

Audit, Assessment & Investigation – Different powers

Assessment - Chapter XII

- Self Assessment (S. 59)
- Provisional Assessment (S. 60)
- Scrutiny of Returns (S. 61)
- Assessment of Non-filers of returns (S. 62)
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Audit - Chapter XIII

- Audit by Tax Authorities(S. 65)
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<u>Investigation – Chapter</u> <u>XIV</u>

- Power of inspection, search & seizure (S. 67)
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 persons to give evidence
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 (S. 70)

Section 71

Access to business premises

Demands & Recovery - Chapter XV

- Adjudication of taxes Matters not involving fraud etc. (5. 73)
- Adjudication of taxes Matters involving fraud etc. (S. 74)

Departmental Audit - Legal Framework

- Relevant legal Provisions in the GST Act and Rules viz.,
 - ✓ Section 2(13) Meaning of the term 'Audit';
 - ✓ Section 2(85) Meaning of the term 'Place of Business';
 - ✓ Section 65 Audit by Tax Authorities;
 - ✓ Rule 101 Departmental Audit;
 - ✓ Section 71 Access to the business premises of the taxpayer;
 - ✓ Sec 35 read with Rule 56 Maintenance of Accounts, Records & Documents.
- GST Audit Manual 2019 issued by the CBIC;
- Manual for Quality Assurance Review & Audit Performance Index 2021 issued by the CBIC;
- Trade Circular No. 13T of 2020 General Procedure for GST Audit issued by the Commissioner of State Tax, Maharashtra.

Departmental Audit - Legal Framework

- Meaning of the term 'Audit' u/s 2(13) of the Act:
 - **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,

• <u>To verify</u>

the correctness of

- ✓ Turnover declared,
- ✓ Taxes paid,
- ✓ Refund claimed and
- ✓ Input tax credit availed,

To assess

✓ his compliance with the *provisions of this Act* or the rules made thereunder.

- (1) The <u>Commissioner</u> or <u>any officer authorised by him</u>, by way of a <u>general</u> or a <u>specific</u> order, may undertake audit of <u>any registered person</u> for such period, at such frequency and in such manner as may be prescribed.
- (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**:
- Section 2(85) Place of business includes
 - 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, supplies or receives goods or 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.

Access to business Premises - Section 71

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person
 - <u>To inspect</u> books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise <u>and such other things</u> as he may require and which may be available at such place,
 - For the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge shall, make available to the audit party the following:
 - i. such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
 - ii. trial balance or its equivalent;
 - iii. statements of annual financial accounts, duly audited, wherever required;
 - iv. Cost audit report, if any, under section 148 of the Companies Act, 2013;
 - v. Income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961;
 - vi. any other relevant record,

- Option given to conduct audit either at the place of business of a registered person or in their office.
- In view of emphasis on trade facilitation, intelligent enforcement and providing non-intrusive environment to taxpayers, it has been decided to move from the present system of premises-based audit to desk-based (office) audit in case of **small category of taxpayers**. However, in case of non-cooperation by the taxpayers, premises-based audit may be carried out after approval by the Commissioner. (Para 5.7.7 of the GST Audit Manual)
- (3) The registered person shall be informed by way of a notice *not less than fifteen working days* prior to the conduct of audit in Form ADT 01.
- If department letter for conducting audit is not replied, following actions to be taken:
 - ✓ Note sent to executive Commissionerate for taking appropriate action;
 - ✓ Inclusion in the Risk Parameters for future To be identified for audit on priority;
 - ✓ Downgrading of the GST compliance ratings.

- (4) The audit shall be completed within a period of **three months** from the date of commencement of the audit.
- If 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 <u>not exceeding six months</u>.
- 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)**.
- Civil WP No. 3/2020 Extension of Limitation Dated 23.03.2020
 - This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by <u>litigants</u> across the country in filing their <u>petitions/applications/suits/appeals/all other proceedings</u> within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

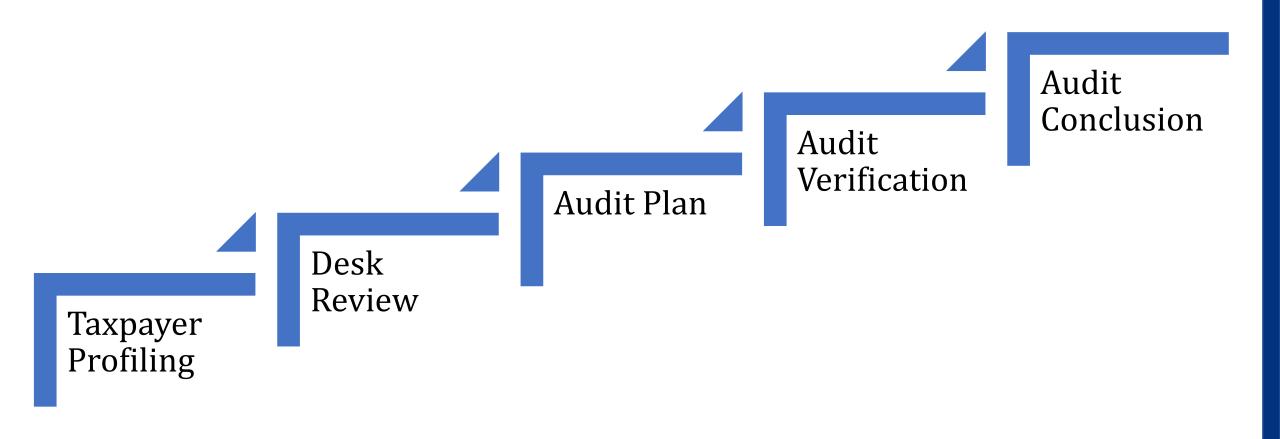
- It is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. [Power under Article 142 of the Constitution of India]
- The order is binding on all the Courts/ Tribunals and authorities. SC further ended the above relaxation.
- CBIC has extended the time-limit for compliance of any actions till 30.06.2021
- (5) 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 the audit.

- (6) On conclusion of audit, the proper officer shall, <u>within thirty days</u>, inform the registered person about findings, rights and obligations and the reasons for such findings in Form ADT 02. [Proper officer is AC/DC]
- (7) Where the audit 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 [Superintendent for S. 73 and AC/ DC for S.74]

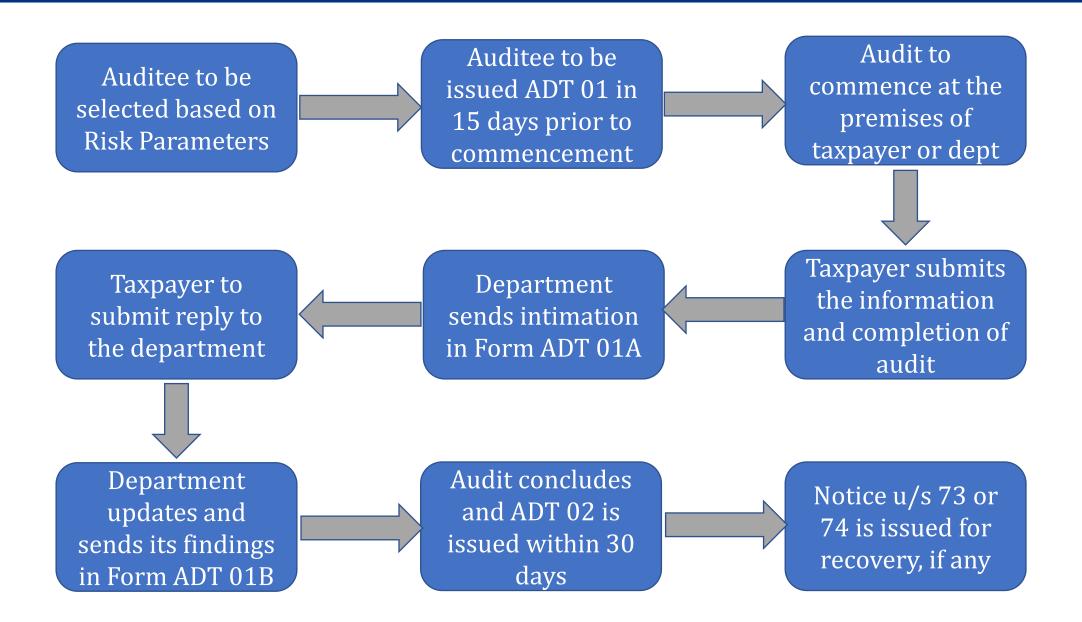
Periodicity of Audit & Selection Criteria

- Audit to be conducted for a financial year [or part thereof] or multiples thereof;
- Audit is sample selection driven, Criteria for selection to be as under:
 - ✓ Risk Based Selection v/s earlier turnover/ taxes paid basis selection
 - ✓ Theme Based Selection
 - ✓ Deferment for Accredited Taxpayers 3 years from the date of last audit
- 20% cases to be identified based on the local risk parameters as under:
 - ✓ Taxpayer did not provide/delayed in providing documents sought by the Audit Team;
 - ✓ Inconsistency in filing of tax returns by the taxpayers;
 - ✓ Taxpayer's return was previously investigated for evasion;
 - ✓ Taxpayer received notices from other governmental entities;
 - ✓ Quality of the Taxpayer's books and records not well-kept;
 - ✓ Taxpayer has supplied goods on which there has been reduction in rate of duty, in order to examine the possibility of profiteering u/s 171 of the CGST Act, 2017;
 - ✓ Higher incidence of supplies without issuance of e-way Bills have been noticed.

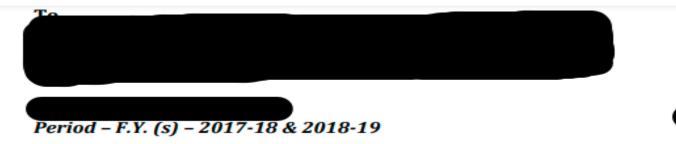
Methodology of GST Audit



Steps involved in the GST Audit



GST Audit by department - ADT 01



NOTICE FOR CONDUCT OF GST AUDIT

Whereas it has been decided to undertake audit of your books of accounts and records for the financial year(s) 2017-18 & 2018-19 in accordance with the provisions of Section 65 of the CGST Act, 2017. I propose to conduct the said audit at my office/at your place of business in the month of JAN., 2021.

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 authorized representative on 25.01.2021 at Office of the Assistant Commissioner of CGST, Audit-I Commissionerate Pune, Sector No. 26, GST Bhavan, Dr. Ambedkar Rd., Near Akurdi Rly. Station, Akurdi, Pune-411044 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.

The list of documents required is as per the list enclosed - Annexure - A

GST Audit by department – ADT 02

[Upload pdf file containing audit observation]

initiated against you under the provisions of the Act.

Reference No.:

To

FORM GST ADT - 02

[See rule 101(5)]

Date:

Name				
Audit Report No.	dated			
	Audit R	keport under secti	on 65(6)	
	epared on the basis		has been e railable / documents	
Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other				
amount				

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

GST Audit by department - Preparation & Approach

- Cooperating with the audit team and providing all the necessary information & documents called for;
- Keeping the entire information in an organized manner ready prior to the visit by the audit party;
- Seek adjournment if information/documents not ready MH Trade Circular;
- Identity of the each and every member of the audit team must be verified;
- Additional time to be requested if not clear/ not sure about any facts or law;
- Professional can be involved as an authorized representative to handle the audit and represent the taxpayer;
- Get pre-audit done internally / externally.

GST Audit by department - Preparation & Approach

- Payment can be made under protest or under the right to contest Areas of interpretation – Keeping the issue alive – waiting for the apex court judgment;
- Proper officer may issue a SCN, if no SCN issued, then file a refund application;
- If department asks for original documents Make available on a sample basis backed by a CA certificate;
- Unofficial demands by the aggressive officers in the course of audits Payment must not be demanded under coercion/ harassment **Gujarat High Court**;
- Oral directions for payment/ reversals Suggested to keep everything in writing -Submit a letter stating the complete sequence of events with full facts & details;
- Type of replies given during the audit would help It will make the foundation strong for future litigation;

Departmental Communication & Correspondences

- **Email:** has got legal recognition Regd email id, uploading on the portal Sec. 169;
- **Telephone:** Not preferable mode of communication with the dept Non-evidence means of correspondence;
- Letters from the dept: the envelope cover should be retained as evidence for date of receipt.
- **Letters to dept:** All correspondences to the departmental officers be duly acknowledged and if not done, a copy to be sent by RPAD;
- **DIN to be quoted:** To be treated as invalid and deemed to have never been issued;
- **Visits by depts:** Visiting officers are required to record in the visit register with the purpose;
- **Visit to department:** After introduction of E-Governance projects in tax depts no longer required to visit to dept except in few exceptional cases.

- Jurisdiction General or specific orders, whether central or state Below 1.5 Crore (90% to the state) & Above 1.5 Crore (50% by both) Need to know who has the jurisdiction;
- Hard copy v/s Soft copy records Whether there is a requirement to provide backup of a software;
- Anything incorrectly reported in the audit report how to handle;
- Already assessment completed, returns scrutinized, investigation carried out etc.;
- Verification of the transitional credits, whether can be covered as a part of audit;
- 100% refund granted based on verification of the documents, can it be re-opened;
- Can GST audit by department also go into the classification, valuation, rate of tax etc. of the goods imported or whether it would be covered under the Customs Audit;

- Rate of interest, whether payable @ 18% or 24%;
- Whether interest is payable at gross or net value for tax payable in the course of audit;
- Penalty whether payable for tax dues arising for payment in the course of audit;
 - ✓ Cases involving fraud/ suppression or otherwise;
 - ✓ Taxes paid on own ascertainment prior to issuance of the audit para or SCN;
 - ✓ Tax along with applicable interest is paid within 30 days of the issue of SCN;
- If no audit objection raised on a particular matter in one year, then whether penalty payable for issue raised in the subsequent years or whether extended period of limitation cannot be invoked;
- Payment of tax liability in the course of audit by utilizing the ITC;

Time-limit for issuing the SCN is as under:

Financial Year	Normal cases	Cases involving fraud, suppression etc.
2017-18	Nov 9, 2022	Aug 9, 2024
2018-19	Sept 30, 2023	June 30, 2025
2019-20	Dec 31, 2023	Sept 31, 2025

- In case of denial of refunds, the time-limit from the computed from the date of sanction of the refund claim;
- Any tax liability & interest payable under the audit, whether can be recovered from the recipient/ customer;
- Whether receiver can avail input tax credit on the liability detected and paid by the supplier as a part of audit and recovered from the recipient – It is not covered u/s 17(5)(i);

- Availability of ITC for taxes paid under reverse charge in the course of audit;
- Incorrect type of tax paid i.e., IGST is paid instead of CGST & SGST;
- Extension for payment of tax/ payment of tax in maximum 24 installments;
- Whether audit team can seize the goods, assets or any other things in the course of audit;
- Whether physical verification of stocks and cash be carried out?
- Can investigation be carried out as a part of 'Audit';
- Can audit be carried out at the residence of a taxpayer;
- C&AG is not considered as a proper officer for the purpose of conduct of the audit;

- SCN is to be handled by the adjudicating authority and not by the audit authorities -Nemo judex in sua causa;
- Whether Audit team can call for and ask the Internal audit reports S. 71(1);
- Substantial amount of data is being asked in the course of GST Audit especially the one that is already available with the department:
 - ☐ A substantial amount of data is already available in GSTN. Some of the data like those contained in annual financial statements keeps changing every year. Utility named Taxpayer at a Glance (TAG) containing all the available information of the registered person will be accessible to the auditor. [Para 5.1.2 of the Audit Manual]
 - □ Whenever GST audit of a registered person is taken up, the audit team conducting the audit should review the data already available and the data that is not available and collect the information not available and update the data of the registered person. [Para 5.2.1 of the Audit Manual]

RCM on procurements from the unregistered persons:

The provisions of Section 9(4) of the CGST Act, 2017 specify a class of registered person who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both. As such during the course of Audit, the auditors may examine the details of procurements from such un-registered persons. [Para 5.8.2 of the Audit Manual]

• ITC admissibility on account of mis-match between GSTR 2A vs GSTR 3B:

For verifying the gap in ITC availment as identified in para 5.5.4, the auditor should carry out a test check of the invoices of such suppliers whose details are not figuring in GSTR 2A and identify some of such suppliers with high tax value and get the particulars of tax payment verified at the supplier's end. [Para 5.8.3 of the Audit Manual]

Broad Areas of Verification by the department

Area	Particulars
Registration	Details of directors, places of business, type of registration etc.
Outward Supplies	Levy, Classification, Rate of tax, Time of supply, Valuation, Exemption, Place of supply, Nature of Tax etc., Reconciliation with books
Inward Supplies	Eligibility of credit, 2A reconciliation, Incorrect type of credit taken, Tax reversed by the supplier under CN, Reconciliation with books, 180 days payment, ITC availed beyond due date, Reversal of ITC etc.
Reverse Charge	Reconciliation with books, Paid in cash, Interest payment for delay, URD for first 3 months
Refunds	Eligibility, correctness of the claim, supporting documents etc.
Transitional issues	ITC transferred, Correctness & calculations, Supporting documents etc, Taxability of spill over transactions
Procedural compliances	Manner of documentation maintained (Proper documentation & systematic arrangement), Job work, E-way bill compliances etc.

GST Audit by department - Information demanded

ANNEXURE A

THE LIST OF RECORD / DOCUMENTS REQUIRED FOR AUDIT UNDER GST FROM THE REGISTERED PERSON.

S.NO	PARTICULARS	PERIOD/DETAILS
1	Registration certificate	Application details and amendment with the
		additional premises if any
2	GSTR 9/GSTR 9C	01/07/2017 to 31/03/2018 &
		01/04/2018 to 31/03/2019
3	GSTR 1	All monthly returns in soft form .01/07/2017
		to 31/03/2019
4	GSTR3B	All monthly returns in soft form .01/07/2017
		to 31/03/2019
5	Summary of GSTR - 2A	System generated for the period 01/07/2017
		to 31/03/2019 (SOFT)
		All monthly returns from 01/07/2017 to
		31/03/2019 (SOFT)
6	Summary of GSTR 3B	All monthly returns from 01/07/2017 to
		31/03/2019 (in soft form)
		(appears in the system assessee login in
		Annual Return menu.
7	Summary of GSTR 1	Summary of GSTR 3B`(system assessee login
		in Annual Return menu.) 01/07/2017 to
		31/03/2019
8	Comparative summary of GSTR-	Appearing in the assessee login in the Return
	1/GSTR3B/GSTR2A/Exports/RCM - 4	Dashboard. (Downloaded in Excel form)
	types of summary and one	
	consolidate summary of all	

GST Audit by department – Information demanded

9	Audited balance sheet and Profit and loss Account	F Y 2017-18 & 2018-19
10	Break up of Turnover	For 01/04/2017 to 30/06/2017 and 01/07/2017 till 31/03/2018
11	Annual Financial Report/ITR4/5/6/7 as applicable and Auditors Report .	F Y 2017-18 & 2018-19
12	VAT report /Return	01/04/2017 to 30/06/2017
13	ER-1/ER-3/ST-3 for the period 01/04/2017 to 30/06/2017	01/04/2017 to 30/06/2017
14	Tran-1	Filed and revised if any
15	Any correspondence from Range office regarding Tran-1	01/07/2017 ONWARDS
16	Cases pending SCN/Commr.(A)/*CESTAT/ HC/SC if any	Details up to 30/06/2017- as on date
17	ITC credit taken-Break up of Capital Goods /services/Inputs	01/07/2017 to 31/03/2019 (Excel form soft copy) invoice wise
18	Details of Goods and services supplied -Taxable /non taxable/nil rated/exempted/Zero rated HSN WISE	01/07/2017 to 31/03/2019
19	26 AS statement	For the FY 2017-18 & 2018-19

GST Audit by department – Information demanded

Annexures	Particulars	Details Asked for
Annexure I	Registered Persons Master File	 Registered persons profile- Name, address, GSTIN, etc. Details of Proprietor/Partner/Director/and authorized person Details of registration with Other Govt departments-Customs, DGFT, CIN, Stock broker with SEBI etc. Bank account details HSN/SAC wise supplies made and taxes paid. Details of zero-rated supplies/deemed exports
Annexure IV	Ratio Analysis of Database	 Separate for goods and services: ITC availed: Tax paid through cash +ITC Total inward supply cost: Total outward supply value ITC availed on CG purchased: addition to CG Other income: Sales Outward supply of scrap: Total outward supplies Value of exempt supplies: value of total outward supplies ITC on inputs: purchase price of inward supplies Value of zero rated: Total supply Non-GST supply: Total supply

GST Audit by department - Information demanded

Annexures	Particulars	Details Asked for
Annexure V	Comparative Chart of Items from FS with various returns	Comparative chart for following items as per records maintained u/s 35 of CGST Act, GSTR 9, Cost audit report, Income Tax audit report, Trial balance, company annual report, ITR 6 • Details of qty and value of goods manufactured and cleared • GST paid in cash and through ITC, credit and cash register • Qty and value of exports with payment and without payment • ITC-op. balance, availed and utilized for payment of duty on goods, on services, removal of inputs and capital goods as such • Consumption of major raw materials- qty and value • Waste and scrap- qty and value, details of written off stock • Details of power and fuel.
Annexure VI	Questionnaire for ICQ's and walkthrough	1)I/w supplies - Centralized or decentralized, PO series, ITC availment stage, FOC by customer, ITC reversal, etc. 2)O/w supplies - marketing pattern, invoice series, FOC, discounts 3)Stores-frequency of stock taking, time of recording receipt etc. 4)Tax accounting-System to check GST liability, CG accounting etc. 5)Job work-input output ratio, treatment of scrap generated, etc.

Indicative list of records/documents to be kept ready – Circular 13T of 2020

- Financial statement and reports Balance sheet, tax audit report, Annual financial statement, Cost audit report, trial balance
- Inward-Outward supply summary statement
- RCM ledger and supportive documents
- Inward-Outward supply invoices
- Cancelled invoices due to any reason
- Goods return (inward and outward supply) register along with credit note/debit note details
- Inward supply Register (soft copy)
- Outward Supply register (soft copy)
- Zero rated supply register and supportive documents (commercial invoice, shipping bill, bill of lading, EGM, Bank realization certificate or inward remittance certificate etc.)
- Details of Exempted supply/Supply to SEZ dealer
- Refund claim/ availment details if any (export of good and services, inverted duty structure etc. any type of refund claimed by dealer)
- TDS payment transactions if any
- TRAN-I details (details regarding credit carried forwarded from previous Act to GST Act
- GSTR 2A-Mismatch, unmatched transactions details.
- E-way bill transactions month wise summary statement and corresponding register

Indicative list of records/documents to be kept ready – Circular 13T of 2020

- In case of services, FIRC (Foreign Inward Remittances), corresponding agreements, invoices Annual Maintenance Contract copies and corresponding invoices if any
- Details of advances received and tax payment for the same
- Other Income/ misc. income
- Reversal / reduction of ITC
- Scrap sales
- Details of exempted outward supply
- Details of zero rated supply
- Non-GST supply
- Job work details (inward and outward side)
- Credit ledger/Input tax credit availment summary (for Capital asset, liability, Refund claim, any other deduction)
- Cash ledger availment summary (for liability, RCM, any other deduction)
- Reversal of ITC within 180 days due to non-payment in 180 days

Key Accounts, Records & Documents to be maintained

- Ensure the following documents are kept in one file/ folder:
 - Copy of Annual Report (Auditors Report, Tax Audit Report, Directors report, Financials including notes to accounts)
 - All Periodical Returns (GSTR -1 & GSTR 3B)

• Working and Monthly Computations duly matched:

- ✓ Sales Register/Report (with Supporting Invoices), Classification Notes; product literature;
- ✓ Credit Note Register/Report
- ✓ ITC Statement (with supporting Invoices)
 - Explanation Statement for eligibility can be annual
 - Details of Reversal and its computation
- ✓ Reconciliation with Books Vs. GSTR- 1 Vs. GSTR 3B

Annual Reports (GSTR – 9; GSTR 9C):

- ✓ Workings and Supporting's
- ✓ Reconciliation with Books Vs. GSTR 9 Vs. 9C

Key Accounts, Records & Documents to be maintained

Area	Particulars
General Accounts, Records & Documents to be maintained	 Tax invoices for outward & inward supplies; Bill of supply for exempt supplies; Receipt voucher for advances received; Refund voucher for advances refunded; Self Invoice for procurements from URD; Payment voucher for advances paid; Debit Notes; Credit Notes; Delivery challan for stock transfer, job work & other removals; E-Way Bill.
Procurement Records	 Input Tax Credit Register - Invoice No., Date, Supplier's Name, address, GSTIN, Taxable Value, Tax, Total, accounting head. HSN; Purchase Register having the complete details of the ITC availed and other items matched with the financials; Copies of Purchase Orders & Price Circulars

Key Accounts, Records & Documents to be maintained

Area	Particulars
Sales Records	 Sales Register having the complete details of the outward supplies and other items matched with the financials; Sale Orders & Price list; Customer Agreements & contracts
Inventory Records	 Raw Materials/Packing Materials Inventory Register - Details of Op. Stock, purchased, Goods removed & Cl. Stock along with HSN Finished goods Inventory Register - Details of Op. Stock, Goods manufactured, purchased, Goods sold/removed and closing stock Goods lost damaged, written off, given free Scrap/wastage Details - Details of Op. stock, generated, removed, Cl. stock Stores Ledger Goods Receipt Note (GRN)/Material Receipt Note/Inspection Cum Receipt Report (ICRR), Material Return Note Rejected Goods Register, Waste Register Physical Stock Verification Statement Job work/Sub-contract Register

Environment Tomorrow?

- More Transparency in system;
- More Accountability for CAs + Tax Officers;
- Electronic Interface increasing;
- Tax Harmonization in India + World;
- Less tolerance for unethical activities;
- Profession/ Professionals to play bigger role in addressing concerns of fraud, money laundering, corruption and enhancing governance.

THANK YOU

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