

GST Audit- a clause by clause analysis of GSTR 9 & 9C
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1) Legal Provisions & Rules relating to Annual Return and GST Audit

- i. Section 35(5) which provides for accounts audited by Chartered Accountant or A Cost Accountant reads as follows –

(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 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.

Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a Local Authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

Section 44 of the CGST Act, 2017.

The annual return is required to be filed as per provisions of Section 44(1) and audit reconciliation statement as per Section 44(2) are reads as follows –

44 (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

44 (2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Explanation. – *For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 30th June, 2019*

Rule 80 of CGST Rules, 2017

80. Annual return.-(1) Every registered person [other than those referred to in the proviso to sub-section (5) of section 35], other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a nonresident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically in **FORM GSTR-9** through the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in **FORM GSTR-9A**.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in FORM GSTR -9B.

(3) Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

[Provided that every registered person **whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees** shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in

FORM GSTR-9C for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner

2 Scope of GST Audit

a) The annual financial statement in GSTR 9 or 9A is required to be prepared by the registered person and submitted. However, reconciliation statement in form 9C is required to be certified by the auditor. The Part-B of GSTR-9C provides for following two types of certification –

I) Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by the person who had conducted the audit.

OR

II) Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by a person other than the person who had conducted the audit of the accounts:

Through the reconciliation statement auditor certifies the figures indicated in GSTR-9 and GSTR-9C.

b) Reconciliation statement in form 9C shall be annexed to report.

c) The auditor is required to certify maintenance of books of account, record, documents to ascertained the payment of tax. As per Section 35(1) the registered person shall maintain the accounts in the following manner –

35(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.*

d) The audit is defined in very wide manner under Section 2(13) of CGST Act as follows -

(13) "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;

The word is defined in wide manner but certification has limited scope.

e) Clarification issued vide C.B.I. & C. Press Release Nos. 105 & 106/2019, dated 3-7-2019

“ (h) **Role of chartered accountant or a cost accountant in certifying reconciliation statement :**

There are apprehensions that the chartered accountant or cost accountant may go beyond the books of account in their recommendations under **FORM GSTR-9C**. The GST Act is clear in this regard. **With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (FORM GSTR-9) with the audited annual accounts of the taxpayer.**

It appears that scope of audit is restricted to information which are contained in the balance sheet and profit & loss account. The auditor is not supposed to go beyond the information given in financial statement to determine tax liability.

f) Relevant Clause of Certification in FORM GSTR-9C.

*4. In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, the particulars, given in the said Form No.9C **are true and fair** subject to the following observations/qualifications, if any:*

- ◆ Scope of the GST audit in terms of the Statutory provisions and Clarifications?
- ◆ Approach by Auditors in areas like valuation, Related party transactions, etc.
- ◆ Acceptance Levels adopted by the Department while reviewing GSTR 9 and GSTR 9C for the year 2017-18.
- ◆ Impact of Management Representation on the scope of auditor.

Computation of Aggregate Turnover of 5 Crores for determining applicability of GST audit.

- ◆ **Rule 80 specifies the turnover limit of more than Five crores for GST audit for the year 2018-19.**
- ◆ Section 2(6) defines “aggregate turnover” which is as follows:

(6) “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

- ◆ It is evident that the turnover includes exempt supplies, export of goods or services, the inter-state supplies of person having the same Permanent Account Number. Thus the definition does not include the turnover of transaction which are not considered as supply. Such transaction are specified in Schedule – III and will include transaction which can not be considered as supply under Section 7.

Computation of Aggregate Turnover of 5 Crores.

- ◆ **Issues for determining the aggregate turnover?**
- ◆ Whether Aggregate Turnover to be computed net of credit notes issued during the Financial Year?
- ◆ Whether Advances to be considered for computation of aggregate Turnover?
- ◆ Purchase Return declared as Outward supply to be considered in aggregate turnover?
- ◆ Salary to partner.
- ◆ Profit from partnership business.
- ◆ Dividend received on shares.
- ◆ Interest on debentures.
- ◆ Interest on loans.
- ◆ Interest on Fixed Deposit / Bank interest on savings / Post office deposit,
- ◆ Residential Rent from personal asset of an individual.
- ◆ Income from sale of securities.
- ◆ Income from buying and selling of foreign currencies.
- ◆ Waiver of loan/wrote back of expenses.
- ◆ In some supplier of services like builder, travel agent, the value is determined as per Rule 32 of the GST rules. This is national value and the taxable value will not match with amount shown in profit & loss account. What should be taken as a turnover?

3) Scope of term “ no supply” under Annual return.

- ◆ Item 5 F of the Annual Return requires disclosure of income on account of “ Non-GST supply (includes ‘no supply’)”
- ◆ **What is the scope of Non-GST Supply.**
- ◆ Whether items like sale of land and building which are covered under schedule III to be disclosed in Annual return.
- ◆ Whether income of Dividend on mutual fund, profit on sale of securities, etc to be disclosed under such heading.

The reference book issued by CA Institute for GST Audit and Annual return for FY 18-19 has clarified the following:

- ◆ Non-GST supplies - Non-taxable supplies as defined under Section 2(78) of the CGST Act - Supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).
- ◆ No supply - No supplies include the activities covered under Schedule III which are neither a supply of goods nor a supply of services. Examples- Sale of land or completed building, actionable claims other than lottery, betting and gambling.

Issues related to Cross Charge

1. What will be implication in case where cross charge is not done by Head office to its branches.
2. Whether employees salary shall be included in value for the purpose of cross charging.

3. Whether proviso 2 to CGST Rule 28 can be applied for any value without applying for ALP.
4. Assuming that out 20 branches one branch is SEZ unit whether cross charge should be done to SEZ unit?
5. Whether proportionate supply to SEZ unit can be classified as export of services and therefore on submission of LUT application whether cross charge can be made to SEZ unit without levying any GST?

Case study on sale from Bonded Warehouse (Prior To 01/02/2019)

Issue: If Supplies are made during the period 1.4.2018 to 31.01.2019 in respect of transactions pertaining to sale from Bonded warehouse, what are the GST Implications in respect of such transactions.

1. Whether assessee is required to reverse input tax credit under rule 42 for the period 1.4.2017 to 31.01.2019.
2. Whether the clarification issued on 01.02.2019 is applicable from 1.7.2017 retrospectively or it is applicable from 1. 02.2019 prospectively.

4) Relaxation given upto 2018-19 for Annual return.

- ◆ In November 2019 FORM GSTR 9 was simplified and Section 16 of the CGST Act, 2017 and information under many of the tables were made optional.
- ◆ For e.g. instruction to table 4I of Annual return reads as follows:
- ◆ **For FY 2017-18 and 2018-19, the registered person shall have an option to fill Table 4B to Table 4E net of credit notes in case there is any difficulty in reporting such details separately in this table.**
- ◆ **What is the scope of term “Difficulty in reporting such details”.**
- ◆ **What is the Impact of non-reporting of such figures in Annual return when such amounts available in the books of accounts and GSTR 1 filed earlier.**
- ◆ **Whether GST auditor is bound to qualify GSTR 9C is bifurcation not provided in the Annual return.**

5) Whether liability during audit and annual return can be paid through ITC.

- ◆ Additional tax may be disclosed during GSTR 9 and GSTR 9C filling.
- ◆ Instructions in GSTR 9.

“ 9. Towards the end of the return, taxpayers shall be given an option to pay any additional liability declared in this form, through FORM DRC-03. Taxpayers shall select —Annual Return|| in the drop down provided in FORM DRC-03. It may be noted that such liability can be paid through electronic cash ledger only.

- ◆ Instructions in GSTR 9C.

8. Towards the end of the return, taxpayers shall be given an option to pay any additional liability declared in this form, through FORM DRC-03. Taxpayers shall select —Reconciliation Statement|| in the drop down provided in FORM DRC-03. It may be noted that such liability shall be paid through electronic cash ledger only.

SECTION 49. Payment of tax, interest, penalty and other amounts. —

.....

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 or section 43A], to be maintained in such manner as may be prescribed.

.....

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

6) Disclosure of Tax paid in 2018-19 pertaining to 2017-18

- Table 4 of Annual return requires the assessee to disclose the value of supplies made during the year along with the tax payable. This value has to be based on Financials.

Pt. II	Details of Outward and inward supplies made during the financial year					
	(Amount in ₹ in all tables)					
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	
4	Details of advances, inward and outward supplies made during the financial year on which tax is payable					
A	Supplies made to un-registered persons (B2C)					
B	Supplies made to registered persons (B2B)					
	Zero rated supply (Export) on					

Disclosure of Tax paid in 2018-19 pertaining to 2017-18

- Table 9 of Annual return contains details of tax paid during the Financial year. Details in the said table are auto populated from 3B returns filed during 2018-19.

Pt. IV	Details of tax paid as declared in returns filed during the financial year						
	Description	Tax Payable	Paid through cash	Paid through ITC			
				Central Tax	State Tax / UT Tax	Integrated Tax	Cess
9	1	2	3	4	5	6	7
	Integrated Tax						
	Central Tax						
	State/UT Tax						
	Cess						
	Interest						
	Late fee						

The total of Table 9 of Annual return is auto populated in GSTR 9C and is compared with the tax payable as per the GST audit.

- In cases where tax for a supply made in 2017-18 is paid in the GSTR 3B of the month of August 2018, the value of supply and its corresponding tax liability will not be included in table 4 of the Annual return.
- However Table 9 of Annual return will take the amount of tax paid from 3B returns of 2018-19 and thus the tax paid figure will contain details of such tax paid.
- Due to this anomaly, it will appear that assessee has paid excess GST. Also such amount will be auto populated in 9C tax paid as per Annual return.
- Auditors needs to be careful to exclude such tax payment for the purpose of reconciling the tax payable as per books and tax payable as per Annual return.

Issue related to Disclosure of Input tax credit in GSTR-9

- When ITC is availed net of reversal in GSTR-3B then what should be right presentation in table 6 & 7 of GSTR-9.

6 Details of ITC availed during the financial year					
A	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)		<Auto >	<Auto >	<Auto >
B	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Inputs			
		Capital Goods			
		Input Services			
C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Inputs			
		Capital Goods			
		Input Services			
D	Inward supplies received from	Inputs			
7 Details of ITC Reversed and Ineligible ITC for the financial year					
A	As per Rule 37				
B	As per Rule 39				
C	As per Rule 42				
D	As per Rule 43				
E	As per section 17(5)				
F	Reversal of TRAN-I credit				
G	Reversal of TRAN-II credit				
H	Other reversals (pl. specify)				
I	Total ITC Reversed (Sum of A to H above)				
J	Net ITC Available for Utilization (6O - 7I)				

- **Gross Basis:** If assessee shows gross ITC in Table 6 (Details of ITC availed during the financial year) and reversal in Table 7 (Details of ITC reversed and ineligible ITC for the financial year) then the department may take a view that ITC which was not availed, now cannot be available as time limit has lapsed. Or
- **Netted off:** Assessee should declare ITC net of reversal in Table 6 (Details of ITC availed during the financial year) of GSTR-9.

7) Audit impact of GSTR 2A matching in audit.

Section 16 of the CGST Act, 2017.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

- ◆ (a)
- ◆ (c) **subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and**
- ◆ **Matching provisions required filing of GSTR 2 and matching with credit of GSTR 2A. However GSTR 2 will not be made functional.**
- ◆ Circular no 26/26/2017 GST dated 29th December 2017.
- ◆ It has been further decided that the time period of filing of **FORM GSTR-2** and **FORM GSTR -3** for the months of July 2017 to March 2018 would be worked out by a Committee of officers and communicated later. **(Para 1.3 of point 1)**

◇ **Since, the GST Council has decided that the time period of filing of FORM GSTR-2 and FORM GSTR-3 for the month of July 2017 to March 2018 would be worked out by a Committee of officers, the system-based reconciliation prescribed under Circular No. 7/7/2017-GST dated 1st September 2017 can only be operationalized after the relevant notification is issued. The said circular is therefore kept in abeyance till such time. (Para 3.2 of point 3)**

◇ Detailed instructions regarding reconciliation of information furnished in FORM GSTR-3B with that contained in FORM GSTR-2 and FORM GSTR-3 will be issued in due course of time. (Para 6 of point 3)

◇ Department has started issuing notices for demanding unmatched ITC for previous years.

◇ Table 8 of Annual return deals with details of input tax credit availed and compares the same with GSTR 2A.

◇ Whether GST auditor is required to show such unmatched amount as liability in GSTR 9C.

◇ **Impact of new Rule 36 (4) of CGST Rules, 2017 on GST audit. (inserted w.e.f October 2019)**

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed [10 per cent] of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

Earlier limit of 20% of matched credit.

8) Audit impact - of payment of wrong type of taxes.

◇ Assessee may have classified inter-state supply instead intra-state supply.

◇ Thus instead of IGST assessee has paid CGST + SGST on such supply.

◇ Provisions of Section 77.

◇ **SECTION 77. Tax wrongfully collected and paid to Central Government or State Government. —**
(1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

◇ *(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.*

8) Audit impact - of payment of wrong type of taxes.

◇ *Whether tax needs to be paid again at the time of filling annual return or GSTR 9C.*

◇ *Whether Interest to be paid in GST audit.*

◇ SAJI S. 2018 (19) G.S.T.L. 385 (Ker.)

◇ *Seizure/Detention of goods - Release of goods - Duty demand erroneously paid under "SGST" instead of "IGST" leading to refusal to release goods by consignor - Concerned Officials can transfer amount from head "SGST" to "IGST" - Inequitable for authorities to let petitioner suffer on count of any delay in transfer - Direction to release goods forthwith along with vehicle and to ensure that tax and penalty already stood remitted under "SGST" is transferred to head "IGST" - Rule 94 of CGST Rules, 2017 - Section 77 of Central Goods and Services Tax Act, 2017. [paras 7, 8, 9, 10]*

9) Liability of interest on tax paid in Audit / Annual return.

SECTION 50. Interest on delayed payment of tax. — (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part

thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Amendment in Section 50 to levy interest on net Electronic Cash Liability.

- ◇ Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”.
- ◇ CBIC has issued notification no. 63/2020-Central Tax dated 25.08.2020 to bring the above amendment into effect from 1st Sept 2020. Thereafter, CBIC issued a press release on 26.08.2020 to clarify that for the prior period interest shall be charged only on net electronic cash liability.
- ◇ However, it has been seen that the department is still demanding interest on the gross liability stating that they are not bound to follow press release since in GST Law amendment is w.e.f. 1st September 2020.

Impact of retrospective amendment on GST audit

10) Adjustment of excess payment of taxes detected during Annual return / Audit.

- ◇ Details of outwards supply are declared in GSTR 1 whereas tax is paid in GSTR 3B.
- ◇ As GSTR 3B is manual return, there are chances of errors.
- ◇ Assessee may have under reported its tax liability in 2018-19 but may have paid excess tax in 3B in 2019-20.
- ◇ Whether such excess tax paid in one year can be adjusted against short liability during annual return and GSTR 9C.
- ◇ C.B.E. & C. Circular No. 26/26/2017-GST, dated 29-12-2017.
4. It is clarified that as return in **FORM GSTR-3B** do not contain provisions for reporting of differential figures for past month(s), the said figures may be reported on net basis alongwith the values for current month itself in appropriate tables i.e. Table No. 3.1, 3.2, 4 and 5, as the case may be. It may be noted that while making adjustment in the output tax liability or input tax credit, there can be no negative entries in the **FORM GSTR-3B**. The amount remaining for adjustment, if any, may be adjusted in the return(s) in **FORM GSTR-3B** of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed. Where adjustments have been made in **FORM GSTR-3B** of multiple months, corresponding adjustments in **FORM GSTR-1** should also preferably be made in the corresponding months.

Recent Decision of Bharti Airtel – Delhi High Court

- ◇ Para 4 of Circular no 26/26/2017-GST is arbitrary as it allows for rectification of GSTR 3B only in subsequent months.
- ◇ Statutory scheme envisages rectification of GSTR 3B in the same tax period.
- ◇ Petitioners were allowed to rectify GSTR 3B, pay liability through ITC and claim refund of excess tax paid.

11) Audit of assessee undergoing investigation for fake invoice credit.

- ◇ Section 16 specifies the receipt of goods or services are once of the conditions of availing the input tax credit.
- ◇ Department has started investigation in various cases for credit without actual receipt of goods.

- ◇ Whether payment of GST on fake invoices would amount to reversal of ineligible credit.
- ◇ Auditors responsibility and scope with respect to assessee under such investigation.

THANK YOU

BALANCED VIEW

PRESENTED BY

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