

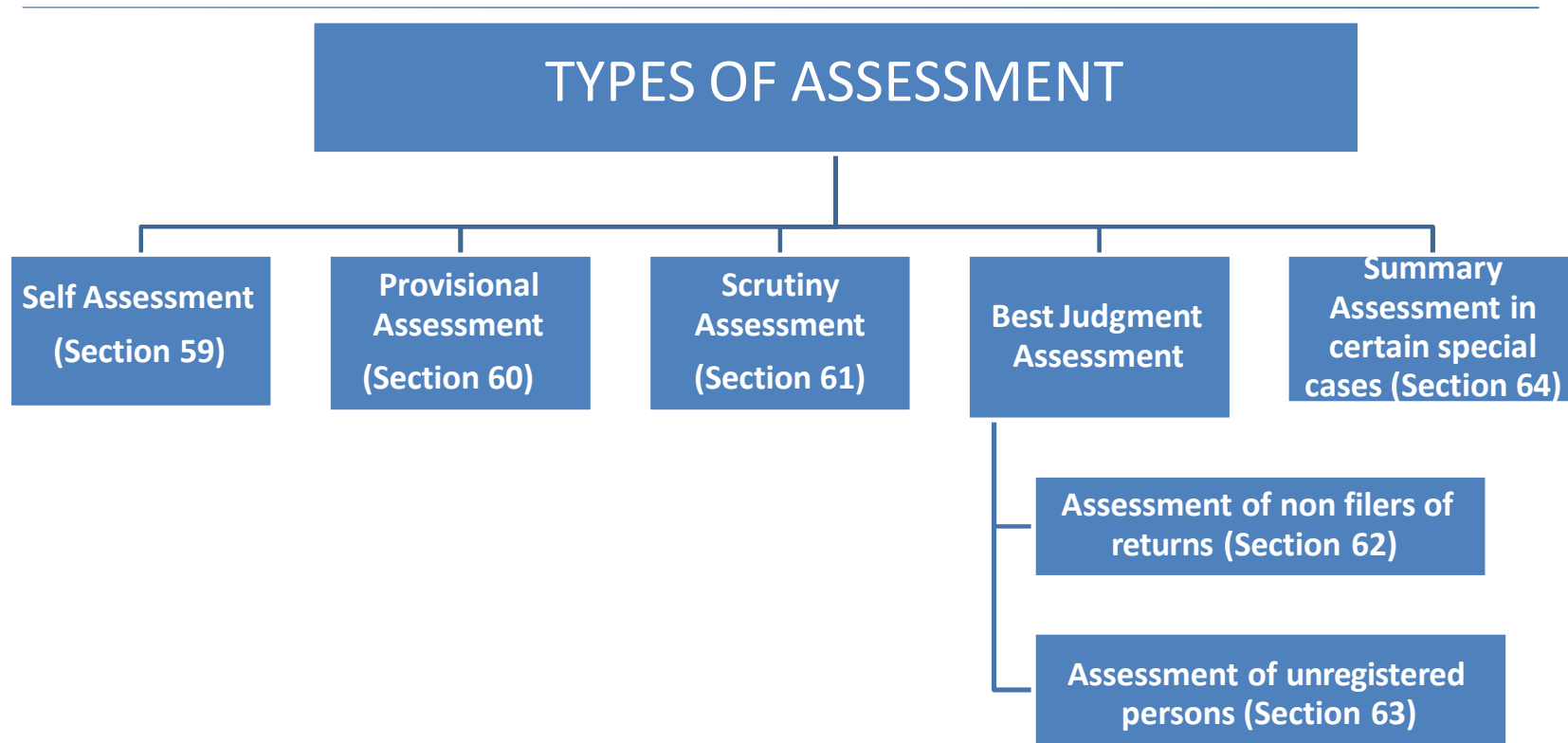
SHOW-CAUSE NOTICES, DEMANDS & RECOVERY UNDER GST

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AGENDA

- Assessments under GST
- Demands and Recovery
- Notices
- Appeals and Revision

ASSESSMENTS UNDER GST



SELF-ASSESSMENT (Section 59)

- Purpose
 - Ease of assessment procedure for *Registered* taxable person

- Procedure
 - Registered taxable person shall
 - himself assess the taxes payable under this act; and
 - furnish a return for each tax period (Returns u/s 39)

PROVISIONAL ASSESSMENT (Section 60)

➤ Purpose

- Provisional assessment applies where the taxable person is unable to determine the value of goods/ services; or determine the rate of tax applicable on supply

➤ Procedure

- Taxable person will submit a request to the proper officer in writing giving reasons for payment of taxes on provisional basis; upon receipt of which proper officer may allow payment of tax on provisional basis at such rate or value as specified by him;
- Taxable person is required to execute a bond and may also be required to execute surety or security as proper officer deems fit.
- Proper officer shall pass the final assessment order within the period not exceeding 6 months; period may be extended either by Joint/ Additional commissioner (a further period not exceeding six months) or by Commissioner (for such further period as he may deem fit) on sufficient cause and for reasons recorded in writing.

➤ Interest

- Interest applicable on additional tax amount payable pursuant to the final assessment order, at the rate specified in section 50(1). In case of tax refund, interest on such refund shall be paid as provided under Section 56.

SCRUTINY ASSESSMENT (Section 61)

Cases where satisfactory explanation to discrepancies are submitted

➤ Purpose

- Scrutiny of a filed return (and related particulars) by a proper officer to verify its correctness

(Related particulars would primarily mean invoice wise details of inward and outward supplies along with commodity codes.)

➤ Procedure

- In case of discrepancy, proper officer shall inform the taxable person of such discrepancies noticed and seek his explanation
- In case explanations are found acceptable, the taxable person shall be informed and no further action is taken

SCRUTINY ASSESSMENT (Section 61)

Cases where no satisfactory explanation to discrepancies are submitted

- If:
 - satisfactory explanation is not furnished within 30 days of the date of informing the taxable person (or further period as permitted to him); or
 - taxable person accepts discrepancy but fails to take corrective action within a reasonable period
 - proper officer may initiate appropriate action including those under Section 65 (**Audit** by Tax Authority), 66 (**Audit by CA** or Cost Accountant) or Section 67 (Power of **inspection**, search and seizure), or
 - proceed to determine tax under section 73 (determination of tax not paid/ short paid/ erroneously refunded etc – **Non Fraud case**) or Section 74 (determination of tax not paid/ short paid/ erroneously refunded etc – **Fraud case**)

BEST JUDGEMENT ASSESSMENT

Assessment of non filers of returns (Section 62)

➤ Purpose

- To assess the tax liability of taxable person who failed to furnish the prescribed return under Section 39, 45 or 46

➤ Procedure

- Where registered taxable person fails to furnish the return,
 - the proper officer may after allowing a period of 15 days from the date of notice,
 - proceed to assess the tax liability to the best of his judgment
- Tax liability assessment by proper officer shall take into account all the relevant material available or gathered by such officer;
- Time limit for issue of assessment order:
 - Five years from the due date for furnishing the annual return
- Assessment order (made under Section 62) shall be deemed as withdrawn where the taxable person furnishes a valid return within 30 days of service of the said assessment order.

BEST JUDGMENT ASSESSMENT

Assessment of unregistered persons (Section 63)

- Purpose
 - To assess tax of the taxable persons who has failed to obtain registration despite of being liable to be registered, the proper officer shall conduct assessment for the period during which the assessee remains unregistered.

- Procedure
 - Show cause notice to be issued
 - Reasonable opportunity of being heard to be allowed to the said taxable person
 - Proper officer to assess the tax liability to the best of his judgment
 - Limitation: Assessment order to be *issued* within 5 years from the due date of filing the annual return of the year to which the tax not paid relates.

SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES (Section 64)

- Purpose
 - Tax assessment in special cases to protect the interest of revenue

- Procedure
 - Proper officer may
 - on any evidence showing a tax liability of a person coming to his notice;
 - with previous permission of Additional/ Joint Commissioner;
 - proceed to assess the tax liability of such person

- Premise:
 - Proper officer can issue an assessment order if he has sufficient ground that any delay will adversely affect the interest of revenue
 - *In case taxable person is not ascertainable and the liability pertains to goods, the person in charge of such goods shall be deemed to be the taxable person.*

- Withdrawal of order:
 - If on application by the taxable person or *suo moto* Additional/ joint commissioner considers that order under section 64 is erroneous, he may withdraw such order and follow procedure laid in Section 73 or 74.

AUDITS UNDER GST

AUDITS UNDER GST

AUDIT BY TAX AUTHORITIES (S.65)

- Audit prescribed for all assesses. To be conducted:
 - for businesses and at frequencies to be prescribed;
 - at business premises or at office of taxable person;
 - with prior intimation of at least 15 days before initiation of audit
- Manner of Audit:
 - To be carried out in a transparent manner and to be completed within 03 months from the date of commencement of audit, i.e., from the date of making information available by the assessee.
 - Period may be increased upto a further period of 06 months for reasons to be recorded in writing.
 - During audit facility for verification of books of accounts or other documents may be sought for and information and assistance may be required for timely completion of audit.
- On conclusion of audit:
 - Without delay, findings of audit, rights and obligations of taxable person and reasons for findings to be informed
 - If detected that tax remains unpaid/ short paid/ erroneously refunded or ITC erroneously availed, action under Section 73 or 74 may be initiated.

AUDITS UNDER GST

SPECIAL AUDIT (S.66)

- **Special Audit**
 - To be conducted by external agencies, i.e., Chartered Accountants and Cost Accountants nominated by the Commr.
 - It is in addition to audit under Section 65.
- **To be initiated when Deputy/Asst. Commr. due to:**
 - nature and complexity of a case; and
 - considering the interest of the revenue
 - find that the value is not declared correctly or credit is not availed within normal limits;
The concerned officer may direct such taxable person in writing to get his records and books of accounts verified by nominated professionals.
- **Nominated professional**
 - Shall submit a report within 90 days to the Deputy/ Asst. Commr. (time period may be extended on application)
 - Proper opportunity of being heard is to be granted to the taxable person, prior to using the information gathered for using in any proceeding under the Act or rules made thereunder.
 - In case of detection of tax not paid or short paid or erroneously refunded or input tax credit erroneously availed action under Section 73 or 74 may be initiated.
 - Expenses for audit to be determined and paid by the Commissioner.

DEMANDS AND RECOVERIES

Adjudication

Cases Not Involving Fraud, Suppression Etc. [Section 73]

Demand when made	<ul style="list-style-type: none">• Non payment / short payment of tax• Erroneous refund• Wrong availment or utilisation of input tax credit
Demand how made	To serve SCN to show cause why assessee should not pay: <ul style="list-style-type: none">• amount specified in the notice;• Interest u/s 50;• Penalty under the provisions of the Act.
Time limit to adjudicate and pass orders	3 Years from the due date for filing Annual Return of financial year in which tax was not paid.
Period before which SCN shall be issued	3 months prior to the date of passing the order

Time limit explained	Demand for the period	FY 2017-18
	Due date for filing ANNUAL RETURN	31st January 2020
	Maximum Time for issuance of SCN	31 st October 2022
	Adjudication order to be passed	31 st January 2023
Subsequent Periods	Instead of show cause notice, statement of demand would suffice.	
Where tax is paid with interest		
Before issue of SCN	No SCN to be issued ; No penalties to be imposed, proceedings deemed to be concluded. For balance amounts if any not paid, SCN may be issued	
Within 30 days of issue of SCN	No penalties to be imposed- Proceedings are deemed to be concluded	
After adjudication, where demands are confirmed	Tax + interest + Penalty of 10% on demand OR Rs. 10,000	

Adjudication

Cases Involving Fraud, Suppression Etc. [Section 74]

Demand when made	<ul style="list-style-type: none"> • Non payment / short-payment of tax • Erroneous refund • Wrong availment or utilisation of input tax credit <p>WITH INTENTION TO EVADE</p>									
Demand how made	To serve show cause notice and adjudicate after the reply / submissions of the assessee – Principles of Natural Justice to be followed									
Time limit explained	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Demand for the period</td> <td style="padding: 5px;">FY 2017-18</td> </tr> <tr> <td style="padding: 5px;">Due date for filing annual returns</td> <td style="padding: 5px; color: red;">31st January 2020</td> </tr> <tr> <td style="padding: 5px;">Due date for SCN</td> <td style="padding: 5px;">31st July 2024</td> </tr> <tr> <td style="padding: 5px;">Adjudication order to be passed</td> <td style="padding: 5px;">31st Jan 2025 (5 years from above due date)</td> </tr> </table>		Demand for the period	FY 2017-18	Due date for filing annual returns	31 st January 2020	Due date for SCN	31 st July 2024	Adjudication order to be passed	31 st Jan 2025 (5 years from above due date)
Demand for the period	FY 2017-18									
Due date for filing annual returns	31 st January 2020									
Due date for SCN	31 st July 2024									
Adjudication order to be passed	31 st Jan 2025 (5 years from above due date)									
Time limit in case of orders issued by the Appellate Authority or Courts	Orders to be issued within two years from the date of communication of directions									

Other Provisions

Voluntary tax payment	No SCN shall be issued, if Tax+ interest + 15% of the tax is paid as penalty and intimated to the officer before issue of SCN
Balance if any (where proper officer feels so)	Issue SCN for such balance amount
Tax + Interest paid + 25% of tax as penalty paid - Within 30 days	Proceedings of SCN are deemed to be concluded
After adjudication - where demands are confirmed and payment is made within 30 days of communication of the order	Tax + interest+ Penalty of 50% of tax <u>OR</u> minimum of Rs. 10,000

Certain issues on Show Cause Notice

Whether tax could be demanded without issue of SCN?

- Metal Forgings V UOI 2003 146 ELT 241 (SC)
- JK Synthetics Vs UOI 2009 234 ELT 417 DEL

Whether proceedings could go beyond SCN?

- Bhallarpur Industries 215 ELT 489
- Toyo Engineering – 201 ELT 513
- As per section 75(7), demand of duty cannot exceed duty demanded in notice

Whether a corrigendum to SCN could be issued

- After issue of SCN but before reply
- After reply but before PH
- After PH but before passing order - PENGUIN ELECTRONICS (P) LTD- 2005 (185) E.L.T. 194 (Tri.)

Certain issues on Show Cause Notice

Whether SCN should state specific allegations, supported by evidence?

- Based on assumptions or presumptions – SCN Not Valid - Oudh Sugar Mills case 2 E.L.T. J 172

Whether SCN could be challenged before High Court?

- Possible under Article 226 - based on facts and certain circumstances

Where a taxable person dies - Whether SCN could be issued on Legal representative?

- Reference to Section 93 of the CGST Act, 2017

- Shabina Abraham – 2015(322) E.L.T. 372 (S.C.)- No demand proceedings against legal heir

- CCE Vs. Dhiren Gandhi 281 ELT 64 (Kar)

Proper Officer – Section 2(91) read with Circular 03/3/2017-GST dated 05.07.2017 - Commissioner of Central Tax or Officer who has been assigned the function by the Commissioner in the Board

Invocation of Extended Period of 5 Years to Issue SCN

No demand beyond 5 years	M Square Chemicals – 231 E.L.T. 134 (S.C)
When 5 years period is available	Non payment / short payment / wrong availment of credit / Erroneous refund by reasons of fraud, willful mis- representation of facts, Suppression of facts to evade taxes

Illustrations

- Wrong classification of products knowingly to avail benefit of reduced rate / exemption
- Not accounting for outward supplies so as to reduce output tax liability
- Accounting of excess inward supplies knowingly to avail excess credit
- ❖ Every non payment/ short payment does not call for invocation of 5 year period- intention to evade must be present and to be proved by department
- ❖ When issue (on classification / valuation etc.) is decided by higher courts and the same is followed, extended period cannot be invoked
- ❖ Revenue Neutrality

JUDICIAL DECISIONS

- Golak Patel Volkart Limited Vs. CCE MANU/SC/0400/1987
 - Statutory scheme requires issue of show cause notice by the Central Excise Officer, response by the person served with the show cause notice and final determination by the order in original.
- CCE Vs. Mehta & Co. MANU/SC/0107/2011 and UOI. Vs. Madhumilan Syntex Pvt. Ltd. & Anr. MANU/SC/0550/1988
 - Issue of SCN is a condition precedent to raising an enforceable demand
- Canara Bank v. V.K. Awasthy MANU/SC/0249/2005
 - The principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi- judicial and administrative authority while making an order affecting those rights.
- State of Orissa v. Binapani Dei and Ors. MANU/SC/0332/1967
 - Even an administrative order or decision in matters involving civil consequences, the opportunity of personal hearing has to be granted.

JUDICIAL DECISIONS

- CCE, Bangalore vs. Brindavan Beverages (P) Ltd: MANU/SC/2645/2007
 - The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.
- Super Fashion Fasteners Pvt. Ltd. vs. CCE : MANU/CN/0199/2018
 - Having considered the rival contentions and on perusal of records, we find that the individual liability of duty alleged in the show cause notice and proposed to be recovered individually from M/s. Super and M/s. Omega has been arrived at on the basis of presumption that the clandestine activity was in the ratio of the consumption of electricity. Such a proposition is absurd and the quantification of individual liability is totally presumptive in nature. Therefore, we do not go into other arguments on merit and hold that the show cause notice is totally presumptive and relying on the ruling of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bangalore v. Brindavan Beverages Pvt. Ltd. (supra), we set aside the impugned order-in-original and allow all the appeals
- Kaur & Singh vs. C.C.E., New Delhi 1997 (4) ELT 289 (SC)
 - SCN must communicate to the addressee the specific allegation/charge and the basis for the demand of tax. The party to whom SCN is issued must be made aware of the allegations against it and that this is a requirement of natural justice.

JUDICIAL DECISIONS

- Lord Chloro Alkali vs. Special Director Enforcement Directorate MANU/DE/2692/2017
 - 16. Further, it is a settled principal of law that "Affirmati Non Neganti Incumbit Probatio", that is, "the burden of proof is upon him who affirms - not on him who denies".
- Bhagwan Jagannath Markad and Ors v. State of Maharashtra MANU/SC/1171/2016
 - "18. It is accepted principle of criminal jurisprudence that the burden of proof is always on the prosecution and the accused is presumed to be innocent unless proved guilty. The prosecution has to prove its case beyond reasonable doubt and the accused is entitled to the benefit of the reasonable doubt."
- Novamet Industries & Ors. v. UOI MANU/UP/0912/2007
 - Non-relied seized goods and documents should be released to the assessee, in cases where show cause notice is not issued, within six months from the date of the seizure. Once the show cause notice is issued to the party, the documents/records which have not been relied upon may be returned to the party under proper receipt.

JUDICIAL DECISIONS

- Vikas Gumber Vs. Commissioner of Customs MANU/DE/4998/2009
 - Departmental authorities are under obligation to release such documents as are not relied upon by them within a reasonable time
- Selvi Paper Mills Ltd Vs. CCE MANU/CC/0085/2012
 - Considering the fact that the appellants were not supplied with the un-relied upon documents, in that situation, the adjudicating authority is directed to supply the remaining documents which were seized and not relied upon to them appellants, so that the appellants shall be able to reconcile their records and thereafter the adjudicating authority will do the fresh adjudication. In view of this observation, the matter is remanded to the adjudicating authority with the direction to supply the non-relied upon documents to the appellants and thereafter fix a date for final hearing of the matter.

JUDICIAL DECISIONS

- G-Tech Industries vs. Union of India MANU/PH/1118/2016
 - 17. In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination.
 - 18. It is only, therefore,
 - (i) after the person whose statement has already been recorded before a gazetted Central Excise officer is examined as a witness before the adjudicating authority, and
 - (ii) the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,
 - that the question of offering the witness to the assessee, for cross-examination, can arise.
 - 19. Clearly, if this procedure, which is statutorily prescribed by plenary Parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the CCE, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof.
- Basudev Garg Vs. Commissioner of custom-2017 (48) STR 427- Delhi High Court
 - Cross-examination is the right.

JUDICIAL DECISIONS

- CCE, Meerut vs. Parmarth Iron Pvt. Ltd. [MANU/UP/2113/2010 : 2010 (260) ELT 514 (Alld.)
 - "Evidence-Cross-examination - Revenue if chooses not to examine any witnesses in adjudication, their statements are not considerable as evidence - Statements if relied, then persons whose statements relied upon have to be made available for cross-examination for evidence to be considered."
- Apex Court in [2015 (321) ELT A210] and Delhi High Court in the case of Shakti Zarda Factory (I) Ltd. [MANU/DE/1665/2004 : 2015 (321) ELT 438] and Saakeen Alloys Pvt. Ltd. [MANU/GJ/0467/2014]
 - Retracted statement is not admissible in evidence in absence of independent reliable evidence to corroborate the same.
- Balaji Vegetables Vs. CCE 1999 (108) ELT 802; Saphai Saw Mills Vs. CCE 1999 (109) ELT 197.
 - Even if the party has agreed to pay the duty during investigation stage, yet the adjudication of SCN (i.e. service of SCN, receiving reply to SCN, grant of reasonable opportunity of personal hearing and passing of adjudication order is must
- AR Plastic Vs. CCE 2004(171 ELT 413 and also Veera Spinning Mills Vs. CCE 2001(131)
 - Despite the fact that the duty has been deposited (either with protest or without protest), SCN is a must

JUDICIAL DECISIONS

- Prabhat Forging Vs. CCE 2002(139) ELT 720
 - No demand can be confirmed either upon Director or on partners unless SCN has been served upon them by the Department
- Pfizer Ltd GVs. CCE 2001(131) ELT 251 (Tri)
 - Similarly no tax and penalty can be confirmed on employee unless he had been served with SCN setting out his role in the commission of offence or evasion of duty
- Nityanand Nirmal Vs. CCE 1999(109) ELT 522 followed in CCE Vs. Sompura Ceramics 2001(130) ELT 195 (Tri).
 - In case of partnership firm, SCN must be served upon the firm and the service of notice only upon the partner is not a good service and shall not be deemed to be service upon partnership firm.
- Steel Ingots Vs. UJOI 1988 (360 ELT 529(MP): Ennore Steel Vs. UOI 1990(47) ELT 363 Madras
 - A letter issued by Supdt/AC asking the party to pay Tax/Duty is not a valid notice and is in violation of principal of natural justice
- J K Synthetics Vs. UOI 2009(234) ELT 417 (Delhi HC) and CCE Vs. Merchant Impex 2012(276)ELT 458 Karnataka DB
 - Every communication cannot be equated with SCN unless the communication contains all the necessary ingredients, as stated above in this para , of SCN

JUDICIAL DECISIONS

- Metal Forgings Vs. UOI 2003(146) ELT 241 SC
 - A communication sent by the Department either in the form of directions or suggestion or advice shall not be construed as SCN as SCN requires clear, specific unambiguous charge, alleged violation of law or rules, clear and specific demand of duty/tax/penalty and grounds for levy of penalty and above all, if the extended period is invoked, then the reasons/grounds for invocation of extended period
- Godrej Soap Vs. CCE 2004(174) ELT 35 (Three Member Bench)
 - SCN issued by a person who is not authorized to do so, SCN is void in totality and good part of the SCN, cannot be severed from the bad part.
- Hindustan Dyeing & Printing Works vs. Commissioner of C. Ex. (03.07.2013 - CESTAT - Delhi) : MANU/CE/0444/2013
 - Fairness of the adjudication requires the department to return back all the relied upon/non-relied upon documents. No reason on the part of the Revenue can justify such non-return of the documents. I really sometimes fail to understand as to what can be the objection of the Revenue for return of such seized documents, which they no longer require and which admittedly belong to assessee.
- (a) Sanghi Textiles Processors v. UOI 1993 (65) ELT 357; (b) Methodex Systems v. UOI MANU/MP/0486/2000;(c) Balakrishna Dass and Sons v. CC, New Delhi MANU/CE/4102/2001; and (d) PGO Processors Pvt. Ltd. v. CCE 2000 (122) ELT 25.
 - The non-supply of relied upon documents amounts to violation of principal of natural justice

JUDICIAL DECISIONS

- Santogen silk mills v CCE – 2003(157) ELT 208-CESTAT Mumbai & PGO Processors P. LTD v CE – 2000(122) ELT 26- Rajasthan High Court
 - merely making the relied upon documents available for inspection is not sufficient and copies of the relied upon documents have to be furnished:

JUDICIAL DECISIONS

- Scott Wilson Kirkopatrik (I) Pvt Ltd. Vs. CST Banglaore (2007) 8 STJ 358 (CESTAT Bangalore)
 - Element of fraud, collusion etc is must. Therefore is entire data is disclosed in ST-3 the extended period cannot be invoked.
- Nexcus Computers Pvt Ltd Vs. CCE (2008) 9 STR 34 Chennai Tribunal)
 - Extended period cannot be invoked where the department itself is not clear about the facts.
- Gujarat Ambuja Exports Ltd. Vs. UOI (2012) 26 STR 165 (Gujarat HC)
 - Extended period cannot be invoked where the department was aware about the facts as the assessee provided the requisite information.
- Infinity Infotech Parks Ltd. Vs. UOI & Others 2012 – TIOL – 987 (Delhi High Court)
 - Mere failure to declare would not amount to wilful suppression since for wilful suppression the positive act from the side of the assessee shall be found.

OTHER ISSUES

- Jurisdiction of officer
- Procedural rules – Rule 142

ADJUDICATION PROCEDURE- Section 75

Personal Hearing	To be granted: <ul style="list-style-type: none">✓ When assessee makes a specific request for the same✓ Where the proper officer contemplates an adverse decision against the assessee
Can assessee seek adjournment of hearing	Yes - If there is a sufficient reason Maximum of 3 adjournments are allowed.
Order of the officer	<ul style="list-style-type: none">✓ Shall set out facts✓ Shall give basis for his decision
Interest	<ul style="list-style-type: none">✓ whether or not specifically stated in the order, interest on the demand confirmed shall be payable.✓ where there is a modification of amount demanded by the appellate authorities, corresponding interest is payable

ADJUDICATION PROCEDURE

Conclusion of adjudication proceedings	of	<ul style="list-style-type: none">✓ Where order is passed✓ Where no order is passed within 3 years or 5 years as the case may be
Period to be excluded	to be	Period during which any order is pending before Courts on the same issue then such period shall be excluded in computation of 3 years or 5 years where the SCN has been issued within time.
Proceedings against noticee	co-	Where the proceedings against main noticee is concluded, proceedings against co-noticee is also deemed to be concluded
Penalty		If penalty imposed under Section 73 or 74 then no penalty under any other provisions of the Act can be imposed for same act on the same person.

SERVICE OF NOTICE – Section 169

Courier / through messenger to address of tax payer/ manager/ agent/advocate/ tax practitioner/person regularly employed / family member residing with the tax payer

By registered post acknowledgment due to last known address

Email to the email id provided during registration

Publishing on common portal [GSTN]

Publishing in news paper

None of the above possible --- Affixing the notice at some conspicuous place last known place of business

If none of the above is possible - affixing on notice board of the office

Deemed to be served on the date on which it is tendered or published or affixed

If sent through Registered post/speed post - then deemed to have been received by addressee, at the expiry of normal time taken to deliver unless contrary is proved

ADJUDICATION PROCEDURE – Certain Issues

Orders cannot travel beyond scope of show cause notice

Order shall be a reasoned order - Cryptic orders does not stand test of law

Follow judicial discipline

Whether corrigendum could be issued to an order?

Review of the order by the authority who has passed the order?

TAX COLLECTED TO BE REMITTED- Section 76

- Any amount collected representing tax [whether or not taxable] shall be remitted to Govt. account with interest
- Where same is not deposited- SCN to be issued by proper officer asking person to deposit the tax so collected with interest and also proposing to impose penalty of 100% of tax
- Based on the representation, the proper officer to determine the amount due. Such order shall be passed within 1 year from date of issue of SCN - No time limit to issue SCN
- Amount paid shall be adjusted against the tax payable (if any) on the said supply. Balance credited to Consumer welfare fund
- Person bearing the incidence of such tax could claim refund within 6 months of date of issue of public notice in this regard
- Similar to Section 11D of CEA, 1944, 73A of FA 1994

TAX WRONGLY DEPOSITED WITH CENTRE OR STATE- Section 77

- Supply treated as intra state and CGST & SGST is paid
- Subsequently the same is held to be inter state liable for IGST
- tax so paid wrongly (CGST&SGST) would be refunded
- Assessee has to pay IGST -- No interest for delayed payment
- Similar provisions under Sec 19 of IGST law

RECOVERY OF TAX – SECTION 78

When the recovery proceeding could be initiated	Where amounts confirmed in the order is not paid within 3 months of the date of service of order
For safeguarding the revenue, on recording reasons, lesser time frame may be fixed	
Where appeal is preferred against the order	To the extent of the amount covered under appeal no recovery proceedings shall be initiated.

MODES OF RECOVERY OF CONFIRMED DUES- Section 79

Deduction from the amounts due to the taxable person

Instruct other specified officer to deduct the dues from the amount which such officer is liable to pay to the taxable person

By detaining or selling any goods (belonging to taxable person) under his control or under the control of other specified officer

By issuing notice to Bank, post office, insurance company or customer or such other person who hold the money of the person liable to pay or due to such person to remit the money to Government account

In case person to whom notice is issued fails to pay the amount, such person would be deemed to be a defaulter.

Payment to the proper officer would be deemed to be discharge of his liability towards the person liable to pay.

MODES OF RECOVERY OF CONFIRMED DUES

Payment to the taxable person by such person even after receipt of notice- such person is liable personally to the extent of such amount due

Seizing of property based on the authorization from competent authority. Sale of such property if dues and or the cost of distress and keeping of property is not paid within 30 days of seizure.

Send a certificate specifying the amount due to the District Collector to enable him to recover the same as arrears of land revenue.

File an application with appropriate Magistrate, who shall proceed to recover the amount specified as if it is a fine imposed by him

SGST officer may recover CGST and vice versa

PAYMENT OF DUES IN INSTALLMENT – SECTION 80

On application the Commissioner / Chief Commissioner may allow payment of dues in installments

Reasons to be recorded for granting such facility

Maximum installments shall be 24 monthly installments - interest would be applicable

Self assessed tax due as per return (which is not paid) is not eligible for installment facility

Default in one installment- balance dues could be recovered immediately without further notice

LIABILITY TO PAY IN CERTAIN CASES

Transfer of business [Sec. 85]	Both the Taxable person (transferor) as well as transferee are jointly and severally liable. Tax could be determined before or after transfer
Agent & Principal [Sec.86]	Agent as well as principal, both are jointly and severally liable
Company in liquidation [88]	Any tax due whether determined before, after or during course of liquidation of the company, if cannot be recovered from the company, then every person who was director of the company at the relevant time shall be jointly and severally liable
Directors of Pvt. company [89]	Where tax dues of the Pvt. company cannot be recovered from the company, then every person who was director of the company at the relevant time shall be jointly and severally liable

LIABILITY TO PAY IN CERTAIN CASES

Partners of the firm [90] Partners of the dissolved firm	Firm as well as partners are jointly and severally liable Every person who was partners at relevant time is jointly and severally liable
Guardians, Trustees [91]	Where business is carried on by a person on behalf of a minor , in case of any tax dues, the same may be recovered from the minor

RECOVERY

Transfer of property to be void in certain cases [Section 81]

- after any amount becoming due under GST provisions
- Transfers property with an intention to defraud
- Such transfer would be void
- Exceptions

Tax to be first charge on property [Section 82]

Provisional attachment to protect revenue in certain cases[Section 83]

- During assessment (non filers, un registered person), demand proceedings or search proceeding. **(Pranit Hem Desai vs. Additional Director General, SCA No 9392 of 2019)**

Continuation and validation of certain recovery proceedings [Section 84]

UNDER PROTEST

- INDIA CEMENTS LTD. v. COLLECTOR OF C. EX 1989 (41) E.L.T. 358 (S.C.)
 - “We gave our anxious considerations to the rival submissions. A perusal of the letter dated June 11, 1974 clearly shows that all possible contentions which could be raised against the levy of duty on the value of packing material were raised. If this could not be said to be a protest one fails to understand what else it could be. It does not require much time to analyse the contents of the letter. An ordinary reading with common sense will reveal to anybody that the appellant was not accepting the liability without protest. We have no hesitation to hold that the letter was in the nature of protest. That being the position, the question of limitation does not arise for refund of the duty.”

NOTICES

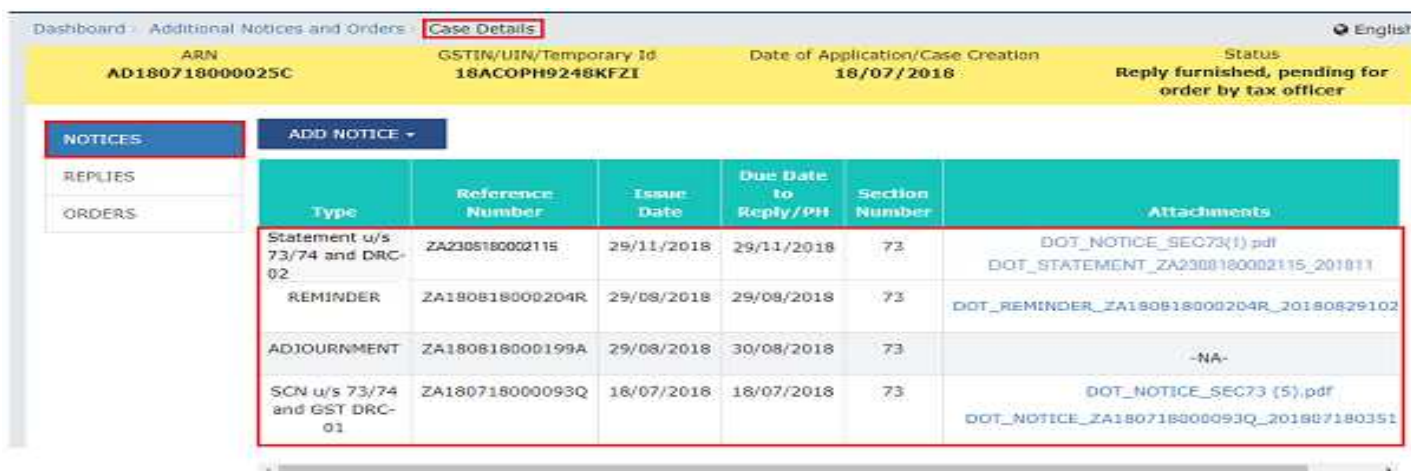
SEC. 73 OR 74

- A notice can be issued by the Department under Section 73 or Section 74, along with a summary, issued electronically in Form DRC-01.
- Where such notice has been issued for any period, the proper officer may issue a statement specifying the details of the amount payable in Form DRC-02.

Section	Tax, Interest, and Penalty	Action that can be taken by the taxpayer	Action taken by the Authority
Voluntary payment before issuance of SCN			
Under Section 73	Tax + Interest	Intimate the Department about voluntary payment in Form DRC-03.	The proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04, and if satisfied, no notice will be issued.
Under Section 74	Tax + Interest + Penalty @ 15% of tax		
Payment within 30 days of issue of SCN			
Under Section 73	Tax + Interest	Intimate the Department about voluntary payment in Form DRC-03.	If the Authority is satisfied with the reply, it will drop the proceedings by the issue an order in Form DRC-05, or else Notice of a personal hearing will be issued.
Under Section 74	Tax + Interest + Penalty @ 25% of tax		
Payment after 30 days of issue of SCN but within the stipulated time mentioned in SCN			
Under Section 73	Tax + Interest + Penalty @ 10% of tax or Rs. 10,000 whichever is higher	Reply to the SCN in Form DRC-06 and submit documents.	If the Authority is satisfied with the reply, it will drop the proceedings by the issue of Form DRC-05, or else Notice of a personal hearing will be issued.
Under Section 74	Tax + Interest + Penalty @ 50% of tax		

HOW TO VIEW A NOTICE ON THE GST PORTAL?

- **Step 1:** Log in to the [GST Portal](#).
- **Step 2:** Click on Services>User Services>View Additional Notices/Orders>Case Details.
- **Step 3:** Once the taxpayer clicks on View additional notices, he can see all the Notices/Orders issued by the Department. Click View to see the Case Details.



The screenshot shows the 'Case Details' page on the GST Portal. The page header includes the ARN (AD180718000025C), GSTIN/UIN/Temporary Id (18ACOPH9248KFZI), Date of Application/Case Creation (18/07/2018), and Status (Reply furnished, pending for order by tax officer). A sidebar on the left contains 'NOTICES', 'REPLIES', and 'ORDERS'. The main content area features a table with columns: Type, Reference Number, Issue Date, Due Date to Reply/PH, Section Number, and Attachments. The table lists four notices: a Statement u/s 73/74 and DRC-02, a REMINDER, an ADJOURNMENT, and an SCN u/s 73/74 and GST DRC-01.

Type	Reference Number	Issue Date	Due Date to Reply/PH	Section Number	Attachments
Statement u/s 73/74 and DRC-02	ZA2305180002115	29/11/2018	29/11/2018	73	DOT_NOTICE_SEC73 (1).pdf DOT_STATEMENT_ZA2305180002115_201811
REMINDER	ZA180818000204R	29/08/2018	29/08/2018	73	DOT_REMINDER_ZA180818000204R_20180829102
ADJOURNMENT	ZA180818000199A	29/08/2018	30/08/2018	73	-NA-
SCN u/s 73/74 and GST DRC-01	ZA180718000093Q	18/07/2018	18/07/2018	73	DOT_NOTICE_SEC73 (5).pdf DOT_NOTICE_ZA180718000093Q_201807180351

HOW TO REPLY TO A NOTICE ON THE GST PORTAL (DRC-06)?

- **Step 1:** Click on 'Replies' on the Case Details page.
- **Step 2:** Click on 'Add Reply' tab and select 'Reply'.
- **Step 3:** The status of the reply is 'Pending for reply by the taxpayer' in the below screenshot. But, once the taxpayer adds the reply it will change.

The screenshot displays the 'Case Details' page on the GST Portal. At the top, there are navigation tabs: 'Dashboard', 'Additional Notices and Orders', and 'Case Details'. Below this, a yellow header bar contains the following information:

ARN AD230818000039A	GSTIN/UTIN/Temporary ID 23AJ1PA1572E6ZO	Date Of Application/Case Creation 13/08/2018	Status Pending for reply by taxpayer
------------------------	--	---	---

Below the header, there is a sidebar with a menu containing 'NOTICES', 'REPLIES', and 'ORDERS'. The 'REPLIES' option is highlighted. To the right of the sidebar, there is an 'ADD REPLY -' button with a dropdown menu showing 'REPLY'. Below this, there is a table with the following columns: 'Filed Against', 'Reply Date/Pk', 'Option for Personal Hearing', and 'Attachments'. The table currently shows 'No Records Found'.

HOW TO REPLY TO A NOTICE ON THE GST PORTAL (DRC-06)?

- **Step 4:** Reply page is displayed:

NOTICES
REPLIES
ORDERS

Type: REPLY

Date Of SCN: 09/08/2018

SCN Ref No: ZA180818000054Q

Personal Hearing Required ? Yes

Financial Year: 2018-2019

Reply *

Attachments
 No file chosen
File with PDF/JPEG format is only allowed
Maximum 4 files and 5 MB for each file allowed

Verification
 I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Name of Authorized Signatory *: ANGAD ARORA

Place *: Enter Place

Designation / Status: Manager
Date: 29/08/2018

DSC is compulsory for companies and LLP.

BACK PREVIEW FILE

HOW TO REPLY TO A NOTICE ON THE GST PORTAL (DRC-06)?

- **Step 6:** Click Preview to view the reply. If satisfied, click on 'File'.
- **Step 7:** 'Submit Application' page will be displayed. A taxpayer can choose to file with DSC or EVC.
 - **a. File with DSC:** Browse the certificate and click on the button 'sign'.
 - **b. File with EVC:** An OTP will be sent to the registered mobile number and email ID. On validation of OTP, a success message will be received along with ARN.
- **Step 8:** Notices and Orders page will be displayed. Click on the link to download the filed reply and then click 'Ok'



- **Step 9:** The Case Details page will be displayed but now the status of reply will change to 'Reply furnished, pending for order by tax official.'

HOW TO VIEW AN ORDER ISSUED BY TAX OFFICIAL?

- **Step 1:** Click on the 'Orders' tab in the case details page.
- **Step 2:** All the orders issued against the taxpayer will be displayed.



The screenshot shows a web interface for viewing case details. At the top, there are tabs for 'Dashboard', 'Additional Notices and Orders', and 'Case Details'. The 'Case Details' tab is active. Below the tabs, there is a yellow header bar with the following information: ARN: AD180718000032H, GSTIN/UIN/Temporary Id: 18BV1PD2202D2Z8, Date of Application/Case Creation: 19/07/2018, and Status: Order for creation of demand issued. Below the header bar, there is a table with columns: Type, Order Number, Order Date, Section Number, and Attachments. The table contains one row of data: Assessment order and GST DRC-07, ZA180818000205P, 29/08/2018, 73, and 01test.pdf. Below the table, there is a sidebar with tabs for 'NOTICES', 'REPLIES', and 'ORDERS'. The 'ORDERS' tab is selected.

Type	Order Number	Order Date	Section Number	Attachments
Assessment order and GST DRC-07	ZA180818000205P	29/08/2018	73	01test.pdf DRC07_ORDER_ZA180818000205P_20180829103449.pdf

APPEALS AND REVISION

Hierarchy of Appeals

Stages of Appeal	Orders Passed by	Appeal to
1 st	Adjudicating Authority	Appellate Authority
2 nd	Appellate Authority	Appellate Tribunal
3 rd	Appellate Tribunal	High Court/ Supreme Court
4 th	High Court	Supreme Court

APPEAL TO APPELLATE AUTHORITY (SECTION 107)

Appealable Order	Order of the Adjudicating Authority
Time Limit	<ul style="list-style-type: none"> ▪ Within 3 months from the date of order communicated - Tax Payer ▪ Within 6 months from the date of order communicated - Department <p>If sufficient cause shown, time limit can be extended by one month</p>
Pre –Deposit	<ul style="list-style-type: none"> ▪ Full amount of admitted tax, interest, fine etc. to be paid AND ▪ 10% of disputed tax amount
Grant of Stay	If the pre-deposit is made for the balance of 10% tax then recovery against such amount will be automatically stayed
Adjournment	If sufficient cause shown then adjournment can be given and maximum of three times allowed.

APPEAL TO APPELLATE AUTHORITY (SECTION 107)

Powers of Appellate Authority	<ul style="list-style-type: none">▪ Allow additional grounds to be included▪ Confirm, modify, annul the decision of the lower authority▪ Cannot refer the case back to original authority
Speaking orders	<ul style="list-style-type: none">▪ Shall be in writing▪ Shall state the points considered▪ Reasons for decisions
Time limit for orders	Within one year from date of filing of appeal

REVISIONAL AUTHORITY (SECTION 108)

Revision – When	<ul style="list-style-type: none">▪ Order is erroneous in so far prejudicial to the interest of the revenue AND▪ Illegal▪ Improper▪ Non consideration of certain material facts
Powers of Revisional Authority	<ul style="list-style-type: none">▪ Stay the operation of decision or order of the lower authorities▪ Enhancing or modifying▪ Annul the decision of lower authorities
Revision – When Not Permissible	<ul style="list-style-type: none">▪ The subject matter is in appeal before Appellate authority/ Appellate Tribunal/High Court/Supreme Court▪ Time limit (6 Months) for filing appeal by the department to Appellate Tribunal has not expired▪ Order already taken for revision▪ Revised order

REVISIONAL AUTHORITY (SECTION 108)

If an order is already in appeal

Order is in appeal but point of issue is different then revision permissible
Such revision to be within one year from the date of order in appeal.

Period of Limitation

- If stay is granted by the Tribunal/Courts then such period to be excluded for computing time limit
- If the issue is pending before HC/SC then such period to be excluded

Records can be relied upon

- Records available at the time of examination (includes those which came to his notice after the order of lower authorities)

Certain issues on revision of orders

In what circumstances order is considered as erroneous and prejudicial to undertake revision?

- CIT v. Jawahar Bhattacharjee 2012 (341) ITR 434 (Gauhati)
- Bhagwan Das 2005 (272) ITR 367 (All.)

Whether additional grounds will be admitted during revision of order?

Whether revision amounts to review of order?

Whether Writ is possible against revisionary orders?

APPELLATE TRIBUNAL

National / regional Bench	State Bench / area bench
Appeal against any order of the appellate authority or revisional authority, which involves issue relating to PLACE OF SUPPLY	Appeal against any order of the appellate authority or revisional authority, which should not involve issue relating to place of supply
National president and members	State President and members
President/ Judicial member and Technical member (Centre) and Technical member (State)	Judicial member and Technical member (Centre) and Technical member (State)

APPELLATE TRIBUNAL (SECTION 112)

Appealable Order	<ul style="list-style-type: none"> ▪ Order of Appellate Authority ▪ Orders of Revisional Authority ▪ If the amount involved is less than Rs. 50,000 then the appeal may be rejected
Time limit for appeal	<ul style="list-style-type: none"> ▪ For tax payer – Within 3 months from the date of order communicated ▪ For department – Within 6 months from the date of order communicated
Memorandum of Cross Objections	<ul style="list-style-type: none"> ▪ To be filed by the respondent within 45 days of receipt of notice ▪ Period extendable by further 45 days
Pre -Deposit	<ul style="list-style-type: none"> ▪ Full amount of admitted tax, interest, fine etc. to be paid AND ▪ 20% of disputed tax amount
Grant of Stay	<p>If the pre-deposit is made for the balance of 20% tax then recovery against such amount will be automatically stayed</p>

REMOVAL OF DIFFICULTY ORDER

- Order No. 09 /2019-Central Tax dt. 03.12.2019
 - the “three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal” in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:- (i) date of communication of order; or (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;
 - the “six months from the date on which the said order has been passed” in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:- (i) date of communication of order; or (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

APPEALLATE TRIBUNAL

Orders of Tribunal [Section 113(1)]	<ul style="list-style-type: none">▪ Allow additional grounds to be included▪ Confirm, modify, annul the decision of the lower authorities▪ Refer back the case for fresh adjudication
Amendment of orders [Section 113(2)]	Mistake apparent on the record can be rectified within 3 months of the date of the order What is mistake apparent on record ?
Review of order	Not permissible
Time limit for passing order [Sec 113(4)]	Within one year from the date of filing as far as possible
Interest on refunds (Section 115)	Consequent to the order of the Tribunal, interest at 6 % shall be payable if the pre-deposit amount is refundable.

APPEAL TO HIGH COURT (SECTION 117)

Appealable Order	<ul style="list-style-type: none">▪ Order of the State Bench or Area bench of the Tribunal, provided there exist 'Substantial Question of Law' Through writ petition under Article 226 of the constitution appeal can be filed.▪ Decisions of Appellate Authority for Advance Ruling can be appealed through a Writ Petition
Time limit for filing appeal	<ul style="list-style-type: none">▪ To be filed within 180 days of the order communicated▪ Condonation of delay is entertainable
Orders of the High Court	<ul style="list-style-type: none">▪ To be heard by not less than two judges▪ Judgement to be in writing and to be in the form of certified copies
Amendment of Order	Review of its own order is permissible - Shivdeo Singh & others v State of Punjab AIR 1963 SC 1909

APPEAL TO SUPREME COURT (SECTION 118)

Appealable Order	<ul style="list-style-type: none">▪ Order of National or Regional benches of Appellate Tribunal▪ Order of the High Court, if High Court certifies the case is fit for appeal to Supreme Court
SLP	Under Article 136 – Based on its discretion can admit the appeal from the judgment of lower authorities or Tribunal/Courts

NON APPEALABLE ORDERS (SECTION 121)

Order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to the other officer

Order relating to seizure or retention of books of account, registers etc.

Order sanctioning prosecution

Orders sanctioning payment of taxes on instalment basis

THANKS !!

Abhay Desai