

Litigation Strategies

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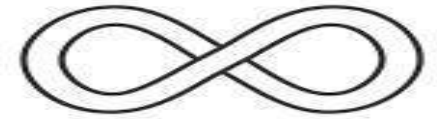
Disclaimer

All views stated are my personal views, they are not binding on WIRC/ICAI. My personal views may be correct/incorrect as they are expressed based on my understanding of the subject. This presentation is meant only for Educational Purposes.

All members/listeners are requested to go through tax law provisions on their own and advise their clients accordingly as each situation is peculiar in itself.

All Illustrations provided are imaginary and any resemblance to any situation/s is/are purely co-incidental and without any intentions to disclose private and confidential information.

Litigation Strategies



From
IMPERFECTION.....
to **PERFECTION**

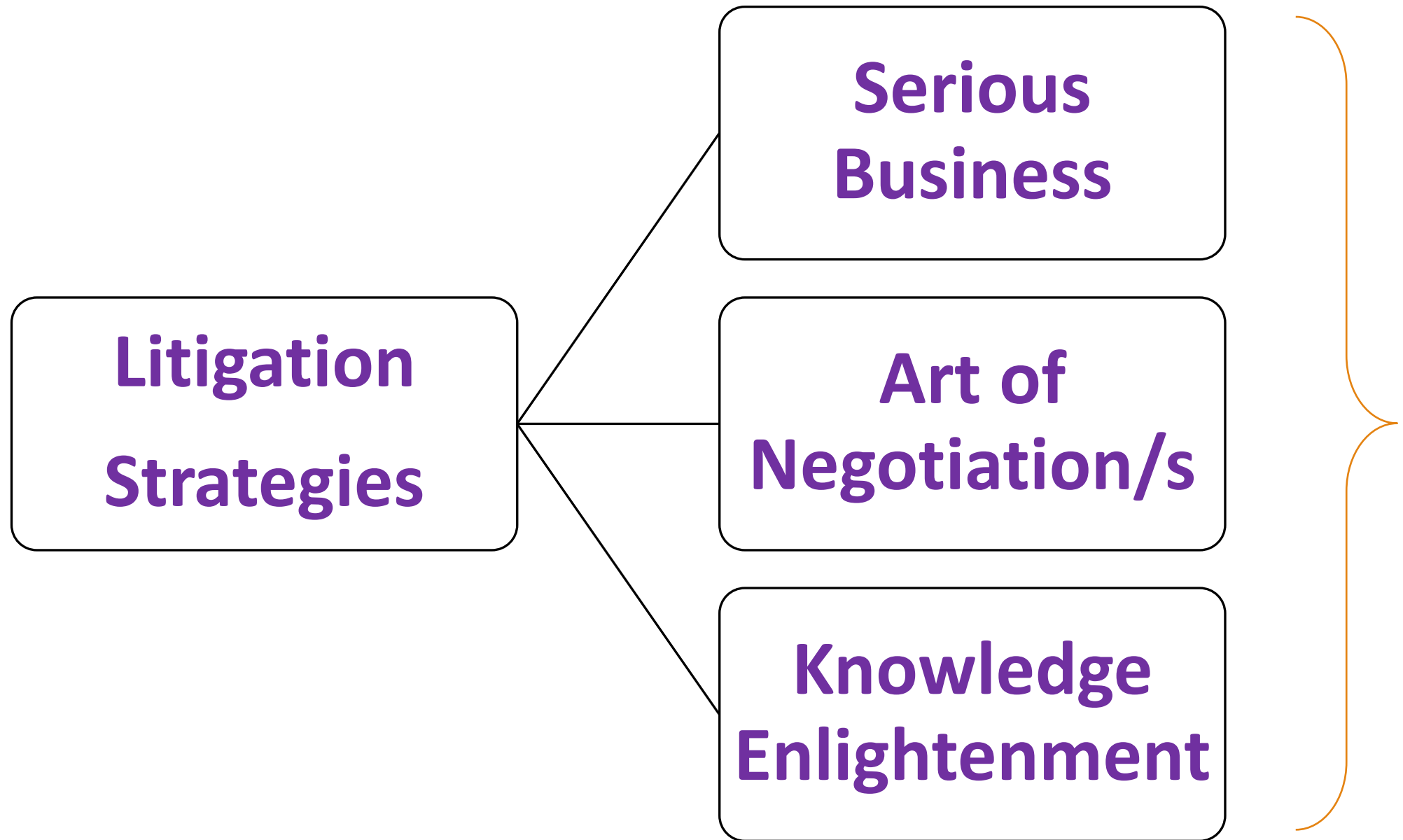
SAC - Litigation

What does it mean in the context of litigation ?

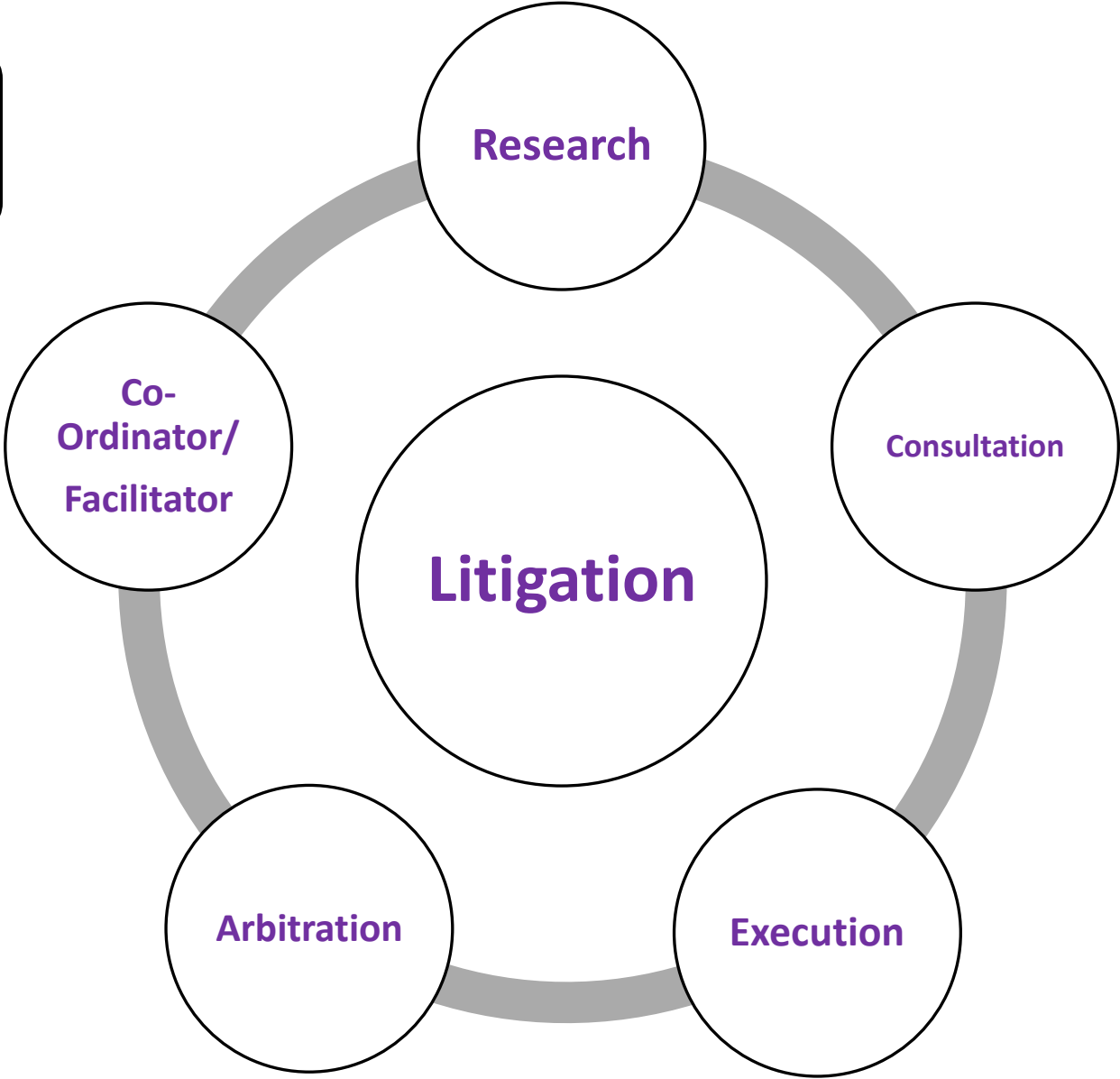
S Science
A Arts
C Commerce



Craft
Core
Technology



Scope





SAC

Dharma



Adharma

Expectations

Proper Officer

- Proper Compliances
- Timely filing
- Timely discharge of levies
- Adherence to Best Judgement
- Self Assessment mechanism
- Timely, effective responses
- Transparent disclosure
- Documentations/Burden of Proof

Taxpayer

- No interference
- No litigations
- Timely Processing of Returns
- No Visits
- Believing in the merit of the self-assessment mechanism
- Least Harassment
- Clearly Defined Litigation procedures
- Speaking order and Transparency Relationship based on Trust

Law

“Once the law is made, it is often forgotten by all the Stakeholders”

Ten Codes???? – 12 Months – 52 Weeks – 7 Days – 24 X 7

GST Act + Rules
IGST/CGST/SGST/UTGST

Forms
Circulars
Notifications
AAR/AAAR
Adjudications
Tribunal
HC/SC/WP

Income Tax Act + Rules

Forms
Circulars
Notifications
AAR/AAAR
Assessments
Tribunal
HC/SC/WP

Companies Act + Rules

Forms
Circulars
Notifications
Adjudications
NCLT/CLB
HC/SC/WP

Other Laws Act + Rules

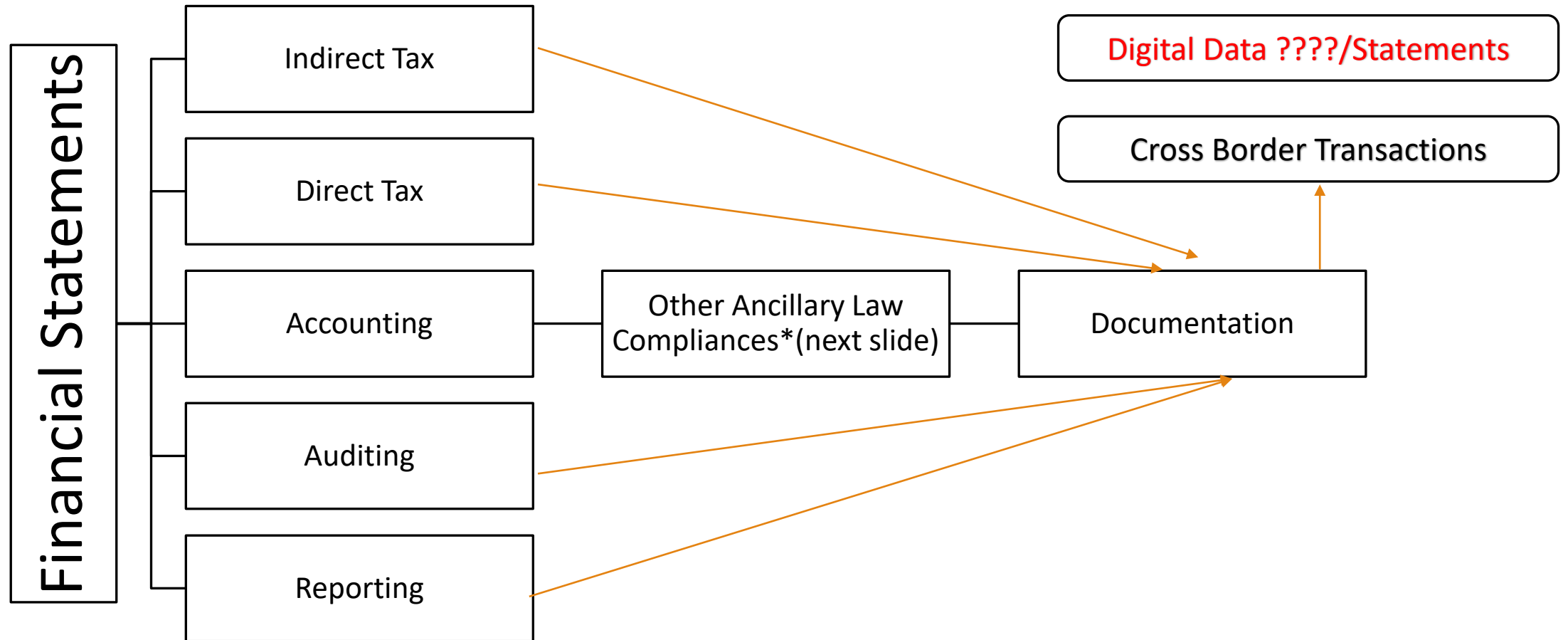
Forms
Circulars
Notifications
Adjudications/Order
Tribunals
HC/SC/WP



12 Months ????
- 52 Weeks ????
- 7 Days ????
- 24 X 7 ????



Foundation



Foundation -Other Ancillary Laws + Rules

- ✓ **Indian Contract Act, 1872**
- ✓ **The Sale of Goods Act, 1930 & Essential Commodities Act, 1955.**
- ✓ Legal Metrology Act, 2009
- ✓ Insurance Act (IRDA, 1999) & Indian Fatal Accidents Act, 1955
- ✓ **Indian Partnership Act , 1932 (Partnership and LLP Act,2008)**
- ✓ **Transfer of Property Act, 1882**
- ✓ **Real Estate (Regulation and Development) Act,2016 & RERA , Society Registration Act, 1860.**
- ✓ **Indian Registration Act, 1908 & Indian Stamp Act, 1899**
- ✓ Indian Easements Act, 1882
- ✓ **Indian Evidence Act, 1872**
- ✓ **Labour Laws (Factories, PF, ESIC & PT , Gratuity, Wages, Maternity, Bonus etc.)**
- ✓ **MSME Act, 2006**
- ✓ Designs Act, 2000
- ✓ **Succession & Inheritance Laws.**
- ✓ **Aadhaar (Targeted Delivery of Financial and Other subsidies , Benefits and Services) Act, 2016**
- ✓ **FEMA, 1999.**
- ✓ Limitation Act, 1963
- ✓ **Customs Act, 1872**
- ✓ **Special Economic Zones Act,.... (in future DESH).**
- ✓ Banking Laws (including Negotiable Instruments Act, 1881, Coinage Act , Recovery of Debts and Bankruptcy Act, 1993 & RBI Act, 1934)
- ✓ **Companies Act, 2013**
- ✓ Securities & Commodities Contracts Acts (SEBI,1992, SCRA, 1956, Depositories etc.)

Foundation -Other Ancillary Laws + Rules

- ✓ Sovereign Commerce Act
- ✓ Minerals Laws
- ✓ **Legal Metrology Act, 2009**
- ✓ Environmental Laws
- ✓ **Carrier Laws**
- ✓ **Motor Vehicles Act (E Way Bills , Search & Seizure & GST ITC ????)**
- ✓ **State Registration Laws**
- ✓ Competition Act, 2002
- ✓ Medical Laws
- ✓ Education Laws
- ✓ **Internet Intermediaries Laws**
- ✓ Indian Charitable Trusts, FCRA etc.
- ✓ Gaming Laws
- ✓ **Criminal & Civil Procedure Laws**
- ✓ **PMLA ,1988 and BMA Act, 2015**
- ✓ **Intellectual Property Laws ((Trade Mark, 1999 , Patents Act, 1970 and Copy Rights, 1957)**
- ✓ **General Clauses Act .1897**
- ✓ State Emblem of India (Prohibition of Improper Use) Act, 2005.
- ✓ Chartered Accountants Act, 1949
- ✓ Company Secretaries Act, 1980
- ✓ Cost and Works Accountants Act, 1959
- ✓ Credit Information Companies (Regulation Act, 2005)
- ✓ Right to Information Act, 2005.

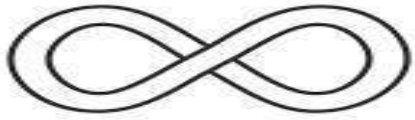
Litigation Scenarios

Scenarios

- **Builder/FMCG/ Pharmaceuticals**
 - Gifts – Car/Watches/ Laptop/Mobile Phones – Sale/Performance incentives/Diwali
 - ITC to be reversed u/s 17(5)(h) – same month/subsequent month/ Oct 23 ????
 - OTL payable – Schedule I
 - Time Limit applicability u/s 16(4)....30.11.23
 - Valuation issues u/s 15 and Rules
 - Cross Charge levies/ISD levies
 - Inhouse employees

Ramifications

- ❖ Is there transfer of legal ownership ???
- ❖ whether more than two persons are involved as contemplated under sale of goods of act
- ❖ Committed obligations.....
- ❖ **Whether reversals of ITC are correct ????? Or OTL option is correct ?????**
- ❖ **Accounting Treatment/Ancillary law Compliances ?????**

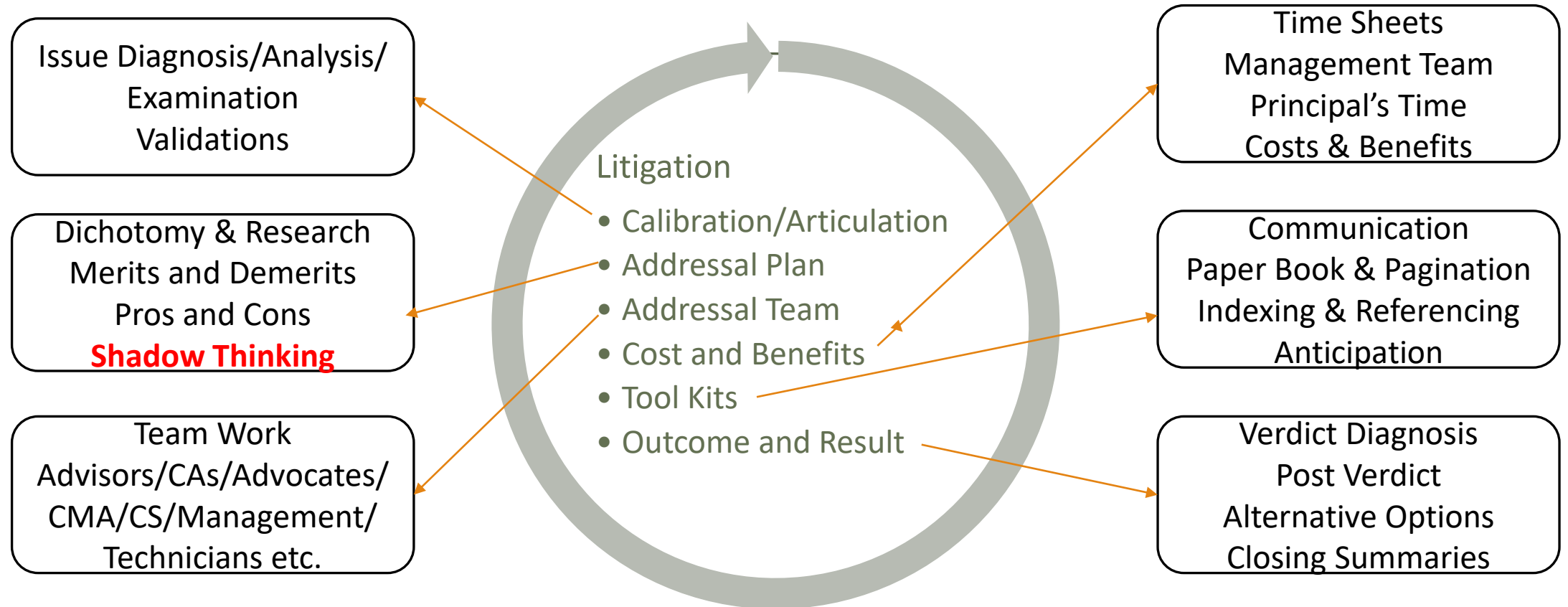


Suggestive

Strategy ??????.....



Litigation Strategies



Litigation Strategies – Judicial Precedents

Supreme Court

High Court

Tribunals

Theories

Ratios

Open/Closed

Statute Interpretations

Opinions

AAR/AAAR

Overseas Jurisprudence
Commentaries
Finance Minister
Speeches

Submissions – LH
Authentication
Scanning Policies

Copy Cut Paste
ChatGPT
Policies

Litigation Strategies

Law

Business Model

Implementation
mechanism

Interpretations

Wording, Phrasing
Sentences, Contextual
References , Preciseness

Language – Eng./Hindi
Simple/Moderate/Effective/
Respectful

Issues –
Convincing/Interpretative/
Argumentative

Presentation –Graphics –
Narratives- Highlighting
Principles & Key Points -
Dressing

Notice & Adjudication
Orders

Alternative Remedies
Writ Petitions/
SLP

Goods Classification
– CTA-HSN-WTO

Classification- Services –
UN Classification –
Central Product
Classification

Litigation Strategies

Parties

Jurisdictions

Time Limits

Filing & Submissions
Exhibits & Annexures

Electronically/
Physically Maintained
Records

Hearing
Offline/Online
Maintenance

Verdict & Outcomes

Recording/Notes

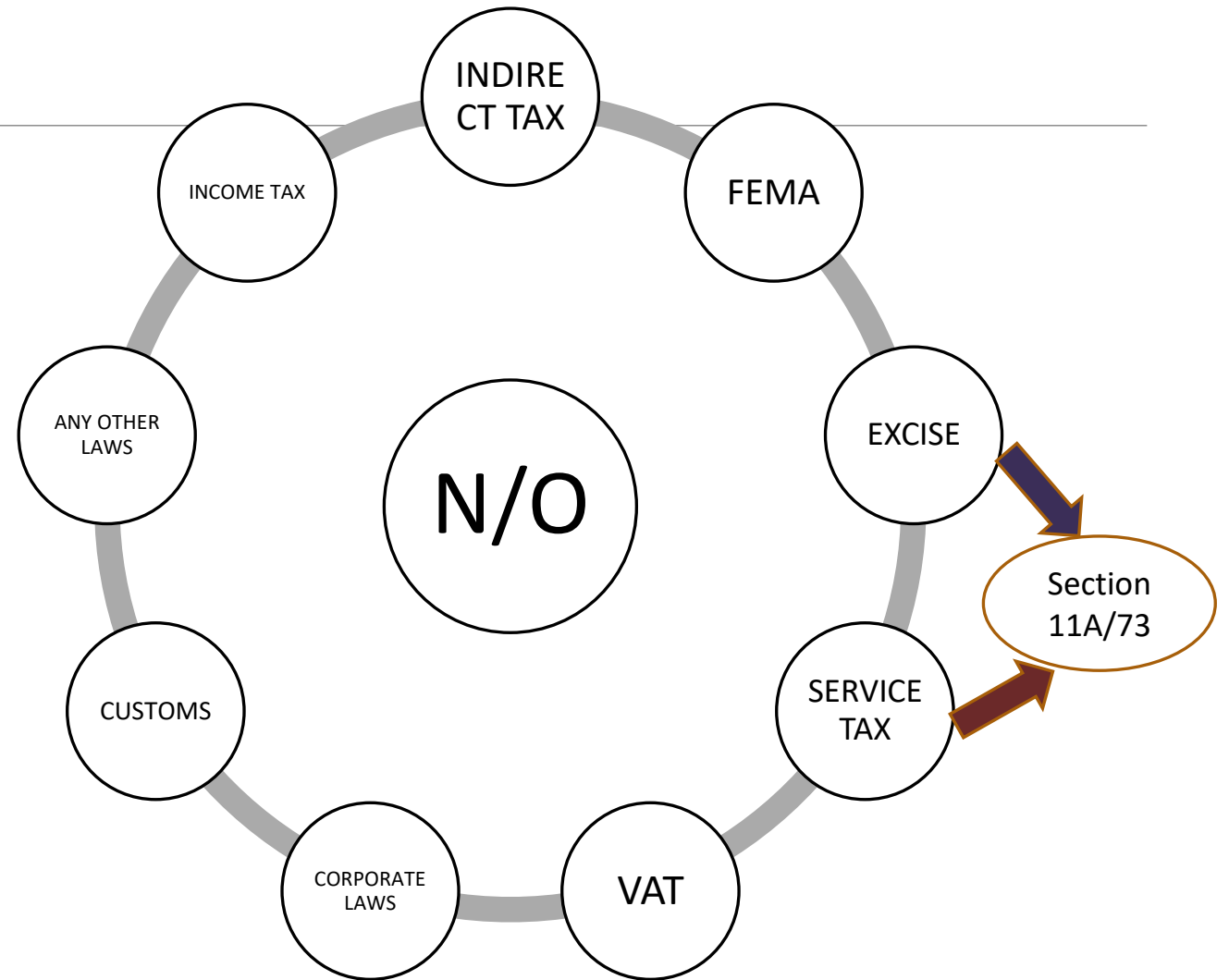
Fees /Emoluments/
Rewards/Perks

Digitization

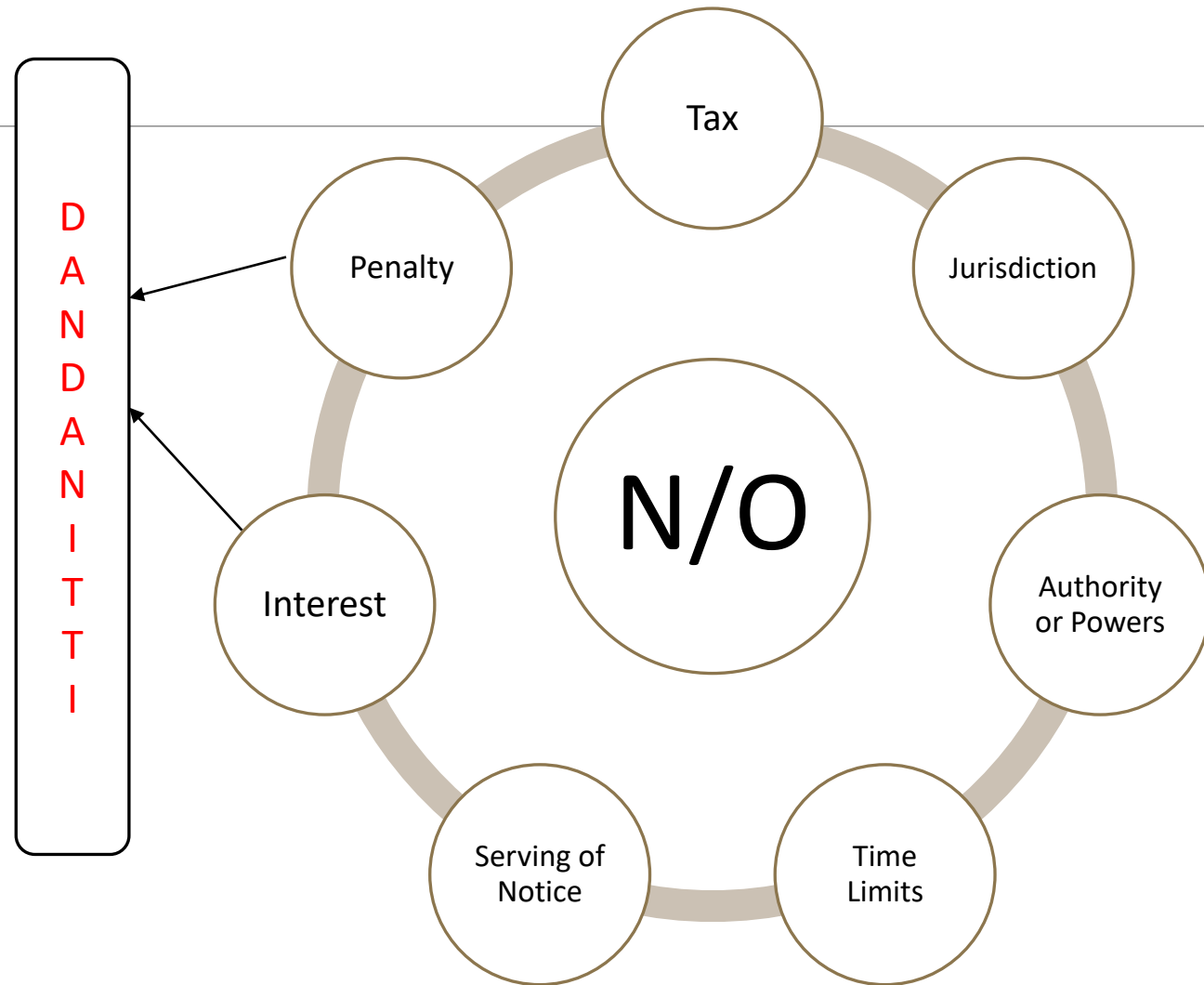
Synopsis and Summaries

Administrative Follow Up
Back Up

CONTOURS OF NOTICE/ORDERS



COMPONENTS OF NOTICE/ORDERS



History of Notice/SCN/Orders cum DN – Process

Standard steps

1 st Event	2 nd Event	3 rd Event	4 th Event	5 th Event	6 th Event
Letter or pre communications	Issue of SCN Cum Demand Note	Reply by Noticee	Personal Hearings	Adjudications	Alternative remedies
Explaining discrepancies or differences	Source, Allegations, Quantifications and Sections etc.	Refuting allegations, quantifications	Before Appropriate authority	Impartial, factual and speaking order by either dropping the allegations or crystalizing the demands	CIT(Appeals) Tribunals HC SC – SLP or Writ



Advisor

Legislature
Law/Rules/Forms/Execution guidance

Process

Litigation Strategies

Lawful

Neutral

Right Side/Judicial

Proceedings

Accept/Drop Or Reject

Recovery

Notice
Jurisdiction
Time limits

- Various kinds of possible discrepancies/examined
- Complete

Allegations - SCN
Facts
Addendum

- On RTP/Third Party

Response
Agree/Disagree
Facts

- Defense

Order/Verdict
Adjudication

Speaking Order

Communications
Between
PO/RTP

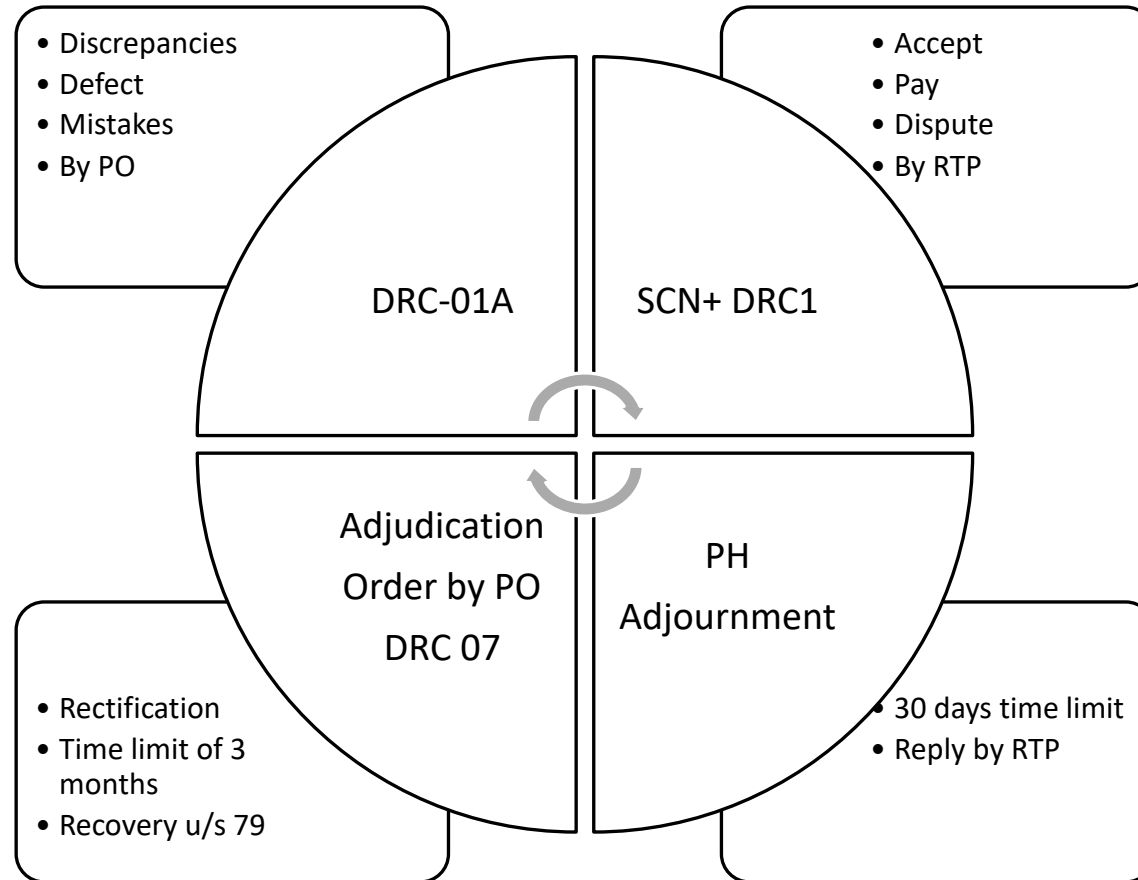
Appeals/Tribunals
High/Supreme Court
Writ Petitions

Process

Can PO ask RTP to reverse ITC by visiting POB/APOB? -
With/
Without
Due process

Valid /Invalid
Proceedings ????

Spot recoveries



Whether such process is lawful, binding and follows principles of natural justice ?
Can dept. initiate garnishee proceedings for recovery?????

When to comply ????
Summons u/s 70



Art of negotiation and drafting

- ART - READING, COMMUNICATION, DOCUMENTATION and domain knowledge of business activities
- All issues raised in SCN should be addressed in the reply by the Noticee.
- Check for assumptions and presumption aspects in SCN ???
- Drafting – use of legal jargons/maxims and judicial pronouncements

Art of negotiation and drafting

- Clash of titans – tax payers and advisors and/or departmental officers – Fair play ??? **Natural Justice and speaking order ???** – adjudications as well as defense ?
- In P. Ramanatha Aiyar's advanced law lexicon, third edition, the term 'Adjudication' is defined as under:
- “The act of adjudicating; the process of trying and determining a case judicially. The application of the law to the facts and an authoritative declaration of the result.
- The word 'adjudication' means judicial determination of a cause after taking into consideration the material on record and after hearing the parties.
 - A. Adherence to the principles of natural justice;
 - B. Reasoned and speaking order.



Opportunity for presentation of case to the notice

- Reply to the notice
- Reply and hearing are not substitutes of each other
- Party can raise inconsistent and contrary pleas
- Issue of taxability or rate of tax (duty) can be raised even if not raised earlier
- Principles of natural justice
- Nemo debet esse iudex in propria causa -Doctrine of Bias
- Audi alterem partem -‘to hear the other side’
- Personal hearing
- Reasoned and speaking order is must



Common terms and phrases used in SCN cum Demand Note (illustrative)

- Conditions, procedures and contraventions
- Observed or appears that - mismatch of data or non reporting of details or non-disclosure
- Fully aware about lawful compliances
- Fraud or wilful suppression of facts or wilful misstatement of facts or Collusions or Concealment etc. & if not detected if unnoticed/undetected loss of Govt revenue and so on
- Responsibility to pay appropriate tax under self assessment regime – invocation of section 174 of CGST Act 2017
- Demands quantified with specified rate of levy
- Intention to evade taxes bearing Govt Revenue
- Why tax, interest , penalty etc. should not be demanded for all of the above and so on etc.

Meticulous drafting of response to SCN cum DN

- SCN should be studied under the lens by examining and digesting every word of the communication
- All supporting documentation should be prepared and kept ready before drafting such reply – tables/reconciliations/proofs
- SCN issues to be summarized in tabular pointers
- SCN cum DN allegations should be reproduced in the reply drafted
- drafted reply should cover response to each of the issues raised in SCN Cum DN in a comprehensive manner



Meticulous drafting of response to SCN cum DN

- After each response, the conclusion/s should be summarized
- Main aspects to be covered in order sheets at the time of PH.
- Reply should be prepared as if we are preparing paper book for litigation at higher forums
- If documents are lost by the department, the copies thereof can be filed again giving reference of previous filing



Meticulous drafting of response to SCN cum DN

- Demands as alleged in SCN Cum DN need to be verified with all supporting and if any errors are found, they need to be correctly defined and quantified while filing the reply
- If based on our own workings, if tax and interest are payable, it is recommended that such tax and interest are paid along with SCN reply
- If demands not payable, such facts should also be explicitly notified in replies filed
- Communication should be simple, precise, factual, descriptive and constructive.
- Replies should be never standardized as each situation can be different.





Best practices for SCN Cum DN replies

- Always keep three copies of SCN replies
- While filing replies, always record the process of serving of notices. Especially, if the same are not physically served to the taxpayers in the form of tabulations as well as references of previous communications for documenting the records.
- Always start your reply by starting with words “ Without prejudice,.....
- In concluding para of SCN replies, always demand personal hearing if the submissions filed are not acceptable to the adjudicating authorities
- Avoid seeking adjournment unless the same is absolutely necessary



Best practices for SCN Cum DN replies

- Avoid USE OF LEGAL JARGONS/MAXIMS AND JUDICIAL PRONOUNCEMENTS unless the same are absolutely necessary because officer is not the presiding judge of court but quasi judicial authority
- File the replies in the paper book format – ensure proper numbering of the pages in chronological order and tagging of the references appropriately notified in main SCN reply
- While appearing before the authorities be appropriately dressed and keep your pointers handy in the summarized forms
- Supporting judicial material can be kept handy and the same should be organised from reliable sources only. Only if required, they should be filed as additional submissions

Litigation Reply Contents

- ✓ Communication properly Addressed with proper use of Salutations
- ✓ Notice/s Referenced & reproduced
- ✓ Letter of Authority
- ✓ Index of Submissions
- ✓ Summary of Issues Involved.....
- ✓ Discussion about each of the issues involved as per Para referredSynopsis, Facts, Comprehensive Written submissions, Laws and Rules properly referenced in Support & Conclusion/s drawn in respect each of the issues.....use of **Bold**, *Italics* and Underlined as needed to emphasize the communication with logical flow of arguments advanced with cross referencing and pagination of the documents filed

Litigation Reply Contents

- ✓ Use of Judicial Precedents with abundant caution
- ✓ Summary of all the Issues involved at the end with our conclusion sanitized at least two times or more
- ✓ File replies by way of response to each of the paras/issues referred with appropriate defence.
- ✓ Jurisdiction and Time Limits issues
- ✓ Prayer to grant relief and drop the proceedings
- ✓ Always seek personal hearings if your views and conclusions stated are not acceptable to them
- ✓ Communication of Contact details.
- ✓ Soft Copies of Compilations

Litigation Notices Content Samples

Form GST DRC 07 - Issues involved –

1. **Excess ITC claimed** in GSTR 3B/9 which is **not confirmed in GSTR 2A or 8A of GSTR 9** 2. **ITC claims** after the **last date of availment** of ITC as per section 16(4)- GSTR 3B 3. Interest on delayed payments made with GSTR 3B

As **no satisfactory reply** has been filed by the Taxpayer, **Demand** has been **adjudicated**.....**even when reply has been filed but adjudicated without considering the reply.**

Form GST DRC 01A - Brief Facts – ITC claims after the last date of availment of ITC as per Section 16(4)

Please refer to the above proceedings. In this regard, the amount of tax/interest/penalty payable by you under section 73(5) with reference to said case as ascertained by the undersigned in terms of the available information, as is given below.....reply to be filed by**failing which SCN will be issued u/s 73(1)**

Comments: No information provided of mismatch/No submissions considered which are fileddemands would be raised.

Litigation Notices Content Samples

Form GST DRC 01A – Intimation of Tax ascertained as being payable u/s 74(5)

During the course of investigation the following liabilities were worked out in relation with difference in ITC claimed in Purchase Register and ITC auto populated in GSTR 2A.....You have claimed excess ITC which doesn't appear in GSTR 2A, hence, you are not eligible to claim excess ITC as per the provisions of Section 16.....mismatches in Invoice Numbers and GSTIN Numbers etc.....you are advised to pay the amount of tax as ascertained above along with amount of applicable interest and penalty u/s 74(5) failing which SCN would be issued u/s 74(1)

Comments: Deviations already reversed in GSTR 3B where applicable but investigation team doesn't want to consider & ascertained demand without passing speaking ordermatter appeal before Commissioner (Appeal), no reliefwrit petitions filed , directions provided to file the appeal before the Tribunal

Other Scenarios:

Demands ascertained without quoting HSN/SAC codes, quoting Sections and Rules , without authorisation and/or incorrect determination of value of supply based on arbitrary value with or without e way bills , RUD not provided.....

Litigation Notices Content Samples

OIO

Intelligence was gathered that there was difference between turnover shown in the balance sheet and ST-3 returns filed by or Form 26AS vis-à-vis ST-3..... Therefore, a visit was conducted on 24.01.2017 under Authorisation No. 184/2017 dated 23.01.2017 issued by the Assistant Commissioner, Anti Evasion, Service Tax-....., Mumbai or AFS/Form 26AS vis-à-vis GSTR 9/9A

Issues – Export of Services vis-à-vis Intermediary ServicesComments: Is it necessary that data reported in AFS/Form 26AS/ITR etc. and ST-3 would match ??????

Out of Pocket Expenses - Best Judgement Assessment with adhoc additionsno justifications/no rational.....without jurisdictionbeyond time limitsorders framed with preconceived mindset.....blatant violation of principles of natural justice

Opportunity of Personal Hearing - 05/01/2023 or 06/01/2023 or 07/01/2023.....order passed on 08/01/23 stating that no one attended, no submissions filedSCN unserved but shared on email after 6 monthsClarification sought for reduction in value of supplies during the periodby same authority for the same period 4 months back.....reply filed by the Taxpayer

Peculiar Scenarios

Situations

- Circular Trading
- SCN without summary in Form GST DRC 01

- SCN with summary post notification in Form GST DRC 01

Remedy

- Is it Fraud, Concealment or Mis-reporting ?
- Objections should be filed by pointing out the defect, such notice is defective as well as invalid.

- Notice is valid only if the same is issued within time limits and it needs to be defended properly after examining the contents under lens.

Peculiar Scenarios

Situations

- Notice issued and order passed simultaneously without granting opportunity of being heard are not sustainable
- Deputy Comm. acted within his competency if carried out search & seizure on basis of authorisation of Joint Comm.: HC
- Order Passed u/s 130 whether such order is good in law.....
- **Order Passed u/s 73/74 ??? whether such order is good in law.....**

Remedy

- Patna HC Sangam Wires v. State of Bihar (2023) 151 Taxmann.com 359
- Orissa HC J and T Gems and Jewellery (P) Ltd (2023) 151 Taxmann.com 364.
- Held “Yes” for Section 130
- Opined , “No” for Section 73/74.

Words and Phrases - Communication

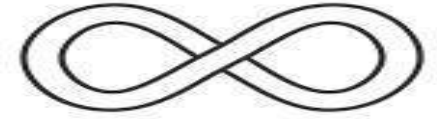
In Actionable	In Complete	In Correct	In Exhaustive	In Discipline	In Eligible
In Visible	In Vincible	In Consistent	Ir Replaceable	Ir Reversible	Ir Rebuttable
Ir Responsible	Ir Recoverable	In Competent	Im Practical	Im Proper	Ir Rational
Im Prudent	In Admissible				
Non Commitment	Non Guilty	Non Scheduled	Non Transparent	Non Execution	Non Commitment
Non Offence	Non Verifiable	Non Real	Non Economic	Non Vital	Non Classification
Non Material	No Enquiry	Non Justification	Non Factual	Non Offence	Non Violative
Non Disclosure	Non Speaking	Non Apparent	Non Specific	Non Error	Non Mistake

Words and Phrases - Communication

Un Pragmatic	Un Remarkable	Up Held	Un Clear	Un Authorised	Un Lawful
Un Constitutional	Un Biased	Un Satisfactory	Un Explained	Un Signed	Un Disclosed
Un Justice	Un Meaningful	Un Admissible	Un Lawful	Un Reasoned	Un Reliable
Presumptions	Assumptions	Addendum	Contents	Personal Hearing	Checklist
Data Sharing	Integration	Date	DSC	Tools /Research Database	Diagrams
Subject to	In relation to	Ancillary	Incidental	Mistake	Misleading
Adjudication	Penalty	Assessment	Legal Grounds	Additional Evidence	Additional Grounds

Words and Phrases - Communication

Reasonable	Masterful	Due Care	Offense	Qualitative	Quantitative
Accounting Policy	Prudence	Quash	Otherwise	Title/Ownership	Vicarious
RUD	Mis Statement	Non-Fraudulent	Non-Concealment	No Mens Rea	No Crime/Crimeful
Horse's Mouth	Cross Examination	Time Barred	Within	Binding Precedents	Binding Effects
Cardinal/Thumb Rules	Canons	Procedures	Protocols	Fundamental	Rule of Law
Onus/Burden of Proof	Objective	Purpose	Precise/Concise	Non- Tampering	Evidential
Hidden	Dis Advantage	Fiscal Prudence	Fiscal Policy	Jurisprudence	A Synchronisation



Litigation Strategies



From
IMPERFECTION.....
to **PERFECTION....**

End is the beginning



SAC

Dharma/Nitti

SAAM

DAAM



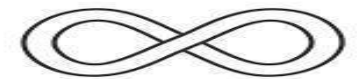
Adharma/Anitti

DAND

BHED

SURROUND YOURSELF WITH PEOPLE WHO TALK ABOUT VISION AND IDEAS NOT PEOPLE

Appreciated all of You.



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