taxpayer is a high/low risk area.

The Audit Officer should check the data available in returns with other documents such as gross trial balance, Income Tax Returns, Annual Audited accounts, Income Tax Audit report etc. and carry out a preliminary reconciliation for the purpose of identifying any amount that might have escaped from the payment of GST.

7.6 Trend Analysis:

For audit purposes, either absolute values or certain ratios should be studied over a period of time to see the trend and the extent of deviation from the average values during any particular period.

7.7 Gathering of information of the assessee/taxpayer Tour of premises/Audit Visit:

Before start of audit verification, the Audit Officer should know about the functioning of various areas, such as nature of trade/manufacturing/ service and also areas like marketing, production, purchase, stores and accounts. Such information can be gathered from the heads of various sections of the assessee/taxpayer during the visit his

business premises. This is used to gather information about the systems adopted or followed by the tax payer.

A physical tour of the unit/premises provides confirmation of much of the information gathered during previous steps and it also helps resolve issues noted earlier. Often, the tour brings out operations and technical details about inputs/input services used and products/by-products/wastes manufactured, and types of services supplied, some of which may not have been considered during the discussions.

It provides clues about important aspects of the operations of the manufacturing unit of the tax payer. If necessary, the Audit Officer should speak to the manager or supervisor/foreman during the tour.

The Audit Officers should also go through the working papers prepared in the last audit in order to acquaint themselves with the broad procedures followed by various sections of the assessees/taxpayers as part of the desk review. The Audit Officers may fix appointment with various section heads and during discussions the overall functioning of the tax payer's business can be found out and at the same time officers of the company can also explain various procedures adopted by them.

Various types of records maintained for internal control purpose and reports generated by the units can also be found out by the Audit Officers during discussions.

Any important happenings like fire or natural calamity, introduction of new products, overall scenario of industry, new marketing techniques, new discounts, action of competitors etc. can also be found out by the Audit Officers.

Points noticed during desk review can also be enquired at this stage. For this purpose, a sample questionnaire is required to be prepared for discussion in the areas like supply of goods/services (Outward/Inward), stores, tax accounting, job work etc. depending upon the nature of the industry/business. The following guidelines should be kept in mind at the time of interview.

i. Stay in control of the interview.
ii. Follow a prearranged path of questioning but be flexible.
iii. Explain questions clearly and ensure that the question has been understood.
iv. Listen carefully and observe reactions.
v. Do not interrupt unless the interviewee appears to be deliberately changing the subject.
vi. Avoid ambiguous and leading questions.
vii. Display confidence and put the auditee at ease.
viii. Summarize the interview at the end and seek clarification if necessary

The purpose of the tour is to gather information from the assessee/taxpayer about the various systems followed by him in the different areas of inward & outward supply, manufacturing, accounting etc. This information can be test-checked by conducting a walkthrough.

7.8 Evaluation of the Internal Controls

The objective of review of internal controls is to assess whether the assessee/taxpayer has reliable systems and controls in place that would produce reliable accounting/business records. Most medium to large companies have ERP systems in place, which account for all transactions from entry of raw material to clearance of final products. Audit Officers must have a look at these systems and more relevantly determine whether software being used exclusively for the transactions related to tax matters is integrated to the main ERP system or is running parallel to the main ERP. This assessment would be used by the Audit Officer to decide on the extent of verification required and to focus on areas with unreliable or missing controls. It should be noted that this review must be commensurate with the size of operations.

A small assessee/taxpayer might have little in terms of internal controls whereas a large assessee/taxpayer would have sophisticated internal controls in place.

If the internal controls are well designed and working properly, then it is possible to rely on the books maintained by the assessee/taxpayer. The scope and the extent of the audit can be reduced in such a case. The reverse would be true if the internal controls are not reliable.

Audit should evaluate the soundness of internal control of sub-systems/areas like inward & outward supply, accounting etc.

In this regard, an Audit Officer should normally examine the following:

i. Characteristics of the tax payer's business and its activities.
ii. System of maintenance of records and accounts.
iii. Identifying the persons handling records for accounting purposes.
iv. Allocation of responsibilities at different levels.
v. System of internal checks.
vi. System of movement of documents having relation to tax assessment.
vii. Inter-departmental linkages of documents and information.
viii. System of own internal audit.

7.9 Techniques for evaluation of the Internal Controls.

Walk-through: This is a process by which the Audit Officer selects any transaction by sampling method and traces its movement from the beginning through various sub systems to the end. The Audit Officer verifies this transaction in the same sequence as it had moved. By this method the Audit Officer can get a feel of the various processes and their inter linkages. It is also a useful method to evaluate the internal control system of an assessee/taxpayer. The Audit Officer can undertake walk through process of sales, purchase, account adjustment systems etc. Similarly, key controls may be examined for recording of all cash transactions: these controls may include scrutiny of numbered cash transaction invoices, daily reconciliation of cash invoices, separation of taxes etc. Undertaking a 'walk-through' and analysis of internal inventory and input controls during this process would help the Audit Officer in evaluating the system of internal controls in a scientific manner.

Preliminary Visit:

In all cases of Desk Audit, the officers shall issue a notice for visit of the business premises and this visit should be invariably done to have a feel of the industry or business. Later on the audit of the books of accounts can be carried out in the office of the Audit Officer.

7.10 Audit Plan

- The objective of preparing an audit plan is to outline a logical series of review and examination steps that would meet the goals and standards of an audit in an efficient and effective manner.
- Audit Plan is the most important stage before conduct of audit. All the previous steps are actually aimed at preparation of a purposeful Audit Plan. By now, the Audit Officer is in a position to take a reasonable view regarding the vulnerable areas, the weak points in the systems, abnormal trends and unusual occurrences that warrant detailed verification. Certain unanswered or inadequately answered queries about the affairs of the assessee/taxpayer may also be added to this list.
- Audit plan should be a detailed plan of action. The audit plan should be consistent with the complexity of the audits.

7.11 Audit Verification

The objective of audit verification is to perform verification activities and document them in order to obtain and record audit evidence. The verification techniques must be appropriate for audit objectives identified in the audit plan. It is important that in an audit, the objections that are raised are technically correct and stand up against scrutiny or challenge.

Law being open to interpretation and dynamic, it may be difficult to test the technical correctness of all discrepancies noticed/raised. However, it should be correct to the extent that any professional Audit Officer, working with and having access to the same research material would likely to come to the same conclusion. It also means that the Audit Officer must demonstrate, in writing, the research and reasoning used to base his/her application of legislation, policies and jurisprudence.

Audit verification involves verification of data and actual verification of documents submitted at the time of desk review, verification of points mentioned in the audit plan.

7.12 Verification of points mentioned in the audit plan:

The Audit Officer should conduct the verification in a systematic manner, following the sequence of steps envisaged in the working papers. While conducting audit verification, special care should be taken to examine all those issues pointed out in the audit plan. The Audit Officer should try to determine whether the apparent weaknesses in the internal control system of the seller/ distributor /manufacturer/service provider have led to any loss of revenue. He should also identify the procedural infractions on part of the assessee/taxpayer, which are recurrent in nature and which may obscure a significant fact. During the process, he must cross check the entries made by the assessee/taxpayer

in various records and note discrepancies, if any. In all cases involving discrepancies, the Audit Officer should make detailed enquiries regarding the cause of the discrepancies and their revenue implication.

The Audit Officer should also examine the documents submitted to various Government departments/Regulatory Authorities such as Customs, Income Tax, Banks, etc. by the assessee/taxpayer. This should be used in cross verification of the information filed by the assessee/taxpayer for the GST assessment.

Extensive use of information available with open sources such as electronic and print media, internet etc. should also be resorted to for verification of information filed by the assessee/taxpayer.

The audit verification gives maximum opportunity to the Audit Officer to go through the assessee/taxpayer's records in his unit. Therefore, Audit Officer may come across a new set of information or documents, not earlier known, during any of the earlier stages. Further, while examining an issue, the Audit Officer may come across a fresh issue also requiring detailed examination. In such a situation, the Audit Officer should go beyond the scrutiny envisaged under the Audit Plan and record the reasons for doing so.

Despite audit verification being a structured process, it should be flexible enough to accommodate the needs on the spot.

At the end of each entry in working papers, Audit Officer must indicate the findings. If any of the planned verifications is not conducted, the reasons for the same must also be recorded. While the process of verification for each audit would be unique in terms of Audit Plan, it should involve some general steps as discussed below:

7.13 General steps in audit verification:

- **Physical Verification of Documents:** All important documents are already verified at the time of desk review. However, in case of any discrepancy noticed and pointed out in the Audit Plan, a detailed scrutiny of the financial records of the assessee/taxpayer becomes imperative. The documents to be examined include Annual Financial Accounts containing Director's Report, Statutory Audit Officer's Report, Balance Sheet and Profit & Loss Account. If necessary, the Audit Officer must go into details of the figures mentioned in the Annual Financial Statements and for that he must examine Trial Balance, Ledgers, Journal Vouchers and Invoices. He may also examine Cash Flow Statement, Groupings, Cost Audit Report and Tax Audit Report. He should also check whether the assessee/taxpayer is maintaining the statutory records as required under various statutes especially under the Companies Act, 2013.
- Audit objections raised must be fully supported by documentary and legal evidence. This will greatly help in explaining and discussing the objections with the assessee/taxpayer and other follow up action. It needs to be ensured that all audit documentation is complete, accurate and of professional quality.

- Working Papers are a synopsis of audit operations conducted by the Audit Group. Entry of all items mentioned in the audit plan must be made in the working papers, during Audit Verification.

Working papers should support the audit effort and results. They should:

i. Be clear, concise, legible, organized, indexed, and cross-referenced;
ii. Disclose the audit trail and techniques used in the examination of each significant item;
iii. Support the conclusions reached and cover all queries raised;
iv. Include audit evidence (e g., copy of a financial statement, an invoice, a contract, a bank statement, etc.) to support the assessment;
v. Link results to supporting working papers e.g. the objections identified in the working papers must agree with the summary of audit results or statement of audit objections and the audit report;
vi. See that audit reports are clear and disclose all material and relevant information; and
vii. Take follow up action.

- Apparently, the financial and other documents maintained by the assessee/taxpayer for his private use and in compliance of other statutes are of great importance which may reveal substantial short/non-payments of tax. The Audit Officer may take note of the same during 'Gathering information about the assessee/taxpayer and the system followed by him and go through them during 'Audit Verification'.

7.14 Apprising the assessee/ taxpayer of irregularities noticed and obtaining his explanations.

It is important that the Audit Officer discusses all the discrepancies noticed with the assessee/taxpayer before preparing draft audit report. The assessee/taxpayer should have the opportunity to know the discrepancies and to offer explanations with supporting documents. This process will resolve potential disputes at an early stage and avoid unnecessary litigation.

The ultimate aim of conducting an audit is to increase the level of tax compliance of assessee/taxpayer. Therefore, no audit can be considered to be complete unless the Audit Officer has made all efforts to ensure maximum recovery of short levy before leaving the premises of the assessee/taxpayer.

As the Audit system adopts a transparent methodology, it is necessary that all the discrepancies noticed by the Audit officer are conveyed to the assessee/taxpayer with a view to obtain his explanations before preparing the Audit Report. Accordingly, the discrepancies noticed should be intimated in writing to the assessee/taxpayer, clearly stating that the same is not in the nature of any show cause notice and is only a part of participative and fact-finding audit scheme under which even the preliminary and tentative audit observations are being shared with the assessee/taxpayer for obtaining his explanations.

Where satisfactory explanation or evidence is submitted to the Audit Officer, the findings should be revised as necessary.

However, if a response from the assessee/taxpayer is not forthcoming, audit paras should be prepared on the basis of available records after citing the lack of cooperation on part of the tax payer, in the Audit Report.

It is the Audit Officer's responsibility to explain all the observations to the assessee/taxpayer and to make all attempts to resolve any disagreements before those are finalised.

It is also the Audit Officer's responsibility to make sure that the senior officers are aware of potential disagreement and the position taken by the assessee/taxpayer.

7.15 Suggestions to Taxpayer/Assessee for future compliance

Before leaving the assessee/taxpayer's premises, the Audit Officer must discuss future compliance issues with the senior management of the assessee/taxpayer. The Audit Officer should also discuss the steps that management can take to reduce specific errors detected during the audit and to improve compliance by suggesting improvements in the accounting systems etc. Written or verbal assurances as given by assessee/taxpayer should be recorded in the Audit Report.

If, in any way, the department can assist the assessee/taxpayer to reduce errors and improve compliance, such offer of assistance should be made.

CHAPTER-8
PREPARATION OF AUDIT REPORT AND ADJUDICATION

- After completion of audit verification, the Audit Officer should prepare the verification report for all issues identified in the Audit Plan. This document should record the results of verification conducted as per the audit plan. Any additional issue verified/ point noticed should also be mentioned. The Audit Officer would then discuss each of such issues with the assessee/taxpayer pointing out either non-payment or procedural infractions. The initial views of assessee/taxpayer must be recorded in the verification document. The Audit Officer should also apprise the assessee of the provisions relating to applicability of interest and encourage him to take advantage of those provisions in order to avoid disputes and litigation.

- Where the assessee/taxpayer is in agreement with the short levy/excess claim of ITC, as noticed, the audit officer should explain the benefit available under Section 73(5) or 74(5) of the GST Act, 2017 as the case may be and use persuasion as a measure of recovery of dues along with interest, if any, promptly. Details of spot recoveries and willingness of the assessee/ taxpayer to pay short levy should also be recorded. This document would then become the basis for preparation of the draft audit report.

- The narrative of the observations in the audit report in the Form GST ADT -02 should be concise, to the point and self-contained and should convey the adverse observations made. Where the observations are based on any circulars or clarifications issued by the CCT, they should NOT be quoted. Cases, in which certain specified conditions are not fulfilled, giving rise to observations, should be clearly brought out. Similarly, where observations are backed by interpretations as decided by court judgments, decisions of Appellate authorities or supported by technical literature, those should be cited.

- The audit report should be finalised within the shortest time span**.**

- A copy of the audit report, even if it is a No Discrepancy Report, should be sent to the assessee/taxpayer, by e-mail and/or letter, and necessary records confirming such action should be kept in Assessee Master File.

8.1 Follow up action and issue of show cause notice:

An audit observations should be closed after requisite action i.e., either recovery of amounts due or issuance of show cause notice, has been taken on it. After the issuance of Audit Report, wherever further action such as issue of Show Cause Notice is required, the Audit Office should prepare the Show Cause Notice and take adjudication process u/s 73/74 and recover the amounts due.

8.2 Pre-Notice consultation

[Refer section 73(5) or 74(5), rule 142(1A) and form DRC 1A]

1. Every taxpayer has a right in law to be given "final opportunity" to discharge dues "before any notice" is issued. This is a statutory requirement under section 73(5) and 74(5) of KGST Act for taxpayer to be given an opportunity to discharge dues without penalty or reduced penalty to put an end to the dispute about the said dues.
2. Amount payable may be ascertained by taxpayer or by tax authority. As such, it is important for the computation of dues to be made by tax authority. Statement in DRC-01A is the prescribed document to inform taxpayer about the tax, interest and penalty, if any, payable. Format of DRC-01A requires "grounds and quantification" of ascertainment by tax authorities to be provided. This would "inform" taxpayer about the basis for such dues and based on this information, taxpayer may consider accepting to "pay dues without contest".
3. Pre-notice consultations without disclosure of "grounds and quantification" will not be considered as legal and by-passing pre-notice consultation would leave the subsequent show cause notice as illegal. There have been decisions in other tax regimes where the show-cause notice was quashed for omission to complete statutorily prescribed pre-notice consultation proceedings. For this reason, pre-notice consultations are mandatory for tax authorities to follow and it is an enforceable right of taxpayer.
4. Once DRC-01A is issued, taxpayer is permitted to make "submission" containing clarifications with regard to the "grounds" in respect of the said dues. If the submissions by taxpayer provide necessary clarification and thereby resolve the issue then, tax authorities may take the same on record and conclude proceedings initiated. If the clarifications are not completely satisfactory, the taxpayer's reply "accepting or rejecting" this final opportunity would then allow tax authority to proceed with show cause notice under section 73(1) or 74(1) of KGST Act.
5. Care must be taken that "submission" in respect of DRC-01A does NOT mean that taxpayer will submit detailed arguments. Tax authority is free to initiate these proceedings under 74(5) instead of 73(5) without disclosing the reasons for invoking section 74 of the KGST Act. Submissions by taxpayer in respect of DRC-01A must be confined to "grounds" for the underlying dues to be raised and not on matters of law. These pre-notice consultation proceedings are NOT a substitute for detailed adjudication proceedings. It is an opportunity to "inform" the grounds and seek "response" from taxpayer on the dues involved. Taxpayer is free to "accept or reject" and then avail the "due process" of law in the form of show cause notice and adjudication.
6. Actions to be followed:
   Include reference number of DRC-01A in show cause notice so that it is clear to taxpayer, adjudicating authority and appellate authorities that pre-notice consultations have been conducted and taxpayer has "rejected" the opportunity to resolve the dispute.

7. Actions NOT to be followed:
   a. Show-cause notice MUST NOT be issued before issuing DRC-01A
   b. DRC-01A MUST NOT be issued with "undisclosed" grounds for dues
   c. DRC-01A is NOT an adjudication proceeding but an intimation proceeding to allow taxpayer to avail the concessional treatment in section 73(5) or 74(5) of KGST Act.

8.3 Show-cause Notice

[Refer section 73, 74 and 76, rule 142 and form DRC1 and 2]

1. Every demand for tax or other sum under KGST Act MUST be accompanied by a 'show cause notice'. Various provisions prescribe that show-cause notice is to be issued. When GST portal prescribes format of notice, generally, it DOES NOT refer to show cause notice. If a prescribed notice is applicable, then the notice may be issued in that format. But, if show cause notice is required to be issued, then points discussed in this chapter will be very helpful. Show cause notice is compulsory even if the demand for dues is obvious and there is no requirement for detailed hearing or discussion. After completion of pre-notice consultation, show cause notice is the first step to set the 'due process' of law into motion.
2. Show cause notice lays down the 'framework' for the rest of the life of that issue until it is finally resolved. No adjudicating authority or appellate authority can 'fill in any blanks' in the show cause notice. If something important is missed out from the show cause notice, the demand must be dropped in adjudication and a fresh show cause notice will have to be issued but within the limitation time prescribed.

8.4 Communication and service of Notice

[Refer section 169]

While it is important to issue notices to set the law in motion and to put taxpayer at notice about the proceedings proposed to be undertaken, unless such notices 'reach' taxpayer, all effort would be wasted. Concept on reaching communication to taxpayer is called 'service' of notice, that is, to verify whether the notice has been 'served' on the taxpayer.

1. GST regime has introduced 'service by email' for audit purpose. When a taxpayer has submitted an 'authorized email' then as per the Information Technology Act, 2005 service by email is valid service if sent to such email address.
2. Sec.169 – Service of notice in certain circumstances, -

   (1) Any decision, order, summons, notice or other communication under this act or the rules made there under shall be served by anyone of the following methods, namely:-

   (a) by giving or tendering it directly or by a messenger including a courier to

the addressee or the taxable person or to his manager or authorized representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have decided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of his business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who are which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

Sec.160 (2) - 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 earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

8.5 With this non-service cannot be challenged in appellate proceedings:

1. But where *ex-parte* orders are passed care must be taken to ensure that service of notices is well documented on the files. As discussed earlier about principles of natural justice, service of notice is a first step in giving the tax payer an opportunity to defend on the proposition in such notice and to finally allow party to be heard. All these are part of one principle '*audi alteram partem'*.

Relevant date:

2. Sec.73(2)–The proper officer shall issue the notice under sub-section(1) at least three months prior to the time limit specified in sub-section (10) for issuance of

order.

Sec.73(10) - The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

Sec.74 (2) – The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

Sec.74(10) – The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

3. FORM GST DRC-01 is the summary of the show cause notice prescribed in rule 142 and must 'accompany' a show cause notice. Show cause notice is incomplete unless accompanied by this summary in FORM GST DRC-01. There is a reference number for this summary of show cause notice and both must be served simultaneously as a single document to the taxable person.

4. Structure of show cause notice –It must include all 'ingredients' that will sufficiently be considered that taxable person is 'put at notice'. The key ingredients required are:

   a. Facts are defined to be *"incident, act, event, or circumstance. A fact is something that has already been done or an action in process. It is an event that has definitely and actually taken place, and is distinguishable from a suspicion, innuendo, or supposition. A fact is a truth as opposed to fiction or mistake."* and only undisputed facts are to be stated as 'fact'. Fact-in-issue is that fact which has a bearing on the issues involved in the show cause notice. Facts that are not relevant to the issues involved are not to be included in show cause notice. Undisputed facts do not require proof. But disputed facts or facts that are likely to be disputed need to be proved.

   b. Actions that result in violations must be stated very clearly. What exactly has been done by taxable person must be specified so that taxable person can reply in defence whether the said actions have or have not been done and submit evidence to establish innocence. It is not sufficient to state 'tax has not been paid', that would be the result of this action. Action itself needs to be proved. Duty to prove (also called onus of proof) lies on person making assertion. In other words, allegation of violation of law requires revenue authorities to substantiate the allegation with proof. Higher the violation, greater is the required proof. Proof may be of different types depending on the source and quality. Proof varies in degree but proof must establish allegation to the satisfaction of a Court and not just in the opinion of Proper Officer issuing

show cause notice.

c. Allegation on taxable person must also be specific. It is not sufficient to approximately lay the charges. That is, if output tax is payable, the actions of taxable person must be clearly specified in the show cause notice. It is not enough to state that 'taxable person has made supply liable to tax'. It must go into more specific details about 'form' of supply that is alleged to be made. And explain how that particular form stands satisfied in the 'facts' of the case. From the actions, the violations by taxable person will emerge. That is, whether output tax is applicable which has not been discharged or whether output tax which is collected has not been deposited. Clue may be taken from the words stated in Section 73 and Section 122 to frame the exact nature of violations and unclear description of violations are also not sufficient requirement in law.

d. Cause of action refers to the exact provision of law that has been contravened by the violation and the course that the law prescribes to be taken in view of the said violation due to the action of taxable person. This is a very important ingredient in the show cause notice. If any cause of action is omitted, even if the demand is valid, it cannot be confirmed by an adjudicating authority or appellate authority or a Court.

   Opportunity for personal hearing is a very important constitutional guarantee that must be allowed. Refusal to grant adjournment is not reasonable unless repeated adjournments are sought without any valid reasons.

   Demand for tax on outward supply requires allegations to be specific not only regarding supply but the exact form of supply involved.

5. Limitation is the maximum time-limit or the 'end date' by when show cause notice must be issued. If show cause notice is issued late, then demand will not be legally valid. As well understood, there are two limitation periods prescribed:

a. <u>for which the show cause notice may be issued under Section 73 of KGST Act</u>. Care must be taken that a show cause notice must be issued under Section 73 and not merely as 'show cause notice'. The 'substance and effect' may be that of a show cause notice but unless stated to be under a Section 73, not even section 160(1) of KGST Act can come to the audit officer's rescue; and

b. <u>for which show cause notice may be issued under section 74 of KGST Act.</u> Apart from the points made under section 74, please note that a show cause notice must also allege and refer the 'special circumstances' required for a show cause notice under Section 74. These 'special circumstances' are, (i) fraud or (ii) wilful misrepresentation or suppression of facts to evade tax. If a show cause notice is issued under Section 74 (due to allegation of special circumstances) and later during adjudication or appeal, special circumstances are not proved by revenue then, such a show cause notice will be 'deemed' to

be a show cause notice under section 73. Refer Section 75(2) which makes this clear and demand to be now made will stand automatically readjusted to (i) reduced period of demand (ii) with full extent of reduction of penalty in Section 73.

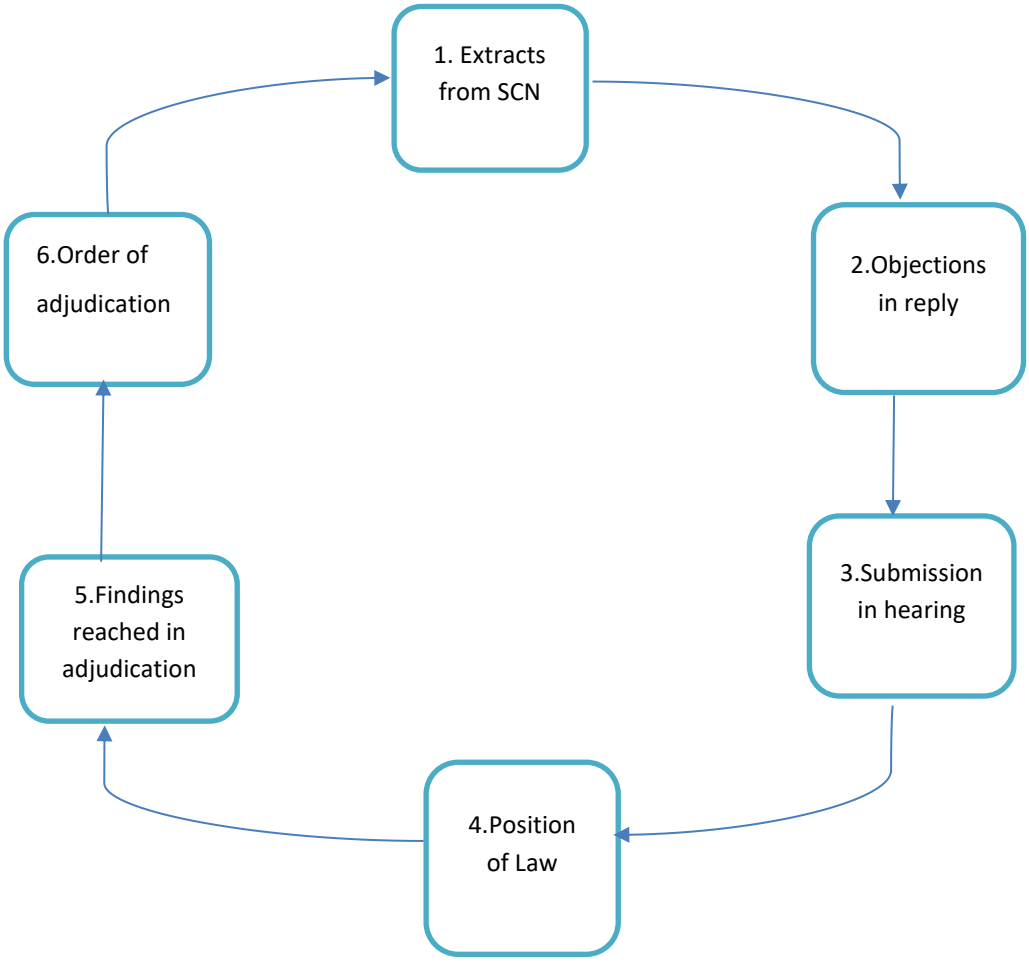
6. Issue of Statement and its summary in FORM GST DRC-02 under Section 73(3) or Section 74(3): In addition to the show cause notice and FORM GST DRC-01, in a case where it is felt that the short payment of tax is suspected to be present in the periods other than those tax periods covered in FORM GST DRC-01, a Statement is prepared under Section 73(3) or 74(3) and the same must be served along with the summary of such statement in FORM GST DRC-02. This is deemed to be a notice issued under Section 73(1) or 74(1) for the tax periods covered under Section 73(3) or 74(3) as per Section 73(4) or 74(4) as the case may be.

7. Actions to be followed:
    a. Show cause notice PLUS summary in FORM GST DRC-01 to be issued.
    b. Statement under Section 73(3) or Section 74(3) PLUS FORM GST DRC-02, where applicable, to be issued.
    c. Sections of law under which action is proposed must be correctly referred without omission as it can adversely affect final outcome.
    d. All relevant evidence relied upon must be enclosed with show cause notice.
8. Actions NOT to be followed:
    a. ENDORSEMENT is not an accepted form of notice. Reference to Section 73 or 74 or 76 of the KGST Act is important to make such endorsements a valid 'show cause notice'. Hence, it is suggested to call such notices as 'show cause notice' itself instead of 'endorsement'
    b. Notice must allow reasonable time for Tax payer to reply.

8.6 Speaking order

[Refer section 73(9) or 74(9) and 76(6), rule 142 and form DRC 6, 7 and 8]

1. Order of the adjudicating authority must be detailed as it is the start of a long journey to its destination where the interpretation of the law and for appreciation of the facts of the case will be delivered through the process of appeal prescribed in the KGST Act. The order of adjudicating authority must carefully capture all the ingredients narrated in the show cause notice, objections raised by the party, interpretation of law by the adjudicating authority to reach final findings on facts-in-issue and pass the orders. Such a combined narration of the conclusion of audit proceedings is referred as a 'speaking order' by adjudicating authority. Some key aspects to reiterate before going into the components of a speaking order:



a. The show cause notice, which lays down the 'framework' of the entire demand must be discussed in the order with extracts. This will bring to the fore, the key issues that the adjudicating authority is required to reach a finding on facts and make a determination. Without this groundwork, it would be impossible for appellate authorities to come quickly to determine the issues (in appeal, if any). It also requires that key 'facts' and 'basis' be recorded in the show cause notice along with the 'grounds' which make up the boundaries within which the adjudicating authority has to reach findings as per restrictions placed in Section 75(6) and 75(7) of KGST Act. The adjudicating authority is barred from coming up with 'new grounds' for confirming demand. Grounds missed in the show cause notice CANNOT be introduced during adjudication proceedings to reach the final finding for supporting the demand. If grounds have been poorly considered in the show cause notice and demand cannot be confirmed on the

basis of those same grounds then, adjudication fails. As mentioned earlier, if some grounds have been missed out, a fresh show cause notice should be issued.

b. "grounds of show cause notice" must be carefully considered and should NOT be issued hurriedly without considering all the facts.

2. Order of adjudication may address the following aspects:

a. Extracts from the show cause notice need to be referred in the adjudication order so that it can be seen by every reader of the order that adjudicating authority was fully aware of the facts, actions and violations, allegations and evidence, cause of action proposed to be taken against the taxpayer under specific provisions of law and fact that the adjudicating authority has been identified these in the said show cause notice to hear the case.

b. Objections by the taxpayer (more correctly called 'Notice') must be recorded. Not only the fact whether objections 'were / were not' filed, but also in case it was filed, details of the objections filed must be recorded. Entire objections need not be reproduced in the adjudication order, but salient features must be recorded. Objections may include decisions of the Tribunal or Courts also, treatment of the same will be discussed in ensuing paragraphs. Reply by taxpayer containing objections must be filed in FORM GST DRC-06 under Rule 142(4) of the KGST Rules.

c. Opportunity of hearing must be granted to the taxpayer as per Section 75(4), either in person or through authorized representative as per section 116 of the KGST Act. During the hearing, taxpayer may provide the summary of objections already submitted or provide addendum to the objections raised earlier. Refer format of 'record of personal hearing' attached for reference. The adjudicating authority is expected to allow a fair hearing and give full attention to the arguments being made. There is no requirement for adjudicating authority to reply or counter the objections raised but only hear the taxpayer or his representative. However, it may be noted that the adjudication authority is free to ask questions to clarify the objections being conveyed or bring up points where objections are unsubstantiated and vague. Please note that all the objections need not be accepted but are still points that are being raised and are to be discussed in the order. Powers of adjudicating authority are not listed in KGST Act, but the duty of adjudicating authority may be found in the show cause notice itself. It may be seen from Section 75(6) and 75(7) of the KGST Act that the adjudicating authority is to make a determination of the allegations / propositions made in the show cause notice based only on the grounds raised in such show cause notice. Departmental representative may also be present during the hearing to counter the objections raised by taxpayer, if required where the audit officer is not a adjudicating authority. Such Officer who wants to be present may require to intimate the Adjudicating Authority beforehand. The adjudicating authority may sometimes require the departmental representative or the person who conducted the special audit to be present and hear the views

of the department on the issues adjudicated. The Adjudicating authority should remain objective and unbiased. If the departmental representative is present and submits any counter-objections, the same may also be recorded in the record of personal hearing. Record of personal hearing may be signed, and copies delivered to all parties present against acknowledgement.

d. Position of law must be discussed in the adjudication order making regular reference to provisions referred in the show cause notice. A discussion of the legal interpretation that the adjudicating authority considers relevant on the issue involved to support the findings reached form the next part of the adjudication order. Case laws referred in the objections may be listed with the ratio of those decisions stated. It must be examined if these decisions are overruled by any later decisions of higher Courts and discussed in this part of the order. Any additional decisions relevant to the case may be introduced in the order at this point which provides the correct position of law applicable to the present case.
e. Findings by the adjudicating authority are on (i) facts (ii) basis and (iii) grounds. It may be noted that if facts of the case are correct but the basis on which conclusions reached in show cause notice are not correct then, the adjudicating authority cannot make corrections, improvements or adjustments to support the demand. If facts and basis are agreeable by adjudicating authority but grounds in the show cause notice are not agreeable then also, demand cannot be supported.
f. From the foregoing, it is to be noted that only if the adjudicating authority is agreeable on all the factors in the show cause notice, the demand raised be confirmed in order. Once the adjudicating authority accepts that all the facts are agreeable then, these factors (facts, basis and grounds) become the view of the adjudicating authority for purposes of later proceedings in appeal or review. Utmost care must be taken to ensure that the adjudicating authority records 'findings' on all these factors in reaching the conclusion. The show cause notice contains the framework for demand and adjudicating authority must pass orders u/s 73(9) or 74(9) of the KGST Act containing all the aspects referred in the Show Cause Notice and pass the 'speaking order'.
g. The adjudicating authority is required to pass above 'orders' determining whether the demand proposed in the show cause notice is payable by taxpayer or is dropped in favour of taxpayer. This discussion must be made in a clear manner which is the conclusion of the adjudication process. It must cover all aspects of tax, input tax credit, refunds, interest and penalty.

3. Adjudication must be completed before "end date" as applicable under Section 73(10) or 74(10) of the KGST Act. If adjudication is kept pending beyond this date then, as per Section 75(10) the proceedings will be "deemed to be concluded" and no adjudication is permitted to be carried out after this "end date". Tax authorities must take care that the proceedings do not extend beyond

this date. Tax authorities to also note that where the same issue is pending in "some other proceeding" before any appellate authority (Tribunal or Court) then, as per Section 75(11) the present show cause notice may be kept pending and the end date prescribed will be "kept in abeyance" until disposal of that case by such appellate authority. Once that case is decided then, the time limit under Section 73(10) or 74(10) commences. Refer discussion in chapter on New in GST under the sub-title 'call book' cases.

4. Taxpayer must be served this order along with demand in final determination of liability in FORM GST DRC-07 under Rule 142(5) of the KGST Rules to be uploaded online along with reference number of adjudication order. Please note that summary in FORM GST DRC-07 will automatically be considered as per Rule 142(6) as a notice for recovery under Section 79 of the KGST Act. It may be noted that even if demand or calculation of interest is missed out in the order, interest is still payable as per Section 75(9) of the KGST Act. Consequently, if any amount other than interest is missed out in the order, taxpayer is NOT liable to pay other than that demanded. Please note section 78 allows 3 months from date of order for any recovery action to be initiated under section 79 of KGST Act. That is the time allowed for taxpayer to file appeal under Section 107(1) or for rectification under Section 161 of the KGST Act. Before any recovery action is initiated (without any further notice to the taxpayer), it may be noted that Section 107(4) allows 1 month for condonation of delay, if allowed by FAA, for filing appeal. Hence, any recovery action within 3 months is not admissible but recovery action in the fourth month must be taken due care taking note of any appeal filed by the taxpayer. However, where the proper officer considers it expedient in the interest of the revenue, he may, for the reasons to be recorded in writing, require the taxable person to make such payments within such period less than a period of three months as may be specified by him in accordance with proviso to Section 78. However, the recovery action needs to be suspended once the appeal is filed and admitted and this suspension should be limited to the amount of tax disputed and the recovery action continues for the undisputed amount. Please also note that in order to file appeal, taxpayer is required to submit 'certified copy of order' under Rule 108(3) of the KGST Rules.

5. In case there is any 'mistake apparent on record' in the order then, on a request by taxpayer or voluntarily, the adjudicating authority may rectify the mistakes within 3 months under section 161 (and not beyond 6 months) from date of such order and upload a revised summary in FORM GST DRC-08 under Rule 142(7) of the KGST Rules. However, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error arising from any accidental slip or omission. It is important to note that 'mistake apparent on record' DOES NOT refer to 'reconsideration of the facts or law' to change the conclusions reached in the adjudication order. That would be a review of the decision taken which is not permitted and the remedy for aggrieved taxpayer is to file appeal under section 107 of the KGST Act.

However, if there is a mistake apparent on record, the adjudicating authority may take that into consideration and pass the correction by a rectification order and upload the revised demand in FORM GST DRC-08 on the portal.

6. While confirming the demand, interest and penalty may also be applicable, hence care must be taken to apply the appropriate provisions of the KGST Act:
   a. Interest as applicable under Section 50(1) for non-payment of tax and Section 50(3) for erroneous credit shall be collected. Care must be taken to inform the taxpayer by way of a notice about the interest payable on the right amount under the right provision of the KGST Act.
   b. Penalty is applicable under several provisions of KGST Act. Care must be taken to confirm demand for penalty under the right the KGST Act. Here, it is important to refer to section 126 which provides 'general discipline' about imposing penalty. Although show cause notice may propose imposition of penalty, adjudication order must consider the guidelines in section 126 and reach a finding based **"on the degree and severity"** of violation. Section 126(4) specifies that adjudicating authority must pass a 'speaking order' for the purpose of imposing penalty.

7. Actions to be followed:

   a. Reply to the show cause notice to be received in FORM GST DRC-06;
   b. Hearing must be granted, and adjournments must also be granted for bona fide reasons as these are rights of taxpayer in adjudication;
   c. Order of adjudication to be passed with summary in FORM GST DRC-07;
   d. Speaking order must discuss demand and separately discuss reasons for imposing penalty;

8. Actions NOT to be followed:

   a. Repeated adjournments are NOT to be entertained where sufficient reasons for seeking adjournment are not provided;
   b. Vague/mechanical non-speaking orders are NOT admissible as such orders are considered incomplete;
   c. Order of adjudication confirming demand must NOT be based on new grounds other than those in show cause notice.

9. Whenever the rights of a person are being affected by passing of an order, the principles of natural justice must be followed. Adjudication without following these principles will leave the demand merely notional as the proceedings may be considered illegal. Following the procedures in the KGST Act and Rules is necessary and once prescribed procedures are followed, taxpayer cannot claim that the demand is illegal on appeal on the grounds of absence of proper grounds,

opportunity of hearing and proper appreciation of facts and law. Principles of natural justice are in-built in the above procedures of adjudication and passing of 'speaking order'

CHAPTER-9
SPECIAL PROVISIONS IN GST

9.1 Incorrect Notices

1. The KGST Act lays a lot of emphasis on following the procedures prescribed. One of the most important special provisions in GST law is that notices must be issued under the correct provisions of the KGST Act. From the previous discussions, it would be quite clear as to the nature of proceedings to be initiated under each Section. Show cause notice for demand of tax must be issued under Section 73 or 74 or 76 of the KGST Act including for demand of interest and imposition of penalty.
2. Now, various other sections require compliance by taxpayers such as- Issue of invoice under Section 31, maintenance of accounts and records under section 35, clam of input tax credit in accordance with Section 16(2) within the time permitted under section 16(4) in the return to be filed under Section 39, issue of e-way bill under Section 68 etc. In case any non-compliance is noted, a separate notice has to be issued for levying penalty under the relevant sections.

9.2 Protective notice

Refunds may be granted or rejected depending on eligibility to the claim. But, where after sanction of refund, it is found that the refund is obtained erroneously, a show cause notice may be issued under section 73 of the KGST Act immediately demanding repayment of "erroneous refund granted".

9.3 Call-book cases

There can be several instances where show cause notice is issued but adjudication is not possible because similar issue (of same taxpayer or any other taxpayer) is pending before the Tribunal or Court. Passing adjudication orders on the same issue prior to the Tribunal or Court order would not be in accordance with judicial discipline. For this reason, the show cause notice issued may be kept pending with approval of the Joint Commissioner or Additional Commissioner. This is permitted in Section 75(11) of KGST Act. Please note that if a show cause notice is NOT issued pending decision of Tribunal or Court then, the maximum time limit prescribed under section 73 or even under section 74 of KGST Act would lapse and the demand would be 'time barred'. In such cases, show cause notices are issued but adjudication orders are not passed. To keep the notices pending is called "call book cases" where cases will be called back from this book or diary once the decision of Tribunal or Court is passed and the interpretation to be taken in adjudication is known.

9.4 Payment of tax

Non-payment of demand attracts interest and due to the high rates of interest, taxpayer may want to **"deposit"** the disputed amount. Section 107(6) and 112(8) of the KGST Act provide for depositing 10 per cent or 20 per cent of disputed tax as a prerequisite for admission of appeal and on admission of an appeal, the recovery of the balance is stayed automatically until disposal of the appeal. The amount has to be paid as deposit and only this amount is eligible for interest under section 115 from the date of such deposit in case the appellant succeeds in appeal and the deposit becomes refundable. The appellant may pay a part of disputed tax in addition to the pre-deposit made while filing the appeal and in case he succeeds the appeal, this part of the disputed tax paid becomes excess paid tax only as a consequence of the appeal order and would become refundable. The appellant has to file an application for refund under section 54 for this refundable amount and the amount needs to be refunded within 60 days from the date of application. Interest needs to be paid on such excess paid tax only when this refund of tax is not made within 60 days from the date of application and not from the date of payment of this amount.

9.5 Collection in the 'name' of tax

1. Where tax is NOT applicable, taxpayer is NOT permitted to charge and collect any amount as tax from customers. But, where tax is NOT applicable and taxpayer collects any amount **"in the name of tax"** then, the same amount is liable to be paid to the Government under Section 76 of the KGST Act without adjusting input tax credit balance against such amount. Please note that amounts collected in the name of tax must be deposited **"in cash and not credit"**. That is, the taxpayer is NOT permitted to collect tax when tax is NOT applicable. And in case tax is collected, such amount must be paid fully and only in cash.

2. If any amount of tax is collected in the name of tax by the tax payer, even then there is no provision for 'spot recovery'. Section 76(2) of the KGST Act requires that a show-cause notice must be issued. Please note this show-cause notice is NOT under Section 74 but under Section 76. When a show-cause notice is issued under Section 76, please also note that there is **"no time limit"** for recovery of such amounts. Show cause notice under Section 74 has 5 years' time limit but show cause notice under Section 76 does not have any time limit. Further, penalty for collecting amount in the name of tax is "equal to tax" as per Section 76(2) of KGST Act. Care must be taken not to impose penalty under section 122 for demands under section 76 of the KGST Act.

9.6 Unjust enrichment

1. Unjust enrichment means, no person should take advantage of another. If a taxpayer pays tax and collects this tax from customers and later, if this tax is not applicable, taxpayer should claim refund. Now, if the tax authority sanctions refund to the taxpayer then, such taxpayer will be enriched at the cost of customer. Refund in this case, is to be given to customer. Section 54(1) of KGST Act very clearly states **"any person"** may claim refund if such person has paid tax which is not payable.

2. In the GST scheme, when taxable person pays tax, there is a presumption under Section 49(9) of the KGST Act that this tax amount has been collected from customers and paid. Any taxable person who claims refund, is required to prove to the refund sanctioning authority that the burden of this tax paid had not been passed on to the customers. This is also known as "proving absence of unjust enrichment". This is a very important concept applicable under GST law that must be considered whenever the question of giving refund arises. It is for this purpose that there is a special fund created where refund is sanctioned but if absence of unjust enrichment is not proved satisfactorily by the tax payer then, the amount of refund cannot be retained by the department but has to be transferred to the Consumer Welfare Fund under Section 57 of the KGST Act.

9.7 Provisional bank attachment

The provisions of the KGST Act permits pre-adjudication attachment of the bank account or property of taxpayer to protect interest of revenue under section 83 of the KGST Act. Even before show cause notice is issued and even before an adjudication order is passed, with the prior approval of the Commissioner, the taxpayer's bank account or any property may be attached. This is not a provision for recovery of tax but to temporarily block the funds or property. This provision DOES NOT apply to the proceedings under section 61 of KGST Act. It is important to note that Commissioner must be satisfied that the provisional attachment is necessary or there may be a threat to recovery of dues later once the demand is confirmed in the adjudication proceedings. No such provisional attachment will remain for more than 1 year and the adjudication proceedings must be completed within 1 year of provisional attachment. The provisional attachment gets automatically vacated once the pending proceedings are completed and has to be replaced by action under section 79 for regular recovery of any dues.

9.8 Demand of Output Tax

Step 1:

if a supply is alleged, then find under which specific provision of the KGST Act does it amounts to supply:

Step 2

Step 2(a): if a supply is under section 7(1)(a) then pick which 'form' of supply is the allegation relating to it and demonstrate how the ingredients in each form of supply (Sale, Transfer. Barter, Exchange, License, Rental Lease, Disposal) are found to exist in the given transaction:

If supply is alleged under any other provisions, say, 7(1)(b) or 19(3), please identify the ingredients specified under those provisions and list those ingredients in the notice.

Step 2(b): if supply is NOT as per any forms of supply mentioned above then, check if it is a deemed supply under section 7(1)(c) which requires Schedule I to be understood:

From the table below, it can be noticed that 'goods only' are involved in some case and 'service only' are involved. Even services can be involved in stock transfer.

Description	Para	Involving		Accounting v. GST treatment		
		Goods	Services	Same	Reverse actual treatment	Apply fictional treatment
Credit-taken assets disposed-off	1	✓	×	×	✓	✓
Stock transfer	2	✓	✓	×	✓	✓
Principal-agent activities	3	✓	×	×	✓	✓
Overseas activities	4	×	✓	×	×	✓

Refer Columbia Asia AAAR (Kar.) citation KAR/AAAR/Appeal-05/2018 dated 12-12-2018 for detailed understanding and importance of this concept.

Step 2(c): if the supply is under section 19(3), then it is a deemed supply and the time of supply will be the date when the inputs/capital goods were first sent to job-worker;

Step 2(d): if the supply is under section 31(7), then it is important to find out when exactly customer accepted the goods or whether the customer has not accepted the goods or if due to lapse of 6 months' time, it is treated to be as a supply.

Step 3:

Step 3(a): Exact nature of 'supply' will now be available and the same must be included in the show cause notice to determine the 'taxable event' for demand of tax on outward supply.

Step 3(b): after it is determined that 'goods' or 'services are involved, then the relevant HSN classification is required to be applied. It is very important to note:

i) Goods are always classified under HSN 1 to HSN 98. There is no HSN for goods under chapter 99; and

ii) Services, are always classified under HSN 99. There is no other HSN chapter for services.

Step 4: HSN based classification must be verified by referring to www.kar.nic.in

Step 5: Apply the HSN classification to entries under 2/2017-CT(R) in the case of supply of goods and under 12/2017-CT(R) in case of supply of services to determine (i) applicability of exemption (ii) compliance with conditions linked to exemption;

Step 6: Verify if the conditions of input tax credit under (i) section 16(1) or (ii) 17(2) or (iii) 17(5) or (iv) 18(6) are satisfied;

Step 7: Based on the HSN classification adopted by the taxpayer and classification emerging from the above, raise demand of output tax.

9.9 Demand of Repayment of Input Tax Credit

a. ***Step 1***: if the object of supply is of 'goods' or 'services' must be established

b. ***Step 2***: if it is 'goods' then, it must be established whether it is to be 'treated' as supply of goods or is there any fiction in Schedule II to treat it as supply of 'services' and vice versa. Please refer Schedule II where the basis for classification is listed along with indication of 'new' fictional treatment in GST law and areas of 'risk' of possible misinterpretation can be deduced.

c. ***Step 3***: after it is determined that 'goods' or 'services' are involved, then HSN classification is required to be applied. It is very important to note:

i) Goods are always classified under HSN 1 to HSN 98. There is no HSN for goods under chapter 99; and
ii) Services are always classified under HSN 99. There is no other HSN chapter for Services.

d. ***Step 4:*** HSN based classification must be verified by referring to www.gst.kar.nic.in

e. ***Step 5:*** Verify (i) the applicability of exemption, and (ii)compliance with the conditions linked to exemption;

f. ***Step 6:*** Verify if the conditions of input credit under (i) of section 16(1) or (ii) 17(2) or (iii) 17(5) or (iv) 18(6) are satisfied;

g. ***Step 7:*** Based on the above exercise, raise demand either towards (i) short payment of tax or (ii) ineligible credit availed, under section 73 or 74 of the KGST Act.

9.10 Format for Show-cause Notice under Sec 73 or 74 or 76

FORMAT

Show Cause Notice under Section 73 or 74 or 76 of the KGST Act

(strike out whichever is not applicable)

Assignment No. and date……

SCN No. and date…….

DRC1/2 No. and date……..

DRC1A No. and date……

Tax period from …….. to …….

WHEREAS you M/s ……. having your place of business at ……are an individual / firm / company and registered with GSTIN No…….. under the jurisdiction of ……., Karnataka GST authority.

WHEREAS it has come to the knowledge of the undersigned that you have undertaken …… transactions which are liable to GST under section 9 of KGST Act being a ……taxable supply under section 7(1)(a) of the KGST Act……..

WHEREAS based on the inquiry conducted it is found that the said taxable supply is a 'lease' transaction. Lease, is a lawful contract for permitting right to use goods for a finite duration of time. It is found that your contracts with various customers as per Annexure A contains arrangements involving lease and the consideration for the same as per the contracts referred to in said Annexure A is to the turn of Rs…….

WHEREAS extracts of your audited financial statements entitled 'Schedule to profit and loss account' reflects the said amount of turnover in respect of lease as 'income from lease contracts' provided by you during the inquiry duly self-attested is enclosed as Annexure B.

WHEREAS the said amount of turnover relating to the transaction involving in respect of lease as 'income from lease contracts' provided by you is not included in your monthly GSTR 3B returns filed for the tax period(s) April 20XX to March 20XX. On verification, you have informed vide your letter dated in Annexure C, that only 'turnover of sales' is reported in GSTR 3B is reported by you as advised by your consultants.

WHEREAS GST being a self-assessment tax under Section 59, it is incumbent upon every taxable person to determine the taxability of any transaction, compute the applicable tax, discharge such tax applicable and report the same without any interjection by revenue authorities. Further, in terms of the explanation to Section 74 of the KGST Act, "suppression" is defined to be "……". Self-assessment responsibility under Section 59 read with the statutory definition of

suppression, it appears that tax is liable to be demanded under the extended period of limitation due to presence of special circumstances prescribed in section 74 of the KGST Act.

WHEREAS pre-notice consultations were held with you by the undersigned as summary of demand in FORM GSTR DRC 1A as required under section 74(5) of KGST Act read together with rule 142(1A) of the KGST Rules was served on you vide DCR1A No…….. dated ……. which was received by you on……..

WHEREAS the facility allowed in law under section 74(5) was turned down by you vide your letter of rejection dated …….and the same was received by the undersigned on …… As a result, you have opted to forfeit the concession available thereunder.

WHEREAS the omission to report tax in respect of tax period(s) April 20XX to March 20XX is not in accordance with extant provisions of the KGST Act, you are hereby called upon to show cause before Deputy Commissioner of Goods and Services Tax, VTK-1, Gandhinagar, Bangalore 560 002 as to why;

GST on the turnover of lease transactions amounting to supply under Section 9 read with section 7(1)(a) of the KGST Act at an amount of Rs…should not be demanded under Section 74 of the KGST Act;

a. Interest on the said turnover as applicable under Section 50(1) of the KGST Act; and
b. Penalty under Section 122(2)(b) of the KGST Act. Should not be demanded from you in accordance with law.

If no reply is received in FORM GST DRC-6 within ……. days from the date hereof or no appearance is entered by you or your duly authorized representative under section 116 of the KGST Act when the case is posted for hearing, the case will be decided based on merits and records available without any further opportunity of hearing to you.

Issued by:……..
Name and Signature…….

9.11 Record of Personal Hearing:

FORMAT

Office of Deputy Commissioner, Government of Karnataka
Record of Personal Hearing

Assignment No. and date……
SCN No. and date…….
DRC1/2 No. and date……..
DRC1A No. and date……
Tax period from …….. to …….
Personal hearing intimation No. and date ……

M/s ……appeared in person through Mr. ……, proprietor/partner/director or through authorized representative Mr. ……., Chartered Accountant / Advocate, duly authorized vide letter of authorization / vakalath dated.....

WHEREAS written objections dated ……. were filed [OR objections were NOT filed] in reply to the above referred show cause notice. Further, a summary of objections and additional objections dated…..were submitted today.

WHEREAS the demand was / was not admitted and all objections were reiterated and more particularly, the following points were argued:

a. ……

b. ……

There being nothing further to add, a request for early disposal of the above referred show cause notice was made. Copy of this record was delivered to the parties present which were received and acknowledged.

Before me

Deputy Commissioner Jurisdiction……
Date and seal

Appeared by

Name and dated signature Designation and contact no.
(in acknowledgement of receipt of signed copy)

9.12 Order of Adjudication:

FORMAT

Office of the Deputy Commissioner, Government of Karnataka
Order of Adjudication

(passed under section..... of KGST Act

General notes:

Copy of this order issued free of cost to the Notice is served electronically by registered email / on portal of registered person / by post / in person

Any person aggrieved of this order may appeal before the First Appellate Authority within 3 months from date of this order under section 107 of the KGST Act.

First Appellate Authority is the Joint Commissioner /the Additional Commissioner , whose office is located at ……ADDRESS…….

Certified copy of this order may be applied immediately in order to avoid delay in filing of statutory appeal as required under rule 108(3) of the KGST Act.

In case of any mistakes apparent on record, the same may be brought to attention of the undersigned within 3 months under section 161 of KGST Act.

ANY OTHERS

Assignment No. and date……
SCN No. and date…….
DRC1/2 No. and date……..
DRC1A No. and date……
DRC 7 No. and date……..
Tax period from …….. to …….
Personal hearing intimation No. and date ……

WHEREAS the above referred show cause notice that was served was duly acknowledged, detailed objections dated …… was filed on… and argued in person / authorized representative on hearing granted on……

WHEREAS the show cause notice observed the following non-compliance:

a. ……
b. ……

And called upon the Notice to show cause why:

c CGST in the amountof Rs… .....should not be demandedunder Section 73/74/76 of the CGST Act;
d CGST in the amountof Rs… .....should not be demanded under Section 73/74/76 of the KGST Act;
e Interest on above demand at the rate applicable should not be demanded under Section 50(1) of the KGST Act;
f Penalty should not be demanded under Section 122, 125, …… and ……. of the KGST Act;
g Ineligible amount of input tax credit claimed of Rs…… should not be demanded under Section 73/74 of the KGST Act;
h Interest on above demand at the rate applicable should not be demanded under Section 50(3) of KGST Act;

i Penalty should not be demanded under Section 122, 125, …… and ……. of KGST Act; and

j ANY OTHERS

Discussion on facts:

……. Discussion on position of law:
……. Discussion on objections filed:
……. Findings:
…….

ORDER

In view of the foregoing, I hereby confirm the demand under section ….

in respect of..... confirm interest thereon

under section ……of.....and confirm penalty thereon

under section ……

Further, I drop the demand under section ……. in respect of ……..

By me

Deputy Commissioner, Jurisdiction……

Date and seal

Copy to:

1. Additional Commissioner ……..
2. Revisionary Authority ……..
3. Commissioner …….

* * * * *

CHAPTER-10
GUIDE TO GST AUDIT
(Karnataka GST Act, 2017)

Chapter No.	CONTENT	Page No.
1	Registration (Regular)	**72**
2	Composition scheme	**72**
3	Composition Scheme for Services	**73**
4	Suspended or Cancelled registration	**73**
5	Unregistered Persons	**74**
6	Supply (Goods)	**74-75**
7	Supply (Services)	**76**
8	Supply (goods treated as services)	**76**
9	Supply (Immovable property)	**77**
10	Supply (Intellectual property)	**77**
11	Supply (Agricultural)	**78**
12	Supply (cess attracting articles)	**78**
13	Supply (Non-monetary consideration)	**79**
14	Supply (Barter - exchange)	**79**
15	Supply (No consideration)	**80**
16	Exit from Composition	**80**
17	No Supply	**80**
18	Money Transactions	**81**
19	Digital Currency Transactions	**81**
20	Classification (Goods)	**81**
21	Classification (Services)	**82**
22	Exemption (Goods)	**82**
23	Exemption (Services)	**83**
24	Reverse Charge (Goods)	**83**
25	Reverse Charge (Services)	**84**
26	Electronic Commerce Operator (ECO)	**84**
27	Electronic Commerce Supplier	**85**
28	Input Tax Credit (taken)	**85**
29	Input Tax Credit (utilized)	**86**
30	Input Tax Credit (reversed)	**87**
31	Input Tax Credit (blocked)	**88**
32	Input Tax Credit (cess)	**88**
33	Input Service Distributor	**88**
34	Valuation (monetary consideration)	**89**
35	Valuation (non-monetary consideration)	**90**
36	Valuation (related party transactions)	**90**
37	Valuation (deemed value notified)	**91**
38	Time of Supply	**91**
39	Place of Supply (goods domestic)	**92**
40	Place of Supply (services domestic)	**93**
41	Place of Supply (goods exports-imports)	**93**
42	Place of Supply (services exports-imports)	**94**

43	Place of Supply (SEZ)	**95**
44	High-Sea sales	**95**
45	Merchant trade	**95**
46	In-bond sales	**96**
47	Import of Goods	**96**
48	Import of Services	**97**
49	Export of Goods	**97**
50	Export of Services	**98**
51	Returns (GSTR1)	**98**
52	Returns (GSTR3B)	**99**
53	Returns (GSTR9)	**99**
54	Returns (GSTR9A)	**99**
55	Transitional activities	**99**
56	Financial records	**100**
57	Stock records	**100**
58	TDS	**101**
59	TCS	**101**
60	Job-work	**102**
61	Deemed Exports	**103**
62	EOU-STP-EPZ	**103**
63	SEZ Developer	**103**
64	SEZ Unit	**104**
65	SEZ Unit (supplies in DTA)	**104**
66	Exporters	**105**
67	UIN-holders	**105**
68	Single-GSTIN-holders	**105**
69	Multi-GSTIN-holders	**106**
70	Reconciliation Statement (table 5 of annual returns)	**106**
71	Reconciliation Statement (table 7)	**107**
72	Reconciliation Statement (table 9)	**107**
73	Reconciliation Statement (table 12)	**107**
74	Reconciliation Statement (table 14)	**108**
75	Reconciliation Statement (Part B)	**108**
76	Interest (on output tax)	**109**
77	Interest (on input tax credit)	**109**
78	Refund (beneficial schemes)	**109**
79	Refund (deemed export)	**110**
80	Refund (goods export)	**111**
81	Refund (services export)	**112**
82	Refund (EOU-EPZ-STP)	**112**
83	Refund (SEZ)	**112**
84	Refund (Tax wrongly paid)	**113**
85	Refund (excess tax paid)	**113**
86	Refund (cash balance)	**114**
87	Output tax interchange	**114**
88	Cessation or succession of business	**114**
89	Verification of 'outward supply'	**115**
90	Verification of 'inward supply'	**116**

91	Verification of 'non-monetary transactions'	**11**
92	Verification of 'deemed supply'	**117**
93	Verification of 'other income'	**118**
94	Verification of 'no supply'	**118**
95	Verification of 'input tax credit'	**119**
96	Verification of 'apportioned credits'	**119**
97	Verification of 'blocked credits'	**119-121**
98	Verification of 'records matching'	**122**
99	Verification of 'returns'	**122**
100	Verification of 'place of supply'	**122**
101	Verification of 'exports'	**123**
102	Verification of 'imports'	**123**
103	Transition credit s.140(1)	**124**
104	Transition credit s.140(2)	**124**
105	Transition credit s.140(3)	**124**
106	Transition credit s.140(3) *proviso* (WITHOUT INVOICE)	**125**
107	Transition credit s.140(5)	**125**
108	Transition credit s.140(6)	**126**
109	Transition credit s.140(7)	**126**
110	Transition credit s.140(8)	**126**
111	Transition credit s.140(9)	**126**
112	Transition steps on stock with job-worker s.141	**127**
113	Transition steps s.142	**127**
114	Cash balance refund	**128**
115	Refund due to export (goods) with payment of tax	**129-130**
116	Refund due to export (services) with payment of tax	**131**
117	Refund due to supply to SEZ (goods) with payment of tax	**132**
118	Refund due to supply to SEZ (services) with payment of tax	**133**
119	Refund of unutilized credit (export of goods) without payment of tax	**134**
120	Refund of unutilized credit (export of services) without payment of tax	**134**
121	Refund of unutilized credit (goods to SEZ) without payment of tax	**134**
122	Refund of unutilized credit (services to SEZ) without payment of tax	**135**
123	NO REFUND of unutilized credit (SEZ developer to SEZ unit)	**135**
124	Refund of deemed exports (to Supplier)	**135**
125	Refund of deemed exports (to Recipient)	**136**
126	Refund of inverted tax	**136**
127	Errors Master, for verification exercise	**137**

1. Registration (regular)

Registration is a compulsory requirement for admission of tax liability and thereafter to discharge the said tax under the self-assessment-based tax regime. As such, details of registration obtained (date, location and additional locations) and dates of amendments to registration are required to be checked / verified.

1.1 Verification of reason for registration (transition, normal, voluntary or mandatory and casual taxable person or non-resident taxable person) may provide necessary information or insight to understand further aspects that may be examined during the course of audit;

1.2 Knowing the details of goods / services supplied as mentioned in the registration would be helpful for understanding the nature of business.

1.3 In the case of new registration of tax payer in the GST regime, the reason for non-registration under the earlier tax regime may need to be examined to determine tax compliance in respect of overlapping transactions;

1.4 Also, in the case of new registration in a GST regime, the date of exceeding or crossing the threshold for registration, computation of threshold and any inclusions / exclusions to verify the threshold and related complaints are to be checked / verified;

1.5 Details of gross, total and taxable turnovers prior to crossing of the threshold with cash book / bank statement, previous Income Tax Returns, etc. would be a necessary check to complete the exercise of compliance verification;

1.6 In the case of multiple GSTIN in same location (related or unrelated persons), collate details of all registrations and make note for further verification of inter-branch activities;

1.7 Registration is a mandatory requirement in terms of Section 24, verify whether one or more than one category under Section 24 is applicable and mark it for further verification of tax payment on outward supplies when the taxpayer is below the threshold.

2. Composition Scheme

2.1 Date of registration being the first requirement before choosing the option of composition, this information would be helpful to determine whether in the interregnum there were any taxable transactions and the appropriate rate at which they were taxable.

2.2 Date of approval of composition option involves the process of justification to avail composition, due consideration by proper officer and the final approval under the respective category of composition needs verification.

2.3 Details of multiple-GSTIN, if any, in existence and all GSTINs opted for composition with the date/s in case of each, would be valuable for further verification with regard to conformity to composition conditions.

2.4 Details of the category of composition (manufacture, trading or restaurant etc.,) and verification of the basis for such classification (new commodity mention, must for manufacture category). Care must be taken to verify / check about the process as informed to the tax authorities and the process actually undertaken, to be in

conformity with the category of composition, as the rates of tax applicable have not been uniform from the inception of GST regime and Rule 7 has undergone changes not only in respect of the rate of tax but also the taxable turnover;

2.5 Details of service income received after approval of composition, verify Income Tax Returns, cash book / bank statement, etc. For registration purposes, relaxation of service income of Rs.5 lakhs or 10% of turnover with effect from 1st Feb 2019 onwards also needs to be checked.

2.6 Verify compliance with disqualification conditions:

a) Any instance of output tax being collected including MRP goods being sold at MRP;
b) Any instance of input tax credit claimed even if subsequently reversed.
c) Any instance of inter-State outward supply. Verify place of supply.
d) Date on which income from services exceed the threshold limit.
e) Any others

2.7 Verify the aggregate turnover at PAN-level, based on Income Tax Return for each year.

3. Composition Scheme for Services

3.1 Details of service composition under the KGST Notification 02/2019 - FD 48 CSL 2017 dated 7th March 2019, w.e.f 1st April 2019 and subsequent amendment to the KGST Act by the insertion of section 10(2A), being an alternative scheme introduced to section 10 calls for careful verification;

3.2 Please note that this is not particularly involving services, but any person who is not eligible to composition under section 10(2) can opt but popularly known as composition to services.

3.3 Details of turnover threshold for eligibility may be examined to make sure the correctness of compliance with the scheme;

3.4 Details of the date of composition and turnover prior to this date

3.5 Composition rate of tax @6% is applicable on all goods and services by a taxable person who has opted for composition rate of GST;

3.6 Verify compliance with disqualification conditions:

a) Any instance of output tax collected
b) Any instance of input tax credit claimed even if subsequently reversed.
c) Any instance of inter-State outward supply. Verify place of supply.
d) Any others;

3.7 Verify the aggregate turnover at PAN-level, based on Income Tax Return for each year so as to not to exceed the turnover limit prescribed for composition and mark it for verification of exit from scheme.

4. Suspended or Cancelled registration

4.1 Reason for suspension or cancellation of registration is a material factual position that requires careful consideration for guiding further enquiry into compliance.

4.2 Cancellation of 'active' cases; Verify tax payment, credit reversal under section 29(5) and payment of interest and late fee, if any, up to date of cancellation.

4.3 Cancellation of 'inactive' cases; Verify report of satisfaction prior to cancellation - such as unreported turnover, tax collected but not paid and credit appearing in FORM GSTR 2A and refer for the restoration of cancellation under section 30 or best-judgement assessment under section 63;

4.4 Suspension of registration; Verify reason for suspension instead of cancellation and action taken on dues.

4.5 Verify use / misuse of GSTIN after date of cancellation.

5. Unregistered persons

5.1 Decision not to take registration though liable is very often found to be due to inadvertence rather than a well-informed decision. Verification of turnover of unregistered persons helps in identification of revenue leakage, although not part of routine audit assignment. Unregistered persons may not only be the entire legal entity, but also of be a particular legal entity that is registered in one place and maintains operational branches (fixed establishment) at other places attracting requirement for registration.

5.2 Below threshold for registration; Verify computation of threshold and any inclusions/ exclusions to confirm actual threshold.

5.3 Reason for not being registered under the earlier tax regime to be noted.

5.4 Verify the nature of business to identify applicability of mandatory registration under section 24.

5.5 Verify Persons claiming benefit of non-registration under section 23 of the GST Act from Income Tax Returns for each year.

6. Supply (goods)

6.1 Incidence of levy of tax arises on a supply transaction but supply itself has multiple dimensions in the GST regime. Therefore, it becomes important to identify the exact nature of supply involved in a given transaction in order to carry out deeper enquiry / inquiry into that transaction.

Note: One may read the relevant Sections and understand the nuances of the provisions.

6.2 In the case of supply under 7(1)(a) of the GST Act, details of 'form' of supply involved in a particular transaction of taxpayer as admitted, may be examined to be satisfied about the correctness of the treatment under that 'form', and continue this exercise for all transactions carried out by taxpayer. Forms of supply vary such as sale or lease, transfer, barter, exchange, license, rental, lease or disposal, etc. Verify with sample contract or Purchase Order, for each category of supply of goods involved in the business.

6.3 Details of advance received to be examined keeping in mind, the exemption given for goods under the KGST Notification (22 / 2017) - FD 47 CSL 2017 dated 15th November, 2017 applicable only from 15th November 2017 in which case time of supply would arise only at the time of issue of invoices. In respect of services, the advances received in relation to a supply of services are liable to tax at the time

when the advances are received and to the extent of the advance amount received, though the invoice for services is issued at the time of completion of services.

6.4 Unless one enjoys ownership, one cannot effect a lawful sale. Misunderstanding about ownership can be fatal to the conclusion as to whether the transaction is one of sale of goods or supply of services. Verify existence or acquisition of 'ownership' rights in order to 'pass on' ownership rights in each form of supply (if not, it could be supply of services except for Hire purchase);

6.5 Based on nature of business verify possibility of delay in issuing of tax invoice and compare with accounting policies (disclosed in annual report of audited financial statements and Audit Officers' report) about the 'time' of recognition of income;

6.6 Details of e-invoices generated has to be verified with reference to the e-way bill raised by the taxable person and any discrepancies in the details, quantity, quality, goods, services etc. may be noted.

6.7 Details of e-way bill used for movement of goods, compare date of invoice with date of movement recorded to confirm reliability of supplies stated by taxpayer;

6.8 Check for the issue of changes in the value of goods by verifying the debit notes and credit notes and compare them with the invoices and also the payments received against such invoices where the value has changes. Also verify whether the debit note or credit note has any effect on the value of supply. Please also note that single debit note or credit note may be issued for multiple invoices and hence comparison of the debit notes and credit notes with reference to the invoices needs to be made to check the validity of such debit notes or credit notes.

6.9 Verify any regularity of payments from customers without significant returns of goods or dispute about payments to confirm correctness of supplies stated by the taxpayer, please verify whether the profitability of the business is sufficient to cover the delay in receipt of payments from his customers. Calculate the Inventory turnover ratio and the Debtor turnover ratio and other financial ratios to check the viability of the business. Further also check the payment schedule for the inward supplies received by the taxable person audited and verify whether the payments for inward supplies are made within the stipulated time to claim the input tax credit on the same.

6.10 Verify any ancillary supplies involved in the principal supply and correctness of treatment as supply of goods such as installation, assembly or commissioning activities including supply of accessories or extended warranty, etc. It is important to make an analysis of the parts to the whole ratio, so that the inputs are consumed in right proportion and report any variations in the same.

6.11 Verify in the cases of supply of multiple goods or services, whether the same are covered under the composite supply or mixed supplies or independent supplies and the rate of tax applicable on the said transaction. Verify the possibility of "mixed supplies" involved in the business due to any other element supplied for no extra consideration or included in part of primary consideration.

7. Supply (services)

7.1 Details of supply of services involved in the business as principal or as agent and mark for verification of classification variations and schedule I applicability.

7.2 Details of advance received and payment of tax (exemption not applicable to supply of services) with adjustment in tax invoice;

7.3 Verify any irregularity of payments from customers without significant cancellation of invoices or payment disputes to confirm correctness of supplies stated by taxpayer,

7.4 Check for receipt of incentives in the form of cash, discounts, free goods etc, and the taxability of those transactions.

7.5 Based on nature of business, verify the possibility of delay in issuing tax invoice and compare with accounting policies (disclosed in annual report of audited financial statements and Audit Officers' report) about the 'time' of recognition of income;

7.6 Verify whether 'cash' basis of accounting followed by taxpayer (disclosed in annual report or audited financial statements and Audit Officers' report) and mark it for verification of time of supply and payment of tax;

7.7 Verify any ancillary supplies involved in the principal supply and correctness of treatment as supply of services. If there is any related installation or assembly activities, verify if supply of those goods is naturally or artificially separated from service of installation or assembly;

7.8 Verify the possibility of mixed supplies involved in the business due to any other element supplied for no extra consideration or included as part of primary consideration.

8. Supply (goods treated as services)

8.1 Details of classification of 'goods' and basis for 'treatment' as services, either based on schedule II or on the basis of interpretation of composite supply (check interpretation) and mark for verification of rate of tax applied.

8.2 Verify from sample contracts or Purchase Orders, the nature of 'contractual rights' to validate the 'fictional' treatment of goods supplied as services. For e.g. construction services or transfer of intellectual property, etc. Check whether there is any transfer of land involved in the construction contracts or just a construction service.

8.3 Verify any incidental and independent supplies mingled with supply treated as services. For e.g. leasing of goods is treated as supply of services but accessories sold along with lease of car or any machinery is "supply of goods" or "late payment charges" treated as interest and not included in taxable value. Another example, development of software is treated as "supply of services" but "sale of hardware" in same project may be supply of goods;

8.4 Verify movement of goods (e-waybill reports) and compare them with date of invoice for compliance with timing of tax compliance;

8.5 Verify transactions where 'acceptance' by Customer is made a condition for completion of supply. Any delay in acceptance due to some issues may defer time of

tax payment. Based on the nature of business determine reasonableness of such 'acceptance' criteria for completion of supply;

8.6 Verify whether the duration of site activities (works contracts) along with other factors such as technical site staff creates 'fixed establishment' and mark it for verification of (i) registration requirement at site and (ii) correctness of credits claimed at registered location in later review;

8.7 Verify the feasibility of re-adjustment of transactions of goods 'treated' as services. For e.g. if car given on lease or rent, credit of GST and cess is allowed; but if car is used for self-use, entire credit would be lost.

9. Supply (immovable property)

9.1 In respect of immovable property in question, examine the contract involving the said immovable property, verify if the document is registered or unregistered (legal rights passed or could change) and amounts collected (as per books and as per deed). Also verify if any supplementary deeds are executed by changing parties or share of parties, etc.

9.2 Details of the accounting treatment in books (audited) before transaction and after transaction (stock or investment, income or capital gains);

9.3 Details of any 'reversible rights' or 'permanent rights' :-whether it is sale of land or merely a perpetual right of enjoyment is important to identify and examine if it is claimed to be excluded by para 5, schedule III or offered for tax;

9.4 Where the transaction is through 'general power of attorney', details of such commercial activities by utilizing the power granted and the parties concerned to be verified;

9.5 Where the sale deed is NOT involved, examine the nature of 'immovability' such as machinery embedded to earth, lifts and escalators, prefabricated buildings, etc.

9.6 Details of any commercial transaction involving the said immovable property by way of lease, license easement, rental etc to be verified for the specific 'form' of supply stated by the taxpayer and to verify movement of funds (date of payment) and date admitted in agreements;

9.7 Details of tax treatment given to the said transaction and interpretation used in each case to be verified.

10. Supply (intellectual property)

10.1 Details of the commercial arrangements involving 'intellectual property', the flow of funds and date, the payer-payee, contractual terms, details of rights owned, owner-transferor the same or different and related particulars to be verified including statutory registrations (Country-wise) for IPRs, if any;

10.2 IPRs without any statutory registration, such as goodwill or copyright may be verified including valuation whether internal or external valuers used;

10.3 Details of whether all IPRs involved in commercial transaction accounted as business asset in the books (audited) or kept outside the books;

10.4 Details of IPRs not in books, whether real, basis for establishing existence of said IPRs and valuation of said IPRs. Review report of external valuers for better understanding

10.5 Treatment given to the said transaction and interpretation may be verified;

10.6 Details of any income-tax adjustment of 'notional valuation' of IPRs in the case of sale of business or allotment of shares (details in section 56 of Income-tax Act) and GST treatment required due to acceptance of such treatment by taxpayer.

11. Supply (agricultural)

11.1 Identity of products claimed to be 'agricultural' must be collected and the said claim to be validated in each case;

11.2 Obtain test reports from taxpayer to validate identity of products claimed to be agricultural;

11.3 Identify is any 'treatment' carried out on agricultural products and whether said treatment rendered, results in change of classification as 'processed agricultural products' and verify tax implications;

11.4 Verify if any 'brand name' affixed on the product or in connection with the product and verify change in tax treatment due to use or non-use or surrender of brand name (Para 2 in KGST Notification 1/2017- FD 48 CSL 2017 as inserted by KGST Notification 27/2017- FD 48 CSL 2017 dated 22nd September,2017);

11.5 Validate if the taxpayer satisfies test of 'agriculturist' and mark it for verification, is exemption from registration under section 23 applicable or not.

11.6 Identify if the said agricultural products are not exempt from tax but are liable for RCM under the KGST Notification 04/2017- FD 48 CSL 2017 dated 29th June 2017;

11.7 Identify 'non-agricultural incidental and ancillary activities' involved due to nature of operations such as transportation, cleaning, waste and scrap disposal, doing job work for others, labour charges and recoveries from others towards rental of tractor or tools, etc., to be marked for verification;

11.8 Verify any supply through 'agricultural cooperatives' as payment flow will not normally be same as flow of supply. Some cooperatives operate as 'commission agents' and some as 'resellers' of produce which needs verification;

11.9 Verify if 'agricultural and non-agricultural products' are supplied, to examine the correctness of treatment without composite or mixed supply implications.

12. Supply (cess attracting articles)

12.1 Details of cess applicability, especially tobacco products where dimensions and packaging affects tariff and cars where engine capacity affects tariff;

12.2 Inward supplies attracting cess and outward supplies NOT attracting cess to be verified. For e.g. aerated beverage attracts cess on inward supply but cess does not apply on outward supply in restaurant, if it is part of the service of supply of food and drinks;

12.3 Verify processing activities of cess-articles resulting in change of rate of cess (increase or decrease and addition or deletion)

12.4 Cess articles used as capital goods to be identified and marked for verification of credit treatment later.

13. Supply (non-monetary consideration)

13.1 All inward supplies are 'exhausted or used' in the business directly or indirectly in making outward supplies. So, use of every inward supply is traceable to one or other outward supply, directly (trading or services) or indirectly (manufacture). Where inward supplies are not traceable in any outward supply and not remaining as inventory indicate that they are used for 'own benefit' to business (rent of office or Audit Officers' services). If inward supplies are not traceable in any of these ways, there is a 'high' likelihood that it may be distributed as outward supply but without any money consideration. For e.g. gift articles given to distributors or customers or suppliers or other business associates. Such transactions are likely to be supply (due to definition of consideration in section 2(31) (b) which is significantly different from earlier tax regime). Schedule I may be taken note of in this regard. Gifts up to a value of Rs. 50,000-00 per year by an employer to his employee is allowed as not a supply but ITC should be restricted on them. Such inward supplies are expenditure of business but could involve outward supply that needs to be verified;

13.2 It is generally understood that a business transaction without a *quid pro quo*, is impossible. Transaction that is admitted to be without anything in return, may be verified with audited financial statements and Income Tax Returns whether such transactions are treated differently under allied laws compared to the treatment offered under GST. When there is nothing in return, such a transaction appears to be a gift. Gift is defined in Section 122 of the Transfer of Property Act to be an unenforceable agreement. Generally, it is uncommon to find a business engaging in unenforceable agreement. All these factors indicate that inward supplies that are not used in making an outward supply or consumed for the benefit of the business must be involved in a further supply for consideration in non-monetary form.

14. Supply (barter - exchange)

14.1 Details of barter-exchange transactions, commercial understanding, effective date of passing of contractual rights, time of supply and valuation (basis and reliability) to be verified;

14.2 Unlike supply that is for non-monetary consideration, barter-exchange transactions are openly admitted by taxpayer. Tax treatment and interpretation taken by the taxpayer to be verified;

14.3 Barter or exchange could be a supply when a transaction does not involve immovable property. But in both cases, no money is paid or received. In an exchange there could be "money value" but no money is exchanged. Transactions where goods are given in exchange schemes, there may be a barter. In the case of prize schemes, for e.g. customers get a Flask for making purchases above Rs. 20,000. In this case, GST is paid on goods purchased i.e. Flask, but if no consideration is payable for the flask then, it would be not a supply of flask and ITC

is not eligible on the inward supply of flask. All prize and gift schemes need to be verified carefully in light of the Circulars issued in this regard from time to time.

It is important to note how this transaction is treated in the books as marketing expenditure as otherwise. The input on the purchase of flasks etc. could be restricted in terms of Section 17(5)(h).

15. Supply (no consideration)

15.1 Verify transactions where movement of goods or provisions of services are established through documentation such as contracts, payments, e-waybill, etc. In such cases, although there is no consideration, in a limited number of cases supply may exist. These cases are listed in Schedule I;

15.2 Care must be taken to verify that each of the four entries covered in Schedule I is based on the scope and applicability of each transaction.

15.3 Based on the nature of business of taxpayer, every single entry in Schedule I must be examined in the business of taxpayer and marked for later verification of related party transactions.

15.4 Identify transactions without consideration and mark then for verification of credit availed on these transactions.

15.5 Absence of consideration is a very serious statement by the taxpayer and cannot be accepted without due verification of such statement. Details of the underlying transaction and the reason for supply without consideration must be tested based on the criteria suited to such transactions.

16. Exit from Composition

16.1 Details of composition scheme availed;

16.2 Details of crossing the threshold for ineligibility from composition;

16.3 Date of change over to regular GST payment and payment of GST on turnover from correct 'change over date';

16.4 Details of input tax credit on the stock of goods available on the date of such changeover under section 18(1) and certification of the Chartered Accountant along with filing of online form in respect of such credit;

16.5 Verify overlapping and transition contracts at or about the date of exit from composition for payment of tax appropriately.

17. No supply

17.1 Verify transactions stated by taxpayer as 'no supply' which are to be verified along with contractual documents and other proof of underlying transaction including interpretation that such transactions do not involve supply;

17.2 Special attention is required to be paid to such transactions as to whether they have been reported in monthly or annual returns or they are not at all disclosed due to bonafide belief of 'no supply';

17.3 Details of schedule III transactions to be identified and marked for later verification of the exact nature of those transactions and correctness of tax treatment given;

17.4 Details of 'pure agency' transactions to be separately identified for verification of each transaction and conformity with definition given in Rule 33;

17.5 Any other case of 'no supply' transaction to be identified based on the nature of transaction and to verify any notional treatment prescribed even for such transactions for limited purposes of section 17(3).

18. Money transactions

18.1 Details of transactions in money to be identified for verification whether they are purely money transactions or involve any supply by themselves or in the form of any fee or commission for facilitating transaction in money;

18.2 Volume of transactions in money can be a good indicator whether further enquiry is required in those transactions or not;

18.3 Based on nature of business of taxpayer, transactions in money can be identified whether they are normal or abnormal;

18.4 Information provided by taxpayer about such transactions can be verified by comparing receipts and payments account with income and expenditure account for completeness of such information;

18.5 The advance received, deposit given and such operational transactions are also categorised as transactions in money but these transactions will have required tax treatment and this indicates that all transactions in money are not merely loan transactions that do not have any tax implications.

19. Digital currency transactions

19.1 Money is not limited to paper currency or banking transactions. The money is also transacted in digital form such as e-wallets and pre-paid instrument. It would be helpful to understand working of such digital currency and RBI regulations permitting such digital currency;

19.2 Only if RBI approval is obtained the transaction will be digital currency if not, other implications arise in GST. If taxpayer does not have RBI approval, such transactions should be marked for verification of time of supply, valuation and input tax credit applicable in such cases;

19.3 If a transaction involving 'voucher' that is not a digital currency duly approved by RBI, tax treatment applicable to goods or services redeemable with such voucher to be verified;

19.4 Taxpayer's statement about digital currency and voucher must be verified along with necessary statutory approvals and other documents as tax treatment will significantly be different due to poor understanding of facts relating to such digital transactions;

19.5 Transactions such as loyalty and reward points may be identified and marked for further verification of tax treatment applicable to such points.

20. Classification (goods)

20.1 Details of classification adopted by taxpayer may be verified by comparison with HSN tariff entry;

20.2 Verification of classification of goods is not complete without referring to the full tariff entry in First Schedule to Customs Tariff Act. Every HSN tariff adopted by taxpayer must be examined by comparison with first schedule to Customs Tariff Act; Whenever doubt arises, reference to be made to explanatory notes to HSN published by WTO;

20.3 Verify alternative or competing entries available in the Customs Tariff Act and examine the possibility of advantageous tax rates in case it is a tariff interchange, whether for *bona fide* reasons or otherwise. Basis for classification in each of those alternative or competing entries to be examined more closely before concluding correctness of HSN tariff adopted by the taxpayer; Also, references may be made to classification adopted in the pre-GST regime and changes made if any;

20.4 Reference to the GST council meeting minutes is essential to understand the policy and thinking resulting in the rate of tax prescribed for goods involved. Further verification of rate changes in respect of articles is necessary to ensure completeness of classification exercise;

20.5 Points from classification of services to the extent relevant may be examined and adopted for verification of classification of goods.

21. Classification (services)

21.1 Details of classifications adopted by the taxpayer in the case of services need to be more carefully examined as there is only one chapter 99 to classify all services;

21.2 Description of services in commercial parlance significantly varies from the description adopted in chapter 99 and this difference in terminology must be noted to identify the impact on tax treatment;

21.3 Classification of services has undergone numerous clarifications through circulars and press releases. Details of such clarification must be collected to identify the nature of possible interpretations that could be taken by taxpayer;

21.4 Due to availability of credit of services in the case of customers who are traders and unfamiliarity of classification of services by the suppliers who are traders, scope for misinterpretation exists. Based on the nature of business of the taxpayer and the profile of suppliers and customers involved, potential classification challenges need to be identified for verification;

21.5 Change in classification adopted by the taxpayer needs to be examined on account of legislative changes or voluntary correction of classification errors and the tax treatment including effective date of such change may be verified;

21.6 Points from classification of goods to the extent relevant in the context of classification of services may also be adopted and followed.

22. Exemption (goods)

22.1 Exemption entries follow HSN tariff therefore, verification of exemption for goods must include a comparative review of HSN tariff description along with tariff description in exemption notification;

22.2 Exemption granted for goods also uses ‘qualitative’ factors such as purpose of use, categories of persons who use, declaration of end use, disclaimer in use of brand

name, etc. Verification of satisfaction with these conditions is necessary in each case to correctly apply the exemption granted.

22.3 Where any external test and verification is required to determine the classification exemption applicable, reports obtained by taxpayer from time to time may be collected to reconfirm not only the reliability of those reports but also disclaimers and disclosures stated in those reports;

22.4 In the case of provisional assessment opted by any taxpayer, details of the reasons for such provisional assessment may be examined to the extent of impact on differential tax and interest due to such uncertainty in classification for purposes of exemption;

22.5 Verification of exemption claim relevant to determine treatment required in respect of valuation and input tax credit by the tax payer. Information collected during verification of exemption maybe marked for reference at the time of verification of credits.

23. Exemption (services)

23.1 Details of description of services in a contract and invoice to be examined and to confirm correctness of classification adopted by:

a) Verify from SAC entry and annexure to classification of service for the scope of SAC entry chosen by the taxpayer;

b) Verify from explanatory notes to classification of services for understanding the true scope of each entry and the specific exclusions and inclusions listed in the explanatory notes;

23.2 Verify any alternative or competing entries available;

23.3 Verify any advantage in using alternate or competing entries (by changing place of supply or reducing rate of tax by opting different description for services).

24. Reverse Charge (goods)

24.1 Identify the applicability of reverse charge under section 9(3) and section 9(4) and the effective date of changes made from time to time;

24.2 Verify reporting and compliance of RCM payments and the effective due date and date of actual payments;

24.3 Based on the nature of business of the tax payer identify any conditions linked to nature of supplier (like supply by agriculturist of agricultural produce or by any other person of such produce) to verify the extent of applicability of RCM liability;

24.4 Identify availability of credit in respect of RCM payments and confirm whether credit has been taken after payment or on accrual of liability;

24.5 Identify RCM arrears discharged subsequently, whether credit has been claimed or forfeited, by keeping in mind the time limits under section 16(4) for claiming credit;

24.6 Verify date of issuing self-invoice under section 31(3)(f) in comparison with the date of supplier's invoice;

24.7 Note above points not only for RCM compliance but also for verification at the time of review of annual returns filed.

25. Reverse Charge (services)

25.1 Services attracting RCM have undergone multiple changes. Details of the date of RCM liability and the date of actual discharge to be summarised for verification;

25.2 Introduction of RCM liability midway during the month need to be verified for compliance from the beginning of that month or the next month due to practical difficulties and tax already charged by supplier prior to introduction of RCM;

25.3 Services such as GTA have posed some challenge to the taxpayers due to the requirement of 'consignment note'. Different positions have been taken in such cases, but reference may be had to the circulars and allied laws to provide clarity regarding the tax positions taken;

25.4 Erroneous payment on forward charge basis in respect of services notified under RCM does not exempt RCM liability even if it results in payment of tax twice. Verify also if the tax payer has claimed credit twice due to payment also being made twice;

25.5 Points in relation to reverse charge for goods to the extent relevant may be referred and applied in the case of services RCM also.

26. Electronic Commerce Operator (ECO)

26.1 Identification of ECO attracting Section 9(5) or 52 may have errors. The notifications issued in this respect have not been from the inception of GST Act. Care must be taken to identify which category each ECO falls under it and then determine the nature of compliance to be expected;

26.2 ECO under Section 9(5), results in complete exclusion of actual supplier from payment of tax. Entire responsibility of discharging tax on the taxable value of actual supply is on the ECO. As a result, the actual supplier is completely out of tax net (to the extent of turnover through ECO). Care must be taken to extract the relevant information for verification of tax compliance; e.g. Ola, Uber, Oyo.

26.3 When tax on gross taxable value is already discharged by ECO, out of this gross taxable value amounts such as commission and other charges collected or retained by ECO would not again be liable to tax. Different ECO have taken different positions regarding this issue. Details of tax positions taken may be collected and compliance verified;

26.4 In respect of ECO under Section 52, responsibility to discharge tax continues on the actual supplier and ECO is liable to collect tax at source in addition to discharging tax on commission or other charges collected or retained by ECOs. Details of TCS may be collected for later verification;

26.5 In respect of ECO under Section 52, is required to take registration in each State where the actual supplier is located. Compliance with locations where registration is required and locations for registration actually taken need to be verified along with the first date of transaction in that State and the actual date of registration is necessary;

26.6 Depositing TCS must be made timely to avoid consequences of retaining amount collected in the name of tax. TCS amount deposited need to be reflected in the portal of the supplier from whom such amounts were collected. There have been numerous

reports of non-deposit of TCS or deposit of TCS in incorrect GSTIN of actual supplier. All these aspects to be verified. Non-deposit of TCS is a serious violation.

26.7 ECO definition does not make reference to web application or mobile application but a 'digital network'. The absence of applications, does not exclude such digital economy enterprises from the coverage of definition. Classifications and verification of 'ECO' would be very important. At the same time, selling of own stock through website does not come within the definition of ECO, in spite of having a web application for online sales;

26.8 Supplies registered with ECO may or may not have been compliant with their own tax obligations. Absconding suppliers or suppliers with outstanding dues does not allow ECO to bypass its own compliance.

26.9 ECO activities involve extensive amounts of discounts, benefits, cash back, rewards, prizes, etc. including benefits in kind. The details may be collected for verification regarding possible supply involving consideration in non-monetary form;

26.10 Also, activities involving refunds, returns and rejects to be verified for compliance with tax, based on merits of each transaction.

27. Electronic Commerce Supplier

27.1 Supplier's attached to ECO and notified under section 9(5) are free from registration requirement provided they do not have any turnover other than through ECO whether from same or any other line of business. Verification of this exclusion must be done with care along with collection of additional information such as ITR, bank statements, etc.

27.2 Other suppliers attached to ECO are liable for tax compliance on their own along with benefit of TCS that may be collected by the ECO. Taxable value that is subject to TCS and the taxable value reported by such suppliers are usually verifiable to confirm correct reporting of taxable value and any mismatch will indicate non-compliance either by ECO or by supplier;

27.3 Suppliers with TCS do not have the benefit of threshold limit for registration. As a result, turnover below threshold limit is also liable to tax from the date of first supply through ECO. Non-payment of tax below threshold limit must be verified from the date of registration whether voluntarily or compulsorily;

27.4 Nature of tax paid (CGST-SGST or IGST) by the supplier with the TCS may be tallied with nature of TCS collected (CGST-SGST or IGST) by ECO. Differences in the place of supply need to be verified to identify the source of error and collect the correct tax on the supply. Details may be noted for later verification of compliance with section 77.

28. Input tax credit (taken)

28.1 Input tax credit is available subject to satisfaction of certain pre-conditions and post-conditions. Taxpayer is responsible for satisfaction of these conditions. Credit may be taken soon after pre-conditions are satisfied, and the credit so taken will be liable to be reversed if any of the post conditions are not satisfied. Not only is a listing of

these pre and post conditions are required to be maintained by taxpayer but also maintained in a manner that is verifiable.

28.2 Credit must be taken by reflecting the amount in the monthly returns in addition to recording the credit in the books of accounts. Credit omitted in the monthly returns would be lost forever, if they are not taken before the end of the time limit specified in section 16(4). Verification of credit is not only in respect of the fact of taking credit in the return but also within this time limit after fulfilling at least the pre-conditions associated with credit

28.3 Due to the limitations of FORM GSTR-3B, invoice-wise details are not required to be furnished along with the claim of input tax credit. However, these details are required to be maintained and furnished to a limited extent in the annual return. Exercise of verification of credit must include verification of credit on a monthly basis as well as identification of the invoice-wise breakup of the total credit claimed for each month; At the time of audit, the officers are required to verify the transactions with reference to the FORM GSTR-2A and check the validity of the claim of input tax credit.

28.4 For the year 2017-18, time limit for taking credit was extended from September 2018 to March 2019. No such extension was granted for 2018-19 which remained only till September 2019. Being permitted to claim credit after the end of the financial year, in respect of invoice for inward supplies issued during the said financial year, does not allow credit so availed after the end of the financial year, to be utilised for discharge of dues relating to the said financial year. In other words, credit availed belongs to the month in which it is availed (regardless of the relaxation to avail it after the end of financial year) and credit so availed can be utilised to discharge liability of that month or carried forward and utilised to discharge liability of subsequent months. Verification of credit also involves verification of timing of credit and utilisation to discharge present or future liability.

28.5 There is a well-established concept that one-to-one correlation is not required for input tax credit. It means that credit availed in respect of furniture business in one city may be utilised to discharge liability of an electrical business in another city provided both businesses are operated under the same GST registration. This concept is often misunderstood and applied for availment of credit rather than for its utilisation. In other words, at the time of taking credit each inward supply is liable to answer for satisfaction of the pre-conditions. Verification of satisfaction of preconditions must be made in respect of every inward supply because all expenses 'of' the business are not eligible for input tax credit but only those inward supplies 'by' the business that satisfy these preconditions are eligible for credit;

28.6 Verification of aborted projects or un-fructified ventures in the light of the pre-conditions laid down in Section 16(1) would be valuable to determine compliance with the requirements of law.

29. Input tax credit (utilized)

29.1 Once credit is admissible and availed in the returns, it may be freely utilised to discharge any of the output tax liability (except in the case of cess where only credit

of cess can be utilised). Verification of utilisation requires verification of admission of output tax liability. The output tax liability belongs to the month in which the supply is made, and not the month in which the supply made is reported in the returns. Belated reporting of supply made does not postpone the liability but in fact attracts liability along with interest. Care must be taken to verify not only for the discharge of output tax liability by utilisation of input tax credit but also timelines of such discharge of liability;

29.2 Cross-utilisation of input tax credit is permitted with IGST but not between CGST and SGST. Verification of utilisation also extends to verification of compliance with Rule 88A which was introduced from 29th March, 2019. Prior to introduction of Rule 88A cross-utilisation was not permitted;

29.3 Points noted in the context of utilisation of input tax credit maybe referred in the context of discharge of liability in cash through electronic cash ledger.

30. Input tax credit (reversed)

30.1 Ineligible credit is not to be availed in the first place, but credit which is eligible that is later discovered to be ineligible, or becomes ineligible due to any of the changed circumstances attracts reversal. Reversal made by taxpayer is in itself an admission of erroneous availment of credit unless reversal is due to new facts which may emerge subsequent to lawful availment. Care must be taken to verify reversal along with payment of interest on such reversal;

30.2 Reversal may also arise in accordance with Rules 37, 40, 42, 43 or 44. Where reversals are stated to be under these rules, verification of calculation and the effective date applicable to such a reversal are important steps. Care must be taken to confirm the date of amendments made to these rules periodically to meet the requirements of the law and these amendments be given prospective effect;

30.3 Error in the reversal or delay in the reversal or non-reversal attract liability to tax along with interest. The instances attracting reversal may be identified and taxpayers' own calculations for such reversal maybe called for verification. Absence of any calculations prepared by the taxpayer necessitates detailed calculations to be made in order to create demand of such credit along with interest;

30.4 Due to the existing rule regarding utilisation of credit, credit availed but liable for reversal will also be utilised in payment of output tax in each month by the GST portal. Doubtful credits cannot be availed and left unutilised. Such utilization of ineligible or doubtful credits will result in improper availment of credit leading to non-payment of output tax by its utilisation;

30.5 There are many doubts regarding eligibility to credit in certain cases and many of these doubts are *bona fide* too. Being a self-assessment tax system, taxpayer is responsible for all erroneous interpretation that are eventually clarified by a higher authority. All doubtful credit claimed may be marked for follow up action where the interpretation is objected to by revenue compared to the one followed by taxpayer.

31. Input tax credit (blocked)

31.1 Blocked credits are covered by section 17(5) and there is no subjective relaxation permitted, except in the case of clause (b), where relaxation is permitted when the said inward supplies are in turn directly used to make further outward supply. Verification of exclusion of blocked credits *ab initio* by the taxpayer is important;

31.2 Based on the study of activities of the taxpayer, presence of inward supplies in respect of which credits are blocked can be identified. Specific verification needs to be carried out to confirm that inadvertently or otherwise blocked credits are not claimed;

31.3 Credit in respect of construction of immovable property is excluded from being blocked in the case of further supply of construction, or for establishment of plant and machinery. Verification of details of assets in the nature of plant & machinery is important to satisfy as to whether they are in fact plant and machinery or not.

31.4 Presence of large number of staff in the business can itself indicate possibility of inward supplies that are for the benefit of personal consumption by such staff. Thorough understanding of the nature of business can be a big advantage in the course of verification of blocked credits' compliance.

32. Input tax credit (cess)

32.1 Credit of cess is admissible only for payment of cess on outward supply. The verification of nature of outward supply is important to identify the eligibility to credit of cess paid on inward supplies. Notes made earlier in the context of classification of supplies attracting Cess may be referred to verify correctness of claim of input tax credit in respect of cess paid on such inward supplies;

32.2 For example - aerated beverage sold by a manufacturer to a distributor is categorised as supply of goods and attracts cess. However, if the same beverage is sold by a restaurant to a consumer, as a part of a service, the outward supply would be of services and not attract cess. Notes made earlier in the context of supply of goods treated as services may be referred for verification of compliance.

33. Input service distributor

33.1 ISD is applicable only for services that are enjoyed commonly or whose place of supply is a location where registration is not required to be taken by the legal entity in terms of section 22. In these cases, legal entity may obtain ISD registration to collect such credits and distribute them to registered locations (branches of legal entity) that actually enjoyed those services. Verification of requirement of ISD along with effective date of ISD registration is an important first step in reviewing compliance;

33.2 Every month an ISD is required to exhaust all the credits on the inward supplies by distributing it to all the beneficiary branch locations. ISD invoice is required to be issued to distribute entire credit and exhaust the same at the end of each month. ISD credit note is also permitted where the distribution is discovered to be erroneous and to be recovered from one branch and redirected to another branch. The verification of ISD transactions requires monthly monitoring of credits received and distributed,

including credit notes issued. The reference maybe had to Rule 39 for compliance with this requirement;

33.3 ISD location by itself cannot have any RCM liability or outward supply liability. It can also, not have, any stock of goods for making outward supplies and for that matter permanent premises with staff that can tantamount to a place of business as per section 2(85) or fixed establishment as per section 2(50), thereby attracting normal registration on its own merit;

33.4 It is also very common to make a mistake with ISD activities and taxable activities of inter-branch supplies. Care must be taken to verify the absence of any capacity to provide taxable inter-branch services at such ISD location. Possibility of demand of output tax on inter-branch supply of services at such ISD location may require further verification if such capacity is found to exist. Notes made in this respect may be referred in the context of verification of credit at the recipient branches.

34. Valuation (monetary consideration)

34.1 Taxable supplies for consideration in monetary form are subject to tax on the basis of the price actually agreed for the supply. It is, however, important that the price agreed is the sole consideration and there is nothing more or extraneous that flows to the supplier for the supply. Where price is the sole consideration for the supply, tax maybe computed on this price. Verification of invoice and contract or PO will give an indication of the compliance with this requirement;

34.2 Where the consideration is partly in monetary form and involves some extraneous consideration, valuation as per Rule 27 to 31 will be attracted. Where taxpayer admits valuation as per rules, the nature of requirement for reference to Rules may be verified along with application of the rules to arrive at the taxable value in those cases;

34.3 In certain cases, it is permitted for the government to prescribe the taxable value of the transaction by Rules and tax computation will be based on such prescribed value and not the commercial price agreed for the supply. Hence there would always be difference between the turnovers declared in the returns and the books of accounts and this fact should be taken note of. In other cases, where the value of supply cannot be ascertained by the taxpayer to self-assess himself, he may opt for provisional assessment under section 60 of the KGST Act and the turnovers may be declared on the basis of the methodology provided by the assessing authority. Even in such cases, there may be difference between the turnovers declared in the books of accounts and the returns. Reference maybe had to rule 31A, 32 for their applicability and computation;

34.4 Where option to operate under prescribed values is taken, suitable documentation must be maintained to identify the value as per invoice and the taxable value as per the Rules prescribed. Necessary reconciliation for the differences, if any, may also be verified. Due care must be taken to further verify if these differences are very significant to find out whether any additional activities are involved and tax liability bypassed by relying on prescribed values for these transactions. For e.g. travel agent may have to pay tax on the base fare but additional remuneration earned by way of

service charges and loyalty programs, may be an independent transaction liable to tax separately and not as ticketing services, if they are separately charged and shown, which may be verified.

34.5 Another aspect to be verified is the rate of exchange applied for transactions that are not in Indian rupees. Notes from valuation review exercise may be referred in the context of verification of import and export transactions later.

35. Valuation (non-monetary consideration)

35.1 Where there is a supply but the consideration is not in monetary form then, reference to rules for determination of taxable value is the only remedy. Transaction where recourse to the valuation rules are necessary may be identified for verification of their applicability and computation;

35.2 Without going into detailed discussion about these rules here, it is sufficient to mention that care must be taken to identify instances where actual price of a transaction is determined as not applicable, then taxable value must be strictly determined as per the rules and the values arising by applying the rules alone must be followed and no other alternative source substitutes are permitted;

35.3 Reference to Rule 30 or 31 appears to be residual provisions and to apply these rules, it must be first established that none of the previous rules provide an answer to the taxable value and without recourse to these residual rules there would be an impossible situation. Recourse to residual rules cannot be availed as the first option but must always be the last resort.

35.4 In cases where deviation from the transaction value is made while valuing the supply, then the grounds and the methodology adopted must be sufficiently explained and the principles of natural justice must be followed.

36. Valuation (related party transactions)

36.1 All points regarding valuation of supply are applicable even in the case of related party transactions, except that particular attention is to be paid to the fact that: (i) There must exist a relationship or related party (explanation to Section 15(5), (ii) the actual price agreed for the supply is declared to be unreliable, In such a situation recourse to rules is imperative whenever the transactions are between the related parties. Before going into valuation, in these cases, it is important to identify related party transactions by voluntary disclosure by the taxpayer as well as comparison with disclosure of related party transactions in the audited financial statements and income-tax audit report;

36.2 Having stated that the price actually agreed for the supply is not acceptable, taxable value computed as per the rules must be used in all cases of transactions with related parties to arrive at the tax liability. The verification of method adopted by the taxpayer, basis for it's the selection and the result from application of such rule is important;

36.3 Another important aspect to mention is *second proviso* to rule 28 which states that value declared in the invoice will be accepted as a taxable value where the whole of the tax charged is creditable in the hands of the recipient. But in cases where the

input tax credit is ineligible in the hands of the recipient, then one has to verify whether the pricing has been done on arms-length basis and transfer pricing principles are followed. Care must be taken to ensure that the value so assigned in the transactions between related parties are not contradictory with basic principles of valuation in section 15(1);

36.4 This method of valuation is also to be applied in transactions between distinct persons, that is, inter-branch supplies where no payment is actually made but a valuation is nevertheless required to compute tax liability. Reference maybe had to these notes while dealing with cross-charge between branches.

37. Valuation (deemed value notified)

37.1 As mentioned earlier, optional value is prescribed under rule 31A and rule 32. However, the provisions of section 15(5) empower the Government to notify the taxable value in certain cases. Based on the nature of business of the tax payer and review of notifications under section 15(5), the transactions that come under the deemed value notification may be identified for verification. In such cases, it should be noted that the turnovers declared in the returns are as per the determined value and not as per the book value;

37.2 Where a deemed value is notified, the actual price agreed for the supply even if it is contained in a registered document is liable to be ignored due to the legal fiction created by the notified deemed value. For e.g. real estate projects have a deemed value of the contemporaneous selling price of their apartments and such deemed value after permitted abatement is to be applied in all cases irrespective of tactual price for the apartment. Care must be taken to identify any interpretation taken by taxpayer to deviate from the deemed value so that further action in accordance with law may be taken in such cases (w.e.f. 01.4.2019).

38. Time of supply

38.1 Tax invoice is issued in accordance with the terms of the contract but also upon confirmation by the customer of acceptance of supply. There may be a difference in time between completion of supply (especially in the case of services) and the time of issue of tax invoice. Based on the understanding of the nature of business of the taxpayer, verification of potential mismatch in time of supply and time of tax invoice is important to ensure correctness of tax payment;

38.2 Verification of time of supply in the case of related party transactions, transactions between branches of the same legal entity, import of service transactions and transactions attracting RCM liability:- Detailed statement of time of supply calculation maybe obtained to confirm correctness of compliance;

38.3 Continuous supply transactions need to be carefully examined so as not to artificially delay time of supply by agreeing to delay time of invoice. The understanding of the nature of business of taxpayer would provide good insight into reasonableness of the agreed delay in time to invoice;

38.4 Time of supply in respect of debit notes to be traced back to the original tax invoice, except in instances where special provision is made in Section 12(6) and 13(6). Care

must be taken to identify the time of supply adopted in the case of debit notes and to verify compliance;

38.5 Extensive implications arise in respect of transactions involving 'vouchers' and reference maybe had to the points noted in the context of transactions in 'money'. Based on this understanding and the specific provisions in Section 12(4) and 13(4) for goods and services respectively, they may be verified for correctness of compliance;

38.6 In case of any ambiguity about time of supply in the case of advances, *proviso* to rule 50 addresses this ambiguity and verification of time of supply in case of advances may be verified on this basis.

39. Place of supply (goods domestic)

39.1 Determination of place of supply is a significant question of law and therefore the choice of proper clause in the section can alter the outcome of this question of place of supply. Verification of parameters of supply is important to identify correctness of application of the correct tax regarding place of supply;

39.2 Error in application of correct tax in the Section to determine place of supply can result in payment of wrong tax attracting liability to pay right tax again (with relief of refund of the wrong tax paid) under section 77. However, care must be taken to check whether the taxpayers have a motivation to deliberately misapply place of supply provision so as to pay a tax that is more easily creditable in the hands of the recipient rather than correctly apply place of supply provision and pay a tax that may not be creditable. Further, applying a wrong place of supply would make a local transaction an export and this would lead to wrong refund of input tax credit accumulated. These facts need verification;

39.3 Whether supply 'involves movement' or not requires careful consideration of the nature of the goods being supplied and the terms of the contract in the given instance. Not involving movement is a question or fact agreed between the parties in a contract of supply. Movement must be differentiated from delivery of the goods. Delivery is a question of law and movement is a question of fact that can be seen by physical inspection. Delivery is when the risks are passed on along with title to the recipient. Verification of these facts require careful consideration of the nature of the goods themselves and with a sound understanding of the nature of business of taxpayer;

39.4 Similarly, where supply 'does not involve movement' careful consideration must be given to the facts and the nature of the goods involved in the supply. Inter changing the relevant clause in the provision relating to the place of supply may result in error in payment of tax. Goods, by their very nature are movable, but supply of such movable goods without involving movement does not make them immovable but enjoyable by the recipient on 'as is, where is' basis. Verification exercise must extend to such transactions also to determine whether in fact no movement is required;

39.5 Assembly and installation activities attract a different clause regarding the place of supply and care must be taken to verify whether the terms of understanding between

the parties and the nature of the goods themselves is such that, without assembly and installation the supply will be incomplete or assembly and installation are separate and ancillary activity after conclusion of the supply. Only where supply of the goods is incomplete without assembly and installation will this clause be applicable for determination of place of supply. Care must be taken to verify whether assembly and installation are integral to the supply. One must ensure that assembly and installation does not result in creation of an immovable property resulting in the supply being a works contract which is a supply of service as per schedule II;

39.6 Supply of goods 'on board' conveyance must not be equated with supply of food in the train or on flight because supply of articles of food for human consumption is supply of services as per schedule II. Supply of items of food by the manufacturer to the Railways or airlines are also not covered by this clause as they are not supplied 'on board'. Care must be taken to avoid misapplication of this provision.

40. Place of supply (services domestic)

40.1 Place of supply of services is contained in 13 different clauses in section 12 of the IGST Act and care must be taken to identify the correct clause applicable to arrive at the place of supply accurately. Points noted earlier in the context of place of supply of goods may be kept in mind and similar approach may be followed while determining place of supply of services;

40.2 Residual clause in section 12(2) must be applied if and only if, none of the other clauses is squarely applicable to a given case. After satisfying that none of the other clauses are applicable, then and only then, residual clause may be applied. Verification must be done in all cases where residual clause is applied to make sure that there is proper compliance;

40.3 Question of 'place of supply' is different from 'place of businesses. The place of supply is only to determine whether the supply is inter-State or intra-State in nature. But, place of business is relevant to determine the State in which registration is to be obtained by the supplier. It is easily possible in law that a particular supply may have the place of supply in one State but the supplier may have his place of business in a different State. It is commonly seen that place of supply is somehow interchanged with place of business to seek registration at the place of supply and not at the place of business. Care must be taken to verify the correct State for registration and identification of the nature of tax based on place of supply;

40.4 Having applied the place of supply test to determine the nature of tax payable, care must be taken to verify any misapplication of place of supply in order to pass on maximum credits to the recipient. This can be verified by examining the facts gathered based on the nature of business about the place of supply.

41. Place of supply (goods exports-imports)

41.1 The domestic transactions have a different provision to determine the place of supply whereas cross border transactions have a different provision. Due care must be taken to identify the correct provision and the nearest location of the recipient outside India does not automatically result in the supply being an export. The fact

that payment is made in foreign currency is also not a factor to determine whether the transaction is an export or not. Popular misunderstandings based on these two factors may be kept in mind while verifying export and import transactions;

41.2 GST law entirely borrows the concept of export and import in the case of goods from Customs law and the same definitions are found in IGST Act. As a result of the supply, if the supplier himself is responsible in his own name to carry the goods from within India to any location outside India, that would be export and vice versa would be import. Due care must be taken to verify customs assessment documents to confirm the facts for treatment of the same transaction as export or import under GST;

41.3 Neither is the location of one of the parties nor the currency of payment relevant for making the decision about export or import. Import of goods is liable to IGST and the points noted under import of goods may be referred for the question of place of supply of imports. Export of goods is a zero-rated supply and notes made in that context may be referred for the question of place of supply of exports.

42. Place of supply (services exports-imports)

42.1 Reliance on customs law for determination of place of supply in the context of export or import of goods is entirely not applicable in the context of export or import of services. Care must be taken to avoid any mix-up in the application of the definition from goods with services;

42.2 Place of supply of services in the context of exports and imports also have several clauses that are applicable in various cases. Process of choosing the correct clause is important to arrive at the correct answer regarding place of supply. Unless the place of supply is outside India, the transaction would not be an export of service. And unless the place of supply is inside India, the transaction would not be an import of service;

42.3 Care must be taken to identify instances where the residual clause for place of supply is applied specially in the case of export of services to enjoy the benefit of zero-rated supply. As pointed out earlier, residual clause is the clause of last resort;

42.4 In the case of export of services, payment in foreign currency is not only a requirement but also an ingredient in the very definition of export of services. Where payment is either not received in foreign currency within the time limit prescribed or extended time limit from Commissioner or not at all received, the question of place of supply becomes important as such transactions would be liable to tax as an inter-State supply. The notes made in the context of export of services may be referred along with the determination of place of supply;

42.5 'Destination based consumption tax' is the philosophy behind introduction of GST but there is no such provision in law allowing taxpayer to decide what is the destination of consumption of any supply. Care must be taken to verify and look into the relevant provisions to identify the place of supply or consider the facts of the case and determine the place of supply. Section 13(8) is a case in point where all the services are provided to a customer located outside India, and the place of supply of those services are specified by the law to be where the supplier of services is located

and not the recipient of those services. The verification of such common mistakes is important to identify any lapse in compliance.

43. Place of supply (SEZ)

43.1 Even though special economic zone is located physically within the boundaries of India, for the purpose of GST law, such zone is considered to be a territory outside India. As a result, supply to such a zone is treated on par with actual export outside the territory of India. Such supplies are declared to be always inter-State supply even though the supplier and the recipient inside the zone may be in the same State. Care must be taken to verify whether any incorrect tax i.e. CGST-SGST, instead of IGST have been charged in any case to a recipient who is located in the SEZ ;

43.2 Supply between two special economic zone units or a developer and a unit are also always treated as inter-State supply they are both in the same zone, in two different zones in the same State or two different zones in two different States. Verification of transactions between two zone units; or the developer and the units, must be made to ensure that zero-rated benefit is always applied and GST is not charged;

43.3 Reference may be made to section 16(1)(b) of IGST Act where it is clearly provided that 'all supplies' are entitled to zero-rated benefit. The only restriction is that the supplies to which zero-rated benefit is allowed, they are duly endorsed by the SEZ authority as being permitted for entry into the zone and for the purpose of 'use in authorised operations'. Concept of use in business that is relevant for input tax credit is similar to the concept of use in authorised operations. Unless supplies are endorsed by the SEZ authority in this manner zero-rated benefit cannot be extended. Where zero-rated benefit is not extended, IGST alone must be charged in all such instances.

44. High-sea sales

44.1 Confirmation of transactions by the Customs authorities would be a reliable source of information regarding high sea sales. Date of the first transaction, date of commencement of journey, date of the second transaction and date of clearance from customs are all relevant for verification of such transactions;

44.2 Bill of entry assessed by Customs authorities and details of the persons undertaking the first transaction and the second transaction appearing in such bill of entry would be the final authority on the facts. Margin earned by the high-sea seller is not liable to GST but the entire turnover is liable to be reported by the seller.

44.3 Verification is necessary to identify payment of RCM on ocean freight even though transaction may be high sea sales and covered by Schedule III. Judgements of the various Courts may be referred on this issue;

44.4 Details of Schedule III transactions may be noted for later verification of credit in respect of services directly related to these excluded transactions.

45. Merchant trade

45.1 Without goods entering India, direct transport of goods from the location of supplier to the location of the customer signifies merchant trade transactions. Verification is

necessary to confirm no physical entry of the goods into India and discharge of any RCM liabilities on account of ocean freight or any other services liable as import of service;

45.2 Exclusion of these transactions by Schedule III does not sanction omission from reporting as a 'no supply' transaction. Details of the same may be noted for verification of annual return and its reconciliation with the audited financial statements.

46. In-bond sales

46.1 After having entered India, goods are permitted to be stored in a Customs approved warehouse. During their storage in such warehouse, it may be supplied to other buyers. Payment of Customs Duty along with IGST will be the responsibility of these buyers and not the person who imported the goods and stores them in such customs warehouses. Verification of these transactions and the contractual value in comparison with the value declared for Customs assessment purpose provide valuable information regarding correctness of compliance by each person involved;

46.2 Quantitative details are to be verified in respect of goods received and goods removed from such customs warehouses and any loss of quantity due to deterioration, damage or obsolescence that are subject to discharge of customs duty along with IGST. The information reported in this regard to the immediate Customs authorities may be verified for compliance;

46.3 Warehouse charges paid would be liable to GST on forward charge basis by the warehouse keeper and in certain cases (not being lease of property but service of warehousing) on reverse charge basis where the warehouse is operated by the Customs department.

47. Import of goods

47.1 All import of goods are liable for assessment by the customs authorities, and therefore, it is important to note that all imports need not be by way of 'sale' transaction. It is common to find imports by way of 'lease' transaction also. In such cases the Customs notification 50/2017-Cus. dated 30th Jun 2017 as amended, at entry numbers 547, 557A and 557B provides exemption from IGST under the Customs Tariff Act on submission of declaration that tax on RCM basis would be paid by the importer in terms of para 1(b) or 5(f) of schedule II. Verification in this regard is necessary;

47.2 Import of goods by way of 'lease' transaction being common, physical import takes place only once but rentals are payable throughout the term of the lease agreement. As a result, tax on RCM basis would be payable on each rental payment under the lease agreement. Only upon satisfaction of due discharge of tax on all lease rental payments, will the goods be permitted to be returned back to the overseas lessor. Verification of these aspects is necessary in the case of leasing transactions;

47.3 Incidental charges paid not only in respect of leasing transactions but on all other transactions to overseas parties is necessary to satisfy the compliance with import of service incidence;

47.4 Care must be taken to verify compliance in respect of rate of foreign exchange to be adopted in the case of import and export transactions as prescribed in Rule 34.

48. Import of services

48.1 Classification between goods and services due to the fiction of schedule II is further compounded due to the complex definition of 'import of services'. Care must be taken to identify such transactions and verify their tax compliance;

48.2 All payments in foreign currency to persons outside India, does not always attract liability as import of services. Such instances where place of supply is outside India, tax liability would not arise even though payment is made by a person in India. Care must be taken to validate transactions where payment is made from India and tax is not admitted on this account;

48.3 Transactions not involving payment in foreign currency can also attract liability as import of services. Instances could be transactions between related persons or transactions between distinct persons or notional transactions between establishments of a single legal entity located in two different countries. Such transactions can be verified based on reporting of such transactions in the accounts as operations of overseas branches as reflected in the income tax return as income attributable to overseas establishments. Verification of such transactions requires careful consideration of information not only available in the GST returns filed but also in the records maintained under allied laws;

48.4 Exemption claimed in respect of import of services under entry 10 or 10F of Integrated Tax notification 10/2017-Integrated tax (Rate) warrants careful consideration before admitting the same;

48.5 Several other entries in Integrated Tax notification 10/2017-Integrated tax (Rate) maybe verified for applicability and due compliance. For e.g. the overseas freight is a case in point;

48.6 Points noted in the case of import of goods to the extent relevant may be applied and necessary verification carried out in the context of import of services also.

49. Export of goods

Exports being zero-rated appear to pose no challenge for verification of compliance along with the assessment of exports by custom authorities. Verification of customs assessment document (shipping bill) is important to confirm the fact regarding the export which may be marked for later verification of refund claims based on export of goods;

49.1 Rule 96B introduced from 23rd March 2020 requires repayment of refunds claimed based on export of goods in the event foreign currency related to the export is not repatriated within the time permitted by RBI. The verification of export of goods also helps in examination of compliance with this new Rule;

49.2 Care must be taken to verify compliance in respect of rate of foreign exchange to be adopted in the case of import and export transactions as prescribed in Rule 34. Also

note that the provisions are not the same in the case of goods as is applicable in the case of services ;

49.3 Export of goods without payment of tax has to be made by following the procedure of Bond or Letter of Undertaking. There may be cases where such procedure is not followed. It requires examination as to such procedure being followed or not.

50. Export of services

50.1 Unlike goods, export of services requires repatriation of foreign currency in order to be recognized as a zero-rated supply. As a result, verification of timely repatriation of foreign currency is important ,failing which such transactions also will be taxable as they are anyway specified to be an inter-State supply;

50.2 Another important aspect to verify is the place of supply in respect of transactions stated to be export of services. All transactions where foreign currency is repatriated to the supplier in India will not come within the definition of export of services unless, place of supply of such transaction is permitted by the various provisions of section 13 to be outside India. Verification of place of supply in respect of all export of services is important;

50.3 Definition of import of services and definition of export of services are not identical and therefore the tax treatment applicable to both are not obliged to be identical. This aspect needs to be borne in mind while verification of export of services;

50.4 Points noted in the case of import of services to the extent relevant may be applied and necessary verification carried out in the context of export of services also;

50.5 Export of services without payment of tax has to be made by following the procedure of Bond or Letter of Undertaking. There may be cases where such procedure is not followed. It requires examination as to whether such procedure is being followed or not.

51. Returns (Form GSTR-1)

51.1 Every invoice is required to be reported in Form GSTR-1 prescribed. The omission of reporting of any invoice in Form GSTR1 results in the non-disclosure of liability. The liability to tax arises in the month in which supply takes place which must be the month in which tax invoice is also issued and reported. Care must be taken to verify prompt issuance of tax invoice and reporting in Form GSTR-1;

51.2 Lapses in reporting liability in Form GSTR-1 increases the need to be verified further whether there is any belated reporting or total non-reporting of such cases;

51.3 Notes made earlier in the context of timeliness of reporting liability and its discharge in the context of input tax credit may be referred to identify the action to be taken for recovery of any non-reported liability in cash (and not by utilisation of credit) along with applicable interest.

51.4 Amendment entries made in FORM GSTR-1 may be noted and compared with the turnovers declared in FORM GSTR-3B and interest liability needs to be worked out if there is any delay in admission of tax liability and consequent payment of tax.

52. Returns (Form GSTR3B)

52.1 With the amendment of rule 61(5) with effect from 1 July 2017, Form GSTR-3B is a return in the place of Form GSTR-3 prescribed under section 39. Therefore, for all purposes of law, Form GSTR-3B is a return where credit of input tax is taken and utilised for discharge of liability for each 'tax period'. Filing of monthly returns is imperative for disclosure of self-assessment made by the taxpayer and for further action by the revenue authorities based on such self-assessment;

52.2 Admission of liability, claim of credit, reversal of credit and discharge of liability are all disclosed through Form GSTR-3B. It is common for taxpayer to assume that Form GSTR-3B is a matter of procedure but, any non-disclosure of information in Form GSTR-3B could well result in allegation of 'suppression' in view of the definition in section 74;

52.3 Form GSTR-3B being summary returns, various adjustments of previous period are given effect to and only net turnover is disclosed. Therefore, it would be imperative to seek for the workings as to the current period turnover and adjustments made to verify the correctness of adjustment and applicability of interest on the same.

53. Returns (Form GSTR-9)

53.1 Filling of Annual return for each financial year is a compulsory requirement for every registered person. Annual return contains summary of transactions relating to the financial year whether report during the financial year or subsequent to the financial year. It is due to this concession of belated reporting permitted that the annual return becomes essential. Verification of annual return can be a significant first step in identifying transactions impacting tax liability and credit validation;

53.2 Being a return prescribed in law, annual return is liable for scrutiny under section 61. Information reported in annual return not only discloses what is reported but also where information is reported as 'nil' makes a positive assertion to tax authorities. Careful verification of annual return can provide much needed information about the transactions and tax compliance by registered person;

53.3 However, care must be taken to verify instances where filing of annual return has been optional by virtue of a notification.

54. Returns (FORM GSTR-9A)

Composition taxpayers also are required to file an annual return in a truncated form. Notes made in the context of and return for regular taxpayers are also relevant in the context of return for composition taxpayers. Exemptions from filing of annual return need to be examined in such cases.

55. Transitional activities

55.1 Overlapping transactions with regard to provision of service before and after implementation of GST cannot be subject to the wrong tax merely because it is convenient or it is cumbersome for the parties. It is very clear regarding the nature of tax applicable in respect of overlapping transactions. Tax treatment given to overlapping transactions need to be verified to demand the right tax in the event any tax has been paid by the taxpayer;

55.2 Transition declaration filed, information reported there in and timeliness of its filing are all important parts of verification of this exercise.

55.3 Table 5G in reconciliation statement in Form GSTR 9C for 2017-18 along with the workings to support that calculation may be verified for confirmation of the correctness of tax treatment in respect of overlapping transactions;

55.4 Conditions linked to credit claimed under earlier laws cannot be lost sight of due to introduction of GST and any violation of those conditions such as loss or destruction of inputs or capital goods will result in liability to discharge tax under the earlier laws and not GST. Verification of any instances of loss or destruction is important to identify discharge of correct tax;

55.5 Disposal of transition stock or other assets will not be tax free but subject to GST. Merely because no credit of GST has been availed on them it does not exclude liability to GST under schedule I;

55.6 The transition credit must be claimed under the right heading and within the due date subject to verification of conditions in section 140. The voluntary compliance by a tax payer is expected and any deviation does not permit improper claim of transition credit;

55.7 Verification of any court cases that may have been pursued by the taxpayer or pursued by others but relied upon by the taxpayer is required to verify correctness of claim of tax not paid and not due to any advantageous interpretation taken.

56. Financial records

56.1 Accounts and records are required to be maintained by every registered person. However, due to the nature of computer accounting followed, accounts and records are maintained by the legal entity and extracts from those are available in respect of each registered person. Transactions between registered persons belonging to the same legal entity need to be specifically verified in order to confirm the tax compliance in such cases;

56.2 Details noted in the context of transactions under schedule I, may be referred back in order to confirm completeness of information available for verification of financial records relating to each registered person.

57. Stock records

57.1 It is very common that stock records are maintained at the HSN and tariff entry level and not in respect of individual items called stock keeping units (SKU). This is for this reason it is important to confirm stock details provided for verification whether they are HSN level or SKU level. For e.g. The hardware store may maintain two types of inventory namely brass and iron although there may be hundreds of items of hardware made of brass and made of iron. Verification will let one know if the stock records are at HSN level.

57.2 Yet another aspect to consider is that unique quantity code (UQC) used for maintaining stock records may not be the same as the one used for issuing tax invoice to customers. For e.g. carpets may be purchased in kilograms and supplied to

customers in square feet. The verification exercise needs to take note of conversion formula in case of multiple UQC followed by taxpayer.

57.3 Loss of stock or unaccounted stock does not automatically result in assumption of taxable supply involving such quantity of stock but requires further enquiry to determine nature of supply that best explains this difference in quantity of stock.

58. TDS

58.1 An important provision that came to be notified only from "1st October 2018" that applies to all inward supplies by a Government agency or entity. Not only the registered suppliers to such government agency or entity are liable for deduction of tax at source but also unregistered suppliers and composition taxpayers. Verification of tax the deducted and deposit to the credit of specified taxpayer identified by GSTIN is important so that credit of such TDS flows to the correct registered person. Care must be taken that TDS applies to all "taxable goods or services or both" which excludes exempt goods and services but includes supplies made by unregistered suppliers and composition taxpayers.

58.2 Timing of supply and timing of credit of TDS provide a good indication of correctness of compliance by the supplier. To verify not only the time of supply but also the nature of supply based on the category under which TDS has been deducted and deposited.

58.3 Delay in deposit of TDS results in further verification on the part of the deductor. However, this delay does not excuse supplier from deferring discharge of tax liability on the supply. Verification of timely discharge of tax liability by the supplier regardless of TDS credit is important.

59. Tax Collected at Source (TCS)

59.1 Supplier's supplying goods or services through electronic commerce operators are subject to collection of tax at source by the ECO as payment from the customers in respect of the supply that are passed through ECO. TCS not only is a source of but also a significant source of information to monitor tax compliance by such suppliers. TCS is not applicable where the transaction is notified under section 9(5). Verification of collection of tax at source by ECO as well as credit of TCS in the hands of the suppliers must be a coordinated effort.

59.2 Supplier's may have had transactions since 1st July, 2017 through ECO but TCS was notified only from "1st October, 2018". Even without TCS transaction, data may still be available with ECO for prior period. Verification of TCS data and reverse calculation based on TCS values can help in establishing completeness of turnover reporting by suppliers.

59.3 Care must be taken to verify that TCS is applicable on "taxable supplies", as TCS is a tracking system for suppliers supplying taxable supplies online. Please note supplies attracting TCS is a condition making registration mandatory under section 24;

59.4 Other points noted in the context of e-commerce operators and suppliers attached to e-commerce operators may be referred for tax compliance verification in the present context.

60. Job-work

60.1 General understanding of job work needs a slight adjustment in our thinking due to the definition of job work in section 2(68). Transaction where 'treatment or process' is carried out on 'goods belonging to another' comes within the general understanding of job work. The definition makes a slight departure, where the person whose goods are being put through the treatment or process involved in the job work must also be a 'registered person'. As a result, if the customer for whom job work is being carried out is unregistered, then the 'treatment or process' remains supply of services (para 3, schedule II) but not a job work. Due to this important point in the definition, there are number of instances where rate of tax applicable to job work is applied even when the treatment or process is carried out for a customer who is an unregistered person. Care must be taken to verify registration status of the customer in all cases where job work is carried out so that the rate of tax is applied appropriately.

60.2 Goods sent for job work is not a supply, but non-return of goods after the duration prescribed is deemed to be a supply of goods under section 19(3) for inputs and 19(6) for capital goods (excluding moulds and dies, jigs and fixtures and tools). Verification of quantitative reconciliation of the processed goods sent to a job worker and return of equivalent quantity of processed goods back from the job worker is an important step in ensuring compliance with deemed supply under section 19 and liability to pay will be from the original date when the goods were sent to the job worker, along with interest.

60.3 Since non-return of goods from job worker is deemed to be a supply, due care must be taken regarding the disclosure of normal wastage in the course of job work activity to be differentiated from abnormal wastage by the job worker. Normal wastage may be permitted subject to verification, but abnormal wastage will be hit by the provision of deemed supply under section 19 attracting liability to tax and interest on the equivalent quantity of unprocessed goods not returned by job worker;

60.4 Where such treatment or process or service is provided to an unregistered customer, the rate of tax may be different but also the provisions of section 19 will not be applicable. Care must be taken to verify implications under the general definition of supply to verify compliance.

60.5 Goods sent to one job worker after processing may be sent to another job worker for further processing before being sent back to the principal. Also, the documents such as delivery notes and the e-waybills may be verified and it is important that those records satisfactorily explain the quantitative reconciliation of unprocessed goods sent and the equivalent quantity that change hands until they eventually return to the principal as fully processed goods;

60.6 It is permitted for processed goods to be directly supplied to a customer from the premises of the job worker provided the location of the job worker is added as an additional place of business of the principal. However, this relaxation allowed in section 143 is applicable only when the principal and the job worker are located in the same State. Care must be taken to verify whether job worker in another State has been authorised to directly make a supply to a customer under this section 143.

Implications of supply under para 3, schedule I may need to be verified if the principal is also not registered in the job worker's State.

61. Deemed exports

61.1 Certain categories of supplies are notified under Section 147 to be categorised as 'deemed exports' even though these supplies are not correctly comparable to exports in any manner. Identification of supplies based on reference to the notification 17/2017-FD 47 CSL 2017 dated 19th October 2017 for list of supplies entitled to this scheme is important.

61.2 Tax on the supply is to be paid by the supplier either without collecting it from the recipient or upon collecting it from the recipient. In either case, after reporting the supply and discharging the tax applicable, the tax so paid may be claimed as a refund either by the supplier or by the recipient with suitable declaration that both parties are not claiming refund. The verification of deemed export refund being claimed needs to take into consideration the eligibility to deemed export, actual payment of applicable tax in the normal course, waiver of claim of refund by one party and authorising the claim of refund by the other party.

62. EOU-STP-EPZ

62.1 Export oriented units in various forms approved by the Government are regular registered persons for purposes of GST. They are eligible for credit of taxes paid on inward supplies subject to the conditions of credit and the provisions of blocked credits. Nature of verification of compliance by EOUs is similar to that of a regular taxable person;

62.2 An additional benefit is also allowed to EOUs that is detailed in CCT Circular No. GST -18/2018-19 dated 25th March 2019 where inward supplies are permitted to be made without payment of tax to the supplier, subject to the condition that the said supplies received are used for the permitted activities of the EOU. This circular contains the specific procedures to be followed as per the scheme of 'deemed exports'. The notes in the context of deemed exports may be referred for the purpose of verification of compliance by EOUs.

62.3 Reference may be had to the procedures prescribed in the above mentioned circular regarding maintenance of register in Form B for all inward supplies pre-approved in Form A and its utilisation.

63. SEZ Developer

63.1 All supplies "to or by" SEZ being treated as inter-State supplies, supplies by the SEZ Developer of a zone to an another SEZ Unit within the same zone are always inter-State supplies. Further, these Interstate supplies are always zero-rated supplies. And all supplies made by the SEZ Developer to a SEZ Unit being limited to 'essential supplies', generally, SEZ Unit is required to obtain endorsement from the SEZ authority regarding "use in authorised operations". Accordingly, no GST will be payable by SEZ developer on outward supplies made to a SEZ Unit in the zone;

63.2 SEZ Developer may have some supplies outside the zone such as disposal of scrap, charges for sale of electricity produced to the grid, etc. In these cases points noted regarding 'DTA supplies' by SEZ Unit may be referred in the context of such activities by SEZ Developer also.

64. SEZ Unit

64.1 All supplies "to or by" a SEZ Unit is also required to be treated as inter-State supply in the hands of the local supplier as well as when it is made by the SEZ Unit. Outward supplies by a SEZ maybe an export outside India or a supply to another SEZ Unit in the same zone or a different zone. All these supplies will be inter-State supplies and the points noted regarding export of goods and export of services may be referred while verifying supplies made by a SEZ Unit.

64.2 Supplies to a SEZ Unit by local supplier being an Interstate supply even when the local supplier and the SEZ Unit are in the same state, The local supplier will be eligible for zero rated benefit on the goods or services supplied to SEZ Unit provided endorsement from SEZ authority regarding "use in authorised operations" is issued. When this endorsement is issued then, either the local supplier may apply for refund of the output tax paid on the supply (without collecting it from the SEZ Unit) or the SEZ Unit may apply for refund of the output tax paid by the local supplier (after it is collected from the SEZ Unit).

64.3 Supplies made to a SEZ Unit by a local supplier without being granted the necessary endorsement by the SEZ authority, local supplier must charge IGST on all supplies made because it is always an Interstate supply. Verification of local supplier requires confirmation whether all supplies to SEZ unit is with IGST only and not CGST-SGST.

65. SEZ Unit (supplies to DTA)

65.1 Supplies by a SEZ within India but outside the zone are called 'DTA' supplies because the area outside the zone is 'domestic tariff area' where all domestic taxes will be applicable at normal tariff rates. It is important to note that the goods sold by a SEZ Unit to a DTA-Recipient is liable for assessment for payment of Customs duty along with IGST as per the Customs Tariff Act. Supply of goods to DTA requires verification of bill of entry filed by the DTA recipient. In certain instances, bill of entry is permitted to be filed by the SEZ Unit instead of being filed by the DTA-Recipient;

65.2 Supply of services by a SEZ Unit into DTA does not attract payment of customs duties but GST is attracted on forward charge basis in the hands of the SEZ Unit as normal outward supply of services. Verification of supply of services into DTA by a SEZ Unit requires to remove all notions about the supplier being an SEZ Unit and all the provisions of GST law regarding classification of services or supply of goods treated as supply of services as per schedule II and appropriate valuation provisions must be applied.

66. Exporters

66.1 Exporters may be manufacturer exporters or merchant exporters. Manufacturer exporters are entitled to input tax credit in respect of all inward supplies used in the manufacture of the export products (goods or services). Verification of completion of exports based on notes made in the context of place of supply in respect of imports may be referred back for compliance.

66.2 Merchant exporters are those who collaborate with supporting manufacturers to manufacture and supply products to such merchants who export in their own name. In the normal course the supporting manufacturer would charge applicable GST on the supplies to the merchant exporters for claiming credit and then avail zero-rated benefits on the exports. As per notification 41/2017-Integrated tax (Rate) these supporting manufacturers are permitted to charge a special rate of 0.10 per cent GST to the merchant exporter. As a result, outward supply by the supporting manufacturer has a lower rate than the inward supplies involved in the hands of such supporting manufacturer. The inverted rate structure that now arises in the hands of the supporting manufacturer becomes entitled for refund to the extent of such rate inversion.

66.3 Procedure in the context of collaborative work between a supporting manufacturer and divergent exporter is also applicable to a non-manufacturer supplier supporting the merchant exporter. The numerous aspects involved in verification may be derived based on the procedure applicable for ensuring neutralization of GST incidence for export sector.

67. UIN-holders

67.1 Embassy and Consular Missions are entitled to certain privileges under the United Nations (Privileges and Immunities Act), 1947. As such, the supplies to such bodies are not exempt from GST but they are allowed the benefit of exemption by way of refund. Section 55 grants the refund to such organizations and the registration that is granted to them is called unique identification number (UIN) under section 25(9);

67.2 UIN-holders are entitled to refund in terms of a procedure specially prepared and prescribed in circular 36/10-2/18-GST dated 13 Mar 2018. Special rates are notified under the notification 16/2017-Central tax (Rate).

68 Single-GSTIN-holders

68.1 A Legal entity that holds a single GST number or GSTIN is under no obligation to maintain separate records in respect of each line of business carried on. All liabilities, all credits, and all compliance as can be consolidated and reported through single return and single audit because of the single registration that is held. Care must be taken to verify compliance with pre-conditions of credit are in respect of each inward supply irrespective of the line of business for which it is made and thereafter utilisation can be common;

68.2 Where the operations are independently managed, the facility of maintaining separate series of invoices may be availed by the registered person. In such cases,

verification based on each series may be carried out and all observations consolidated for further action;

68.3 Points noted earlier in the context of input tax credit conditions may be referred back in respect of compliance verification of single GSTIN holders.

68.4 It is also important to see the disclosures in the Audited Statements which are the points relating to the accounting standards followed, the policies of accounting and revenue recognition etc. These needs to be analysed in the background of tax implications under the GST Acts.

69 Multi-GSTIN-holders

69.1 Where there are more than one GSTIN issued to a single legal entity (PAN-holder), the transactions between each GSTIN needs to be verified for time of supply, valuation and credit compliance;

69.2 Where no transactions are reported such between different GSTIN-holders, it is generally unusual and requires verification not only in respect of possible supply of goods between them and also supply of services. It is unusual to find all activities completely decentralised such that there is no interdependence on each other not even for management oversight and supervision or for common back office functions. That based on a study of the nature of business of the taxpayer and nature of functions performed by each GSTIN-holder, the nature of inter-branch supplies can be identified;

69.3 Points noted in the context of valuation in respect of related party transactions may be referred while verifying compliance in respect of inter-branch supplies.

70 Reconciliation Statement (Table 5 of annual return)

70.1 Reconciliation of turnover indicates that the time of supply being the basis for taxability under GST does not coincide with recognition of income as per the audited financial statements. Reconciliation is an assurance that there is no part of the turnover that has been completely omitted from treatment under GST. It also discloses different types of transactions that are admitted by the registered person for GST purposes. For e.g. any amount appearing in Table 5D indicates that X registered person has admitted inter-branch supply of goods and services and the absence of any amount in this table calls for further enquiry in cases of multi-GSTIN entities. Another example could be transactions reported in table 5J where credit notes are admitted to be issued along with Audit Officers' opinion that those credit notes are not admissible under section 34, so that suitable tax treatment may be verified in respect of such inadmissible credit notes;

70.2 Every line item in table 5 indicates the possible treatment that is required and whether or not the same is carried out by the registered person. Table 5M and 5N indicate the existence of circumstances requiring valuation adjustment for verification of their treatment for GST purposes.

71 Reconciliation Statement (Table 7)

71.1 Non-taxable transactions of all kinds are also required to be reported in table 5 of annual return. Reconciliation statement needs to contain the Audit Officer's affirmation of all non-taxable transactions in table 7. Verification of the recurrence relation in table 7 will reveal the extent of disclosure of non-taxable transactions in the annual return compared to the transactions in audited financial statements. From this table valuable information can be obtained regarding the basis of classifying transactions as non-taxable as well as the Audit Officer's opinion about the non-taxability. On taxable transactions tax is paid already but on non-taxable transactions verification provide valuable information about the possible error in interpretation of the exemption or other form of non-taxability of these transactions;

71.2 Turnover may be exempt from tax or maybe excluded from tax by schedule 3 or rule 33. There are many aspects that need to be examined to confirm this interpretation. Disclosure in table number 7 by the Audit Officer will also provide an opportunity to identify what extent these transactions have been reported by the taxable person and whether these transactions are included as income or not.

72 Reconciliation Statement (Table 9)

72.1 Although role of the Audit Officer is to carry out reconciliation, table 9 indicates rate-wise breakup to be verified validated and certified by the Audit Officer. Verification of this table will indicate in one glance the turnover admitted under self-assessment and offered for tax. Based on the nature of business of taxpayer it can be easily confirmed whether there are any errors in interpretation of classifications and exemption;

72.2 Reference maybe had to earlier notes regarding classification errors due to adventurous reclassification or erroneous application of exemption notification. By a comparative study of facts of the registered person with the conditions linked to classifications or exemption, correctness of tax rates applied by the registered person may be verified;

72.3 Based on the nature of business of the registered person, conspicuous absence of certain rates of tax particularly relating to transactions covered in schedule I and schedule II, notes made earlier in this regard may be referred for confirmation of such possibilities during the course of verification exercise.

73 Reconciliation Statement (Table 12)

73.1 Another important table in the reconciliation statement is table 12 where the requirements of accounting for input tax credit in the books of accounts exactly the way it is reported in the monthly returns is presented and reconciled for any timing differences. Timing differences refers to financial year in which the credit appears on the portal compared to the financial year in which the credit is accounted in the books of accounts. Timing differences are necessary due to the requirement to fulfil various conditions by the recipient before being eligible to claim credit stated in section 16(2) and 17(5) in certain clauses;

73.2 Once this reconciliation is found to tally, as reported by the Audit Officers, there is no further requirement to verify compliance with section 16(3). But any comments are found in the Audit Officer's report about compliance with this requirement then, further verification based on the nature of those comments will be required;

73.3 Another aspect to consider is that depreciation policy followed by a registered person may be less than 60 months for capital goods. In such cases, care must be taken to verify if the capital goods, after they are fully depreciated, are 'still in use and possession' until the end of its specified useful life. And where capital goods taken out of 'use' would amount to 'write-off' attracting treatment under section 17(5)(h) or 'disposal' attracting treatment under section 18(6) due to permanent disposal under para 1, schedule I, read with rule 40(2) or 44(6);

73.4 When credits are taken only in the returns but not in the books of accounts, the entire fact comes to light in table 12. Verification of table 12 is very significant to make sure these aspects are all complied by the registered person in the same year and no later than September returns of next year.

74 Reconciliation Statement (Table 14)

74.1 Expense-wise reporting of credits is valuable information which tax authorities need not spend time and resources in tabulating. Table 14 very clearly provides detailed breakup of credits availed based on nature of inward supplies. Inward supplies where credit is not admissible are also specified in table 14 which may readily reveal if credit under those heads is 'nil' or not. Analytical calculations are possible once information in such detail is readily made available;

74.2 Verification of credit along with the sources of credit is made easy by table 14. With this information and a good understanding of the nature of business of the registered person, the verification would be very much easy. Keeping all these factors in mind, it may be possible to identify whether the sources of credit and the extent of credit flowing from each source are normal or abnormal. Based on this, detailed inquiry can be planned or ruled out.

74.3 Table 14 comparison is possible not only for one financial year but also for multiple financial years and can provide valuable information to understand the trend of credits whether they are linear or erratic. This data can also be a source of information for further analysis and verification and monitoring compliance.

75 Reconciliation Statement (Part B)

75.1 This Part B is more important part of reconciliation statement than Part A for the reason that once any returns are filed and reconciliation statement submitted, it is unlikely that there will be any major unreconciled items involving unpaid tax liability. Taxpayer and Audit Officer can be safely assumed to have examined the liability, if any, arising out of unreconciled amounts and suitable tax treatment voluntarily given at the time of filing. However, there are more important aspects that the Audit Officer based on his understanding of the business of taxpayer and treatment given to various transactions by the registered person, would have disclosed in his certificate as an attachment. Careful review and study of this

disclosure statement attached to the Part B certificate can give valuable information about the further course of action required to be taken by the Proper Officer.

76 Interest (on output tax)

76.1 Interest is applicable at the rate of 18% on unpaid output tax liability. Though the amendment to this is carried out, it would have prospective effect from the date of notification. The relevant press release that such interest is payable on net cash liability is also to be taken note of. It may be noted that interest is payable on all unpaid or delayed payments of output tax. The verification of non-payment and belated payment of output tax is necessary to determine compliance with interest obligation by taxpayer;

76.2 Section 75(12) states that it is not necessary to issue a show cause notice before taking recovery action in respect of interest on self-assessed tax that is unpaid or paid belatedly. Necessary action after verification may be taken to note the extent of unpaid interest liability. Cases which are to be decided later must be entered in the call book for further action later.

77 Interest (on input tax credit)

77.1 Ineligible input tax credit availed also attracts interest at 24% from the month in which such credit is taken until it is reversed. Non-payment of this interest liability is to be verified by identifying due date of any reversal required compared to the actual date when such reversal is made by taxpayer.

77.2 Ineligible credit taken and utilised results in a more serious violation and necessary action in respect of reversal of ineligible credit or effective non-payment of output tax liability discharged using ineligible credit maybe taken up for necessary approval and demand.

77.3 Erroneous transition credit taken and utilised would also result in interest liability at the interest rate effective for non-payment of output tax liability, which is 18% under section 50(1) of the KGST Act.

77.4 There is no provision in GST law for demand of interest in respect of reversal of transition credit wrongly taken. Necessary verification of transition credit already made note of may be kept in mind while dealing with interest on such reversal of transition credit.

78 Refund (beneficial schemes)

78.1 Refund is basically a reimbursement of taxes paid. Refunds are also allowed under various beneficial schemes. These scheme not only allow refund of input tax credit used for making zero-rated supply but also for inward supplies eligible to deemed export treatment (only permitted goods supplied to persons referred the KGST Notification 17/2017 (FD 47 CSL 2017) dated 19th October, 2017 as per CCT circular No. GST-18/2018-19 dated 25th March, 2019).

78.2 Then there are supplies ‘to’ SEZ developer or units that a domestic supplier is allowed zero-rating on outward supplies made, which will be given to the SEZ developer or unit if the domestic supplier does not claim the zero-rated benefit.

Details of these beneficial schemes are to be carefully looked into by the audit officers.

78.3 Care must be taken while verifying refunds under beneficial schemes:

a) ***Step 1***: check under which of the schemes, this refund is being claimed.

b) ***Step 2:*** if refund is of 'input tax credit' then, check for satisfying all pre-conditions such as section 16(1) and section 16(2) as well as post-conditions in sections 16(2), 17(2) and 17(5). Also ensure capital goods credit and transition credit are not included in the formula of eligible credit.

c) ***Step 3:*** if refund is of 'tax paid on inputs and input services' then, check if the inputs and input services are 'used in operations' by the beneficiary of the scheme. It is seen that tax paid on inputs and input services NOT USED in operations are claimed as credit on the basis that this requirement of 'use in operations'. Since credit blocked under section 17(5) is not applicable to 'refund of tax paid', the only check is the authorization by the Development Commissioner of EOU or of the SEZ (developer or unit) by the criteria of 'used in operations';

d) ***Step 4:*** if refund is of the output tax paid (when it need not be paid such as in zero-rated supplies or deemed exports), ensure that exemption benefit under Customs or 0.1% scheme of GST is not claimed on the inward supplies;

e) ***Step 5:*** check for unjust enrichment, collect declaration as per rule 89(2)(l) and CA certificate as per clause (m);

f) ***Step 6:*** check time limit for claiming refund (two years from 'relevant date' applicable in each case as per explanation (2) to section 54; and

g) ***Step 7:*** check if application is filed as per procedure and in the form prescribed. All other requirements not listed here are also to be checked as per section 54, rules 89 to 97A read with all the circulars issued. Refer CCT circular No. GST-30 /2019-20 dated 2nd December 2019. (electronic refund process) along with CCT Circular No. GST-04/2020 dated 27th April, 2020.

78.4 It is important to bear in mind that the time limit to demand back 'erroneous refund' sanctioned has a time limitation of 3 years from the 'date of refund' and not the due date for filing annual returns. Also note that where any 'suppression' (as per legally revised definition in explanation to section 74) is involved by some action to wrongly file the refund claim, the time to demand erroneous refund is 5 years from the date of refund. As per this definition, (i) not furnishing information that is required (as per rule and circular on refunds) as per formats like form RFD 1A or RFD 1 and (ii) not providing information requested in writing, will amount to suppression.

79 Refund (deemed export)

79.1 Deemed export is basically not export. Deemed export benefit is applicable in the following transactions:

Table

S.No.	Description of supply
(1)	(2)
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

79.2 It is important to note the following points:

a) Point 1: Deemed Export benefit is available in respect of 'goods only'. Goods that are eligible is determined by Development Commissioner having jurisdiction over these Recipients who will decide eligibility to 'deemed exports' based on nature of the goods and the end-use of those goods by the respective Recipient;

b) Point 2: DEx benefit is output tax on outward supply by the Suppliers making outward supply to these four Recipients;

c) Point 3: DEx benefit requires payment of tax first by the Suppliers;

d) Point 4: DEx benefit is 'refund' of the output tax paid which may be paid by utilizing input tax credit available with the Suppliers. Refund is to be claimed by the supplier after paying output tax;

e) Point 5: If this Supplier does not want to claim this refund but wants to collect the output tax from Recipient then, the DEx benefit of 'refund' can be claimed by the Recipient; and

f) Point 6: All procedures applicable must be followed and both parties cannot claim the same benefit.

79.3 Care must be taken to verify the eligibility to deemed export benefits, payment of tax by Supplier and then, processing of refund. Points noted earlier regarding recovery of any erroneous demand to be referred for verification purposes.

80 Refund (goods export)

80.1 Export of goods is complete when the goods are taken out of India to a place outside India and refund of input tax credit availed is allowed on completion of export. Customs documentation is relied for verification of completion of export. Shipping bill is an assessment document for exports as per the Customs regulations and another document called 'let export order' is issued by the Customs authorities which gives the exact date of export. Tax invoice in Indian currency is required as per section 31 and export invoice in foreign currency is required for the purposes of Customs and foreign exchange regulations. Getting little familiar with the Customs procedures may be helpful to understand export of goods.

80.2 Section 16(3) of the IGST Act allows two types of refunds for all types of zero-rated supplies, export of goods being one of them. Refund can be claimed for input tax credit claimed but not possible to utilise, as exports do not require output tax payment. Here, unutilised input tax credit is allowed as a refund after completion of

export as per the formula in Rule 89(4). Due procedure for claiming refund of unutilized credit may be followed;

80.3 Another method allowed in case of zero-rated benefits is to pay output tax and apply for refund of the same amount paid. It is important to note that this payment of output tax is by utilizing input tax credit. So, the output tax is paid by credit but refunded in cash to exporter. Verification of export is similar along with the due procedure being followed.

80.4 Export of goods is complete irrespective of whether any payment in foreign currency is received or not. There should be no concern whether export is complete or not in the event foreign currency is not received from the customer outside India. However, it is important to take note that as per Rule 96B any refund claimed after export of goods from India is to be repaid to the government if the foreign currency is not received within the due date prescribed by RBI.

81 Refund (services export)

81.1 Export of services has a very different definition compared to export of goods. Point to be noted about export of services, especially, is about place of supply which needs to be verified while granting refund of export of services. Export of services is also eligible for both refund methods (discussed under export of goods), that is, refund of unutilized credit as per formula as well as refund of output tax paid on exports;

81.2 Due process and steps to verify including timelines are similar with respect to export of goods and export of services.

82 Refund (EOU-EPZ-STP)

82.1 EOU is an 'export-oriented unit' and EPZ is also an EOU but located in an area notified as an Export Processing Zone. STPI is also an EOU but only for software exports or software related services exports. EOUs being one of the four Recipients under 'deemed export', all types of EOUs can claim 'Deemed export benefit'. As discussed under 'deemed exports', the refund of 'tax paid on inputs and inputs services' will be allowed to the Supplier or to the Recipient.

82.2 All points noted in the context of refund of deemed exports including the authorization by the Development Commissioner are applicable, if the goods (and not services) are 'used in operations, to be entitled to claim of refund after verification.

83 Refund (SEZ)

83.1 SEZ is a special economic zone and there are two types of registered persons in SEZ. The Developer of the zone called SEZ Developer and the registered person who takes a premises inside the zone on lease from the Developer called SEZ Unit. All supplies 'to and by' SEZs are always inter-State supply even if the local supplier and the zone (with the Developer or Unit receiving the supply) are in the same State. SEZs (Developer or Unit) are entitled to zero-rated benefit. That is, the local supplier (who is outside the zone) making a supply (of goods or services) will get the consequential benefits 'as if' export outside India is being made. This benefit to

local supplier is called 'zero-rated benefit' and is either refund of unutilized input tax credit (as per formula) or refund of output tax paid on supply to SEZ (without collecting it from SEZ);

83.2 Refund of unutilized input tax credit must always be claimed by the local supplier (outside the zone) making the zero-rated supply to SEZ. But refund of output tax paid on supply to SEZ can be claimed either by the supplier or by SEZ after paying this output tax and claim refund from the Government. If the SEZ Unit has paid the tax, the Unit can claim the refund. But if the local taxable person has paid the tax without actually collecting it from the SEZ, only he can claim the refund of the tax paid on the transaction of supply. The invoice and also the books of account needs to be verified to ascertain the exact nature of payment of tax. It is important to note that refund is applicable only on inputs and input services and NOT on capital goods purchased by SEZ;

83.3 All points noted in the context of export of goods and services are to be verified to the extent relevant in the context of refund to SEZ.

84 Refund (tax wrongly paid)

84.1 Tax not payable may be paid by the taxpayer and then refund claimed. This is also allowed as the Government cannot collect tax which is not applicable. Procedure for claiming this refund requires filing of application within the time limit of 2 years from the month in which it is paid. If this refund is not claimed within the time limit prescribed, refund is NOT payable, and the Government may credit this amount to the Consumer Welfare Fund. Refunds from the Consumer Welfare Fund can be applied by the person who has paid such tax.

84.2 Verification of this claim requires not only the procedure and time limits to be followed but also submission of proof of actual payment and the basis for such payment claimed to have been wrongly made.

85 Refund (excess tax paid)

85.1 Payment of tax in excess does not permit taxpayer to *suo moto* adjust by withholding payment of tax under another transaction. But by a misreading of circular number 26, taxpayers are found to be unilaterally adjusting excess tax payments by withholding tax payment in subsequent transactions or by applying wrong rate of tax. Verification of instances of excess tax payment needs to be taken up so that unpaid tax where such adjustment has been made is suitably demanded and the taxpayer is advised to seek refund of excess payment.

85.2 Payment of tax 'under protest' is a practice under the earlier tax regime which does not find a specific mention in GST law. Any payment in the name of tax requires a prior admission of liability to such tax. Refund claimed of amounts paid 'under protest' need to be verified with respect to period of limitation to claim refund under the procedure prescribed for claiming refund under section 54;

85.3 Refund of amounts deposited pending appeal are duly taken care of in the appeal provisions as well as any delay in repayment of deposited amounts (after successful resolution of dispute) under section 56 relating to interest on delayed refunds. Care

must be taken to identify the nature of excess payment claimed by the taxpayer and the procedure followed for refund in each such instance of payment in excess of actual liability.

86 Refund (cash balance)

86.1 Excess cash in electronic cash ledger can be claimed as refund, if that cash balance is not required for any liability to pay tax. Verification in this case is limited and unjust enrichment does not apply to cash refund claimed. Cash refund may arise if TDS-TCS amounts are not reported by the counterparty and tax is already paid from own sources by the registered supplier and later when TDS-TCS amounts which are equal to cash balance, it would be in excess and eligible for refund. Availability of TDS-TCS certificates in FORM GSTR7A-8A is not sufficient to allow refund of cash balance.

87 Output tax interchange

87.1 Payment of wrong tax does not excuse from payment of right tax. Section 77 of KSGT Act and section 19 of IGST Act, require payment of the right tax, once again. However, without any interest liability along with the relief by way of refund of the wrong tax already paid. Errors in determination of place of supply may result in payment of wrong tax. Verification of questions regarding place of supply noted earlier may be referred to determine, whether payment of right tax along with refund of wrong tax is applicable in a given transaction;

87.2 It is not uncommon to find taxpayers having made a mistake in taking credit wrongly, may report output tax also under the same head so as not to result in loss of credit. Based on the nature of business instances, such errors maybe noted so that compliance under that credit provisions is taken up and not as an interchange of output tax.

88 Cessation or succession of business

88.1 Transfer of business by merger or amalgamation is covered under suitable provisions of section 85. And cessation of business is covered by section 93 and para 4 of schedule II. Verification of any cessation or succession of business is important to identify the correctness of treatment of output tax liability and credit balance of the business;

88.2 Circular 96 may be referred for specific instructions regarding succession of business due to death of proprietor. Care must be taken to verify nature of representation made by the legal heirs regarding continuation or discontinuation of the business carried on by the proprietor before his demise. The verification of compliance is important to identify treatment to be given in respect of credit, if any, remaining in the business and stocks to be subject to treatment under section 29(5) (cancellation of Registration). Treatment under section 18(6) also may be attracted in the event succession of business is treated as a taxable supply. If the business is transferred as a whole, then the same is not liable to tax.

89 Verification of 'outward supply'

89.1 Verification of outward supply is common for all taxpayers across industry segments. This exercise involves review of transactions which amount to supply that are either admitted by the taxpayer or are identified by the revenue authorities. Admitted transactions of supply require verification of 'classification and valuation', as these two aspects affect the amount of tax admitted as the liability on supply;

89.2 Classification involves three steps (i) classification as goods or as services; (ii) classification under the tariff depending on whether they have been classified as goods or as services; and (iii) classification under the exemption notification in case of partial or full exemption as adopted by taxpayer;

89.3 Valuation on the other hand involves two steps (i) finding out whether valuation based on price of the transaction is admissible as per section 15(1) and any adjustments as per section 15(2) or 15(3) are required to be made; and (ii) verification, if there is reference to rules required as per section 15(4) to find out the taxable value or deemed value is applicable as per section 15(5) which is a special provision that is used in limited instances;

89.4 If valuation as per price of the transaction is liable to be rejected then, there is no scope for entertaining actual price paid or payable but reference must be made to the rules to find out which rule is specifically applicable in the given case. In case, option is available to taxpayer under Rule 32, then verification is to be done to check if the option has been availed throughout the financial year without exception. Valuation Methodology prescribed under each of the clauses of Rule 32 may need to be verified;

89.5 If valuation as per deemed value is applicable, even though price of the transaction is available or alternative value as per rules can be determined, due to the legal fiction, valuation according to the deemed value alone must be followed. Verification exercise may be focussed to ensure consistent use of the deemed value to discharge tax. Returns filed by the taxpayer in case of deemed value will reveal a noticeable difference between 'invoice value' and 'taxable value' in the returns;

89.6 It is common that some comparative pricing is followed in the case of supply of goods to related parties including distinct persons. In the case of supply of services, this comparative pricing may not be easily available. Where bought out goods or services from third parties are supplied by a person to his related person, then to compute the value of supply between related parties (including distinct persons), the price paid to the third-party supplier may be acceptable as the open market value. Whereas, in the case of self-generated goods or services, 'cost plus method' (i.e. 110% of cost of manufacturing) may be the most reliable way of arriving at taxable value. Cost Plus method relies upon rule 30/31 and a certificate from an Audit Officer may be relied upon by taxpayer to arrive at such values.

89.7 Analytical verification of outward supply of a Taxpayer is impossible without a sound understanding of the nature of business of such taxpayer. Review of information from industry leaders in the given sector in their annual accounts or other publicly disclosed records would be very valuable to understand how to go about verifying the records of the taxpayer.

89.8 However, while rejecting the value of supply declared by the taxable person and adopting a different methodology as stated above, the principles of natural justice needs to be followed,

90 Verification of 'inward supply'

90.1 Inward supplies also require verification not only for identifying any reverse charge liability but also for verification of supplies to identify the purpose of such inward supplies and determine the nature of outward supplies that these goods or services received may be used for. Verification of inward supplies is also required for ensuring compliance with the conditions specified / imposed related to input tax credit;

90.2 It is true that every inward supply is used for making outward supply, immediately or later by retaining them as inventory. Certain inward supplies may not themselves be directly used for making outward supplies, like capital goods, indirect expenses etc. Examples of such expenses are rental of factory building, services of tax consultant and auditor availed, etc.;

90.3 Inward supplies that are neither used for making outward supply (immediately or later) nor consumed by the taxpayer, may reveal whether further inquiry is necessary into the 'purpose' of these inward supplies. It is common to find a taxpayer, misunderstanding the nature of GST law where such inward supplies may actually be involved in making an outward supply but for consideration in 'non-monetary form'. On one hand the inward supply is admitted to be 'in the course or furtherance of business' but on the other hand it is argued that there is no outward supply involving them, merely because money consideration is not received when they are given away to be enjoyed by a customer or supplier or any other third party. Gold coin given to distributor by the manufacturer or cash-back given to new customer, are some examples of inward supplies that are neither used in making an outward supply nor consumed and enjoyed by the tax payer incurring expenditure on these inward supplies;

90.4 All inward supplies must be duly accounted for in making outward supplies, directly or indirectly, whether consideration is in monetary or non-monetary form. This verification may also reveal inward supplies that are unproductive or unfruitful expenditure of the business. If such expenditure is noticed, further verification into the treatment of such expenditure as 'extraordinary costs' or as 'abandoned project costs' or any equivalent treatment in the books of accounts and for statutory reporting under allied laws, must be done. Such unproductive costs incurred may indicate that the underlying goods or services have not been used in making outward supplies and are effectively 'written off'. Notes from this verification exercise may be relied upon while validating input tax credit, if any, availed in respect of such expenditure.

91 Verification of 'non-monetary transactions'

91.1 Barter or exchange are simple examples of transaction of supply where the consideration is not in the form of money. Such transactions are also liable to GST

even if money is not involved in return for the supply. Care must be taken to identify transactions where the consideration is in non-monetary form and confirm compliance with tax on such transactions. Barter or exchange involves supplies where goods are given in return for services or vice versa. Both the transactions are liable to GST because there are two supplies in barter or exchange. Care must be taken to verify if tax has been paid on both kinds of transaction.

91.2 With the expanded definition of 'consideration' in Section 2(31) (b), it is important to keep in mind that "no business will give something in return for nothing". If something is given then, there must be a return of valuable consideration. For e.g. Gold coin given to a distributor by a manufacturer of television. The gold coin is not given as a charity but as a motivation for making more sales in the next year. Gold coin given by manufacturer is an incentive for marketing services received from the distributor. Inward supply to manufacturer is services and outward supply is gold coin to distributor. Distributor is liable to issue invoice for the marketing services charging GST at 18 per cent percent under SAC 9961 and manufacturer is liable to issue invoice for the gold coin supplied under HSN 71 with GST at 3 per cent;

91.3 Outward supply need not be in an income account but it can be in an expenditure account also, as noticed in the above example where the gold coin given by the manufacturer is accounted as 'business promotion expenses'. Verification of Form GSTR2A and input tax credit register will reveal that something was received by the manufacturer from, say, State Bank of India with GST rate of 3 per cent. Once there is an inward supply, it is to be verified further as to whether the inward supply is (i) consumed by the taxpayer for own use, or (ii) held as inventory at the end of the year or (iii) converted into an outward supply on payment of appropriate GST. An inward supply cannot vanish without an outward supply, directly or indirectly. The only exception is consumables which are used in the manufacture, where they are used in the manufacture of goods while they do not actually form part of such output;

91.4 Verification of supplies in non-monetary consideration requires careful examination of the business of the taxpayer, along with input tax credit register and nature of treatment given in the books of account of the taxpayer. Reversal of credit in such cases does not excuse liability to pay output tax.

92 Verification of 'deemed supply'

92.1 Deemed supply can be verified only by examining whether any of the four circumstances in schedule I, are applicable to the facts of the tax payer or not. Actual transaction by a taxpayer may be different from the fictional transaction required to be treated as per GST law. Books of account will continue to carry actual transaction, but GST treatment will be required in the returns for compliance with tax;

92.2 'Stock transfer of goods' from one branch to another branch can be verified based on e-waybill, delivery challan and transport documents. But 'stock transfer of services' from one branch to another can be ascertained only by verification of vouchers charging the cost centres along with application of law to the activities of a business. FAQ released by the Government for banking sector clearly shows that 'head office'

of a bank is a supplier of services to all the 'branch offices' of that bank and GST is liable on the total cost of running the head office as 'management and supervision services. If this is true for the head office of a bank, then it is equally true for head office of a company or partnership firm running a business;

92.3 In the case of Commission agents who receive only commission income but are assisting in 'purchasing or selling' goods for and on behalf of their Principals, GST law treats transactions between Principal and agent to be 'supply without consideration under schedule I. There are two supplies between the principal and the agent, one related to the goods which is covered under schedule I and the other, provision of service by the agent to the principal. GST is payable on the supply of goods by the principal to the agent, if such goods are taxable and again GST is payable on the outward supply of the goods of the Principal by the agent to the customer, with input tax credit benefit. Further, GST is also payable on the services provided by the Agent to the Principal. Verification of the books of account of an agent will reveal only commission income reported whereas for GST purposes the entire transaction will have to be considered and not as per books of account, given the fiction in para 3 of Schedule I.

93 Verification of 'other income'

93.1 Other income, among other possible kinds, would be of three types generally, namely, (i) accounting treatment as other income or (ii) reduction of expenditure to certain extent or (iii) transactions in the nature of short supply or short payment to the supplier. Verification of other incomes requires identification of each of these three types so that GST treatment can be verified in respect of the last type where either output tax is liable to be demanded or input tax credit, if availed, is liable to be reversed as per Rule 37;

93.2 Other income such as Recovery of expenditure incurred are very commonly reduced from the expenditure account and not shown separately as other income in the financial statements. Verification of these transactions requires examination of expenditure account where there is a reduction due to such 'recoveries'. It is not concealment in the account to reduce the expenditure on account of such recoveries, but it is a general practice according to the rules of accountancy. But, for the purposes of GST even if the expenditure is reduced by the recoveries it could be an outward supply liable to output tax even though, not appearing separately as income in the financial statements.

94 Verification of 'no supply'

94.1 Not only are transactions listed in schedule III, treated as neither a supply of goods nor supply of services, but also value of certain activities listed in Rule 33 that are treated as 'no supply'. Verification is not only required in respect of transactions which are listed in Schedule III but also transactions that claim to be satisfactorily covered by Rule 33. As well known, transactions involving transfer of land is very often carried out by executing general power of attorney which needs to be examined regarding transfer. ;

94.2 Pure agency transactions are allowed to be excluded from the taxable value of a supply but the definition of 'pure agency' requires satisfaction of stringent conditions to come within its ambit which may not be satisfied in all the cases so as to be held as pure agency transactions by the taxpayer. Verification of transactions claimed to be 'no supply' will require examination of the conditions fulfilled prescribed as in rule 33.

95 Verification of 'input tax credit'

95.1 All expenditure incurred by the legal entity are not admissible as inward supplies 'used' in the course or furtherance of business by the taxpayer in order to be entitled to input tax credit . Legal entity may incur expenses that may not be 'in the course of furtherance of businesses. Business expense entitled for input tax credit is not just an expense of the legal entity, but inward supplies 'used' in making outward supplies. Inefficiency in the utilisation of these inward supplies must be differentiated from utilisation of common place for non-business purpose.

95.2 Reference to Section 17(1) makes it clear that inward supplies used for business purpose alone are entitled to credit and any inward supplies 'by' the legal entity that are not clearly and justifiably utilised for business purpose will be classified as utilised for 'other purpose'. In such cases, these inward supplies are barred from credit. Taxpayers operate under the misunderstanding that all expenses incurred by the legal entity, unless credit is blocked under 17(5), are eligible for input tax credit but, that is clearly not the case.

96 Verification of 'apportioned credits'

96.1 Where output tax is not payable then input tax credit is not allowable, except in the case of zero-rated supplies. Verification of any apportioned credits may be carried out based on compliance with Rule 42 and 43. Further verification is required to identify misuse of goods on which input tax credit is claimed by (i) diversion for other than business use or (ii) not using as planned. Where there is such utilization, the input tax credit is liable to be reversed.

96.2 Proportionate reversal of credit also requires verification of 'exempt turnover' due to the inclusion of certain transactions from Schedule III and transactions involving sale.

97 Verification of 'blocked credits'

97.1 Blocked credit is an entire topic of detailed verification under each of the clauses specified in section 17(5). Care must be taken to identify inward supplies listed in each of the cases and to confirm if GST paid on the same are excluded.

97.2 As per clause (a), passenger transport vehicles (below 13 passenger capacity) is blocked for claiming credit. Outward supplies using passenger transport vehicles are allowed in cases such as passenger transport services or driver-training or sale/lease of such vehicles. Margin scheme is applicable only in the case of a taxable person involved in the buying and selling of second hand goods.

97.3 Clause (aa) credit on vessels and aircrafts are also blocked and subject to the same tests and exclusions as passenger transport vehicles.

97.4 Clause (ab) credit in respect of upkeep of passenger vehicles is linked to the test of credit admissibility on such vehicles. That is, if the vehicle is eligible for credit then, inward supplies on upkeep of that vehicle is also eligible for credit.

97.5 Clause (b) credit, there is no 'purpose test' applicable in these inward supplies that are very much required 'in the course of business' but, they are specifically blocked. *Proviso* to clause (b) allows credit on these inward supplies if they are further involved in outward supply. Care should be taken to note the 'placement' of this saving *proviso* as shown in the extract of section 17(5) from the CBIC website as amended by the CGST Amendment Act, 2018:

(*aa*) vessels and aircraft except when they are used—

(*i*) for making the following taxable supplies, namely:—

(*A*) further supply of such vessels or aircraft; or

(*B*) transportation of passengers; or

(*C*) imparting training on navigating such vessels; or

(*D*) imparting training on flying such aircraft;

(*ii*) for transportation of goods;

(*ab*) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (*a*) or clause (*aa*):

Provided that the input tax credit in respect of such services shall be available—

(*i*) where the motor vehicles, vessels or aircraft referred to in clause (*a*) or clause (*aa*) are used for the purposes specified therein;

(*ii*) where received by a taxable person engaged—

(*I*) in the manufacture of such motor vehicles, vessels or aircraft; or

(*II*) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(*b*) the following supply of goods or services or both—

(*i*) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (*a*) or clause (*aa*) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(*ii*) membership of a club, health and fitness centre; and

(*iii*) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.".

97.6 Clause (c) and (d) of section 17(5) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service and Goods or Services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course of furtherance of business. The two exceptions are,- (a) where the expenditure involved in the construction is not capitalised in the books of account and the building is treated as a revenue item or (b) where the expenditure is classified as 'plant and machinery'. Property constructed may be used for business such as office or factory or even let out on rent where the rental amounts are liable to GST, even then the input tax credit is

completely blocked as it relates to immovable property. Verification of the two exceptions requires careful consideration of the accounting treatment given to it as 'revenue expenditure' or capitalised as 'plant and machinery'. Plant and machinery are generally understood as those used in the manufacture or processing of articles.

97.7 Clause (e) All inward supplies by a composition taxpayer are blocked for credit to such taxpayer. On exit from the composition scheme, credit on stocks can be claimed as per section 18(1). On cancellation of registration by the composition taxpayer, reversal of credit under section 29(5) is not applicable due to earlier non-availability of credits;

97.8 Clause (f) all inward supplies of goods or services or both received by 'non-resident taxpayer' are blocked except on 'goods' imported by him;

97.9 Clause (g) Inward supplies 'used for' personal consumption is blocked. This clause clearly indicates that (i) at the time of receipt of these supplies, credit was admissible as they were meant for use in the course or furtherance of business (ii) but after their receipt, there is some 'change of use' and they are actually put to personal consumption. Care must be taken to verify the nature of these inward supplies. In this case it is important to note that if the goods at the outset are procured for personal use, then the input tax credit is not available at the time of their procurement itself. But in case the taxable person, as goods capable of personal use is dealing in the same goods and is not aware of their final use at the time of such procurement and later diverts some of the goods for personal use, the input tax credit claimed earlier shall have to be reversed when the change in use occurs. There are several inward supplies like games room equipment purchased in a people-centric business like BPO-KPO where, right at the beginning the end use is (substantially) for enjoyment by employees and therefore, credit is not admissible. It is important to note that when any credit is admitted by the taxpayer to be on supplies used for 'personal consumption' then, though the said items are treated as fixed assets, they would not be capital goods and as they are used for personal consumption, no input tax credit would be available on the same. Same treatment is to be shown in the Income-tax and audited financials.

97.10 Clause (h)This applies only to 'goods' that are received but later are 'lost, stolen, destroyed, written off or disposed by way of gift or free samples'. Care must be taken to note the difference between 'lost and loss'. Normal loss of raw material during production process is not lost. For this clause to be attracted, the goods must be 'lost, stolen, destroyed or written-off' such that they are no longer available for intended use in business. Written-off means voluntary action by taxpayer that those goods are no longer 'fit for use'. Write-off may be fully done in one year or partly over a few years. But care must be taken to verify the reason for write-off. Depreciation is not write-off. Next part of this clause important to note is 'disposed of by way of gift or free samples. Gifting and sampling can be the 'ways to dispose' of certain goods. Disposal is one of the forms of supply in section 7(1)(a) and also covered in para 1, schedule I as 'permanent transfer or disposal of business assets where input tax credit has been availed on such assets'. Gifts and samples are liable to credit reversal when they are not liable to output tax as a supply.

Tax paid in the proceedings under Sections 74, 129 and 130 will be blocked credit. Care must be taken to verify that tax paid under 74 is not claimed as credit. Similarly, taxes paid under Section 129 and 130 are blocked. It is important to note that tax paid under Section 129 is not levied under Section 9 but due to violation of Section 68.

98 Verification of 'records matching'

98.1 Tax invoice issued by a supplier and reported in Form GSTR-1 will appear in Form GSTR-2A of the recipient. It is important to verify if the total amount of credit claimed by a taxpayer in Form GSTR-3B is matching with the invoices appearing in Form GSTR-2A. However, it is important to note that matching of tax invoice through Form GSTR-2A is not final or conclusive proof of payment of tax by the supplier. Condition specified in section 16(2)(c) is a condition applicable to the recipient who is claiming input tax credit and if this condition is not satisfied input tax credit is denied to the recipient.

98.2 Verification of records matching requires deeper examination as to whether only Form GSTR-1 has been filed or the tax also has been paid by the supplier in respect of input tax credit claimed by the recipient. It is also important to note that inward supplies in respect of ineligible items will also appear in Form GSTR-2A and only credit in respect of the eligible items is to be claimed as credit by the recipient.

99 Verification of 'returns'

99.1 This is a very important exercise to identify timeliness of payment of output tax by the taxpayer. it is important to note that (i) output tax belongs to the month in which the Tax invoice is issued and (ii) input tax credit belongs to the month in which it is claimed in the Form GSTR-3B. In other words, output tax must be paid in the month in which the tax invoice is issued and cannot be carried forward and discharged by utilising input tax credit claimed in later months. Verification of returns requires collating 'monthly' output tax liability and extracting report from portal of credit claimed for each month. Any shortfall must be recovered in cash and not by utilisation of credit.

100 Verification of 'place of supply'

100.1 GST is very commonly understood as a 'destination-based consumption tax' but care must be taken to verify that the question of deciding 'place of supply' is not left to the taxpayer but to the provisions of IGST Act to decide what is the place of supply. Verification of place of supply is important to identify if taxpayer has interchanged IGST with CGST-SGST and vice versa.

100.2 Care must be taken to verify whether such interchanging errors should result in demand of the correct tax again as per section 77 along with grant of refund for the incorrect tax already paid by taxpayer. It is important to note that often excess credit available is utilised by wrong classification of inter-State supply as intra-State supply so as to avoid payment of the correct tax in cash.

100.3 The inadmissible input tax credit which is already availed has to be reversed by declaring as an output tax liability in the month it is noticed along with interest.

101 Verification of 'exports'

101.1 Export of goods being zero-rated supplies also requires careful verification based on 'shipping bill' duly assessed by the Customs authorities. Payment of foreign exchange is not a condition for treating a transaction of supply of goods as an export of goods, in view of Rule 96B, any delay or permanent non repatriation of payment in foreign currency towards export of goods requires verification, in case refunds are claimed in respect of zero-rated supplies;

101.2 Exports of services are difficult to verify other than transactions which are accounted in the books of account or the payment received in their bank account. Apart from verification of documents of export of services, another important aspect to consider is that all transactions with foreign customers where payment is received in foreign currency cannot be accepted as export of services. One of the most important condition to be met in the definition of export of services is, whether the place of supply is outside India or inside India. If all the other conditions of export of services is satisfied but the place of supply as determined by section 13 of the IGST Act is not outside India then such a transaction will be inter-State supply liable to GST and none of the benefits of zero-rated supply will be available in such cases;

101.3 Verification of the place of supply requires understanding of the nature of the corresponding contract and the work involved in such contract, to determine based on the principles in section 13, if the transaction is really export of services or an inter-State supply liable to GST.

102 Verification of 'imports'

102.1 Import of goods must be verified based on the bill of entry assessed by Customs authorities. Import of goods may be under a sale or lease arrangement. If the import of goods is under a lease arrangement, care must be taken to verify if GST on RCM is paid on every lease instalment according to time of supply.

102.2 Imports of services require greater care and attention because there is no proof of movement of services to verify the liability to GST. Verification must follow overseas payment based on bank account transactions. Another source of information for verification of import of services is, income-tax TDS on accounting of liability to make payment in respect of import of services.

102.3 Transactions between a distinct person in India and a branch office or a project office or a representative office located outside India but belonging to this distinct person, requires more careful verification of import of services by legal fiction under para 4, schedule I. GST is not only applicable on transactions which are accounted in the books of account but also transactions which are omitted to be accounted in the books of account because such transactions between the office outside India and the distinct person in India are consolidated at the end of the year.

103 Transition credits Section 140(1)

103.1 Verify last returns filed under earlier tax regime within the due date and in a valid manner as prescribed under those laws.

103.2 Verify, if any amendments are made after filing the last returns by referring to the statutory last date for making amendments.

103.3 Collect confirmation that no amendments are made so that in future, if any amendments are discovered this confirmation can allow action under section 74.

103.4 Verify if the taxpayer has regularly claimed refund (like exporters, etc.) under earlier laws from any of the earlier returns. If so, note that the time limit permitted for claiming refund is one year in Service tax, and verify whether any refund applications are filed in respect of the closing balance of credit in the last returns. Both refund as well as transition credit cannot be claimed; therefore, choice to claim refund results in forfeiture of transition credit. If any part of the credit claimed is disallowed in the refund process then, taxpayer will lose the transition credit as well as refund of the unutilised credit (see *proviso* to s.142(3)).

103.5 Satisfy that the closing balance of credit is the final amended balance after adjusting for any reversal on account of refunds claimed. And then verify if this closing balance is included in FORM GST TRAN-1 declaration filed within the due date of "27th December, 2017" and the same is reflected in the common portal as CGST or SGST, as applicable.

104 Transition credits Section 140(2)

104.1 Under the Central Excise provisions, applicable to manufacturers and service providers, credit on capital goods was allowed partly in the first year of purchase and balance in subsequent years. Where capital goods are purchased under the earlier tax regime and only part of the credit was claimed as per above provisions, balance available credit is allowed through transition process as CGST credit.

104.2 Verify total capital goods credit available as per the invoice and extent of credit already claimed in earlier years. Confirm that balance of credit was not availed earlier by verifying returns filed earlier and compare them with credit balance in books of account where unclaimed balance of credit must be reported as outstanding credit to be claimed in future.

104.3 Verify that the balance portion of credit only is included in FORM GST TRAN-1 declaration filed within the due date of "27th December 2017" and the same is reflected in the common portal as CGST (and not SGST credit).

105 Transition credit Section 140(3)

105.1 Verify that credit of central tax as well as state tax, paid under earlier tax regime (but not claimed earlier) is only included as transition credit.

105.2 Credit not claimed earlier should be due to goods (inputs only and not capital goods) (i) used by manufacturer of finish products that were exempt from Central Excise duty,(ii) used by a provider of services exempt from service tax, (iii) works contractor opting to pay service tax under 26/2016-ST dated 20th June, 2012 (and not under abatement method as per Valuation Rules) (iv) central excise registered trader

(called first stage or second stage taxpayer and importer or depot of manufacturer). Verify each of these four categories specifically for any mistakes.

105.3 Verify the closing stock statement of these inputs as on 30th June 2017 and confirm that purchase is not more than one year old by reviewing the invoices which are to be maintained by taxpayer for verification purposes.

105.4 Verify that this credit is included in Form GST TRAN-1 declaration filed within the due date of "27th December 2017" and the same is reflected in the common portal as CGST (and not SGST credit).

106 Transition credit Section 140(3) *proviso* (WITHOUT INVOICE)

106.1 In the same cases as above where invoice is not in the possession of the taxpayer then, special scheme under *'proviso'* is available where transition credit is allowed even without the tax payer having invoice in his possession as follows:

a) Output **CGST** is "more than 9 per cent" then, deemed credit of **"60 per cent"** of the output tax paid will be allowed.
b) Output **CGST** is "less than 9 per cent" then, deemed credit of **"40 per cent"** of the output tax paid will be allowed.
c) **Output IGST** is "more than 9 per cent CGST" then, deemed credit of **"30 per cent"** of the output tax paid will be allowed.
d) **Output IGST** is "less than 9 per cent CGST" then, deemed credit of **"20 per cent"** of the output tax paid will be allowed.

106.2 Even if any invoice is not in the tax payer's possession, quantity of goods must be lying in stocks which are used to make a taxable supply in the GST. Verify the stock records as on 30 Jun 2017 along with the forward verification of date of actual sale of those goods made with payment of GST.

106.3 Verify outward supply is made within **"six tax periods of GST"** to claim transition credit. In other words, output GST must be paid and then percentage-based claim of transition credit to be claimed.

106.4 Verify that this amount is claimed by Form GST TRAN-2 declaration filed within the due date of "31st March 2018" and the same reflected in the common portal as CGST (and not SGST credit).

107 Transition credit Section 140(5)

107.1 Invoice issued with tax under the earlier laws received after introduction of GST is allowed to be claimed within 30 days. Verification of credit under this provision requires to identify tax paid under law, central tax or state tax, and corresponding credit claimed through monthly returns;

107.2 Time allowed for this credit is maximum 30 days, that is, 30th July 2017 to claim credit under GST even though tax paid is not GST. Verification of time limit is very important to identify all credit claimed based on date of invoice which should be "before 1st July 2017" and included in the GST returns for the month of July. Verify cases where delay in filing return for the month of July includes credit under this provision;

107.3 Taxpayer is required to maintain a statement of all such invoices so that there are no claims made under this provision in respect of credit that could not be claimed under earlier laws.

108 Transition credit Section 140(6)

108.1 Taxpayer paying "fixed rate or fixed amount" based tax under earlier tax regime is entitled to claim the credit of inputs held in stock on "30th June 2017". Verification of the eligibility to this scheme along with the stock statement as on the transition date is important;

108.2 Conditions applicable to the claim of credit includes inputs held in stock and not capital goods or input services, invoice in respect of such inputs is available and not more than ONE year old and the output supplied by taxpayer liable to tax under GST (other than composition);

108.3 Verify to ensure that the eligible portion of credit only is included in FORM GST TRAN-1 declaration filed within the due date of "27th December 2017" and the same is reflected in the common portal as CGST and SGST, as appropriate.

109 Transition credit Section 140(7)

109.1 Central tax follows a system of distributing credit in respect of services received under "input service distributor" scheme. Any credit available for distribution under this scheme is permitted to be distributed after the introduction of GST;

109.2 Verification is required in respect of the eligible credits for distribution and the time limit for completing the distribution immediately after introduction of GST;

109.3 ISD scheme being available for related party transactions only, care must be taken to ensure the distribution is completed immediately after introduction of GST without delay.

110 Transition credit Section 140(8)

110.1 Transition credit already discussed under s.140(1) and s.140(3) may be available to a taxpayer with centralised registration under earlier laws who is now permitted to take closing balance of credit eligible under these two provisions as on "30th June 2017" and it must be claimed by any of the "distinct persons" by suitable method of allocation out of the total transition credit balance;

110.2 Points of verification noted earlier are to be followed for verification of transition credit under this provision also. Delay in filing of last returns under the earlier tax laws by more than 3 months after introduction of GST will result in loss of credit available for transition;

110.3 Credit to be claimed should not be ineligible under GST laws. Verification exercise to cover eligibility conditions under GST in respect of transition credit also should be followed.

111 Transition credit Section 140(9)

111.1 Similar to rule 37, delay in payment to supplier attracted reversal of central tax paid under the earlier laws. Tax reversed under earlier laws can be taken back provided payment to the supplier is made within 3 months from introduction of GST;

111.2 Verification of credit claimed back under this provision requires verification of the date of payment to the supplier. Total payment to the supplier cannot be accepted without invoice-to-invoice confirmation of payment, for allowing recovery of reversed credit under this provision;

111.3 Credit not recovered under this provision within 3 months by making payment to the supplier results in total loss of the credit.

112 Transition steps on stock with job-worker under Section 141

112.1 Goods sent to a job worker under the earlier laws must be received back within 6 months after introduction of GST. Goods not received back within this limit of 6 months, attracts reversal of credit in the hands of the Principal. Verification of Principal claiming credit on goods recorded in the stock statement on "30th June 2017" stated to be lying with job worker requires confirmation of the date of return of the processed goods by the job worker. Return of processed goods by the job worker but, after lapse of 6 months from introduction of GST can be condoned by additional 2 months by the Commissioner. Without condonation, processed goods received back after 6 months or goods not at all received result in recovery of credit on proportionate basis claimed by the Principal;

112.2 This provision is applicable not only for raw materials, but also for semi-processed goods sent for job work. Verification required in the case of raw materials or semi processed goods for comparison with processed goods received back requires understanding of the "input: output ratio" from each process carried out by the job worker;

112.3 Goods sent for 'testing or other processes' must also be brought back within six months from the introduction of GST in order not to attract recovery of the credit already claimed and included in the transition process.

113 Transition steps Section 142

113.1 After following the transition process, in respect of goods supplied under the earlier laws that are returned back within 6 months after introduction of GST, tax paid under earlier laws is eligible for refund of those taxes paid. Care must be taken to verify if the sales returns during the GST regime are not reduced from the total turnover if the sale was made under earlier regime;

113.2 Any additional amount received after the introduction of GST in respect of sales or services provided earlier with applicable taxes under the earlier laws, such additional amount will be liable to GST. Verification of the additional income received need not have any supply, if supplies are already completed under the earlier tax regime. For any reduction of invoice value issued under earlier laws, credit note may be issued with a reduction in GST, even though no GST was paid on the original invoice issued. Care must be taken to verify all such debit notes and credit notes issued in respect of overlapping transactions;

113.3 All claims under earlier laws including assessments, reassessment, appeal or refund to be treated in accordance with the earlier laws after transition credit has been claimed in respect of closing balance as discussed earlier. Transition of closing

balance once completed cannot be reopened for any adjustment or amendments. Reduction of transition credit is permitted but there is no provision to demand interest on reversal of excess transition credit taken that is not utilised;

113.4 Section 142(11) is a very important provision to note where "overlapping transactions" are specifically discussed. Whichever is the correct tax, whether earlier laws or GST, the correct tax must be paid and any instance of payment of the wrong tax will result in a 'second demand' of the correct tax. If VAT is applicable due to transfer of property being completed but, tax invoice issued under GST regime will not justify payment of GST instead VAT must be paid, even if GST has also been paid due to this misunderstanding;

113.5 In the case of works contracts, where VAT and service tax is already paid, but the tax invoice is issued under GST regime then, VAT and service tax already paid will be granted as an 'abatement' from the total GST liable to be paid on this invoice. Care must be taken to verify that total tax collected from the customer is not more than the total tax payable due to this treatment in transition provisions.

114 Cash balance refund

114.1 Excess cash deposit in the electronic cash ledger without any further requirement of cash balance to discharge output tax liability is available for refund with limited verification before sanction. Care must be taken to verify briefly the reasons for excess cash deposit. Following is the list of cases where high cash balance is claimed as refund:

a) Delay in getting TDS-TCS credit on portal but monthly tax already paid by supplier from own funds.
b) Overestimation of month-end net tax liability when the actual liability is low.
c) Cash deposited to pay penalty under section 129 after order in Form GST MOV-9 is passed but demand in FORM GST DRC-07 is not uploaded on the portal.
d) Cash deposits from unusual 'transfer in' bank account from other taxpayers done by mistake.
e) Demand in FORM GST DRC-13 inadvertently deposited by third-party into cash ledger of taxpayer; and
f) Any inadvertent cash deposits by taxpayer.

114.2 As can be seen from the foregoing, not all the reasons for excess cash balance claimed as refund appears to be 'inadvertently excess'. However, in *bona fide* cases refund may be granted with limited verification. Verification is limited in the case of refund of balance in the electronic cash ledger. Still, due process of filing application for sanction of refund must be followed. Basic conditions for claiming refund are as follows:

Basic requirements	Compliance acceptance
Time limit to file refund application	2 years from 'relevant date' as per explanation 2 to s.54
Application form for refund	RFD1A manual and RFD1 online (after 23 Sept 2019)
Supporting documents	Annexure 2 CA/CMA certificate (claim above 2 lakhs)

114.3 Additional conditions for claiming refund applicable in different cases are as follows:

Refund type	Additional requirements	Compliance acceptance
Exports	Forex repatriation statement	eBRC/FIRC from bank
	Statement of exports	Shipping bill assessed by Customs
	Undertaking to repay refund sanctioned if credit found inadmissible	Circular 24/2017
	Undertaking that no prosecution involved to bar provisional credit	Rule 91(1)
Supplies to SEZ (developer or unit)	Proof of entry into zone and used for authorized operations	Endorsement of tax invoice by SEZ Authority
	Undertaking of 'no double claim' but supplier and SEZ-recipient	
Deemed exports	Proof of receipt of goods by license-holder (AA / EPCG) or EOU-STP unit	Circular 14/14/2017
	Declaration that input tax credit 'not availed' by recipient	
	Declaration of 'no claim' by recipient to allow supplier to claim refund	

115 Refund due to export (goods) with payment of tax

115.1 Exports are zero-rated supplies and it is the policy that all zero-rated supplies must be free from any burden of GST on the inputs, input services, capital goods and on the outward supplies. This policy is implemented under multiple schemes and care must be taken not to focus on the policy but on the procedure under which taxpayers are required to claim refund and establish the completion of zero-rated supplies to allow the benefit of refund in the manner prescribed for the specific scheme chosen by the taxpayer. This is common for all zero-rated supplies and must be taken due note of, while verifying refunds already sanctioned.

115.2 Exports of goods have one reliable document for verification, that is, Shipping Bill assessed by the Customs authorities at the port of export. Shipping bill is an assessment order for classifications and valuation aspects relating to export of goods under Customs law. Once the export is completed at the port of export, ICEGATE software where the Shipping Bill (SB) will be filed, is assessed and approved. On completion of export of goods, Customs authorities issue an order called 'let export order' or LEO which is the date of completion of export. This data is to be reported in Table 6A of Form GSTR-1. But where SB data is not available on the date of filing GSTR1 (due to delay in issuing LEO) but tax invoice is already issued on the date of movement of goods from place of business of taxpayer, amendment of Form

GSTR-1 in subsequent month is permitted in table 9A (to reopen old table 6A fields and update SB details);

115.3 Although export of goods are zero-rated supplies and GST is not payable on zero-rated supplies, it is permitted for the exporters to pay GST at the rate applicable to the goods being exported without passing on the GST burden to the foreign customer, and then, file refund application to collect back the GST amount paid. Payment of GST on export of goods is not in cash but by debiting the balance in electronic credit ledger. After completing export (discussed above), the amount debited is allowed to be claimed as a refund in cash. This is the procedure to return-back any GST paid by the exporter on the inward supplies (whether on inputs, input services or capital goods). Verification of refund of GST paid on export of goods does not require verification of admissibility of input tax credit but only verification of the proper debit of the amount of GST applicable on the goods exported and compliance with Customs procedures regarding export of goods. In case any ineligible credits are included in the electronic credit ledger and payment of GST on export of goods is by debiting such balance in electronic credit ledger, verification of refund is not the procedure under which ineligible credits are to be questioned but by undertaking separate audit proceedings under section 65 where necessary verification of credits claimed may be taken up.

115.4 Another important aspect to keep in mind is, the definition of 'export of goods' in Section 2(5) of the IGST Act, which does not have any condition regarding payment to be realised within certain time limit. Therefore, whether payment is received from the foreign customer or there is a default in payment for the export by the foreign customer, as soon as customs assessment is completed the tax payer is eligible for refund of the tax paid on the export. This refund being an indirect way of collecting back input tax credit lying with the tax payer, there is a new rule 96B that is introduced on 23 March 2020. This rule requires repayment voluntarily along with interest of all refund made in respect of export of goods under this scheme of 'payment of tax on export'. There may be questions whether this rule will have retrospective or prospective effect but, as a measure against avoidance of tax and improper claim of refund, it is widely believed that non-payment of export proceeds in respect of exports 'with payment of tax' basis, refund sanctioned is liable to be recovered retrospectively under this method or scheme of 'with payment of tax', must extend to verification of subsequent realization of export proceeds;

115.5 Realization of export proceeds is required to be made in foreign currency and within the time limit permitted by RBI. Where the export proceeds are received but currency conversion has taken place outside India and as per the certificate of realization of export proceeds given by the bank in the form of electronic bank realization certificate (e BRC) or foreign inward remittance certificate (FIRC) then, rule 96B will not be complied with due to realization of export proceeds in Indian currency. There are specific countries with which India has an agreement and RBI has issued specific circulars that exports to these countries (Nepal, Bhutan, etc.) will be treated as exports even if payment is received by Indian exporters from customers in Indian currency. The taxpayers need to produce all the necessary permissions of

RBI where there is any delay in realization of export proceeds or where there is any extension granted in special cases or where realization in Indian currency is specifically permitted. Unless such permissions and relaxations are not produced, refunds sanctioned right from 1st July 2017 are liable to be recovered. It is interesting to note that rule 96B contains a further relaxation to return the recovered refund amount to the taxpayer in the event export proceeds are realised after the time limit allowed but subject to maximum 3 months or as permitted by RBI.

116 Refund due to export (services) with payment of tax

116.1 Export of services is also permitted under the similar scheme 'with payment of tax'. Without repeating all the points mentioned above, in the context of export of goods with payment of tax, differences and special features are discussed here. Definition of export of services in Section 2(6) of IGST Act not only contains the requirement that 'place of supply' must be outside India but also a condition that 'payment for the exports' must be received in foreign currency. The only relaxation allowed is, where there is an agreement between India and the foreign country and RBI has permitted exports against payment in Indian currency from those countries.

116.2 In addition to all the points of verification discussed above, in the context of export of goods one of the most important points to verify in relation to export of services is about the 'place of supply'. Merely because payment is received in foreign currency, it does not mean that that supply is an export. This is a common misunderstanding among taxpayers borrowing the understanding from RBI regulations where currency of the transaction is treated as primary factor, but GST does not make currency the primary factor, The definition of export of services must be satisfied in each and every case before being accepted as export;

116.3 Regarding the aspect of 'place of supply' it is important to note that place of supply is not the location of the recipient outside India who is makes payment to the Indian exporter but the provision in section 13 of IGST Act which determines the place of supply. A good example can be section 13(8) where services provided by a supplier in India to a customer (recipient) outside India is still treated to have its 'place of supply' in India itself. In such cases, even though payment is received in foreign currency, the transaction does not get recognised as export of services. Verification of the place of supply is an important aspect in respect of refund sanctioned under this scheme (with payment of tax on export of services) not for supplies listed in Section 13(8) but also supplies covered by other provisions of Section 13(3), etc., where the place of supply is determined to be inside India;

116.4 Another important aspect of the difference between export of goods and export of services is that, in the case of export of goods if the payment is not received as prescribed, the transaction will not become taxable, but any refund sanctioned will be repayable. However, in the case of export of services, if the payment is not in foreign currency, the transaction will be taxable as an inter-State outward supply in addition to any refund sanctioned becoming repayable. This aspect is to be included in the process of verification of refunds sanctioned in the case of export of services 'with payment of tax'.

117 Refund due to supply to SEZ (goods) with payment of tax

117.1 Supply of goods to SEZ is also included in the definition of zero-rated supply and the benefit of refund where goods are supplied by a local supplier to a customer inside SEZ with payment of tax' is allowed not only to the local supplier but as an option even to the SEZ-recipient. It is important to note that the registered person inside the SEZ maybe the developer of the SEZ or a unit operating in the SEZ by taking the premises on lease from the developer. These registered persons are called SEZ-developer and SEZ-unit. Points mentioned earlier in the context of export of goods may be referred in the context of supply of goods to SEZ (to the developer or unit);

117.2 Where a local supplier chooses to claim the zero-rated benefit in respect of supply of goods to SEZ 'with payment of tax', the local supplier will be required to supply the goods and pay the output tax applicable but without actually collecting the output tax from the SEZ customer. Procedure for filing application and claiming refund of output tax paid on zero-rated supply of goods is similar to exports or to SEZ but, the statement required to be submitted along with the application is different. Points noted later regarding the summary of all the statements applicable for different kinds of refunds may be referred in the case of supply of goods to SEZ 'with payment of tax' and refund claim being made by the local supplier;

117.3 Refund that a local supplier is entitled to claim under the scheme of supply of goods to SEZ 'with payment of tax' contains an option where the local supplier can, (i) give up claim to refund, (ii) collect output tax from the SEZ customer, (iii) provide proof of payment of this output tax to the government and (iv) enable SEZ customer to apply for refund of tax paid to the local supplier in respect of the supply made to SEZ. Verification of refund sanction in case of any claim filed by SEZ (developer or unit) includes verification of double claim, if any, by both parties inadvertently;

117.4 Most important aspect to verify in the case of supply of goods to SEZ is to ensure that the said goods are approved by the SEZ Authority to be 'used in authorised operations'. Care should be taken to note that refund of output tax is not limited to the conditions applicable for input tax credit but the condition of approval by the SEZ Authority whether the goods are approved or not approved based on the nature of SEZ activities and decided to be required for 'use in authorised operations'. Basis for deciding as to whether goods are entitled for approval by the SEZ Authority as required for 'use in authorised operations' is not contained in GST law but contained in the SEZ Act. Proper Officer is required to rely on the decision of the SEZ Authority and not question the decision taken by the Authority where approval is granted. Verification is only for the endorsement on the tax invoice (issued by local supplier) as permitted for entry into the zone along with 'use in authorised operations';

117.5 Common mistakes regarding supply of goods to SEZ are to only focus on (i) tax invoice being issued to the SEZ customer and (ii) physical delivery of goods inside SEZ area. But, supply of goods to the SEZ requires or refers to, (a) tax invoice issued to the registered person with address of a SEZ area, and GSTIN should be to

this address (b) physical delivery of goods inside SEZ area (c) endorsement of the tax invoice by the SEZ Authority of permitting entry into the zone along with 'used in authorised operations' and (d) tax charged on the tax invoice is IGST only. All these four conditions are required to be satisfied for a supply of goods to be accepted for the purposes of refund of the output tax paid by the local supplier or allowing option for SEZ customer to claim refund of tax so paid under the scheme of refund on supply of goods to SEZ 'with payment of tax'. It is very common to find one of the four conditions required (for supply of goods to SEZ) to be missed due to misunderstanding and misapplication of the benefit of the scheme;

117.6 Points explained earlier regarding verification of eligibility to claim input tax credit is not open for examination in the case of refund of output tax paid in respect of supply of goods to SEZ 'with payment of tax'. Other points mentioned in the context of export of goods 'with payment of tax' and claim of refund of such tax may be included in the verification of refund under this scheme also.

118 Refund due to supply to SEZ (services) with payment of tax

118.1 All the points discussed earlier regarding supply (of goods) to SEZ are to be considered while verifying supply of services to SEZ. Care must be taken to verify supply of services as there is no verifiable trail of documents regarding physical movement as available in the case of supply of goods. The only verification that is possible in respect of supply of services to SEZ is the endorsement by the SEZ Authority on tax invoice issued (by the local supplier of services) regarding 'use in authorised operations'. As stated earlier, decision of the SEZ Authority is final regarding admission of services into zone and admissibility of refund under this scheme;

118.2 Even in respect of supply of services to SEZ, refund of output tax paid by local supplier may be claimed (i) by the local supplier or (ii) by the SEZ customer. It is important to note that supply of services is not purely services, but also composite supplies treated to be services as per schedule II such as works contract, leasing of equipment, software development services, intellectual property services, etc. It is important to reiterate that, the 'eligibility' conditions applicable to input tax credit is not to be applied for verification of eligibility to scheme for refund of output tax paid on supply of services to SEZ. Endorsement issued by the SEZ Authority on the tax invoice issued by local supplier is the conclusive document for eligibility to refund under the scheme;

118.3 Definition of 'services supply' to SEZ does not have the additional conditions of place of supply or payment in foreign currency. Supply of services to SEZ is always inter-State supply as per section 7(5)(b) read with *proviso* to 8(2) of IGST Act even when the location of local supplier and SEZ are in the same State. Supply of (rental or leasing) services by SEZ developers and SEZ unit in the same zone are also considered as inter-State supplies as per these provisions of IGST Act.

119 Refund of unutilized credit (export of goods) without payment of tax

119.1 The export of goods 'without payment of tax' is a totally different scheme for granting benefit from the burden of tax in case of exports. Points noted earlier regarding verification of customs assessment procedures for determination of export of goods is applicable even under this scheme. However, refund is not in respect of any output tax paid but proportionate input tax credit availed and lying unutilised due to zero-rated exports undertaken. As a scheme for refund of unutilised input tax credit, it is first important to determine whether the balance of credit is valid and admissible before applying the formula for determining what proportion of this balance is eligible for refund;

119.2 All the checks and balances for determining eligibility to input tax credit such as pre-conditions for taking credit provisionally and post-conditions that can deny credit provisionally taken as well as blocked credits need to be verified. Any amount of ineligible credit included in 'net input tax credit' would amount to erroneous sanction of refund. Further, inclusion of ineligible credits would itself indicate wilful misstatement by taxpayer, knowing fully well that ineligible credits should not be taken at all, leave alone include them for claiming refund;

119.3 All exports (goods or services) without payment of tax require that 'letter of undertaking' or 'bond' be executed for every financial year. Omission or delay in executing LUT does not affect the export but must be regularised prospectively. No demand for tax should be made for failure due to executive duty (para 49, master circular 125), at the same time non-compliance with this statutory requirement should not be allowed to continue without being regularised at the earliest. Verification of exports includes verification of LUT to confirm the scheme of refund chosen by the taxpayer;

119.4 Care should be taken to verify compliance with the following aspects:

a) Correct calculation of formula as per rule 89(4) of the KGST Rules, 2017.
b) export turnover is not on billing basis but on realization basis;
c) brought forward balance of foreign currency realised and carried forward balance of foreign currency for each month/quarter need to be monitored on a cumulative basis so that 'double counting' of same amount realised does not take place in two refund claims;
d) matching of invoices with Form GSTR-2A; and
e) all basic and additional requirements listed earlier.

120 Refund of unutilized credit (export of services) without payment of tax

120.1 In addition to the requirement of LUT, verification of satisfaction of definition of export of services is required even under this scheme as credit is claimed as refund. Points mentioned earlier regarding verification of realization of payment in foreign currency and verification of place of supply are two important points to note;

120.2 All points to verify, that are listed in the context of refund of unutilised credit against export of goods are also applicable for export of services as the refund claim is under the same provisions of rule 89(4) of KGST Rules, 2017.

120.3 As in the case of refund of unutilised credit, all conditions related to claim of input tax credit are required to be verified in the process of sanction of refund under the scheme.

120.4 Refund of unutilized credit (goods to SEZ) without payment of tax

120.5 Although similar to export of goods, supply of goods to SEZ is very different for the purpose of verification of refund sanctioned. Export of goods is limited to taking the goods outside India, but supply of goods to SEZ extends to (a) tax invoice issued to registered person with address of SEZ area and GSTIN should be to this address (b) physical delivery of goods inside SEZ area and (c) endorsement of tax invoice by the SEZ Authority for permitting entry into the zone along with 'used in authorised operations'. Benefit of refund of unutilised credit is available only to local supplier making supply of goods to SEZ and not to the SEZ (developer or unit) itself;

120.6 All points to verify listed in the context of refund of unutilised credit against export of goods are to be verified in this scheme also in addition to verification of entitlement to input tax credit before being eligible for refund claim.

121 Refund of unutilized credit (services to SEZ) without payment of tax

121.1 Supply of services to SEZ requires verification of completion of supply based on the endorsement of tax invoice by the SEZ Authority. All points mentioned in the context of refund, on supply of goods to SEZ are to be verified in this context also;

121.2 Refund of unutilized credit cannot be claimed by a SEZ (developer or unit) but only the supplier making such supply is entitled to this scheme.

122 NO REFUND of unutilized credit (SEZ developer to SEZ unit)

122.1 All though it may seem like a repetition, it is important to reiterate that supply of goods or services between two SEZ registered persons, namely, developer and unit or one unit and another unit (in same or different zones) would always be inter-State supply. When all inward supplies are already zero-rated, there remains nothing more to claim input tax credit by a registered person operating in SEZ. Care must be taken to ensure that registered person operating in SEZ does not claim both benefits, that is, exemption on inward supplies (directly to the local supplier or indirectly by refund to SEZ customer) as well as input tax credit in respect of inward supplies that have failed to satisfy the SEZ authority so as to issue endorsement towards 'use in authorised operations';

122.2 It is interesting to note, passenger transport vehicle purchased by the registered persons in SEZ is not allowed as zero-rated benefit for purchase of such vehicle whereas, inward supply of civil construction works and related goods and services are allowed zero-rated benefit to the developer and SEZ unit.

123 Refund of deemed exports (to Supplier)

123.1 Verification of 'deemed export' requires confirmation that the recipient of supply is listed in the KGST Notification 17/2017 – FD 48 CSL 2017 dated 19th October 2017 and there is necessary pre-authorization for purchase from the jurisdictional Development Commissioner of the recipient. The Development Commissioner

determines the inward supplies eligible to the deemed export benefit. Supplies given 'deemed export' recognition are:

Table

S.No.	Description of supply
(1)	(2)
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

123.2 Deemed export in respect of output tax is only on 'goods' (not services) supplied to any of the four categories of recipients. Output tax applicable on goods supplied by the local supplier are first collected by the Government and then returned as a refund under the scheme. This refund is granted to the local supplier subject to the condition that output tax is not recovered from the recipient of the supply. Alternatively, recipient of the supply is granted the refund subject to the condition that local supplier has deposited this tax with the Government and does not claim the refund once again;

123.3 In this scheme, pre-authorization of the supply to the eligible recipient as decided by the Development Commissioner is the final word in the matter of eligibility to refund. Verification of refund sanctioned requires examination of:

a) approval by the Development Commissioner;
b) deposit of tax on outward supply by the local supplier;
c) confirmation that the eligible recipient of the supplies has neither claimed refund nor the input tax credit of the output tax amount;
d) all other basic and additional requirements relating to refund including timelines and application along with enclosures in prescribed format.

124 Refund of deemed exports (to Recipient)

124.1 Without repeating the procedures and verification steps involved in refund of deemed exports, it may be pointed out that in the case of refund claim by eligible recipient, care must be taken to verify:

a) output tax payment has been made by the eligible recipient;
b) local supplier has deposited the tax on outward supply;
c) local supplier has not claimed the refund under the scheme; and
d) input tax credit of the amount claimed as refund is not claimed by the eligible recipient in addition to the refund.

125 Refund of inverted tax

125.1 Another beneficial scheme where rate of tax on inward supply is higher than the rate of tax on outward supply. Government has maintained rates of tax to be lesser on basic materials and higher on processed materials, however certain products may have a higher rate of tax on inward supplies compared to the lesser rate of output tax on outward supplies. This scheme of refund of excess credit requires selection of

'higher rate' inward supply of inputs that are involved in 'lower rate' outward supply. This is referred to as 'inverted rate structure' in the business of taxpayer. Verification of inverted tax refunds sanctioned, is required primarily in the following areas:

a) only inputs on goods must be taken for comparison for inverted rate and not input services or capital goods;
b) outward supplies may be goods or services;
c) ratio of 'high rate' inputs out of all inward supplies in the outward supply is the objective of the formula in rule 89(5); and
d) all basic and additional requirements listed earlier.

125.2 Key areas of misunderstanding by the taxpayers in claiming refund under this scheme have been:

a) inclusion of input services for claim of inverted rate refund;
b) articles specifically barred from this scheme by the KGST Notification 05/2017-FD 48 CSL 2017 dated 29th June 2017 and the KGST Notification 15/2017-FD 48 CSL 2017 dated 29th June 2017 are also included in the claim;
c) failure to verify matching of credit before including them in the refund claim;
d) claim of refund under the scheme results in reduction of claim of input tax credit under zero rated benefit scheme being missed out and refund claimed twice; and
e) incorrect utilisation of different heads of input tax credit resulting in incorrect accumulation of credit resulting in erroneous claim of refund.

125.3 An extension of this 'inverted rate structure' refunds is followed in the case of supply of goods only (not services) for further export by traders holding export orders. This back-to-back arrangement is found in the KGST Notification 40/2017-FD 48 CSL 2017 and 41/2017-Int.(R). Under these notifications total output tax applicable is '0.10 per cent' so that all inputs used by the supplier (attached to the exporter) have an inverted rate structure. Verification of such refunds sanctioned requires to comply with the same areas identified above;

126 Exporters claiming '0.1 per cent' scheme for inward supplies are not permitted to avail refund under the scheme for export of goods 'with payment of tax'. This point may be referred for verification of refund on export of goods.

127 Errors Master, for verification exercise

127.1 Verification of business activities of any taxpayer requires the preparation of a "errors master" which basically refers to typical areas of error committed by a taxpayer in interpretation of GST law and in discharge of liability admitted. The reason why such an errors master will be helpful is because where tax is admitted and paid, any errors will relate to misinterpretation of rate of tax or valuation. But more serious errors can be identified if transactions that are stated to be 'non-taxable' are taken up for verification. Such non-taxable transactions are very often not even reported in the monthly returns and even in the annual returns, due to understanding that anyway tax is not payable on them;

127.2 Verification of non-taxable transactions requires deep appreciation of the business of taxpayer. Understanding of the business of taxpayer will help in identifying the 'likely' areas where taxpayer may have misinterpreted the law and that is why this 'errors master' may be prepared. Exchange of information among Officers will help each other based on their knowledge about respective industry sectors.

* * * * *

GUIDE TO GST ACT PROCEDURES
(Karnataka GST Act, 2017)

Chapter No.	CONTENT	Page No.
	Guide To GST Act Procedures	**139**
Chapter 11	New in GST	**140-143**
Chapter 12	Provisional assessment	**144-146**
Chapter13	Scrutiny of Returns	**147-149**
Chapter14	Assessment of Non-Filers	**150-153**
Chapter15	Assessment of Un registered persons\	**154-156**
Chapter16	Summary Assessment	**157-159**
Chapter17	Audit by Department	**160-162**
	Web-Links	**163**
	ANNEXURE -1	**164-165**

GUIDE TO GST ACT PROCEDURES

(Based on the Karnataka GST Act, 2017)

CHAPTER-11

New in GST

11.1 Taxpayers to question notices

1. It is important to introduce officers to Section 160(2) of KGST Act, 2017 which states that:
   *"*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 t****o whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication."*

2. From the above, it is clear that taxpayers are not allowed to raise questions about 'legal correctness' of service of any notice or communication from the proper officers if either they 'act upon' the notice on merits or 'fail to question' legality of service of such notice at the first proceedings, pursuant to such notice.

3. By questioning the legality of service of the notice even before replying on merits, taxpayer is not challenging the authority of the Proper Officer but only seeking for his rights under law. Nevertheless, it is important for GST Officers to examine any questions raised about the legality of service of the notice and address all the concerns so that the rest of the proceedings are not rendered illegal.

11.2 Legally overlook errors in notices

1. Errors in notices can affect the correctness of the notice itself. However, KGST Act has a provision in section 160(1) where such errors in notices can be 'legally overlooked':
   "(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason or any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law."

2. From the above, it is clear that adequate provision is made to legally overlook errors in the notices issued. But this provision cannot be stretched too far by the adjudicating authority or audit officer going to the extent of 'filling in the blanks' of a notice as it would be against the principles of natural justice of sufficiently putting the party at notice about the allegations. For example, if the notice issued under Section 74 alleges wilful non- payment of tax and refers to Section 122 for imposing penalty although appropriate provision is in Section 122(2)(b) of the KGST Act. Here, taxpayer cannot object to the legality of the notice for failure to mention in the notice the specific sub-section for imposing penalty as the circumstances for imposing penalty under each sub-section is different in Section 122. Section 160(1) would come to rescue the notice because 'in substance and effect' the correct provisions of law are referred in the notice, that is, Section 122 and the 'intents, purposes and requirements' of the Act are satisfied.

11.3 Limitation of actions

Limitation refers to the time limit fixed for all actions. Taxpayers have time limit for their actions, equally, the tax authorities also have time limit fixed for their actions. No tax demand can be raised beyond 5 years calculated from the due date of filing of annual returns, even if tax evasion is apparent. That is the significance of timelines of all actions. It means, that all actions including litigation must have finality at some point of time. In other words, nothing in law must remain open or pending indefinitely. In GST, every provision has a time limit and care must be taken to 'start' proceedings before the 'last date'. Any proceedings that 'missed' the relevant start date will result in loss of revenue permanently and there is no power given to any higher authority to regularize the delay. Such limitation applies to the taxpayer while filing reply or appeal. And delay in filing reply may result in ex parte orders and delay in filing appeal may result in immediate recovery. Time limits under each section are discussed under respective chapters (later) but, the importance of time limit fixed must be kept in mind.

11.4 Onus of proof

Section 75(6) of the KGST Act requires that every show cause notice under section 73 or 74 of the KGST Act must clearly contain "facts and basis of his decision" and section 75(7) states that "no demand shall be confirmed on the grounds other than the grounds specified in the notice". These provisions make it clear that, a show cause notice must contain all matters relating to the demand, namely, facts, basis and grounds.

Section 101 of the Indian Evidence Act states that the one who makes a certain assertion must prove that those facts exist and show cause notice qualifies as 'an assertion' against the tax treatment adopted by the taxpayer. GST being a self-assessment tax regime, own determination of tax liability is presumed in

law to be correct. If such self-assessment is to be questioned, then the 'assertion' of incorrectness requires the tax authorities to discharge onus of proof. Onus of proof is to 'displace' the interpretation adopted by the taxpayer. Courts will look for satisfactory discharge of this onus of proof before examining the viability of the interpretation by the tax authorities. If the Court is not satisfied that the onus of proof has been satisfactorily discharged then, the notice or order will not be entertained on merits. Tax authorities would be able to finally uphold any demand if the notice were to be sufficiently strengthened by adducing evidence in support of the new /divergent interpretation being proposed against the self-assessment made by a taxpayer. So, the responsibility on the tax authorities is far greater in GST and this is a deliberate procedure that is followed for long under Central tax legislations that is continued in GST.

2. Self-Assessment under GST

3. GST is a 'self-assessment' based tax. Taxpayer is responsible to determine supply, rate of tax, valuation, input tax credit, filing of returns and discharge of self- assessed tax.

4. VOLUNTARY PAYMENT OF TAX LIABILTY NOTICED, BASED ON FORM GST DRC-01 AND FORM GST DRC-02.

Spot recovery in GST may be understood as voluntary payment. KGST Act permits the taxpayer to voluntarily pay tax or any other sum in FORM GST DRC-03. Care must be taken that the taxpayers may change their mind about this voluntary payment after the payment has been noted by the audit officer. It is advisable to issue pre-notice statement in FORM GST DRC-1A with the benefit of waiver of penalty under section 73(5) or with reduced penalty under section 74(5) of the KGST Act in respect of all such observations resulting in acceptance of liability by the tax payer. If the taxpayer deposits any tax in FORM GST DRC-03 voluntarily the same requires reference details of the Proceedings in FORM GST DRC-1A as this form is prescribed under Rule 142 of KGST Rules. Care must be taken to avoid 'convincing 'the taxpayers to deposit tax without following the procedures.

5. ***Summons***

Summons may be issued under section 70 to a person to appear and provide information or to produce documents. Proceedings to summon cannot be undertaken routinely, but only during the course of audit or investigation or other inquiry as per law. Person who is summoned is required to state the information 'truthfully'. Care must be taken to issue summons to right person who may have knowledge relevant to the proceedings taken up.

6. Once a statement has been recorded, care must be taken that the taxpayer is not likely to withdraw or deny the statement made voluntarily. Therefore, it is important to note that notice cannot be based almost entirely on the basis of

statements made by any person and it is only a weak evidence. And in the absence of additional corroborative evidence, statements alone are unreliable and are not sufficient to support demands in tax evasion matters. There are many decisions of Apex Court and High Courts on this issue under various tax laws including Income-tax Act which will also be relevant in the GST evasion proceedings.

7. Credit blocking

Blocking of credit under rule 86A of KGST Rules is an important provision that is new in GST since it is a system-based tax. It is significant because credit appearing in the system against taxpayer's name and GSTIN is allowed to be 'blocked' even without issuing notice or adjudication or any proceeding. This is an emergency provision where Commissioner of Commercial Taxes or any officer authorised by him in this behalf can block the credit with reasons recorded in writing.

Following 5 reasons are identified under rule 86A:

a. Supplier is non-existent.
b. Supply (of goods or services) is non-existent.
c. Tax amount is not paid to the Government.
d. Taxpayer claiming credit is non-existent; or
e. Tax invoice (for claiming credit) is non-existent.

8. Undisputed arrears

Amounts that are 'undisputed' such as self-assessed tax are permitted under Section 75(12) to be recovered under Section 79 of the KGST Act WITHOUT following any procedure of law such as issuance of notice or adjudication. As this is a self-assessment tax regime, once taxpayer has admitted liability in FORM GSTR 3B returns, there is no further requirement to issue any notice for recovery of such admitted tax by following any suitable method available under section 79 of the KGST Act. Interest on such self-assessed tax is also stated to be an 'undisputed' arrear under section 75(12) of the KGST and this provision must be taken note of by the authorities.

CHAPTER-12

Provisional Assessment

Introduction:

A supplier will come to know the extent of his tax liability which has to be discharged on a continuous and regular basis only after assessment. Assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment. The major determinants of the tax liability are generally the applicable tax rate and the value. There might be situations when these determinants might not be readily ascertainable and may be subject to the outcome of a process that requires deliberation and time. Hence like under the previous tax laws, when due to various circumstances it might not be always possible, at that point of time, to carry out an assessment and determine the exact duty liability, the GST law also provides for provisional assessment.

The Proper officer provisionally determines the amount of tax payable by the supplier and it is subject to final determination. On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amounts of tax as may be finally assessed and the amount of tax provisionally assessed. On finalization of the provisional assessment, any amount that has been paid on the basis of such assessment is to be adjusted against the amount that has been finally determined as payable. In case of short payment, the same has to be paid with interest and in case of excess payment, the same will be refunded with interest.

Procedure

In case a supplier is unable to determine the value of goods or services or both or to determine the rate of tax applicable thereto, he can request the Proper officer in writing, giving reasons for payment of tax on a provisional basis. The supplier requesting for payment of tax on a provisional basis has to furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The Proper officer will scrutinize the application in FORM GST ASMT-01. In case, additional information or documents in support of the request by the Asst. Commissioner /Dy. Commissioner of State Tax to decide the case, notice him FORM GST ASMT-02 will be issued to the supplier requesting for submission of the same.

The supplier has to file a reply to the notice in FORM GST ASMT-03, and if he desire so he can also appear in person before the Asst. Commissioner /Dy. Commissioner of State Tax to explain his case.

The Proper officer will then issue and order in FORM GST ASMT-04 within a period not later than 90 days from the date of receipt of the request, allowing the payment of tax on a provisional basis. The order will indicate the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount (this amount shall include the amount of integrated tax, central tax, state tax or union territory tax and cess payable in respect of the transaction) for which the bond is to be executed along with the security to be furnished. The security will not exceed twenty five percentage of the amount covered under the bond.

The supplier has to execute the bond in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as mentioned in FORM GST ASMT-04. A bond furnished to the proper officer under the State Goods and Service Tax Act or Integrated Goods and Service Tax Act shall be deemed to be a bond furnished under Central Goods and Service Tax Act.

On executing the bond the process of the provisional assessment is complete and the supplier can supply the goods or services or both and pay the tax at the rate or on the value that has been indicated in the order in FORM GST ASMT-04.

Finalization of provisional assessment

The provisional assessment will be finalized, within a period not exceeding six months from the date of issuance of FORM GST ASMT-04. The Asst. Commissioner / Dy. Commissioner of State Tax will issue a notice in FORM GST ASMT-06, calling for any information and records required for finalization of assessment and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.

On sufficient cause being shown and for reasons to be recorded in writing, the time limit for finalization of provisional assessment can be, extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

Interest Liability

In case any tax amount become payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order of final assessment.

In case of any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

Release of security consequent to finalization

Once the order in FORM GST ASMT-07 is issued, the supplier has to file an application in FORM GST ASMT-08 for the release of the security furnished. On receipt of this application the Asst. Commissioner /Dy. Commissioner of State Tax will issue an order in FORM GST ASMT-09 within a period of seven working days from the date of the receipt of the application, releasing the security after the amount payable if any has specified in FORM GST ASMT-07 has been paid.

Conclusion

Provisional assessment provides a method for determining the tax liability, in case the correct tax liability cannot be determined at the time of supply. The payment of provisional tax is allowed only against a bond and security. The provisional assessment has to be finalized within six months unless extended. On finalization, the tax liability can either be more or less as compared to the provisionally paid tax. In case of increase in the tax liability, the difference is payable along with interest and in case of decrease in the tax liability the excess amount will be refunded with interest.

CHAPTER-13

Scrutiny of Returns

Section 61 *[Refer rule 99 and FORM GST ASMT-10, 11 and 12]*

1. This section permits 'scrutiny of returns' by Proper Officer. Only jurisdictional Proper Officer can undertake scrutiny. As per GST portal, returns filed by registered person will appear in the login of the jurisdictional Proper Officer. Action under this section is applicable only in case taxable person is 'registered' and no action under this section can be initiated if the taxable person is 'liable' to be registered.

2. Returns – means returns actually filed in FORM GSTR 3B, 4 and 9. Returns actually filed may be taken up for scrutiny. Reference may be had to section 46 of the KGST Act to know which are the returns that come within scope of this chapter.
Discrepancy – means questions that arise from examination of said 'return'. Doubts arising in the mind of the Proper Officer is NOT a discrepancy. Discrepancy is defined in Cambridge dictionary to mean "*an unexpected difference, esp. in two amounts or two sets of facts or conditions, which suggests that something is wrong and has to be explained"*. Notice of discrepancy calling for explanation must be issued in FORM GST ASMT-10 by stating the discrepancy in simple and plain language without lengthy discussion about it. Format provided on GST portal must be used. Discrepancy includes clerical as well as analytical errors such as;
a) FORM GSTR-3B containing turnover vastly different from turnover in FORM GSTR-1 for the same tax period.
b) TDS-TCS credits appear in FORM GSTR-3B/FORM GSTR-4 but nil outward supply reported.
c) Credit appearing in FORM GSTR-2A/2B is lower than credit taken in FORM GSTR-3B contrary to rule 36(4) of the KGST Rules.

3. Explanation – registered person is required to give explanation about the discrepancy. Important to note that by accepting the notice issued, registered person would have indirectly admitted the 'discrepancy'. This fact (of admitting discrepancy) would be very helpful in later proceedings (under other sections). Explanation is to be given by registered person in FORM GST ASMT-11. Further, it is not stated that 'satisfactory' explanation should be provided. Proper Officer is free to be dissatisfied with the explanation and proceed with further course of action. If explanation is satisfactory, then proceedings will be closed by passing an order in FORM GST ASMT-12.

4. Resolution – to the notice issued will either lead to admission and payment of dues (tax or credit or interest) and closure of scrutiny. Admitting but not discharging dues would lead to action under section 79 based on principle laid down in section 75(12) of the KGST Act. There may also be non-admission of discrepancy by the registered person indicating that the Proper Officer may put up the file to JCCT/ADCOM for initiating further action under section 65, 66, or 67 or even proceed to issue notice under section 73 or 74 of the KGST Act.

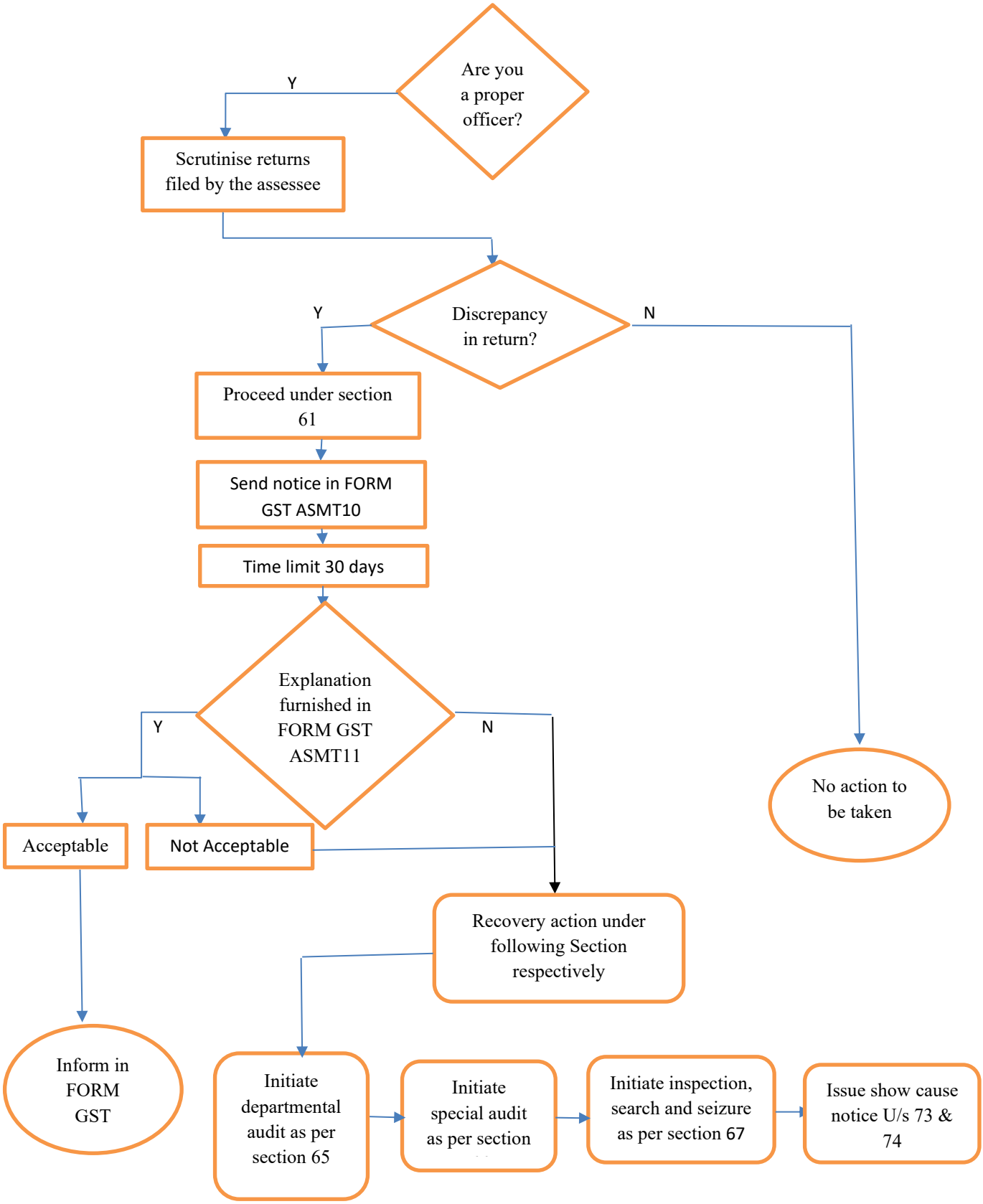
5. Actions to be followed:

   a. One FORM GST ASMT-10 for one or multiple returns. It is advisable to issue one Form GST ASMT-10 per return and further Form GST ASMT-10 may be issued if the same discrepancy is continuing.
   b. All discrepancies need not be raised in one Form GST ASMT-10. Each discrepancy may be raised completely and properly in separate Form GST ASMT-10 without duplication or overlap or repetition.
   c. Time limit for issuing FORM GST ASMT-10 is effectively 33 months from date of filing of said return. This date emerges from the last date by when show cause notice may be issued under section 73(2) of the KGST Act.

6. Actions NOT to be followed:

   a. Follow-up scrutiny is NOT admissible. Once FORM GST ASMT-11 is filed by registered person, it must conclude with FORM GST ASMT-12. Another round of FORM GST ASMT-10 is NOT advisable.
   b. Detailed discussions about discrepancy involving personal hearing with registered person or authorized representative to be avoided.
   c. Spot recovery of dues is NOT permitted under this section. Only if reply by the registered person in FORM GST ASMT-11 admits liability, dues may be deposited through FORM GSTR-3B by making appropriate correction entries in the returns or through FORM GST DRC-03.
   d. Demand of dues in FORM GST DRC-07 is NOT applicable under this section
   e. Any document titled ‘endorsement’ NOT to be issued. Formats prescribed in rules only to be followed for taking action. No legal value in using any additional wordings.

7. GST being a self-assessment-based tax system, revenue authorities are required to ensure minimal intervention in examination of the tax payer’s records. For this reason, various provisions are enacted, and each provision is applicable in specific situations only. General inquiry is not to be undertaken under this section.


Are you a proper officer?
Y
Scrutinise returns filed by the assessee
Discrepancy in return?
Y
N
Proceed under section 61
Send notice in FORM GST ASMT10
Time limit 30 days
Explanation furnished in FORM GST ASMT11
Y
N
Acceptable
Not Acceptable
No action to be taken
Recovery action under following Section respectively
Inform in FORM GST
Initiate departmental audit as per section 65
Initiate special audit as per section
Initiate inspection, search and seizure as per section 67
Issue show cause notice U/s 73 & 74

* * * * *

CHAPTER-14

Assessment of Non-filers

Section 62 [Refer rule 100 and form ASMT13 along with DRC7]

1. This section permits 'best judgement assessment' of NON-FILERS by the Proper Officer. Only the jurisdictional Proper Officer (LGSTO/ SGSTO) can undertake assessment of non-filers. As per GST portal, returns filed by registered person will appear in the login of the jurisdictional Proper Officer. Action under this section is applicable only in case the taxable person is 'registered' and no action under this section can be initiated if the taxable person is 'liable' to be registered.

2. Before taking any action under this section, notice under Section 46 must be issued in FORM GSTR 3A allowing 15 days' time for registered person who has NOT filed the returns to file a return. Any registered person who has NOT filed returns under section 39 (3B return), 44 (annual return) or 45 (final return) is covered by section 46. Please note that section 37 (GSTR 1 return) is NOT covered by section 46. Hence, NON-FILER for the purposes of best judgement assessment under section 62 refers to (i) person who has a valid registration and (ii) has NOT filed GSTR 3B/GSTR4 or GSTR 9 or GSTR 10. Notice in GSTR 3A must be specific for 'tax period'. *'One-for-many'* is permitted, that is, one 3A notice for many tax periods is not barred in law.

3. Once notice is issued in FORM GSTR-3A, registered person is required to file a 'valid return'. It is defined in section 2(117) that "valid return means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full". Please note that even though there may be some actual turnover in the books of accounts of the registered person, if a different turnover is shown in 3B and taxes paid on such turnover, it will be a valid return. A valid return could be incorrect. Even a 'nil' return is a valid return. No further action under section 62 can be taken once a valid return (even incorrect or nil return) is filed by a registered person.

4. In case such an incorrect or nil return is filed by a registered person, in response to a notice under Section 46, the Proper Officer may take action under Section 61 in respect of such return but with caution as the intelligence obtained by the Proper Officer to call for explanation in respect of discrepancy in such an incorrect or nil return filed must be 'from such return' and not 'outside such return'. If there is risk of revenue leakage, The Proper Officer may refer for summary assessment under Section 64 or audit under section 65. Choosing the right provision is important to take any action 'lawfully', reference may also be made to CCT circular No. GST 33/2019-20 dated 26th December 2019 where the standard procedure is prescribed by the Government.

5. Once 15 days' time permitted in a notice under Section 46 ends, without any further notice or information to the registered person, best judgement assessment may be carried out under this section or any other section. Best judgement assessment may be

carried out based on the information available with Proper Officer in FORM GST ASMT 13. Circular suggests that turnover available in Form GSTR 1 may be considered to determine tax liability.

6. Best judgement carried out may be served to the registered person (refer chapter 4 on Communication and Service of Notices) in FORM GST ASMT-13 and this will appear on the portal of the registered person to pay and discharge this liability. No further information or intimation to the registered person is required after best judgement assessment is carried out.

7. Best judgement assessment of tax liability involves few legal issues such as (i) basis for arriving at gross turnover keeping in view the seasonal, cyclical and economic factors affecting trade of registered person (ii) growth rate of turnover should not be arbitrary and unreasonable (iii) final determination of tax liability.

8. Once best judgement assessment is completed, the registered person is permitted to file a 'valid return' within 30 days from date of order. Refer discussion in para 3 above on valid return which applies after order is passed. Where such a valid return (even incorrect or nil return) is filed by the registered person the order passed under this section will be AUTOMATICALLY WITHDRAWN. There is no other proceeding that is required like application by the registered person or hearing on such application and adjudication whether to withdraw or not. It is automatic. No further recovery action can be taken up if valid return (even incorrect or nil return) is filed by the registered person.

9. Further, if 30 days lapses, the order passed becomes final and the only remedy available for the registered person is to file an appeal under section 107 to FAA on payment of 10 per cent pre-deposit. If the registered person files a valid return (even if it is correct and complete) because it is filed after 30 days from date of order, the order passed is NOT WITHDRAWN. Appeal to FAA is the only remedy to the registered person. Please note that time to file appeal under section 107(1) is 3 months PLUS an additional time to condone is 1 month under section 107(4) subject to sufficient cause being shown to the FAA.

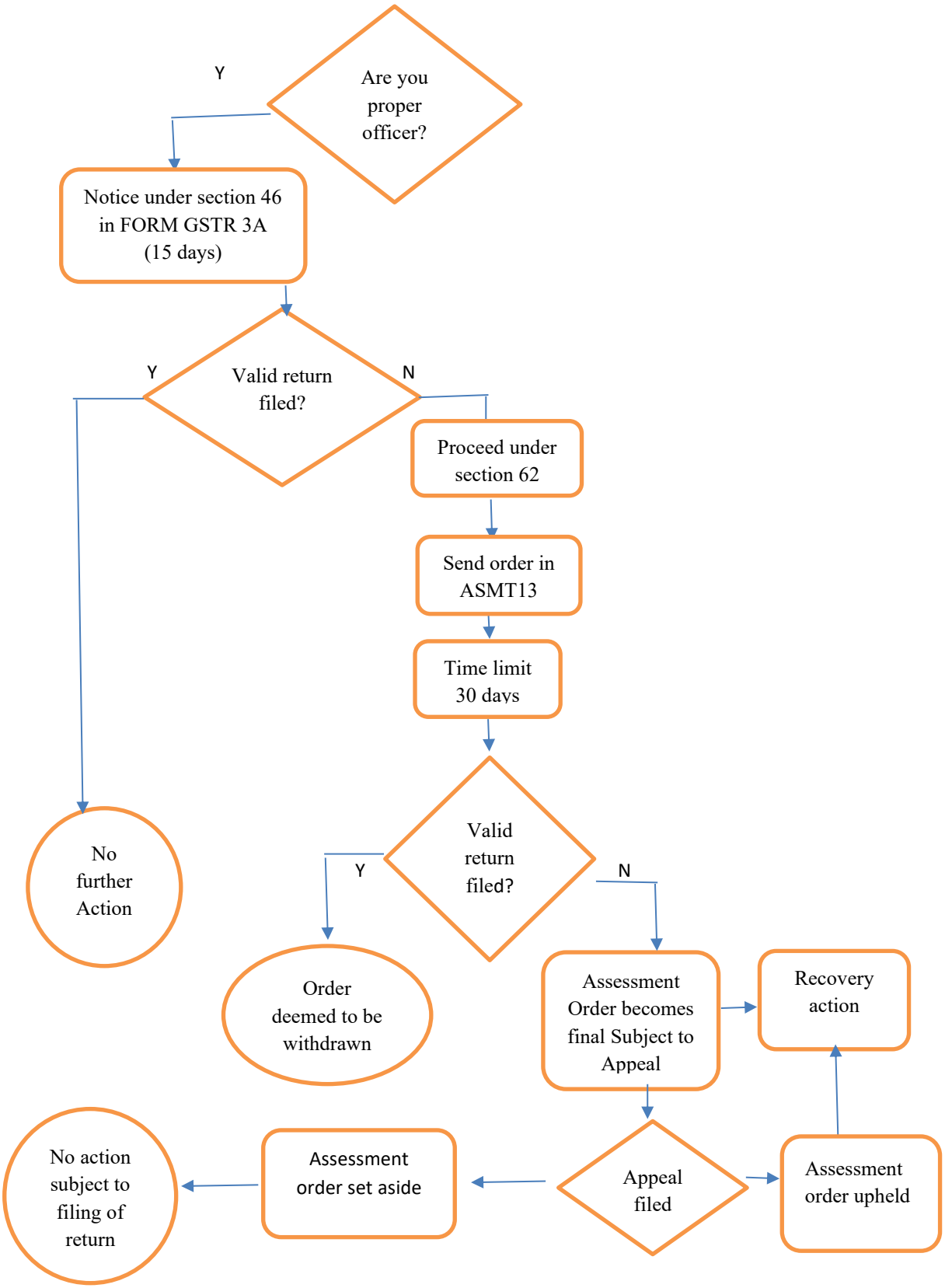
10. If order under this section is not withdrawn due to the lapse of 30 days to file a valid return, the demand raised in this best judgement order becomes FINAL. This amount can be recovered under section 79 after issuing a notice under section 78 intimating the registered person as this amount is now an 'arrear'.

11. Please note that since this proceeding is assessment on 'best judgement' basis, there is no requirement for issue of a show cause notice and hence, there is no evidence to be produced for the basis adopted but the rationale of best judgement should be clear in the order passed. It is suggested that best judgment assessment may be carried out in a fair and reasonable manner without any arbitrariness in estimation of such tax liability.

12. No proceedings can be initiated under this section after 5 years from the due date of filing annual return.

13. Actions to be followed:
    a. Issue of notice under Section 46 is MUST before taking up proceedings.
    b. Order passed must be served on the registered person.
    c. Valid return filed within 30 days must be accepted and order withdrawn automatically.
    d. Valid return filed after 30 days would result in recovery if appeal is not filed within the due date before FAA.

14. Actions NOT to be followed:
    a. Proceedings NOT applicable to unregistered persons even if their liability to tax is very clearly seen or supported.
    b. Without issuing FORM GSTR 3A, no action under this section is permitted.
    c. Issue of show cause notice NOT required for these proceedings.
    d. Valid return filed cannot be questioned under this section.
    e. Notice should NOT be vague or uncertain as this would be important in any legal action brought by registered person.


Are you proper officer?
Y
Notice under section 46 in FORM GSTR 3A (15 days)
Valid return filed?
Y
N
No further Action
Proceed under section 62
Send order in ASMT13
Time limit 30 days
Valid return filed?
Y
N
Order deemed to be withdrawn
Assessment Order becomes final Subject to Appeal
Recovery action
Appeal filed
Assessment order upheld
Assessment order set aside
No action subject to filing of return

CHAPTER-15

Assessment of un-registered persons

Section 63 [Refer rule 100 and form ASMT14, 15 along with DRC1, 7]

1. This section permits 'best judgement assessment' of URDs (unregistered taxable persons) by Proper Officer. The Proper Officer is the one under whose jurisdiction the business premise is located. This section is applicable in the case of three types of unregistered persons:
   a. Taxable persons who 'fails' to obtain registration even though liable.
   b. Taxable persons who has obtained registration for the period starting from the date he became liable for registration and ending with the effective date of registration
   c. Taxable persons whose registration is cancelled under section 29(2) for the period where he is not registered i.e. after effective date of cancellation, if he has done business and was liable for registration.

   This section will apply not only to cases where liability is on forward charge basis but also to cases where liability is on reverse charge basis.

2. In the first instance, it must be understood that 'failure' to register is the criteria. Failure means *"situation or condition of not meeting a desirable or intended objective."* without prior knowledge of requirement to register. Whereas 'omission' means "*failure to carry out or perform an act."* There seems to be very little difference between 'omission' and failure. It is not possible to find out the reasons for non-registration by a person. One may claim ignorance about taxability of their transactions to be excused from this section. But, in a self-assessment tax regime, requirement to register cannot be excused due to ignorance as it is considered a duty of the taxpayer. If responsibility to 'intimate' requirement of registration is placed on Proper Officer then, it would undermine self-assessment nature of this law. Therefore, from the point of balance of convenience, it is more likely that 'all cases' of non-registration comes within the operation of this section as 'failure' to obtain registration when there is a liability to tax.

3. In the second case, the person was liable for registration but did not register himself and subsequently from a later date obtained registration. In such cases, the person is liable to be assessed as an unregistered person from the date on which he became liable for registration till the date on which the registration became effective.

4. In the third case, registration was obtained but due to any of the reasons the registration was cancelled under section 29(2). Later it has come to the notice of the authority that the person is liable to tax for the post cancellation period. He has to assess the person under section 63 for the post cancellation period. Before assessing such taxable persons under this Section, the proper officer shall check whether the taxable person has applied for revocation of the cancelled registration within the time prescribed under Section 30 in FORM GST REG-21. Wherever such application is pending before the proper officer, the proceedings under this section shall be continued only after deciding the admissibility of such application for revocation.

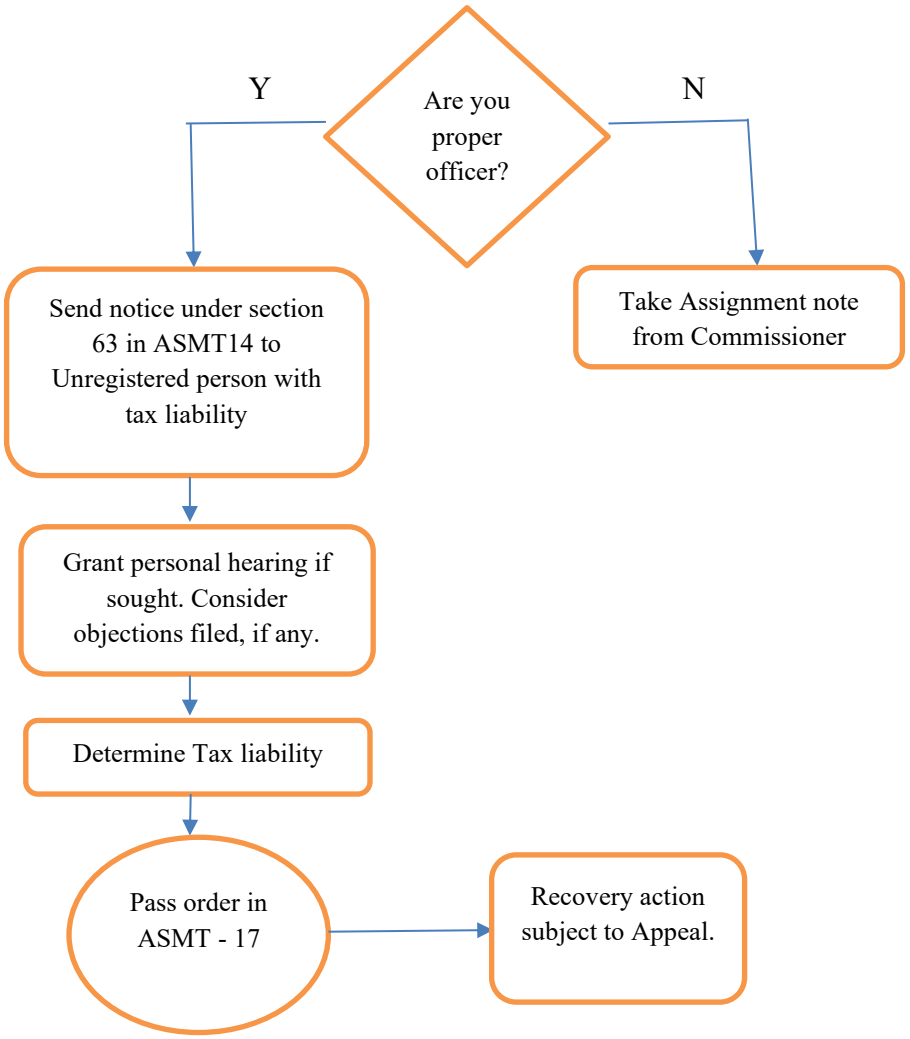
5. The merits of initiating proceedings under this section involves legality about the basis of findings-on-facts arrived at by the Proper Officer as well as correctness of invoking this section to make a best judgement assessment of tax liability. It is also interesting that no other case (other than the three discussed above) can be brought under this section for determination of tax liability. But for the present, best judgement assessment as proposed by the Proper Officer is required to be communicated to the taxable person in FORM GST ASMT-14.

6. The three cases (discussed above) for invoking action under this section itself provides good indication that the Proper Officer is aware of and holds sufficient grounds to warrant such action. There is no much room to allege arbitrariness in estimation of the tax liability or unreasonableness of the process, because FORM GST ASMT-14 contains all the ingredients of a show cause notice. After granting a hearing, the tax liability will be determined and order passed in FORM GST ASMT-15.

7. Once order is passed in FORM GST ASMT-15, there is no provision for withdrawal of such order. And unless appeal is filed under section 107 before FAA, this order becomes final. Tax payer may file appeal against this order within the time prescribed.

8. No proceedings can be initiated under this section after 5 years from the due date of filing annual return.

9. Actions to be followed:
    a. Opportunity to be heard, MUST be granted to taxable person (this procedure is not required in case of best judgement assessment of non-filers under section 61);
    b. Estimation of the tax liability DOES require evidence to support allegations.
    c. Order passed must be served on the taxable person. Service of notice should NOT be vague or uncertain as this would be important in any legal action brought by registered person.


Are you proper officer?
Y
N
Send notice under section 63 in ASMT14 to Unregistered person with tax liability
Take Assignment note from Commissioner
Grant personal hearing if sought. Consider objections filed, if any.
Determine Tax liability
Pass order in ASMT - 17
Recovery action subject to Appeal.

* * * * *

CHAPTER-16

Summary Assessment

Section 64 [Refer rule 100 and form ASMT 16, 17, 18]

If the proper officer is in possession of the evidence that any person is liable to pay any tax under the provisions of this Act and he has sufficient reason to believe that any delay in assessment will adversely affect the interest of revenue (i e the officer has reason to believe that the person would fail to discharge the tax liability) then the officer may proceed to determine the tax liability of such person. Such an order shall be passed in FORM GST ASSMT-16 and only after prior sanction of the Additional /Joint Commissioner and it is not mandatory to hear the person whose liability is being assessed.

However if the liability relates to goods and it is difficult to ascertain the person liable to pay tax then the person in-charge of the goods shall be deemed to be liable to pay tax and such person shall be assessed to tax under this provision.

1. This section permits 'summary assessment' of both, registered and unregistered taxable persons. This is a very important provision, but it has conditions which must be satisfied before initiating proceedings. Prior approval of the Additional Commissioner or Joint Commissioner of GST is required for Proper Officer to take up any action under this section. In order to get such permission, the section requires that *"evidence showing tax liability"* must be available with Proper Officer and based on such evidence and other relevant consideration, The Additional Commissioner or Joint Commissioner of GST would grant permission to Proper Officer.

2. Proper Officer is required to disclose the details of evidence relied upon to obtain permission to assess the taxable person. If permission itself was not obtained then, entire proceedings under this section will be bad in law. Once permission is granted, the Proper Office must determine tax liability based on such evidence. This is an important difference in this section as compared to earlier sections because tax liability determined under summary assessment is in relation to the evidences that is collected.

3. Proper Officer will proceed with summary assessment by passing an order in FORM GST ASMT-16. There is no requirement for Proper Officer to issue any show cause notice but proceed after obtaining permission to determine tax liability. This is an emergency power to determine the tax liability and then set the law in motion for taxpayer to come forward and address the tax liability determined or file appeal.

4. As an emergency provision, summary assessment may not be undertaken in respect of well-established and registered taxable persons who are regularly filing returns. In respect of such persons, there are other provisions to investigate based on specific evidence that comes to attention of the Proper Officer. It is therefore, important NOT to apply this provision when there is no justification for invoking emergency provisions under this section. It is for this reason that there is a check on the authority of the Proper Officer in the form of 'prior' permission.

5. Once summary assessment is made, the person assessed may make an application to the Additional Commissioner or Joint Commissioner of GST who granted permission for Proper Officer to carry out proceedings under this section, for 'withdrawal' of order in FORM GST ASMT-17. This application should be filed within 30 days from the date of order. If not filed within 30 days, the summary assessment order becomes final and the only remedy available for the taxable person is to file appeal under section 107 of the KGST Act.

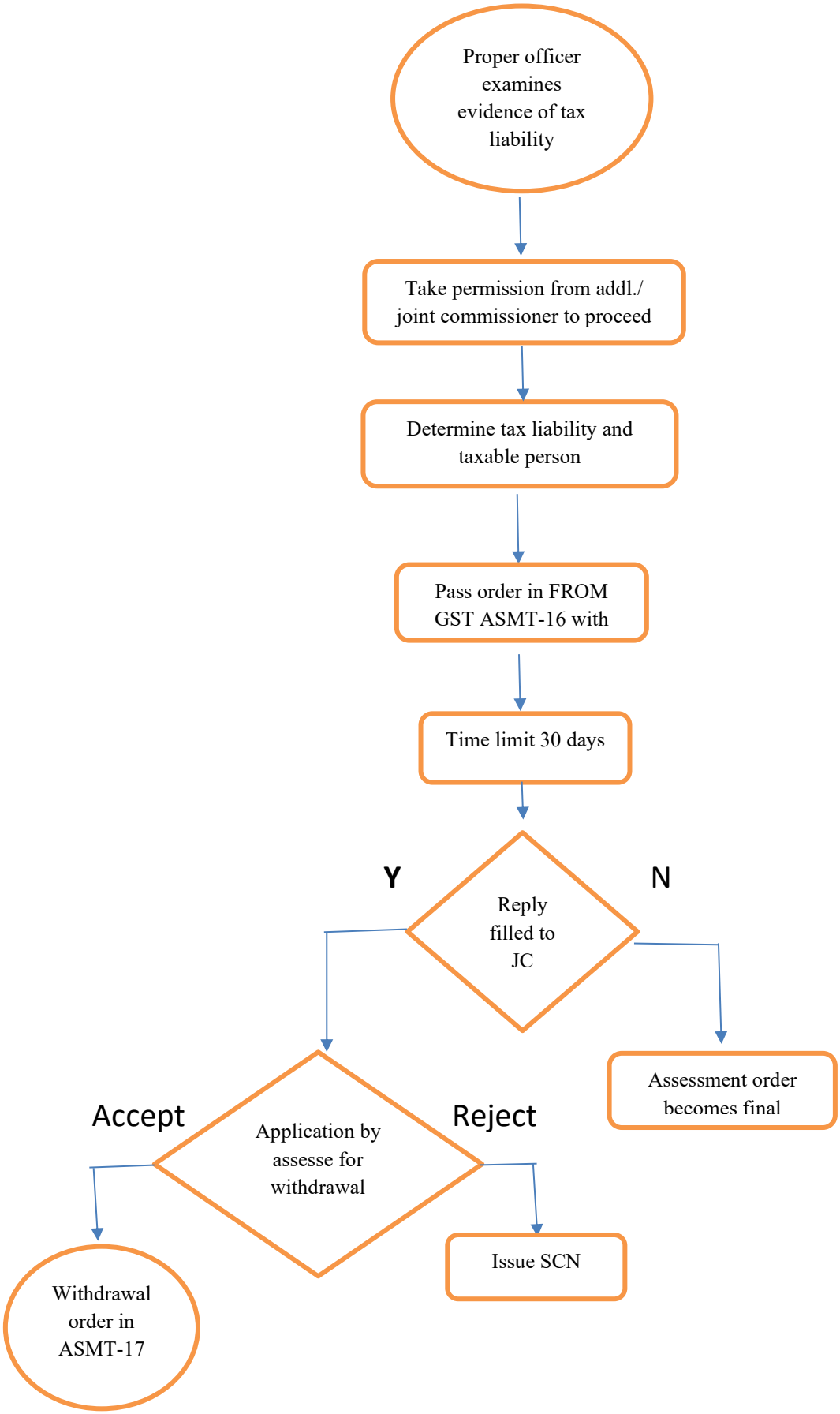
6. The Additional Commissioner or Joint Commissioner may dispose of the application filed by passing order in FORM GST ASMT-18 by 'accepting or rejecting' the request for withdrawal of the summary assessment made by the taxable person. If the application for withdrawal of summary assessment is accepted then, the tax liability determined will be cancelled but that does not mean that the evidence relied upon to start these proceedings are unreliable or they vanish. The case may be recommended for regular assessment under section 73 or 74 as the case may be. Withdrawal of summary assessment does not act in any way prejudicial to the action initiated under section 73 or section 74.

7. There is no time limit prescribed for disposal of such applications. As stated earlier, the only remedy for taxable person in case this summary assessment order becomes final is to file an appeal before FAA. If this withdrawal request is delayed beyond the time limit allowed for filing appeal before FAA, the taxable person will be liable for recovery action.

8. No proceedings can be initiated under this section can be initiated after 5 years from the due date of filing annual return.

9. Actions to be followed:
    a. Prior approval of the Additional Commissioner or Joint Commissioner must be taken by the Proper Officer to invoke this section.
    b. Order may be passed against registered and unregistered taxable persons.
    c. Orders may be passed in respect of tax liability on forward charge as well as reverse charge basis.
    d. Time limit of 30 days must be kept in mind for filing of withdrawal application by the taxable person.

10. Actions NOT to be followed:
    a. As it is emergency powers, it must NOT be used routinely.
    b. Tax liability is based on best judgement.
    c. Service of order should NOT be vague or uncertain as this would be important in any legal action brought by registered person.


Proper officer examines evidence of tax liability
Take permission from addl./ joint commissioner to proceed
Determine tax liability and taxable person
Pass order in FROM GST ASMT-16 with
Time limit 30 days
Y
N
Reply filled to JC
Assessment order becomes final
Accept
Reject
Application by assesse for withdrawal
Withdrawal order in ASMT-17
Issue SCN

* * * * *

CHAPTER-17

Audit by Department

Section 65 [Refer rule 101 and form ADT1, 2, 3, and 4]

1. Audit by tax department is a feature in GST law where on a selective 'risk based' assessment, audit of records of registered person will be undertaken. It is true that 100 per cent audit is NOT contemplated. At the same time, selection of cases for audit is NOT to be undertaken in a crude and unstructured manner. The Commissioner would issue appropriate and timely guidelines as to the manner of selection of cases for audit.

2. The process of audit by the tax department is very interesting for the reason that the Proper Officer designated to carry out scrutiny of returns under section 61 is NOT the Proper Officer to carry out audit under section 65. However, under State administration, assignment note may be issued for same person to carry out the functions under both these provisions. However the work may be assigned, the interesting aspect is that audit is a time-based approach under section 65 of the KGST Act.

3. Registered persons are selected for audit and the audit will be conducted at the business premises of the registered person. But registered person who is selected for audit by tax department will be issued intimation in FORM GST ADT 01 calling for various information at least 15 days prior to the proposed visit. Surprise visits are NOT permitted under this section. It should be noted that information already available on GST Pro/Prime portal is also accessible to audit officers. It is suggested that such information be accessed from GST Pro/Prime portal and only information that is NOT available must be called for. It is also seen that various complex reports and calculations that are NOT regularly maintained are also requested and registered persons may not be able to provide such information. It is suggested that information requested must be based on a thorough understanding of the business activities of the registered person. With that, registered person will be able to appreciate the knowledge and understanding of the GST Officers about the business in addition to the law and its implications so that they will be forthcoming in providing the required information.

4. Once the requested information is received, generally, a desk-review of the file is carried out to see if there is a requirement to visit and conduct audit of registered person. Where there is a justification to conduct an audit, the GST Officers are able to visit the business premises where registration is obtained, and books and records are available. GST Officers are authorized to make general inquiries into the transactions of supply or no-supply, classification, exemption, valuation, input tax credit, filing of returns and all other aspects of compliance with GST law. Section 65 allows general inquiry unlike other sections like Section 67 or 70 of the KGST Act where general information cannot be collected for verification.

5. Audit under this section must be completed within 3 months from the date of commencement. Date of commencement is defined to mean *"date on which records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later"*. With special permission from the Commissioner, audit can be extended by further 6 months. So, audit once commenced, cannot continue beyond 9 months maximum period. Registered person will be informed in Form GST ADT 02 of the "audit findings" after 30 days from the date of completion. The registered person may submit a reply to the audit findings to clarify any misunderstanding of facts or omission to take into consideration certain documents on record or such other matters, GST Officers may finalize their findings. If those findings are NOT accepted by registered person and the liability discharged, GST officers may proceed to issue show cause notice under section 73 or 74 of KGST Act. It is important to note that, there is no provision for spot recovery of demand under departmental audit under section 65 of KGST Act.

6. If audit is NOT completed within the 3 months (and additional time of 6 months, if extended in writing by Commissioner the audit must be stopped. When time limits are clearly specified and power of the Commissioner is also limited to maximum 9 months from date of commencement, delay beyond this time limit puts an end to the audit proceedings under this section of KGST Act.

7. A registered person **"cannot request for audit under section 65"**, It depends on the risk-based audit selection system that will be followed. Based on certain risk factors, Proper Officer may put-up the file for approval to higher officers for selection of particular registered person to be audited under section 65 of the KGST Act.

8. There is another provision in section 66 of the KGST Act where during the course or any **"scrutiny, inquiry, investigation or other proceedings"**, a GST Officer is of the "opinion" that (i) value of supplies are not correctly declared or (ii) credit availed is not within normal limits, with "prior approval" of the Commissioner, instruct the registered person in Form GST ADT-3 to get his accounts audited by a Chartered Accountant or Cost Accountant. It is important to note that special audit for **"no other reason**" is permitted. Maximum time limit allowed is 90 days plus an additional 90 days as requested by the registered person or such Audit Officer. Such Charted Accountant or Cost Accountant must submit a report to the Assistant Commissioner and fee for the audit will be paid by the Commissioner. On conclusion of special audit the registered person shall be informed of the findings of the special audit in ADT-04. The Assistant Commissioner will inform findings from such Audit Officers' report WITHOUT providing copy of the report itself to the registered person in ADT4. Opportunity to reply will be available. And if the findings are sustainable, a show cause notice under section 73 or 74 of the KSGT Act will be issued. Even here, there is no provision for spot recovery of demand. However voluntary payment in DRC-03 by tax payer is allowed under Rule 142(2) of KGST rules.

9. Actions to be followed:

a. Guidelines issued by the Commissioner MUST be followed for selection of cases for audit;
b. Registered persons selected for audit by tax department MUST be intimated at least 15 days prior to the proposed visit.
c. Only information that is NOT available in the GST Pro/ Prime portal must be called for.
d. Audit CANNOT continue beyond 9 months, delay beyond this time limit puts an end to the audit.
e. Tax department may proceed to issue show cause notice under section 73 or 74 of KGST Act if the audit findings are NOT accepted by registered person and liability discharged.

10. Actions NOT to be followed:

a. Audit is NOT to be undertaken in an unstructured manner.
b. Surprise visit is NOT permitted under this Section.
c. Spot recovery of demand under departmental audit is NOT permitted under this Section.

* * * * *

Web-links

1. Classification of services:

a) Annexure of Classification:

https://www.cbic.gov.in/resources/htdocs-cbec/gst/Notification11-CGST-Annexure.pdf

b) Explanatory notes to Annexure:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/explanatory_notes_01oct19.pdf

2. Classification of goods:

a) Customs Tariff Act, First Schedule:

https://www.cbic.gov.in/htdocs-cbec/customs/cst2021-251120/cst2021-251120-idx

3. Ready reckoner of rates of CGST-SGST:

a) Forward charge rate on goods(1/2017-CT(R))

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Ready-Reckoner-Final-27102018.pdf

b) Exemptions on goods (no reckoner link given, refer 2/2017-CT(R))

c) Reverse charge rate on goods (no reckoner link given, refer 4/2017-CT(R))

d) Forward charge rate on services (11/2017-CT(R))

https://www.cbic.gov.in/resources//htdocs-cbec/gst/11-Rate_Notification-CGST-01.04.2019.pdf

e) Exemptions on services (12/2017-CT(R))

https://www.cbic.gov.in/resources//htdocs-cbec/gst/12-Exemption_CGST-01.04.2019-revised.pdf

f) Reverse charge rate on services (13/2017-CT(R))

https://www.cbic.giv.in/resources//htdocs-cbec/gst/13-Reverse_Charge-CGST-01.04.2019-revised.pdf

4. Ready reckoner of rate of IGST (some differences exist in IGST compared to CGST notifications):

a) Forward charge rate on services (8/2017-Int.(R))

https://www.cbic.grov.in/resouces//htdoc

ANNEXURE-1

Indicative list of documents to be submitted/ to be kept ready for verification by dealer as per GST-ADT-01

1. Financial statements and reports- Balance sheet, Tax Audit Report, Annual Financial statement, Cost Audit Report, Trial Balance.
2. Inward – Outward supply summary statement
3. RCM ledger and supportive documents
4. Inward – Outward supply invoices
5. Cancelled invoices due to any reason
6. Goods return (inward and outward supply) register along with credit note/ debit note details
7. Inward supply Register (Soft copy)
8. Outward supply register (Soft copy)
9. Zero rated supply register and supportive documents (commercial invoice, shipping bill, bill of lading, EGM, Bank realization certificate or inward remittance certificate etc)
10. Details of Exempted supply/ supply to SEZ dealer
11. Refund claim/ availment details if any (export of goods and services, inverted duty structure etc., any type of refund claimed by dealer)
12. TDS payment transactions if any
13. TRAN-1 details (details regarding credit carried forwarded from previous Act to GST Act)
14. GSTR-2A- Mismatch, unmatched transactions details.
15. E-way bill transactions month wise summary statement and corresponding register
16. In case of services, FIRC (Foreign Inward Remittances), corresponding agreements, invoices, Annual Maintenance Contract copies and corresponding invoices if any
17. Details of advances received and tax payment for the same
18. Other Income/ misc. income
19. Reversal/reduction of ITC
20. Scrap sales

21. Details of exempted outward supply
22. Details of zero-rated supply
23. Non-GST supply
24. Job work details (inward and outward side)
25. Credit ledger/ Input tax credit availment summary (for Capital asset, liability, Refund claim, any other deduction
26. Cash ledger availment summary (for liability, RCM, any other deduction)
27. Reversal of ITC within 180 days due to non-payment in 180 days.

* * * * *