

Best Practices -_Reply to Show Cause Notice – Service Tax

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The service tax law has resulted in a large number of disputes [more than 1 lakhs + pending as on date] mainly due to the fact that the law is changing frequently and drafting has been seen to have many loose ends. The trigger happy attitude of some of the audit personnel from the Internal Audit or CAG has led to the number of cases increasing by leaps and bounds. The delays in dispute resolution and contrary judgements which are quite common has added to the woes of the service providers who have been subjected to the SCN. It is expected that until some serious reforms are taken up in this area, Tribunals would not be able to provide justice in time and the faith of the assesseees in the system as a whole which is not good as on date getting to a point of no return.

As far as the professional is concerned, the maximum amount of work to be done in any dispute is to provide enough information avoid issue of the SCN. Once the SCN has been issued diligence, completeness, clarity and evidence gathering and presentation would be required. He needs to capture all the facts [with evidence] examine the relevant contracts, invoices, disclosures in the accounts and ensure that the reply is comprehensive at least as far as facts are concerned. Legal points can be raised at future dates if required. The result of a dispute even if decided at the Tribunal or High Court would substantially depend on the 1st reply and its contents. At the adjudication stage all the evidence can be verified. After that stage the examination of facts becomes more difficult. At times after reaching the Tribunal the case maybe remanded due to inadequate clarity in facts. The tax payer would then have to again do through all the stages.

In this article an attempt has been made to collate some of the best practices to ensure good quality reply. Many of the concepts have been borrowed from the experience of doing an audit where 15- 20% of the time spent on planning results in a better quality audit. The advisable steps are as under:

1. Once a SCN is received the date of receipt [preservation of the cover] is to be seen along with the period of dispute. Maybe to check limitation applicability as well as back dating of letter.
2. In case the reply cannot be made within the time provided a request for extension should be made with reasons. If time sufficient send a reply with attendant documents.
3. In case some of the relied upon documents are not available with the assessee they should be specifically requested for and time sought for reply after receipt of the same.
4. At times the computation of the amount demanded is not available. This can also be requested to be able to reply effectively and also as a process of natural justice.
5. To read the show cause notice thoroughly. If you have not understood any point mentioned in the notice please read it again and again till you understand.
6. As far as facts concerned look at incomplete facts, colored facts [slightly changed which impacts] vital omitted facts and incorrect facts. [specifically the background should be made clear with all important facts in the reply]
7. If the SCN is based on audit note then whether there was independent application of mind by the issuer. Further the reply to the audit note earlier may also provide some clarity/ possible defence.
8. To understand the profile of the client [web site- information provided, review of the financials] so as to gain more knowledge about the business of the client and nature of activities. Facts constitute good portion of the evidence where changes in law would have limited impact.
9. To read the agreements / correspondence/ letters referred to in the SCN. If not referred more important.
10. To make a note of specific provisions of the Act, Rules , circulars , notifications and case laws referred to in the SCN.
11. Get an insight into the revenue understanding by looking at the background of department circulars , notifications issued from time to time.

12. To read the provisions of the Act applicable to the period to which the SCN pertains. The latest provision may not be relevant. To check whether the principals mentioned in the then law have been changed substantially due to retrospective amendment and also why.

13. To prepare a table showing the flow of events/ correspondence with dates in the following manner. This will help us to know that we are having copies of all the documents in the sequence. Further it can be used to give a bird's eye view while referring the matter from time to time in the course of proceedings.

Sr No	Type of Document and Reference no	Date	Authority issuing the same	Matter	Points mentioned	Charging Sections /sections referred	Internal ref No of the paper book/ submission file
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14. To write down the brief facts of the case with reference to points mentioned in the SCN. This will make sure that you have not missed any of the points mentioned in the SCN. After mentioning the fact you can write (Point no *** of SCN). To make sure that you have covered all the points of the SCN while jotting down the facts.

15. You can mention the points mentioned in 'correspondence from the client' and 'correspondence from the Department' . This will emphasise the fact that the noticee has been prompt in replying to the department. This will help to argue the charge of not being 'suppressing the facts or wilful omission' .

16. To note down the issues involved in the chronological manner with reference to all the above i.e. SCN, correspondence, agreements relied upon, law provisions mentioned in the SCN.

17. Prepare working notes based on the provisions of the law.

18. The figures at times require re-computation in which case the same can be confirmed as correct.

19. To prepare submissions based on the complete understanding of the facts and the provisions of the law. This should cover all the relevant issues mentioned above.
20. The reply can also have a specific request to provide a hearing at which time additional submission or modification could also be made.
21. The legal issues which require to be commonly examined could be as under:
 - a. Whether the period of limitation of 18 months is applicable to the case?
 - b. Whether the matter was earlier raised and dropped?
 - c. Whether there is any information asked for, which has not been provided amounting to a violation of principles of natural justice?
 - d. Whether the SCN has been issued based on assumption, presumption and is biased?
 - e. Whether there is any jurisdictional issue?
 - f. Whether information was provided or was available to the department on the said issue. If so then penalty not applicable?
 - g. Whether in any earlier year there was an audit conducted and the issue was not adverted to or adverted but not raised or just not raised though transaction existed?
 - h. Whether there was judicial clarity on its non applicability?
 - i. Whether the departments view [education guide/ circulars] had opined that there was no liability?
 - j. Maybe a few more.....
22. Reply should be sent by RPAD. In case acknowledgement sought personally the signature, date and timing and seal of the officer may be ensured.
23. To mention the number of hours put in to prepare grounds of appeal with reference to issues of the case. To ensure that before preparing this you have understood the matter

completely. This time log will give you an idea of the amount of efforts put in for finishing the case.(This may be helpful for billing purpose in terms of man hours involved.)

24. After this stage to study the replies already filed in similar / same matter[if available in house or with some associates]. To compare the issues mentioned in the above exercise and issues mentioned in the reply. To write down the points missed. [Helpful as we tend to repeat our mistakes]
25. In this stage to mention the points of disagreement with earlier reply. To elaborate the points by mentioning the relevant provisions of the law. To make sure that the case laws referred to in the reply are not struck down by retrospective amendments of law or contrary/ distinguishing decisions till date.
26. To mention the points of agreement. This would strengthen our belief in our view.
27. To fill up the checklist of 'SCN reply'. In the remarks column of checklist the relevant point numbers or page numbers of the submissions can be mentioned. This will prove the fact that you have read and understood the matter in entirety and ensure nothing missed.

As time goes following this systematic way of replying would enable and ease delegation of parts of the work. Further it would enable the monitoring the work of the juniors by the senior and serve as a fast brush up for the professional who is going to represent the case. Readers are encouraged to add to this check list of best practices to enhance the same by replying to madhukar@hiregange.com or host queries on pdicai.org.

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