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For

NIRC OF ICAI

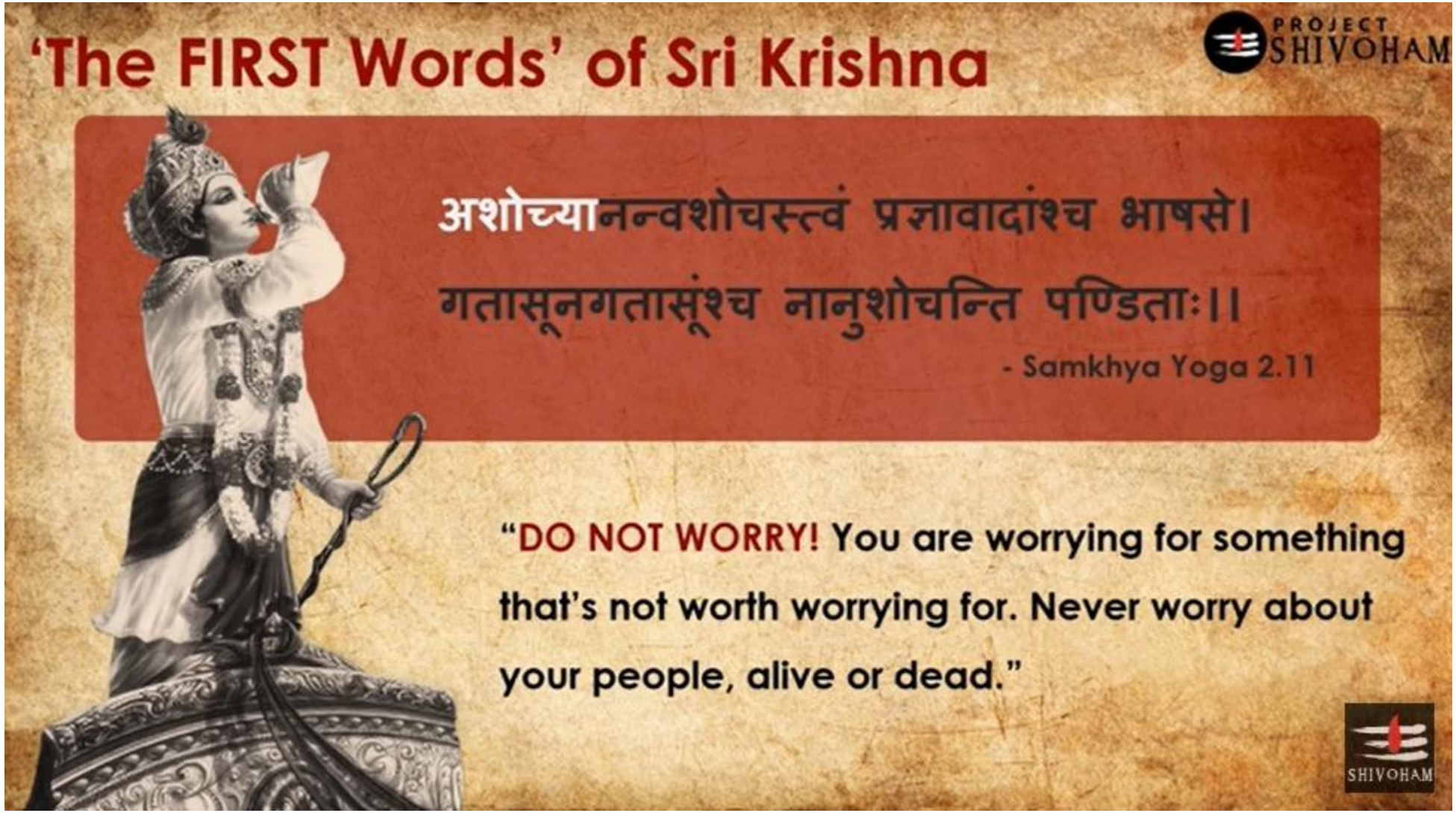
Topic: GST Audit

by

CA Rajender ARORA

Vice-President, Sales Tax Bar Association

"Krishnam Vande Jagadgurum" translates to
"I bow to Krishna, the Guru of the Universe



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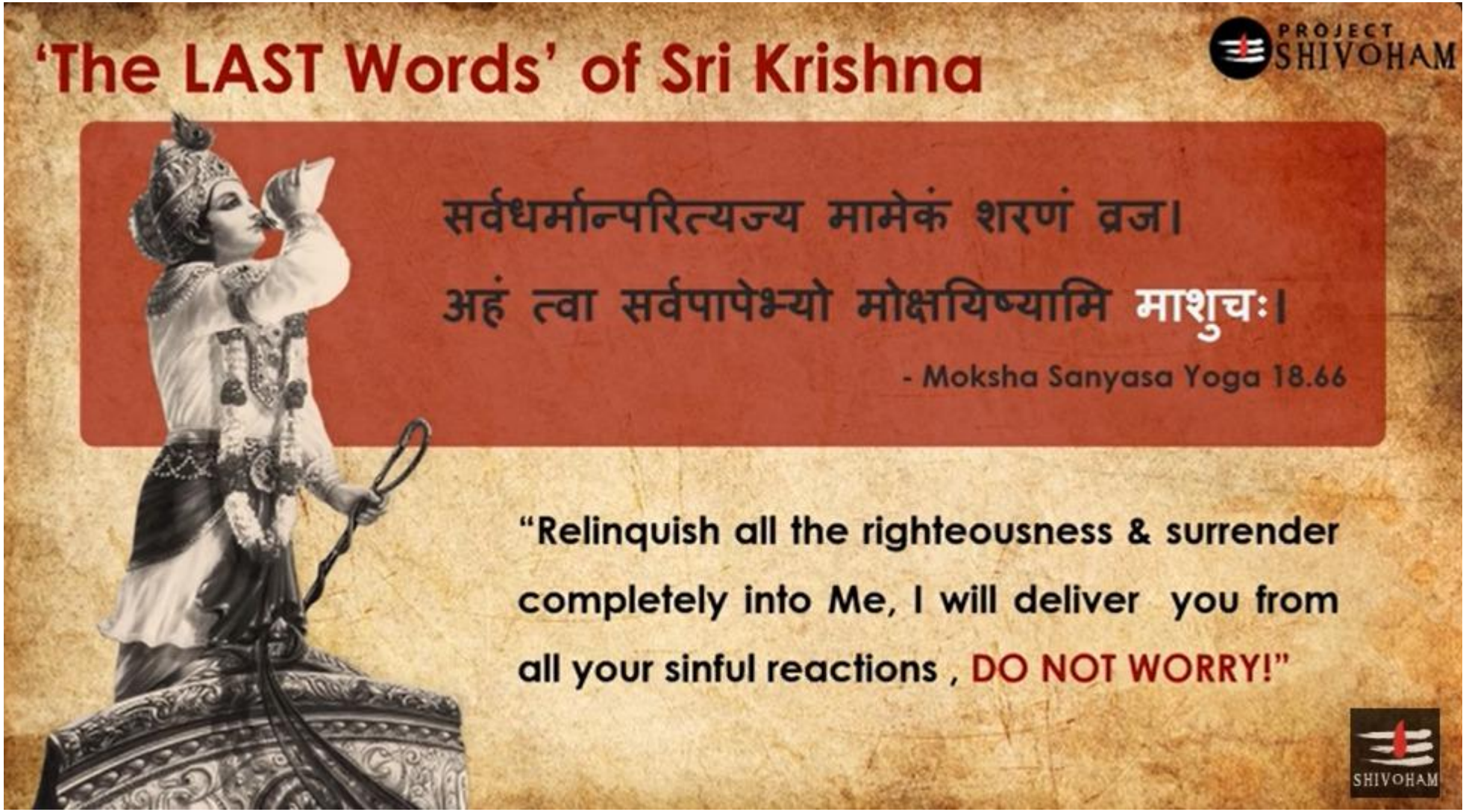

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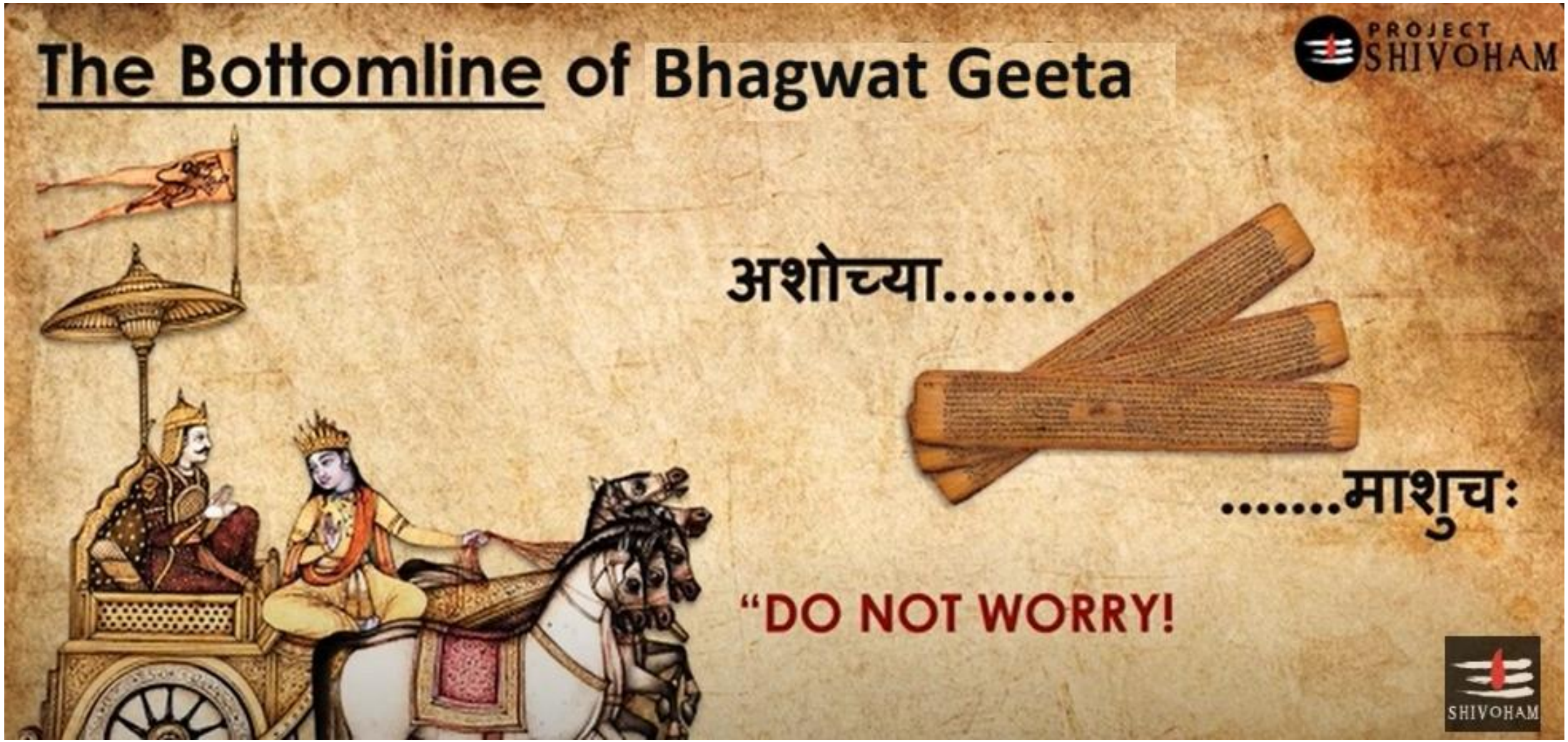

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AGENDA ON AUDIT

- Purpose of Audit
- GST Script
- Audit Manuals
- Health Check ups
- Commencement of Audit and Conclusion of Audit
- Principles of Natural Justice
- Sufficient time for preparations and reply
- Simultaneous Audit and Investigation by anti evasion aur DGGI
- Parallel Proceedings
- One SCN on the basis of One audit report
- SCN u/s 74 due to Audit

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Purpose of Audit

Consequently, there is no provision under GST law to get accounts mandatorily audited.

Tax departments all over the World keeps a lot of faith in the taxpayers.

Section 59 - Self Assessment, gives the power to assessee to self assess his taxes.

In any regime of self assessment taxation, audit of records of the assessee is fundamental be right of the Government

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Section 65 - Audit by tax authorities

Audit of records of taxpayers is the bed rock for the proper functioning of a self assessment-based tax system.

This provision provides for audit of the business transactions of any RP.

It is an important tool in the tax administration to ensure compliance of law and prevent revenue leakage

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Section 65 - Audit by tax authorities

It is probably for the first time in the history of an indirect tax statute that the term 'audit' has been defined.

'Audit' means examination of records, returns and other documents maintained or furnished by the RP. Hence audit cannot be conducted in case of URP even if he was required to be registered.

GST audit is not only for reconciliation of tax liability and payment thereof but, it also encompasses the verification of compliance of the provisions of the GST Acts, laws etc. by a RP.

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GST SCRIPT

Conduct to gain confidence of the audit party

Express and implement full cooperation with the audit party

Know your facts/GST Health Check-up

SCRIPT OF GST — Sec 65 / Rule 101

1 to 174 Sections of CGST Act	1 to 164 Rules of CGST Rules	1 to 25 Sections of IGST Act	1 to 9 Rules of IGST Rules	248 Circulars	Around 1200 Notifications	More than 1000 HC/SC Judgments

Audit Manuals issued from time to time

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AUDIT MANUALS

GUJARAT MODEL GST AUDIT MANUAL 2022	HP GST AUDIT MANUAL 2019	JAMMU AND KASHMIR AUDIT MANUAL 2021	KARNATAKA GST AUDIT MANUAL 2019	UP AUDIT MANNUAL 2021	MAHARASHTRA AUDIT MANNUAL 2020	QAR and API Manual, 2021
• https://drive.google.com/file/d/1RedFhwK4xyjJ5gf9OPzpFoF5Rw-1pWOY/view?usp=share_link	• https://drive.google.com/file/d/1tgxy77k5vGp3yF7yHq0XE3S8wlBTai5D/view?usp=share_link	• https://drive.google.com/file/d/1jQUwq7iiSR7QJWRm7e9VfrmPOaXY9krO/view?usp=share_link	• https://drive.google.com/file/d/10FAkhTTFGVi00lJn8jW0Wtmt_b022Nr-/view	• https://drive.google.com/file/d/1PsxPKNQy9ckayZ2c11JcNEfrGS0IqGxj/view?usp=share_link	• https://drive.google.com/file/d/1YLadhiUCrx2Tl-ENBWu8Wpu2lpEfa2qw/view?usp=share_link	• https://drive.google.com/file/d/1wlBULY8qnndbWw_FlqNf9qyaiZHzsRjx/view?usp=share_link

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AUDIT MANUALS

GST AUDIT MANUAL 2019.

Audit plan for the year 2019-20

https://drive.google.com/file/d/1ek68WThdCTt6XimGQJeuqTCJB8V_ZKDS/view?usp=drivesdk

https://drive.google.com/file/d/10EETFQaKBFNpDo2wq2qTQjfbACNW8etB/view

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PRINCIPLES OF NATURAL JUSTICE

- Doctrine of Bias
- Audi alterem partem, and to hear the other side
- Speaking orders or reasoned decisions

Natural Justice recognizes three principles

i. Nemo debet essc judex in propria causa -nobody shall be a judge in his own cause, This principle is more popularly known as the Doctrine of Bias.

ii. Audi alterem partem, and to hear the other side

- Issuance of Notice.
- Return of Non-Relied upon Documents
- Right to make Representation
- Reasonable time to file Reply
- Grant of Personal Hearing
- Personal Hearing and Decision by the same officer
- Fixing Multiple Dates of PH in Single Letter Violation of PNJ
- Cross Examination
- Right of Legal Representation

iii. Speaking orders or reasoned decisions

- The first two have come to us from the Roman Law and the third one is a recent Innovation due to the rapid development of the constitutional as well as administrative law.

Natural Justice recognizes three principles

- The first two have come to us from the Roman Law and the third one is a recent Innovation due to the rapid development of the constitutional as well as administrative law.
- **The following instances are held as violation of Principles of Natural Justice, (broadly and generally)**

i. If one person hears the case and another decides the case (1989(40) ELT201 & 1987 (30) ELT 957)
ii. Relying upon report of expert without affording and opportunity to rebut the same (1991(55)ELT 115)
iii. Sufficient time was not given to defend the proceedings because of the late supply of material (1992 (57) ELT 36 Bom)
iv. Enquiry and verification were made behind the back of the assessee and no opportunity was given to him to rebut the evidence (1991 (52) ELT 278)
v. Assessee‘s request for chemical test for proper classification of the goods was ignored by the adjudicating authority (1989(43) ELT 155)

Natural Justice recognizes three principles

- **The following instances are held as violation of Principles of Natural Justice, (broadly and generally)**

vi. Request for adjournment of Personal Hearing was not granted by the Adjudicating Authority (1993(63)ELT 89)

vii. 2002(144)ELT267 (ALL) - If the opportunity given is not availed of by the party concerned, there is no violation of principles of natural justice

viii. 1993(63) ELT 427 (MAD) - Principles of Natural justice discussed in detail

ix. 1994(73) ELT(266) ALL) - Order passed by Tribunal not a speaking order held null and void.

- **One very important area of exercising Quasi - judicial power is the dilemma as to whether to follow the Board‘s Circulars or not. The important aspect held by various Courts is that if a circular is beneficial to the assessee then the benefit has to be extended.**

- **The assessee also retains the right to challenge the circulars in which case the quasi judicial authority should treat the provisions of the circular as an expression of opinion and not as a direction and apply their own mind in deciding the issue.**

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HEALTH CHECKUP TIPS

Section 7 + Schedule I – Schedule III – Section 11 = Every Activity which is supply and taxable also.

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HEALTH CHECKUP TIPS

1. Tax Rates
2. ITC eligibility
3. Common credit
4. Registration Requirements
5. Whether ISD or cross change was necessary
6. Valuation
7. During the audit found that some invoices of inward supplies are received before the date of effective registration. Whether ITC of there invoices availed?

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HEALTH CHECKUP TIPS

1. How to protect interest on ITC which is paid after 6 months. second proviso to Section 16(2)
2. If supplies are made to the Government, then whether E-invoice to be raised for that supply also?
3. Under what circumstances E invoicing to be done ?
4. During audit: Stock Reconciliation Kindly Keep proper Records.

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POINTS TO PONDER

1. **Case Study on E-Invoicing . If M/s Ram was required to issue invoice with IRN and it does not issue so then what would happen? If they can issue IRN after movement of good or after issuing invoice? What is the state in the light of various advisory issued by GSTN?**

   - **GSTN advisory - IRN within 30 days of ATO < 10cr - Link**
   - **Rule 48(4) -** The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification:

     Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.
   - **Rule 48(5) -** Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

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Audit u/s 65 is independent of an investigation u/s 67

Suresh Kumar P.P.
v.
Deputy Director, Directorate General of GST Intelligence (DGGI)
KERALA HC AND SC

→

Audit u/s 65 is independent of an investigation u/s 67
and, thus, audit and investigation proceedings may be continued simultaneously-HC

→

SLP dismissed against impugned order of High Court holding that audit u/s 65 is independent of an investigation u/s 67 and, thus, audit and
investigation proceedings may be continued simultaneously- SC

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THIS CASE INCLUDED TO REMIND ABOUT THE EXISTENCE OF THESE THREE IMPORTANT CIRCULARS

[2024] 159 taxmann.com 577 (Bombay)
HIGH COURT OF BOMBAY
Fomento Resorts & Hotels Ltd.
v.
Union of India

Section 3, read with section 5 of CGST Act and section 3 of IGST Act empowers Government to appoint certain classes of officers for purposes of CGST Act; by issuing a notification, Circular No. 3/3/2017-GST, dated 5-7-2017, Circular No. 31/05/2018-GST, and Circular No. 169/01/2022-GST could not be struck down merely on ground that CBIC had no power to issue such circular and that, based on such circulars could not, assign functions of 'proper officer' upon Central Tax Officers for issuing an audit report under section 65(6) or show cause notice under sections 73 .or 74

Circular No. 3/3/2017-GST, dated 5-7-2017-PO

Circular No. 31/05/2018-GST-JURISDICTION

C-ircular No. 169/01/2022-GST –PO DGGI

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Legal Jurisprudence on GST Audit

Section 65 Audit and Anti Evasion/Range Proceedings can not be run simultaneously

- Case Law

Section 65 Audit and Section 67 Inspection are independent and can be persuaded simultaneously

- Case Law

SCN can be issued even after initiation of Section 65 Audit

- Case Law

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Legal Jurisprudence on GST Audit

Audit under section 65 can be conducted even if anti-evasion action was already taken and demand was raised

- Case law

Where a notice had already been issued by Superintendent based on an audit report, subsequent notice issued by Additional Commissioner on same issue was to be stayed; notice was issued to revenue

- Case Law

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POINTS TO PONDER

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AUDIT ON REGISTERED PERSON?

- 2023 (8) TMI 1089 - MADRAS HIGH COURT – Raja Stores
- Other Citation: 2023 (77) G. S. T. L. 367 (Mad.)
- IN THIS CASE HC PRDERED THAT AUDIT CAN BE CONDUCTED ONLY ON THE REG PERSON
- [2024] 162 taxmann.com 719 (Rajasthan)HIGH COURT OF RAJASTHAN Ashoka Fabricast (P.) Ltd. v. Union of India
- BUT IN THIS CASE HC SAID, AUDIT CAN BE CONDCUTED ON THE RP FOR THE PERIOD DURING WHICH HE WAS REGISTERED
- ALSO RP HAD TAKEN FRAUD ITC AND GOT ITSELF CANCELLED, THIS WAS ALSO COMPELLING REASON FOR HC TO PASS THIS JUDGEMENT. HC ALSO IMPOSED COST ON THE RP OF 25000/-
- ALSO IT IS DISCUSSED IN THIS CASE THAT EVEN IF TAX PAYER IS CANCELLEDD BUT STILL ITS LIAB;ITY CAN BE DETERMINED AND CAN BE ISUED NOTICE U/SS 73 OR 74 OR 74A

[2024] 168 taxmann.com 436 (Bombay)HIGH COURT OF BOMBAYL J- Victoria Properties (P.) Ltd.v.Union of India
IN THIS CASE ALSO, HC DECIDED THAT AUDIT CAN BE CONDUCTED EVEN IF RP IS DEREGISTERED BUT FOR THE PEERIOD WHEN IT WAS REGISTERED

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NO PARRALEL PROCEEDINGS ON SAME MATTER

- [2024] 164 taxmann.com 552 (Madras)HIGH COURT OF MADRASP S K Engineering Construction & Co. v. Assistant Commissioner of GST & Central Excise, Salem
- Where Central GST authorities issue audit notice after State GST proceedings, audit is permissible if on different subject matter, not prohibited by Section 6(2)(b) of CGST Act

SECTION 6(2)(B) Subject to the conditions specified in the notification issued under sub-section (1),—where a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

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NO PARRALEL PROCEEDINGS

- Audit Wing of SGST department issued audit memo pointing out several discrepancies, while SCN issued by Anti-evasion Wing of CGST department had already considered all points as mentioned in audit memo; since Audit Wing had issued SCN in respect of a particular discrepancy, Audit Wing of SGST department was to be directed to keep in abeyance all relevant proceedings including impugned
- SCN[2024] 159 taxmann.com 752 (Calcutta)
- HIGH COURT OF CALCUTTA Mahabir Prasad Kedia v. Assistant Commissioner of State Tax

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JURISDICTION OF AUDIT AND TIME LINE

- [2024] 168 taxmann.com 65 (Gujarat) HIGH COURT OF GUJARAT Hubergroup India (P.) Ltd. v. Union of India
- Where show cause notices were issued under section 65(7), read with section74 of CGST Act for raising demand after audit while assessee submitted that audit was concluded beyond period prescribed under section 65(4) of CGST Act and, hence, impugned notices were without jurisdiction, proceedings pursuant to impugned notices were to continue but no final order was not to be passed without permission of Court
- It was submitted that the notice issued under Section 65(1) of the GST Act read with Rule 101 of the Central Goods and Service Tax Rules, 2017 (for short 'the Rules') was issued on27th June, 2022 in Form ADT-01 for the period 2017-18 to 2019-20.
- the audit ultimately concluded on 2nd August, 2024 which is beyond the period prescribed under the provisions of Section 65(4) of the GST Act and consequently, the impugned show-cause notices issued by the respondent-Authorities in response to each paragraph of the audit report are without jurisdiction.

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NOTICE FOR START OF AUDIT MANDATORY

- Where no notice was issued to petitioner prior to Audit as provided undersection 65(3) of CGST Act, there would be stay of further proceedings and impugned order passed under section 74 was to be stayed
- [2025] 170 taxmann.com 140 (Himachal Pradesh)
- HIGH COURT OF HIMACHAL PRADESH Saboo Tor (P.) Ltd. v. State of H.P.

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SLP-AUDIT AND INVESTIGATION CAN NOT BE CONDUCTED SIMULTANOUSLY

- SLP dismissed against impugned order of High Court holding that audit undersection 65 is independent of an investigation under section 67 and, thus, audit and investigation proceedings may be continued simultaneously
- [2021] 125 taxmann.com 61 (SC)
- SUPREME COURT OF INDIA - Suresh Kumar P. P. v. Deputy Director, Directorate General Of GST Intelligence (DGGI)

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PARRALEL PROCEEDINGS CAN NOT BE STARTED TILL IN PROCESS AUDIT IS NOT CONCLUDED

- Where audit proceedings under section 65 has already commenced, saidproceedings should be taken to logical end and proceedings initiated by Anti Evasion and Range Office for very same period should not be proceeded with any further
- [2022] 144 taxmann.com 108 (Calcutta)
- HIGH COURT OF CALCUTTAR. P. Buildcon (P.) Ltd. v. Superintendent, CGST & Central Excise
- FIRST THIS CASE WAS PRESENTED BEFORE SINGLE JUDGE BENCH WHERE IT WAS DISMISSED THEN THEY WENT TO DOUBLE JUDGE BENCH AND PROVIDED WITH RELIEF

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Even if an audit notice had been issued, departmental authority was not barred from issuing show cause notice

- [2023] 147 taxmann.com 434 (Madras)
- HIGH COURT OF MADRASOm Sakthi Constructionv.Assistant Commissioner

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TIME SHOULD BE PROVIDED FOR REPLY UNDER AUDIT

- Audit report issued within seven days from date of issuance of notice undersection 65(6) was not sustainable when same had been issued without providing reasonable opportunity for filing reply
- [2023] 147 taxmann.com 545 (Karnataka)
- HIGH COURT OF KARNATAKA Tinton River Palms v. State of Karnataka

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TIME SHOULD BE PROVIDED FOR REPLY UNDER AUDIT

- Final audit report was liable to be set aside where 30 day time period to file reply to draft audit report was not given; extension to complete audit was to be granted in instant case so as to giving 30 day time period to file reply to draft audit as otherwise it would have led to automatic quashing of draft audit report thereby rendering whole audit futile
- [2022] 145 taxmann.com 485 (Orissa)
- HIGH COURT OF ORISSA Simon India Ltd. v. CT and GST Officer, Cuttack-II Circle, Cuttack

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TIME SHOULD BE PROVIDED FOR REPLY UNDER AUDIT

- Where a notice for audit was uploaded on 14-9-2023 for which assessee gave reply on 28-9-2023 and same reached authority on 3-10-2023 but without considering response of assessee, audit was already finalized on 29-9-2023 and show cause notice under section 73 was issued, since there was no clear 15 working days gap between date of receipt of notice and date of finalization of audit, audit report was finalized within statutory notice period and, hence, same was to be set aside
- [2023] 157 taxmann.com 617 (Andhra Pradesh)
- HIGH COURT OF ANDHRA PRADESH Vardhaman Gold v. State of Andhra Pradesh

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Relevant Case Law

- Where pursuant to an audit under section 65 of CGST Act, 2017, a show cause notice was issued to petitioner and respondent No. 2 passed an assessment order on 29-12-2023, since impugned order was vitiated by non-consideration of petitioner's reply and respondent was directed to provide a reasonable opportunity to petitioner, including a personal hearing, and thereafter issue a fresh order
- [2024] 161 taxmann.com 695 (Madras)
- HIGH COURT OF MADRASTokyo Zairyo (India) (P.) Ltd. v. Assistant Commissioner

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Relevant Case Law

- Where assessee filed reply to discrepancy notice served on assessee in respect of audit but same was not considered while finalizing findings of audit, final Audit Report was in violation of principles of natural justice and, hence, to be quashed
- [2024] 158 taxmann.com 552 (Andhra Pradesh)
- HIGH COURT OF ANDHRA PRADESH PBL Transport Corporation (P.) Ltd. v. Assistant Commissioner (ST)

Jindal Metal Co. vs. DGGI [2024] (Delhi)

Where Show Cause Notice was issued it could not be challenged in writ petition on ground that data relied upon was extracted from electronic devices without complying with procedure under section 145; petitioner had right to raise issue of admissibility of evidence in adjudication proceedings

Our attention was specifically drawn to the requirement of a certificate identifying the document which is proposed to be relied upon in proceedings initiated under the Act and which is a requirement placed by virtue of Section 145(2) of the Act.

3. In our considered opinion, since it would be open for the writ petitioner to assert that the evidence which is relied upon is inadmissible, there exists no cause for us to entertain the challenge or interdict the SCN proceedings.

4. Subject to all rights and contentions of the writ petitioner being kept open, the writ petition shall stand dismissed.

Jindal Metal Co. vs. DGGI [2024] (Delhi)

Section 145 - Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence. Section 65B of Indian evidence Act- Admissibility of electronic records.

145. (1) Notwithstanding anything contained in any other law for the time being in force,-(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
(b) a facsimile copy of a document; or
(c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
(d) any information stored electronically in any device or media, including any hard copies made of such information,
shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

Jindal Metal Co. vs. DGGI [2024] (Delhi)

Section 145 - Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.

(2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,-

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

SECTION 146 READ WITH SECTION 169

Common Portal.

146. The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

SECTION 146 READ WITH SECTION 169

Service of notice in certain circumstances.

169. (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

SECTION 146 READ WITH SECTION 169

Service of notice in certain circumstances.

169. (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

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Section 65 - Audit by tax authorities

Evaluation of the internal control vis-a-vis GST would indicate the area to be focused. This could be done by verifying:

1. **The statutory audit report which has specific disclosure in regard to maintenance of record, stock and fixed assets.**
2. **The information system audit report and the internal audit report.**
3. **Internal control questionnaire designed for GST compliance.**
    a. The use of generalised audit software to aid the GST audit would ensure modern practice of risk-based audit.
    b. The reconciliation of the books of account or reports from the ERP's to the return is imperative.
    c. The review of the gross trial balance for detecting any income being set off with expenses.
    d. Review of purchases/expenses to examine the applicability of reverse charge on goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.
    e. Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.
    f. Ratio analysis could provide vital clues on areas of non-compliance.

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Section 65 - Audit by tax authorities

1. On audit completion, information is required to be provided to the RP including the findings during the audit as per section 65(6) read with Rule 101(5) in Form GST ADT-02 within thirty days. In cases where tax liability is identified during the audit or ITC wrongly availed or utilized by the auditee, the PO may initiate action u/s 73 or 74. Audit cannot conclude automatically resulting in a demand. Independent application of mind is necessary for a valid demand to be raised.

2. It is important to identify that audit u/s 65 can commence in a routine manner although 100 per cent audit of given taxpayer or all taxpayers in the same industry would not be feasible. Unlike the scope and limitation on the powers under sections 61 to 64, the scope and coverage u/s 65 can extend from scrutiny all the way to investigation. New discoveries may be made but not 'spot recovery'. SCN u/s 73 or 74 or 76 is a must for any demand to be entertained by the taxpayer.

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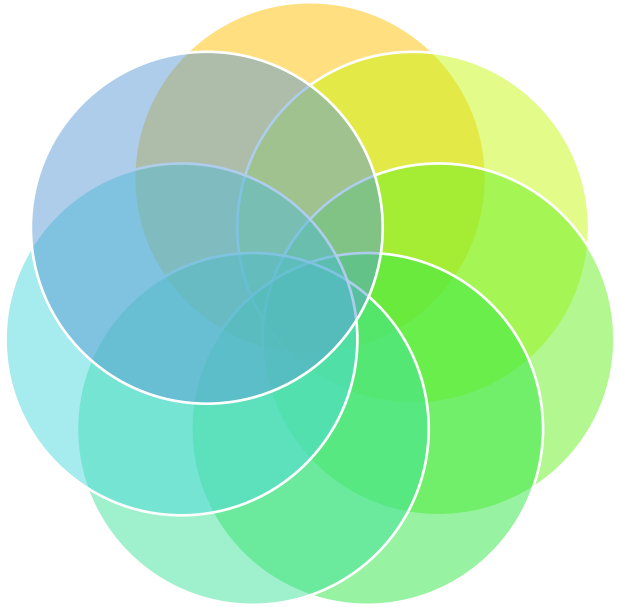
Documents to be prepared by the taxpayer in advance

Returns (GSTR-1, GSTR-2A/GSTR-2B, GSTR-3B, GSTR-9, GSTR-9C)

Summary of invoices on which ITC is availed

Reconciliation of returns with Books of Accounts



Returns submitted to Banks/ Financial Institutions, etc., if applicable

Electronic Cash Ledger and Electronic Credit Ledger

Summary of invoices of outward supply (taxable, zero rated, NIL Rated, exempted, non-taxable)

GST Registration Certificate

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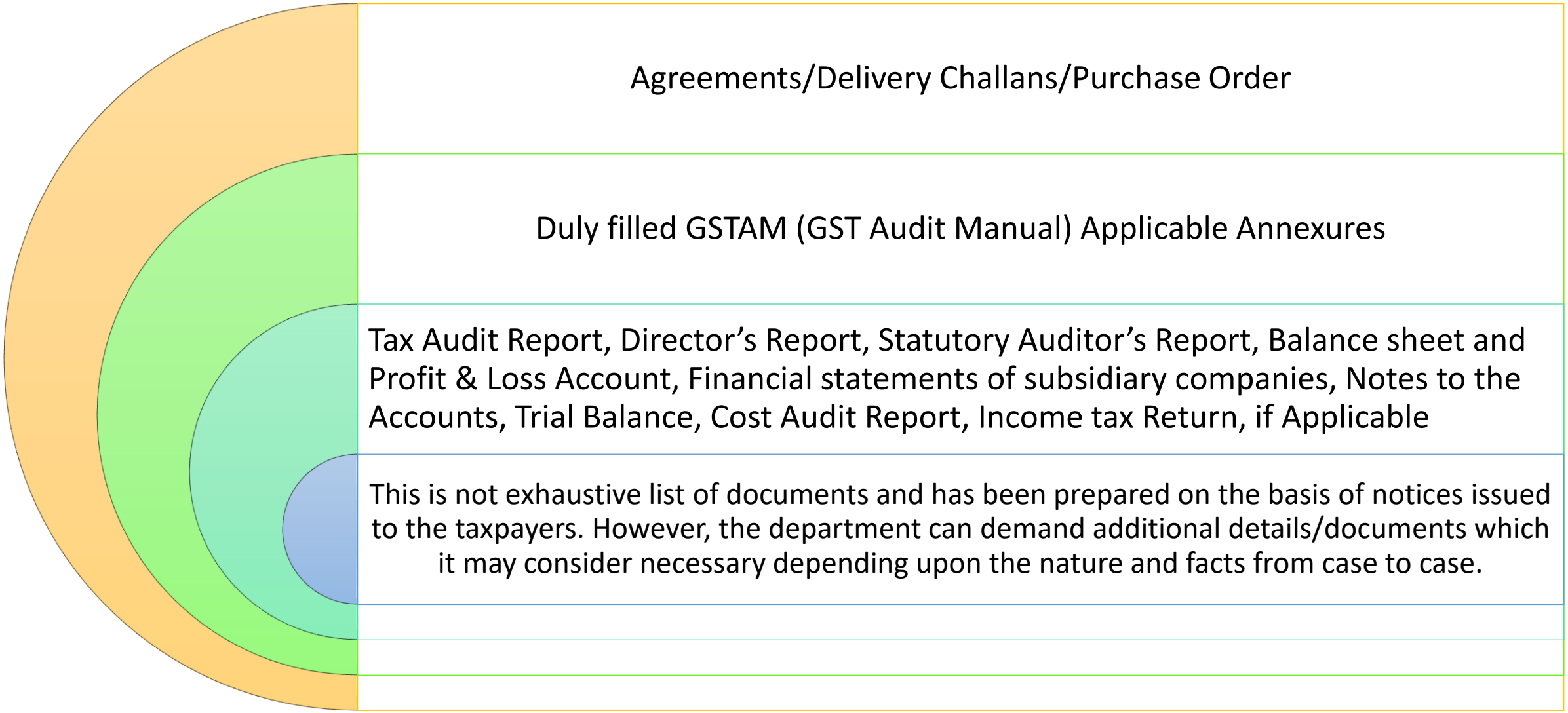
Documents to be prepared by the taxpayer in advance



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Issues in Audit by tax authorities

Issuance of Certificate of Commencement

In-depth Ratio Analysis of Database

Detailed questionnaire for review of Internal Control

Trend Analysis for the last three financial years

- Total ITC credit availed & Total GST payment
- Compare total turnover as per P&L A/c with the corresponding figures submitted to the department in the returns for three years.
- Service Wise Exports (zero rated), turnover of non-taxable services and exempted services
- ITC Analysis - Opening Balance, Credit availed, Debits in Electronic credit ledger, Credit utilised for reversal under Rule 42, Closing Balance
- Service Wise Pure Agent Benefit Claimed

Verification of Records/Registers

Assumption for Variations but Infact may be due to genuine reasons

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Section 65 - Audit by tax authorities

Unofficial demands

- Not to be fulfilled

Payment/Reversals on verbal Orders

- Ask him written orders

If officer demands for

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Section 65 - Audit by tax authorities

Audit by tax authorities

- Commissioner, by general or a specific order, undertake audit of RP for FY or part thereof or multiples thereof, may conduct audit at the PoB of the RP or in their office
- PO shall issue notice not less than 15 working days prior to the conduct of audit in FORM GST ADT-01 to the RP
- PO may inform RP of discrepancies. RP may file reply. PO shall finalise audit after considering reply
- Shall be completed within 3 months from the date of commencement of the audit
- Can be further extended for 6 months by Commissioner
- ”Commencement of audit“ - the date on which the records and documents, are made available by the RP to tax authorities or the actual institution of audit at PoB, whichever is later.
- On conclusion, PO shall within 30 days inform RP findings in GST ADT-02 and his rights and obligations and the reasons of findings
- Audit results in detection of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilised, the PO may initiate action u/s 73 or 74

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Section 65 - Audit by tax authorities

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.
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 fifteen working days prior to the conduct of audit in such manner as may be prescribed.

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Section 65 - Audit by tax authorities

4. **The audit under sub-section (1) shall be completed within a period of three 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 three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months

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

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Section 65 - Audit by tax authorities

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 thirty 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 u/s 73 or section 74 or section 74A.

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Rule 101 - Audit

1. The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or part thereof or multiples thereof.

2. Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.

3. The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

4. The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

5. 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.

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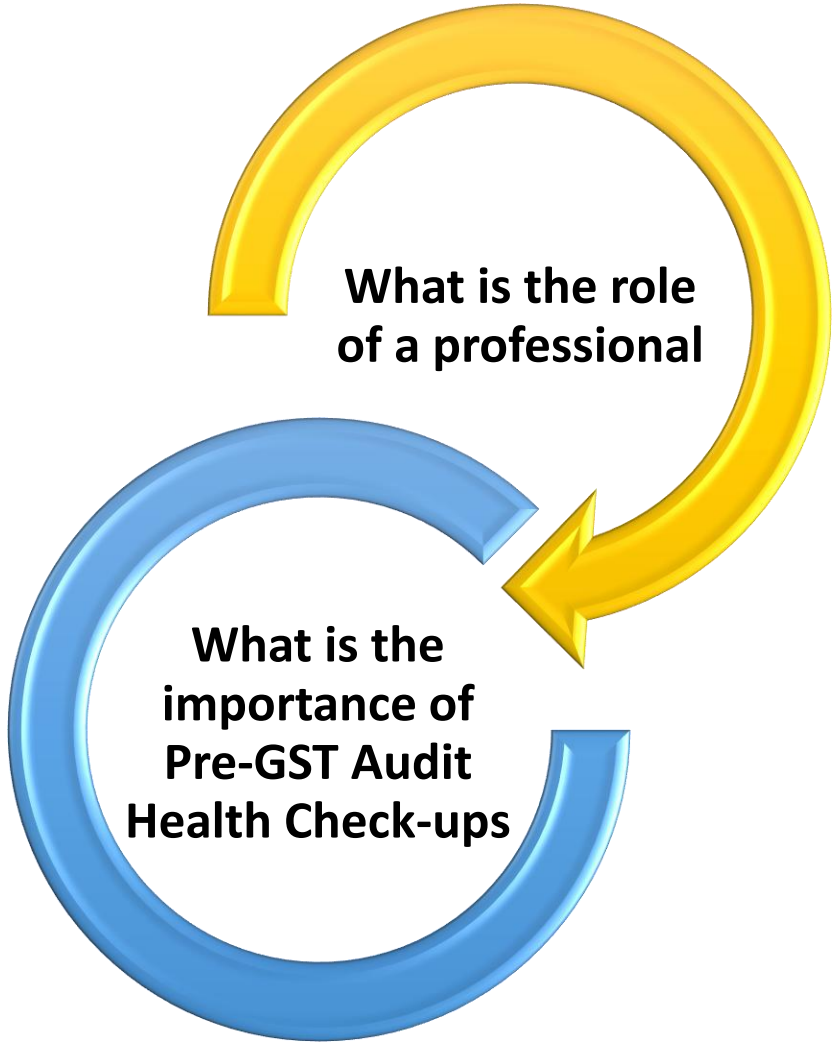
Section 65 - Audit by tax authorities



Once a professional knows what department is looking for, he can prepare in advance

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Points to be kept in mind while Reply

Give exhaustive list of documents, whatever is relevant to the questions asked

Give point wise reply

When draft audit para is provided, give relevant exhaustive to the point reply because on the basis of reply submitted, final audit report shall be drafted

Points to be kept in mind while Reply

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10 POINTS SOLUTION TO HOW TO GET AUDIT BY TAX AUTHORITIES CONDUCTED

Keep all the information up and ready in an organized manner, so that same may be presented as and when required.

Conduct Pre-audit, either yourself or by a consultant to cover the loopholes, if any, both from documentation as well as legal aspect.

Provide complete cooperation to with tax authorities in conducting the audit. Provide all necessary documents and details as asked for without any delay. Provide proper infrastructure. Prompt reply is appreciated. Non cooperation can result in lethal consequences given the powers, like inspection etc.

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10 POINTS SOLUTION TO HOW TO GET AUDIT BY TAX AUTHORITIES CONDUCTED

1. Art of seeking adjournment and seeking extra time. Do not rush to provide any information. When unsure, seek some time.
2. Provide as much information as possible in one go rather than making multiple submissions. Submit complete information regarding any specific issue and not in parts.
3. If insisted upon for any payment of tax on matter subject to litigation, always make payment under protest and mention same in DRC-03.
4. Obtain acknowledgement of documents submitted to ensure department cannot claim non-cooperation later and seek extended period for SCN.

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10 POINTS SOLUTION TO HOW TO GET AUDIT BY TAX AUTHORITIES CONDUCTED

- Ensure as much communication with department as possible in writing. Even when they insist on payment of tax, so as to ensure tax was paid under protest/coercion. BHUMI ASSOCIATES-GUJRAT HC
- Keep parallel record of all documents submitted with department.
- Submit to the point and appropriate reply. Avoid vague and incomplete replies. Take help of consultant wherever necessary.
- The replies submitted during the audit serves as a backbone for strong litigation

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Thank you

Kindly Give your Review @
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