

WIRC of ICAI

Most Emerging Areas of Litigation and Preparation thereof

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07.07.2023



Coverage

- ✓ Source of Demand
- ✓ Principles of natural justice
- ✓ Various emerging issues of litigation

Source of Demand

- Scrutiny of returns [Sec 61]
 - Assessment [Sec 62, 63, 64]
 - Audit [Sec 65]
 - Inspection, Search & Seizure [Sec 67]
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- Collection of the relevant facts and documents
 - DRC-01A Computation of tax demanded

Why is Litigation?

Chapter 9 in the Economic Survey 2017-18 which was titled "'Ease of Doing Business' Next Frontier: Timely Justice", there is a mention that the success rate of department in CESTAT was mere 12% where the decisions were totally or even partially in the favour of the department.

Principles of Natural Justice regarding SCN

Principles of natural justice which are commonly known as “*audi alteram partem*” which means that no one should be condemned unheard.

Brindavan Beverages 2007 (213) E.L.T. 487 (S.C.)

“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.”

Principles of Natural Justice regarding SCN

- A. STRUCTURE OF SHOW CAUSE NOTICE:**
 - a. Should be in electronic mode
 - b. DIN is mandatory**
 - c. Brief introduction of the noticee
 - d. Factual Statement and documents relied upon (RUD)
 - e. Legal provisions and contravention thereof**
 - f. Justification on invoking section 74**
 - g. Computation of tax liability**
 - h. Statement of charges
 - i. Authority to adjudicate

Principles of Natural Justice regarding SCN

B. SERVICE OF THE SCN, ORDER ETC. (Sec 169)

Any one of the following mode of service:

- a. By hand delivery or through courier to the assessee/his manger/AR/Employee/any Adult family member.
- b. By regd post /speed post/Courier with AD to his last known POB/Residence.
- c. By Email
- d. Common portal
- e. Publication is in the local newspaper
- f. If none of the above is practicable by affixing it in some conspicuous place at last known POB/Residence. If not practicable affix on the notice board of the officer.

Principles of Natural Justice regarding SCN

C. ADJUDICATION PROCEDURE:

- a. 30 days time to reply and extension where requested
- b. Mandatory personal hearing
- c. 3 Adjournments
- d. Record of hearing
- e. Cross examination where RUD is from some other person

Principles of Natural Justice regarding SCN

D. SPEAKING ORDER:

- a. It must contain a distinctive order number along with the date and the designation of the officer passing the order.
- b. It must contain a preamble indicating the defence the provisions of appeal, the appellate authority and the time limit for appeal.
- c. It must contain the brief facts of the case, the charges and evidence relating thereto.
- d. The provisions alleged to have been contravened and action proposed in the notice.

Principles of Natural Justice regarding SCN

- e. The written submissions made, including the evidence tendered by the defence must be mentioned in the order.
- f. The particular of personal hearing needs to be mentioned
- g. Analysis and findings of the adjudicating authority with reference to each charge indicating clearly whether a particular charge stands proved or not.
- h. The order of the adjudication authority quantifying duty liability, interest and penalties.
- i. Appropriation of the tax and interest paid if any.

ITC Rejection : 2A Vs 3B, Sec 16(4) time limit

For the period upto 09.10.2019

- a. No provision in the law
- b. Sec 16(2)(aa) inserted vide Finance Act, 2021 wef 01.01.2022
- c. Whether Filing 3B is the conclusive evidence of payment of tax on a particular supply?
- d. Law [Sec 39(7)] provides filing of 3B without paying the Tax, but the portal is not allowing.
- e. After introduction of rule 36(4), additional credit of 20%, 10%, 5%.. But when there was no rule 100% matching expected- Very unreasonable.

ITC Rejection : 2A Vs 3B, Sec 16(4) time limit

- f. MGST Internal Circular dt 25.02.2022 whether valid without GST council recommendation?
- g. CBIC Circular No. 183 dt 27.12.2022 – Whether Circular can restrict the credit?
- h. What about the period from 01.04.2019 to 09.10.2019?

Sec 16(4) Time limit:

- f. Supplier filing the GSTR1/3B after the time limit specified in sec 16(4)..?
- g. Recipient declaring the ITC in his 3B after the time limit specified in sec 16(4)..?

ITC Rejection : 2A Vs 3B, Sec 16(4) time limit

Bharati Airtel Ltd [SLP (C) No. 8654 of 2020]

“The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self assessment. The primary source is in the form of agreements, invoices/challans, receipts of the goods and services and books of accounts which are maintained by the assessee manually/electronically.”

ITC Rejection : Non-filers, Regn Cancellation

- *Relevance..??*
- *What if tax is paid through DRC-03?*
- *LGW Industries Ltd. 2021 (4) TMI 280 - CALCUTTA HIGH COURT*
 - *Documents in support of the transactions*
 - *On the date of transaction, the registration was valid*
 - *Payment made to the supplier*

ITC Rejection : Hawala

- *Appearing in 2A/2B*
- *Supply received*
- *Payment is made to the supplier*
- *Recipient claimed ITC in his 3B*

But ITC used by the supplier to pay his liability is fake..??

- *Arise India Ltd SC decision on VAT..??*

ITC Rejection : Sec 17(5)(h)

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples:

- Whether sec 17(5) is restriction on credit or reversal of credit?
- Production / material handling loss..??
- Inventory destroyed by fire..??
- Value of stock written off..??

ITC Rejection : Sec 17(5)(h)

- Business Promotion expenses..??
- Supreme Court decision in Apex Laboratories Pvt Ltd.
- Physician Samples..??
- Time expired medicine..??

ITC Reversal : Concessional tax rate without ITC

Notes: ... *[Notification 11/2017-CGST(R)]*

(iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,-

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act,2017 and the rules made thereunder.

ITC Reversal : Concessional tax rate without ITC

E.g.

Mr A is a Caterer as well as an event manager.

- Tax rate on catering – 5% without ITC
- Tax rate on Event management – 18%, ITC eligible

- Common ITC Reversal..??
- Enabling provision..??

Fails to pay the supplier within 180 days

'Failure' means non-fulfillment of an obligation imposed

Whether it is a beneficial measure to MSME?

Whether it is an anti-evasion measure?

Difference in GSTR1 & 3B

- Sec 59 – Self assessed tax means the tax declared in GSTR3B.
- Sec 75(12) – Self assessed tax includes tax declared in GSTR1 but not in 3B. [wef 01.01.2022]
- Declare the correct turnover in GSTR 9, reconcile with books of accounts
- Give intimation of the inadvertent error to the jurisdictional officer.

POS in case of certain supplies

Sec 13(3)(a): services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

➤ Technical testing/inspection/certification/ analysis of goods,

[Advinus Therapeutics, Sai Life Science...]

Transfer of MIDC Land

ABC Ltd transfers its land and factory premise in MIDC area to PQR Ltd for a consideration of Rs. 10 Crores.

- What is the nature of supply?
- What is the taxable Value?
- Is it a composite supply?

Cross Charge Vs ISD

- Whether Cross charge is mandatory?
- Valuation..?
- Service received at branch, whether HO can take the ITC?
- Whether ISD is mandatory?

Credit Note

- Reasons for issuing Credit Note
- Proof of incidence of tax not being passed on..??
- Not declared in the 3B of the same month
- Liability reduced post 30th November..??
- Reduction of ITC in case of commercial credit note

Table

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

➤ E.g.

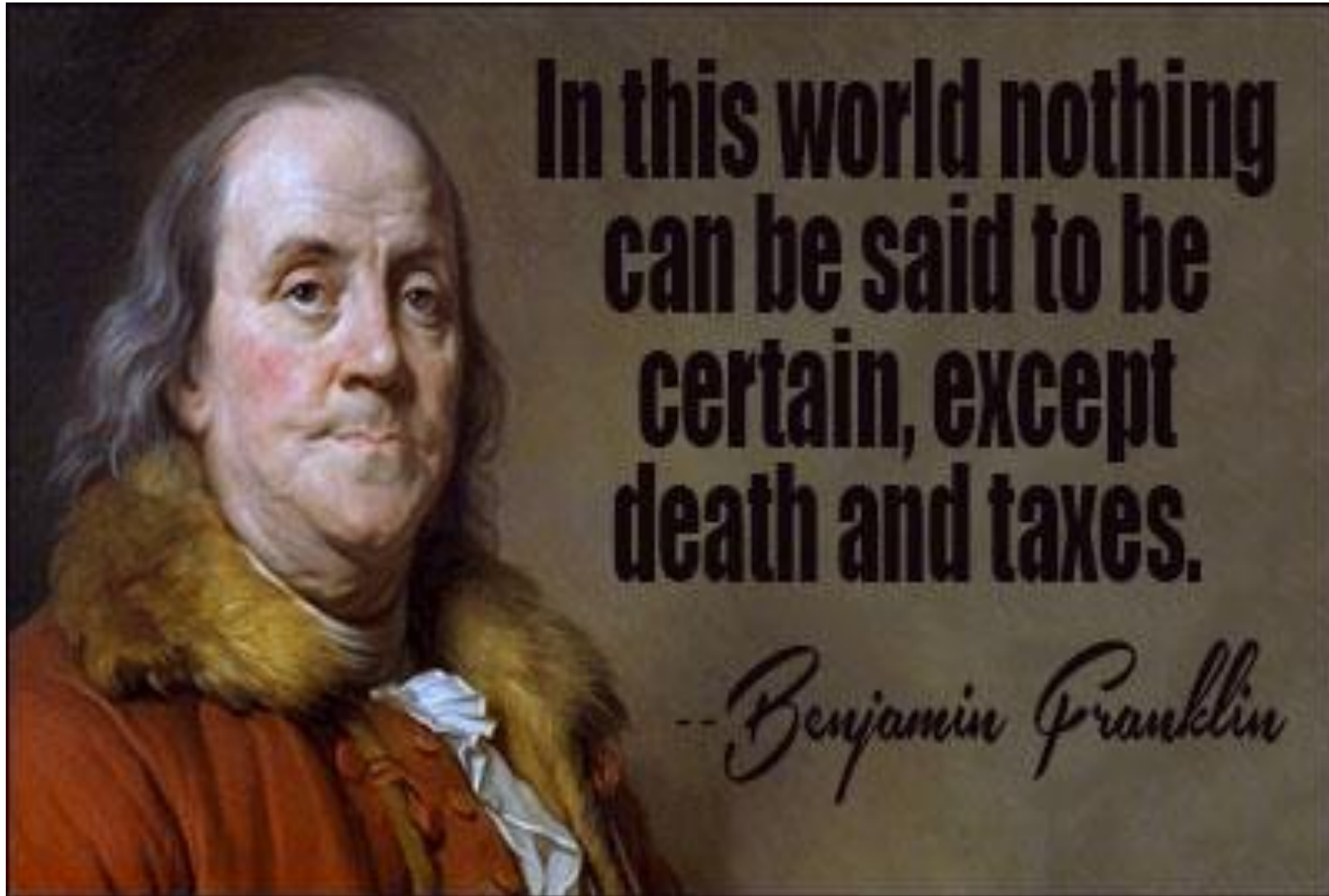
An Indian company availed the service of a civil contractor of South Africa for the construction of mall in South Africa.

Whether RCM is applicable?

- RCM paid not matching with RCM liability as per 2B
- ITC of RCM paid for the earlier year..??
- Self invoice not generated..??

Payment under Protest

- Time limit to claim refund..??
- Why to lodge the protest ?
- How to lodge the protest?



Any Question?

Thank you

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