

GOODS AND SERVICES TAX J.B.NAGAR CPE STUDY GROUP



Key aspects in preparation for Litigation Matters under GST

Presented By: Tabrez Shaikh

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Indirect Tax Litigation in India

As per March 2017 report of the CAG (Comptroller and Auditor General of India):

- Indirect Tax authorities is the biggest litigation in last 3 years;
- As per study, Government filing on an average 1700 appeals annually in the apex court despite the fact, its success rate came down to 11 % in 2016 as compared to 19% in 2014;
- In addition Indirect Tax authorities filing at least 5000 cases every year in various High Courts;
- The success rate in High Courts also reduced to 18 % in 2016 as compared to 34% in 2014;
- As, Tax authorities getting more and more aggressive, the number of cases going up to the courts is continuously rising;
- The estimated revenue locked in litigation was to the tune of 1.89 Lakh crore till 2016.

- To reduce Tax Litigation, threshold limit for filing appeal by the authorities has increased:
 - Threshold limit filing Appeal before CESTAT has increased to 20 Lakhs as compare to earlier limit of 10 Lakhs;
 - Threshold limit for Appeal before High Court and Supreme Court increased to 50 Lakhs and 100 Lakhs as compare to 20 Lakhs and 50 Lakhs respectively.

- Impact of increase in threshold limit:
 - CBIC expected to withdraw approximately 18 % cases from CESTAT, 22 % from High Courts and 21% from Supreme Courts [**Will not apply to cases where substantial point of law is involved**]

- Outcome/ Result:
 - Positive initiative / steps towards ease of doing business;
 - Small and mid-size taxpayers will be benefited, now they focus on business instead of litigation before various forum.

Common Issues Leading to Litigation



➤ Types of Obligation under Tax Law:

- Tax Related Obligation;
- Procedure Related Obligation;

➤ **Verification:** Tax payers' compliance with these obligations is verified by the tax officer by way of **scrutiny, audit, anti-evasion** etc.

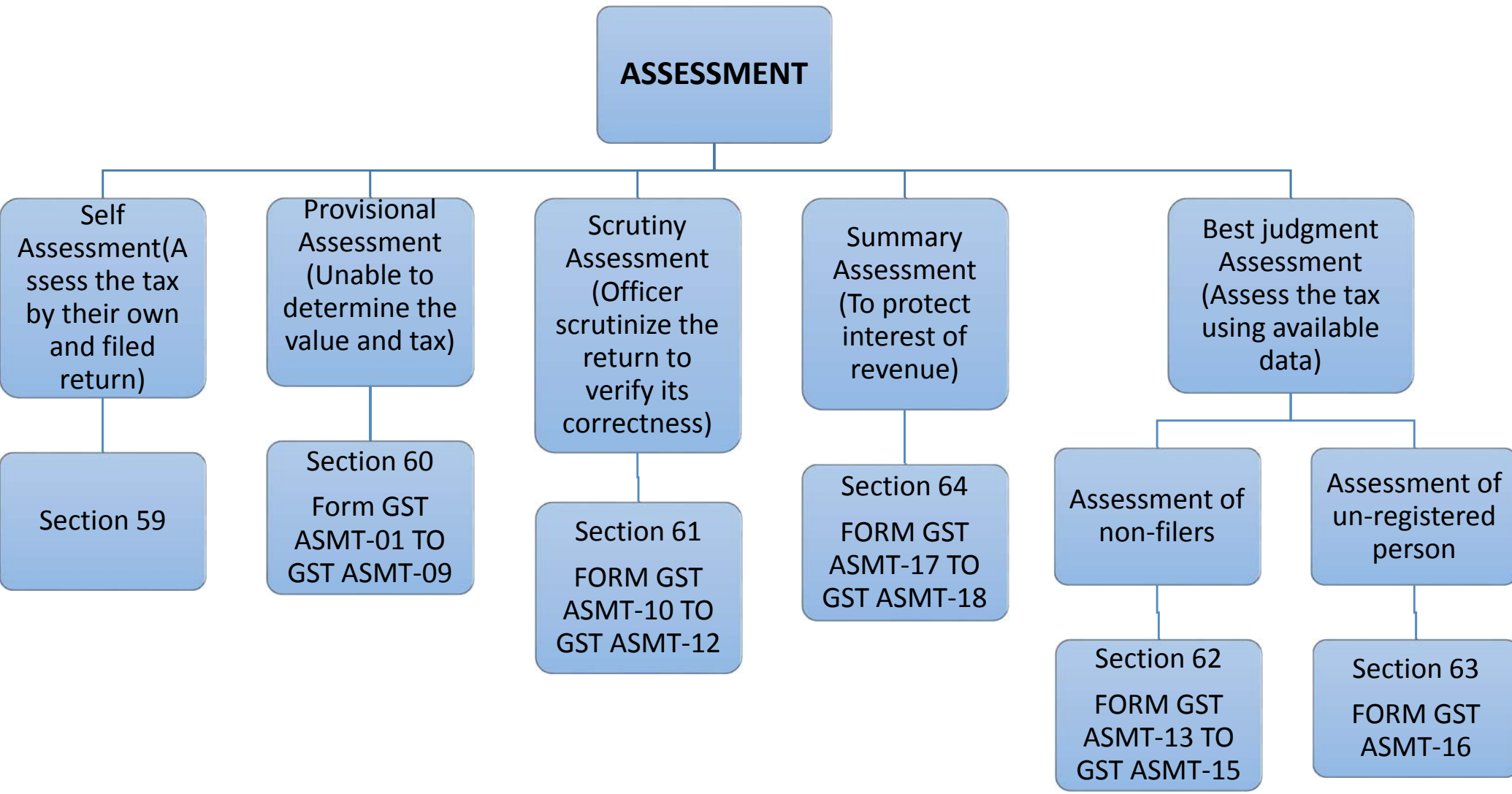
➤ **Disputes:** There can be situation of **actual or perceived non-compliance**, which result into **dispute**.

➤ **Departmental Authorities:** There are **two types** of departmental authorities

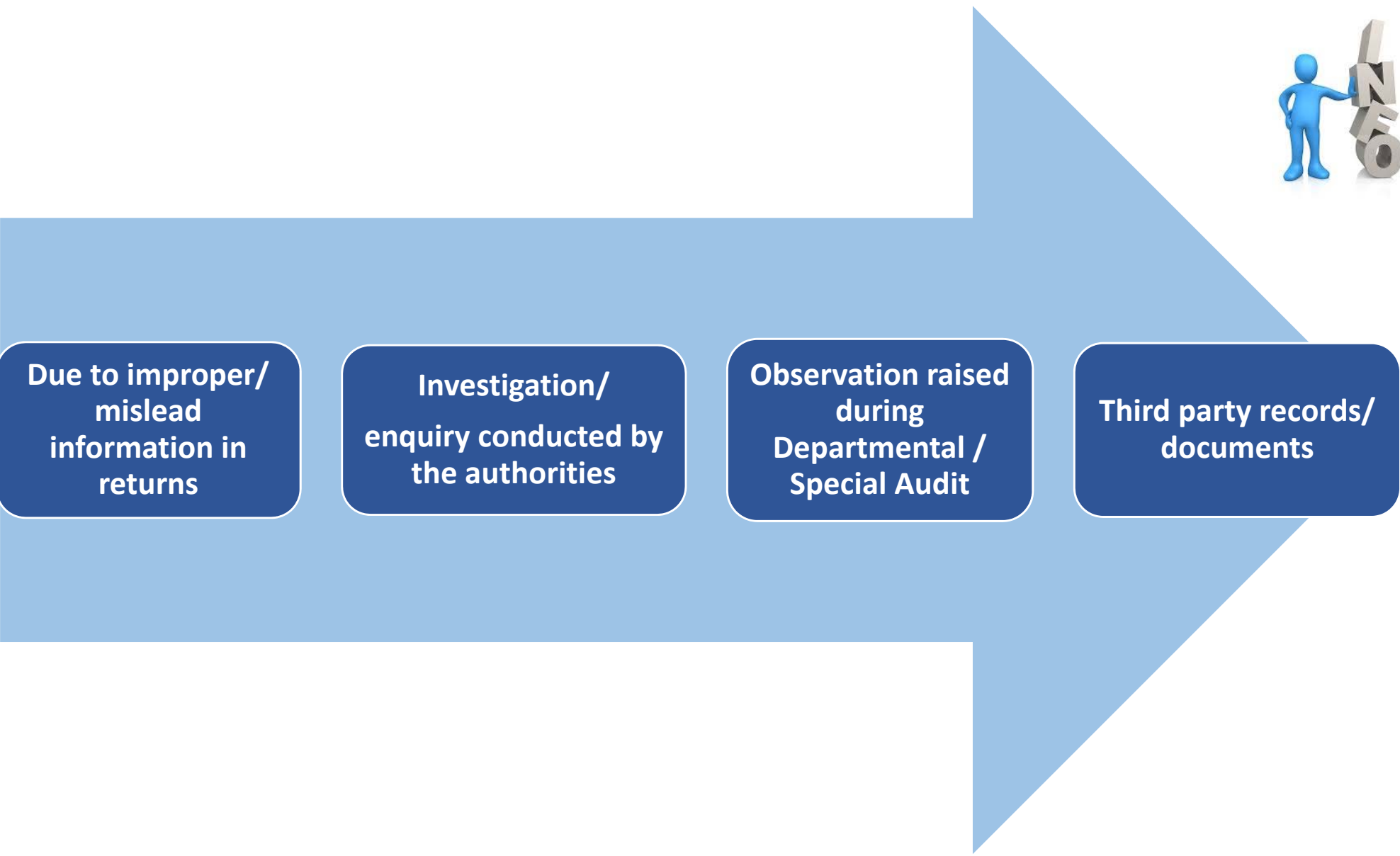
- Administrative Authorities (Assessment, Audits, etc.);
- Judicial Authorities (Appellate Matters);

➤ **Cross Empowerment:** The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that if proper officer of one Act (say CGST) passes an order with respect to a transaction, **he will also act as the proper officer of SGST for same transaction and issue.**

Types of Assessment under GST



Basis which Lead to Litigations



How to avoid Litigations



➤ Evidence:

- Litigation under indirect tax may be on account of dispute of exigibility to tax of a particular transaction or dispute relating to claim of exemption or claim of credit of duty or tax paid;
- At any stage i.e. during audit / investigation or adjudication or at appellate stage, claim for non-taxability or for exemption, etc., must be supported with verifiable proof. Such proof in simple language could be termed as evidence;
- Evidence in the popular sense means “that by which facts are established to the satisfaction of person enquiring”;
- “Evidence” means and includes -
 - all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
 - such statements are called oral evidence;
 - all documents including electronic records produced for the inspection of the Court;
 - Such documents are called documentary evidence.

How to avoid Litigations



➤ Expert Opinion:

- Under Tax litigation, opinion of experts is also play an important role mainly in case of dispute in Classification, Exemption or Concession Rate of Tax;
- Such expert opinions would be relevant to defend the case where the assessee has taken certain legal position based on the expert opinion;
- In the Case of BCCI vs. Commissioner of Service Tax, Mumbai-I [2015] 53 taxmann.com 533(Supreme Court) –

Upheld the decision of Tribunal, for invoking extended period of limitation and confirming Penalty:

“We observe that though the appellant has claimed bonafide belief, no material has been placed before us, either by way of expert opinion or otherwise, as to the basis for entertaining such belief. – A belief can be said to be bona fide only when it is formed after all reasonable considerations are taken into account”

Preparation - Show Cause Notice (SCN)



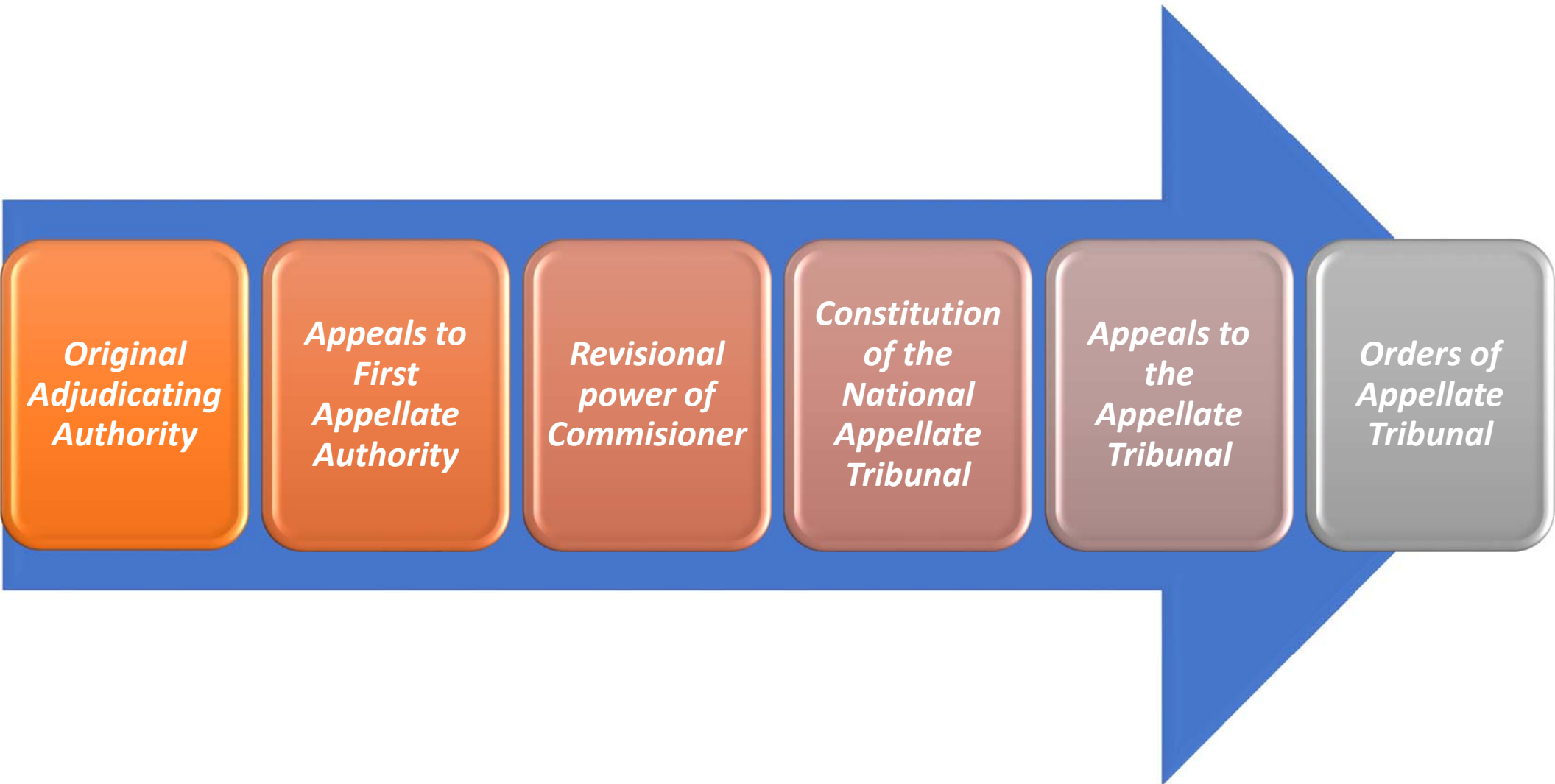
➤ Adjudication in SCN Matters:

- SCN is the starting point, it provides the framework or boundaries for correspondence;
- More precise expressions are employed to describe correspondence and interaction with adjudicating authority;
- SCN must contain the followings:
 - Background fact relating to the Noticee;
 - Identify the fact and issue for the purpose of SCN;
 - Clear statement of acceptance or rejection in whole or part for each para(s) forming the issue raised in SCN;
 - Detailed arguments, corroborative or rebuttal evidence on which is relied upon need to be provided;
 - Supporting case studies or decisions on similar facts need to be provided;
 - Alternative plea may also be contained in order to rebut the issue raised in the SCN;
 - Prayer containing the nature of relief sought including whether an opportunity for a personal hearing is required or waived;

Preparation - Show Cause Notice (SCN)

- Allegations by Department, here burden of proof is on the Department;
- Amount of Demand, interests and penalties and reasons for such levies;
- Documents on the basis of which such duty calculation is based;
- Extended period of limitations invoked?
- Assessee to file written objections (i.e. rebuttals) < 30 days alongwith supporting evidences and documents, here burden of proof is on the Assessee;
- For e.g. When Department alleges that classification is under particular head, it is their onus, but while rebutting it will be onus of the Assessee to prove otherwise;
- Main object of SCN is to provide opportunity of personal hearing to the Assessee, without which it is bad- in-law and it violates the principles of Natural Justice;
- Else the matter would be decided on Ex-parte basis;

Various Appeals under GST



Time Limit & Pre-Deposit

Time Limit under GST:

Time limit to file appeal before FAA

- 3 months for tax payers
- 6 months for department
- 1 month condonable period for both, if sufficient cause is shown

Time limit to file appeal before Tribunal

- 3 months for tax payers
- 6 months for department
- Tribunal got discretionary power to condone delay beyond 3 months if sufficient cause is shown

Time limit to file appeal before High Court

- 180 days from the date of receipt of tribunal order
- High court got discretionary powers to condone the delay involved beyond 180 days

Time limit to file appeal before Supreme Court

- Appeal should be filed immediately after passing of the judgment or order, provided the High court certifies that the case is a fit one for appeal to the Supreme Court.

Time Limit & Pre-Deposit

Mandatory Pre-Deposit under GST:

<u>Authority</u>	<u>Pre-deposit</u>
Appellant Authority {Section 107(6)}	<ul style="list-style-type: none"> ▪ <u>For Undisputed liabilities</u> - Full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; <u>and</u> ▪ <u>For Disputed liabilities</u> - A sum <u>equal to 10%</u> of the remaining amount of tax in dispute arising from the impugned order.
Appellate Tribunal {Section 112(8)}	<ul style="list-style-type: none"> ▪ <u>For Undisputed liabilities</u> - Full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, <u>and</u> ▪ <u>For Disputed liabilities</u> - A sum equal to 20% of the remaining amount of tax in dispute

Preparation for Appeals

- Format prescribed may be referred from the statute, diligence in the adherence to the form and presentation is essential;
- Completeness is also of equal importance where the different parts of the form of appeal such as facts, grounds, prayer and verification are not deviated;
- Well- drafted appeal does not mean a very lengthy appeal;
- the area of skill in filing appeal is not in elaborate language but in precision without leaving out any potential ground for substantiating the relief prayed for;
- Evidence is that which advances the cause asserted by the Appellant;
- Availability of evidence only supports the imagination of the Authority to reach a substantial conclusion about the events that have occurred in the past;
- Do not use additional evidence except in specific circumstances;
- All documents are to be in clear and legible font with adequate margin and line spacing;
- One-inch margin and double line spacing on legal size paper is safe format;
- Selection of case study, ensure that it is relevant and support the fact of your case;

Do's and Don'ts

➤ Do's:

- Ask written requests before submitting information and collect acknowledgement on submission;
- If too many enclosures, do pagination and indexing to facilitate quick reference;
- Record 'date of service' of every communication, notice or order(s);
- Address communication to specific authority and provide relevant references of documents, letters etc.;
- In case of change of address, intimate to the authorities;
- When extracts of statutory provision submitted, ensure photocopy from an official publication is provided. Photocopy from an official publication displays authenticity;
- Subscribe more than one law journal for reference including electronic versions;
- Develop and maintain a good library in the office;
- Before citing any case law ensure that it is current and has not been overruled by a superior authority / Courts;

Do's and Don'ts

➤ Don'ts:

- Do not deviate from prescribed forms and formats. Use enclosures for additional information / data;
- Do not forget to do page numbering after printing and binding the final version of documents for submissions;
- If any information not available, make a clear statement to this effect and do not offer any alternatives because it dilutes the clarity about the earlier statement – “that the said information is not available”;
- Do not make spelling mistakes in the title / designation of authorities before whom submissions are being made;
- Avoid using short forms / acronyms for the title of any authority such as ‘Supdt.’ for Superintendent, ‘AC’ for Assistant Commissioner, etc. Instead, refer to their full and complete title;
- Do not allow typographical errors in statements or replies;
- Do not submit incomplete or erroneous enclosures in the submissions;
- Do not discard books / publications of Act and Rules when the next year’s publications are notified;
- In representation matters, reference is to be made to the law ‘as it then was’ and not as on the date of current proceedings;



Corporate Office

4-A, 2st Floor, HDIL Kaledonia Building, Sahar Road, Andheri (East), Mumbai – 400069.

Board No: +91 - 22 – 6625 6363 | Fax: +91 - 22 – 6625 6364

Tabrez Shaikh

Email: tabrez.shaikh@sgco.co.in

Mobile: +91 9594588997

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