

PRESENTATION ON

DO's & DONT's

While passing Assessment orders

And

Assessment Provisions under GST

**By: Smt. VASAVI JAGANNADHAM,
Appellate Joint Commissioner
Secunderabad Division.**

Outlook of the presentation

- DOs While passing Assessment Orders
- DONTs While passing Assessment Orders
- Issues Observed in general in recently remanded cases.
- Assessment Provisions Under GST
 - Definitions
 - Types of Assessments U/GST
 - Overview of Assessments U/GST
 - Determination of tax U/GST
 - General Provisions relating to determination of tax
 - Other provisions relating to Assessment

DOs While passing Assessment Orders

▪ **To follow due process of Law**

- Collection of data through proper sources.
- Preparation of show cause notice.
- Serving of show cause notice on the dealer.
- Receipt of reply to the show cause notice.
- Posting of case for personal hearing.
- Passing the order.
- Serving the order.
- Initiate collection process after the time granted in the demand notice.

▪ **To Follow Principles of Natural Justice**

- Audi alteram partem.
 - Adjournments and Service of notices.
 - Nemo judex in re sua.
 - Need for show cause notice.
 - Speaking orders.
 - Judicial discipline.
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- ❖ Suresh synthetics 2007 (216) ELT 662 (SC)
 - ❖ Siemens Engineering and Manufacturing Co. of India Ltd. Vs Union of India (AIR 1976 SC 1785)

▪ **To pass reasoned order**

- The objections filed by the dealer shall be examined carefully.
- Summary rejection of the objection as “not tenable” shall be avoided
- Cut and paste orders should be avoided.
- APHC order reported in 16 VST 181 “Steel Authority of India Ltd.”
“Reason is the heart beat of every conclusion. If introduces clarity in order and without the same, it becomes lifeless”.
- SC order in the case of SN Mukherjee VS Union of India [(1990) 4SCC 5914] emphasized the importance of recording reasons.

▪ **To have full knowledge over the Acts, rules and judge made law.**

▪ **Sufficient care and attention while drafting show cause notice and passing of order.**

▪ **Officers should feel proud for drafting good Assessment orders which are upheld before any legal forum.**

▪ **DON'Ts While passing Assessment Orders**

- Waiting till the end of time barring eventhough 4/6 years of time is provided.
 - Not providing information of required documents in the SCN.
 - Raising the issue afresh in Assessment order without mentioning in the show cause notice.
 - Raising of artificial demands.
 - Bald and cryptic orders.
- ❖ APHC in "Sangam Health Care Products Ltd. Vs C.T.O. reported in (41 APSTJ 99) held that

"While passing on Assessment order under the AP VAT Act, the Assessing Authority is under an obligation not only to refer the contents of the explanation submitted by the dealer in detail but also record the reasons if the explanation for any reason is not acceptable. Bald and cryptic orders do not inspire any confidence and they cannot be treated as orders passed in bonafide exercise of powers."

Issues observed in general in recently remanded cases

- Non speaking orders passed without taking into consideration the objections/documentary evidence that were already available on record.
 - ❖ Case Law:- APHC in Sangam Health care Products Ltd. Vs C.T.O. (41 APSTJ 99)
- Orders passed without assigning specific reasons for rejecting the objections filed by the dealers.
 - ❖ Case Law:- APHC in Sirpur Paper Mills Ltd. Vs Assistant Commissioner (46 APSTJ 22)
- Orders passed exparte i.e. on the ground of non production of books of accounts.
 - ❖ Case Law:- 1. APHC in M/s. Sri Goutham Educational Society Vs Assistant Commissioner (CT) (58 APSTJ 178).
2. CCT'S Ref. No. L-V(2) /144/2010, dated 04.05.2010.
- Orders passed without serving the show cause notices or without providing opportunity of personal hearings.
 - ❖ Case Law:- 1. APHC in M/s. Sri Goutham Educational Society Vs Assistant Commissioner (CT) (58 APSTJ 178).
2. CCT'S Ref. No. L-V(2) /144/2010, dated 04.05.2010.
- Orders passed with additional turnovers basing on the third party evidence / vigilance reports without providing them to the dealers.
 - ❖ Case Law:- 1. APHC in M/s. Sri Uma Maheswara Rice and Flour Mill Vs CTO (54 STJ 51)

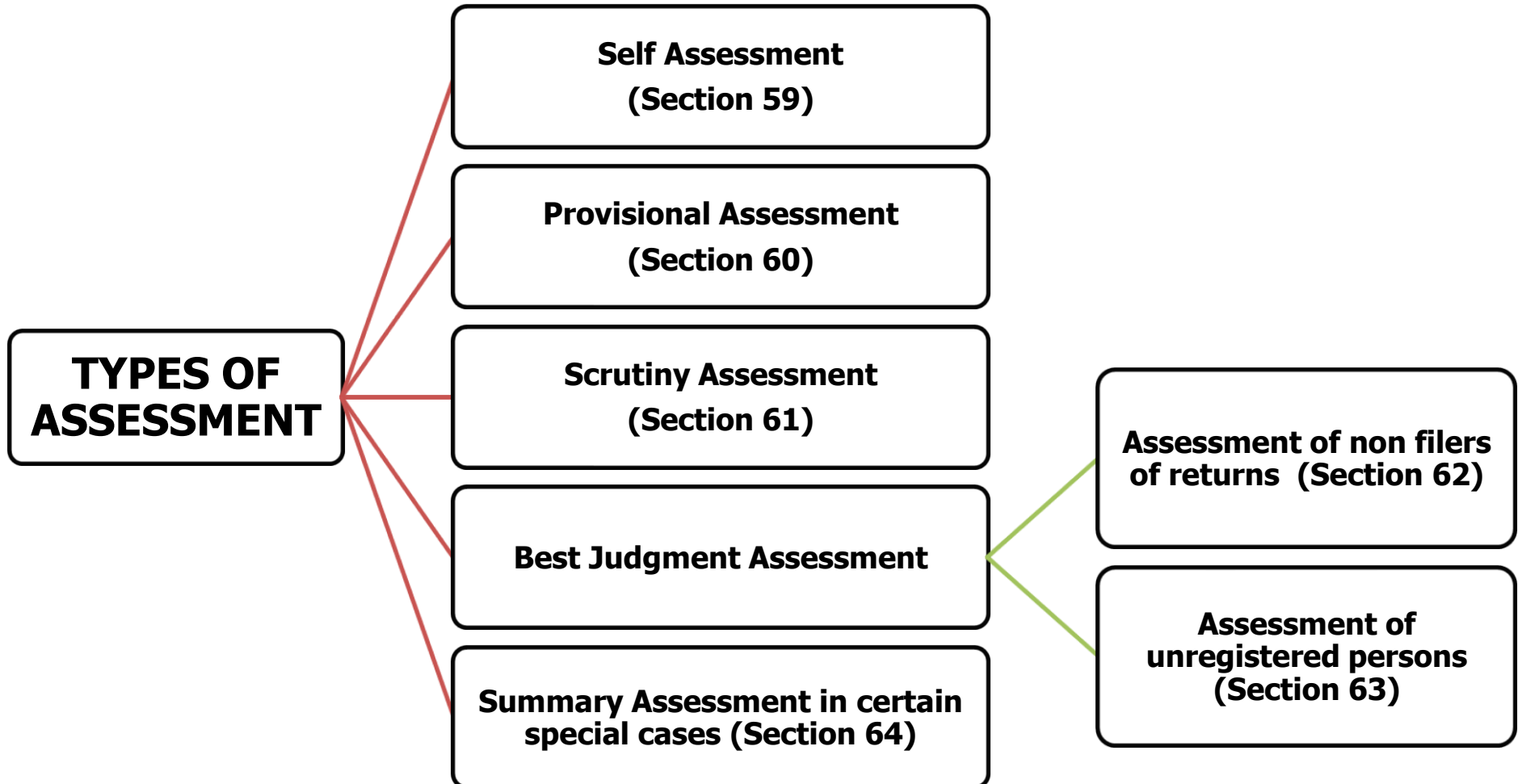
- Orders passed disregarding the binding orders of the superior officers or binding orders of the higher forums.
 - ❖ Case Law:- Honourable SC in Union of India Vs Kamakshi Finance Corporation Limited [1991 (55) ELT 433] SC
- Orders passed disallowing ITC claims prior to the amendment date i.e. 27.09.2016.
 - ❖ Case Law:- APHC in Harsh Jewellers Vs C.T.. (54 APSTJ 133)
- Orders passed under CST Act, levying higher rate of tax or disallowance of exemption in the absence of statutory forms.
 - ❖ Case Law :- Hon'ble SC in State of AP Vs Hyderabad Asbestos Cements production Limited (94 STC 410)
- Orders passed under CST Act, levied higher rate of tax @14.5% on the goods which attracts tax @ 5% under VAT Act.
- Orders passed under CST Act, levied tax on the waybills turnovers used for incoming goods i.e. either for purchases or for receiving goods on stock transfer basis.
- Orders passed under works contract, levied tax by allowing a standard deduction at 30%, whereas dealers produce evidence of their Books accounts and eligibility of various deductions.
 - ❖ Case Law:- Hon'ble SC in Gannon Dunkerley & Co (88 STC 204)
- Orders passed under Entry tax Act, levied tax without establishing that the goods so purchased were notified goods.

ASSESSMENT PROVISIONS U./GST

■ DEFINITIONS

- **SECTION 2(11): “assessment”** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;
- **SECTION 2(4):) “adjudicating authority”** means any authority, appointed or authorised competent to pass any order or decision under this Act, but does not include the Commissioner, Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;
- **SECTION 2(91): “Proper Officer”**, in relation to any function to be performed under this Act, means the Commissioner or the officer of the State tax who is assigned that function by the Commissioner;

TYPES OF ASSESSMENTS U./GST



OVERVIEW OF ASSESSMENTS U./GST

Sl. No.	Proper Officer	Type of Assessments	Section	Rule	Form	Descriptions
1.	Tax Payer	Self Assessment	59	N.A.	N.A.	N.A.
2.	DC(ST)(STU), AC(ST) of Circle, STO of Circle [Proper Officer is defined by CCT's Ref.No.A(1)/93/2017, Dt:18-11-2019.	Provisional Assessment	60	98	GST ASMT-01	Application for provisional assessment under section 60.
					GST ASMT-02	Notice for seeking additional Information / clarification/ documents for provisional assessment
					GST ASMT-03	Reply to the notice seeking additional information
					GST ASMT-04	Order of provisional assessment
					GST ASMT-05	Furnishing of security
					GST ASMT-06	Notice for seeking additional Information/ clarification/ documents for Final assessment
					GST ASMT-07	Final assessment order
					GST ASMT-08	Application for withdrawal of security
					GST ASMT-09	Order for release of security or rejecting the application.

OVERVIEW OF ASSESSMENTS U./GST

Sl. No.	Proper Officer	Type of Assessments	Section	Rule	Form	Descriptions
3.	DC(ST)(STU), AC(ST) of Circle, STO of Circle	Scrutiny of Returns	61	99	GST ASMT-10	Notice for intimating discrepancies in the return after scrutiny.
					GST ASMT-11	Reply to the notice issued under section 61 intimating discrepancies in the return.
					GST ASMT-12	Order of acceptance of reply against the notice issued under section 61
4.	DC(ST)(STU), AC(ST) of Circle, STO of Circle	Assessment of Non-filers of Returns	62	100	GST ASMT-13	Assessment order u/s 62.
5.	DC(ST)(STU), AC(ST) of Circle, STO of Circle	Assessment of Un-registered, B.J. Assessments	63		GST ASMT-14	Show cause notice for assessment u/s 63.
					GST ASMT-15	Assessment order u/s 63.
		Summary assessment in certain special cases	64		GST ASMT-16	Assessment order u/s 64.
					GST ASMT-17	Application for withdrawal of assessment order issued u/s 64.
GST ASMT-18	Acceptance or rejection of application filed u/s 64 (2).					

DETERMINATION OF TAX U./GST

Sl. No.	Proper Officer	Description	Section	Rule	Form	Description
1.	DC(ST)(STU), AC(ST) of Circle, STO of Circle	73.Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts	73 & 74	142	GST DRC 1	Summary of show cause notice
		74.Determination of tax not paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.			GST DRC1A	Intimation of tax ascertained as being payable under section 73(5)/74(5)
2.					GST DRC 2	Summary of Statement
					GST DRC 3	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement.
					GST DRC 4	Acknowledgement of acceptance of payment made voluntarily
					GST DRC 5	Intimation of conclusion of proceedings
					GST DRC 6	Reply to the show cause notice
					GST DRC 7	Summary of the order
					GST DRC 8	Summary of Rectification/ Withdrawal order

General provisions relating to determination of tax

- **Section 75 (4)** :- An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
- **Section 75 (5)**:- The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.
- **Section 75 (6)**:- The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- **Section 75 (7)**:- The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the ground specified in the notice.

Other provisions relating to Assessment

▪ **Section 160:- Assessment proceedings, etc., not to be invalid on certain grounds.**

- (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission. If these are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.
- (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.

▪ **Section 169:- Service of notice in certain circumstances.**

Any decision, order, summons, notice or other communication shall be served by any one of the following methods.

- Tendering it directly or by a messenger
- By registered post or speed post
- By sending a communication to his e-mail address provided at the time of registration
- By making it available on the common portal
- By affixing it in some conspicuous place at his last known place of business or residence or by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

**THANK
YOU**