

Date: 23rd October 2024

To,

(1) Shri Sanjaykumar Agarwal
Hon'ble Chairman,
Central Board of Indirect Taxes and Customs,
New Delhi. 110001
chmn-cbic@gov.in

&

(2) The Commissioner of State Tax,
The Department of Gujarat State Tax,
C-5 Rajya Kar Bhavan.
Ashram Road,
Ahmadabad.
commi-stax@gujarat.gov.in

Respected Sir(s),

Subject : Representation related to Issuance of Guidelines for Adjudication Proceedings under GST Act(s), 2017

1. About the Associations (AGFTC and ITBA):

All Gujarat Federation of Tax Consultants (AGFTC), founded in 1992, is the apex Regional Body of Advocates, Chartered Accountants & Tax Practitioners of Gujarat, having membership strength of more than 2000 professionals and institutional membership across the State of Gujarat.

Income Tax Bar Association, Ahmedabad (ITBA) is one of the first professional associations founded in 1947 comprising of Tax Professionals, Tax Advocates and Chartered Accountants based at Ahmedabad and having current strength of more than 1100 members.

The prime objective of these associations is not only to work for the cause of their professionals but also educate the public at large and to act as a catalyst between Citizens & Government Authorities. Both the associations regularly organize seminars and lectures on tax advocacy and legal awareness.

2. Request to issue Guidelines for adjudication proceedings under GST Act, 2017

A well-drafted GST order, issued by a proper officer, is an important component of fair and efficient for Goods and Services tax (GST) administration. The adjudication order is a holistic exercise of the application of law and reflecting it properly in the notices and orders. An effective order must demonstrate qualities such as clarity, transparency and adherence to the provisions of the GST Acts and Rules, 2017. Manier times, because of the poor drafting of notices and orders, it ends up causing harassment to taxpayers and equally resulting in a loss of efforts and time of proper officers and revenue to the department with chain of litigations and other issues.

Detailed guidelines are required to make the adjudication process more transparent and efficient which will surely help to reduce the litigations and realize revenue to the exchequer in time in an efficient manner.

On a brighter side, recently, Commercial Taxes Department, Government of Tamil Nadu has issued a detailed circular No. 8/2024 dated 29-08-2024 (A1/553/2024/Ease of Business Cell) regarding certain guidelines regarding Adjudication Proceedings under GST Act, 2017. A copy of the circular is attached herewith for ready reference.

3. Request

The Government through the Ministry of Finance and in particular both CBIC & CBDT are continuously working towards ease of compliance, transparency in administration and reduction in litigation for the taxpayers. GST being a unique Act, it is a humble request to both Central Government & State Government to consider the representation made by AGFTC & ITBA for issuance of guidelines regarding Adjudication Proceedings under respective CGST & SGST Acts and oblige.

We sincerely hope that the both the Central and the State Governments would work towards such essential requirement of towards uniformity in the system across the nation and enable business to support the vision and mission of USD 5 trillion economy.

Yours sincerely,

For and behalf of
ALL GUJARAT FEDERATION OF TAX CONSULTANTS



CA (Dr.) Vishves Shah
President



Adv. Mrudang Vakil
Hon. Secretary

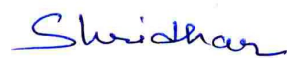


Adv. Ashutosh Thakkar
Sr. Vice President



Adv. Bharat L. Sheth
Chairman:
Indirect Tax
Committee

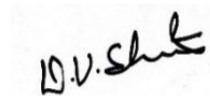
INCOME TAX BAR ASSOCIATION



CA Shridhar Shah
President



CA Kenan Satyawadi
Hon. Secretary



Adv. (Dr.) Dhruven Shah
Chairman: Representation Committee

Encl:

- Circular No.8/2024 dated 29-08-2024 by Commissioner of State Tax Tamil Nadu

CC to:

1. Smt. Nirmala Sitharaman,
Hon'ble Finance Minister
Government of India
North Block,
New Delhi – 110001
E-mail: fmo@nic.in

2. Hon'ble Revenue Secretary,
Ministry of Finance,
North Block, New Delhi – 110001
rsecy@nic.in
3. Shri Kanubhai Desai
Hon'ble Finance Minister
Government of Gujarat
Gandhinagar
min-fin@gujarat.gov.in
4. Shri Dr. T. Natarajan
Principal Secretary
Ministry of Finance,
Government of Gujarat
secfd@gujarat.gov.in

GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
EZHILAGAM, CHENNAI- 600 005

PRESENT: Dr. D.JAGANNATHAN I.A.S.,

COMMISSIONER OF STATE TAX

Circular No: 8/2024
(A1/553/2024/
Ease of Business Cell)

Dated: 29.08.2024

Sub: Commercial Taxes Department – Goods and Services Tax (GST) Acts – Adjudication proceedings – certain guidelines issued – regarding.

A well-drafted GST order, issued by a proper officer, is an important component of fair and efficient Goods and Services Tax (GST) administration. Effective orders must demonstrate qualities such as clarity, transparency and adherence to the provisions of the GST Acts and Rules, 2017. The adjudication process is a holistic exercise of the application of laws and reflecting it properly in the notices and orders. Many times, because of hurried and poor drafting of notices and orders, various appellate forums and Hon'ble High Court set aside such notices / orders, resulting in a loss of efforts and time of Proper Officers and revenue to the Department. Hence, the following guidelines are issued to make the adjudication process more transparent, reduce the litigations and realize revenue to the Exchequer.

1. QUALITIES OF A GOOD GST ORDER:

- (i) **Clarity and Conciseness:** It is of utmost importance to maintain clarity and simplicity while drafting GST adjudication orders. Usage of Clear and unambiguous language ensures that taxpayers can easily comprehend the officer's decision. Also avoiding unnecessary elaboration helps to maintain the focus on the core reasoning behind the orders enhancing its effectiveness and ensuring efficient communication of the decisions to the taxpayer.
- (ii) **Logical Reasoning:** A well-drafted GST adjudication order shall provide a logical and reasoned explanation for the decision arrived by the proper officer. It should meticulously detail the facts of the case, citing relevant legal provisions from the GST Acts and Rules and illustrating how those provisions were applied to the specific circumstances at hand. By doing so, the order establishes a clear and compelling rationale for the decision arrived in the adjudication process.
- (iii) **Fairness and Impartiality:** The order should be free from any bias or prejudice. The order should demonstrate a commitment to fairness and impartiality throughout. It should be evident that the decision was reached through a meticulous evaluation of all evidences and strict adherence to the GST Acts and Rules.
- (iv) **Compliance with Legal Standards:** The order should meticulously adhere to the legal standards and established procedures under the GST

Acts and Rules. It should showcase the officer's comprehensive understanding and accurate application of relevant provisions in reaching a 'just' outcome.

- (v) **Consistency with Precedents:** Consistency with prior judgements and the established legal principles related to GST are crucial aspects of a well drafted adjudication order. This ensures coherence within the GST framework. This consistency not only enhances the credibility of the decision arrived by the proper officer but also provides clarity to the taxpayers and promoting confidence in them about the enactment of GST Acts.
- (vi) **Clarity on Remedies:** If the order grants any remedies or reliefs (such as refunds, adjustments), it should clearly specify the nature and extent of those remedies. This includes details on refunds, adjustments or other forms of relief awarded.
- (vii) **Just and Equitable Outcome:** The order should provide a just and equitable resolution of all issues involved. It should carefully address the issues to achieve a fair and impartial outcome.
- (viii) **Protection of Rights:** A fundamental requirement of the order is to ensure the protection of rights and legal safeguards guaranteed under the GST Acts and the Constitution of India.
- (ix) **Finality and Enforcement:** The order should clearly state whether the order is subject to appeal and, if so, the timeframe for filing an appeal and the authority before whom the appeal is to be filed. Additionally, the order should outline the mechanisms for enforcing its decisions, such as collection of taxes, interest and penalties or implementation of other directives.
- (x) **Clarity on Costs:** If the order includes any payment dues, it should transparently explain the methodology for calculating and determining those dues.
- (xi) **Timeliness:** A commendable order should be issued promptly after the conclusion of the proceedings. This minimizes uncertainties and delays for the parties involved.
- (xii) **Correctness:** Above all, the adjudication order must be legally sound. It should be a well-reasoned and accurate interpretation and application of the relevant provisions of the GST Acts and Rules specific to the case at hand.
- (xiii) **Language and Structure:** The order should be well-structured and utilize appropriate legal language and terminology to convey the message with utmost clarity and precision. A professional and respectful tone should be maintained throughout, avoiding dismissive or accusatory language.

Conclusion: These qualities collectively contribute to a well-drafted GST adjudication order and a process that fulfills its purpose within the legal system. This ensures a fair, transparent and efficient GST administration.

2. ROLE OF ADJUDICATING AUTHORITY:

As per Section 2(4) of The Tamil Nadu Goods and Services Tax Act, 2017 "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Commissioner, Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal.

After issuance of Show cause notice, the adjudicating authority shall issue a speaking order after thorough verification of the written submission and supporting documents filed by the taxable person and subsequent discussions during the personal hearing by applying relevant statutory provisions and by strictly adhering to the Principles of Natural Justice.

Principles of Natural Justice:

There are mainly three Principles of Natural Justice. These three principles are:

i) *Nemo judex in causa sua* or Rule Against Bias

This principle states that 'No one should be made a judge in his own cause'. It means that a decision-maker must be impartial and unbiased while making a decision. The decision of adjudicating authority should not be biased or arbitrary.

ii) *Audi Alteram Partem* or Rule of Fair Hearing

This principle means 'hear the other party or No one should be condemned unheard'. The grant of adequate opportunity of personal hearing is the primary responsibility of any adjudicating authority before deciding a case as per the statutory provisions of tax laws. The same should be real, reasonable and effective and not merely an empty formality. The rule of fair hearing encompasses several aspects which include the right to notice, adequate opportunity of being heard and right to present the case and evidence.

iii) *Rule of Speaking Order or Reasoned Decision*

The third principle of Natural Justice which has developed in course of time is that the order passed must be a Speaking Order or Reasoned Decision. When the adjudicating authority provides the reason behind their decision, the decision is treated as the reasoned decision. It is also called a speaking order.

The taxable person must know why and on what grounds an order has been passed for/against him. This is necessary with a view to exclude the possibility of arbitrariness in the action. Once the taxable person had filed reply/objections pursuant to the show cause notice, it is the duty of the Adjudicating authority to pass a speaking order, providing reasons for rejection of the reply/objections raised by the taxable person. If any cryptic order is passed without touching upon the queries/contentions of the taxable person, ultimately, it will result in filing of writ petition under Article 226 of the Constitution of India, by the taxable person before the Hon'ble High court. Therefore, the orders to be passed by the Adjudicating authority shall always be a speaking order.

3. GENERAL CONTENTS EXPECTED IN A SHOW CAUSE NOTICE:

- (i)** Brief introduction about the taxable person and their nature of business.
- (ii)** The period for which the proposed action and statutory provision (Relevant Section) under which notice is being issued has to be mentioned. The issue shall be properly demarcated for invoking Section 73 or Section 74 as the case may be, by the Adjudicating authority. Specific reference to reason of fraud or any wilful misstatement or suppression of facts shall be established in the notice for invoking Section 74 of the GST Act.

- (iii) The records or evidences which is relied on by the adjudicating authority for the proposed action has to be referenced.
- (iv) The self-declaration, if any, made by the taxable person to the department which is sought to be disagreed by the adjudicating authority has to be stated.
- (v) Detailed analysis of evidences/records based on which the proposed action is sought to be made.
- (vi) Conclusion of the adjudicating authority based on the analysis as stated above.
- (vii) Value of supply for which notice issued has to be mentioned and applicable tax, interest and penalty has to be quantified. Further HSN/SAC dealt by the taxpayer, for the respective commodity/service in which the discrepancy is pointed out must be clearly mentioned along with appropriate rate of tax.
- (viii) Arithmetic as well as logical calculation resorted by the adjudicating authority to arrive into the liability proposed has to be provided with reasonable clarity.
- (ix) If any additions or estimations based on best judgment of the adjudicating authority is made, the special circumstances and reasons which warrants such additions or estimation has to be spelt out. The Quantum of additions or estimation shall have a realistic bearing on the nature of irregularity detected, size of business etc.
- (x) The tax payer shall be afforded with reasonable time to show cause against the proposal.
- (xi) The request of the tax payer for perusal/obtaining copies of the documents or records relied by the authority for making such proposal shall be considered judiciously and allowed. Copies of documents relied on can be given along with the notice itself so as to avoid any delay.
- (xii) The request for cross examination of the witness, if any, shall be considered judiciously and allowed.
- (xiii) On completion of the above time limit, an opportunity of being heard in the matter shall also be given.
- (xiv) Request for adjournment of time and hearing shall be granted based on the merit of such requests.
- (xv) Where the adjudication provisions require that the tax payer shall be given a reasonable opportunity of being heard, the provisions shall be followed in letter and spirit, by intimating the taxable person regarding the date, time and venue of hearing. It shall not be a vague intimation like "the taxable person is at liberty to have hearing on any date, within the time stipulated for submitting the objections."

4. POINTS TO BE NOTED BEFORE ISSUANCE OF ORDERS:

- a. The Proper Officer shall ensure that all the components of natural justice, such as opportunity to show cause, grant of copies of documents relied on for assessment, cross examination of witnesses whose documents were relied on for making the assessment, opportunity of being heard in person, grant of reasonable time to file reply, requests for adjournment etc., are properly available in the adjudication process. The detailed guidelines already issued by the Principal Secretary/ Commissioner of Commercial Taxes in Circular No.12/2022 dated 26.09.2022 relating to the adherence to Principles of Natural Justice in the adjudication process shall be followed in letter and spirit.

- b. The Proper Officer shall ensure that the request for appearance by authorized representative under Section 116 of the GST Act, 2017 are properly considered in the adjudication process.
- c. Once the taxable person has filed his objections, the authority shall carefully analyse the contentions raised by the tax payer against the proposal and shall have a cross check with the facts already available. If any ambiguity in the tax payer's contention needs further clarification, it can easily be done at the time of personal hearing. This would give a better understanding of the matter at his disposal.
- d. Subsequently, oral submissions made by the taxable person at the time of Personal hearing, if any, shall be reduced to writing by the authority by way of Record of Proceedings. Such Notes can be required to be authenticated by the taxable person which will be a token of proper hearing. Copy of such 'Record of Personal Hearing', signed by the Officer and Taxpayer/Authorised Representative, shall be retained in the Assessment records and a copy of it shall be shared with the taxpayer as well to ensure transparency.
- e. Circumstances may arise where the evidences or records produced by the tax payer or otherwise, points toward enhanced liability than already proposed. In such circumstances, in accordance with GSTN system / back-office provision, a separate notice shall be issued and all the safeguards and procedures taken for the original notices shall be followed.

5. POINTS TO BE NOTED WHILE DRAFTING THE ORDERS:

The following guidelines are only illustrative in nature, not exhaustive and can further be elaborated depending upon the need and requirement of a given case:-

- a. Check the year for which notice has been issued.
- b. Check the documents and reply filed by the tax payer to see that it represents to the relevant year.
- c. The records of notice issued, acknowledgments, adjournments, documents and evidences shall be marked and referenced. The references shall be chronologically quoted including the proposal notice, revised proposal notice (if any), reply to the proposals, evidences submitted, etc.
- d. Start with Brief introduction about the taxable person and their nature of business. The period for which the order has been issued and statutory provision (Relevant Section) under which action has been taken shall be mentioned clearly.
- e. Gist of the reasons for which the notice has been issued shall be narrated first. The main issues framed as per the proposal notice shall also be provided in detail.
- f. The date of filing of reply, the objections/contentions raised by taxable person, the date of awarding personal hearing and the details of oral submission put forth by him at the time of hearing have to be specifically mentioned in the order. The evidences or other documents, if any, adduced by the taxpayer shall be detailed out.

- g. Further, the contentions raised by the tax payer against the issues raised in the proposal can be logically listed according to the facts of each case. Related issues have to be identified from the reply and evidences and need to be grouped together. It must be ensured that all the contentions raised by the taxpayer has been taken up and listed.
- h. After listing all issues to be decided upon, the adjudicating authority shall segregate the issues broadly in two categories:-
 - (i) One category in which there is no dispute between Department and taxable person; and
 - (ii) Other category in which the dispute between Department and taxable person persists.
- i. The issues, on which there is no dispute, may be summarized in one or two paragraphs of the findings. The remaining issues, where dispute between the Department and taxable person exists, shall be listed. At this stage, the sequencing of the issues is required to be considered carefully.
- j. Now, the issues listed can be taken up chronologically and answered one by one with consideration to the evidences, records and other documents already in possession. Resultantly, the finding is to be explicitly arrived and recorded.
- k. If any proceedings are made in pursuance of the directions of the Appellate Authority and Hon'ble High Court, the fact of such directions and its applicability to the proceeding has to be provided in detail and acted accordingly.
- l. Value of supply has to be mentioned and applicable tax, interest and penalty has to be quantified. Further, HSN/SAC, for the respective Commodity / Service dealt by tax payer in which the discrepancy is pointed out must be clearly mentioned along with appropriate rate of tax.
- m. The arithmetical calculation as well as logical conclusion based on which the issue is decided against the tax payers has to be resorted to fix the liability of the tax payer. Addition or Estimation, if any resorted shall be in tune with the facts of the case and not be too low or too excessive. The tabulation shall be descriptive enough. Anyone who goes through the tabulation must be able to understand the ratio / logic applied behind such fixation of liability.
- n. After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.
- o. The order shall have sustained chronology. It shall have flow and perfect sequence of events, which would continue to generate interest in the reader.
- p. Appropriate care shall be taken not to load it with all legal knowledge on the subject as citation of too many judgements creates more confusion rather than clarity. While citing any judgement, the latest judgement in which all previous judgements has been considered shall be mentioned. Priority has to be given based on the hierarchy of orders issued (i.e.,) Hon'ble Supreme Court of India, Jurisdictional High Court (High court of Madras).

- q. It must be specifically provided in the Order that the final liability fixed along with the interest shall be paid as per the Demand Notice attached. A Demand Notice requiring the tax payer to pay the liability has to be attached along with the Order electronically.
- r. The order shall specify the Authority before whom an appeal can be filed and the time limit within which it has to be filed.

6. GENERAL CONTENTS OF A MODEL ORDER ARRANGED IN LOGICAL SEQUENCE:

- a. Full address of the Authority including email and phone number.
- b. Statutory provision(s) which gives authority to pass the order.
- c. Quote the references (in chronological order)

Eg. Returns/statement of accounts/audit reports /Reconciliation Statement etc.

- i. Notice for checking of accounts/audit.
 - ii. Adjournment requests.
 - iii. Adjournments granted.
 - iv. External information received/ details of e-way bill.
 - v. Statement recorded.
 - vi. Extract /narration in accounts.
 - vii. Invoices of Inward and Outward supply.
 - viii. Inspection reports.
 - ix. Cross examination request.
 - x. Pre-assessment/penalty notices.
 - xi. Replies filed by the tax payer.
- d. Narrate the name and address, GSTIN, and brief business practice, person to whom the order is intended and the assessment year to which the order relates.
- e. The Adjudication order shall contain a bilingual preamble in Tamil and English for better understanding of the tax payers (Model enclosed as Annexure)
- f. Narrate the contents of the notice.
- g. Narrate tax payer's reply.
- h. Personal hearing and Record of personal hearing.
- i. Briefly discuss and decide on the issues conceded by the taxable person.
- j. Issues framed on matters in which there is difference between adjudicating authority and the taxable person. Connected issues to be answered along with the main issue.
- k. Discuss issue-wise along with evidence and facts. Judgments, if any cited, shall be discussed in depth relating to the issue.
- l. Furnish the tax liability calculation. Quantify the tax, interest and penalty payable by the taxable person. If tax demand is yet to be paid, interest may not be quantified as it will be accruing every passing day till the date

of payment. Hence, as regards interest not quantified cases, a mention that Interest at applicable rates as per Section 50 (1) or (3) would be payable will be quintessential.

m. Specify the Authority before whom an appeal can be filed and the time limit within which it has to be filed.

7. The above instructions are meant to be guidelines for Adjudicating Authorities and shall not be cited by any Proper officer as reference in the show cause notice or in any order. All Proper Officers shall follow the above guidelines. All Joint Commissioners and Deputy Commissioners shall supervise the compliance to above Guidelines. Detailed training and awareness shall be conducted among all officers of the Department through the Commercial Taxes Staff Training Institute / Regional Training Chapters.

Sd/- D. Jagannathan,
Commissioner of State Tax

To

The Additional Commissioner (Large Tax Payers Unit).
All the Joint Commissioners (Territorial & Intelligence).
All the Deputy Commissioners (Territorial and Intelligence).
All the Head of Assessment Circles in the State.
All the Proper Officers in the State (through their Head of office).

Copy to

1. All the Additional Commissioners in the Office of the Commissioner of Commercial Taxes, Chennai-5.
2. The Director / Additional Commissioner (ST), Commercial Taxes Staff Training Institute, Chennai -35.
3. The Joint Commissioner (Computer System), Chennai-35, to upload the same in the intranet website.
4. Stock file / Spare - 2.

// True Copy //


Director / Additional Commissioner (ST),
Commercial Taxes Staff Training Institute

இணைப்பு / ANNEXURE

தமிழ்நாடு அரசு - வணிகவரித்துறை
GOVERNMENT OF TAMILNADU - DEPARTMENT OF COMMERCIAL TAXES

துணை ஆணையர் (மாவ)/ உதவி ஆணையர் (மாவ)/ மாநில வரி அலுவலர்/ துணை மாநில வரி அலுவலர் அவர்களது செயல்முறை ஆணைகൾ

PROCEEDINGS OF THE DEPUTY COMMISSIONER (ST)/ASSISTANT COMMISSIONER(ST) / STATE TAX OFFICER / DEPUTY STATE TAX OFFICER

_____வரிவிதிப்பு வட்டம் / _____ASSESSMENT CIRCLE

முன்னிலை : திரு / திருமதி / செல்வி :
 Present : Thiru / Tmt. / Selvi :

அலுவலக முகவரி:

Office Address:

ச.ம.சே.வ.எண் / GSTIN : நாள் / Dated:.....
 வரி விதிப்பு ஆண்டு / Assessment Year:

பொருள்: Sub:	தநாசமசேவ சட்டம், 2017 மற்றும் மசமசேவ சட்டம், 2017 - தி/ள்..... - சமசேவ.எண்: - வரிவிதிப்பு ஆண்டு - தநாசமசேவ சட்டம், 2017 மற்றும் மசமசேவ சட்டம், 2017-ன் கீழ் பிரிவு..... - படிவம்..... வழங்கப்பட்டது - தொடர்பாக. TNGST Act, 2017 and CGST Act, 2017 - Tvl..... - GSTIN: - Assessment Year - under Section of the TNGST Act, 2017 and CGST Act, 2017- Form issued -regarding
பார்வை: Ref:	1. இவ்வலுவலக படிவம் நாள்..... This office notice in Form dated..... 2. வரி செலுத்துவோர் தாக்கல் செய்த பதில் கடிதம் நாள்..... Reply letter filed by taxpayer dated..... 3. முதல் நேர்முக வாய்ப்பு நாள் First Personal hearing date..... 4.

மேல்முறையீட்டின் விவரங்கள் / Details of Appeal

1. இவ்வாணைக்கு எதிராக, தநாசமசேவ சட்டம், 2017, பிரிவு 107- இன் கீழ்என்ற மேல்முறையீட்டு அதிகார அமைப்பின் முன் இவ்வாணை கிடைக்கப்பெற்ற 3 மாதங்களுக்குள் மேல்முறையீடு செய்யலாம்.
1. An appeal against this order u/s 107 of TNGST Act, 2017 may be filed before the Appellate Authority..... within 3 months period from the date of receipt of this order.

ஆணை / Order