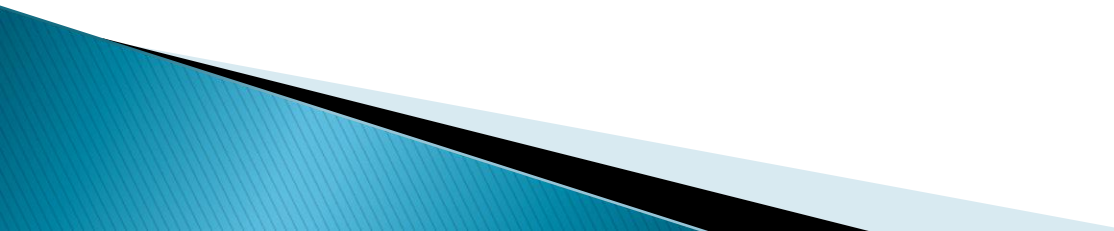


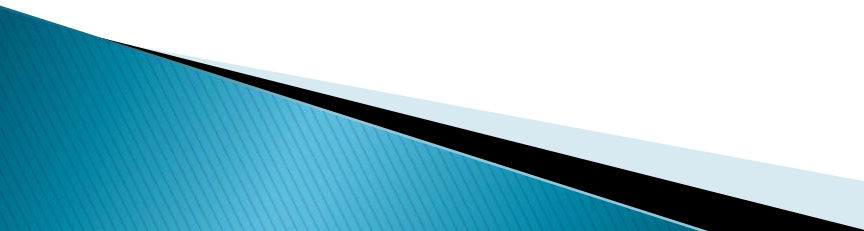
DRAFTING OF ADJUDICATING ORDERS

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OUTLINE

- ▶ VOCABULORY AND LEGAL PROVISIONS
 - ▶ IMPORTANCE OF ADJUDICATING ORDER
 - ▶ IMPORTANT POINTS TO REMEMBER
 - ▶ FEATURES OF ADJUDICATING ORDER
 - ▶ METHODOLOGY FOR DRAFTING
 - ▶ LEGAL SCRUTINY
 - ▶ CONCLUSION
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VOCABULORY AND LEGAL PROVISIONS

- ▶ Adjudicate means decide Judicially
 - ▶ Was called as an assessment order under TGVAT ACT
 - ▶ AA"s are made under all acts
 - ▶ Section 21 of TGVAT ACT deals with AA
 - ▶ Section 9 of CST ACT deals with AA
 - ▶ Sections 59 to 64 of GST Acts deals with AA
 - ▶ Adjudicating authority is any authority competent under law to pass any order under the Act
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LEGAL POSITION (VAT)

- ▶ TGVAT : SECTION 21(1) Reads as” Where a VAT dealer or TOT dealer fails to file a return in respect of any tax period within the prescribed time, the authority prescribed shall assess the dealer for the said period for such default in the manner prescribed”.
- ▶ Section 21(3) Reads as “ Where the authority prescribed is not satisfied with a return filed by the VAT dealer or TOT dealer or the return appears to be incorrect or incomplete, he shall assess to the best of his judgment within four years of due date of the return or within four years of the date of filing of the return whichever is later”.

Cont.....

- ▶ Section 21(4) reads “The authority prescribed may, based on any information available or on any other basis, conduct a detailed scrutiny of the accounts of any VAT dealer or TOT dealer and where any assessment as a result of such scrutiny becomes necessary, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made “.
- ▶ Section 21(5) reads “Where any willful evasion of tax has been committed by a dealer, an assessment shall be made to the best of his judgment by the authority prescribed within a period of six years of date of filing of the return or the first return relating to such offence “.

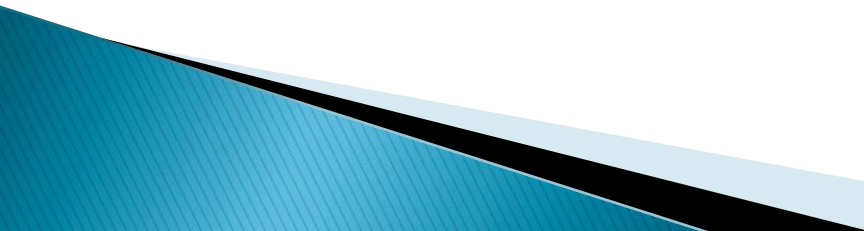
LEGAL POSITION (CST)

▶ Section 9. Levy and collection of tax and penalties

- ▶ (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by the Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced.
- ▶ (2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any ⁵⁶ interest or penalty], payable by a dealer under this Act as if the tax or ⁵⁷[interest or penalty] payable by such a dealer under this Act is a tax or ⁵⁸[interest or penalty] payable under general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, ⁵⁹[refunds, rebates, penalties], ⁶⁰[charging or payment of interest], compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

LEGAL POSITION (GST)

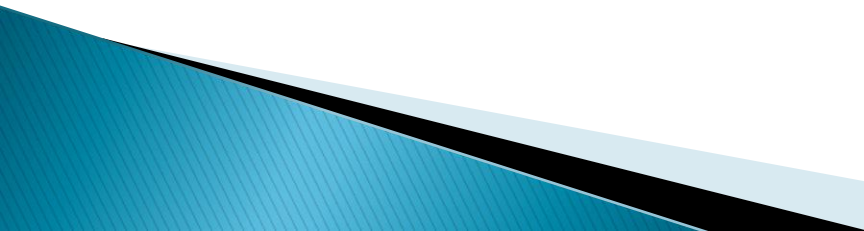
Chapter -XII deals with assessments

- ▶ Section 59 – Self assessments
 - ▶ Section 60 – provisional assessment
 - ▶ Section 61 – assessment on return scrutiny
 - ▶ Section 62 –Assessment of non filers
 - ▶ Section 63 – assessment of unregistered persons
 - ▶ Section 64 – summary assessments
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IMPORTANCE OF ADJUDICATING ORDER

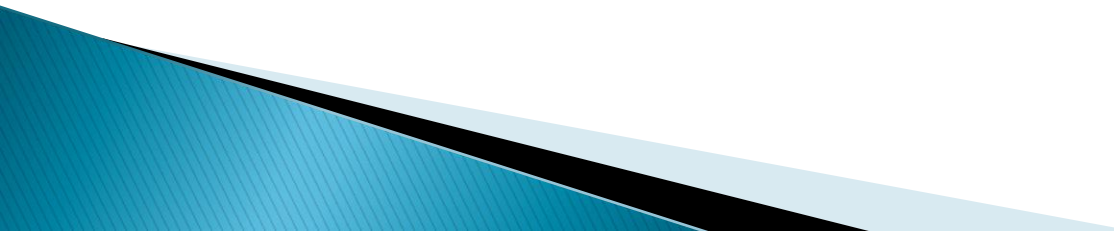
- ▶ Adjudicating order is the culmination of our efforts from the beginning of investigation/proceedings for contravention of provisions of the tax statute(s) till conclusion of investigation /proceeding by way of formal issuance of a written order to the assessee.
- ▶ Adjudicating order is a statutory requirement and it is the basic document for levy of tax liability or any punitive action to be taken for contravention of provisions of our acts which are required to be enforced by our departmental officers.
- ▶ It is the most important item of our work and any lapse in timely issuance of Adjudicating order or issuing AO of poor quality may lead to serious trouble to the officer concerned. Since, it is the starting point of any legal proceeding, utmost care is required to be taken while drafting AO.
- ▶ AO contains the contentions of the assessee as well as the officer , If legally challenged, the winnability of the case depends on the quality and contents of the adjudicating order

IMPORTANT POINTS TO REMEMBER

- ▶ Adjudicating Order should be passed only with the approval of the competent authority.
 - ▶ Adjudicating Order should be passed within the time limit prescribed under the act
 - ▶ Adjudicating Order should contain the details of the authorizations obtained from the competent authorities before passing the order
 - ▶ Adjudicating Order should contain all the references/letters/replies received from the assessee during the process of audit/investigation
 - ▶ Adjudicating order 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.
 - ▶ Adjudicating Order should contain the relevant court laws/ judgments in support of the department
 - ▶ Adjudicating Order should be a speaking order in order to withstand legal scrutiny.
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FEATURES OF ADJUDICATING ORDER

Normally, any adjudication order has following distinct Parts:

- ▶ Nature of the business of the assessee.
 - ▶ Registration details of the assessee.
 - ▶ Authorizations obtained from the competent authority.
 - ▶ Turnovers declared by the assessee to the department.
 - ▶ Variations noticed by the adjudicating officer.
 - ▶ Details of the show cause notices issued to the assessee.
 - ▶ Reply filed by the assessee to the show cause notices issued.
 - ▶ Examination of the reply filed.
 - ▶ Confirming the liability .
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METHODOLOGY FOR DRAFTING

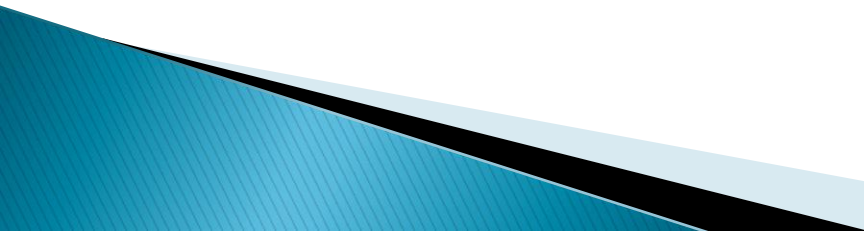
Before drafting the Adjudication Order, one should remember the following steps

- ▶ Careful Consideration of the Material on Record
- ▶ Listing of the Issues to be decided
- ▶ Sequencing of Issues to be decided
- ▶ Consideration of each Issue in Sequential Manner one by one [in the light of allegations made by the Department and evidences relied upon in support of allegations, defense argument and counter evidence submitted by assessee and provisions of the law] and giving Issue-wise findings.
- ▶ Examination of Case Laws [relied upon by the assessee or by the Department]
- ▶ Drafting of Adjudication Order [after drafting of Adjudication Order, check it again for elimination of errors, inconsistencies, spelling mistakes, language defects etc., if any]
- ▶ Discussions and Finding
- ▶ Issuance of order.

LEGAL SCRUTINY

- ▶ The following are the instances when the assessment orders cannot withstand legal scrutiny
- ▶ When principles of natural justice are not followed i.e not giving opportunity to the dealer to file objections, not giving personal hearing etc.
- ▶ when the objections filed by the assessee is not examined in Toto
- ▶ When the laid down laws principles are not followed

CONCLUSIONS

- ▶ Adjudication Order is a conclusion of an investigation.
 - ▶ Adjudication Order confers right to proceed for enforcing a demand.
 - ▶ Adjudication Order conveys the stand of the department before any legal forum
 - ▶ Adjudication Order is a tool in the hands of a tax authority to curtail the non compliances
 - ▶ Adjudication Order acts as a deterrent for the tax evaders.
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THANK YOU

