

## Chapter XII

# Assessment

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- 59. Self-assessment
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- 61. Scrutiny of returns
- 62. Assessment of non-filers of returns
- 63. Assessment of unregistered persons
- 64. Summary assessment in certain special cases

### Statutory Provision

#### 59. Self-assessment

Every registered taxable person shall self assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

#### 59.1 Introduction

In terms of Section 2(11) of the Act, “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment.

The CGST Act contemplates several types of assessments as under:

- Self-assessment (Section 59)
- Provisional Assessment (Section 60)
- Summary Assessment in certain special cases (Section 64 )

Additionally, the CGST Act also provides for determination of the tax liability by:

- Scrutiny of tax returns filed by registered taxable persons (Section 61 )
- Assessment of registered taxable person who have failed to file the tax returns (Section 62 )
- Assessment of unregistered persons (Section 63 )

Section 59 refers to the assessment made by the taxable person himself while all other assessments are undertaken by tax authorities.

Provisional assessment under Section 60 is an Assessment undertaken at the instance of the assessee. It is later followed by a final assessment. Section 61 which deals with scrutiny of returns is basically a pre-assessment procedure for the purpose of determination of tax liability and passing of an order under Section 73 of the Act. Assessments under Sections 62 and 63

are assessments undertaken by tax authorities on the principles governing best judgment assessment. Assessment under Section 64 refers to a protective assessment based on information gathered from intelligence wing of the tax authorities in a particular case.

### 59.2 Analysis:

Self-assessment means an assessment by the tax payer himself and not an assessment by the Proper Officer. The GST regime continues to promote the scheme of self-assessment. Hence, every registered taxable person would be required to assess his tax dues in accordance with the provisions of GST Act and report the basis of calculation of tax dues to the tax administrations, by filing periodic tax returns.

Although the definition includes 'reassessment' there is no provision permitting 're-examination' of an assessment (of any kind) conducted earlier by the same or any other officer. This drafting anomaly is yet to be corrected. Power to reassess cannot be inherent in the power to assess (of any kind) permitted in the Act.

### 59.3 Comparison with equivalent provisions under other laws:

The principles of self-assessment were contained in Central Excise Law, Service Tax Law as well as VAT Laws.

Rule 6 of Central Excise Rules, provides that the assessee shall himself assess the duty payable on excisable goods (except in the case of cigarettes). As regards service tax, concept of self-assessment is envisaged in Section 70 of the Act which provides that every person liable to pay service tax shall himself assess the tax due on services provided by him. State VAT laws also provide for filing of returns and payment of VAT on self-assessment basis [For instance, Section 20 of MVAT Act, 2002 or Section 38 of the Karnataka VAT Act, 2003]

### 59.4 Related provisions

Section / Rule / Form	Description
Section 39	Returns

### 59.5 FAQ

Q1. Who is the person responsible to make assessment of taxes payable under the Act?

Ans. Every registered taxable person shall self assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

### Statutory Provision

#### 60. Provisional Assessment

- (1) Subject to provision of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

- (2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.
- (3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-Section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.
- PROVIDED that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.
- (4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under subsection (7) of section 39 or the rules made thereunder at the rate specified under sub-Section (1) of Section 50, or both from the first day after the due date of payment of tax in respect of the said supply of goods and/or services till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment.
- (5) Where the registered person is entitled to a refund consequent to the order for final assessment under sub-Section (3), subject to sub-Section (8) of Section 54, interest shall be paid on such refund as provided in Section 56.

### 60.1 Analysis

A Provisional assessment can be resorted to in the following situations:

- (i) Value of supply cannot be determined by the taxable person, viz, there is a difficulty in ascertaining:
- Transaction value to be adopted for determination of tax payable;
  - Inclusion or exclusion of any amounts in the value of supply
  - Existence of any circumstance causing failure of transaction value declared
- (ii) Rate of tax applicable on the supply cannot be determined by the taxable person, viz there is difficulty in ascertaining:
- Classification of the goods and / or services under the relevant Schedule;
  - Eligibility to any exemption notification or compliance with conditions associated with such exemption.

Except for the above instances i.e. the value or rate of tax applicable thereto the facility of provisional assessment is not available in any other instance. For example, there may be uncertainty about the kind of tax (IGST or CGST-SGST) applicable, time of supply, supplies to be treated as “supply of goods” or “supply of services”, etc. In these cases, no recourse is available to the taxable person to seek provisional assessment of tax.

Once it is determined that this section is applicable, then the following conditions are to be fulfilled:

- Taxable person must initiate a request to the proper officer in writing giving reasons (i.e. information for which self-assessment cannot be done by him) to be permitted to pay tax on provisional basis;
- Proper officer is to pass an order within 90 days of receipt of request allowing payment of taxes on provisional basis subject to execution of bond by the registered person with surety or security for any differential tax that may be eventually assessed.

Thus, As per Rule 98(1) provisional assessment can be made only upon a written request made by the registered person in **FORM GST ASMT-01** electronically through common portal, along with the documents in support of his request. The provisional assessment cannot be resorted to by the proper officer on *suo-motu* basis.

The proper officer may, as per Rule 98(2) issue a notice in **FORM GST ASMT-02** wherein it requires the registered person seeking provisional assessment to appear in person or furnish additional information or documents in support of his request. The applicant has to file a reply to the notice in **FORM GST ASMT – 03**.

After considering the reply filed, the proper officer as per Rule 98(3) has to pass an order in **FORM GST ASMT-04**, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis.

Such order should indicate the value or the rate or both on the basis of which the provisional assessment is to be made.

The order so passed should also indicate the amount for which bond has to be executed by the taxable person for payment of the difference between the amount of tax (IGST, CGST, SGST as well as UTGST), as may be finally assessed, and the amount of tax provisionally assessed. Further the said order would also intimate the quantum of security to be furnished which shall not exceed 25% of the bond amount.

On such order by the proper officer, the registered person in accordance with the provision of Rule 98(4) has to execute a bond in **FORM GST ASMT-05** along with a security in the form of a bank guarantee as ordered. A bond furnished to the proper officer under the Central/State Goods and Services Tax Act or Integrated Goods and Services Tax Act or

Union Territory Goods and Services Tax Act and cess, if any shall be deemed to be a bond furnished under the provisions of this Act and the rules thereunder.

Under the GST Act, according to the provision of Rule 98(5) a proper officer shall be required to finalise the assessment and pass the final assessment order. For this purpose, the proper officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment. After that the proper officer would issue a final assessment order in **FORM GST ASMT-07**, specifying the amount payable by the registered person or the amount refundable, if any.

The finalisation of assessment has to be completed, within a period of 6 months from the date of communication of provisional assessment order. However, on sufficient cause being shown and for reasons to be recorded in writing, this period can be extended by Joint / Additional Commissioner or by the Commissioner for such further period as mentioned below:

Additional / Joint Commissioner	Maximum of 6 months
Commissioner	Maximum of 4 years

It may be noted that, in the statement of outward supply to be furnished by a registered person under section 37(1) i.e. in Form GSTR-1, the invoices in respect of which tax is paid under provisional assessment is required to be mentioned.

If the amount of tax determined to be payable under final assessment order, is more than tax which is already paid along with return under section 39, the registered person shall be liable to pay interest on the shortfall, at the rates specified in Section 50(1) of the Act, from the first day after due date of payment of tax in respect of the said goods and /or services, till the date of actual payment, irrespective of whether such shortfall is paid before or after the issuance of order for final assessment. Likewise, when the registered person is entitled to refund consequent upon the order for final assessment, interest shall be paid on such refund at the rates specified in Section 56. As such, the registered person must avail this opportunity of provisional assessment after much thought and careful consideration.

Any claim for refund of taxes paid in excess under this section must be in accordance with Section 54 and except for authorizing refund, this section does not itself permit grant of refund.

On issue of provisional assessment order, as per the provision of Rule 98(6) the applicant may file an application in FORM GST ASMT- 08 for release of security furnished after issue of order. On such application, the the proper officer in accordance with Rule 98(7) has to release the security furnished, after ensuring the payment of the amount specified in the order and issue an order in **FORM GST ASMT-09**. This has to be issued within a period of 7 working days from the date of receipt of the application for release of security.

### **60.2 Comparison with equivalent provisions under other laws:**

Section 60 of the CGST Act, is broadly drafted on the lines of the erstwhile provisions of

Central Excise and Service Tax law. A provisional assessment is permitted under Central Excise Act and also under the Finance Act 1994, and is governed by the procedure contained in Rule 7 of the Central Excise Rules or as the case may be, Rule 6(4)/(4A)/(4B)/(5) of Service Tax Rules. Under both these Acts, provisional assessment is carried out only at the instance of the assessee.

Under the State VAT Acts, the concept of provisional assessment "at the instance of assessee", is not prevalent. Some State Acts have used this term to cover the cases of best-judgment assessment done by the tax authorities, in the absence of returns or records. For example, refer Section 32 of Gujarat Value Added Tax Act or Section 40 of the Orissa Value Added Tax Act.

### 60.3 Related Provisions:

Section / Rule / Form	Description
Section 50	Interest
Section 54	Refunds

### 60.4 FAQ

Q1. When is a taxable person permitted to pay tax on a provisional basis?

Ans. Tax payments can be made on a provisional basis only when a proper officer passes an order for permitting the same. For this purpose, the registered person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. The reasons for this purpose may be a case where the registered person is unable to determine the value of goods and/ or services or determine the applicable tax rate, etc. Further, the registered person may also be required to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

Q2. What is the latest time by which final assessment is required to be made?

Ans. It is the responsibility of the proper officer to pass the final assessment order after taking into account such information as may be required for finalizing the assessment, within six months from the date of the communication of the order for provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the timelines may be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding 4 years as he may deem fit.

### 60.5 MCQs

Q1. Where the tax liability as per the final assessment is higher than tax paid at the time of filing of return u/s 39 the registered person shall\_\_\_\_\_.

(a) not be liable to interest, provided he proves that his actions were bonafide

- (b) be liable to pay interest from due date till the date of actual payment
- (c) be liable to pay interest from date of the final assessment till the date of actual payment
- (d) be liable to pay interest from due date till the date of the final assessment

Ans. (b) be liable to pay interest from due date till the date of actual payment

Q2. Provisional assessment under the GST law is permitted to be:

- (a) At the instance of the taxable person
- (b) At the instance of the tax authorities on a best judgment basis in absence of adequate details or response from registered person
- (c) Either of (a) and (b)
- (d) Available only to certain notified persons

Ans. (a) At the instance of the taxable person

Q3. On the grounds of sufficient reasons being provided by proper officer the time period for passing final assessment order can be extended by Joint/ Additional Commissioner for further period of not exceeding

- (a) 2 months
- (b) 4 months
- (c) 6 months
- (d) No time limit.

Ans. (c) 6 months

Q4. On the grounds of sufficient reasons being provided by proper officer the time period for passing final assessment order can be extended by Commissioner for further period of

- (a) 2 months
- (b) 4 years
- (c) 6 months
- (d) No time limit.

Ans. (b) 4 years

**Statutory Provision****61 Scrutiny of Returns**

- (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any in such manner as may be prescribed and seek explanation thereto.
- (2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.
- (3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the taxable person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under Section 65, 66 or Section 67, or proceed to determine the tax and other dues under sub-Section (7) of Section 73 or Section 74.

**61.1 Analysis**

Section 61 deals with a discretionary power to a proper officer to scrutinize returns filed by registered persons to verify the correctness of the return. It is a pre-adjudication process. The process of adjudication is provided in Sections 73 to 75 of the Act. During such scrutiny, discrepancies if any noticed has to be communicated As per Rule 99 vide notice to the registered person in **FORM GST ASMT-10**, and also seeking his explanation within such time set out in the notice, not exceeding 15 days from the date of service of the notice. The notice should also contain the details as to the quantified amount of tax, interest and any other amount payable in relation to such discrepancy. This Section also authorizes registered person to receive and respond in **FORM GST ASMT-11** wherein either the explanations called for by the proper officer is furnished or in case where the discrepancy is accepted, pay the tax, interest and any other amount and inform the same in that.

Where the explanations offered are satisfactory, this fact shall be informed to the registered person and no further action is to be taken in this regard.

In case, satisfactory explanation is not obtained within 30 days of being informed or such further period as permitted by proper officer or after accepting discrepancies, registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the proper officer, may, take recourse after issuance of notice to any of the following provisions:

- Conduct audit at the place of business of registered person in a manner provided in Section 65 of the Act; or
- Direct such registered person by notice in writing to get his records including books of

accounts examined and audited by a Chartered Accountant or Cost Accountant under Section 66 of the Act; or

- Undertake procedures of inspection, search and seizure under Section 67 of the Act
- And proceed to determine dues under sections 73 & 74 of the CGST Act.

The first stage in return scrutiny denotes a prima facie scrutiny, in order to ascertain whether the information furnished by the assessee in returns is prima facie valid and not inadequate or internally inconsistent. The second stage appears to be a detailed assessment calling for records and determination of tax liability under sections 73 to 75.

In doing so, the proper officer, is also entitled to exercise his power under section 67 of the Act, which deals with power of inspection, search and seizure.

From the language employed in section 67, it appears that, these powers are required to be exercised not in routine manner but only under circumstances when there is reasonable belief regarding probable suppression or intention to evade tax.

It's important to note that, section 61(3) empathetically provides that, in case the explanation given by the tax payer in response to discrepancies informed by the proper officer, is found acceptable, the registered person shall be informed accordingly in **FORM GST ASMT-12** and no further action shall be taken in this regard.

### 61.2 Comparison with equivalent provisions in other laws

The provisions as to scrutiny of returns were also present in Service Tax / Central Excise and State VAT laws. For example, Rule 12 of Central Excise Rules. Rule 12(3) provided that, the 'Proper Officer' may on the basis of information contained in the return filed by the assessee under rule 12(1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board. CBEC has issued guidelines for detailed scrutiny of Central Excise Returns vide Circular No. 1004/11/2015-CX, dated 21-7-2015.

### 61.3 Related Provisions

Section / Rule / Form	Description
Section 65	Audit by tax authorities
Section 73 & 74	Determination of tax not paid, short paid, erroneously refunded
Section 67	Power of inspection, search and seizure

### 61.4 FAQ

Q1. Describe the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy in the return.

Ans. In case, satisfactory explanation is not obtained or after accepting discrepancies, registered person fails to take corrective measures, in his return for the month in which

the discrepancy is accepted by him, the Proper Officer may take recourse to any of the following provisions:

- (a) Conduct audit at the place of business of registered person in a manner provided in Section 65 of the Act, or;
- (b) Direct such registered person by notice in writing to provide his records including audited books of account examined and audited by a Chartered Accountant or Cost Accountant under Section 66 of the Act or ;
- (c) Undertake procedures of inspection, search and seizure under Section 67 of the Act; and
- (d) Issue notice under Sections 73 to 75 of the Act.

Q2. What does Section 61 deal with?

Ans. Section 61 deals with scrutiny of returns filed by registered persons to verify the correctness of such returns.

Q3. What is the proper officer required to do, if the information obtained from assessee u/s 61 is found satisfactory?

Ans. In case the explanation is found acceptable, the registered person shall be informed accordingly in Form GST ASMT-12 and no further action shall be taken in this regard.

### 61.5 MCQ

Q1. Where the tax authorities notice a discrepancy in the details during the scrutiny of returns, the registered person:

- (a) would be liable for interest if he is unable to prove that the discrepancy did not arise on his account and it was a fault of another person
- (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted
- (c) must prepare documents to cover up the discrepancy.
- (d) Both (a) and (b)

Ans. (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted

Q2. If the information obtained from taxable person is not found satisfactory by the proper officer, he can pass assessment order u/s 61 raising demand of disputed tax demand.

- (a) True
- (b) False

Ans. (b) False

- Q3. What is the time limit after which action under section 61 cannot be taken?
- (a) 30 days from filing of return or such further period as may be decided by proper officer.
  - (b) No time Limit
  - (c) Time limit mentioned in Section 73 or 75 of the Act.

Ans. (c) Time limit mentioned in Section 73 or 75 of the Act.

- Q.4 What is the time limit, within which the registered person should take corrective measures after accepting the discrepancies communicated to him by proper officer?
- (a) reasonable time
  - (b) 30 days from the date of communication of discrepancy.
  - (c) 30 days from date of acceptance of the discrepancy
  - (d) date of filing of return for the month in which the discrepancy is accepted

Ans: (d) date of filing of return for the month in which the discrepancy is accepted.

### Statutory Provision

#### 62. Assessment of non-filers of returns

- (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered taxable person fails to furnish the return required under Section 39 or Section 45, even after the service of a notice under Section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within the period of five years limit from the date specified of Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.
- (2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-Section (1), the said assessment order shall be deemed to have been withdrawn. But the liability for payment of interest under sub-section (1) of section 50 or for the payment of late fee under section 47 shall continue..

#### 62.1 Introduction

Section 62 of the Act can be invoked only in case of registered taxable persons who have failed to file returns, as required, under section 39 or as the case may be, or final return on cancellation of registration under section 45 of the Act. Issuing notice under section 46 appears to be a pre-condition for initiating proceedings under Section 62 of the Act.

### 62.2 Analysis of Provisions

Non-compliance with the notice under Section 46 paves the way for intimating the proceedings under this section. If the assessee fails to furnish the return, the Proper Officer may after serving him notice under section 46 proceed to assess the tax liability in accordance with the provision of Rule 100 to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee.

It may be noted that a return filed under Section 39 can be revised not later than the due date of furnishing of return for the month of September following the end of the financial year or actual date of filing annual return under Section 44, whichever is earlier.

Therefore, issuance of notice under Section 46 is a necessity for commencing proceedings under Section 62. Non-issuance of notice under Section 46 closes the door on invoking Section 62 although other provisions are available to recover the tax dues.

If, however, a registered person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn. 'Valid return' is defined in Section 2(117) to mean a return filed under Section 39(1) of the Act on which self-assessed tax has been paid in full. In order to avail the facility of withdrawal of the assessment order passed, filing of a valid return is required, including payment of taxes declared therein.

Time limit of 5 years (extended period for cases covered under Section 73), is also applicable for issuing order under section 62.

Consequence of late fee under Section 47 and interest under Section 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section.

An order passed under this section shall be communicated to the registered person in FORM GST ASMT 13

### 62.3 Comparison with equivalent provisions in other laws

It appears that section 62 of the CGST Act is incorporated predominantly on the basis of provisions contained in the erstwhile State VAT Acts.

Section 72 of the Finance Act, 1994 provides for assessment of persons liable to pay service tax, but who has failed to furnish return under section 70. However, procedure contained in section 72 requires that every such person shall be given a reasonable opportunity of being heard before the order is passed.

### 62.4 Related Provisions

Section / Rule / Form	Description
Section 2(117)	Valid return
Section 39	Returns

Section 45	Final return
Section 46	Notice to return defaulters
Section 47	Late fee
Section 50	Interest

**62.5 FAQ's**

Q1. Whether Proper Officer is required to give any notice to taxable person before completing assessment u/s 62?

Ans. The assessment u/s 62 can be initiated only after the service of notice under section 46 i.e. notice to return defaulters.

Q2. If a registered person files a return after receipt of notice u/s 46 but fails to make the payment disclosed by him in the return, can assessment order u/s 62 be passed in this case?

Ans. An assessment order u/s 62 is deemed to have been withdrawn if the registered person furnishes a valid return (including payment of taxes).

**62.6 MCQ's**

Q1. What is the time limit for issuing order under section 62?

- (a) 15 days from the date of service of notice
- (b) 30 days from the date of service of the assessment order
- (c) Yet to be prescribed
- (d) None of the above

Ans. (d) None of the above.

Q2. The proper officer can complete assessment under section 62 without issuing any notice to the registered taxable person before passing assessment order.

- (a) True
- (b) False

Ans. (b) False

Q3. What is the time limit for issuing order under section 62?

- (a) 9 months from the end of financial year.
- (b) 3 years for cases covered U/s 73 or 5 years for cases covered under 74
- (c) 5 years for cases covered U/s 73 or 3 years for cases covered under 74
- (d) 5 years from the due date of filing annual return.

Ans. (d) 5 years from the due date of filing annual return

- Q4. The assessment order u/s 62 shall be deemed to be cancelled if:
- (a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.
  - (b) Where the registered person within 90 days of the service of the assessment order.
  - (c) Assessment order under section 46 cannot be cancelled.
  - (d) Where assessee intimates to the Proper Officer that he has filed the valid return.
- Ans. (a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.
- Q5. After serving of notice u/s 46, the proper officer is not required to give notice of hearing to the registered tax person before passing assessment order.
- (a) True
  - (b) False
- Ans. (a) True.

### Statutory Provision

#### 63. Assessment of unregistered persons

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so, or whose registration has been cancelled under sub section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard

#### 63.1 Introduction

This Section is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration will come within scope of operation of this Section. This provision also covers the cases whose registration was cancelled as per section 29 (2) claiming of the GST Act. section 29(2) of the Act covers 5 instances as follows:

- (a) A person who contravenes the provisions of this Act or Rules made thereunder;
- (b) A composition person who fails to furnish returns for 3 consecutive tax periods.

- (c) A person other than composition person who fails to furnish returns for 6 consecutive months.
- (d) A person who has sought voluntary registration but has failed to commence business within 6 months.
- (e) Where registration has been obtained by way of fraud, willful misstatement or suppression of facts.

### 63.2 Analysis

This Section is applicable to unregistered taxable persons. In such cases, the proper officer is required to give a reasonable opportunity of being heard to such persons before proceeding to assess such person. The section begins with the phrase "Notwithstanding anything to the contrary contained in section 73 or section 74". It therefore appears that, assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment. Even though no return would have actually been filed in such cases, the authority to pass such assessment order is extinguished on the expiry of 5 years from due date applicable for filing annual return for the year to which tax not paid relates.

For assessment under this section, notice has to be issued as per Rule 100(2) in FORM GST ASMT-14 by the proper officer. The notice would contain the grounds on which the assessment is proposed to be made on best judgment basis. The registered person is allowed a time of 15 days to furnish his reply, if any. After considering the said explanation, the order has to be passed in FORM GST ASMT- 15.

### 63.3 Comparison with equivalent provisions in other laws:

Section 23(4) of the MVAT Act contains similar provision as that in Section 63 of the GST Act.

### 63.4 Related Provisions

Section	Description
Section 22	Registration
Section 73 & 74	Determination of tax not paid, short paid, erroneously refunded

### 63.5 FAQs

Q1. What is the time limit for passing order u/s 63?

Ans. The proper officer has to pass an assessment order u/s 63 within a period of five years from the due date for filing the annual return for the year to which such tax unpaid relates to.

Q2. Can an assessment order be passed without affording an opportunity of being heard to the person liable to be registered?

Ans. No, an assessment order cannot be passed without giving him an opportunity of being heard.

### 63.6 MCQs

Q1. What is the time limit for passing order u/s 63?

- (a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates.
- (b) 5 years from the end of financial year in which tax not paid relates to
- (c) No time limit

Ans. (a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates

Q2. No Notice is required to be given before passing assessment order under section 63?

- (a) True
- (b) False

Ans. (b) False

Q3. Section 63 deals with

- (a) Assessment of taxable persons who have failed to file the returns.
- (b) Assessment of registered taxable person who have filed returns as per the law.
- (c) Assessment of unregistered taxable persons.
- (d) Assessment of any taxable person, whether registered or unregistered.

Ans. (c) Assessment of unregistered taxable persons

### Statutory Provision

#### 64. Summary assessment in certain special cases

(1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and any other amount due under this section.

(2) On any application made by the taxable person within thirty days from the date of

receipt of order passed under sub-Section (1) or on his own motion, if the Additional/Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in Section 73 or section 74.

### 64.1 Analysis

The word “summary assessment” is generally used in a tax legislation to denote ‘fast track assessment’ based on return filed by the assessee. It allows the Tax Officer to make prima facie adjustments based on errors or factors based on the available information without an occasion for calling for further information from an assessee or inspecting his records. In the GST Act, it is used to denote those assessments which are completed ex-parte and on priority basis when there is reason to believe that there will be loss of tax revenue, if such assessment is delayed. This provision is only the first step in invoking the machinery provided to enforce recovery of dues from potential defaulters, and this requires an assessment of the tax liability. Such amounts are commonly known as protective assessments which is in a sense protects Government revenue. This section pre supposes the fact that the proper officer be in possession of sufficient grounds to believe that any delay will adversely affect revenue.

The summary assessment can be undertaken in case all of the following conditions are satisfied:

- The Proper Officer must have evidence that there may be a tax liability.
- The Proper Officer has obtained prior permission of Additional / Joint Commissioner to assess the tax liability summarily. The proper officer must have sufficient ground to believe that any delay in passing assessment order would result in loss of revenue.

Summary assessment under this Section of the CGST Act can therefore be construed in some sense as a ‘protective assessment’ carried out in special circumstances, where there are sufficient grounds to believe that taxable person will fail to make payment of any tax, penalty or interest, if the assessment is not completed immediately. Such failure to pay tax, penalty or interest must be due to reasons attributable to the tax payer (ex: insolvency, instances of defaulting, absconding etc). Hence, summary assessment under this Section is not a substitute for assessment getting time barred. Further, mere possibility of non-payment cannot be a grounds for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability. However, it is important to note that upon grant of permission by the Additional / Joint Commissioner, it appears that the evidence available with the proper officer or his apprehension of possible loss of revenue, cannot be called into question. As per the provision of Rule 100(3) The summary assessment order should be in **FORM GST ASMT-16**.

The section allows the person who is assessed and is served the order so passed, to come forward and make an application in accordance with Rule 100(4) in FORM GST ASMT-17 to the Additional / Joint Commissioner, which will then be examined and if the Additional/ Joint

Commissioner is satisfied, the summary assessment order will be withdrawn. As regards the contents of this application, it may be understood that the applicant may attempt to challenge the facts or reasons for the belief about risk of revenue loss and further accept to be available to respond, if proceedings under Section 73/74 were to be undertaken. Besides, the Additional / Joint Commissioner may, on his own motion, withdraw such order and follow the procedure laid down in Section 73 or as the case may be Section 74 for determination of taxes not paid or short paid or erroneously refunded, if he considers that such order is erroneous.

From the above, it appears that every summary assessment order so withdrawn under sub-Section (2), must be followed by a notice under Section 73 or as the case may be 74.

On receipt of application the proper officer has to pass the order of withdrawal or, rejection of the application in accordance with Rule 100(5) in **FORM GST ASMT-18**.

Many times, summary assessments are undertaken in circumstances, when a taxable person to whom liability pertains is not ascertainable. In such cases, the law provides that, if the liability pertains to supply of goods, then person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due on completion of summary assessment. There is no deeming provision when unpaid tax liability relates to supply of services.

#### 64.2 Related Provisions

Section / Rule / Form	Description
Section 73 & 74	Determination of tax not paid, short paid, erroneously refunded

#### 64.3 FAQ

Q1. When can Summary Assessment be initiated?

Ans. Summary Assessments can be initiated by a proper officer on seeking permission from the Additional Commissioner / Joint Commissioner and proving that the taxable person is liable to pay tax

#### 64.4 MCQ

Q1. What is the time period within which a person can apply to the Additional/ Joint Commissioner for withdrawal of such order under this Section?

- (a) 30 days
- (b) 45 days
- (c) 60 days
- (d) No time limit.

Ans. (a) 30 days