

The image features three light-colored wooden blocks, each with a white letter 'G', 'S', and 'T' respectively, arranged to spell 'GST'. These blocks are placed on top of several stacks of Malaysian 1 Ringgit coins. The coins are copper-colored and have 'NEGARA MALAYSIA' and 'BANK NEGARA' inscribed on them. The background is a soft-focus green field under bright, natural light.

G

S

T

GST Department Audit Helpdesk - FAQs

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FAQs on Dept Audit

❑ How should one prepare for department audit?

- In case of big clients pre-audit by tax professional is recommended
- In case of wrong claim of credit or short payment of liability, voluntary discharge of tax liability with interest is recommended to minimise the cost of interest and to avoid penalty.
- Any procedural non-compliances, to be rectified and shortcomings in the records etc. also to be corrected.
- Proper documentation and systematic arrangement of invoices, agreements and support for claim of credit
- Reconciliations of information submitted to department in the returns submitted with the financial records of the auditee.

FAQs on Dept Audit

❑ What are the specific areas one should look into during department audit?

- Match all ledgers based on RCM payment and Ineligible ITC
- Trial balance should be prepared branchwise
- Physical invoices should be audited to find if all particulars are complete and correct
- Workings of GSTR-9, 9C, 3B and 1 should be updated to match with actual figures
- Common parameters for scrutiny notices under Section 61
- Check tax paid vs tax payable on outward supplies (particularly other income)
- Document evidences in case of transactions susceptible to dispute like RCM, miscellaneous income, composite supply or mixed supply etc.

FAQs on Dept Audit

❑ Can excessive information sharing during audit inadvertently create additional disputes?

- Essential to conduct pre-audit
- Vet every information before providing to department
- Difficult to retract any incorrect documentation provided
- Not to provide any self-incriminating evidence
- Not to stop department from focusing on strong areas during department audit

FAQs on Dept Audit

❑ What is the ideal balance between cooperation and protection of legal rights during audit proceedings?

- Administrative and not enforcement action
- Submit all those accounts & records that is required to be maintained as per any law
- Can take time to submit relevant documentation
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 give a 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 HC, Simon India Ltd. 7-Nov-2022)
- Notice of not less than 15 working days prior to conduct of audit and to be completed within 3 months
- Not required to provide reconciliation but the raw data which can be used to prepare the reconciliation (2B-3B reconciliation)
- Justify discrepancies and not to submit evidences on a platter (e.g. creditor ageing)

FAQs on Dept Audit

❑ How should taxpayers prepare employees before departmental visits?

- Establish clear boundaries of who is authorized to submit evidence before the department
- Statement should be given only by a professional or a senior staff who has done the pre-audit or is aware of the findings of the pre-audit
- Department cannot force submission of documents or seize any records. Therefore, employees should not succumb to the pressure of submissions in haste

FAQs on Dept Audit

- ❑ **If an employee gives an incorrect statement, how should the taxpayer correct the record promptly?**
 - Immediately file retraction
 - Submit explanation as to why the earlier statement was incorrect
 - Provide strong evidence to the contrary of what the employee has stated

FAQs on Dept Audit

❑ What should be the strategy for replying to audit findings?

- Reply to the point
- Reply to be fact oriented and provide relevant grounds of defense in brief
- Not provide any unnecessary data which results in formulation of adverse SCN
- For clear matters in favour of assessee, do everything possible to get it dropped
- Submission of data should be limited to the question asked

FAQs on Dept Audit

❑ Should legal positions be explained during audit / investigation or reserved for formal adjudication?

- All replies to audit observations is susceptible to new allegations in the SCN
- But grounds in SCN would not result in new grounds in the order
- Not to provide legal positions which can create a strong counter in SCN
- Where issue is dubious and may not be dropped by Department, better to wait for SCN

Eg. Taxability of exempt supply vs ITC reversal on it

FAQs on Dept Audit

❑ How should taxpayers handle situations where officers seek immediate explanations without reviewing supporting documents?

- Patiently explain the situations in brief without any complex calculations
- If data preparation requires some time, request for time to prepare an explanation
- In case of any resistance, wait for audit observations
- Reply to the point in audit observations
- For all legal positions and detailed explanations, wait for SCN reply

FAQs on Dept Audit

- ❑ **When should taxpayers insist on written audit observations rather than informal discussions?**
 - When the point is expected to be dropped but can be raised during any other proceedings
 - When the officer refuses to accept but the evidences are strong enough for dropping the matter

FAQs on Dept Audit

- ❑ **Should the taxpayer answer audit queries immediately or first ask for the exact basis and computation of the proposed objection?**
 - SCN to be issued along with documents relied upon by Department
 - If RUDs made available subsequent to the SCN, the date of receipt of SCN would be when such RUDs have been received
 - Authenticated copies of documents relied on by Department to issue show cause notice required to be supplied to petitioner. Opportunity to inspect the document and to obtain photocopy thereof not sufficient [2000 (122) E.L.T. 26 (Raj.) - PGO PROCESSORS PRIVATE LIMITED]
 - Department bound to supply all relied upon documents in the show cause notice. Assessee entitled to copies of seized documents even if not relied in the show cause notice. Impugned orders not revealing supply of all documents seized from appellant. Principles of natural justice violated. Impugned order set aside and matter remanded to original authority for fresh decision after supply of all relied upon documents. Appellant to be allowed to examine documents not relied. [ANAGHA SURFACE TRANSPORT P. LTD - 2008 (12) S.T.R. 180 (Tri. - Bang.)]

FAQs on Dept Audit

- ❑ **How should taxpayers respond where the department raises broad objections without transaction-level details?**
 - It is expected that officer would not be looking for transaction level analysis
 - Understand from various government reports as to how best to respond
 - Reserve the detailed findings for later stage
 - If the detailed reconciliation is self-evident, only then submit the same for dropping the matter

FAQs on Dept Audit

❑ **When should taxpayers concede small issues to preserve credibility on larger disputes?**

- Check the quantum of demand and not the number of issues
- If the quantum is less but the number of issues are more, let the department earn brownie points
- No audit gets closed with no observations
- Let the demand arise on the stronger points
- Preserve the real disputes or the areas of weakness

FAQs on Dept Audit

- ❑ **Where RCM liability has been missed but the recipient is otherwise eligible for full ITC, how should the taxpayer handle this situation?**
- Try to get the taxability classified to Section 73
- To argue against evasion in Section 74, take stand of revenue neutrality
- Take full ITC of tax paid
- From 2024-25, always avail ITC
- Where assessee received services from its group companies abroad but did not discharge service tax liability on reverse charge basis but discharged service tax liability along with interest thereon as soon as short payment was pointed out by audit party and intimated department, much before issue of show cause notice, imposition of penalty under sections 76, 77 and 78 was not sustainable [Calderys India Refractories Ltd [2014] 42 taxmann.com 587 (Mumbai - CESTAT)]

FAQs on Dept Audit

- ❑ **Where ITC has been voluntarily reversed before utilisation, can the department still allege evasion and how would interest be calculated?**
- Interest to be calculated using Section 50(3) read with Rule 88B i.e. the date when the quantum falls below the threshold in the ECL
- If years after availment, ITC remains unutilized, there was no intent to evade any tax liability
- Imposition of interest/penalty would be attracted only when such credit was not only availed but also utilised for discharging tax liability for attempt to wrongly avail credit and utilise same when tax liability would have arisen [Aathi Hotel [2022] 137 taxmann.com 435 (Madras)]

FAQs on Dept Audit

❑ **When an issue appears weak on merits but strong on limitation, should the taxpayer prioritise substantive defence or limitation defence?**

- Check whether it is after NPL but before EPL
- Check for defense against Section 74
- If the grounds of limitation are not taken at first level, it may be difficult to argue later
- In case of service of notice or order is not disputed, section 160 bars from doing so later

160 (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

- Patiently argue at various levels if the department does not accept their mistake in the first instance

FAQs on Dept Audit

- ❑ In evasion cases, does it matter whether the department has taken data straightaway from their available sources or they had to unearth the same by deep-diving into the books?
- If data would have been directly available from govt sources without going into the books, then there cannot be any suppression
- Suppression to mean non declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document under the Act or failure to furnish any information being asked by the PO
- **Mere omission to give correct information is not suppression** of facts unless it was deliberate to stop the payment of duty. Suppression means **failure to disclose full information with the intent to evade payment of duty**. When the facts are **known to both the parties**, the omission by one party to do what he might have done would not render its suppression. [[Padmini Products— 1989 (43) E.L.T. 195 (S.C.)]

FAQs on Dept Audit

- ❑ **Can a position disclosed in financial statements but not specifically disclosed in GST returns be treated as suppression?**
 - Suppression to mean non declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document under the Act or failure to furnish any information being asked by the PO
 - The assessee was disclosing the info about the receipt of taxable service on commission basis **in their balance sheet**. So, there was no scope of any evasion of taxes [[DCM Textiles vs CCE (2012) 35 STT 88] (under GST?)

FAQs on Dept Audit

- ❑ **When multiple audits have occurred without objection, how should the taxpayer defend against allegations of wilful suppression in a later period?**
 - 74(3) – SCN of subsequent period to be served through a statement
 - 74(4) – Statement deemed u/s 73(1) if grounds same as the earlier notice
 - Held that when the **first SCN was issued** all the **relevant facts were in the knowledge of the authorities**. Later on, while issuing the **second and third show cause notices the same/similar facts could not be taken as suppression of facts** on the part of the taxpayer as these facts were already in the knowledge of the authorities. [Nizam Sugar Factory v. Collector 2006 (197) E.L.T. 465 (SC)]

FAQs on Dept Audit

❑ On whom does the burden of proof lie against evasion of taxes?

- In M/s Brindavan Beverages (P) Ltd, a Show Cause Notice is the foundation of the case. If the SCN does not specifically allege the ingredients of fraud or suppression with supporting documentary evidence, the extended period under Section 74 cannot be sustained.
- In State Tax Officer vs. Tvl. T. Balasubramanian (2026) 42 Centax 296 (Mad.) [11-03-2026], the court set aside Section 74 orders because the SCN did not "*expressly record intent to evade or wilful misstatement.*" The court ruled that wilfulness cannot be presumed merely because an inspection brought the transactions to light
- Penalty was **not imposable in every case of non-payment** or short payment of duty. Such short payment or non-payment is required to be deliberate with intent to evade payment duty. Further, when a **fraud or misrepresentation is alleged, particulars thereof required** are to be given in showcause notice [Vedanta Aluminium Ltd ((2016) 331 ELT 408 (Calcutta))]

FAQs on Dept Audit

- ❑ **Is the department required to provide any evidence of evasion other than the fact that it could not have been unearthed without the audit being conducted?**
 - It was held the **Appellate authority did not discuss the facts** which were suppressed or mis-declared or mis-stated by the appellant, **except observing that had the Audit not pointed out** the said wrong credit, the amount **would not have been recovered** from the appellant which **cannot be accepted as a ground** for confirming suppression, mis-statement or mis-declaration of facts by the appellant. [Landis + Gyr Ltd. v. CCE 2013 (290) E.L.T. 447 (Tri. - Kolkata)]
 - SC held that that **mere non-payment** of duties equivalent to collusion or wilful misstatement or **suppression of facts** is, in our opinion, **untenable**. In our opinion, the **main body** of the Section, contemplates **ordinary default** and **leaves cases of evasion, a smaller, specific and more serious niche**, to the proviso. [[Uniworth Textiles Ltd v. Commissioner 2013 (288) E.L.T. 161 (SC)]

FAQs on Dept Audit

- ❑ **Where multiple approaches were legally possible, can a bona fide interpretational dispute be used to defend penalty proceedings?**
- In KK Appachan vs CCE Palakkad (2007) 7 STR 230 (CESTAT- Bangalore), it was held that it is well settled principle that in **cases involving interpretation**, there is no scope to hold that appellant are guilty of malafide intention.
- In Vipul Motors Pvt Ltd vs CCE (2008) 9 STR 220 (CESTAT - Delhi), where **confusion was prevalent** during the material period over liability of service tax on impugned activity, there was no mala fide delay in payment and payment was set aside
- In CCE vs Ess Ess Kay Engineering Co Ltd (2008) 14 STT 417, where there is **dispute of interpretation of provision of law**, penal provisions cannot be invoked
- In CCE, Jaipur vs Shree Rajasthan Syntex Ltd (2015) 60 taxmann.com, where during relevant period, **legal position and interpretation of unamended law and position after amendment was in fluid state**, it was held that it would be appropriate to levy penalty.

FAQs on Dept Audit

❑ Can the existence of multiple conflicting judicial decisions itself establish bona fide belief?

- In case of CCE, Vishakhapatnam - III vs Andhra Pradesh Paper Mills Ltd (2017) 50 STR 121 (SC), the court held that in a situation where there are **differing and contradicting judicial opinions / decisions**, the penalty imposed cannot be so unless the issue is finally settled by the Supreme Court.
- In Birla Corporation Ltd vs CCE, Kolkata - VII (2014) 47 GST 143 (CESTAT-Kolkata), where issue of valuation / taxability was unsettled due to **conflicting views / decisions and said issue got settled only after Larger Bench decision**, it was held that allegation of suppression and consequent imposition of penalty was not sustainable
- In CCE, Noida vs Delphi Automotive Systems Ltd (2013) 292 ELT 189 (Allahabad), the Hon'ble High Court held that mens rea was an essential part for levy of penalty. Hence, where **provision of statute was not clear and there were divergent judicial pronouncements**, it could not be said that there was mens rea on the part of taxpayers. Therefore, penalty was to be waived.

FAQs on Dept Audit

❑ Where tax is eventually held payable, should every case automatically attract penalty, or should taxpayer conduct determine the outcome?

- Documents / information requested for **not produced till date** i.e. **Conduct of the assessee is to withhold information** or documents during the proceedings
- So far as time bar is concerned it is clear that when the conduct of the appellant makes clear that abatement was claimed not in accordance with law [Paharpur Cooling Towers Ltd. v. Commissioner of Central Excise, Raipur ([2013] 33 taxmann.com 494 (New Delhi - CESTAT))]
- In *Cosmic Dye Chemical v. Collector of Central Excise*, the Supreme Court clarified that the intent to evade duty is built into the words 'fraud' and 'suppression'. If a taxpayer holds a bona fide belief that a transaction is not taxable, even if that belief is later found to be legally incorrect, Section 74 cannot be invoked.
- In *Commissioner of Central Excise and Customs vs. Reliance Industries Ltd.* (2023) 8 Centax 96 (S.C.)/2023 (385) E.L.T. 481 (S.C.) [04-07-2023], it was held that "*mere act of omission could not be interpreted as deliberate act of non-disclosure aimed at evasion of duty.*" The court emphasized that if an assessee holds a bona fide belief based on a prevailing judicial view (even if later reversed), the extended period cannot be invoked

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FAQs on Dept Audit

❑ What if there was a retrospective amendment in law resulting in the demand?

- In CCE, Puducherry Commissionerate vs CESTAT (2014) 50 taxmann.com, where demand of Service tax was validated by way of **series of retrospective amendments**, it was held that **penalty could not be levied**
- In the case of Jindal Vegetable Products Ltd. V/s. CCE., Meerut- II [2013-31-STR-367 (Tri.- Del.)], it was held that in case of **retrospective amendment** there cannot be suppression and hence **penalties were set aside**.
- In case of Usha Martin Industries V/s. CCE., Ranchi [2006-3-STR-147 (Tri. – Kolkata)], it was held that in view of the retrospective amendment in the Finance Act, 2000, the demand of Service Tax is sustainable against the assesseees, but no penalty can be imposed inasmuch as the **retrospective amendment cannot bring about penal, consequences**.

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Thank You !

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