

# Audit, Assessment & Appeal Proceedings under Sales Tax Laws

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# Proceedings in Tax Laws

**Proceedings:** A particular step or series of steps in the enforcement of laws or regulations

## 03 Players in Proceedings:

Tax Department:	Responsibility to Ensure Implementation of Tax Laws
Tax Payers:	Obligation to Make Compliance of Tax Laws
Tax Laws:	To be Complied with by Taxpayers & Tax Department

**Nature of Proceedings:** Registration, Payment of Tax; Adjustment, Returns, etc.  
Audit, Assessment, Appeal, etc.



# AUDIT INQUIRY & INVESTIGATION

# Audit, Inquiry & Investigation- Meanings

## **Audit**

“A formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards.” [Black Law Dictionary – 9<sup>th</sup> Edition]

“Audit is a tool strategically monitors the regime of sales tax and is primarily geared to decipher tax evasion from amongst the pool of taxpayers. It is a departmental surveillance tool for sniffing out tax that has gone unpaid.” [LHC judgment reported as PTCL 2014 CL 726]

## **Inquiry –**

“Inquiry is the aiming at or discovery of truth by question, either formal, verbal interrogation, or a recourse to the proper means and sources of knowledge when the object has been shaped into a question or problem for solution.” [Advanced Law Lexicon Book 2, 3<sup>rd</sup> Edition 2005]

## **Investigation**

“Investigation means search for material and fact in order to find out whether or not an offence has been committed.”

# Types of Sales Tax Audits under Federal Sales Tax Act, 1990 & Allied Rules

- ❑ Routine/ Desk Audit of Sales Tax Records – Section 25 of STA
- ❑ Selection of Cases for Audit- 72B of STA read with Chapter VIA of Sales Tax Rules, 2006
- ❑ Investigation/Enquiry under Sections 38, 38A, 38B & 40B
- ❑ Pre or Post Refund Audit - Section 10 of STA– Chapter-III of Sales Tax Rules, 2006
- ❑ Audit by Special Audit Panels under Section 32A of STA read with Chapter VI of Sales Tax Rules, 2006
- ❑ Investigation by Directorate General of Intelligence and Investigation-IR [refer SRO 1301(I)/2018, dated 29 October 2018]

# Types of Sales Tax Audits under Federal Sales Tax Act, 1990 & Allied Rules

- ❑ DTRE Audit of Sales Tax Records –
- ❑ Deregistration Audit- Section 21 of STA read with Rule 11 of Sales Tax Rules, 2006

# Tax Audit – Section 25 of STA

*In terms of Section 24, records of last 6 years to be kept and maintained by the registered person which may be audited by Officer of Inland Revenue*

- ❑ Self Assessment Scheme backed by Audit; Self-assessment system through neutral and impartial tool of audit under Section 25 of 72B

## ***03 Steps are followed by Officer for Audit & Related Exercise***

- ❑ CIR or his authorized Tax Officer can requisition statutory records or access the records / computers.
- ❑ On the basis of records, audit can be conducted once in a year. Records can be re-audited, if audited previously by Auditor General of Pakistan
- ❑ Audit Procedures laid down under Para 39 of STGO No. 3 of 2004, dated 12 June 2004.
- ❑ Show Cause Notice issued & proceedings under Section 11 commenced if department not satisfied with taxpayer's response

## Selection of Cases for Audit by Board – S-72B

- ❑ Board is empowered to select cases for audit on random or parametric basis.
- ❑ Section 72B was under litigation where varied interpretations were given by Hon'ble Lahore and Islamabad High Courts. Hon'ble IHC held that Commissioner can exercise his authority independently to initiate audit without selection by the Board.
- ❑ Based on decision of LHC, the audit notices were set aside and specific directions were given to the Board after framing parameters for selection of audit.



## Investigations / Inquiry – Section 38

- ❑ Section 25 itself provides authority of initiating investigation or inquiry under Section 38 of STA in cases of tax frauds.
- ❑ Wide discretion of authorized officer acting on behalf of the Board or Commissioner to access business premises, stocks, records, etc. of Registered Person
- ❑ Onus lies on FBR / CIR to prove the tax fraud according to the definition of term 'tax fraud';
- ❑ Section 38 does not provide authority to adjudicate cases, as such assessment/recovery can be enforced through Section 11 of STA by the concerned LTU/CRTO/RTO.

### Question:

- ✓ Section 38, Whether evidence of tax fraud to be furnished by tax department?

# Investigations / Inquiry – Sections 38A, 38B & 40B

Section	Jurisdiction of authority	Compliance by	Nature of record to be produced / Work to be Done	Event for production of record
38A	Commissioner	Any Person	Information or Statement	Inquiry or Investigation in Case of Tax Fraud
38B	Assistant Commissioner  FBR	Any Person	Documents or Records	Relevance to Audit, Inquiry or Investigation  Formulation of Policy or Broadening of Tax
40B	Officer of Inland Revenue be Posted upon Board's Approval	Registered Office Premise	Not Required	Monitoring of Production, Sales & Stock

**Question:**

- ✓ Notice issued by Officer below Commissioner under Section 38A?
- ✓ Notice to produce record in general under Section 38B. Legality?..

# Pre-Refund Audit- Section 10 of STA read with Rule 29 of ST Rules, 2006

- ❑ Input tax paid by a taxpayer on account of zero rated local supplies or exports made during a tax period is refundable.
- ❑ Audit or Investigation for inadmissible refund claim to be completed in 60 days or with extension in 120 days but maximum of 9 months – Section 10
- ❑ Audit or Inquiry initiated in respect of amount not cleared by system [CREST] or for any other reason to establish genuineness and admissibility of the claim after seeking approval from the concerned Additional Commissioner
- ❑ Show Cause Notice issued for the amount found not admissible

# Post Refund Audit- Rule 36 of ST Rules, 2006

- ❑ After disposing of the refund claim, the officer incharge to forward the relevant file to the Post Refund Audit Division for post-sanction audit and scrutiny:
  - ✓ verification of input tax payment by respective suppliers, and
  - ✓ compliance of section 73 of the Sales Tax Act 1990
- ❑ Scrutiny of refund sanctioned on basis of risk based selection
- ❑ Post Refund Audit Division to send his findings to the concerned Refund Division and Show Cause Notice issued, if necessary

## Audit by Statutory Auditors- Section 8B

- ❑ In relation to a tax period, the taxpayer is not allowed to adjust input tax in excess of 90% of the output tax for that tax period
- ❑ The remaining 10% may be claimed after the corporate sector taxpayers furnish a statement from statutory auditors along with annual audited accounts Showing value additions less than 10%. Such refund is sanctioned on yearly basis in the 2<sup>nd</sup> month following the end of the financial year of the registered person.
- ❑ The non corporate sector is awarded refund only after departmental audit

The Duty & Tax Remission Scheme for Exports 2001 (DTRE) allows both the exporters and indirect exporters to procure duty / tax free goods to be solely used in exports

***Following data is Audited:***

- ✓ Whether the registered person has correctly accounted for the goods for which exemption was awarded by the department
- ✓ Whether stock reconciliation supports the actual / export data
- ✓ Whether the production capacity declared by the taxpayer corroborate with the quantity exported
- ✓ Whether the stipulations of the export order complied with and there is no further claim from the importer
- ✓ Whether the goods were purchased from the suppliers against exempt invoices
- ✓ Whether the percentage of wastage, as disclosed by the taxpayer, is correct according to the business process
- ✓ Whether or not IOCO has any adverse inference regarding the stocks, export or the wastage

# Audit by Special Auditors

- ❑ Audit by Chartered Accountants of Cost & Management Accountants. Special Auditor may conduct audit of records already examined by Department
- ❑ Audit to be conducted as per Terms of Reference
  - ✓ whether the records, tax invoices and monthly returns have been maintained, issued or furnished correctly by the registered person;
  - ✓ whether the monthly returns furnished by the registered person correctly reflect that all taxable supplies in the tax period as revealed by the records and tax invoices,
  - ✓ all input tax, output tax and the net amount of sales tax payable or refundable are in accordance with the Act and are duly substantiated by the records required to be maintained for the purpose

# Audit by ADRC

*Section 47A facilitates the formation and mechanism of ADRC whereby any dispute may be brought for resolution*

*Upon ratification by the FBR through a notification, out of court settlement binding upon FBR and taxpayer*

Cases where the ADRC has ordered audit of 3rd Parties' Records and Information:

- ✓ Dispute among 2 or more taxpayers' over the veracity of information
- ✓ Dispute involve agreement(s) or contract(s) entered with 3rd parties
- ✓ To confirm value of supply declared by sizable firms operating in a particular sector
- ✓ Input Tax previously claimed and awarded to the taxpayers

Legality of Audit of 3rd Party ?



# Audit Due to Blacklisting / Suspension of Registration

The Commissioner may suspend registration of taxpayer if it is confirmed that he has:

- ✓ committed tax fraud, or
- ✓ evaded tax, or
- ✓ failed to deposit the tax due on his supplies despite having
- ✓ recovered it from the respective buyers or recipients of such supplies

Removal from the list of suspected / blacklisted units only after departmental audit

Audit may extend to suppliers and buyers of the blacklisted / suspended person to ascertain whether any inadmissible inputs or refunds have been claimed by them

Where the case is not established against a suspected person, the Commissioner shall issue an order revoking the blacklisting or suspension of registration

# De- Registration Audit

Every registered person would be de-registered from the tax net:

- ✓ who ceases to carry on his business, or
- ✓ whose supplies become exempt from tax, or
- ✓ who do not file tax returns for a consecutive period of 6 months

# De- Registration Audit

- ✓ After successful completion of audit or enquiry, Commissioner will order to cancel the registration of such person from such date as may be specified but not later than 3 months from the date of such application or the date all the dues outstanding against such person are deposited by him, whichever is the later
- ✓ In case of query, tax liability determined by audit observation / show cause notice in the light of Section 11, or 49
- ✓ Final Return to be filed under Section 28
- ✓ De-registration Certificate Issued!



# AUDIT GUIDELINES

# Policy Matters

- ❑ The routine scheduled audit of any registered person shall be conducted only once during a financial year
- ❑ In exceptional circumstances and under the specific instructions by
- ❑ the Commissioner, a particular registered person can be re-audited for that financial year or within that financial year
- ❑ In case of composite units manufacturing and supplying excisable and sales taxable goods, a joint audit will be conducted by the team of officials of Sales Tax and Excise

# Audit Procedure

- ❑ All correspondence, notices and orders issued by the tax office, which are sent to the registered persons or any other person, should bear the seal and signature with telephone / fax numbers and e-mail address of the concerned audit officer
- ❑ All senior auditors and auditors required to affix their signatures on records checked during the audits with official seals
- ❑ In case of routine audit, the concerned Deputy / Assistant Commissioner is required to forward the audit report to the registered person within 4 weeks of submission of the report
- ❑ After approval of the audit report, the senior auditor / auditor is required to issue a signed and sealed certificate of completion of audit to the registered person, as per prescribed format:

# Audit Completion Certificate

This is to state that the audit of M/s. \_\_\_\_\_ (address), bearing Sales Tax Registration No. \_\_\_\_\_, has been carried out by the undersigned on a test basis for the Period / Year ended \_\_\_\_\_.

The Audit has been performed on a routine basis as per the provision of Sales Tax Act 1990 and the schedule issued by the Assistant Commissioner, Audit Division \_\_\_\_\_ for the month of \_\_\_\_\_.

**SENIOR AUDITOR / AUDITOR**

# Sales Tax Audits- Section 28 of Sindh Sales Tax on Services Act, 2011



- ❑ Self assessment scheme backed by audit- Section 28
- ❑ Investigations, Inquiry & Monitoring- Section 52, 54, 26 & WTH Rules
- ❑ Key Differences: Audit under Section 28 of SSTSA & Section 25 of ST Act



## *Basis of Departmental Audit [Rule 3 of Audit Rules-PRA]*

- ❑ Irregular or abnormal fluctuations in input tax adjustments including carry forwards;
- ❑ Non or short payments of tax amounts declared on the monthly returns or other declarations;
- ❑ Unusual variations in inventories;
- ❑ Habitual tendency of filing short or misfiled returns;
- ❑ Sudden or unexpected downward changes in turnover; and
- ❑ Other cogent factor evident from the taxpayer's computer profile over doubts of tax evasion



## Pre Audit Handling:

- ❑ Field Formation Jurisdiction issues,
- ❑ Separate Audit Division,
- ❑ Examination of Financial Statements for Period under Audit
- ❑ Other information-Website, Production Process & Capacity, Products Marketed, Licensing conditions/regulations, industry/sectorial information, Net Tax Position some illustrations



## Pre Audit Handling:

- ❑ Understanding Facts/ Client's Business Reasons for Audit as Confirmed by LHC vide Judgment in WP
- ❑ Examining Records before Submission at Tax Office
- ❑ Time Limitation for Completion of Audit,
- ❑ Banks Statements-Unusual credit entries, recon with declared sales & other issues



## Post Audit - Handling

- ❑ Audit observation blessing in disguise helps to either avoid process of adjudication or restrict the quantum of demand to the extent of contentious / genuine issues;
- ❑ Not obligatory upon tax officers to issue audit observation prior to issue of show cause notice.
- ❑ Understanding of Facts/Client's Business
- ❑ Discussion with client on departmental observation



## Post Audit - Handling

- ❑ Identify the disputed areas
- ❑ Estimate the Potential Exposure
- ❑ Evaluate option of paying obvious tax liability before SCN issuance

# ASSESSMENT OF SALES TAX

# Audit, Inquiry & Investigation- Meanings

## **Audit**

“A formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards.” [Black Law Dictionary – 9<sup>th</sup> Edition]

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## **Investigation**

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## ***Disagreement between Taxpayers & Tax Collectors Over:***

- ✓ Quantification of Tax Payable / Paid; or
- ✓ Interpretation / Understanding of Tax Laws – Resulting Short / Non-Payment of Tax; or
- ✓ Admissibility of Input Tax Adjustment or Refunds
- ✓ Levy of Penalty / Default Surcharge
- ✓ Factual & Legal Disputes: Registration, Revision of Return, etc.



## Assessment Proceedings

- ✓ Disagreement Results into Issuance of Show Cause Notice & Resultant Assessment Order / Order in Original by Tax Officer
- ✓ To Resolve such Disagreements, Federal & Provincial Tax Laws have introduced Provisions to file Appeal by Taxpayers / Aggrieved Persons against such Assessment Order / Order in Original

## Assessment of Tax– Section 11 of ST Act, 1990

- ❑ Issuance of Show Cause Notice by Tax Officer within 5 Years of default because of any 05 following situations:
  - ✓ Non-Filing of Sales Tax Return or Short Payment of Tax Due to Miscalculation. An officer of Inland Revenue shall, after a notice to show cause to such person, make an order for assessment of tax including imposition of penalty and default surcharge.
  - ✓ Non / Short Payment of Sales Tax or Claiming Inadmissible Refund or Input Tax for reasons other than Miscalculation. an order for assessment of tax or determine the amount of tax credit or tax refund including imposition of penalty and default surcharge.
  - ✓ Non / Short Payment of Sales Tax or Claiming Inadmissible Refund or Input Tax because of Collusion or Deliberate act.
  - ✓ Non / Short Payment of Sales Tax or Claiming Inadmissible Refund or Input Tax because of Inadvertence, Error or Misconstruction.
  - ✓ Non-Withholding of Sales Tax (as per Sales Tax Withholding Schedule)
  - ✓ If Registered Person fails to file a return, the tax officer is empowered to determine Minimum Tax Liability of Registered Person in term of Sales Tax General Order No. 3 of 2004, dated 12 June

## Assessment of Tax – Section 11 of ST Act, 1990

- ❑ Taxpayer must be awarded an opportunity of being heard.
- ❑ Order-in-Original must be issued within 120 days, extendable by CIR upto 90 days, excluding the time lapsed due to stay proceedings or ADRC or adjournment applied by the taxpayer [not beyond 60 days].
- ❑ Definition of 'tax fraud' describes the cases which tantamount to deliberate evasion of tax. If conditions are not satisfied, the tax officer cannot impose excessive penalties on the registered person.

### **Practical Questions:**

- ✓ Issuance of Show Cause– Demand of Default Surcharge & Penalty without Principal Sales Tax
- ✓ Invoking Section of Tax Fraud,
- ✓ Difficult for tax officer to distinguish Cases of willful & non-willful evasion

# Short Paid Tax without Show Cause Notice – Section 11A of ST Act, 1990

- ❑ Lesser Payment of Tax than Due Tax as Indicated at Return
- ❑ Such Short Paid Tax to be Recovered from Registered Person by Stopping Goods from Business Premises and Attachment of Business Bank Accounts without Giving Show Cause Notice.
- ❑ Show Cause Notice will be Served Subsequently to Adjudge Actual Tax Liability

Legality of Section 11A?

# Assessment Giving Effect to an Order Section 11B of ST Act, 1990

- ❑ Section 11B is inserted vide Finance Act, 2018 under the Sales Tax Act, 1990.
- ❑ Section 11B seeks to provide issuance of appeal effect order within prescribed time limit for appellate order as issued by appellate forums such as Commissioner, Appeals, Appellate Tribunal, High Court or Supreme Court
- ❑ Identical provision at Section 124 of the Income Tax Ordinance, 2001.

## Definition of Appeal Effect & Brief History

A concept of providing practical implication to Appellate Order

In cases related to sales tax, the taxpayers were facing hardships in getting appeal effect proceedings finalization from tax department within reasonable time from the date of appellate order.

Unlike Income Tax Law, no such provision existed under ST Act prior to Finance Year 2018 for providing appeal effect to any appellate order.

## Time for Appeal Effect Order

- ❑ The appeal effect has to be given by the concerned tax officer within one year from the end of the financial year in which the order of the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court, as the case may be, was served on the concerned tax officer.
- ❑ Where, an order of assessment is set aside wholly or partly and the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is directed to pass a new order of assessment, such new order has to be passed within one year from the end of the financial year in which the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is served with the order.
- ❑ The above time limitation shall not apply to the cases where an appeal or reference has been preferred against the order passed by Appellate Tribunal or a High Court.

# Assessment Giving Effect to an Order Section 11B of ST Act, 1990



## Issues:

- ✓ No Right of Appeal for Appeal Effect Order before Appellate Forum under ST Act as at Section 127 of Income Tax Ordinance 2001
- ✓ Time limit of one year prescribed in the amendment should ideally commence from the date of order rather than from the date of service of the order. Delay in service of orders would delay issuance of appeal effect orders.





## Wholly/Partially Remand Back Proceedings

Lets assume that an order either fully or partially remanded back from Tribunal for de-novo consideration having date 07.6.2019 and which was served on the concerned Commissioner/officer on 28.6.2019 and was received by him on said date.

As the order was received by the Commissioner/officer on 28.6.2019, a new assessment order under Section 11B was to be passed within one year from the end of financial year i.e. by 30.6.2020.

Meaning thereby, officer can only proceed with remand back proceedings and pass fresh order within one year from the date of receipt of Tribunal order. The order passed after the period of one year will be time barred and void-ab-initio.



Unfortunately, this Section does not provide any implication or direct penal action if officer is not complying with the provision of Section 11B.

Unlike in a case discussed in previous slide, for refunds, 11B is not protecting or facilitating the tax payer in any manner if officer does not pass order within one year.

Ultimately, taxpayer has left with no other option to either go to FTO or High Court or you all know alternate options for getting refunds.



## Rule to determine Retrospective effect under Section 11B

There are different case laws to determine retrospective/prospective application of any provision or law. Such as:

- ❑ A penal provision cannot operate retrospectively [(1984) 50 Tax 187 (H.C. Kar)]
- ❑ Subordinate legislation can be applied retrospectively only if expressly mentioned [1976 34 Tax 10 (H.C)]
- ❑ Beneficial notification has retrospective effect [2005 PTD 676]

- ❑ AC-SRB makes assessment of SST liability on the basis of audit, inquiry, inspection or otherwise.
- ❑ In absence of information / return / records, AC-SRB can assess the SST liability on the basis of available information / material, determining the Minimum Tax Liability. MTL is not final liability, which is determined as result of audit, special or forensic audit.
- ❑ In case of Non-Filing of Sales Tax Return; Non / Short Payment of Sales Tax Liability,.
- ❑ An officer of SRB shall, after a notice to show cause to such person in default within 08 years from the end of the tax period, make an order for assessment of tax including imposition of penalty and default surcharge.
- ❑ Amendment in assessment order is also authorized

# Assessment of Tax – Section 47 of Sindh Tax on Services Act, 2011

- ❑ Non / Short Payment of Sales Tax or Claiming Inadmissible Refund or Input Tax because of Collusion or Deliberate Act.
- ❑ Non / Short Payment of Sales Tax or Claiming Inadmissible Refund or Input Tax because of Inadvertence, Error or Misconstruction.
- ❑ Non-Withholding of Sales Tax (as per Sales Tax Withholding Rules)
- ❑ Show cause notice can be issued within 8 years and Order is required to be passed within 180 days, extendable for 60 days excluding the time of adjournments.
- ❑ .Generally, SRB makes assessments on the basis of desk audits focusing on disclosures as per audited financial statements / accounts.
- ❑ **Practical Questions**
  - ✓ Sections 23 & 47 of SSTSA & Section 11 of ST Act
  - ✓ Sales Tax Withholding Prior to 30 June 2019
  - ✓ Demand of Sales Tax Liability through Notice prior to Registration
  - ✓ Legality of Show Cause Notice Requiring to obtain Sales Tax Registration with SRB

❑ **Revision by the Commissioner SRB**

- (1) The Commissioner SRB may, of his own motion or on an application made in writing by a registered person for revision, call for and examine the record of any proceeding under this Act or the rules made thereunder in which an order has been passed by an officer of the SRB other than the Commissioner (Appeals) SRB.
- (2) If after examining the record under sub-section (1), the Commissioner SRB is not satisfied with the legality or propriety of any order passed by an officer of the SRB, the Commissioner SRB may make such revision to the order as he may think fit.
- (3) No order imposing or enhancing any penalty or fine requiring payment of a greater amount of sales tax than the originally levied amount shall be passed unless the person affected by such order has been given an opportunity of showing cause and of being heard.

❑ \*Note: Identical Provision at Section 45A of Sales Tax Act, 1990

## \* Assessment of Tax – Section 55 of Sindh Tax on Services Act, 2011

### □ Revision by the Commissioner SRB

- (4) The Commissioner SRB shall not revise any order under sub-section (2) if:--
- (i) an appeal under section 57 is pending or the matter has been referred to resolution under section 65;
  - (ii) where an appeal against the order lies under section 57, the time within which such appeal may be made has not expired or the person has not waived his right of appeal;
  - (iii) in the case of an application made by a person, the application has not been made within ninety days of the date on which such order was served on the person, unless the Commissioner SRB is satisfied that the person was prevented by sufficient cause from making the application within the time allowed;
  - (iv) in the case where the Commissioner SRB has on his own motion called for and examined an order passed by a sub-ordinate officer, more than five years have lapsed from the date of the original order.
- (5) No application for revision of an assessment shall be made under sub-section (1) unless the amount of tax due under the assessment that is not in dispute has been paid by the taxpayer.

### □ **\*Note: Identical Provision at Section 45A of Sales Tax Act, 1990**



## \*Assessment of Tax – Section 56 of Sindh Tax on Services Act, 2011

### ❑ Revision by Sindh Revenue Board

(1) The Board may, of its own motion, call for and examine the record of any departmental proceedings under this Act or the rules made there under for the purpose of satisfying itself as to the legality or propriety of any decision or order passed therein by an officer of the SRB other than the Commissioner (Appeals) SRB.

(2) If after examining the record under sub-section (1), the Board is not satisfied with the legality or propriety of any decision or order passed by an officer of the SRB, it may pass such order as it may think fit.

(3) No order imposing or enhancing any penalty or fine requiring payment of a greater amount of sales tax than the originally levied amount shall be passed unless the person affected by such order has been given an opportunity of showing cause and of being heard.

(4) No proceeding under this section shall be initiated in a case where an appeal under section 57 is pending or the matter has been referred to resolution under section 65.

(5) No order shall be made under this section after the expiry of five years from the date of the original decision or order of the sub-ordinate officer referred to in sub-section (1).

**\* Note: Identical Provision at Section 45A of Sales Tax Act, 1990**



# Handling Sales Tax Adjudication

- ❑ Show Cause Notice Not Casual Document; Its Ingredients as Held by Tribunal in Case at 2017 PTD (Tribunal) 70
  - ✓ Each Aspect of Allegations with Complete Details
  - ✓ Time Limitation,
  - ✓ Jurisdiction,
  - ✓ Detail of Sales Tax Liability Framed [Complete Charge Sheet]
  - ✓ Relevant Sections & Legal Provisions; Not to have Multiple Sections
  - ✓ Complete Particulars of Assessing Officer, Signature, Stamp, etc.
  - ✓ Independent Judicial Mind
  - ✓ Allegations Levelled to be Specific & Not Vague
  - ✓ Exparte Order
  - ✓ Proper Opportunity of Hearing, etc.

# Handling Sales Tax Adjudication

## Drafting Skill/ Drafting Replies



- ❑ Reply to show cause notice generally emerges as a vital source to build up a strong case before the adjudicating / appellate / litigation forums.
- ❑ Drafting Replies to SCN- Approach
  - ✓ Addressee Name- illustration: Mr., Mrs., Syed, Dr. [Name's Spelling]
  - ✓ Introductory paragraph, reference to notices
  - ✓ Command of Facts
  - ✓ Jurisdictional Issues
  - ✓ Time Limitation
  - ✓ Short Comings in Notice
  - ✓ Other legal objections: Invocation of Legal Provisions; Relevant Provisions
  - ✓ Incorporating case laws relied upon in replies
  - ✓ Factual Submissions- Annexures
  - ✓ Prayer- Closing paragraph

# Handling Sales Tax Adjudication

- ❑ Fact Finding Exercise Comprehensive.
- ❑ Invocation of Legal Provisions
- ❑ Evaluate option of paying obvious tax liability before / after SCN issuance to get relief from default surcharge and penalty before appellate forum
- ❑ Always determine the liability taking effect of input tax, if any, while responding to show cause notice or assessment notices.
- ❑ Quality of presentation of documents and reconciliation help to avoid adverse orders.
- ❑ Imposition of default surcharge and penalties should always be challenged if the tax officer has not proved the malafide intent on the part of taxpayer to evade the tax.
- ❑ Documenting the hearing proceedings and attendance is also critical.
- ❑ Importance of taking global view.
- ❑ Use of connotation 'without prejudice' while arguing the grounds either factual or legal.

# Handling Sales Tax Adjudication

## Interpersonal Skills/Attending Hearings



- ❑ Assessing whether personal hearing is required
- ❑ Close coordinated efforts pay a lot during adjudication proceedings.
- ❑ Keep Context in Mind
- ❑ Art of Advocacy
- ❑ Prior knowledge about Officer-Some illustrations
- ❑ Appearance before officer
- ❑ Setting the tone of hearing
- ❑ Attending hearing with Client Representative



We refer to your Show Cause Notice No. LTO-COM-Audit/2019-20/OPL/2302 dated 26 July 2019 issued to our above client [the company] whereby it was alleged to have claimed inadmissible input tax of Rs.----- in relation to goods and services along with short payment of sales tax on supply of taxable goods. Hence, your office has issued SCN in term of Section 11(2) of the Act whereby the company has been charged with the contravention of Sections 2(44), 2(46)(b), 3(1), 3(1A), 3(7), 6, 7, 8, 23, 26, 33 and 34 of the Act read with Section 3 of Federal Excised Act, 2005.

Your office has required the company to explain the reason for inadmissible input tax adjustment and short payment of sales tax of Rs.----- for the periods from 2017 to 2018 on or before ----- to your office.

At the outset, we furnish reply to SCN for your kind perusal as under.