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INDIRECT TAX STUDY CIRCLE MEETING ON 23RD JULY, 2019

Practical issues under GST Annual Return & Audit

CTC Group Discussion on 23.07.2019

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1. What is the responsibility of the GST auditor?

Section 2:

(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 above definition is applicable for:

- Audit by a CA or CMA under section 35(5),
- Audit by the Commissioner under section 65,
- Special Audit during investigation etc under section 66.

Section 35:

(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.

Generally in case of audit under any Statute, after completing the audit, a prescribed report, shall be submitted to the concerned person. Section 35(5) of the CGST Act does not specify any report or otherwise, but requires the submission of audited accounts. The purpose of

audit under this section is to ensure proper maintenance of books of accounts and other records specified under section 35(1) read with rule 56.

Section 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.

Submission:

Sec 35(5) – Audited Annual Accounts, Such other Documents.

Sec 44(2) – Reconciliation statement.

Reconciliation Statement – Reconciling the value of supply declared in the return furnished with the audited financials statements and such other particulars.

Reconciliation in GSTR 9C:

- Turnover
- Input Tax Credit
- Recommendation for additional tax liability due to non-reconciliation
- Verification stating that I/we Solemnly affirm and declare the information given in 9C is true and correct and nothing has been concealed therein.

Part B – Certification:

Contents	Certification -I	Certification -II
a. Stating that I/we have examined the BS, P&L, CFS	✓	X
b. Reporting whether Books of accounts, records and documents as required under GST law are maintained or not? If not specify what is not maintained.	✓	✓
c. Reporting the		

observation/comments/discrepancies/ inconsistency	✓	X
d. Report whether all the relevant information and explanation are obtained?	✓	X
e. Report whether proper books of accounts are maintained or not?	✓	X
f. Certifying that BS, P&L and CFS are in agreement with the books of account.	✓	X
g. Documents specified u/s 35(5) and Reconciliation Statement u/s 44(2) are enclosed herewith.	✓	✓
h. Expressing the opinion that Particulars mentioned in 9C are true and correct subject to the observation and qualifications, if any.	✓	✓

Certification I – The auditor shall verify whether proper books of accounts are maintained or not, state whether relevant information are obtained or not, report whether books of accounts, records and documents as required under GST law are maintained or not, certify whether BS, P&L, CFS are in agreement with the books of accounts and express opinion whether particulars mentioned in GSTR 9C are true and correct and specify the observation and qualifications, if any.

Certification II – The auditor shall ~~verify whether proper books of accounts are maintained or not, state whether relevant information are obtained or not,~~ report whether books of accounts, records and documents as required under GST law are maintained or not, ~~certify whether BS, P&L, CFS are in agreement with the books of accounts and~~ express opinion whether particulars mentioned in GSTR 9C are true and correct and specify the observation and qualifications, if any.

To understand the responsibility of the auditor, contents of Certification II is more relevant. Accordingly, it may be understood that the auditor is primarily responsible for verifying and reporting whether books of accounts, records and documents required under GST law are maintained or not, if not maintained, specify the same. Further, the auditor needs to give opinion whether the particulars given in GSTR 9C are true and correct also specify the

observations and qualifications in this regard. GSTR 9C is basically the reconciliation of turnover and ITC between books of accounts and what is declared in GSTR 9.

It is relevant here to refer to the audits under other statutes.

Tax Audit - Section 44AB of the Income Tax Act, 1961 provides specified person shall get his accounts audited by an accountant and the report of such audit shall be furnished. The report of the audit shall be in Form 3CA/3CB with separate particulars in the Form 3CD. Both form 3CA and 3CB are reports and an opinion is to be expressed with regard to correctness of the contents of the information given in Form 3CD. The wordings of the Form 3CA and 3CB are similar to that of Part B of the GSTR 9C.

The contents of Form 3CA is similar to Certification II and that in 3CB is similar to Certification I. The comparative table is as under;

Form 3CA Vs Certification II:

Contents	Form 3CA	Certification -II
a. Title	Audit report	Certification
b. I/We report that audit is conducted by And copy of their audit report, BS, P&L and Notes to accounts are annexed herewith.	✓	✓
c. Reporting whether Books of accounts, records and documents as required under GST law are maintained or not? If not specify what is not maintained.	X	✓
d. *Statement of particulars in form 3CD is annexed herewith. **Documents specified u/s 35(5) and Reconciliation Statement u/s 44(2) are enclosed herewith.	* ✓	** ✓
e. *Expressing the opinion that particulars given in the Form 3CD are true and correct subject to the observation and qualifications, if any. **Expressing the opinion that Particulars mentioned in 9C are true and correct subject to the observation and qualifications, if any.	* ✓	** ✓

Form 3CB Vs Certification I:

Contents	Form 3CB	Certification -I
a. Stating that I/we have examined the BS, P&L, [CFS]	✓	✓
b. Reporting weather Books of accounts, records and documents as required under GST law are maintained or not? If not specify what is not maintained.	X	✓
c. Reporting the observation/comments/discrepancies/inconsistency	✓	✓
d. Reporting whether all the relevant information and explanation are obtained?	✓	✓
e. *Expressing opinion/**Reporting whether proper books of accounts are maintained or not?	* ✓	** ✓
f. Certifying that BS, P&L and [CFS] are in agreement with the books of account.	✓	✓
g. Expressing opinion that said accounts give true and fair view.....	✓	X
h. *Statement of particulars in form 3CD is annexed herewith. **Documents specified u/s 35(5) and Reconciliation Statement u/s 44(2) are enclosed herewith.	* ✓	** ✓
i. *Expressing the opinion that particulars given in the Form 3CD are true and correct subject to the observation and qualifications, if any. **Expressing the opinion that Particulars mentioned in 9C are true and correct subject to the observation and qualifications, if any.	* ✓	** ✓

Audit under MVAT Act – Section 61 of the MVAT Act provides for certain specified dealer shall get his accounts audited by chartered accountant and furnish the complete report of such audit and certificates as may be prescribed. In the Part I of the Form 704, the auditor shall certify the correctness of tax liability, set off and other compliances. Thus, MVAT provisions are different than the GST provisions.

However, the instruction 7 (for Part V, auditor's recommendation) in GSTR 9C specify that the auditor shall;

- a. Recommend the additional liability payable due to non-reconciliation of turnover or non- reconciliation of ITC.
- b. Any amount payable for supplies not included in GSTR 9.
- c. Any refund wrongly availed and to be paid back to Govt.
- d. Other outstanding demands to be settled.

In case of a and b above, where there is a difference in the books and annual return and the liability there on is to be recommended. With regard to c and d where there is an order to that effect and no appeal is being filed with the time limit, then the auditor may recommend for payment.

From the above, in my view, the auditor shall not step into the shoes of the assessing authority. The auditor is not certifying the correctness of GST liability or ITC eligibility. The Auditor is not certifying the compliance of the GST provisions. As per the provisions of section 35(5) an audit of specified person is to be conducted to ensure the maintenance of proper accounts and records. As per the provisions of section 44(2) a reconciliation statement is to be drawn up comparing the figures of the annual return and that in the books of accounts and the difference if any and the liability thereon is to be reported in the reconciliation statement.

The above view is reinvigorated by the Press Release dated 03.07.2019 issued by CBIC. In the said press release Point h. clarifies that with respect to the reconciliation statement, their role is limited to reconciling the values declared in the annual return with the audited annual accounts.

The press release may not have any statutory enforcement, however it may depict the intention of the government, hence it may help in the interpretation. Further, in the event of any penal proceedings, such clarification may aid the taxpayer.

However, the GST audit is to be done by the CAs/CMAs. The functioning of these auditors is governed by the respective Institutes. A Chartered Accountant while carrying out the audit, shall adhere to the Auditing Standards issued by ICAI. In case of GST audit, more obligation is casted by ethics and conduct of the Chartered Accountant than the provisions of GST law. In the event of non compliance of the Auditing Standards, a Chartered Accountant may be held to be negligent and may be subjected to penal provisions for professional misconduct under the provisions of ICAI Regulations.

2. What is the legal sanctity of the press release issued as clarifications by the CBIC? Pros and Cons of not following the same.

Basis of Disclosure – As per Press Release Dated 03.07.2019, the primary source of data should be based on GSTR – 1 and GSTR – 3B. However, there may be certain transactions which may not have been reported in GSTR – 3B and 1. In this scenario, certain questions arises as to whether:

- i. Incremental liability of account of non-reporting of Outward liability should be reported in GSTR – 9?
 - ii. Can we avoid reporting the same in GSTR – 9 and directly pay through DRC – 03 and report the same in GSTR – 9C as reconciliation and state that tax is already paid under DRC – 03.
 - iii. “No input tax credit can be reversed or availed through the annual return. If taxpayers find themselves liable for reversing any input tax credit, they may do the same through **FORM GST DRC-03** separately.” Where there is huge ITC c/f what if the same is not followed.
3. Goods are received on 02.01.2018, but the ITC was taken in the books on 31.12.2017. Whether the auditor should recommend for interest?
 4. Company X made purchases from a Company Y during 17-18. Company X took ITC after reducing credit for goods return. Company Y did not issue credit notes. Subsequently in August 18 since Company Y books were finalized they asked Company X to issue and invoice for the goods returned to Company Y. Out of commercial compulsion the Company X did the same and showed the invoice in August 18 with the date of 17-18 and paid tax in 18-19. How to report such transactions in Annual Return and Audit report? Implication if the set off short claimed is not claimed in 18-19.

5. In case of returns filed after the due date, the interest was paid on the net liability (after adjusting ITC). How to report in GSTR 9C?
6. A dealer in goods, paid tax on advance received for goods in October 17, the billing was done in December 17 and tax was also paid on billing basis. What options are available with the dealer? Can he adjust the excess tax paid in the current period 3B?
7. The correct tax was IGST, however the auditee has paid CGST+SGST. Should it be reported in GSTR 9C?
8. ITC of CGST was wrongly taken as SGST. Should it be reported in GSTR 9C?
9. ITC wrongly claimed in GSTR – 3B in 2017-18. The same was realised and was subsequently was netted off in GSTR – 3B of 2018 – 19, wherein only NET ITC after reversing wrong credit was claimed. How the same needs to be reported especially based on below:
 - a. How to report the same in Table 6 since wrong credit has been reversed in Books of Accounts, mainly whether actual ITC should be bifurcated or figures as per 3B should be considered
 - b. How to report the reversals made by NETTING OFF in Table 7 or Table 12
10. ITC was claimed for FY 2017-18 by filing delayed return of March 2019. Auditee is taking the credit based on latest decision of Gujarat HC (GSTR-3B is not return). How to report in GSTR 9C?
11. The dealer has reported the reduction of tax, due to credit note pertaining to 17-18 made in March'18 but left out to be reported and has reported in January 19. Removal of Difficulty Order 2 does not refer to section 34 pertaining to Credit notes. What treatment should the auditor give to such transaction. Following the press release of 3rd July specifying the role of auditor as mere reconciliator, whether auditor can allow the adjustment, same being as per books and reported in Annual return in Part V – Table 11.
12. The credit note was issued in Sept 17 for the supplies made in May 17. Supplier has reduced the turnover and recipient has reduced his ITC. How to report in GSTR 9C?

13. An exporter has availed services of clearing agent in foreign port. He has paid reverse charge on the same claimed ITC. The auditor is of the view that the same is not payable and therefore the ITC of tax paid is wrongly claimed and needs to be disallowed and the exporter needs to file a refund application. Similarly for export commission has been paid to a foreigner for services rendered abroad. Whether Auditor needs to disallow the transactions of ITC?
14. High Sea sales effected in December 2017. (a) ITC was not reversed proportionately. (b) ITC was reversed in December 2017. How to report in GSTR 9C?
15. Books of accounts are registered at the additional place of business instead of principal place of business. Where to report in GSTR 9C?
16. Intermediary services provided by a service provider in India and service recipient is outside India. Since the Place of Supply is the location of supplier, assessee has discharged CGST and SGST on the same. Thereafter a couple of AAR's have held that IGST shall be applicable on such cases. The GST Auditor is of the view that IGST is applicable on such transaction. Assessee is desirous to understand the reporting of the same in Annual return in following situations:
- They continue with the position as adopted for applicability of CGST & SGST.
 - They desire to change the position to IGST.
 - What shall be the reporting to be made by Auditor in GSTR – 9C in both above scenarios.
17. The auditee has registration in 3 States, but cross charging has not been done. How to report in GSTR 9C?
18. GST was not paid on Advance but paid when the tax invoice is issued. How to report in GSTR 9C?
19. The applicable rate of tax is 18% where as, tax has been paid at 12%. How to report in GSTR 9C?

20. RCM liability not discharged and not reported under GSTR – 3B for the year 2017-18. How should the disclosure for RCM liability be made in following scenarios:
- RCM paid in the year 2018-19 and ITC claimed in 2018-19
 - RCM paid in the year 2019-20 and ITC not claimed (Whether can claim in 2019-20)
 - RCM not paid but intended to be paid through DRC – 03
21. RCM payments not made for first 4 months u/s 9(4). Auditee engaged in exempted supplies. Auditee feels that exemption is having retrospective effect. Should it be reported in GSTR 9C?
22. ITC on input was wrongly expensed out in the books but correctly taken in GSTR 3B. How to report in GSTR 9C? What if it is a capital goods?
23. Stock is written off in the books of accounts, no reversal is made in the GSTR 3B. Any reporting requirement in GSTR 9C?