

# **Seminar on Procedural Aspects of Service Tax**

## **(Investigation, Audit and Adjudication)**

**Organised by WIRC of ICAI on 29.08.2015**

Presenter –CA Mandar Telang

# □ Overview

**Self Assessment**

**Filing of Return**

**Investigation / Audit**

**SCN**

**Adjudication**

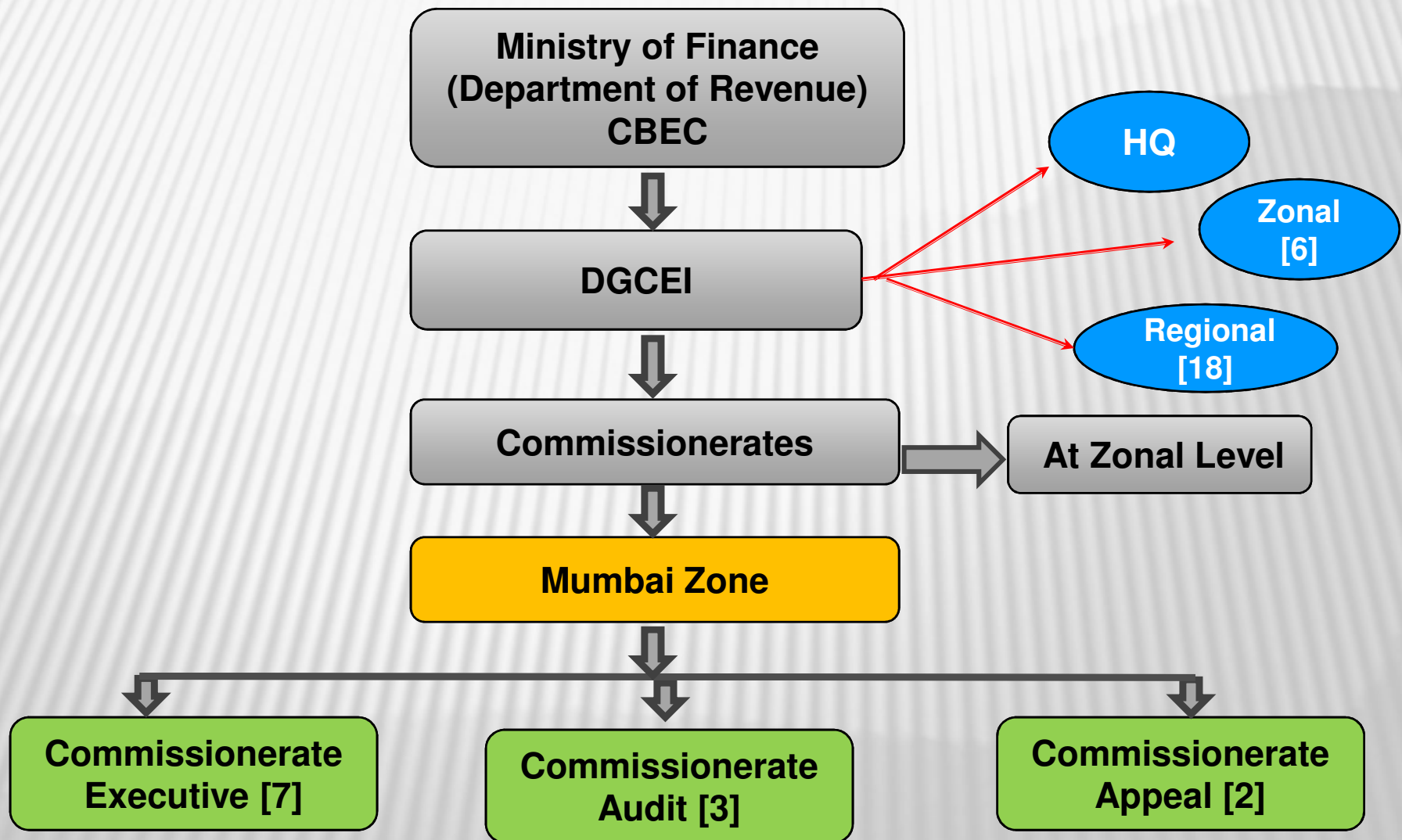
**Appeal/ Rectification**

# □ Overview

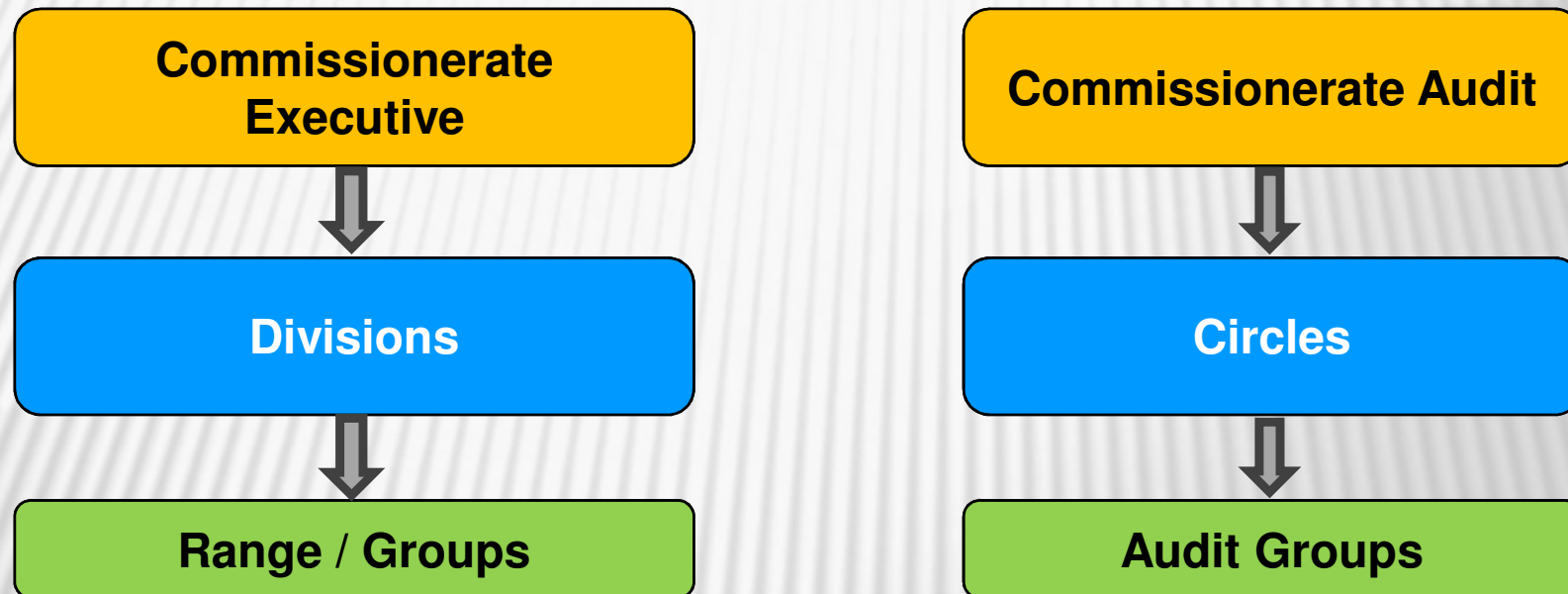
- ❖ Investigations & Audits
  - Administrative Framework
  - Policy Framework
  - Legislative Framework
- ❖ Adjudication
  - Legislative Framework

# **Investigations and Audits - Administrative Framework**

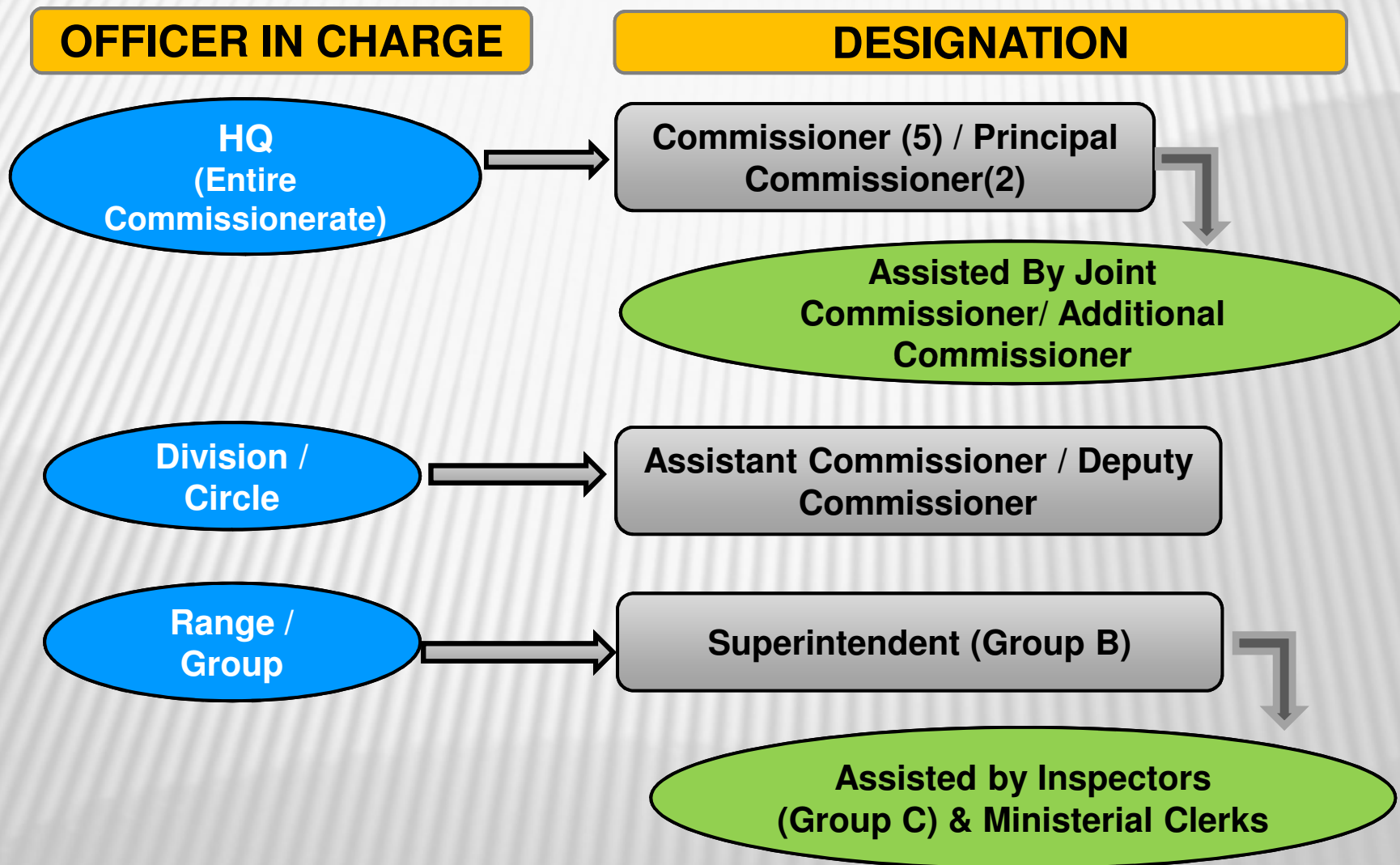
# Administrative Framework



# □ Administrative Framework



# □ Departmental Hierarchy



# □ Functions of Central Excise Officer

## Commissioner of Central Excise

Adjudication

Centralized Registration in r/o units

Powers of revision/review

Pre audit/ post audit of rebate/ refund claims

## Additional & Joint Commissioner of Central Excise

Adjudication

Administrative supervision over Division

## Deputy & Assistant Commissioner Of Central Excise

Adjudication

Provisional assessment

Sanctioning refund/rebate claims

Work Related to Audit / Anti evasion

## Superintendent of Central Excise

Registration

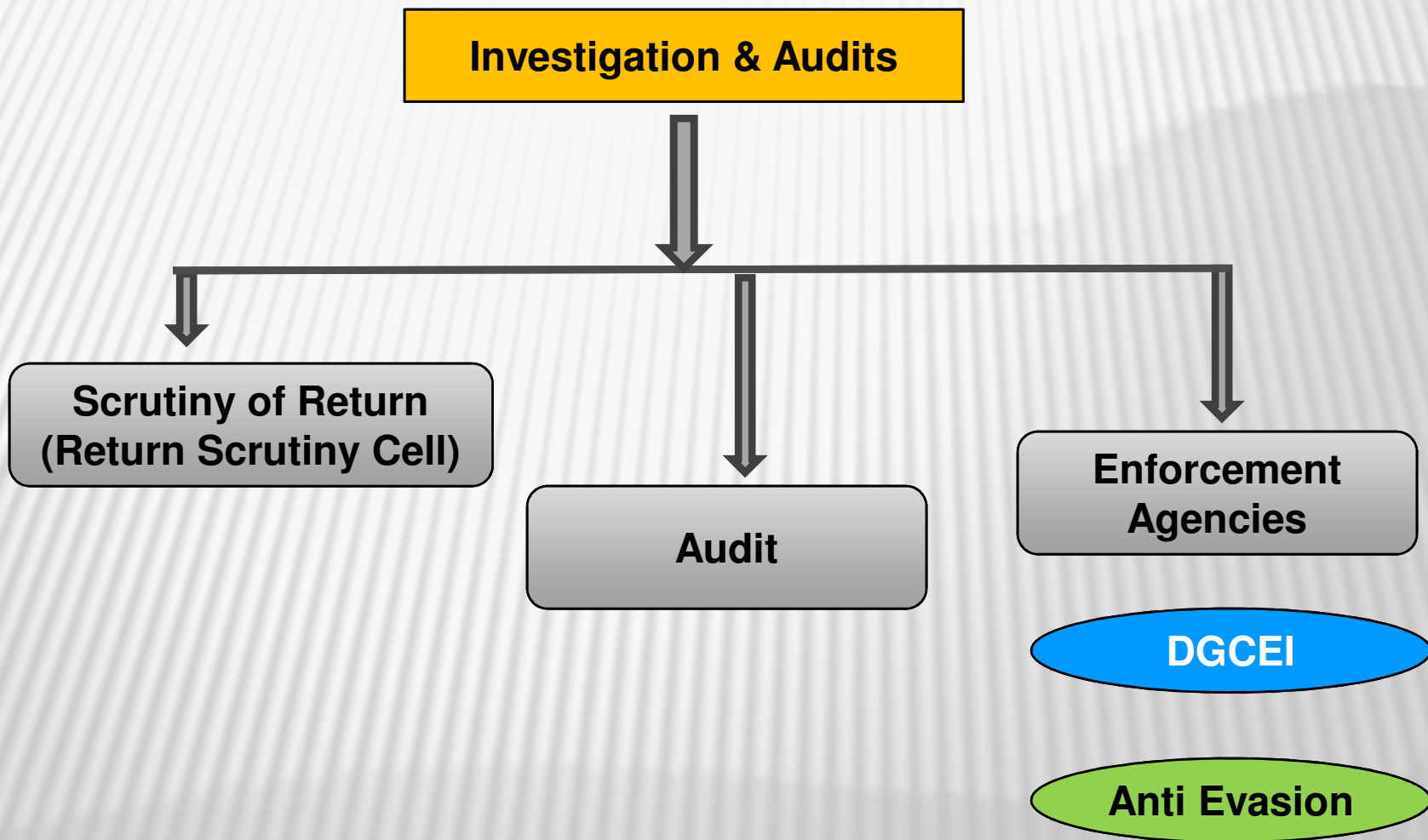
Scrutiny of returns

Surveys

Anti-evasion checks / enquiries



# □ Wings



# Investigation & Audits - Policy Framework

## □ Need for Audit

- Section 70(1) provides for determination of service tax by the assessee himself and file periodic returns in the prescribed form. Thus there is need for strengthening the audit mechanism to prevent tax evasion / avoidance.
- The Central Board of Excise and Customs (CBEC) has issued guidelines for audit of accounts of Service Tax assesseees.
  - Service Tax Audit Manual 2011
  - Circular No.995/2/15-CX dtd.27-02-2015

# □ Audit – Selection Parameters

- Based on Service Tax paid (Circular No. 381/145/2005 dated 6.6.2006 )
- Risk Parameters (service tax Audit Manual 2011)

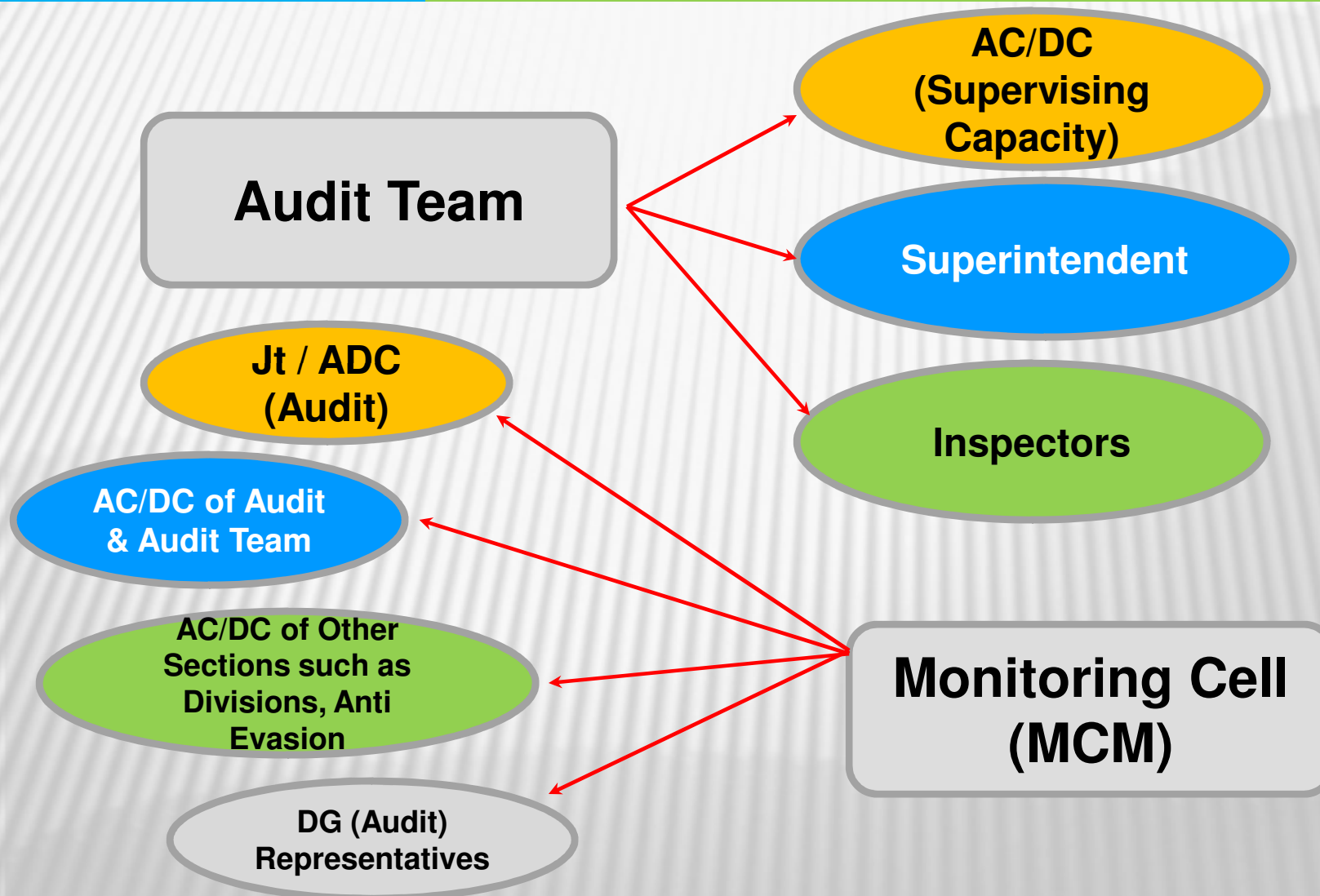
	<b>Quantum of annual duty payment (in cash + CENVAT Credit)</b>	<b>Frequency of audit</b>
1	Taxpayers paying more than Rs 50 lakhs	Every year
2	Taxpayers paying between Rs. 25 lakhs and Rs. 50 lakhs	Once in two years
3	Taxpayers paying between Rs. 10 lakhs and Rs. 25 lakhs	Once in five years
4	Taxpayers paying below Rs. 10 lakhs	2% of the total number every year

# □ Risk Parameters

- Taxpayers paying high proportion of service tax through CENVAT.
- Taxpayers providing exempted and taxable service
- Taxpayers referred to by the Division/Range on the basis of scrutiny
- Taxpayers referred to audit as a result of the scrutiny of their half yearly returns.
- Taxpayers whose earlier audit has resulted into substantial demand.
- Taxpayers having bad track record with the department.
- Taxpayers whose value of taxable service exhibits a downward trend.

## □ **Role of Directorate General of Audit:**

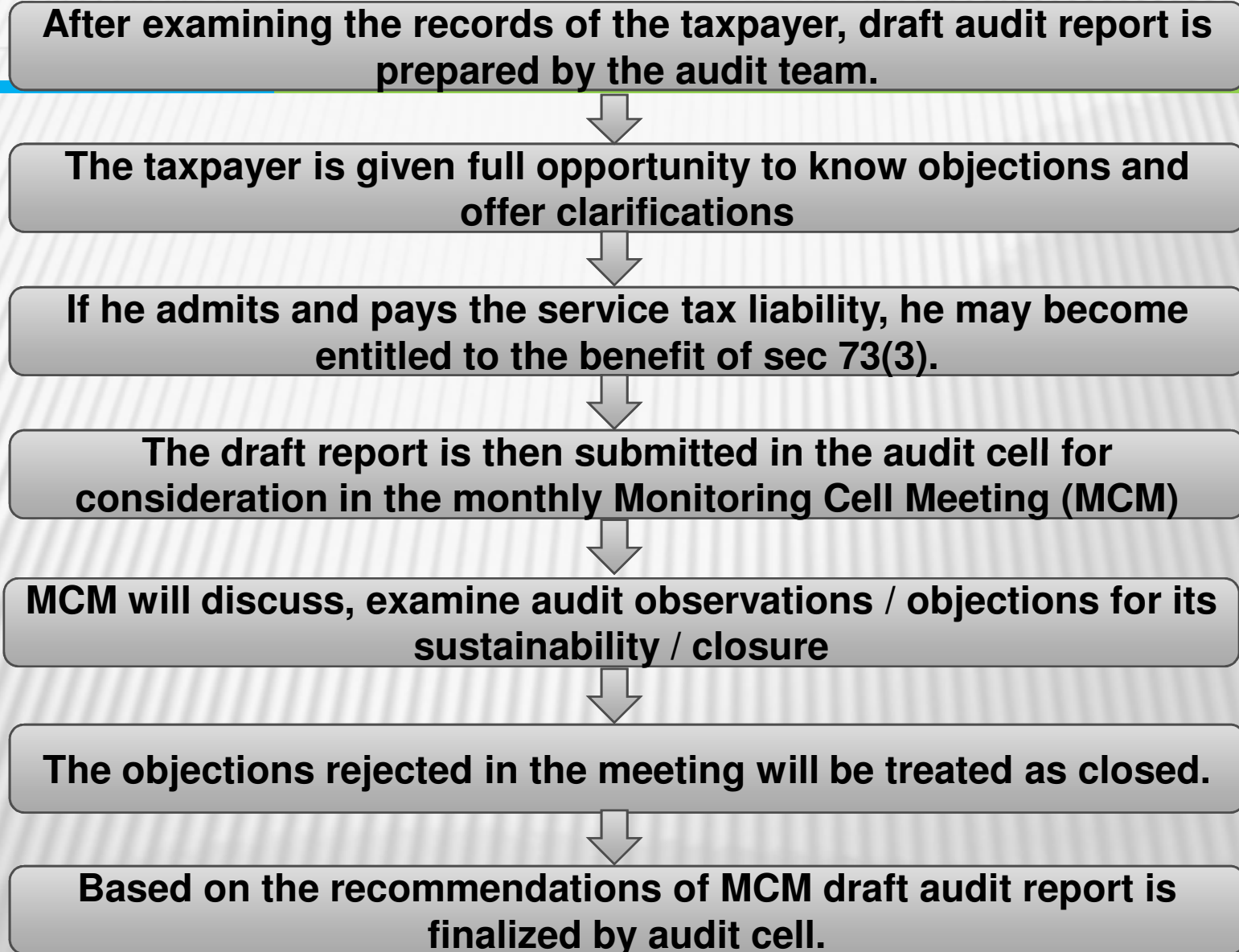
- Monitors service tax Audits undertaken by Commissionerates.
- Audit Commissionerate shall consult zonal units of Directorate General of Audit while finalising the Annual plan of Audit coverage.
- The criteria for categorizing the units into large, medium and small within each zone/ commissionerate is periodically reviewed and revised in consultation with the Audit Commissionerates.



## □ Monitoring Cell Meeting.

- Draft audit report is prepared by the audit team which contains audit objections.
- In the monthly Monitoring Cell Meeting (MCM) draft audit report is submitted for consideration and on the recommendation of MCM, draft report is finalised by audit cell.
  - Closure of audit file if no discrepancy is found in audit
  - Closure of audit para by the Monitoring Committee Meeting(MCM).
  - Approval of audit para by MCM and payment of amount involved.
  - Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised





# □ Scrutiny of Service Tax Returns

## Scrutiny

### Preliminary Online Scrutiny

#### Objective:

- Ensure completeness of information
- Arithmetic correctness
- Timely payment
- Timely submission of returns

#### Means:

Validation checks incorporated by DG(S & DM)

Returns having 'errors marked for correction'

### Detailed Manual Scrutiny

#### Objective:

Correctness of self assessment made by assessee

#### Means:

Reconciliation of information in ST-3 returns with ITR Form No. 4,5,6,7 and 26AS and any other third party information available

- Observation sheet
- Scrutiny report to be presented at MCM

# □ Detailed Manual Scrutiny

**Director Systems and Data Management**

**Nodal Officer of Zone (Officer of the rank JC / ADC)**

**Return Scrutiny Cell (located in every commissionerate' s HQ)**

**Selection of assessee by JC/ ADC**

**Allocation of cases to Divisions, Ranges**

**Presentation of Scrutiny Report in MCM**

**Selection Criteria**

**Monetary Limit**

0-10 Lac

10-25 Lac

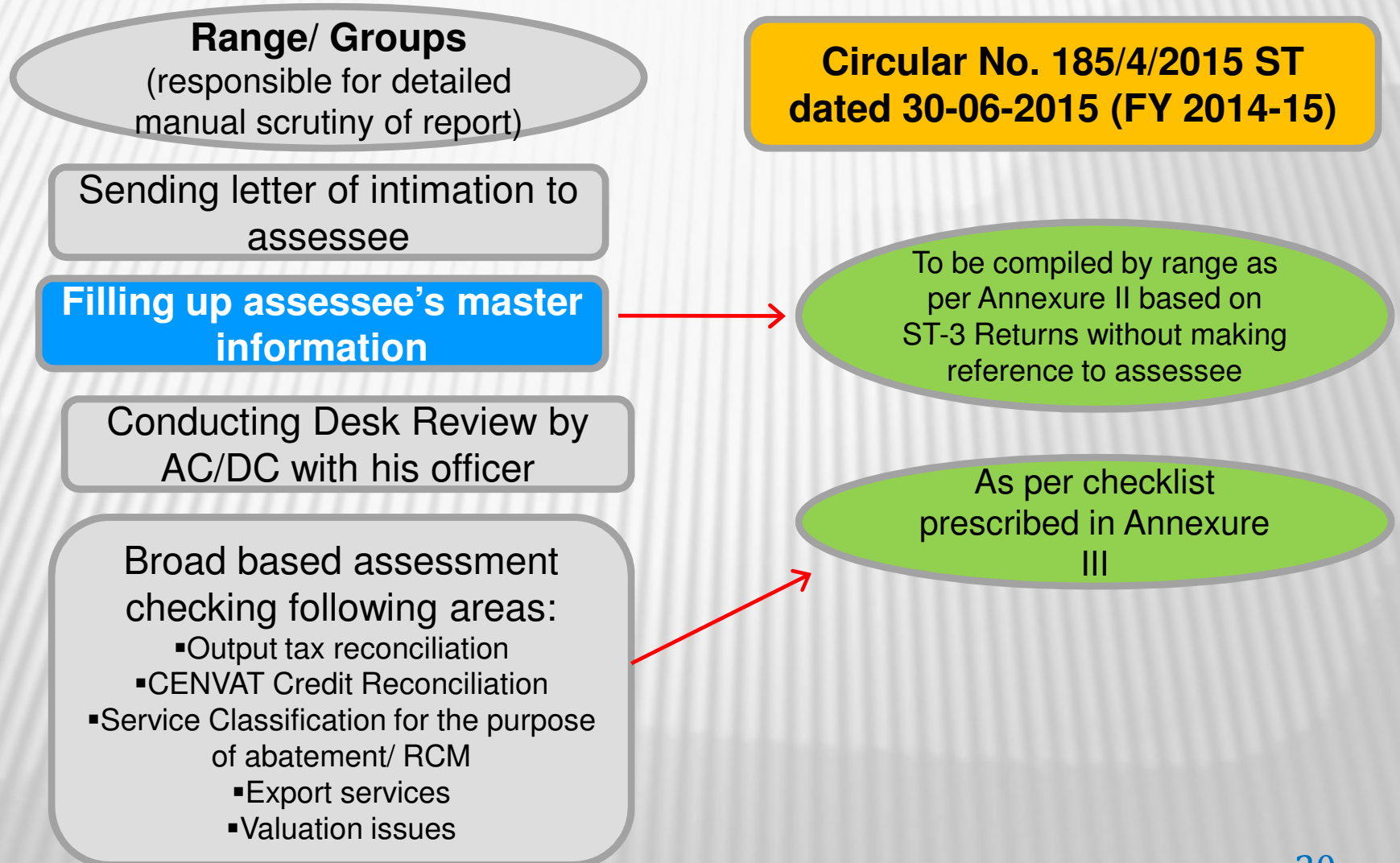
25- 50 Lac

**Risk Parameters**

**Availability of Manpower**

**Periodic Reporting to DGST**

# □ Detailed Manual Scrutiny



## □ Scrutiny or Audit?

- The purpose of detailed manual scrutiny of returns is to ensure the correctness of the assessment made by the assessee... In doing this, the proper officer must rely mainly on assessment related documents like agreement/ contracts and invoices. **Detailed financial records should not be called for in a routine manner** (para 3.1)
- The detailed scrutiny programme **typically supplements the audit programme**. The scope of audit on the other hand is to inspect the financial records of a company for the complete financial year in order to identify non-compliance issues and to evaluate the assessee's internal control system. The two processes of audit and scrutiny are infact complementary to each other. (para 3.2)
- The focus of detailed manual scrutiny of the returns would be on the returns of those assessee **which are not being audited**...(para 4.1)
- The assessee who have been selected for audit or have been audited recently (in the past three years) should not be taken up for detailed scrutiny... **In no event should an assessee be subjected to both audit and detailed manual scrutiny**... (para 4.3.6)

## □ Scrutiny or Audit?

- In case any additional details are required, the same may be obtained from the assessee through requisition rather than through a visit. **Calling of such additional documents must be done with approval of jurisdictional AC/ DC so as to obviate the complaint of administrative intrusion.** (para 5.4)
- ....it is also possible that the officer may come across some issues which may have to be **referred to audit or anti- evasion.** These should also be noted in the relevant column given in the observation sheet. In case where detailed scrutiny of returns results in detection of defaults in service tax payment and it appears that proviso to section 73(1) of the Finance Act 1994 is invocable, the **ST-3 returns of the past periods should also be verified** and the results of such verifications should be recorded. (para 6.1)

# Investigations and Audits- Legal Framework

# □ Powers of Central Excise Officers

Powers and duties of Central Excise Officer are given in the Chapter III of the Central Excise Act, 1944. By virtue of Section 83 of the Finance Act, 1994, certain provisions of Central Excise Act are made applicable to service tax.

- i. Power of Adjudication (Section 73 and 83A)
- ii. Power to search premises and seize (Section 81 of the Act)
- iii. Access to registered premises (Rule 5A of the ST Rules)
- iv. Power to issue directions for carrying out Special Audit in certain cases (Section 72A of the Act)
- v. Power to arrest (Section 91 of the Act)
- vi. Power to issue summons (section 14 of the Central Excise Act)



# □ Assessment

- As per rule 2(1)(b) of Service Tax Rules, 'assessment' includes self-assessment, reassessment, provisional assessment, best judgment assessment.
- **Provisional Assessment:**  
Assessee may make request in writing for provisional assessment to Assistant/Deputy Commissioner. After such a request, assessee has to submit memorandum in form ST-3A.
- **Best Judgment Assessment:**  
Any person liable to pay service tax fails to furnish the return under section 70 or having made a return, fails to assess the tax, the Central Excise Officer can make 'best judgment assessment'. He will determine the sum payable or refundable to the assessee on the basis of assessment.

## Audit

- Audit under service tax is covered by section 14AA of Central Excise Act, 1944 as applicable to service tax.
- Auditor means a Central Excise or Service Tax officer entrusted with the duty of conducting audit.

## □ Who Can Conduct Audit Under Service Tax

- The selective audit is conducted by jurisdictional central excise officer or by an audit party appointed by Comptroller and Auditor General of India CBEC Circular No. 97/8/2007-ST dated 23-8-2007.
- A comprehensive 'Service Tax Audit Manual 2011' has been prepared to provide guidelines to officers conducting audit Circular No. 135/4/2011-ST dated 19-4-2011.
- The audit is generally carried out for a period not exceeding 5 years.
- Taxpayer is given minimum 15 days advance notice of date of visit by the audit party.

## □ Special Audit- Section 72(A)

- The special audit shall be ordered if the Commissioner of Central Excise has reason to believe that where
  - the service tax assessee has failed to declare or determine the value of taxable service correctly; or
  - has availed and utilized credit of duty or tax paid beyond the normal limit or by means of fraud, collusion or wilful misstatement or suppression of facts; or
  - has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises.

## □ Special Audit- Section 72(A)

- The Commissioner, direct such person to get his accounts audited by Chartered Accountant or Cost Accountant nominated by him. **[section 72A(2) of Finance Act 1994]**
- The provisions of special audit apply even if audit was conducted under some other law **[section 72A(3) of Finance Act 1994]**
- The auditee shall be given opportunity of hearing in respect of any material gathered on the basis of such special audit and proposed to be utilised in any proceedings against him. **[section 72A(4) of Finance Act 1994]**

# □ Power of Summons

- Section 14(1) of Central Excise Act provides that any central excise officer can issue summons to any person for any inquiry which such officer is making.
- The term summons means asking a person to appear before the named authority and give evidence and produce documents or other things.
- Summons under sections 107 and 108 of Customs Act may amount to 'custody' but not to 'arrest', but such custody could subsequently materialise into arrest.
- Summons must be issued only when information cannot be otherwise easily obtained.

# □ Show Cause Notice

- As a result of inquiry, audit or investigation Central Excise Officer is of the view that any person liable to pay service tax has failed to pay service tax or erroneously refunded, then Central Excise Officer may serve a notice i.e. **Show Cause Notice (SCN)** on such person, to show as to why he should not pay the amount as specified in the notice.
- The time limit for issuing Show Cause Notice is as follows:

<b>Normal Time Period</b>	<b>18 months</b>
<b>Extended Time Period (allegation of fraud and suppression)</b>	<b>5 years</b>

- After the SCN is served upon the assessee, he should appear before the appropriate adjudicating authority for adjudication of service tax demand and penalties

# □ Show Cause Notice

- Service Tax demand confirmed by the adjudicating order or the order-in-original cannot exceed the demand quantified in the SCN.
- Adjudicating authority cannot confirm the demand on a ground other than that raised in the SCN, unless it is a legal ground.
- No demand can be adjudicated in the absence of SCN.
- Adjudication of penalty u/s 83A is different from adjudication of service tax demand u/s 73(2). Therefore, where SCN is not alleging levy of penalty, adjudication authority cannot impose penalty in the absence of SCN.



## □ When is SCN required?

- As per proviso to section 73(3) Central Excise Officer may determine the amount of short payment of service tax, if any, which in his opinion has not been paid then the Central Excise Officer shall proceed to recover such amount in the manner specified u/s 73 i.e. by issuing SCN u/s. 73(1) and making adjudication order u/s 73(2).
- However if in the course of best judgment assessment, the assessee, on realization of his mistakes (either on his own or on being pointed out by officer), decides to make payment and pays the same along with interest and intimates the same to officer, **then no SCN can be issued** unless, there is willful suppression, fraud, collection, evasion etc.

# Adjudication – Legal Framework

# □ Types of Adjudications

- **Adjudication u/s. 73 of the Act-** Recovery of service tax not levied or paid or short levied or short paid or erroneously refunded.
- **Adjudication u/s 73A of the Act-** Recovery of any amount collected from any person in excess of service tax
- **Adjudication u/s. 83A of the Act-** Adjudication of Penalties
- **Adjudication under Rule 14 of the CENVAT Credit Rules read with sec. 73 -** where the CENVAT credit has been taken and utilized wrongly.

# □ Powers of Adjudication

- Central Excise Officers have been empowered to adjudicate in following:
  - a) Demand of service tax and its recovery- section 73.
  - b) Rectification of mistake by amending own order- section 74
  - c) Imposition of penalty- section 83A inserted w.e.f. 13 May, 2005
  - d) Refund of service tax and interest- section 11B of Central Excise Act made applicable to Service Tax.

## ❑ Monetary Limits for the purpose of Adjudication u/s 73 and u/s 83A

Sr. No	Central Excise Officer	Amount of Service Tax or CENVAT credit specified in a notice for the purpose of adjudication u/s 83A
1	Superintendent of Central Excise	Not exceeding Rs.1 lac (excluding the cases relating to taxability of services or valuation of services)
2	Assistant Commissioner or Deputy Commissioner of Central Excise	Not exceeding Rs. 5 lac (except cases where superintendents are empowered to adjudicate)
3	Joint Commissioner of Central Excise	Above Rs. 5 lac but not exceeding Rs.50 lac
4	Additional Commissioner Of Central Excise	Above Rs. 20 lac but not exceeding Rs. 50 lac
5	Commissioner of Central Excise	Without limit

❖ Refer **Circular No. 130/12/2010-ST** dtd. 20-09-2010

# □ Time Limit for completion

- Finance Act, 2014 has inserted new sub-section 4B in section 73 to provide for time limit for adjudication.
- The new sub-section 4B reads as follows:  
The Central Excise Officer shall determine the amount of service tax due under sub- section (2) –
  - within six months from the date of notice where it is possible to do so, in respect of cases whose limitation is specified as eighteen months in sub-section(1);
  - within one year from the date of notice, where it is possible to do so, in respect of cases falling under proviso to sub-section (1) or the proviso to sub-section (4A).

## □ Time Limit for completion

- Accordingly, following time frame shall be applicable for determining the amount of Service Tax due by the Central Excise Officer:

<b>Particulars</b>	<b>Type of SCN</b>	<b>Prescribed Time Limit</b>
No charge of suppression of facts	Normal Period of 18 months	6 months from the date of notice
Charge of suppression of facts	Extended Period of 5 years	12 months from the date of notice

## □ Process of Adjudication u/s. 73(2)

- Section 33A of The Central Excise Act, 1944 governs the procedure of adjudication, which is made applicable to service tax by section 83 of the Finance Act, 1994.
- The Adjudicating authority shall, in any proceeding under Chapter VI of The Central Excise Act, 1944 or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.
- The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing.
- However, provided that no such adjournment shall be granted more than three times to a party during the proceeding.



