INDIRECT TAX LAW
UNIT-IV

1. What is assessment under GST? What are the different types of assessment?

Ans. The term "Assessment" means determination of tax liability. Under GST regime, a supplier is required to discharge his tax liability on a continuous and regular basis. He will come to know this tax liability only after assessment.

As per Section 2(11) of CGST Act: "Assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment".

The different types of assessment under GST are as under:

(i) Self assessment (Section- 59): The taxable person is required to pay tax on the basis of self-assessment done by him. Hence, all GST return filings are based on self-assessment by the taxpayer. In other words; every registered taxable person shall himself assess the taxes payable and furnish a return for each tax period.

(ii)Provisional assessment (Section-60): Provisional assessment can be conducted for a taxable person when the taxpayer is unable to determine the value of goods or service or both or determine the rate of tax applicable thereto.

Provisions of Provisional Assessment

(a)Requests for provisional assessments will be given in writing.

(b)The proper officer can allow paying tax on provisional basis at a rate or on a value specified by him.

(c)Order will be passed within 90 days from date of request.

(d)The taxable person has to issue a bond with a security promising to pay the difference between provisionally assessed tax and final assessed tax.

(e)Provisional assessments will be followed by final assessments. The proper officer can ask for information before final assessment.

(iii) Scrutiny of tax returns (Section-61): GST Officers can scrutinize a GST return and related particulars furnished by the registered person to verify the correctness of the return. This is called a scrutiny assessment. In case there is any discrepancies noticed by the officer, he/she would inform the same to the registered person and seek his explanation on the same.

On the basis of the explanation received from the registered person, the officer can take following action:

(a) If the explanation provided is satisfactory, the officer will inform about the same to the registered person and no further action will be taken in this regard.

(b) If the explanation provided is not satisfactory, the proper officer will take action and if the taxable person does not give a satisfactory explanation within 30 days or he does not rectify the discrepancies within a reasonable time (not yet prescribed)
The officer may-

- Conduct audit of the tax payer u/s 65
- Start Special Audit procedure u/s 66
- Inspect and search the places of business of the tax payer
- Start Demand and Recovery provisions.

(iv)Assessment of non-filers of tax returns (Section 62): When a registered person fails to furnish the required returns, even after service of notice under Section 46 an assessment would be conducted by the GST Officer. In such cases, the GST officer would proceed to assess the tax liability of the taxpayer 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 a period of five years from the date for furnishing of the annual return for the financial year to which the tax not paid relates. On receipt of the said assessment order, if the registered person furnishes a valid return within a period of 30 days from the date of issuance of assessment order, then in such case, the assessment order would deemed to have withdrawn. However, the registered person will be liable to pay interest under Section 50 (1) and/or liable to pay late fee under Section 47.

(v) Assessment of unregistered persons (Best Judgement Assessment) (Section 63): When a taxable person fails to obtain GST registration even though liable to do so or whose registration has been cancelled under section 29 (2) but who was liable to pay tax, the GST officer can proceed to assess the tax liability of such taxable person to the best of his judgment 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. The proper officer may proceed to assess the tax liability of such person to the best of his judgment considering all the relevant material he has gathered within a period of 5 years from the due date of furnishing annual return for the financial year for which tax not paid relates. For passing the assessment order under this section, the proper officer will issue a notice in form ASMT-14, containing the grounds on which assessment is proposed to be made and after considering the reply proper officer will issue order in form ASMT-15.

(vi) Summary assessment (Section 64): The authorized office is required to obtain prior permission of additional commissioner or joint commissioner to take this assessment. To protect the interest of revenue, a GST officer can proceed to assess the tax liability of a person showing a tax liability with any evidence. The officer can also issue an assessment order id he has proof that the delay in assessment can adversely affect the interest of revenue.

2. Explain the procedure GST assessment.

Ans. See Question No. 1

3. What is Audit under GST? State the objectives of audit under GST. What are the different types of audit under GST?

Ans. As per section 2(13) of CGST Act, 2017, "Audit" means examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made there under 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.

Objective of audit under GST: The objective of Audit under GST laws is twofold;
(i) to prevent revenue leakage and
(ii) to ensure compliance of law.

Types of audit under GST: There are three types of audit prescribed in the GST Act:

(i) Audit when Turnover Exceeds Prescribed Limit [Section 35(5)]: The Section 35(5) stipulates that 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.

(ii) Audit by Tax Authorities [Section 65]: The section 65 authorizes the conduct of audit by the Commissioner or any other officer authorized by him in respect of registered person. The audit may be conducted at the place of business of the registered person and/or in their office. For that purpose, a general or specific order is required by Commissioner.

(iii) Special Audit (Section 66]: The section 66 facilitates the ranked officers to avail the services of a Character Accountant or Cost Accountant to conduct a detailed examination of specific areas of a operations of a registered person. The audit conducted by such nominated Chartered/Cost accountants, as per provision of section 66, is called as Special audit.

4. Who can conduct audit of taxpayers under GST?

Ans. See types of audit under GST.

5. What is anti-profiteering?

Ans. As per section 171 of the CGST/SGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. An authority may be constituted by the government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

6.What is E-Commerce?

Ans. The term 'electronic commerce' (E-Commerce) means supply of goods and/or services including digital product over digital or electronic network.

7.What is Electronic Commerce Operator (ECO)?

Ans. Electronic Commerce Operator (ECO) means any person who owns, operates or manages the digital or electronic facility or platform for electronic commerce.

8. State the provisions of collection of tax by ECO.

Ans. The following are the provisions of collection of tax by E-commerce Operators:

(i)Time of Collection of Tax (TCS) and its value

Every ECO, not being an agent, shall collect an amount calculated at the specified rate (not exceeding 0.5% CGST + 0.5% SGST for intra-State and 1% IGST for inter-State supplies) of the 'net value of taxable supplies made through it, by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

"Net value of taxable supplies" shall mean: Aggregate value of taxable supplies of goods or service made during any month, by all registered taxable persons through the ECO minus Aggregate value of taxable supplies returned to the suppliers during the said month.

(ii) Consideration collected by the ECO

Provisions of TCS are applicable in those cases where consideration is collected by the ECO. It appears that where the ECO is not involved in the collection of consideration or where there is no consideration involved, TCS would not be applicable. TCS shall not be applicable where goods are supplied by the ECO on its own account.

(iii) Rate of TCS: The GST Act does not prescribe the rate of TCS however, the Act has specified the maximum rate of TCS, as under:

(a)1% of the net value of taxable supplies. It is important to mention that rate of TCS would be 0.5% CGST and 0.5% SGST, totalling 1% on intra-State supplies.

(b)1% of IGST on the net value of taxable supplies in case of inter-State supplies.

9. What is E-way bill? State its advantages.

Ans. E-Way Bill is an electronic way bill for movement of goods, which can be generated on GSTN (common portal) having requisite information's about goods despatched. A movement of goods, more than Rs.50, 000 in value cannot be made by a registered person without E-Way Bill.

The benefits of E-way bill: The following benefits are expected from e-way bill mechanism:

(i) Physical interface to pave way for digital interface resulting in elimination of State boundary check-posts.

(ii) It will facilitate faster movement of goods. (iii) It will improve the turnaround time of trucks and help the logistics industry by reducing the travel time as well as costs.

(iv) The consignor needs to give details of consignee also. This would ensure more transparency among all stakeholders of the system.

10. Who can create/generate E-Way Bill?

Ans. Every registered person, who consigns goods valued more than 50,000 under supply to any person or otherwise is receiving supply from unregistered person, shall create an E-Way Bill, or a registered consignor or consignee and a transporter shall create the same, if E-Way Bill is not given with goods consigned.

11. When E-Way Bill is required?

Ans. While transporting goods under all types of transactions, E-Way Bill is required whether transaction is inter-State or intra-State, inward or outward supplies; E-Way Bill is created when value of goods consigned exceeds 50,000.

12. What is zero-rated supply? State the eligibility of input tax credit or refund on zero-rated supply.

Ans. Zero-rated supply" means any of the following taxable supply of goods and/or services namely:
(a) export of goods and/or services; or
(b) supply of goods and/or services to SEZ developer or and SEZ unit.

Eligibility of input tax credit or refund on zero-rated supply

(i)Credit of input tax may be avail for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(ii) A registered person making zero-rated supply shall be eligible to claim refund under one of the following two options namely:
(a) A registered person may supply goods or services under bond or letter of the undertaking without payment of IGST and claim a refund of unutilized input tax credit.
(b) A registered person may supply goods or services on payment of IGST and claim refund of IGST paid on goods and services supplied.

13. What is meant by Inspection, Search and Seizure under GST? Who can order for such proceedings and what circumstances?

Ans. Search: The term 'search', in simple language, denotes an action of a government machinery co 802 look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under the proper and valid authority of law.

Inspection: It is a softer provision than search to enable 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 or an operator of a warehouse or godown.

Seizure: In Law Lexicon Dictionary, 'seizure', is defined as the act of taking possession of the property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

The following persons can order for search and seizure and under the following circumstances:

Proper officer not below the rank of Joint Commissioner can himself or authorize any other CGST officer to carry out search and seize goods, documents, books or things. Such authorization can be given only where the proper officer has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be use for or relevant to any proceedings under this Act, are secreted/hidden in any place.

14. What is meant by 'reasons to believe'?

Ans. Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing, "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' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration.

15. What is meant by the term penalty under GST? What are the offences under GST for which penalties may be imposed?

Ans. The word “penalty” has not been defined in the CGST/SGST Act, but judicial pronouncements and principles of jurisprudence have laid down that a penalty is:
(i) a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
(ii) a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do. Any breach of law/act is an offence. Accordingly, punishment for committing an offence is ‘Penalty’.

Offences and Penalty

S.N	Defaults/Offences	Penalty
1	If a taxable person was not eligible to pay tax under composition but opted the scheme	As per the provisions of Section 73 or 74
2	E-Commerce Operator fails to furnish the information required by the notice served	Up to 25,000
3.	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud of any wilful misstatement or suppression of facts.	10,000 or 10% of the tax whichever is higher
4.	If a Taxable Person : (i) Supplies without the issue of any invoice or issues an incorrect or false invoice, or (ii) Issues any invoice or bill without the supply of goods/services in violation of the GST Laws, (iii) Collects any amount as a tax but fails to pay the same to the credit of the appropriate Govt. beyond a period of 3 months from the due date. (iv) Collects any tax in contravention of the provisions of Law but fails to	Rs.10,000 or Amount equivalent to the tax defaults whichever is higher.

	pay the same to the credit of the Govt. beyond a period of 3 months from the due date.	
5.	Registered person who : Supplies any goods or services on which any tax has not been paid or short-paid or erroneously refunded; or Where the input tax credit has been wrongly availed or utilised for any reason other than the reason of fraud or any wilful higher misstatement or suppression of fact to evade tax.	10,000 or 10% of the tax due, Whichever is higher
6	Any person who : Aids or abets any of the offences by a taxable person, deals with goods which he knows or has reason to believe are liable to confiscation, deals with the supply of services which he knows or has reason to believe are in contravention of GST law, fails to appear pursuant to a summons, fails to issue invoice as per the GST law or fails to account for an invoice in his books of account.	Up to 25,000
7.	Failure to furnish Information Returns	Rs. 100 per day Maximum 5,000
8.	Any person who contravene any provisions of GST law or the rules in respect of which no penalty is separately provided.	up to Rs. 25.000

16. What are the various offences under GST for which prosecution may be imposed?

Ans. Whosoever commits any of the following offences shall be liable for **prosecution:**
(a) Supplies any goods or services or both without the issue of any invoice, with the intention to evade tax.

(b) Issues any invoice or bill without a supply of goods or services or both leading to wrongful availment or utilisation of input tax credit or refund of tax.

(c) Collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.

(d) Evades tax, fraudulently avails input tax credit or fraudulently obtains.

(e) Falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax. Acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation.

(g) Receives or is in any way concerned with the supply of, or in any other manner deals with any supply or services which he knows or has reasons to believe are in contravention of any provisions .

(h) Fails to supply any information which he is required to supply.

Amount Involved in Relation to the Offence	Punishment/ Prosecution
(i) Where the amount of tax evaded exceeds Rs. 5 crore	Imprisonment for a term which may extend to 5 years and fine, cognizable and non-bailable
(ii) Where the amount of tax evaded exceeds Rs. 2 crore but does not exceed 5 crore	Imprisonment for a term which may extend to 3 years and fine, non-cognizable and bailable.
(iii) Where the amount of tax evaded exceeds Rs. 1 crore but does not exceed 2 crore.	Imprisonment for a term which may extend to 1 year and fine.