

# Reply to Issues Arises in GST audit by department

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MATHURA branch of CIRC of  
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- ❑ Post-qualification experience of around 22 years in the field of direct & indirect tax particularly income tax, service tax and VAT ,sales tax and GST.
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# TAX UPDATE



**Reply to Issues  
Arises in GST audit  
by department**

## Scope of discussion

Scope of GST audit by department

Preparation before GST audit

Conduct of GST audit by department

During GST audit by officers?

Action after completion of GST audit on issuance of GST ADT-02/04.

Common Issues arises in GST

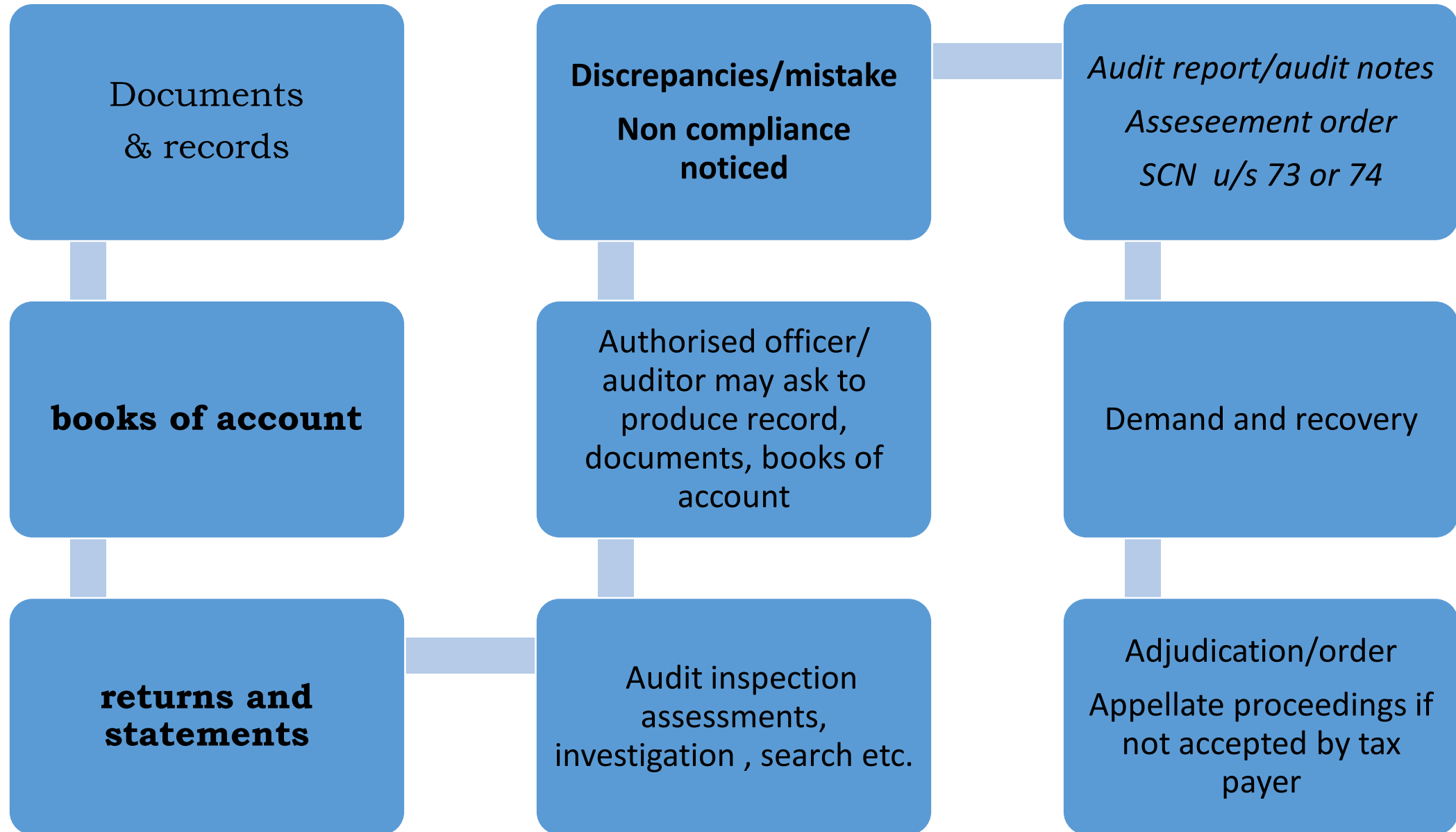
Reply to the common issues.

Action after GST ADT-02/04 u/s 73/74.

## Contents

- ❑ meaning of audit –section 2(13) of CGST/SGST Act.
- ❑ Audit by tax authorities- section 65
- ❑ **Special audit u/s 66 by nominated CA/CMA**
- ❑ **Rule 101, 102**
- ❑ **Scrutiny of return culminates into GST Audit or SCN u/s 73 or 74.**
- ❑ **GST audit manual**
- ❑ **FAQ**

# Process flow chart under GST



# What is to be kept, maintained & retained under GST Law?

documents

- "document" includes written or printed record of any sort and electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 [ S-2( 41)

**electronic records:**  
means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

records

- Not defined in GST but section 35 & rule 57 & 58 has details provisions to comply by taxpayer

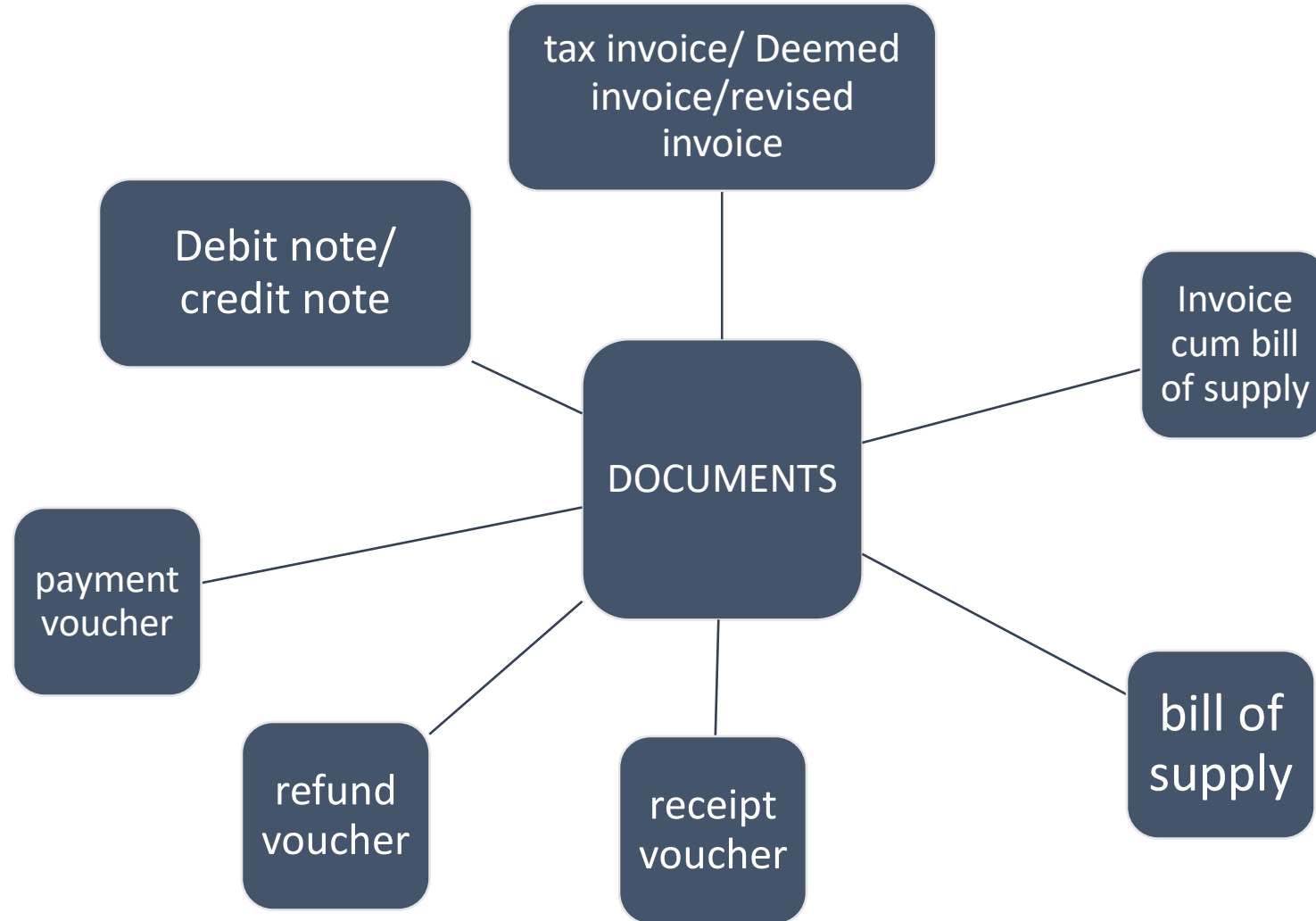
Books of account

- Section 35 read with rule 56

Return and statements

Section 39, 37 & rule 59 to 81

# Documents under GST [S-31]





## ADDITIONAL RECORDS AS PER RULES 56(1)

**every registered person** shall maintain True and correct account of

- goods or services **imported or exported** or
- supplies attracting payment of tax on reverse charge** along with the relevant documents,
- invoices, bills of supply, delivery challans,
- credit notes, debit notes,
- receipt vouchers, payment Vouchers and
- refund vouchers.

## STOCK RECORDS AS PER RULES 56(2)

**every registered person other than composition tax payer shall maintain**

- accounts of stock in respect of goods received and supplied**
- contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

Note: refer section 17(5)(h) having provision for denial of ITC. Such record will enable the taxable person as well as proper officer to restrict credit in respect of goods lost etc.

# ACCOUNT OF ADVANCES [RULE 56(3)]

Every registered person shall keep and maintain a **separate account** of advances received, paid and adjustments made thereto.

- As per section 12 liability to pay tax on goods shall arise at the time of supply
  - Time of supply of goods shall be earlier of date of issue of invoice/last date of issue of invoice or the date on which supplier receive payment. In other words supplier shall be liable to pay tax on advance received even if supply still pending. Such records shall enable the tax liability of the supplier.[12(2)]
  - As per section 13 liability to pay tax on services shall arise at the time of supply
  - Time of supply of services shall be earlier of date of issue of invoice/last date of issue of invoice or the date on which supplier receive payment. In other words supplier shall be liable to pay tax on advance received even if supply still pending. Such records shall enable the tax liability of the supplier.[13(2)]
- 
- Advance against supply of goods not subject to GST but advance against supply of service is subject to GST so accordingly classification in balance sheet is important.

# ACCOUNTS OF TAX [RULE 56(4)]

Every registered person, **other than Composition taxable** person shall keep and maintain an account, containing the details of

- tax payable** [both forward charge as well as reverse charge u/s 9(3)/9(4)],
- tax collected** and paid,
- input tax,
- input tax **credit claimed**, together with
- a register of tax invoice, credit notes, debit notes, delivery challans issued or received during any tax period.

## DETAILS OF NAME AND ADDRESS[RULE 56(5)]

☐ Every registered person shall keep the particulars of -

- a) *names and **complete addresses** of suppliers* from whom he has received the goods or services chargeable to tax under the Act;
- b) *names and **complete addresses** of the persons to whom he has supplied goods.* i .e recipient or person receiving goods on behalf of recipient, or services,
- c) the **complete address** of the premises where goods are stored by him, including
- d) **complete address of the premises where goods stored during transit** along with the **particulars of the stock stored therein.**

If any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer **shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.**[rule 56(6)]

## ELECTRONIC ACCOUNTS AND RECORDS UNDER GST?

A registered person **may** keep and maintain such accounts and other particulars in **electronic form** in such manner as may be prescribed.[ 2<sup>nd</sup> proviso to section 35(1)]

## RULES RELATED TO ELECTRONIC RECORDS[RULE 56(7)]

- Every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such **books of account shall include** any electronic form of data stored on any electronic device. **[rule 56(7)]**
- Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be **preserved for the period as provided in section 36** and
- where such accounts and documents are maintained electronically shall be **accessible** at every related place of business where such accounts and documents are maintained digitally.[ rule 56(16)]

## DIGITAL SIGNATURE ALLOWED? YES [RULE56(15)]

The records under the provisions of this Chapter **may be** maintained in electronic form and the record so maintained **shall be authenticated by means of a digital signature.**



# GENERATION AND MAINTENANCE OF ELECTRONIC RECORDS[RULE 57]

1. **Proper electronic back-up** of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the **information can be restored within a reasonable period of time. Reasonable period not specified?**
2. The registered person maintaining electronic records **shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy** or in any **electronically readable format.**
3. Where the accounts and records are stored electronically by any registered person, he shall, **on demand, provide the details of such files, passwords of such files and explanation for codes used,** where necessary, for access and any other information which is required for such access **along with a sample copy in print form** of the information stored in such files.

## **AMENDMENT IN RECORD ACCOUNTS- ALLOWED? YES [RULE56(8)]**

### **Manual record**

Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and there after, the correct entry shall be recorded

### **Electronic record**

where the registers and other documents are maintained electronically, **a log of every entry edited or deleted shall be maintained.**

## **MAINTENANCE OF ACCOUNT BY AGENT[R-56(11)]**

- (a) particulars of **authorization received** from each principal to receive or supply goods or services on behalf of such principal separately;
- (b) particulars of goods or services **received** on behalf of every principal including description, value and quantity (wherever applicable) of;
- (c) Particulars of goods or services **supplied** on behalf of every principal including description, value and quantity (wherever applicable);
- (d) details of **accounts furnished to every principal**; and
- (e) **tax paid** on receipts or on supply of goods or services effected on behalf of every principal.

Note: *“agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;* [sec 2(5)]

## RECORD TO BE MAINTAINED BY MANUFACTURER[R-56(12)]

- Every registered person manufacturing goods shall maintain **monthly production accounts** showing
- quantitative details of raw materials or services **used** in the manufacture and
- quantitative details of the goods so manufactured
- including the waste and by products manufactured thereof.

## **RECORD TO BE MAINTAINED BY PROVIDER OF SERVICE[R-56(13)]**

Every registered person supplying services shall

- maintain the accounts showing **quantitative details of goods used in the provision of services,**
- details of **input services utilised** and
- services supplied**

## **RECORD TO BE MAINTAINED BY PERSON EXECUTING WORKS CONTRACT [R-56(14)]**

Every registered person executing works contract **shall keep separate accounts for works contract showing -**

- a) the **names and addresses** of the persons on whose behalf the works contract is executed;
- b) goods or services **received for the execution of works contract- description, value and quantity** (wherever applicable) ;
- c) **goods or services utilized in the execution of works contract- description, value and quantity** (wherever applicable) ;
- d) the details of **payment received in respect of each works contract;** and
- e) **names and addresses of suppliers from whom he received goods or services.**

## **RECORDS TO BE MAINTAINED BY OWNER OR OPERATOR OF GODOWN OR WAREHOUSE AND TRANSPORTERS [S- 35(2)]**

- Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter,
- **whether registered or not,**
- shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

## RECORD BY GODOWN OPERATOR? [ R-58(4)&(5)]

- every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, &
- particulars of dispatch, movement, receipt and disposal of such goods.
- owner or the operator shall store the **goods in such manner that they can be identified item-wise and owner-wise and**
- shall facilitate any physical verification or inspection by the proper officer on demand.[ R-58(5)]



## **RECORDS TO BE MAINTAINED BY OWNER OR OPERATOR OF GODOWN OR WAREHOUSE AND TRANSPORTERS.[R-58]**

**if not registered under the Act- needs enrolment no,**

- By submitting the details regarding his business electronically on the common portal in
- FORM GST ENR-01, either directly or through a Facilitation Centre and,
- upon validation of the details furnished,
- a unique enrolment number shall be generated and communicated to the said person.

**No need to get enrolment in every state?**

- Enrolment in other state shall be deemed to be enrolled in the State or Union territory.

**Amendment in details furnished for enrolment?**

- Every person who is enrolled under sub-rule (1) shall, where required, amend the details furnished in FORM GST ENR-01 electronically on the common portal

## RECORD BY TRANSPORTER?

any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the **GSTN of the registered consigner and consignee** for each of his branches.[R-58(4)]

## RECORDS BY CUSTODIAN OF GOODS[R-56(17)]

- Any **person having custody over the goods**
- in the capacity of a **carrier or a clearing and forwarding agent** for delivery or dispatch thereof to a recipient on behalf of any registered person shall
- maintain true and correct records in respect of **such goods handled by him on behalf of such registered person** and
- shall produce the details thereof as and when required by the proper officer.

## RETENTION PERIOD FOR ACCOUNTS & RECORD - IN GENERAL[ SEC 36]

- 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 **72 months** ( 6 years) from the **due date** of furnishing of annual return for the year pertaining to such accounts and records[ sec 36]*

## **RETENTION OF ACCOUNTS ETC – IN THE CASE OF APPEAL OR REVISION MATTER [SEC36]**

- 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 appeal etc 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 **1 year after final disposal of such appeal** or revision or proceedings or investigation, or
- period specified above ( i. e 6 years from due date of annual return , whichever is **later**.
- **Note: for several registered person annual return filing is not mandatory.** For example Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person no need to file annual return u/s 44.

# TYPES OF AUDIT

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graph TD; A[TYPES OF AUDIT] --> B[Audit U/S 65 By The Department]; A --> C[Audit On The Direction Of Department U/S 66 by CA/CMA]; A --> D[Audit By CA/CMA Appointed BY taxpayer U/S 35(5)- discontinued by FA 2021.];
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Audit U/S 65 By  
The Department

Audit On The  
Direction Of  
Department  
U/S 66 by  
CA/CMA

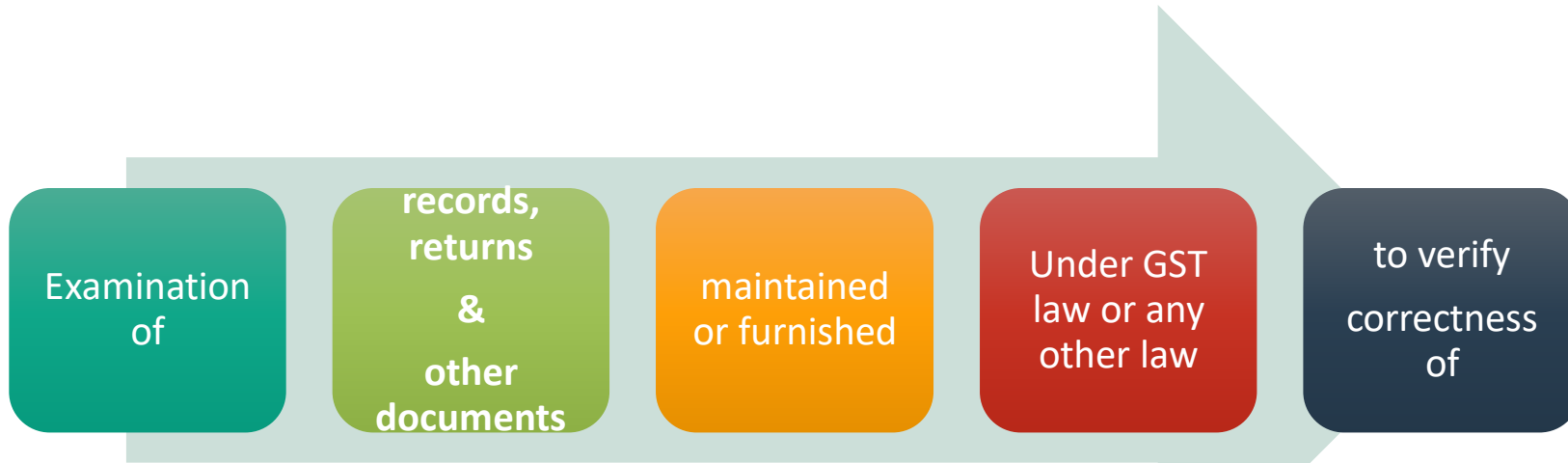
Audit By CA/CMA  
Appointed BY  
taxpayer U/S  
35(5)-  
discontinued by FA  
2021.

## Meaning of GST audit- *SECTION 2(13)*

“audit” means **the examination of records, returns and other documents** maintained or furnished by the registered person under this Act or 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 there under;

Definition is common for section 65 and 66 or any other provisions of GST of GST audit.

# What GST audit require?



**turnover declared, taxes paid, refund claimed and input tax credit availed;**  
compliance of the provisions of GST Law.

Taxes paid : rate of tax, exemption , valuation, deduction claimed in valuation

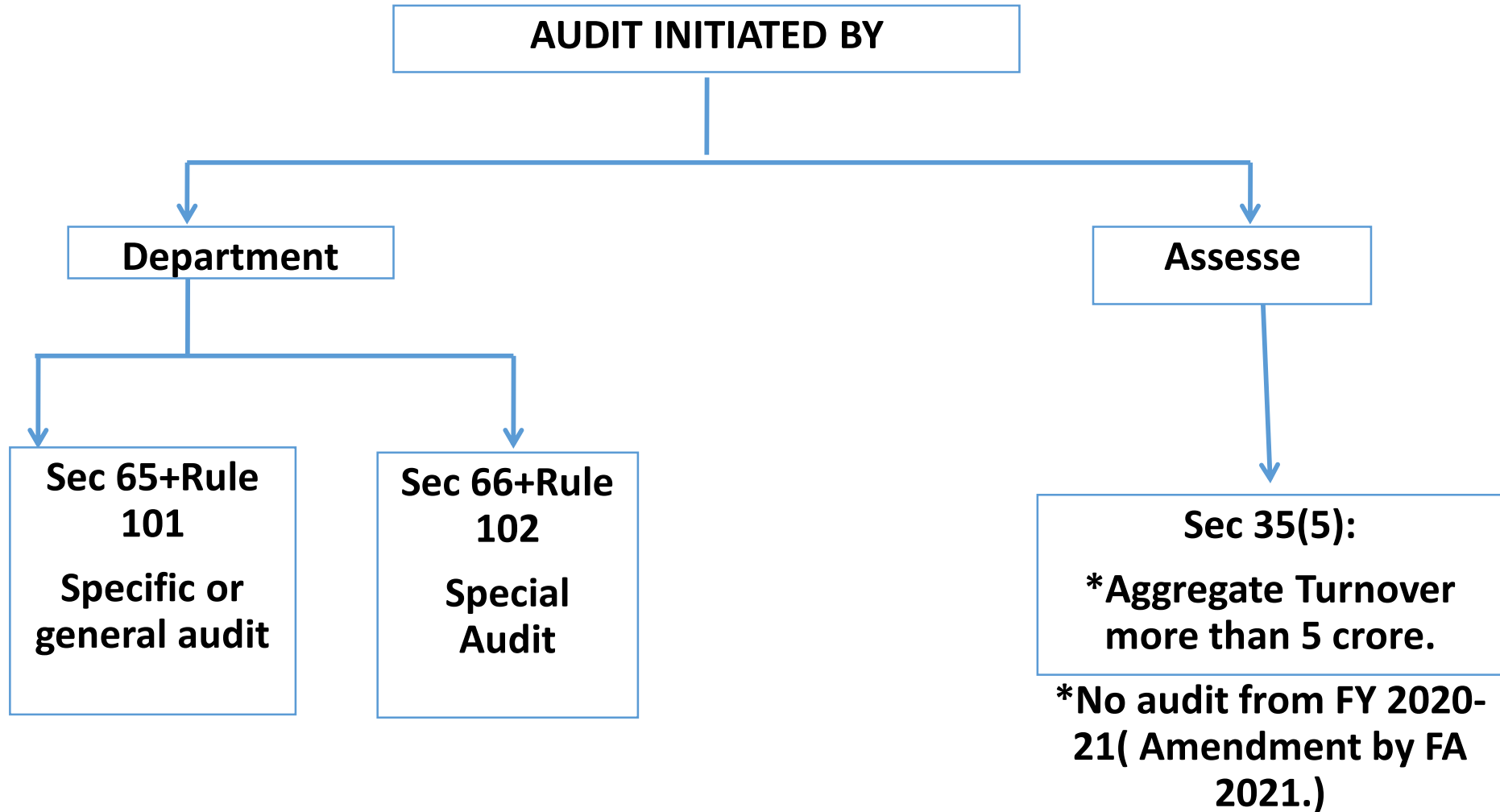


# Objective of GST audit?

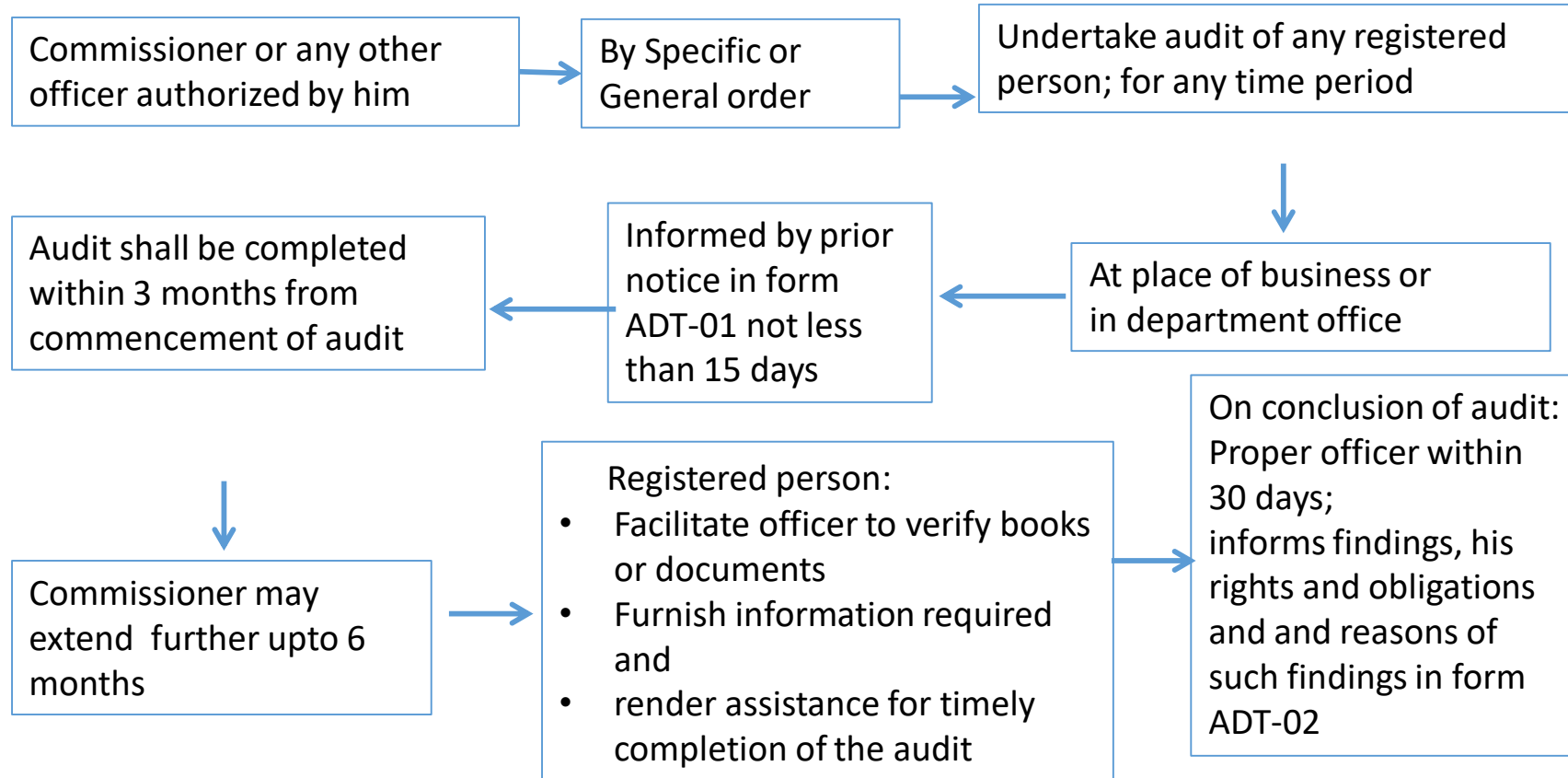
- ✓ to verify; **the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed;** and to assess his compliance with the provisions of this Act or the rules made.
- ✓ Here verification of ITC and due tax payment after allowing valid input tax credit
- ✓ **General issues are** invalid claim/utilization of ITC, invalid exemption, invalid deductions claimed, wrong tax rate, wrong classification of supply, short payment/non payment of RCM liabilities, under valuation of supply, invalid refund etc.
- ✓ to ensure compliances of provisions of GST law. General non compliances are invoice of RCM liabilities missing, stock record missing etc.

## Record, documents could be asked to produce during GST audit?

- ✓ *documents maintained under GST law*
- ✓ *records and the books of account*
- ✓ *Returns( for example GSTR-3B, ITC-04, GSTR-9 and statements furnished under the provisions of the Act and the rules made thereunder. e.g statement of outward supply, GSTR-9C etc.*
- ✓ *documents maintained under **any other law** for the time being in force. For example record of labour law like wages register, bonus record, record required to be maintained under income tax (44AA read with income tax rules) record as mentioned in tax audit report, record of company law like minute book, board meeting minute book, copy of contract etc.*
- ✓ **Meanings of documents:** "document" includes written or printed record of any sort and electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 [S-2(41)]
- ✓ Books of account- **Accounts and other records- section 35 read with rule 56 regarding maintenance of accounts by registered persons.**



## SEC-65 Audit by tax authorities.



**Commencement of audit:** 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.

# Audit by tax authorities- section 65

1) The Commissioner or any officer authorised 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. (Rule 101 of the CGST Rules, 2017)

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

(3) The registered person shall be informed by way of a **notice not less than 15 working days** prior to the conduct of audit in such manner as may be prescribed. **Notice in form GST ADT-1**

(4) The audit under sub-section (1) shall be completed within a period of **3 months from the date of commencement of the audit:**

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, **extend the period by a further period not exceeding 6 months.**

Explanation.—For the purposes of this sub-section, the expression "**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.**

(5) During the course of audit, the **authorised 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 the audit.**

(6) On conclusion of audit, the proper officer shall, **within 30 days**, inform the registered person, whose records are audited, about the **findings, his rights and obligations and the reasons for such findings.**

(7) Where the 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 utilised**, the **proper officer may initiate action under section 73 or section 74.**

## PROCEDURE RELATED TO AUDIT UNDER SECTION U/S 65[RULE 101]

- Period of audit** to be conducted under section **65(1)** may be **financial year**, *part thereof* or **multiples FYs**.
- The** proper officer shall issue a **notice in FORM GST ADT-01**
- The proper officer authorised to conduct audit of the **records and the books of account** of the registered person shall, **verify**
  - the documents **on the basis of which the books of account are maintained**,
  - **returns and statements** furnished under the provisions of the Act and the rules made there under,
  - **correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both**,
  - **input tax credit availed and utilised**,
  - **refund claimed, and**
  - **other relevant issues** and
- record the observations in his audit notes.

- ❑ The proper officer **may inform the registered person of the discrepancies noticed, if any**, as observed in the audit.
- ❑ Auditee **may file his reply** and
- ❑ proper officer **shall finalize** the findings of the audit **after due consideration of the reply furnished**.
- ❑ On conclusion of the audit, the proper officer **shall inform** the **findings of audit** to the registered person in accordance with the provisions of sub-section (6) of section 65 in **FORM GST ADT-02**.

Form GST ADT - 01

[See rule 101(2)]

Reference No.:

Date:

To,

-----  
GSTIN .....  
Name .....  
Address .....

Period - F.Y.(s) - .....

Notice for conducting audit

Whereas it has been decided to undertake audit of your books of account and records for the financial year(s) ..... to ..... in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on -----.

And whereas you are required to:-

- (i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and
- (ii) furnish such information as may be required and render assistance for timely completion of the audit.

You are hereby directed to attend in person or through an authorised representative on ..... (date) at.....(place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.

In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature ...  
Name  
Designation .....



Form GST ADT - 02

[See rule 101(5)]

Reference No.:

Date:

To,

-----

GSTIN .....

Name .....

Address .....

Audit Report No. .... dated .....

Audit Report under section 65(6)

Your books of account and records for the F.Y..... has been examined and this Audit Report is prepared on the basis of information available I documents furnished by you and the findings are as under:

Short payment of Tax	Integrated tax	Central tax	State IUT tax	Cess
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature .....

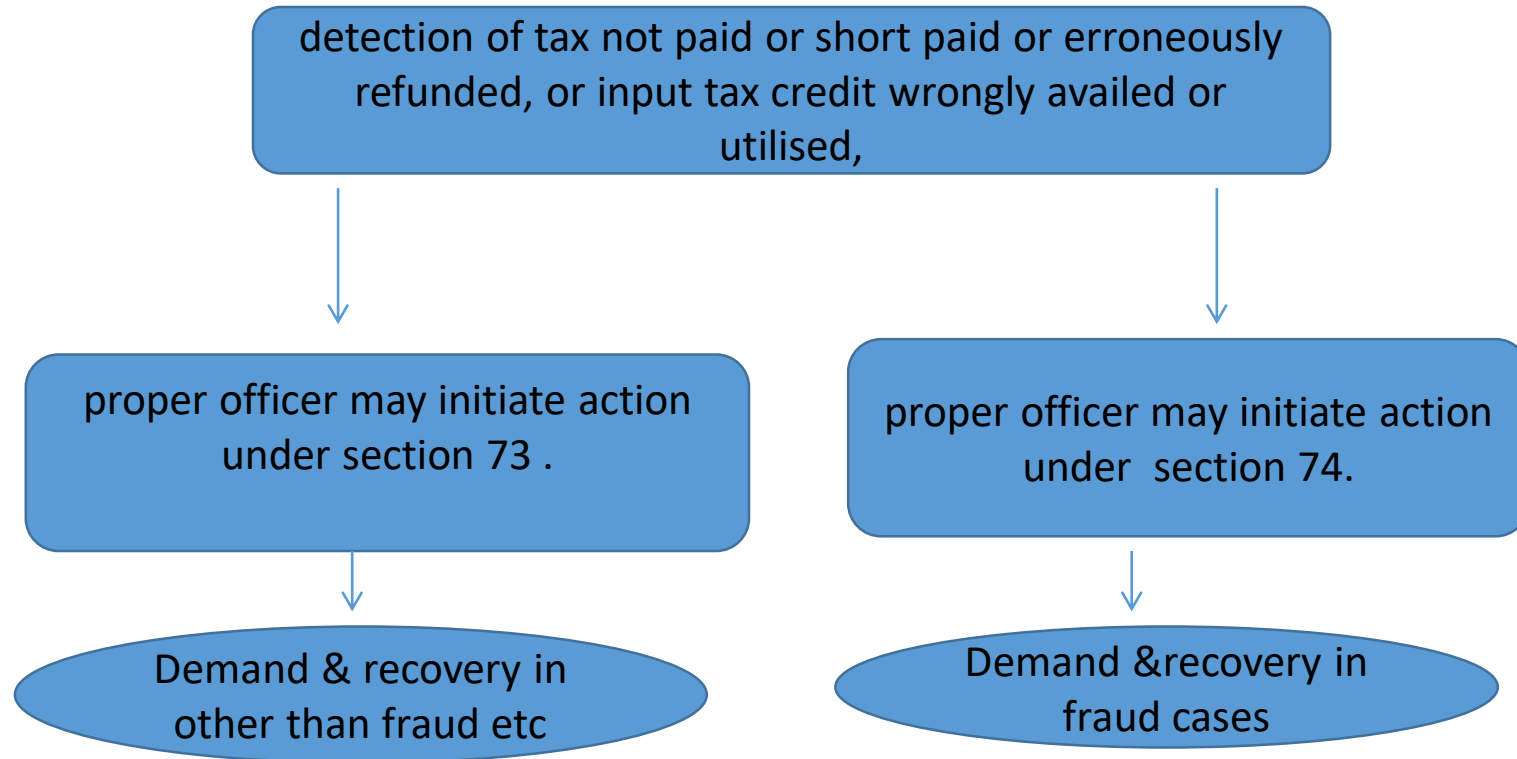
Name .....

Designation .....

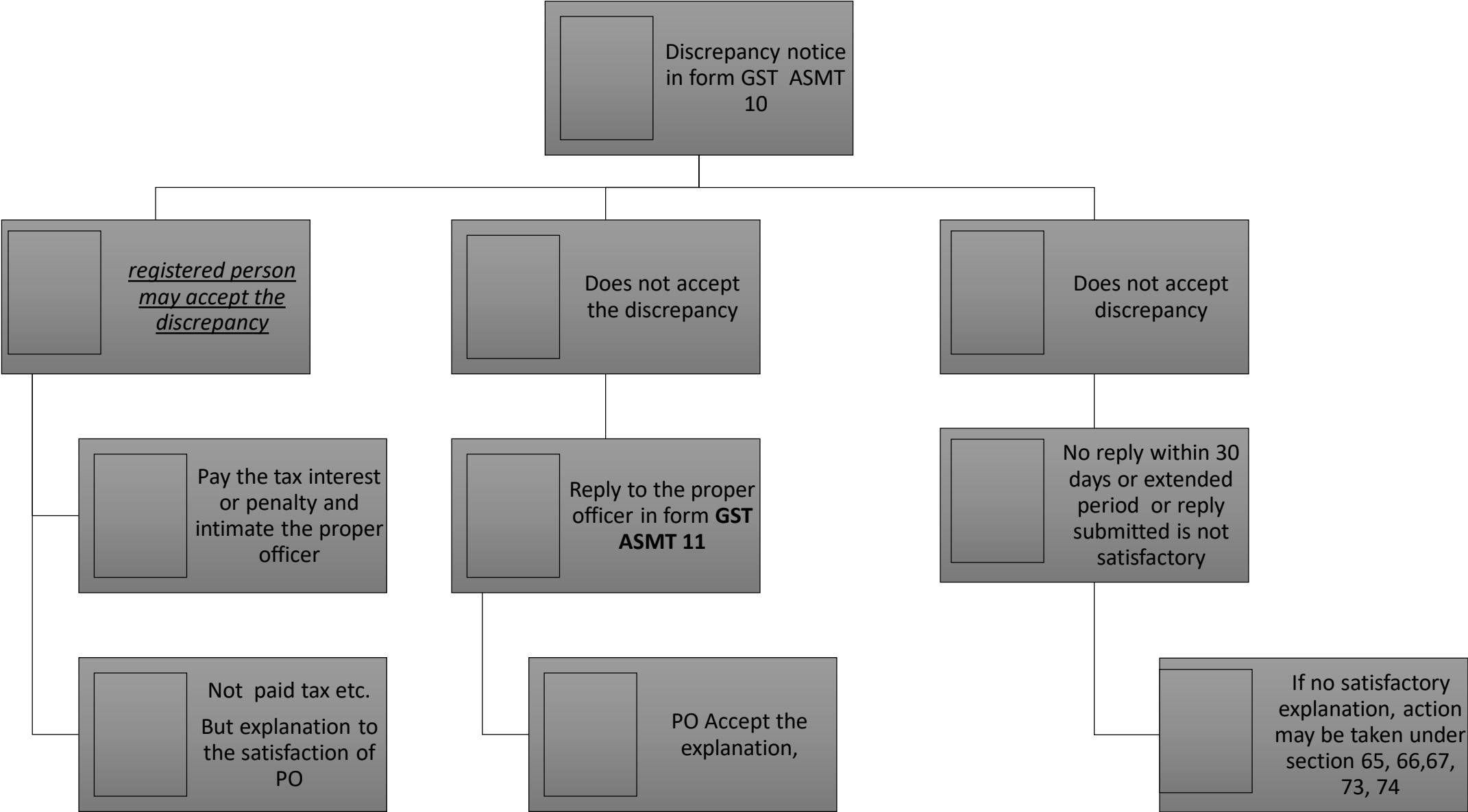
Finalization  
only after  
considering  
reply  
furnished  
Principle of  
Natural  
Justice:

- **Nemo debet Esse judex in propria causa** meaning thereby while deciding anything the approach of the deciding authority must be impartial and without bias. From the show cause notice if it appears that the explanations, information, documents submitted during the investigation proceedings was totally ignored and not considered. It appears that the GST ADT-02 was drafted with a preset mind of imposing tax and not to deal with the relaxation provided under the statute by exemption, concessional rate of tax, rebate in valuation, beneficial notification or circulars etc. therefore, it appears to be gross violation of principles of natural justice.
- **Audi Alteram Partem** meaning thereby it is mandated to hear or no man should be condemned unheard. From the SCN, it appears that no proper opportunity was given or if given but not taken on record because GST ADT-02 is silent about the written submissions or personal hearing of the noticee or any other authorized representative, it is gross violation of principle of natural justice.
- **Speaking order/reasoned order:** Reason to be recorded in any SCN/order and not only that those reasons & material must be shared before decision and response of taxpayer must be considered while disposing the matter. **Siemen Engineering & Mfg Co. (P) Ltd. vs Union of India AIR (1976) (SC) 1785.**

Final result – GST ADT-02-General audit conducted under 65(1) results in detection of tax[S-65(7)]

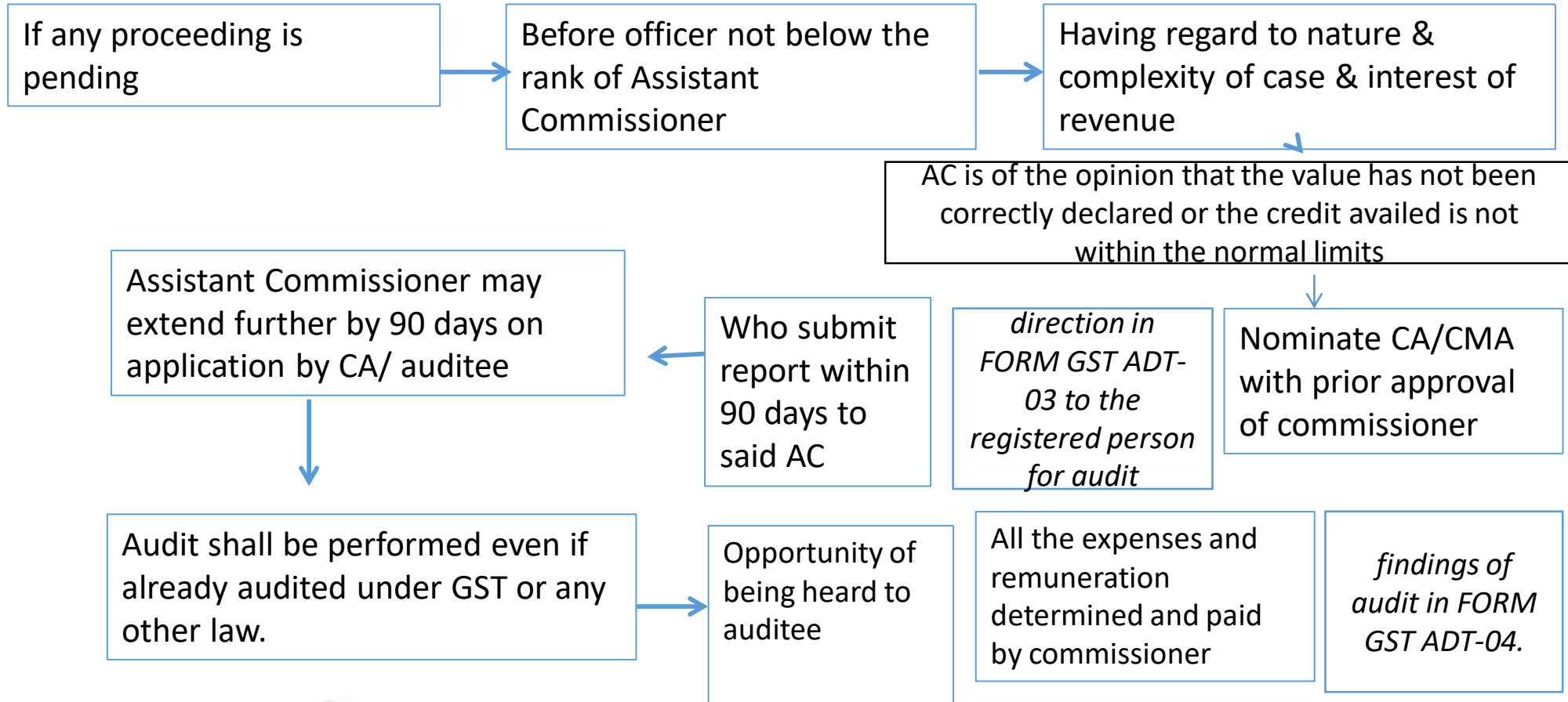


# Action required on service of discrepancy notice



**SPECIAL AUDIT**  
**SECTION 66**

# FLOW CHART -SPECIAL AUDIT

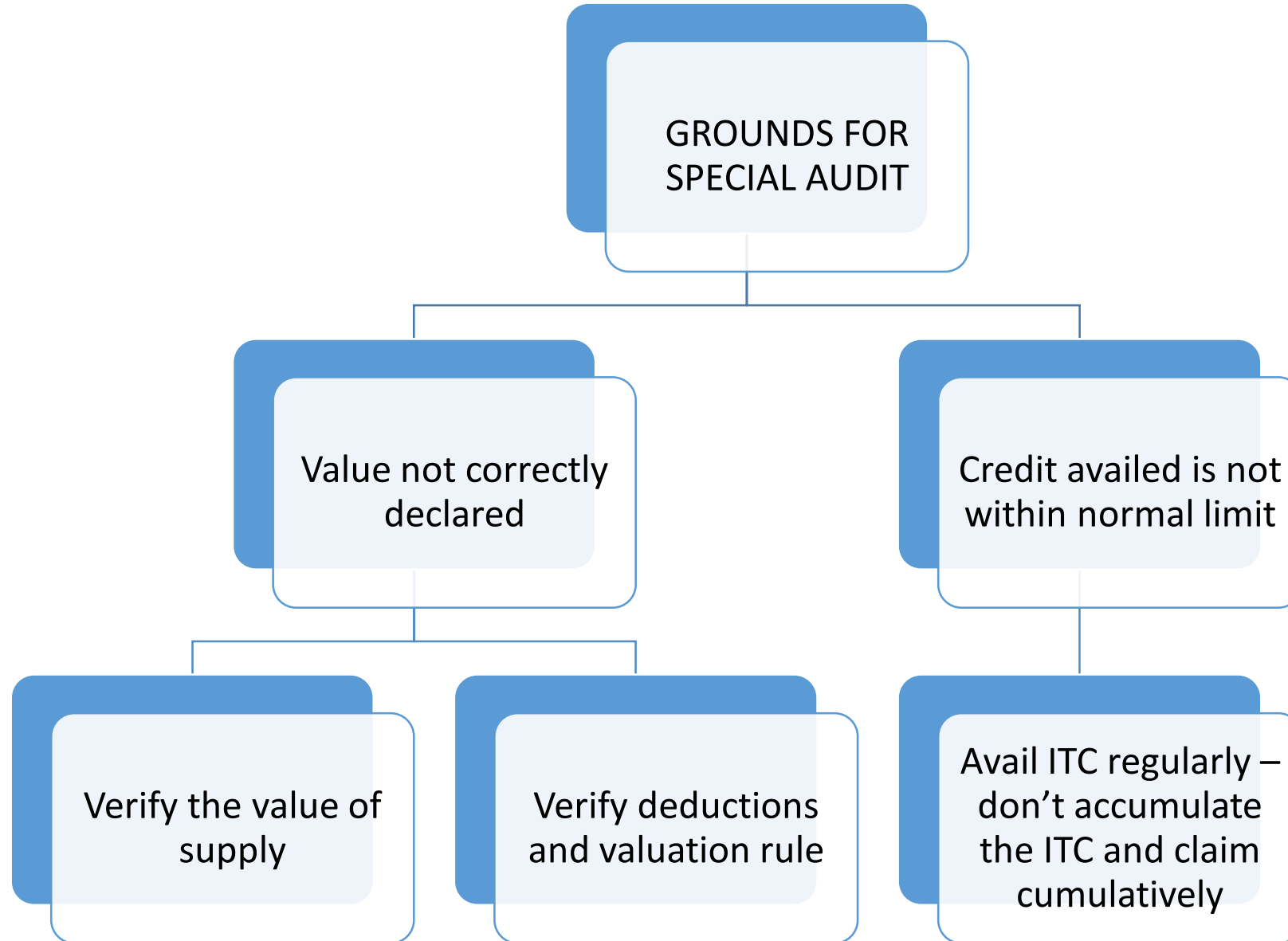


Where the special audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

## SPECIAL AUDIT [Section 66(1)]

- At any stage of scrutiny, inquiry, investigation or any other proceedings before him,
- having regard to the **nature and complexity of the case** and the **interest of revenue**, proper officer(**not below the rank of Assistant Commissioner**)
- is of the opinion that **the value has not been correctly declared** or the **credit availed is not within the normal limits**,
- such officer** may, with the **prior approval of the Commissioner**,
- direct such registered person by a **communication in writing** ( FORM GST ADT -03)
- 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**.

# GROUNDS FOR SPECIAL AUDIT- 66(1)





## Time period for report[ sec 66(2)

- The CA/CMA so nominated shall, within the period of 90 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**
- Assistant Commissioner may, on an application made to him in this behalf by the registered person or the CA/CMA auditor or for any material and sufficient reason, extend the said period by a further period of 90 days.

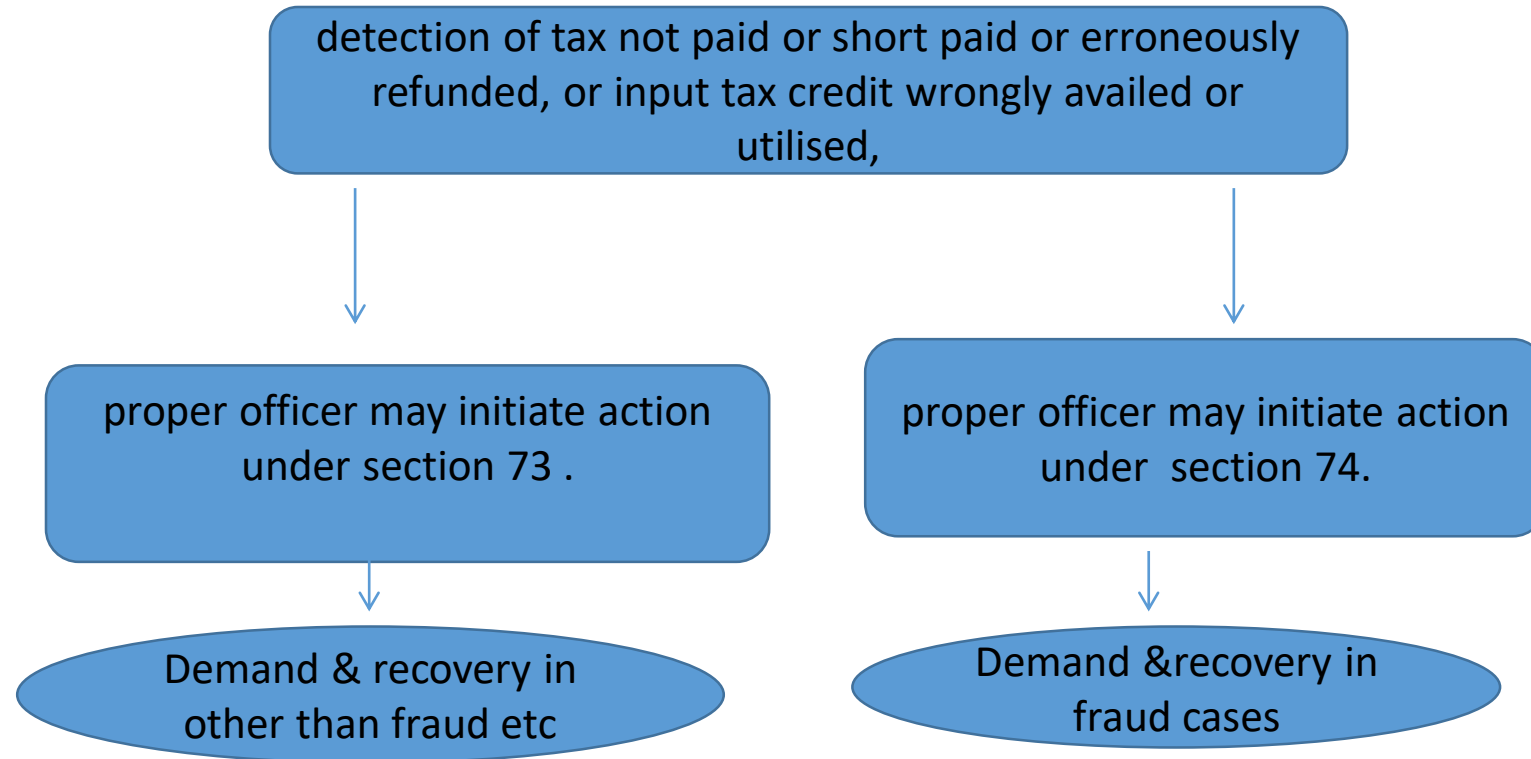
Special audit, even if audit already conducted under GST  
or other law?

The provisions of special audit section 66(1) 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.

## Expenses of the examination and audit of records[s-66(5)]

The expenses of the examination and audit of records under subsection (1), including the remuneration of such CA/CMA, shall be determined and paid by the Commissioner and such determination shall be final.

# Special audit conducted under 66(1) results in detection of tax [s-66(6)]



## Principle of natural justice shall be followed?[ S-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 against him under this Act or the rules made thereunder.**

**Finding shall be shared in form GST ADT-04**

## PROCEDURE RELATED TO SPECIAL AUDIT UNDER SECTION U/S 66[RULE 102]

- Where special audit is required to be conducted in accordance with the provisions of section 66, the officer shall issue a **direction in FORM GST ADT-03** to the **registered person to get his records audited by a CA/CMA** specified in the said direction.
- On conclusion of the special audit, the registered person shall be informed of **the findings of the special audit in FORM GST ADT-04**.

Form GST ADT - 03

[See rule 102(1)]

Reference No.:

Date:

To,

-----  
GSTIN .....  
Name .....  
Address .....

Tax period - F.Y.(s) - .....

Communication to the registered person for conduct of special audit under section 66

Whereas the proceedings of scrutiny of return /enquiry/investigation/..... are going on;

And whereas it is felt necessary to get your books of account and records examined and audited by .....(name), chartered accountant / cost accountant nominated by the Commissioner;

You are hereby directed to get your books of account and records audited by the said chartered accountant / cost accountant.

Signature .....  
Name .....  
Designation .....

**Form GST ADT – 04**  
[See rule 102(2)]

Reference No.:

Date:

To,

-----  
GSTIN .....  
Name .....  
Address .....

**Information of Findings upon Special Audit**

Your books of account and records for the F.Y..... has been examined by -----  
--- (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of  
information available / documents furnished by you and the findings/discrepancies are as under:

Short payment of Tax	Integrated tax	Central tax	State /UT tax	Cess
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature .....  
Name .....  
Designation .....



# Comparison of section 65 and section 66

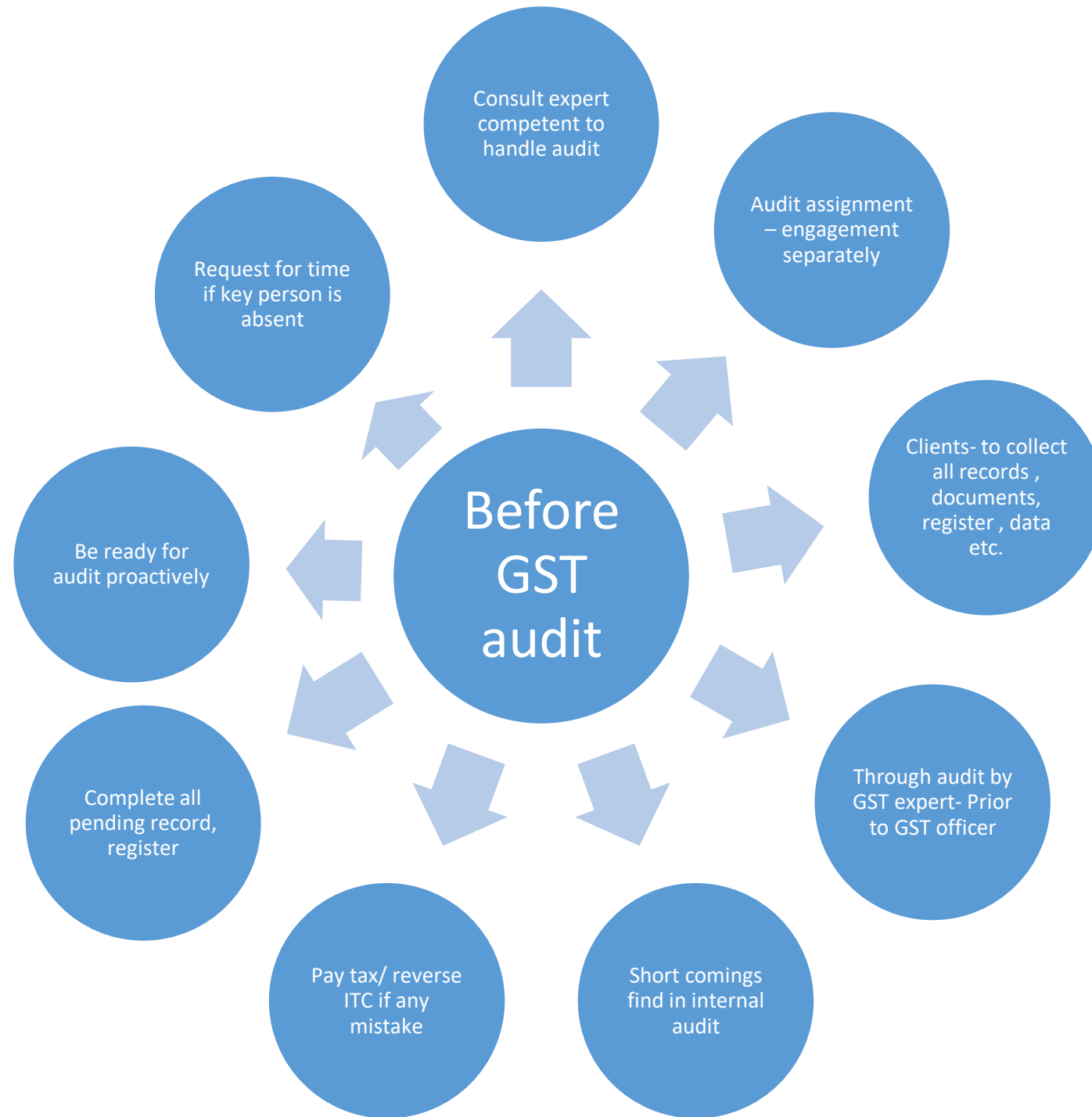
## Audit u/s 65 by GST department directly

- **general audit by tax authorities**
- Proceeding need **not** be pending
- Time period: 3Months
- (+ 6 Months extension)
- For Initiation approval, not required
- Audit by department itself
- Scope wide – correctness of turnover declared, valuation , taxes paid, refund claimed, ITC availed, compliances etc.

## Special Audit u/s 66 by appointed CA/CMA

- **Special Audit by CA on direction of tax authorities**
- Proceeding **Must be** pending **before AC or officer of above rank**
- Time period: 90 days
- (+ 90 Days extension)
- For Initiation approval, from Commissioner Required
- Audit by CACMA nominated by Commissioner
- Limited scope – only to (1) verify valuation and (2) availment of ITC.

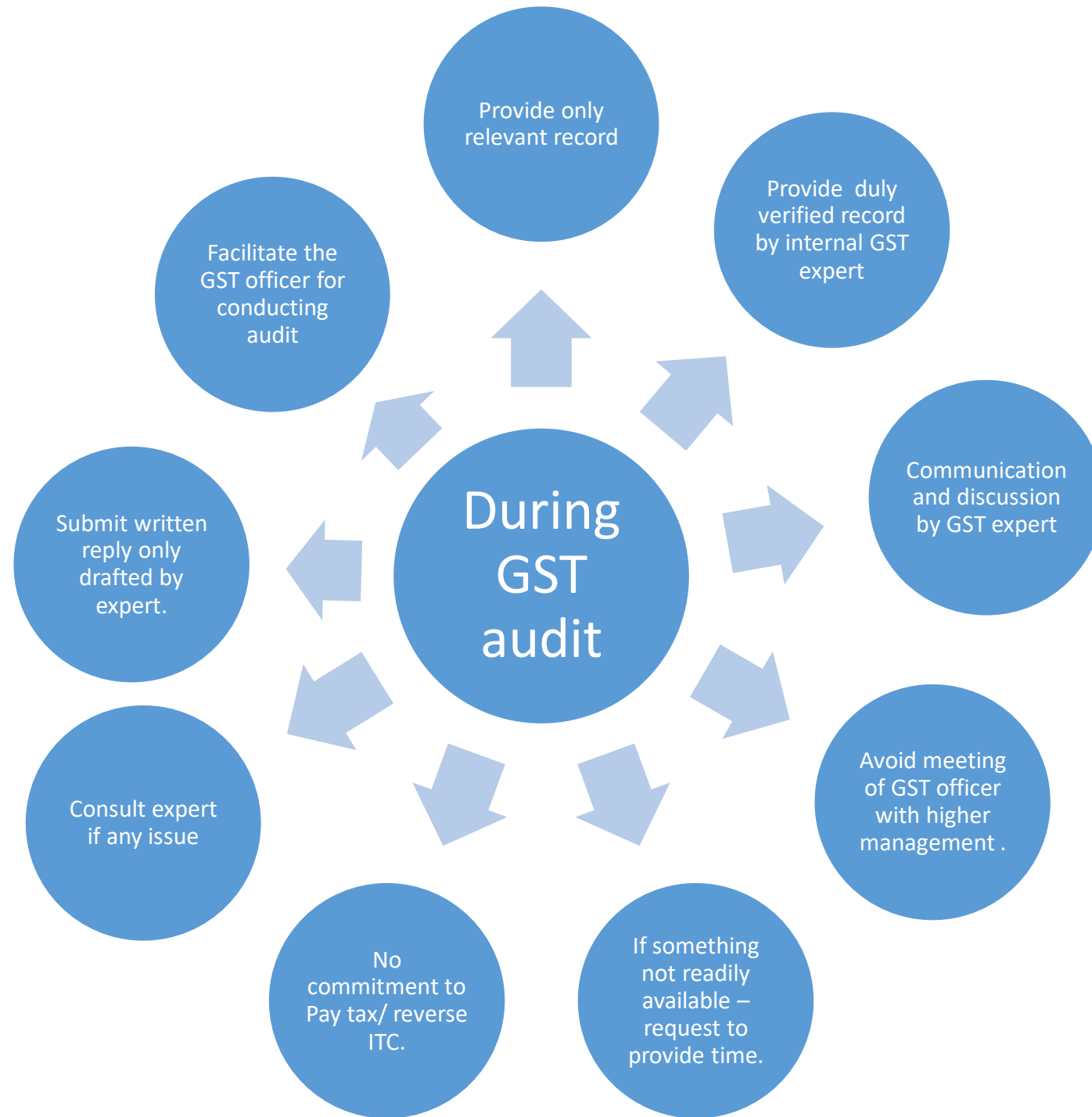
# **Preparation on receiving notice for GST audit**



**For due  
diligence by  
GST expert  
before audit  
by  
department**

- Understanding of the business of the auditee with reference to GST Law.
- Understanding of the applicable legal provision like supply, nature of supply , classification of supply, rate of tax, exemption, valuation , ITC etc.
- Understanding of the maintenance of record and documents.
- Understanding legal history of client under VAT/service tax/GST or other indirect tax.
- Verify all the return ,documents, records for the period for which audit to conducted.
- Mistake in application of GST law/ misapplication- ask client to pay tax/ reverse ITC if wrongly taken.
- Help in preparing the record required to be maintained under GST
- Scrutiny of all important contract having bearing on GST like time of supply , valuation of supply, rate of tax , classification of supply, or ITC availed.
- Supporting record for ITC claimed
- Supporting documents for refund claimed.
- Preparation of all important reconciliations in advance with suitable explanations for difference.

**Precautions during GST audit  
by dept. officer**



After GST audit –on receiving  
audit note in FORM GST ADT-02





**Consideration while drafting  
reply to GST ADT -02**

## ANALYSIS OF GST ADT-02 audit issue

- Understanding of the business of the auditee with reference to issue in GST ADT-02
- Understanding of the applicable legal provision like supply, nature of supply , classification of supply, rate of tax, exemption, valuation , ITC etc.
- Understanding of the GST ADT-02
- Factual mistake in GST ADT-02
- Mistake in application of GST law/ misapplication
- Review the submission made earlier or lacking in submission/no submission
- Submission made but not considered or missing while drafting the GST ADT-02.
- Calculation mistakes/ mistake apparent from record in GST ADT-02
- Whether provisions of law or judicial precedents misapplied or not considered
- GST ADT-02 Without proper reasoning
- Reply by expert of subject / avoid to submit general reply/ submission in hurry.
- discussion with management and decision on Issue to be contested with due pros and cons.



## About the noticee

- About the registration and return filing history
- Nature of business or profession
- Nature of transaction having bearing with the issue –step by step
- full facts having bearing on taxation , exemption, valuation, nature of supply , classification of supply, rate of tax, ITC etc.
- Case history and references of correspondence like letter no, notice no etc.
- Other previous case history whether under GST or pre-GST era tax laws
- Good track record of auditee under other statute as well like income tax , labour laws, pre-GST era enquiry/order
- About the case: full sequence of happening of events
- Undisputed facts mention in GST ADT-02
- Mistake of facts mention in the GST ADT-02

## About the audit issue

- Background of the issue , how it was initiated?
- About submissions reference including personal hearing.
- Nature of proceedings
- Nature of demand( tax , interest , penalty, fee , fine etc) and quantification thereof
- various Issues in the case like exemption denied , transaction/activity taxed, ITC denied, classification matter, valuation issue etc.
- Reference of the particular section , notification, circular etc.
- View of GST officer conducting audit and contrary view / agreed view of the taxpayer on some of the issue with details of tax deposited.
- whether same matter/ identical matter is pending before any authority? If yes, details thereof
- Reference to earlier concluded proceedings/ proceedings going on with other authority

## Issue involved in the audit

- Issue in the case to be narrated with clarity – heading wise
- Issue of short levy / non levy/ short paid/ non paid/wrongly refunded – fraud etc. cases
- Issue of short levy / non levy/ short paid/ non paid/wrongly refunded – other than fraud etc. cases
- Issue of output tax like exemption , rate of tax, classification, zero rated supply, non-GST supply etc.
- Issue of input tax ( credit availment or utilization)
- Non-compliances- non return filing or no reply or non personal attendance case though required
- Non submission of documents
- Penalty
- Interest
- Late fee/fine etc.

## Disputed facts

- High light the mistake of facts mention in the GST ADT-02 with
- Table /chart of wrong facts mentioned in the GST ADT-02 and correct facts of the auditee
- How wrong facts in GST ADT-02 causes demand of tax, interest , penalty etc. ?
- wrong facts not having bearing on quantification of tax, interest or penalty but it is absolutely wrong like nature of business or model of business wrongly mentioned, wrong classification but same tax rate etc., the same should also be highlighted.
- Wrong facts having bearing with the case must be highlighted and how it result into demand ?
- Reporting of figure elsewhere under different laws taken for quantification of demand under GST by misapplication of GST law, like 26AS or turnover reported in ITR taken for quantification of tax under GST without appreciating the different system of both the tax law provisions.
- Figures of other books of account / record taken for quantification of tax without cross examination of record/person.

## Issue wise reply

Issue wise reply consisting of

- 1) facts in brief pertaining to the issue
- 2) applicable provisions of law, preferably quote the relevant portion of law like extract of section/rules/notification/ circular/order etc.
- 3) mistake in GST ADT-02
- 4) Mistakes in principle of law while applying law
- 5) Judicial precedence in favour of the issue
- 6) Relief sought for to delete audit para.



## judicial precedents- Mis-quoted in the GST ADT-02

- ❑ Why judicial precedents not applicable in the case of auditee?
- ❑ Mistake in applicability of ratio decidendi (the principle that the case establishes)
- ❑ Mistake of facts or change of facts / differentiation of facts of the case quoted and facts of auditee with reasons why the quoted judicial precedents is not applicable
- ❑ If precedence of pre-GST law taken , difference between both laws ( pre- GST and post GST law) and reason for non applicability of judicial precedence quoted
- ❑ highlight recent judicial precedence nullifying the earlier precedence
- ❑ highlight judgment of GST era in place of pre-GST era
- ❑ Order of higher court in favour of auditee
- ❑ Contrary view of different tribunal or high court , reason why the case laws quoted is not applicable
- ❑ Case laws quoted is against the spirit and expressed wording of law and review /appeal petition is pending for disposal before higher court .

## If judicial precedents- relied upon in submission

- Only relevant case law having similar facts or ratio decidendi (the principle that the case establishes) should be incorporated in the reply
- Avoid to give too much case laws/ irrelevant case laws
- Preferably quote case of jurisdictional high court/SC/ tribunal having territorial jurisdiction if available
- Case laws with citation and para no of the citation
- Relevant para must be reproduced as it is without any modification
- How facts of case quoted match with facts of the case or ratio of the case quoted is applicable ?
- Contrary view of different tribunal of high court , reason why the case laws quoted in the reply is applicable in case of noticee

## Request for personal hearing besides detailed written submissions

- Detail written submissions with request for personal hearing
- Always ask for physical personal hearing of the taxpayer or representative
- physical hearing develop the understanding of facts and legal propositions
- Submit synopsis after attending physical hearing with auditor and explaining the issue and proposed reply.
- Personal hearing must be taken on record, if order sheet is not properly recorded by the officer, it is always advisable to mention the brief of discussion in personal hearing in the next submission.
- It is always better to handover submission after hearing and explaining to the officer
- Personal hearing with proper jurisdictional officer who is issuing notices
- Prayer for personal hearing to avoid any confusion in the mind of officers

## Written submissions – essentials

- Properly addressed to the officer issuing GST ADT-02
- Page no is must
- All annexure forming part of the reply
- Page no range of the annexure in the body of reply
- Proper binding required to avoid detachment of papers if manual reply.
- Signing by the person who has drafted the submission, preferably the legal counsel
- Review by the other legal counsel if possible
- Don't submit in DAK – without discussion with officer
- Have a proper receiving of submission
- Always mention the reference of earlier submission to remind the officer of earlier submission as well
- Power of attorney / vakaltnama must be there .
- Provide contact no and email id of consultant as well.

**Common  
issue- supply**

- **Non payment of tax under RCM:** Whether supplier has charged and paid tax on supply, yes/no- tax neutral
- **Non payment of tax on advance** appearing in balance sheet: whether refund in next year or supply and tax paid- tax neutral
- **discount /re-imburement** –Under valuation of supply – section 15 and rules- whether fully creditable by party – tax neutral.
- **Amount paid /credited in 26AS, reporting in ITR Vs.** statement of profit and loss- turnover as per GSTR-1/3B. different tax laws has difference provisions of incidence of tax.
- **Exemptions** – strict interpretation.

## Common issue- ITC

- ITC- without physical receiving goods in godown or factory or business premises- receiving by agent/transporter/job worker/ customer bill to ship to model.
- ITC-GSTR-3B Vs. GSTR-2A/2B- rule 36(4) has no statutory backing /rule was not applicable during the period
- Personal use/non business use – nexus with business – definition of business very wide.
- Block credit- building material – booked revenue exp in books.
- Invoice of RCM- whether other party documents available, goods or services received – just technical matters.
- Reversal of common credit- rule 42/43- whether ITC utilised against tax payment or not
- ITC against exempt supply

**Thank You**

**THANK YOU  
CA PP SINGH**

Contact details for any issue/clarification

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