

# **PRESENTATION ON DRAFTING OF ASSESSMENT ORDERS DO'S & DONT'S**

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# OUTLOOK OF PRESENTATION

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# INTRODUCTION

- Assessments are very vital for protecting Revenue.
- The taxes paid through returns on Self Assessment basis may not reflect the actual liability of the dealer in several cases.
- The Assessments bring out the avoided and evaded taxes and determine the correct tax payable by the dealer.
- Assessment is a Quasi Judicial Order.
- It is appealable before the prescribed hierarchy of Appellate Authorities and also before the Courts.
- In order to ensure that the taxes determined in the Assessment Order are collected fully, it is necessary that the order stands the test of the Scrutiny by the Appellate Authorities and Courts.

# A LEGAL REQUIREMENT

- Principles of natural justice require issue of show cause notice before levy of tax/penalty.
- All taxation Acts mandate issue of show cause notice provide an opportunity of personal hearing before orders are passed.
- Orders not proceeded by show cause notices are bound to struck down by the courts.

# **The sequence of passing an Assessment order can be summarized as below:**

1. Collecting data.
2. Preparing Show Cause notice.
3. Serving Show Cause notice on the Dealer.
4. Receipt of reply to the Show Cause notice.
5. Posting the case for personal hearing.
6. Passing the order.
7. Serving the order.
8. Initiate collection process after the time granted in the Demand Notice.

## COLLECTING DATA

- Sources: Scrutiny of returns, Data from Way bills, C- forms etc statutory forms (under VAT regime) Books of accounts, Balance Sheet, Profit & Loss Accounts and data from third parties (Intelligence).
- If the information is gathered from several sources, all the sources should be clearly mentioned.

**Example** : If sales of Motor Vehicle by a dealer are obtained from transport department, we should mention it and also furnish a copy of the information to the dealer.

## Preparing Show Cause notice:

- The Show Cause notice should marshal all the facts of the case, provisions of the Acts and Rules, the Case law if any applicable.
- It should be clear, self explanatory and logical.
- It should contain an introduction with the business details of the dealer the turnovers and taxes declared in the returns, a middle part containing facts gathered, provisions of the Act and Rules applicable etc and concluding part determining the tax liability of the dealer correctly.
- The Tax/penalty proposed should be specified.

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- **Example:** If a dealer is found suppressing sales of Motor Vehicles, when the information obtained from the transport department is compared with those recorded in the account books of the dealer, the fact of suppression of sales and the assessment / reassessment, penalty provisions in the Act should be linked to conclude the turnover/tax which is proposed to be assessed/ penalty proposed to be levied shall be clearly mentioned.



# **Serving Show Cause notice on the Dealer:**

- Service of Show Cause notice on the Authorised person following the procedure if any laid down in the Rules is very important.
- The modes of service include tendering the notice, sending it by Registered Post, through e mail and finally affixing the notice on the front door of the business premises in the presence of two or three witnesses.
- Several Assessment Orders were struck down on the ground of non service of Show Cause notice.

## **Receipt of reply to the Show Cause notice:**

- The time period to respond to the Show Cause notice should be mentioned in the Show Cause notice itself.
- Immediately after expiry of the due date, a notice shall be issued to the dealer requesting him to file reply.
- Minimum three notices shall be issued in succession before passing the ex-parte order.

# Posting the case for personal hearing:

- Hearing the dealer or his Authorised representative is prerequisite condition which shall be adhered to without fail to satisfy the principles of Natural Justice.
- The orders passed without hearing the dealer in person will be struck down by the courts on the ground of failure to follow the principles of Natural Justice.
- Similar to the Show Cause notice, three notices of personal hearing should be issued in Succession.
- The time gap between one notice and the other for personal hearing shall not be less than a week.

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- The Assessing Officer should take care that the dealer is heard patiently.
- What all the dealer submits orally during personal hearing should be noted down by the Assessing Authority in brief bullet points.
- Any additional evidence produced by the dealer should be recorded in the file and acknowledged.
- The number of personal hearings per day should not generally exceed three or four in order to facilitate the Assessing Authority to go through the file thoroughly before hearing.
- A Register of personal hearings shall be maintained scrupulously in order to avoid legal complications.

# Passing the Order:

- It is advisable to pass the Assessment Order soon after personal hearing when all the facts of the case are still fresh in the mind of the Assessing Authority.
- In the Assessment Order every objection raised and every additional evidence produced by the dealer shall be discussed without fail.
- The Order should be simple, straight forward and logical. It should also be self explanatory as in the case of Show Cause notice. It shall be a Speaking Order.
- Even ex-parte orders should be Speaking Orders. Cut and paste orders should be avoided.

# Serving the Order:

- The procedure and the care that is followed in serving Show Cause notice should be followed for serving the Assessment Order also.
- Improper service of Orders will result in striking down the Order very easily by the Appellate Authorities and Courts.
- It should be remembered that an Assessment Order is a permanent record which will be mentioned, discussed and judged by a hierarchy of Appellate Authorities and Courts.
- The Officers should feel proud for drafting good Assessment Orders which are upheld even by the Supreme Court.

## **Initiate collection process after the time granted in the Demand Notice:**

- Since the purpose of passing Assessment Order is to determine and collect the taxes correctly payable by the dealer, it is necessary that the collection process should be initiated soon after the time granted for payment of the demand raised in the Order is started.

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Since passing an Assessment Orders is a common feature under any taxation act, the general principles mentioned above should be followed while passing an Assessment Order under any of the enactments administered by the Commercial Taxes Department.



# REASONS FOR CASES GETTING REMANDED

- Passing of Assessment orders without serving show cause notice
- Adoption of incorrect rate of tax
- Not providing external agencies report to the assessee
- Not providing sufficient time to the assessee to file the objections
- Exempt sales turnover disclosed in VAT returns is assessed under CST Act as taxable turnover
- Disallowance and restriction of ITC without providing reasons
- Levying entry tax on non notified goods and not giving credit to the CST tax already paid
- Objections filed by the dealer are not discussed issue wise in detail

**THANKYOU**