

GST AUDIT (SEC: 65-66)

From GSTPN

Sec 2(13): Audit

- “audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

SEC 35 ACCOUNTS AND OTHER RECORDS

Introduction

1. This Section mandates the upkeep and maintenance of records, at the place(s) of business in electronic or other forms.
2. Power is vested with the Commissioner for relaxation as well as for prescribing ~~additional records for certain classes of taxable persons.~~
3. Furnishing of an audited statement of accounts and reconciliation statement is also contemplated for persons having turnover exceeding prescribed limit.
4. Failure to maintain records or accounts may entail payment of tax as determined by a proper officer in respect of unaccounted transactions.
5. Every owner or operator, of a place of storage, or every transporter whether such owner or operator or transporter is registered or not, shall maintain records and other relevant details as may be prescribed.

Some related Terms:

Place of business - Section 2 (85) of The CGST Bill, 2017 defines “place of business” to

include -

- a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods services or both; or
- b) a place where a taxable person maintains his books of account; or
- c) a place where a taxable person is engaged in business through an agent, by whatever name called;

‘Principal place of business’ - Section 2(89) of defines to mean the place of business

specified as the principal place of business in the certificate of registration.

Accounts and other records

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant. Accounts and other records and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Comparative Analysis between Existing Law and GST

Service tax records:

1. Rule 5(1) of Service Tax Rules, 1994 provides that the records including computerised data as maintained by the assessee in accordance with the various laws in force from time to time shall be acceptable.
2. Rule 5(2) provides that every assessee, at the time of filing of his first return shall furnish to the department, a list in duplicate of
 - (i) All the records maintained by the assessee for accounting of transactions in regard to: -
 - (a) Providing of any service;
 - (b) Receipt or procurement of input service and payment of such input service;
 - (c) Receipt, purchase, manufacture, storage, sale, or delivery, as the case may be in regard to input or capital goods; and
 - (d) Other activities such as manufacture and sale of goods if any.
 - (ii) All other financial records maintained by him in the normal course of business.

Comparative Analysis between Existing Law and GST

Central Excise Records:

1. Rule 10 of the Central Excise Rules, 2002 obligates the maintenance of maintenance of "Daily Stock Account" indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty paid.
2. Chapter 6 of the Central Excise Manual obligates every assessee to furnish to the Range Officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods.

Cenvat Records:

Rule 9 of Cenvat Credit Rules, 2004 provides for maintenance of various records for availment and utilization of CENVAT credit on inputs, input services and capital goods.

Comparative Analysis between Existing Law and GST

VAT Records:

VAT laws of most States obligate every assessee to keep and maintain an up-to-date, true and correct account showing full and complete particulars of his business and such other records as may be prescribed. There is an option to maintain those records at other place or places as he may notify to the registering authority in advance.

Audit of Accounts and Reconciliation Statement:

At present, under the Central excise and service tax laws, there is no requirement for audit of accounts and furnishing reconciliation statement by a Chartered Accountant and Cost accountant. Many State VAT laws stipulate audit of records by a Chartered Accountant and filing of VAT audit reports. Threshold limits are prescribed for such audits.

Reconciliations between the tax records and audited statement of accounts is generally sought for at the time of assessment, audit or investigation by the Revenue authorities. There is no statutory requirement to furnish such reconciliation statements under the present laws although it is carried out during audit / Certification of records.

SEC 36 Period of retention of accounts

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Comparative Analysis between Existing Law and GST

1. Rule 5(3) of Service Tax Rules, 1994 provides that all records shall be preserved for a period of five years immediately after the financial year to which such records pertain.
2. Chapter 6 of the CBEC's Central Excise Manual obligates every assessee to maintain the records for a period of five years immediately after the financial year to which such records pertain.
3. Different State VAT laws prescribe different time periods for maintenance of records. However, many States prescribed a period of five years.
4. Where the proceedings are pending in appeal, revision etc., the records are generally maintained till the proceedings are finally concluded, though this is not specifically stipulated in the present laws. In fact, the books and records are required to be maintained till the time frame for revision proceedings stand open and are not barred by limitation of period.

Sec 65(1): Audit by Tax Authorities

- The Commissioner or any officer authorized by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

Sec 65(2): Place of Conduct of Audit

- The officers referred to in sub-Section (1) may conduct audit at the place of business of the registered person and/or in their office.

Sec 65(3): Intimation

- The registered person shall be informed, by way of a notice, not less than fifteen working days, prior to the conduct of audit in such manner as may be prescribed.
- Intimation of audit is to be issued to the taxable person at least 15 days in advance in Form GST ADT-01

Sec 65(4): Period of Completion

- The audit under sub-Section (1) shall be completed within a period of three months from the date of commencement of audit:
- Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.
- Explanation.- For the purposes of this sub-Section, **'commencement of audit'** shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

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- Such audit is to be completed within 3 months from the date of commencement of audit, which may be extended by the Commissioner, where required, by a further period not exceeding 6 months.
- The Commissioner needs to record reasons in writing for grant of any such extension.

Sec 65(5): Obligation of Auditee

- During the course of audit, the authorized officer may require the registered person,
 - (i) to afford him the necessary facility to verify the books of account or other documents as he may require,
 - (ii) to furnish such information as he may require and render assistance for timely completion of audit.

Sec65(6): Audit Report

- On conclusion of audit, the proper officer shall within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for the findings.
- On audit completion, information is required to be Provided to the registered person including the findings during the audit in FORM GST ADT-02 within thirty days of conclusion of the audit.

Sec 65(7) : Consequences

- Where the audit conducted under sub-Section (1) results in detection of
 - tax not paid or
 - such short paid or
 - erroneously refunded, or
 - input tax credit wrongly availed or utilized,
 - the proper officer may initiate action under Section 73 or 74.
- In cases where
 - tax liability is identified during the audit or
 - input tax credit wrongly availed or utilizedby the auditee , the procedure laid down under Section 73 or 74 is to be followed. Audit cannot conclude automatically resulting in a demand. Independent application of mind is necessary for a valid demand to be raised.

FAQ

- Q1. Whether audit is mandatory in case of every registered person?
- No, it is not mandatory. It will be applicable only in cases where the appropriate authorities authorize the same by issue of general / specific orders.

Whether any prior intimation is required before conducting the audit?

- Ans.
- Yes, prior intimation is required and the taxable person should be informed at least 15 days prior to conduct of audit in FORM GST ADT-01.

What is the period within which the audit is to be completed?

- Ans.
- The audit is required to be completed within 3 months from the date of commencement of audit or within the extended period of 6 months in cases where the Commissioner is satisfied for reasons to be recorded in writing that the audit cannot be completed in 3 months.

What is meant by commencement of audit?

- Ans.
- It means the date on which the records and documents requisitioned by the tax authorities are made available by the registered person or the actual institution of audit at the place of business whichever is later

What are the obligations of the taxable person when he receives the notice of audit?

- The taxable person should afford necessary facility / information / assistance /
- documents for smooth conduct of audit and its timely completion.

What would be the action by the proper officer upon conclusion of the audit?

- The proper office must within 30 days inform the registered person (i.e. the auditee) about his findings, reasons for findings and his rights and obligations in respect of such findings.

CASE STUDY

- A notice for audit was served to M/s. ABC Ltd, on 20.02.2020. Required information was given by M/s. ABC Ltd, on 25.05.2020. The audit officers visited the place of business on 26.06.2020. What is the last date within which the audit is to be completed?
- It will be 3 months from 25.05.2020, viz., 24.08.2020 or within an extended period of 6 months. The extended period would be 24.02.2021.

SEC : 66

SPECIAL AUDIT

Sec 66(1) :

- If at any stage of scrutiny, enquiry, 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 interest of revenue, is of the opinion that
 - the value has not been correctly declared or
 - the credit availed is not within the normal limits,
- he may, with the prior approval of the commissioner, direct such taxable person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

- An Assistant commissioner based on the nature and complexity of business and is of the opinion that
 - Value has not been correctly declared; or ,
 - Credit availed is not within the normal limits.,

after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in FORM GST ADT-03

- The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person
- Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

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Sec 66(2) :

- The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:
- Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

Sec 66(3) :

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

Sec 66(4) :

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

Sec 66(5) :

- The expenses of the examination and audit of records under sub-Section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
- The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in FORM GST ADT-04.

Sec 66(6) : Consequences

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

FAQ

- Who can serve the notice for special audit?
- An officer not below the rank of an Assistant Commissioner with prior approval of the Commissioner may serve notice for special audit, having regard to the nature and complexity of the case and the interest of revenue.

Under what circumstances notice for special audit shall be issued?

- If the proper officer (not below the rank of Assistant Commissioner) is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, a special audit may be ordered.

Who will conduct the special audit?

- A Chartered Accountant or a Cost Accountant so nominated by the Commissioner may undertake the audit.

What is the time limit to submit the audit report?

- The auditor will have to submit the report within 90 days or the further extended period of a 90 days.

Who will bear the cost of special audit?

- The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

What action the tax authorities may take after the special audit?

- Based on the findings / observations of the special audit, action can be initiated under Section 73 or 74 as the case may be of the CGST Act.

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