

# IMPORTANCE OF DRAFTING EFFECTIVE ASSESSMENT ORDERS

APPELLATE JOINT COMMISSIONERS

# PURPOSE OF ASSESSMENTS

- Key functionality of the Department
- Culmination of efforts of the officers
- A Statutory requirement
- Time bound duty
- To withstand Legal scrutiny
- Key Revenue enhancer
- Deterrent effect and discipline among tax payers

# KEY POINTS OF ASSESSMENT ORDERS

## Assessment Orders

- should be passed only with the approval of the competent authority.
- Should be passed within the time limit prescribed under the act
- Should contain the details of the authorizations obtained from the competent authorities before passing the order
- Should contain all the references/letters/replies received from the assessee during the process of audit/investigation
- Should discuss all the objections filed by the assessee in reply to the show cause notice in detail and thus either agree or disagree to the objections raised.
- Should contain the relevant court laws/ judgments in support of the department
- Should be a speaking order in order to withstand legal scrutiny.

# LEGAL SCRUTINY

The following are the instances when the assessment orders cannot withstand legal scrutiny

- When principles of natural justice are not followed.
- When the notices/communications are not served on the assessee
- When the objections filed by the assessee are not examined
- When the laid down laws principles are not followed
- When the case laws relied upon by the assessee are not considered carefully with reference to the law existed at material time.

# SCENARIO UNDER GST

- Definition of Adjudicating Authority
- Role of Adjudicating Authority
- General Time limit for adjudication
- Extended period of limitation for adjudication
- Deemed conclusion of proceedings
- Judicial discipline
- Essential elements of principles of natural justice

# ADJUDICATION ORDER

Normally Adjudicating order has the following parts

- Brief facts of the case
- Show cause notice issued and served on the assessee
- Written submissions by the assessee
- personal hearing and submissions made during personal hearing
- Discussions and findings by the Adjudicating authority
- Adjudicating Order

# PROCESS OF ADJUDICATION

- Step 1 : Careful consideration of material on record
- Step 2 : Listing of issues to be decided
- Step 3 : Segregation of issues of non dispute
- Step 4 : Sequencing of issues to be decided
- Step 5 : Consideration of each issue in sequence
- Step 6 : Careful consideration of case laws
- Step 7 : Speaking order is must
- Step 8 : Adjudicating order and service

# KEY POINTS UNDER GST

- Consequential orders should be passed within 2 years
- When there is a stay such stay period is to be excluded for computation of limitation
- Personal hearing opportunity and its adjournments to be granted for not more than 3 times
- The assessee is not allowed to produce any evidence other than the evidence produced by him before the adjudicating authority before the appellate authorities
- The appellate authority or the tribunal shall not take any evidence produced under sub rule 1 unless the Assessing authority cross verifies it
- Authorized representation
- Restriction applicable on Appeals



# ESSENTIAL ELEMENTS OF PRINCIPLES OF NATURAL JUSTICE

- Audi alteram partem
- Adjournments
- Need for show cause notice
- Speaking order
- cross examination

# Conclusion

- Assessment is a quasi judicial function of the officers of the department. Through imposition of an appropriate tax/penalty after assessment procedure, it should be ensured that no revenue loss is caused by contravention of applicable laws/ rules/ regulations etc. however, if a tax payer is punished or the punishment is more than warranted by the nature of offence, it may undermine the trust between the department and the tax payer. If on the other hand, a real offender escapes the punishment provided by law, it may encourage the commission of offences. To disseminate such lapses, the appellate forums acts as a medium for interpretation of the acts/ rules. The establishment of such forums is to ensure prompt initiation and speedy disposal of the impugned assessment orders

THANK YOU