

DO'S AND DON'TS TO REPRESENT BEFORE AUTHORITIES

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Venue : Western India Regional Council of The Institute of Chartered Accountants of India

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I. PURPOSE OF REPRESENTATION

A. INVESTIGATION:

The department undertakes the investigation based on the complaint received from the third party and information gathered by the internal intelligence. The investigation in general consists of the following stages:

- Nature and purpose of investigation
- Recording of statement
- Examining of document
- Explanation the nature of transaction

B. SCRUTINY OF RETURN:

- **SCRUTINY OF DETAILS:** The department scrutinises the details submitted by the assessee. The scrutiny of details primarily includes the comparison of GSTR-1 vs GSTR-3B, GSTR-2A vs GSTR-3B, GSTR-2A (RCM supplies) vs GSTR-9 (table 6D) etc.
- **BACK UP RECORD:** The department can ask for the backup records based on which working are carried out.
- **RCM Ledger:** The details pertaining to RCM shall be submitted separately. The said details should have proper bifurcation of supplies received from unregistered person and received from registered person. Some of services like GTA, Legal Expenses created problem.
- **TRAIL BALANCE:** State wise trial balance should be maintained.

C. AUDIT

Section 65 of CGST Act, 2017 empowers the tax authorities to conduct audit. The audit can be conducted by the details gather by the department and based on the details submitted by the assessee. The audit process may involve the following:

- A. Audit by Department :** Generally client shall submit the document and explain the nature of transaction and compliance with GST Provision.
- B. Preparation of information:** Information required for audit are required to be prepared.
- C. Representation for legal provision.**
- D. Liaisoning**

D. INSPECTION/SEARCH/SEIZURE

The department based on the details received from third party and based on its own intelligence, undertake the inspection/ search/seizure. In GST, It is experienced that the following can lead to inspection/search/seizure:

- Substantial difference between the ITC reported in GSTR-3B and GSTR-2A.
- Substantial unreconciled amount reported in GSTR-9C/GSTR-9
- Difference between E-way bill data and GSTR-1 data etc.

E. PRE-SHOW CAUSE NOTICE/SHOW CAUSE NOTICE

i. PRE-SHOW CAUSE:

- The purpose of pre-show cause notice is to crystallise the allegation.
- Giving opportunity to the assessee to make the payment before show cause notice in order to avoid the penalty.

ii. SHOW CAUSE NOTICE:

- Allegation freezing stage.

iii. REPLY TO SHOW CAUSE NOTICE:

- Understanding the allegation and reply against each allegation.
- Factual submission
- Legal submission
- Submission based on time barring

F.CONTENT OF PH MEMO

- File no./Appeal no.
- Name of the appellant
- Order in Appeal/ Order in Original no.
- Name of respondent
- Date of personal hearing
- Details of authorized representative
- The PH memo is required to be signed by the authorized representative after conclusion of hearing.
- Signature of the authority/tribunal before whom hearing was conducted.

G. AAR/AAAR

An advance ruling **helps the applicant in planning his activities which are liable for payment of GST, well in advance.** It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities.

i. Legal submission:

- Based on the interpretation of provision of law/rules/circular
- Judgements
- Previous AAR on the identical matter.

ii. Factual Submission:

- Business model of the applicant.
- Nature of transaction undertaken by the applicant.
- Submission based on the agreement entered into.

H. COMMISSIONER (APPEALS)

Commissioner (Appeals) is first appellate authority. Any person being aggrieved by the decision of adjudicating authority can file an appeal before Commissioner (Appeals).

I. TRIBUNAL

Any person being aggrieved by the decision of adjudicating authority and Commissioner (Appeals) can file an appeal before Tribunal.

CONDUCT IN TRIBUNAL

A. DRESS CODE AT TRIBUNAL

- **Male:** Black Coat with white shirt and black tie and black trouser.
- **Female:** Black coat over a white sari or any other white dress.

B. CO-ORDINATION WITH REGISTRAR IN CASE OF DEFECTS

- The defects mentioned in the defect memo is submitted.
- Once defects is resolved, diary number and appeal number is allotted.

C. MENTION IN TRIBUNAL

- As a matter of courtesy, matter should be mentioned “either before the proceeding of tribunal is initiated or after the conclusion of proceeding of tribunal”.
- The matter which are utmost urgent and for which early hearing application is filed are mentioned.

D. EARLY HEARING IN CASE OF SETTLED MATTER/URGENT MATTER

- If the matter is settled or in case of urgent, the application for early hearing can be submitted before the tribunal by way of filing Miscellaneous Application indicating the grounds therein.
- The tribunal can accept the early hearing application or reject the same.

II. REPRESENTATION BY AUTHORIZED REPRESENTATIVE

A. PERSONAL HEARING:

- Personal hearing is mandatory to grant. As per section 75(4) of CGST Act, 2017 personal hearing shall be granted where a request is received or where any adverse decision is contemplated.
- Non-granting of personal hearing is violation to the principle of natural justice.

B. QUALIFICATION OF AUTHORIZED REPRESENTATIVE

- An advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- Chartered accountant,
- Cost accountant
- Company secretary

Who holds a certificate of practice and who has not been debarred from practice. The person should not be disqualified under the provisions of the CGST/SGST or UTGST.

C. DOCUMENTS REQUIRED FOR REPRESENTATION

- Duly signed copy of authority letter/vakalatanama/power of attorney by appellant and counsel.
- The authority letter/ vakalatanama/power of attorney shall bear court fees stamp of Rs. 25 when representation is made before Tribunal.

D. REPRESENTATION SKILL

- Commercial awareness
- Communication
- Factual clarity/ clarity of legal provisions/rules/regulation
- Updated knowledge

E. SUBMISSION

i. FACTUAL SUBMISSION:

1. It shall be ensured that all the factual submissions are made absolute to the satisfaction of officer. If not done then it becomes a challenge to correct such factual error at later stage during adjudication proceeding.
2. For instance the SCN is issued based on values shown in balance sheet prepared at all India level for raising demand pertaining for supplies only in a particular stage as state wise bifurcation of such values was not provided during audit.
3. The assessee shall provide the copies of agreement and invoices, discount policies and ledger to support its factual submission.
4. The assessee can also submit a certificate of an expert in case of classification issues, certificate by CA/cost accountant in cases of values are not directly derived from account/ ledger to support its factual submission.

II. LEGAL SUBMISSION

1. GST law, rules, notification. - The relevant provision of GST law, notification, rules are available on CBIC portal. The reference of press release/circular can be taken.
2. Judgement/Advance Rulings – Advance rulings/Judgements decided on the similar matter can be referred while making the legal submission. Advance Rulings/Judgements can be searched on the various tax software such as Tax management India, Tax India online, GST excus R.K. Jain, Indian Kanoon, VIL etc.
3. Judgement of earlier laws: Ratio of judgement pronounced by courts under Service Tax, Excise, Customs can also be taken. The judgements can also be searched on the software mentioned above.
4. If no case law: Intention of the introducing the law should be interpreted and submission should be made based on the provision of law.

THANK YOU

BALANCED VIEW

PRESENTED BY

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