



LEGAL DRAFTING IN TAX LITIGATION

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INTRODUCTION TO LITIGATION

POINTS TO REMEMBER DURING LEGAL PROCEEDINGS

Administrative
Principles

Natural
Justice

Non-
Speaking
Order

Statutory
interpretation

Legal
Doctrines

Condonation
of Delay

Service of
Notice

Quasi
Judicial
Authorities

Legislation by
Incorporation
and Reference

Inherent Power
of Authorities

Jurisdiction

Time Barred

Inter-section
with other
laws

Filing of Writ
Petition

Patent and
Latent
errors



BASICS OF LEGAL DRAFTING

COURSE OF ACTION AS SOON AS A CASE IS RECEIVED.

- Firstly, understand the remedy what the client wants:
 - Whether the reply pertains to scrutiny notice?
 - Whether filing an application with the Department would work?
 - Whether we need to file a cross objection, appeal or writ against an Order/Judgement?
- Based on the remedy, provide a requisition **list of documents** that are required in order to understand the matter in detail.
- After going through each and every document thoroughly, prepare a brief summary of course of actions and filter out the relevant annexure depending upon the stage of litigation.
- Always keep an eye over the statutory limitation period, jurisdiction of the Forum including Court (both territorial and pecuniary) and the applicable court fees.
- While carrying out any legal drafting, check the specific formatting and filing procedure including Rules of a particular High Court
- Check whether caveat application, if any, has been filed by other party.
- Importance of **prayer** cannot be ignored.

DO'S AND DON'TS

- Use simple words & avoid technical jargons. Avoid double negatives such as not unusual, not uncertain etc.
- Long sentences should be avoided.
- Use consistent words while drafting. Avoid repetition and redundancy.
- Comply with all the legal formalities that are required. Each High Court has separate set of rules for printing, page numbers, annexure numbering etc.
- Always mention the dates, amount in numbers as well as in words.
- Paragraphs must be concluded properly. Para wise comments must be given in the end of reply.

DO'S AND DON'TS

- In certain matters, understanding about the company/industry would be very relevant.
- Provisions, Notifications and Circulars need to be seen for relevant period and the status of the same should be verified.
- Structure of all arguments should be made before starting drafting of grounds.
- Finalise all the annexures / exhibits and their sequence before starting the drafting of reply. Only relevant annexures to be annexed.
- Whenever a reproduction is made in a draft, the same needs to be in *italics*.
- The grounds should be precise and to the point and must be drafted in logical way. One point should be connected to the other. Weak arguments should not be mentioned in the beginning.
- Before placing the reliance on a judgement check whether it is in favour entirely or not.



LEGAL DRAFTING VIS-A-VIS TAX LITIGATION

COMMON GROUNDS ON WHICH PROCEEDINGS ARE ISSUED AGAINST THE TAXPAYER UNDER INDIRECT TAX

- has availed/ claimed the ineligible/excess ITC/ refund
- Cross Charge v. ISD; 2A v. 3B mismatch
- Valuation including related party transactions
- has wrongly classified the goods/ service and wrongly availed exemption on goods/ services.
- The sequence for determination of TV as per CVC, 2007 is not followed
- The benefits of EPCG, Duty Remission scheme, Advance Authorization has been availed erroneously.
- Amendment of BOE/Shipping bill under Section 149 and Section 154 of the Customs Act, 1962.

THINGS NEED TO BE SEEN AS SOON AS SCN IS ISSUED

- In case of notice issued by CGST/Central Excise/Service tax officers whether DIN number is available or not?
- Whether DRC-01A or pre SCN consultation Notice is issued or not?
- Whether procedure prescribed in the Act and Rules for issuing the SCN is followed or not?
- Whether SCN is properly served or not?
- Whether issuing authority has jurisdiction to issue SCN or not?
- Whether officer who has issued SCN is a proper officer or not under the provisions of Act?
- Whether SCN is issued within time?
- In case of wrong avilment of credit whether credit was utilized or not?
- Calculation of demand and rate of tax applied to be checked.
- Whether SCN is issued invoking the extended period of limitation or not?
- What are the key allegations and crucial evidences to defend our case?

COMMON GROUNDS TO BE TAKEN WHILE REPLYING TO AN ANY TAX PROCEEDINGS

- Period of Limitation
- Natural Justice Principles were not followed
- No Document Identification Number
- No Proper reasoning assigned against the demand raised
- Revenue Neutrality

COMMON GROUNDS TO BE TAKEN WHILE REPLYING TO AN ANY TAX PROCEEDINGS

- No jurisdiction of Issuing authority
- Position before self- assessment regime
- Classification of the goods did not consider the HSN explanatory notes
- Grounds in respect of penalty and interest
- Procedural v. Substantive

THINGS NEED TO BE SEEN AS SOON AS APPEAL IS FILED

- Whether the Order is in favour in entirety or not?
- Whether the adjudicating authority has passed the Order considering all the submissions made by the parties?
- What are the findings and observations of the authority in the Order?
- Whether the authority has provided the personal hearing before issuing the Order?
- Whether the Order is issued within the prescribed time limit?
- Is there any patent error committed in the Order?
- In case an adverse Order is passed, whether the Order has quantified the demand correctly or not?
- Confirm the date of receipt of Order?



SPECIAL CONSIDERATIONS FOR CLASSIFICATION DISPUTES

CLASSIFICATION DISPUTES : POINTS TO BE PONDERED UPON

- Understanding the product and technology.
- The Section Notes, Chapter Notes and GRI Principles need to be read thoroughly.
- The importance of HSN explanatory Notes need not to be undermined.
- The foreign ruling including WCO advisory can be helpful for determining the classification of a product.
- The general determination of the classification of the parts is a complex exercise.
- Difference between the wordings of Custom Tariff and GST Tariff should be kept in mind.



OPPORTUNITIES FOR CHARTERED ACCOUNTANTS

Thank You