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Invisible Players, Visible Risk: Non-Filers and Unregistered Persons in the GST Regime

"Compliance is less expensive than correction." The article provides a comprehensive overview of the assessment mechanisms under the Goods and Services Tax (GST) law, for both compliant and non-compliant taxpayers, focusing on how tax liability is determined. It highlights key provisions of best judgment assessments (Sections 62 and 63), including the implications for non-filers and unregistered persons. Understanding these assessment types is crucial for ensuring compliance and efficient tax administration within the GST framework.

Definition of Assessment in GST

- **Defined under Section 2(11) of the CGST Act, 2017**

  Assessment means the Determination of tax liability under this Act and includes -

  i. Self-Assessment (Sec. 59),

  ii. Re-Assessment[1],

  iii. Provisional Assessment (Sec. 60),

  iv. Summary Assessment (Sec. 64) and

  v. Best Judgment Assessment (Sec. 62 and Sec. 63)

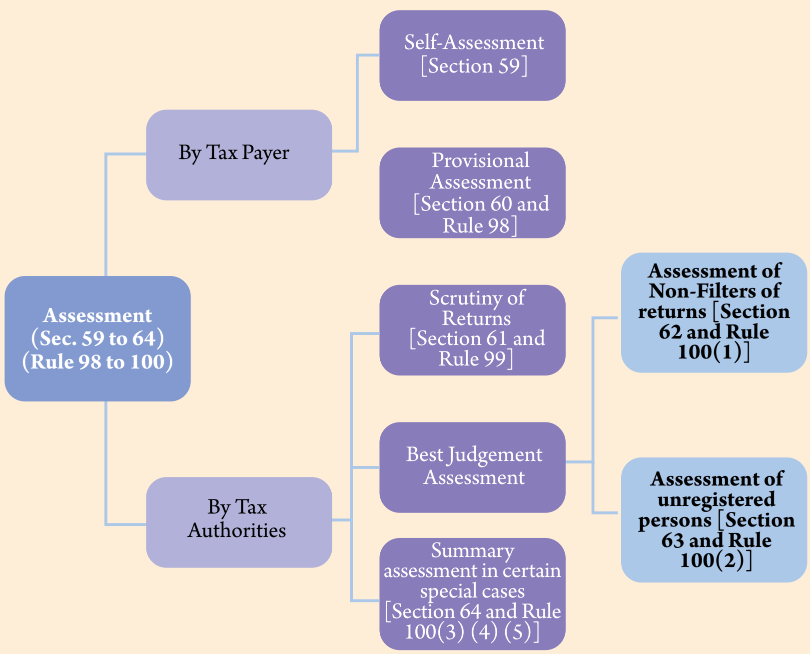
Basically, an assessment is a quasi-judicial proceeding which is adopted in fixing the correct liability to pay a tax.

- **Concept of Best Judgement Assessment (BJA)**

  - Definition of BJA is not provided under the GST Law. However, in general practice and as per other acts such as Income Tax Law, BJA means the assessment of a taxpayer that is carried out by the Assessing Officer (AO) as per the best of his judgement and based on all relevant information gathered, available material and records.

  - 'Best Judgement Assessment' must not be 'worst' judgement

Types of Assessments in GST



[1] Point to be Noted:

However, it must be noted that there is no explicit provision permitting a Proper Officer to re-assess the tax liability of a taxable person, as re-assessment is not provided in any specific section on assessment; therefore, a Proper Officer must take care not to carry out roving exercise to redetermine liability except in case of rectification or any other method as provided in the law.

assessment, that means judgement must be fair, not arbitrary. It should reflect realistic turnover, consider seasonal variations, and allow proportionate input tax credit. There is no legal basis to compute gross tax liability without credit. Estimated credits should be included to determine an accurate net tax liability under best judgement.

- Under the GST Law, BJA is covered under two sections, i.e., Section 62 & 63, and applicable only when the circumstances as mentioned in the sections are triggered. In the upcoming paragraphs, these provisions, legal procedures, and their implications are discussed.

What really happens if you do not file your GST Return? [Section 62]

1. Notwithstanding anything to the contrary contained in Section 73 or Section 74 [or Section 74A], where a registered person fails to furnish the return under Section 39 or Section 45,
   - even after the service of a notice under Section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement, taking into account all the relevant material which is available or which he has gathered and issue an assessment order
   - within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.
2. Where the registered person furnishes a valid return within *60 days (earlier 30 days) of the service of the assessment order under Sub-Section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under Sub-Section (1) of Section 50 or for payment of late fee under Section 47 shall continue.

   Provided that where the registered person fails to furnish a valid return within sixty days of the service of the assessment order under Sub-Section (1), he may furnish the same within a further period of 60 days[2] on payment of an additional late fee of Rs. 100 for each day of delay beyond 60 days of the service of the said assessment order, and in case he furnishes a valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under Sub-Section (1) of Section 50 or to pay late fee under Section 47 shall continue.

Stepwise Procedure for Assessment of Non-Filers of Returns [Sec. 62 and Rule 100(1)]

- **Rule 68 - Notice to non-filers of returns:**

  Firstly, a notice in FORM GSTR-3A shall be issued, electronically, to a registered person who fails to furnish a return under Section 39 or Section 44 or Section 45 or Section 52.

- **Rule 100(1) - Assessment Procedure adopted for non-filers of returns:**
  - If the taxpayer fails to furnish the return within 15 days of issue of notice FORM GSTR 3A, then the proper officer may assess the tax liability in accordance with the provisions of Rule 100 (1) of the CGST Rules, 2017.
  - The best judgement assessment has to be made on the basis of the material available on record

and the information gathered by the proper officer and the circumstances of each case.
  - As per Rule 100 (1), assessment orders under Section 62(1) are issued in FORM GST ASMT-13, with a summary uploaded in FORM GST DRC-07.
  - If a valid return is filed within 60 days of service of the ASMT-13 order, the assessment is deemed withdrawn, but interest (Sec 50(1)) and late fee (Sec 47) still apply.
  - If not filed within 60 days, the taxpayer may file the return within a further 60 days (i.e., (60+60) 120 days from service), by paying an additional late fee of ₹100/day beyond the initial 60 days. The assessment will still be deemed withdrawn, but liability for interest and late fee continues.
  - If no return is filed within the period as mentioned above, the order becomes final and cannot be withdrawn, even if returns are filed later. However, the aggrieved person may prefer appeal u/s 107 against the best judgment assessment order.
  - Once FORM GST DRC-07 is issued, recovery proceedings for tax assessed in FORM GST ASMT-13 will be followed.

2 Substituted vide The Finance Act, 2023 dated 31.03.2023, notified through Notification No. 28/2023 – CT dated 31.07.2023, w.e.f. 01.10.2023, prior to its substitution, it was read as: "thirty days".

Standard Operating Procedure to be followed in case of Non-Filers of Returns

CBIC, vide Circular No. 129/48/2019, dated 24.12.2019, has issued a Standard Operating Procedure in respect of the assessment of non-filers. Extract of the circular is as below:

1) A format of the Notice to be issued u/s 46 of the CGST Act, 2017, to the defaulter for not filing of return is given and instructed to file pending returns within 15 days and failure to comply with the notice will attract the provision of Section 62 (i.e. best judgment assessment for Non-Filers of Returns) without issuing any further communication/notice.

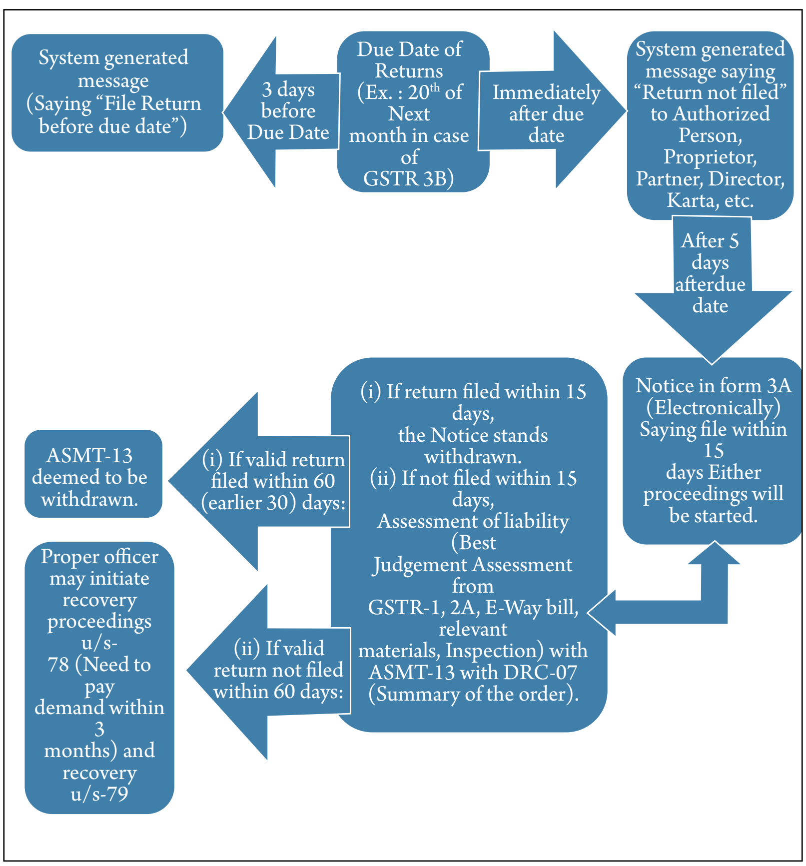
2) Circular has prescribed the guidelines to ensure uniformity in the implementation of the provisions of law across the field formations, which is summarized below:

Which Forms are to be used for the proceedings u/s 62?

Ser. No.	Form No.	Purpose
1.	GSTR-3A (System Generated)	Notice to taxable person
2.	GST ASMT – 13	Assessment order
3.	GST DRC-07	Summary of the order to be uploaded electronically

Amnesty scheme for non-filers (Deemed withdrawal of best judgement assessment order)

- A special amnesty scheme vide *Notification No. 06/2023 CT, dated 31-03-2023* under the CGST Act allowed taxpayers, who received best judgment assessment orders under Section 62(1) on or before 28.02.2023 (for not filing returns), to get these orders automatically withdrawn—if they filed all pending returns and paid the required tax, interest, and late fees between 1st April and 30th June 2023. Further, vide *Notification No. 24/2023 CT, dated 17-07-2023 (w.e.f. 30-06-2023),* the date for deemed withdrawal of assessment order issued u/s 62 was extended to 31-08-2023. This benefit applied regardless of any ongoing or decided appeals. Orders were not withdrawn if compliance was not done within these dates. The scheme was a one-time relief valid only for relevant orders issued up to 28.02.2023.



"'Best Judgement Assessment' must not be 'worst' judgement assessment, that means judgement must be fair, not arbitrary. It should reflect realistic turnover, consider seasonal variations, and allow proportionate input tax credit."

- **Case Law:**

  In *Joy Mathew vs. Union of India* (2020), the Kerala High Court held that filing returns within 30 days under Section 62(2) nullifies assessment orders and cancels recovery notices.

Is Non-Registration a Loophole or a Liability Under Section 63? [Section 63]

- Notwithstanding anything to the contrary contained in Section 73 or Section 74 [or Section 74A], where a taxable *person fails to obtain registration*
- *even though liable* to do so or *whose registration has been cancelled* under Sub-Section (2) of Section 29, but

"If the taxpayer fails to furnish the return within 15 days of issue of notice FORM GSTR 3A, then the proper officer may assess the tax liability in accordance with the provisions of Rule 100 (1) of the CGST Rules, 2017."

who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods

- and issue an assessment order within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.
- provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Assessment Proceedings u/s 63

Procedure:

i. **Time to Start the Procedure:**

The procedure of the Assessment of Unregistered Persons starts when a tax officer comes to know, either during inspection or survey or enforcement or through the information available with the intelligence unit or through any other means, that a taxable person has failed to obtain registration or to pay taxes even though he/she is liable to do so.

The procedure of the Assessment Proceedings u/s 63 against Unregistered Persons

- Adjudicating Authority / Assessing Authority (A/A) issues a "Show Cause Notice" to the taxable person and, if a personal hearing is required, also schedules a date and time and venue for the same.
- In case no reply is received from the taxable person, A/A issues a reminder. A maximum of three reminders can be issued.
- A taxable person can reply to the issued notice and request a personal hearing (PH) in case A/A has not called for a personal hearing in the issued notice. Additionally, if required, he/she can also file an application for extension of the PH date. If A/A approves the application for extension, A/A will issue an adjournment with the new date and time and venue for PH. Adjournment can be allowed a maximum of 3 times.
- If PH is not required, A/A, based on the taxable person's reply, issues an Assessment Order – ASMT-15 or DROP PROCEEDING Order.
- If PH is required, A/A conducts the PH and, on that basis, passes the Order.
- If the taxable person does not reply, even after the issue of three reminders, A/A passes an ex-parte order as per the best of his judgement based on available information and records.

Rule 100(2)

- The proper officer shall issue a notice to a taxable person in accordance with the provisions of Section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on a best judgment basis.
- A summary of the notice is uploaded electronically in FORM GST DRC-01.
- After allowing a time of 15 days to such a person to furnish his reply, the officer may pass an order in FORM GST ASMT-15, with a summary uploaded electronically in FORM GST DRC-07.

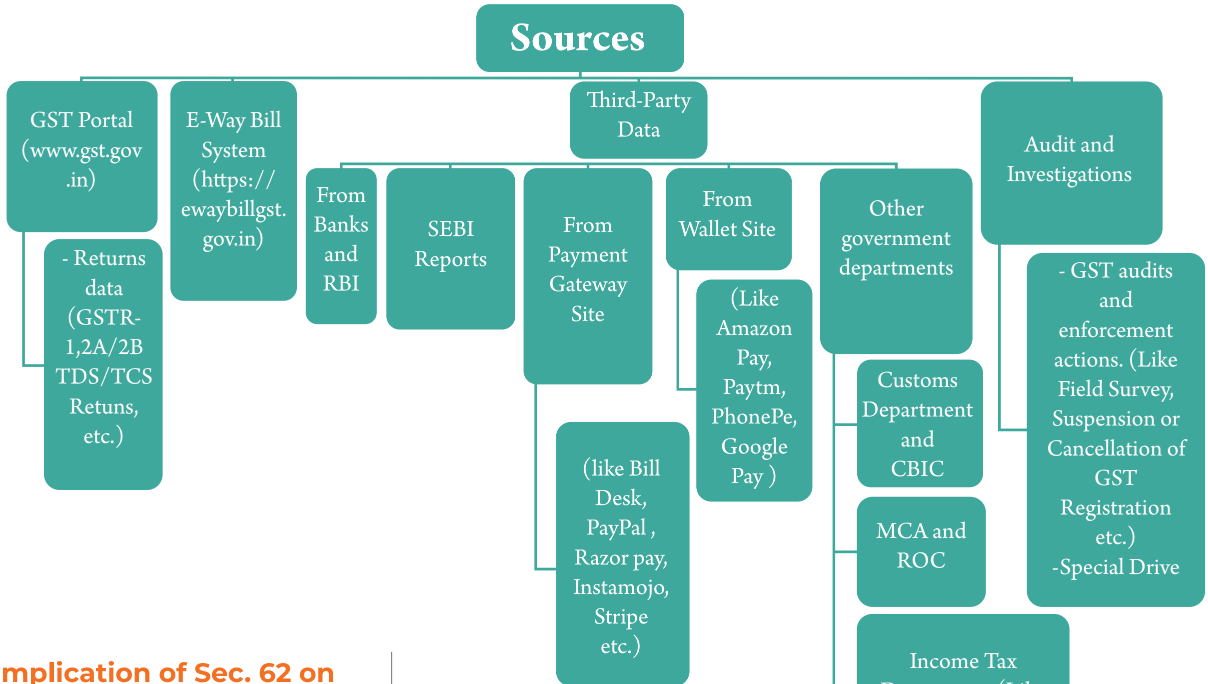
Which Forms are to be used for the proceedings u/s 63?

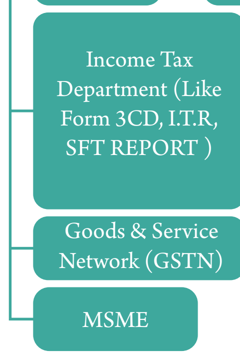
S. No.	Form No.	Purpose
1.	GST ASMT – 14	Notice to taxable person
2.	GST DRC – 01	Summary of notice to be uploaded electronically
3.	GST ASMT – 15	Assessment order
4.	GST DRC – 07	Summary of order to be uploaded electronically

How Do Authorities Track the Unregistered and Non-Filers?

Example:

In the month of July 2025, Karnataka GST authorities issued notices to approximately 7,000 unregistered vendors based on UPI transaction data indicating potential tax liability under Section 63 of the CGST Act.





Implication of Sec. 62 on the Recipient (Buyer)

Rule 37A

- New Rule 37A has been inserted vide Notification No. 26/2022-CT dated 26.12.2022 to specify the mechanism for reversal of input tax credit already availed by the recipient in Form GSTR-3B. As per the said rule, where the supplier has furnished the details of the invoice or debit note in Form GSTR-1 or IFF but the return in Form GSTR-3B has not been furnished by the supplier till 30th November (earlier 30th September) of the subsequent financial year, the input tax credit availed by the recipient shall be reversed along with interest.
- However, if the recipient reverses the ITC already availed in Form GSTR-3B on or before 30th November of the succeeding financial year, then the recipient is not required to pay interest on such reversal amount. If the recipient reverses ITC after 30th November, then he is liable to reverse the amount of ITC along with interest as per Section 50.
- The recipient may re-avail the amount of ITC in Form GSTR-3B after the supplier furnishes the Form GSTR-3B.

Interest and Late Fees

- Interest and late fees apply even for non-filers and unregistered persons; these are independent of Sections 73 and 74.
- Interest (Section 50(1), CGST Act): If tax is not paid within the prescribed time, interest (up to 18%) is payable.
- If tax is declared late in a return (u/s 39), interest is only on the amount paid via electronic cash ledger—unless proceedings under Sections 73, 74, or 74A have already commenced for that period.
- Late Fee (Section 47(1), CGST Act): ₹100 per day (up to ₹5,000) for delay in filing returns under Sections 37, 39, 45, or 52.

Conclusion

GST compliance is not just about avoiding penalties; it is about unlocking peace of mind, credibility, and steady growth. Filing on time and staying registered turns obligations into opportunities. Think of compliance as your business's passport, not a burden: it does not restrict you; it is the currency of trust and the smartest investment which opens doors to trust, stability, and lasting success. Remember, *Prevention is always cheaper than correction. Discipline today secures freedom for tomorrow.*

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