

Provisional Assessment in GST

Introduction:

A supplier will come to know the extent of his tax liability which has to be discharged on a continuous and regular basis only after assessment. Assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. The major determinants of the tax liability are generally the applicable tax rate and the value. There might be situations when these determinants might not be readily ascertainable and may be subject to the outcome of a process that requires deliberation and time. Hence like under the previous laws, when due to various circumstances it might not be always possible, at that point of time, to carry out an assessment and determine the exact duty liability, the GST law also provides for provisional assessment.

The Asst. Commissioner/Dy. Commissioner of Central Tax provisionally determines the amount of tax payable by the supplier and is subject to final determination. On provisional assessment, the supplier can pay tax on provisional basis but

only after he executes a bond with security, binding them for payment of the difference between the amounts of tax as may be finally assessed and the amount of tax provisionally assessed. On finalization of the provisional assessment, any amount that has been paid on the basis of such assessment is to be adjusted against the amount that has been finally determined as payable. In case of short payment, the same has to be paid with interest and in case of excess payment, the same will be refunded with interest.

Procedure:

In case a supplier is unable to determine the value of goods or services or both or to determine the rate of tax applicable thereto, he can request the Asst. Commissioner/Dy. Commissioner of Central Tax in writing, giving reasons for payment of tax on provisional basis. The supplier requesting for payment of tax on a provisional basis has to furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The Asst. Commissioner/Dy. Commissioner of Central Tax will scrutinize the application in FORM GST ASMT-01. In case, additional information or documents in support is required by the Asst. Commissioner/Dy. Commissioner of Central Tax to decide the case, notice in FORM GST ASMT-02 will be issued to the supplier requesting for submission of the same.

The supplier has to file a reply to the notice in FORM GST

ASMT – 03, and if he desires can also appear in person before the Asst. Commissioner/Dy. Commissioner of Central Tax to explain his case.

The Asst. Commissioner/Dy. Commissioner of Central Tax will then issue an order in FORM GST ASMT-04 within a period not later than ninety days from the date of receipt of the request, allowing the payment of tax on a provisional basis. The order will indicate the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount (this amount shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction) for which the bond is to be executed along with the security to be furnished. The security will not exceed twenty-five per cent of the amount covered under the bond.

The supplier has to execute the bond in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as mentioned in FORM GST ASMT-04. A bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under Central Goods and Services Tax Act.

On executing the bond the process of the provisional assessment is complete and the supplier can supply the goods or services or both and pay the tax at the rate or on the value that has been indicated in the order in FORM GST ASMT-04.

Finalization of provisional assessment:

The provisional assessment will be finalized, within a period not exceeding six months from the date of issuance of FORM GST ASMT-04. The Asst. Commissioner/Dy. Commissioner of Central Tax will issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.

On sufficient cause being shown and for reasons to be recorded in writing, the time limit for finalization of provisional assessment can be, extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

Interest liability:

In case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

Release of Security consequent to Finalization:

Once the order in FORM GST ASMT-07 is issued, the supplier has to file an application in FORM GST ASMT-08 for the release of the security furnished. On receipt of this application the Asst. Commissioner/Dy. Commissioner of Central Tax will issue an order in FORM GST ASMT-09 within a period of seven working days from the date of the receipt of the application, releasing the security after the amount payable if any as specified in FORM GST ASMT-07 has been paid.

Conclusion:

Provisional assessment provides a method for determining the tax liability in case the correct tax liability cannot be determined at the time of supply. The payment of provisional tax is allowed only against a bond and security. The provisional assessment has to be finalized within six months unless extended. On finalization, the tax liability can either be more or less as compared to the provisionally paid tax. In case of increase in the tax liability, the difference is payable along with interest and in case of decrease in the tax liability the amount will be refunded with interest.
