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INDEX

ARTICLE

TYPES OF NOTICES UNDER GST	2
ACTIVITIES - AUGUST, 2023	12
UPCOMING PROGRAMMES SEPTEMBER, 2023	17
HOLIDAYS - SEPTEMBER, 2023	19

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TYPES OF NOTICES UNDER GST

- CA.SOORAJ BHARATHRAJ



There will be hardly any taxpayer who has not received notice from the GST Department till date. The GST Department has access to various sources of data like database shared by the Income Tax Department, E-way bill portal, E-invoice portal, Returns filed by the supplier etc. Considering the varied source of data and also different laws under which these data are furnished, like for example the Income Tax Act, there is bound to be mismatch between the data furnished by the taxpayer and the source from which the GST Department extracts its data. As a result all taxpayers will have to deal with some notice or the other during the course of their GST journey.

In this Article, we will see the statutory provisions in relation to some notices issued by the GST Department and the points to be kept in mind while replying to these notices. Quite often in our enthusiasm to prove our innocence we end up replying to notices /letters which do not deserve a reply. We therefore have to be aware of the various provisions under which the Department can issue notices and what are the remedies available for the taxpayer in dealing with these notices. This Article does not cover notices received for Audit (Sections 65 and 66 of the CGST Act 2017) and notices in relation to registration and cancellation since the topics will require separate deliberation.



1. ASMT -10 – SCRUTINY ASSESSMENT

► **Relevant statutory provisions – Section 61 of the CGST Act and Rule 99 of the CGST Rules**

This is the most common notice received by the taxpayers. Under Scrutiny Assessment, the Department issues notices to taxpayers highlighting certain discrepancies in the returns filed by the taxpayers. The taxpayer has to file his response in **ASMT-11**, within 30 days of the date of notice or such further extended time as may be allowed by the Department. If the Department is satisfied with the response, it will issue a closure order in **ASMT-12**. If however, the Department is not satisfied with the response, it can issue a Show Cause Notice under Section 73 or 74 of the CGST Act or it may initiate appropriate action under Section 65 or Section 66 of the CGST Act (Audit by the Department or Special Audit by Professionals), which deal with Audit of the taxpayers books and records or it may even order inspection under Section 67 of the CGST Act.

It may be noted that the word “discrepancy” has not been defined under the GST Law. It will be worthwhile to refer to CBIC Instruction No 2/2022 which refers to the following examples of a discrepancy :-

- (a) GSTR 1 vs GSTR 3B mismatch
- (b) GSTR3B vs GSTR 2A (now GSTR 2B) /GSTR 8A mismatch
- (c) GST paid under the reverse charge mechanism (RCM) vs RCM liability in GSTR 2A/2B
- (d) RCM paid in GSTR 3B vs RCM availed as input
- (e) Exempted supplies reported in GST returns but proportionate input not reversed under Rules 42/43 of the CGST Rules.
- (f) Comparison with E-way bill data
- (g) Input Tax Credit (ITC) availed in respect of invoices from suppliers whose registration has been cancelled.
- (h) ITC claimed after due date prescribed under Section 16(4) of the CGST Act.
- (i) Unpaid interest on account of late filing of GSTR 3B.
- (j) Unpaid late fee in respect of delayed filing of GSTR 1 or GSTR 9



It is also to be noted that ASMT-10 can be issued only in respect of returns filed by the taxpayer ; for e.g. GSTR 1, GSTR 3B, GSTR 4 and GSTR 9, in the case of a regular taxpayer. Therefore it must be kept in mind that ASMT-10 cannot be issued calling for books of accounts and records of the taxpayer. An examination of these records may be necessary during the course of the assessment proceedings but the notice can be issued only in respect of discrepancies identified in the returns filed by such taxpayer.

It may also be noted that the taxpayer has a minimum time limit of 30 days to file a reply to the notice, which is provided under the statute. Therefore if a notice provides a lesser time limit, the taxpayer can dispute it.

Needless to say, ASMT-10 can be issued only to a registered person. It cannot be issued to unregistered persons, including persons whose registrations have been cancelled.

Section 61 uses the words “ The Proper Officer may scrutinize” which means it is not necessary that scrutiny notices should be issued to all the taxpayers. The Department will rely on risk assessment parameters and data analytics to identify appropriate cases to be taken up for scrutiny.

2. ASMT-13-BEST JUDGEMENT ASSESSMENT

► ***Relevant Statutory Provisions – Section 62 of the CGST Act and Rule 100(1) of the CGST Rules***

This provision gives wide range of powers to the Assessing Officer. The Section starts with a non obstante clause which says “Notwithstanding anything to the contrary contained in Section 73 or Section 74 of the CGST Act “. This implies that a best judgement assessment order can be passed without initiating a Show Cause Notice under Section 73 or Section 74 of the CGST Act 2017.

Before discussing best judgement assessment, it is necessary to go through Section 46 of the CGST Act which deals with issue of notices to non filers of returns. As per Section 46 of the CGST Act, if a taxpayer fails to file a return for a tax period, notice in **GSTR 3A** shall be issued to such taxpayer asking him to file the return within 15 days of the notice.



If a taxpayer fails to file the return within the above mentioned time limit, the Department shall issue a best judgement assessment order for the tax period in **ASMT-13** and a summary of the Order shall be uploaded electronically in **DRC-07**. However all is not lost for the taxpayer even now. If the taxpayer files a valid return for the relevant tax period after payment of tax along with applicable interest, within 30 days of the date of issue of ASMT-13 (increased to 60 days with effect from 1st October 2023), the assessment order shall automatically stand withdrawn. If the taxpayer fails to do so, another opportunity (with effect from 1st October 2023) is provided wherein if the taxpayer files a valid return as aforesaid within a further period of 60 days by paying a late fee of Rs 200 per day of delay, then the assessment order shall automatically stand withdrawn.

If the taxpayer fails to utilize the opportunities as mentioned above, the assessment order shall be final. Even the Hon'ble Courts will not interfere with such an order. Reference is drawn to the judgement of the Hon'ble Kerala High Court in the case of Bridge Hygiene Services Pvt. Ltd. v. STO 2019 (30) G.S.T.L. 391 (Ker.) wherein the Court refused to intervene and directed the petitioner to file an appeal against the order before the appellate authority.

It may be noted that the limitation period prescribed under the law is 5 years from the due date for filing annual return in respect of the prescribed period. The CBIC has issued **Circular 129 of 2019** which prescribes the procedure to be followed by the Department while making a best judgement assessment.

The CBIC on the recommendation of the GST Council had provided an amnesty scheme wherein all best judgement assessment orders issued upto 28th February 2023 would stand withdrawn if valid returns for the tax period were filed on or before 31st August 2023.

It may be noted that Section 62 specifically mentions that the assessment shall be made after taking into account "relevant material which is available or which he has gathered". This implies that the assessment shall be made after considering GSTR 1 if filed by the taxpayer, GSTR 2A/2B of the taxpayer, e-way bill data etc. There are a number of judgments by the Hon'ble Courts in the country, that best judgement assessment shall not be arbitrary involving wild guess work but shall have reasonable nexus to the materials available and the circumstances of each case.



3. **ASMT-14 – Assessment of Non Filers**

► ***Relevant Statutory Provisions – Section 63 of the CGST Act and Rule 100(2) of the CGST Rules***

This provision also begins with a non obstante clause which gives the Department to pass an order without initiating a Show Cause Notice. Under this provision, if a taxable person fails to obtain registration despite being liable to do so or if a person whose registration has been cancelled under Section 29(2) of the CGST Act, is liable to pay tax, the Department can make a best judgement assessment of the tax liability of such a person. A notice in **ASMT-14**, along with a summary in **DRC-01**, shall be issued to the such person giving him 15 days time to respond to the best judgement assessment.

On consideration of reply furnished by the noticee, the Department shall issue an order in **ASMT-15** and a summary of the order shall be uploaded electronically in **DRC-07**. Once the order is passed, the only option left with the taxpayer is to file an appeal under Section 107 of the CGST Act, with the first appellate authority.

It may be noted that best judgement assessment under this provision can be made against a taxpayer whose registration was cancelled for the reasons referred to in Section 29(2) of the CGST Act, which includes non -filing of returns.

Unlike Section 62, this section has no reference to the “relevant material which is available or gathered”. However, going by the ratio laid down by the Hon’ble Courts, the best judgement assessment is to be made judiciously and not according to the whims and fancies of the officer making the assessment.

4. **ASMT-16- Summary Assessment**

► ***Relevant Statutory Provisions – Section 64 of the CGST Act and Rule 100(3) of the CGST Rules***

This provision empowers the Department to do a best judgement assessment, to protect the interests of the revenue, if there is any “evidence” of tax liability of a person and there



are sufficient grounds to believe that any delay in assessing such tax liability may adversely affect the interests of the revenue. However, the assessing officer referred to as the “proper officer” shall take prior permission of the Additional Commissioner or Joint Commissioner before making the assessment. The Assessment Order shall be issued in **ASMT-16** and a summary of the Order shall be uploaded electronically in **DRC-07**. It may be noted that this provision extends to “any person” and not just a registered person.

The person on whom the assessment has been made may make an application in **ASMT-17** to the Additional Commissioner or the Joint Commissioner and if on perusal of the application, the Additional or Joint Commissioner, as the case may be is satisfied that the assessment order should be withdrawn, an Order of withdrawal shall be passed. The Order of withdrawal or rejection of the application made by the assessee shall be passed by the Additional or Joint Commissioner in **ASMT-18**.

As may be seen, this provision is intended to be used in rare cases ; for example in cases where the taxpayer is likely to abscond.

5. **DRC-01B- GSTR 1 vs GSTR 3B**

Where tax payable declared in GSTR 1 filed by a registered person is more than that declared in GSTR 3B, an intimation in Part A of DRC-01B shall be issued by the proper officer. If the tax is so payable, it may be paid vide DRC-03 along with applicable interest under Section 50 of the CGST Act and furnish the details in Part B of DRC-01B. If however no tax is payable, the registered person shall furnish the reasons in Part B of DRC-01B. The payment or response as the case may be shall be made within 7 days of the date of receipt of the intimation.

If no response is filed or the response filed is not satisfactory, the Department can directly recover the differential tax under Section 79, without even issuing a Show Cause Notice.



6. DRC-01C- GSTR 3B vs GSTR 2B

Where the input tax credit availed by a registered person in his GSTR 3B exceeds the input tax credit reflected in GSTR 2B, by such percentage points as may be prescribed, an intimation in Part A of DRC-01C shall be issued by the proper officer. If the difference between input tax credit availed in GSTR 3B and reflected in GSTR 2B represents excess input tax credit, the registered person shall reverse such excess credit along with applicable interest through DRC-03 and intimate the same to the proper officer in Part B of DRC-01C. If however, the aforesaid difference does not represent excess input tax credit, the registered person shall furnish the reasons in Part B of DRC-01C. The payment or response as the case may be shall be made within 7 days of the date of receipt of the intimation.

If no response is filed or the response filed is not satisfactory, the Department can directly recover the excess input tax credit under Section 79, without even issuing a Show Cause Notice. It may be noted that the percentage of variance between input tax credit availed in GSTR 3B and input tax credit, reflected in GSTR 2B, is yet to be prescribed by the GST Council.

7. Show Cause Notice – Section 73 and Section 74

Where it appears to the proper officer, that any tax has not been paid, or short paid or erroneously refunded or where input credit has been wrongly availed or utilized, for any reason other than fraud, wilful misstatement, or suppression of facts to evade tax, he shall serve a Show Cause Notice under Section 73 of the CGST Act 2017. If however, the non payment, short payment etc is on account of fraud, wilful misstatement, or suppression of facts to evade tax etc, then Show Cause Notice shall be issued under Section 74 of the CGST Act 2017.

In both the above cases, the Show Cause Notice shall be accompanied by a summary in **DRC-01**, which shall be uploaded electronically. A comparative table showing the provisions under Section 73 and Section 74 is given below :-

	Section 73	Section 74
Time limit to pass order	within 3 years from the due date for filing annual return for the financial year.	within 5 years from the due date for filing annual return for the financial year.
Time limit to issue notice	at least 3 months prior to the above time limit.	at least 6 months prior to the above time limit.
If payment made before issue of notice	no penalty	penalty equal to 15% of tax
If payment made within 30 days of notice	no penalty	penalty equal to 25% of tax
If payment made after 30 days of notice	penalty equal to 10% of tax or Rs 10,000 whichever is higher	penalty equal to 50% of tax

A summary of the order shall be uploaded in **DRC-07** electronically in both the cases.

The applicable time limits for financial years 2017-18 to 2021-22 is given below for ready reference, based on the due date for filing annual return for each year :-

Financial Year	Section 73		Section 74	
	Order	SCN	Order	SCN
2017-18	31-Dec-23	30-Sep-23	06-Feb-25	06-Aug-24
2018-19	31-Mar-24	31-Dec-23	31-Dec-25	30-Jun-25
2019-20	30-Jun-24	31-Mar-24	31-Mar-26	30-Sep-25
2020-21	28-Feb-25	30-Nov-24	28-Feb-27	31-Aug-26
2021-22	31-Dec-25	30-Sep-25	31-Dec-27	30-Jun-27



Note: The due dates to issue orders u/s73 for financial years 2017-18 to 2019-20, have been extended vide Notification dated 9 of 2023 dated 31st March 2023

● **Point to be kept in mind while replying to Notices**

As mentioned in the earlier part of this Article, we may in our anxiety to file the reply miss out on certain basic points to be kept in mind while replying to the notice. It may be noted that the validity of a notice shall be questioned before responding on the merits of the notice. As per Section 160(2) of the CGST Act, the validity of a notice, order or communication shall not be questioned, once such notice, order or communication has already been acted upon.

Here are some of the basic points which are to be checked before filing reply to a Notice :-

- 1.) Check whether the officer who has issued the notice has the necessary jurisdiction to do so. The GST Law uses the term “proper officer” in relation to the various provisions. Reference is invited to CBIC Notification 2 of 2017 and Circulars 1 of 2017, 3 of 2017 and 31 of 2018 in this regard. These documents specify the “proper officer” in relation to each function /proceeding under the GST Law.

As far as the Kerala SGST Department is concerned, reference is invited to Circulars 5 of 2023 and 6 of 2023 (post restructuring), which specify the proper officer for each function

- 2.) Check whether the Notice is time barred.
- 3.) Check whether the Notice is having DIN (Document Identification Number). In respect of notices issued by the Kerala SGST Department other than through GST portal ,reference number RFN is mandatory (refer to Circular Number 14/2023).
- 4.) Check the relevant statutory provision under which the notice has been issued. The notice should clearly specify the Section and the relevant Rule under which It has been issued. If it is a plain letter without referring to any statutory provision, a polite response may be filed calling for the relevant statutory provision under which it is issued



and at the same time rejecting the allegations if any, without going into the merits of the matter.

- 5.) In case a Show Cause Notice is issued, check whether a summary in DRC-01 has been uploaded electronically. There have been cases where the Hon'ble Courts have set aside Show Cause Notices issued without accompanying DRC-01. Similarly only issuing DRC-01, without a Show Cause Notice, will invalidate the proceedings.
- 6.) Check whether the Notices and Orders are signed, either digitally or manually. There have been cases under the Income Tax Law as well as GST where unsigned notices / orders have been held to be invalid.
- 7.) In cases where non payment or short payment is undisputed, make the payment within 30 days of the Show Cause Notice to avoid penalty (in Section 73 cases).
- 8.) In respect of Show Cause Notices issued under Section 74, check whether the notice clearly provides the grounds on which fraud, suppression etc is alleged.
- 9.) The response should always be to the point and avoid irrelevant details and statements.

As mentioned at the beginning of this Article, the above are only a few of the different types of notices issued by the GST Department. Whatever be the notice received, it is necessary to go through the relevant statutory provision before responding.

ACTIVITIES - AUGUST, 2023



Tree Saplings Distribution Conducted

Theme – “Protecting the plant is not a choice, it’s a responsibility we all share”. - 11.08.2023



**Inauguration of Annex Class Room at Puthiyedath Arcade, Ashokapuram
New premises for running coaching classes and soft skill courses of ICAI.**

Inauguration - Dr. Beena Philip, Mayor, Kozhikode Corporation, Kozhikode. - 11.08.2023



One Day Seminar on Tax Audit at Hotel Parmount Tower.

Speakers - Adv. (CA) Santosh Sagar, Bangalore & CA. G. Rengarajan , Ernakulam - 12.08.2023



Independence Day 2023 - CA. Mujeeb Rahman M K, Chairman, Kozhikode Branch of ICAI hoisted National Flag at Brach premises. - 15.08.2023





Inauguration of Inter May 2024 batch

Inauguration - Dr.(Sr.) Jaseena Joseph, Principal, Providence Women's College, Kozhikode. - 22.08.2023



Felicitation Programme for Newly Qualified members in May 2023 Final examination. - 26.08.2023



**Financial Literacy Programme at St. Mary's English Medium School, Chevarambalam, Kozhikode.
Speaker - CA. Vinod Mathew.**



Onam Celebration 2023 - celebrated Onam with Pookkalam, variety entertainment programmes and Onasadhya. Inauguration - Sri. U K Kumaran, Novelist. - 26.08.2023



Healthy Mind, Happy Life - seminar on Health is Wealth: Food is the Better Medicine to promote the importance of Naturopathy and Ayurvedha. - 26.08.2023



International Commerce day celebrations at Farook College, Kozhikode. Inauguration - Dr. K.A. Aysha Swapna, Principal, Farook College (Autonomous). - 07.08.2023



UPCOMING PROGRAMMES SEPTEMBER, 2023

2

Setting up of MSME Helpdesk at Branch in association with DIC Kozhikode

- For handling the queries of the general public.
- Help desk will be functional at Branch on every first Saturday of the Month starting from September, 2023

2

CPE Seminar

Topic : Know Your Business Structures
Speaker : CA. Geo Jacob

8

Awareness programmes

Mega Career Counseling at :

1. Farook College, Autonomous
2. Govt. Arts & Science College, Kozhikode
3. Farook Higher Secondary School.
4. Dayapuram Residential School, Calicut
5. Kendriya Vidyalaya

8

Financial Literacy Programme

At Govt. Arts & Science College, Kozhikode
Speaker : CA. Geo Jacob

9

One Day Seminar on Limited Liability Partnership

Session 1 : Finalisation of Accounts and Audit of LLPs
(Technical Guide on FS of LLP)

Speaker : CA. Razee Moideen

Session 2 : Value creation in business by LLP structure

Speaker : CS. Ashique A M

13

MSME Clinic Training on Financial Matters and GST (DIC in Association with ICAI Kozhikode)

Speaker : CA. Jamsheed Adam



ARS Members of Kozhikode branch of SIRC will be eligible for Reimbursement of ₹500



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HOTEL PRIYADARSHINI GROUNDS HOSAPETE (NEAR HAMPPI) KARNATAKA

HOSTED BY

BALLARI BRANCH OF SIRC OF ICAI

HOLIDAYS - SEPTEMBER, 2023

Date & Day	Particulars
06.09.2023 - Wednesday	Sreekrishna Jayanthi
22.09.2023 - Friday	Sree Narayana Guru Samadhi
27.09.2023 - Wednesday	Eid e Milad

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to icaikoznewsletter@gmail.com along with name, membership number and mobile number.