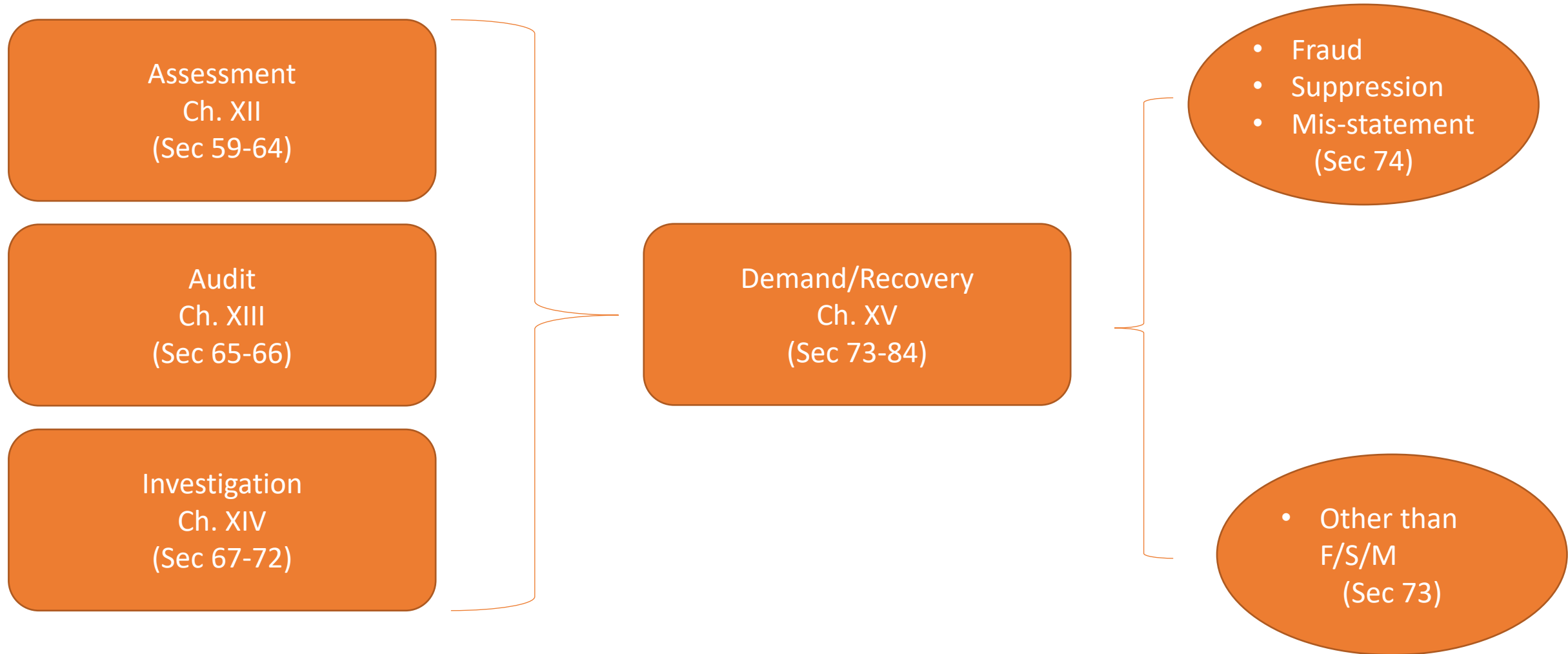


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Adjudication in GST



Assessment

Section 59 : Self Assessment of Taxes Payable

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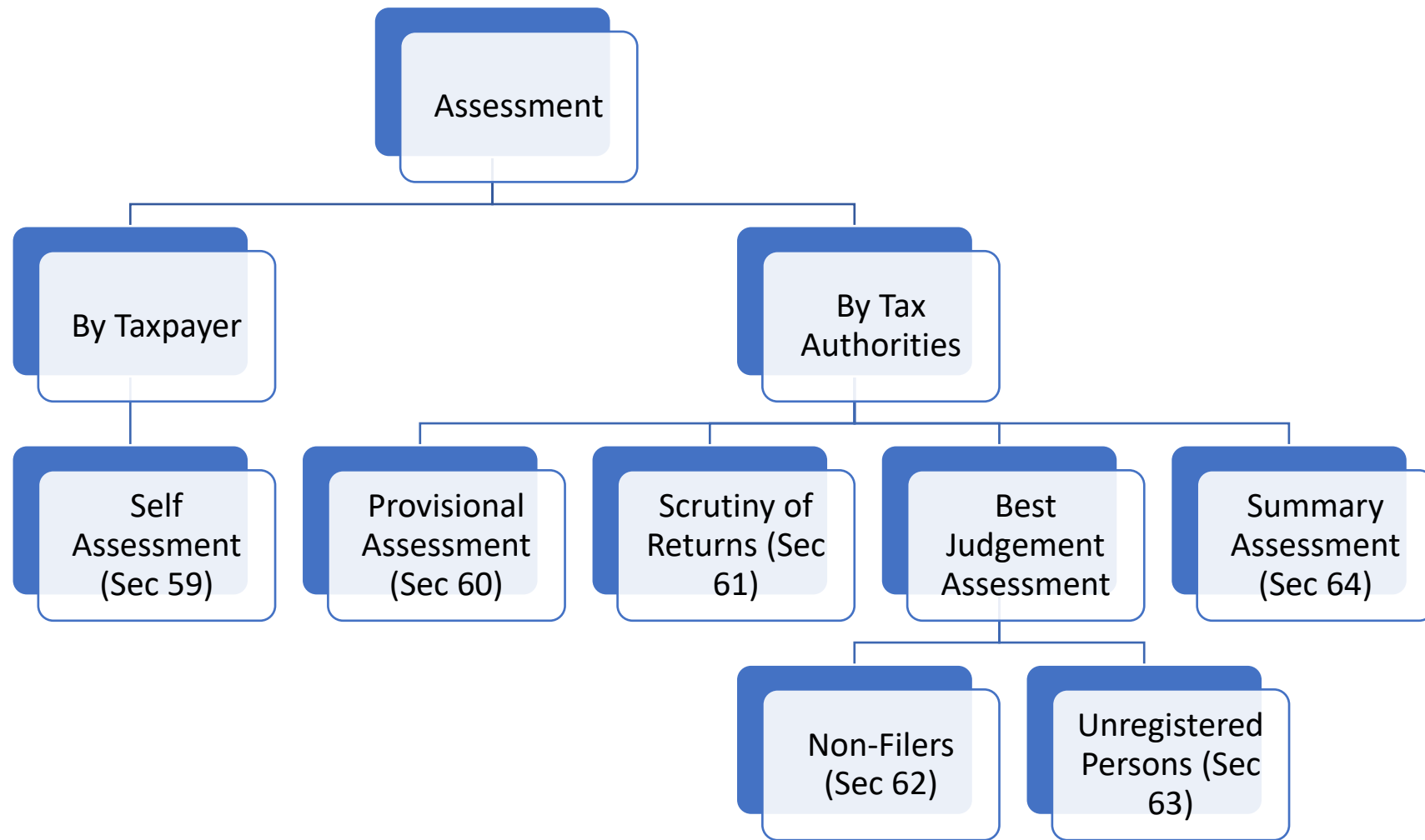
Section 69 : Power to Arrest

Section 70 : Power to Summon Persons to give Evidence/ Produce

Section 71 : Access to Business Premises

Section 72 : Officers to Assist Proper Officers

Assessment (Sec 59-64)



Assessment

As per section 2(11) of the GST ACT the term “assessment means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment

Self-Assessment [Sec 59 of CGST Act]

Sec 59 Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Determination of tax liabilities is to be undertaken by the payer himself and stated in the return to be filed by him.

Provisional assessment [Sec 60 of the CGST Act read with Rule 98 of the GST rules]

A supplier will come to know the extent of his tax liabilities which has to be discharged on a continuous and regular basis only after assessment.

Provisional assessment, provides a method for determination the tax liability in case the correct tax liability cannot be determined at the time of supply. The provisional assessment has to be finalized within 6 months unless extended.

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 amount of taxes may be finally assessed and the amount of tax provisionally assessed.

Procedure of Provisional Assessment

- 1) Provisional assessment may be **invoked by a taxable person** by making a **request/application to the proper officer** and such request may be made only under the following two circumstances-
 - (I) He is unable to determine the **value** of goods and/or services, or
 - (II) he is uncertain about the **rate** of tax applicable
- 2) Provisional assessment can be made only upon a written request made by the taxable person and the same **cannot** be resorted to by the **proper officer on suo-motu basis**.
Such person shall furnish an **application** along with the documents in support of his request, electronically in **FORM GST ASMT-01** on the common portal.[Rule 98(1)]
- 3) The request indicated specified **ground/reasons** for inability of the applicant.
- 4) The proper officer may, on receipt of the application under sub-rule (1), issue a **notice** in **FORM GST ASMT-02** requiring the registered person to furnish **additional information** or documents in support of his request and the applicant shall file a reply to the notice in **FORM GST ASMT-03**, and may appear in person before the said officer if he so desires.

Finalisation of Provisional Assessment

1. The proper officer shall pass an **order**, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him within a period **not later than 90 days** from the date of receipt of such request,
 - For securing the amount of difference between the provisional assessment and tax as may be finally assessed, the proper officer **shall also require the taxable persons**
 - **To execute a bond, or**
 - **To furnish a surety or security.**
 - The proper officer **shall issue an order** in **FORM GST ASMT-04** allowing the payment of tax on a provisional basis indicating –
 - The value or the rate on the basis of which the assessment is to be allowed on a provisional basis, and
 - The amount for which the bond is to be executed and security to be furnished **not exceeding 25%** of the amount covered under the bond. **[Rule 98(3)]**
 - The registered person shall execute a bond in **FORM GST ASMT-05** along with a security in the form of a bank guarantee for an amount as determined under rule 98(3).
2. The proper officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalisation 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**.

Finalisation of Provisional Assessment

3. The proper officer shall be required to finalise the assessment and pass the final assessment order within a period not exceeding **6 months** from the date of communication of provisional assessment order. However on sufficient cause being shown this period can be extended by

Additional/Joint Commissioner	—————>	For a further period not exceeding 6 months
Commissioner	—————>	For such further period not exceeding 4 Years

Liability of interest at the time of final assessment

4. If the amount of tax determined under the final assessment order, is more than the amount specified in the provisional assessment order, then the taxable personal shall be liable to pay interest @ 18% p.a. on the **SHORTFALL** from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment

Tax Becomes refundable consequent to the order of final assessment

5. Where the tax liability as per the final assessment is less than in provisional assessment, the registered person shall be paid interest at the rate specified under section 56 (i.e. 6% p.a.) from the date immediately after the expiry of 60 days from the date of receipt of application in accordance with the provisions of section 54(1) till the date of refund of such tax.

Release of security

6. Thereafter the applicant may file an application in **FORM GST ASMT-08**, for release of security furnished earlier.
7. Final order will be issued in **FORM GST ASMT-09** within a period of **7 working days** from the date of receipt of application.

Illustration 1 :

KB & Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12.01.20XX, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

KB & Sons complies with the same and supplies both the consignments of goods on 25.01.20XX thereafter paying the tax on provisional basis in respect of both the consignments on 19.02.20XX.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21.03.20XX, a tax of Rs. 1,80,000 becomes due on 1st consignment whereas a tax of Rs. 4,20,000 becomes refundable on 2nd consignment. KB & Sons pays the tax due on 1st consignment on 09.04.20XX and applies for the refund of the tax on 2nd consignment same day. Tax was actually refunded to it on 05.06.20XX.

Determine the interest payable and receivable, if any, by KB & Sons in the above case.

Answer:

Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25.01.20XX under provisional assessment is 20.02.20XX.

In view of the provisions of section 60(4), in the given case, KB & Sons is liable to pay following interest in respect of 1st consignment:

$$= \text{Rs. } 1,80,000 \times 18\% \times 48/365$$

$$= \text{Rs. } 4,261 \text{ (rounded off)}$$

Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05.06.20XX) within 60 days from the date of receipt of application of refund (09.04.20XX), interest is not payable to KB & Sons on tax refunded in respect of 2nd consignment.

Scrutiny of returns [Sec 61 of CGST Act]

- The proper officer can scrutinize the return to verify its correctness. It is a non-compulsory pre-adjudication process. In simple words, it is not mandatory for the officer to scrutinize return. Scrutiny of returns is not a legal or judicial proceeding, i.e., no order can be passed. The officer will ask for explanations on discrepancies noticed.
- The proper officer may scrutinize the return and shall inform the registered persons of discrepancies noticed, if any, and seek his explanation
- In case of discrepancy, proper officer shall issue a **notice** to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within a maximum of **30 days** from the date of service of the notice.

The registered person may –

- Accept the discrepancy as mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same or
- furnish an explanation for the discrepancy in **FORM GST ASMT- 11** to the proper officer

Where the explanation furnished found to be **acceptable**, the proper officer shall inform the registered person in **FORM GST ASMT-12**.

In case, satisfactory response is not received within 30 Days or extended time the proper officer, may -

- Undertake departmental audit at the place of business of registered person as per section 65 of the Act;
- Direct such registered person by notice to get his records including books of accounts audited by Chartered Accountant or Cost Accountant (Special Audit) as per section 66 of the Act;
- Undertake provisions of Inspection, search and seizure as per section 67 of the Act;
- And proceed towards Determination of tax under sec 73 & 74 of the CGST Act.

Assessment of Non-filers of Returns [Sec 62 of CGST Act read with Rule 100 (1) of the CGST Rules]

- (1) This section is applicable where a registered person fail his returns, which may pertain to any of the following category-
- return of the tax period in case of a normal taxable person (**Sec 39**),
 - return in case of a person opting for composition (**Sec 39**),
 - final return after cancellation of registration (**Sec 45**)
- 2) Where a registered taxable persons fail to file his return within **15 days of issuance of notice** in form **GSTR-3A**, the proper officer may assess the tax liability to the **best of his judgment**, and issue an assessment order in **FORM GST ASMT-13** within a period of **5 year** from the date specified under sec 44 for furnishing of the annual return for the Financial years to which the tax not paid relates. It means that if the transaction of non-filer for FY 2017-18, then the officer can pass the order till 31.12.2018 + 5 years i.e. 31.12.2023
- 3) If a **valid return** has been furnished with in **60 days of service of assessment order**, the proper officer may withdraw the said assessment order but the liability for payment of interest under sec 50(1) or for payment of late fee under Sec 47 shall continue.

Provided that where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a **further period of 60 days on payment of an additional late fee of Rs. 100 for each day of delay beyond 60 days of the service of the said assessment order** and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under sub-section (1) of section 50 or to pay late fee under section 47 shall continue. **[Earlier only 30 days were granted after assessment order, now 60 days + further 60 days are granted, through amended Sec 62 vide The FA, 2023, w.e.f. 1-10-2023]**

SOP issued which is to be followed in case of Non-Filers of Return [Circular No. 129/48/2019-GST dt 24-12-2019]

- (i) Preferably, a **system generated message** would be sent to all the registered persons **3 DAYS BEFORE** the due date to nudge them about filing of the return for the tax period by the due date.
- (ii) Once the **due date** for furnishing the return under section 39 is **over**, a **system generated mail** / message would be **sent to all the defaulters** immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the **said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.**
- (iii) **5 days after the due date** of furnishing the return, a notice in **FORM GSTR-3A** (under section 46 of the CGST Act read with rule 68 of the CGST Rules) shall be issued electronically to such registered person who fails to furnish return under section 39, **requiring him to furnish such return within 15 days;**
- (iv) In case the said return is **still not filed by the defaulter within 15 days of the said notice**, the **proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act**, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and would issue order under rule 100 of the CGST Rules in FORM GST ASMT-13. The **proper officer would then be required to upload the summary** thereof in **FORM GST DRC07;**
- (v) For the purpose of assessment of tax liability under section 62 of the CGST Act, the **proper officer may take into account** → **the details of outward supplies available in the statement furnished under section 37 (FORM GSTR-1),** → **details of supplies auto populated in FORM GSTR-2A,** → **information available from e-way bills,** or → **any other information available from any other source, including from inspection under section 71;**

SOP issued which is to be followed in case of Non-Filers of Return [Circular No. 129/48/2019-GST dt 24-12-2019]

- vi. In case the defaulter furnishes a valid return within **30 days of the service of assessment order** in **FORM GST ASMT-13**, the **SAID ASSESSMENT ORDER SHALL BE DEEMED TO HAVE BEEN WITHDRAWN** in terms of provision of sub-section (2) of section 62 of the CGST Act.
- vii. However, if the said return **remains unfurnished within the statutory period of 30 days** from issuance of order in FORM ASMT-13, then **proper officer may INITIATE PROCEEDINGS UNDER SECTION 78 AND RECOVERY UNDER SECTION 79 OF THE CGST ACT.**

Amnesty provided for withdrawal of assessment orders against non-filers of GSTR 3B & GSTR 10 under Sec 62 [Through NN 6/2023-CT dated 31-3-2023]

An amnesty scheme has been provided for conditional deemed withdrawal of assessment orders in cases where the concerned return could not be filed within 30 days of the assessment order issued on or before the 28-2-2023 under Sec 62(1) but has been filed along with due interest and late fee upto 30-6-2023, irrespective of whether appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not.

Assessment of Unregistered Persons [Sec 63 of CGST Act]

(1)The proper officer may apply best of his judgment for the relevant tax periods and issue an assessment order where:

- A taxable person fail to obtain registration even though liable to do so, or
- Whose registration has been cancelled under Sec 29(2) but who was liable to pay tax.

(2)The proper officer shall issue a notice to taxable person in **FORM GST ASMT-14** containing the grounds and after allowing a time of **15 days to such person to furnish his reply**, if any, pass an order in **FORM GST ASMT-15**

(3)The assessment order must be issued within a period of **5 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:**

(4)No such assessment order shall be passed without a reasonable opportunity of being heard.

If it is found that he did not register when he was liable to, then demand and recovery for unpaid tax will commence and the PENALTY for not registering will also apply.

Penalty for not registering under GST

- Penalty 100% of tax due or Rs. 10,000
-whichever is higher

Summary Assessment [Sec 64 of CGST Act read with Rule 100 (3) to (5) of the CGST Rules]

Circumstances

- Summary assessment is generally used in a tax legislation to denote “fast track assessment” based on return filed by the assessee.
- Following conditions need to be satisfied for Proper Officer to issue summary Assessment –
 - There should be any evidence showing a tax liability of a person
 - He should have the previous permission of **Additional Commissioner or Joint Commissioner**,
 - The assessment of the tax liability of such person should be to protect the interest of revenue and
 - He should issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Order of summary assessment shall be issued in **FORM GST ASMT-16**

Withdrawal of Summary Assessment

- The taxpayer can apply within **30 days from the date of receipt of order**. If he proves to the Additional/Joint Commissioner that the order was wrongly passed, then the order will be cancelled.
- The Additional/Joint Commissioner can on his own, cancel the order if he is of the opinion that it was wrongly passed. Post this, demand and recovery provisions u/s 73 & 74 will be applicable.

Summary assessment is usually done in cases of defaulting or absconding taxpayers.

Often summary assessments are carried out in situations where it is not possible to identify the taxable person concerned in a case of supply of goods. In such cases, the person in-charge of the goods will be deemed to be the taxable person. He will be assessed and held liable to pay tax and amount due under summary assessment.

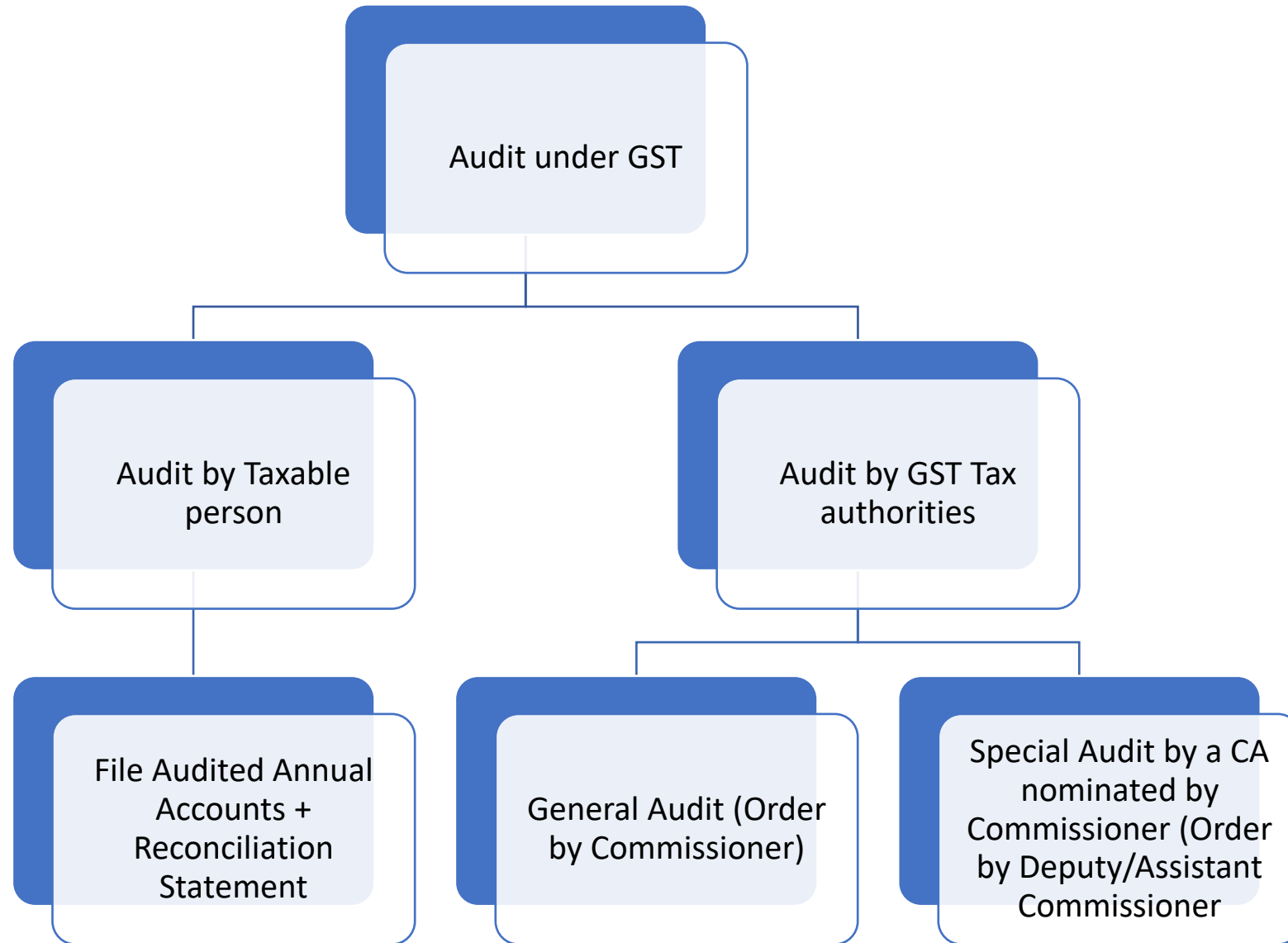
Audit

GST envisages 3 type of audit . The **first audit** is by a Chartered accountant or a Cost accountant. Every registered person whose **aggregates turnover** during a financial year **exceeds INR 2 crore** shall get his accounts audit by a chartered accountant or a cost accountant and furnished a copy of audit annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C**

In the **second type**, which is the normal audit the commissioner or any officer authorized by him may undertake audit of any registered persons for such period, at such frequency and in such manner as may be prescribed.

Third type of audit is called the “**special audit**”. In the special audit the registered persons may be directed to get his record i.e. books of the accounts examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceeding; depending upon the complexity of the case.

Audit (Sec 65-66)



General Audit - Order to Conduct Audit by Commissioner (Sec 65)

1. The **commissioner** or any officer authorized by him, by way of general or special order may undertake audit of any registered persons for **such period**, at such frequency, of the business transaction at –
 - the place of business of the registered person, or
 - the department's office.
2. The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year [or part thereof] or multiples thereof. [Rule 101(1)][**Inserted vide Notification No. 74/2018 dated 31st December, w.e.f. 31-12-2018.**]
3. Notices for undertaking of audit will be issued to the taxable person at least **15 days on advance** in form **GST ADT-01**

How to conduct Audit ?

1. The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify
 1. the documents on the basis of which the books of account are maintained and
 2. the returns and statements furnished under the provisions of the Act and the rules made thereunder,
 3. the correctness of the turnover, exemptions and deductions claimed,
 4. the rate of tax applied in respect of the supply of goods or services or both,
 5. the input tax credit availed and utilised,
 6. refund claimed, and
 7. other relevant issues and record the observations in his audit notes.

Finalization and Proceeding of Audit

1. AUDIT SHALL BE COMPLETED within a period of 3 months from the date of commencement of audit* or under certain conditional, the period not exceeding 6 months , as extended by the commissioner.
2. On conclusion of audit , the proper officer **shall**, within **30 days**, notify its finding to the registered person in form **GST ADT-02** detailing his rights and obligations and the reasons for such findings.
3. THE PROPER OFFICER **MAY** INITIATE PROCEEDING FOR DETERMINATION OF TAX under sec 73 or 74, levy of interest and/or penalty if the audit conducted reveals any evidence of-
 - tax not paid or short paid
 - Input tax credit wrongly availed or utilized, or
 - amount erroneously refunded

* Commencement of audit means the later of the following – (a) the date on which the records/accounts called for by the audit authorities are made available to them or (b) the actual institution of audit at the place of business of the taxpayer.

Special Audit [Sec 66 of the CGST Act read with rule 102 of the GST rules]

Special audit provides a lawful and legal way for the GST officers to take the assistance of a Chartered Accountant or Cost accountant to determine the tax liabilities in complex cases. The professional expertise of a Chartered Accountant or Cost Accountant will be obtained to ensure that the interest of revenue is safe guarded at all times.

Direction For Special Audit

- 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**, direct such registered person by a communication in writing to get his records including books of account examined. Such direction is given in **Form GST ADT -03**
- Audit shall be conducted by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- Assistant Commissioner need to take prior approval of the Commissioner.

Who shall incur fee & expense of Special Audit

- The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, shall be **determined and paid by the Commissioner and such determination shall be final.**

Finalization & Reports

- The chartered accountant or cost accountant so nominated shall, **within the period of 90 days, submit a report** of such audit duly signed and certified by him to the said Asst. Commissioner mentioning therein such other particulars as may be specified. The regd. Person shall be informed of the findings of the Special Audit in Form **GST ADT -04**
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 90 days.**

Findings of special audit

- The provisions of Special Audit 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.
- The taxable person will be given an **opportunity of being heard** in findings of the special audit.
- If the audit results in detection of unpaid/short paid tax or wrong refund or input tax credit wrongly availed then **demand and recovery actions will be initiated u/s 73 or 74**

Inspection (Sec 67)

It is important to understand that option of conducting Inspection, search, seizure and arrest are exercised only in exceptional circumstances and as a last resort to protect the Government Revenue.

Inspection is a softer provision than search, which enables officers to access any place of business of taxable person or of person engaged in transporting goods or who is an owner or an operator of a warehouse or godown. Inspection can be carried out by an officer CGST/SGST only upon a written authorization in **INS-01** given by an officer of the rank Joint Commissioner or a above.

Power of Officer

I. Inspection

Where the proper officer has **REASONS TO BELIEVE** not below the rank of **JOINT COMMISSIONER**, that-

(a) a **taxable person** has → suppressed any transaction relating to supply or the → stock of goods in hand, or has → claimed ITC in excess of his entitlement or → contravene any of the provisions of this Act or rules to evade tax under this Act; or

(a) **any person** engaged in the business of → **transporting goods** or → an **owner or operator of a warehouse or a godown** or any other place is → keeping goods which have escaped payment of tax or has → kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may **authorise in writing** any other officer to **inspect any places of business** of the

- taxable person or
- the persons engaged in the business of transporting goods or
- the owner or the operator of warehouse or godown or any other place*

***Note - He can also examine any other place if he sees fit**

What is meant by 'reasons to believe'?

'Reason to believe' means having knowledge of facts (although does not mean having direct knowledge), that would make any reasonable person, knowing the same facts, to reasonably conclude the same thing.

As per Sec 26 of the Indian Penal Code, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

Reason to believe is a determination based on intelligent examination and evaluation. It is different from a purely subjective consideration, i.e., an opinion. It is based on facts rather than an interpretation of facts.

Suspicion cannot be called as a 'Reason to Believe'.

Is it necessary to record the 'reasons to believe' in writing, before issuing order for Inspection/Search/Seizure?

GST Act does not mention recording the reasons to believe. In fact, Finance Act 2017 has amended Sec 132(1) & (1A) of Income Tax Act retrospectively stating, that reason to believe, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Meaning of Search, Seizure and Inspection

- **'Inspection'** is the act of examining something, often closely. In tax/legal language, it is a softer provision than search. It enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner/operator of a warehouse or godown.
- **'Search'** involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law.
- **'Detention'** - **Not allowing access to the owner** of the goods by a legal order/notice is called detention. However the **ownership and possession of goods still lies with the owner**. It is issued when it is suspected that the goods are liable to confiscation.
- **'Seizure'** - Seizure is **taking over of actual possession of the goods by the department**. Seizure can be made only after inquiry/investigation that the goods are liable to confiscation. Although **ownership of goods remain with the owner**.
- **'Confiscation'** - Confiscation of the goods is the ultimate act after proper adjudication. Once confiscation takes place, the **ownership as well as the possession goes out of the hands of the original owner and into the hands of the Government Authority**.

II. Search and Seize

Sec 67(2) Where the proper officer, **NOT BELOW THE RANK OF JOINT COMMISSIONER**, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that

- **any goods liable to confiscation** or
 - any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, **are secreted in any place**,
- he may authorise in writing (in **INS-02**) any other officer to **search and seize** or may himself search and seize such goods, documents or books or things:

If Seizer of Goods is Impracticable

Provided that where it is **not practicable to seize** any such goods, the proper officer may serve an order (**Form GST INS-03**) for not to remove or deal with the goods except with the prior permission.

III. **Seal or break open door**

Sec 67(4) - The officer authorised shall have the power

- to seal or break open the door of any premises or
- to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

Period of Retention of Goods or Documents

Documents or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

Sec 67(3) The documents, books or things which have not been relied upon for the issue of notice under this Act or the rules made thereunder, **shall be returned to such person within a period not exceeding 30 days** of the issue of the said notice.

Rights of the Person – To Take Copies of the Document Seized

Person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts except where making such copies or taking such extract may, in the opinion of the proper officer, prejudicially affect the investigation.

Release of Goods

I. Release of the Goods on Provisional Basis

- Goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security,
- The bond for the value of the good shall be executed in **Form GST INS-04** and of security shall be furnished in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable **Rule 140(1)**
- In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed.

II. Release of perishable or hazardous nature goods (Rule 141)

1. Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays
 - an amount equivalent to the **market price of such goods or things or**
 - the **amount of tax, interest and penalty** that have become payable or may become payable by the taxable person,
 - **whichever is lower** ,such goods or as the case may be things shall be released forthwith, by an order in **Form GST INS-05**, on proof of payment.
2. Where the taxable person fails to pay the amount referred as above in respect of the said goods or things, the Commissioner may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or other amount payable in respect of such goods or things.

III. Actual Release of goods where no notice is served - Where any goods are seized, but no notice in respect thereof is given within **6 months** of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. However, the period of **6 Months may**, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding **6 months**.

IV. Disposal of goods

The proper officer may dispose of the goods in such manner as may be prescribed , if such goods pertains to the following class of goods or goods as specified by the Govt. by the notification:-

1. Perishable or hazardous nature of any goods.
2. Depreciation in the value of the goods with the passage of time
3. Constraints of storage space for the goods, or
4. Any other relevant considerations by notification

Refer Notification No.27/2018 – Central Tax dated 13th June 2018

Other ways to check/inspect - Power to make Sample purchase – Sec 67(12)

The **Commissioner or an officer authorised by him** may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and

→ on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Basic Requirements to be observed during search operations –

The following principles should be observed during Search –

- ❖ No search of premises should be carried out without a valid search warrant issued by the proper officer.
- ❖ There should invariably be a lady officer accompanying the search team to residence.
- ❖ The officers before starting the search should disclose their identity by showing their identity cards to the person-in-charge of the premises.
- ❖ The search warrant should be executed before the start of the search by showing the same to the person-in-charge of the premises and his signature should be taken on the body of the search warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the search warrant.
- ❖ The search should be made in the presence of at least two independent witnesses of the locality. If no such inhabitants are available/willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.
- ❖ Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person-in-charge of the premises being searched. Similarly, after the completion of search all the officers and the witnesses should again offer themselves for their personal search.
- ❖ A Panchnama/Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama/Mahazar and the list of goods/documents seized/detained should invariably be signed by the witness, the in-charge/owner of the premises before whom the search is conducted and also by the officer(s) duly authorised for conducting the search.

Basic Requirements to be observed during search operations –

The following principles should be observed during Search –

- ❖ After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.
- ❖ The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.
- ❖ A copy of the Panchnama/Mahazar along with its annexure should be given to the person incharge/owner of the premises being searched under acknowledgement.

Search Warrant and its contents

The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of JC or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details –

- ❖ The violation under the Act
- ❖ The premise to be searched
- ❖ The name and designation of the person authorised for search
- ❖ The name of the issuing officer with full designation along with his round seal
- ❖ Date and place of issue
- ❖ Serial number of the search warrant
- ❖ Period of validity i.e. a day or two days etc.

Power to summon persons to give evidence and produce documents (Sec 70)

- (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.
- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “**judicial proceedings**” within the meaning of **section 193 and section 228 of the Indian Penal Code**.

Who can summon someone for evidence?

The proper officer can summon any person to give evidence or produce a document.

Any person summoned, has to attend on his own or through an authorized representative. They will appear under oath.

Consequences of non-appearance to summons

The proceeding before the official who has issued summons is deemed to be a judicial proceeding.

If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). (shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both)

If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC (shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both) and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 174 of the IPC.

In case he gives false evidence, he can be prosecuted under section 193 of the IPC. (shall be punished with imprisonment of either description for a term which may extend to seven years)

In addition, if a person does not appear before a CGST/SGST officer who has issued the summon, he is liable to a penalty upto ₹ 25,000 under section 122(3)(d) of the Act.

Guidelines for issue of summons

The CBIC in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- ❖ Summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for top management
- ❖ The language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver

Power to summon persons to give evidence and produce documents (Sec 70)

- ❖ Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.
- ❖ Where for operational reasons, it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer.
- ❖ In all cases, where summons is issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons
- ❖ Senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking 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.

Precautions to be observed while issuing summons

The following precautions should generally be observed when summoning a person –

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised by when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- (iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as matter of strategy.
- (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 of the case.

Access to Business Premises (Sec 71)

- (1) Any officer under this Act, authorised 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.

Who can access business premises and inspect books?

The Joint Commissioner of CGST/SGST will authorise a CGST/SGST officer to have access to any place of business of a registered taxable person. The officer can inspect books of account, documents, computers and other required things to carry out any audit, verification in 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 authorised 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;
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
- (vi) any other relevant record,

for the scrutiny by the officer or audit party or the CA or CWA within a period **not exceeding 15 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.

Officers to Assist proper Officer (Sec 72)

1. All officers of
 - Police,
 - Railways,
 - Customs, and
 - those officers engaged in the collection of land revenue,
 - including village officers,
 - officers of State tax and officers of Union territory tax

shall assist the proper officers in the implementation of this Act.
2. The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner

Summary

Section	Officer
Provisional Assessment – Sec 60	Extension of Due Date of Final Assessment Order AC/JC – Further 6 months Commissioner – Further 4 years
Scrutiny Assessment – Sec 61	No Officer – PO
Assessment of Non-Filers – Sec 62	No Officer – PO
Assessment of Unregistered Person – Sec 63	No Officer – PO
Summary Assessment – Sec 64	AC/JC – Permission
Audit – Departmental – Sec 65	Commissioner or officer authorised by him. Extension of period by Commissioner by 6 months
Audit – Special – Sec 66	Assistant Commissioner & Above, with prior permission of Commissioner. Extension of person by Assistant Commissioner – 90 days
Inspection – Sec 67(1)	Not below JC
Search and Seizure – Sec 67(2)	Not below JC
Power to make Sample Purchases – Sec 67(12)	Commissioner or officer authorised by him
Access to Business Premises – Sec 71	Not below JC