THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SIRC of ICAI

Topic : Workshop on the Art of Representation under the GST

Date : 30-12-2024 | By CA Ganesh Prabhu

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Approach to Client Representation by CA’s

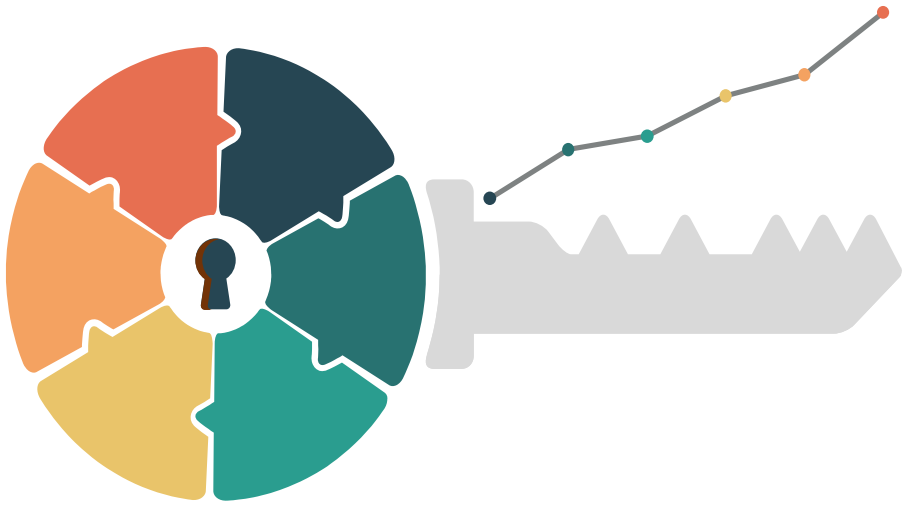
Client representation in tax matters is one of the most critical roles played by Chartered Accountants (CAs). The effectiveness of this representation depends on the CA's adherence to professional

Agenda for Discussion

- Legal Authority & Limited Liability of CA's
- Authorship & Answerability to Positions Taken
- Correspondence with Tax Authorities
- Authorship & Manner of Presentation of Replies
- Limitation of Proceeding U/s 161
- Conflict of Interest & Ethical Consideration
- Professional Conduct of CA
- Approach to Representation
  - Soft & Traditional
  - Firm & Judicious



Legal Authority and Limited Liability of CA’s



Art Vs. Science

Appearance before Government Authorities or Department Authorities is an Art and most important function in litigation

Formal Representation

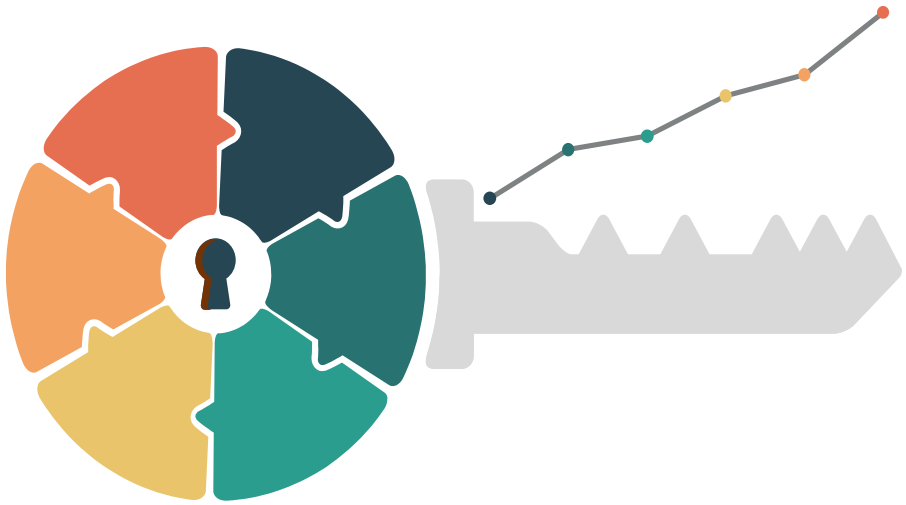
It is a formal representation done on behalf of the Client in the proceeding before a AA or AT

proceedings.

Assistance to Lead the Case

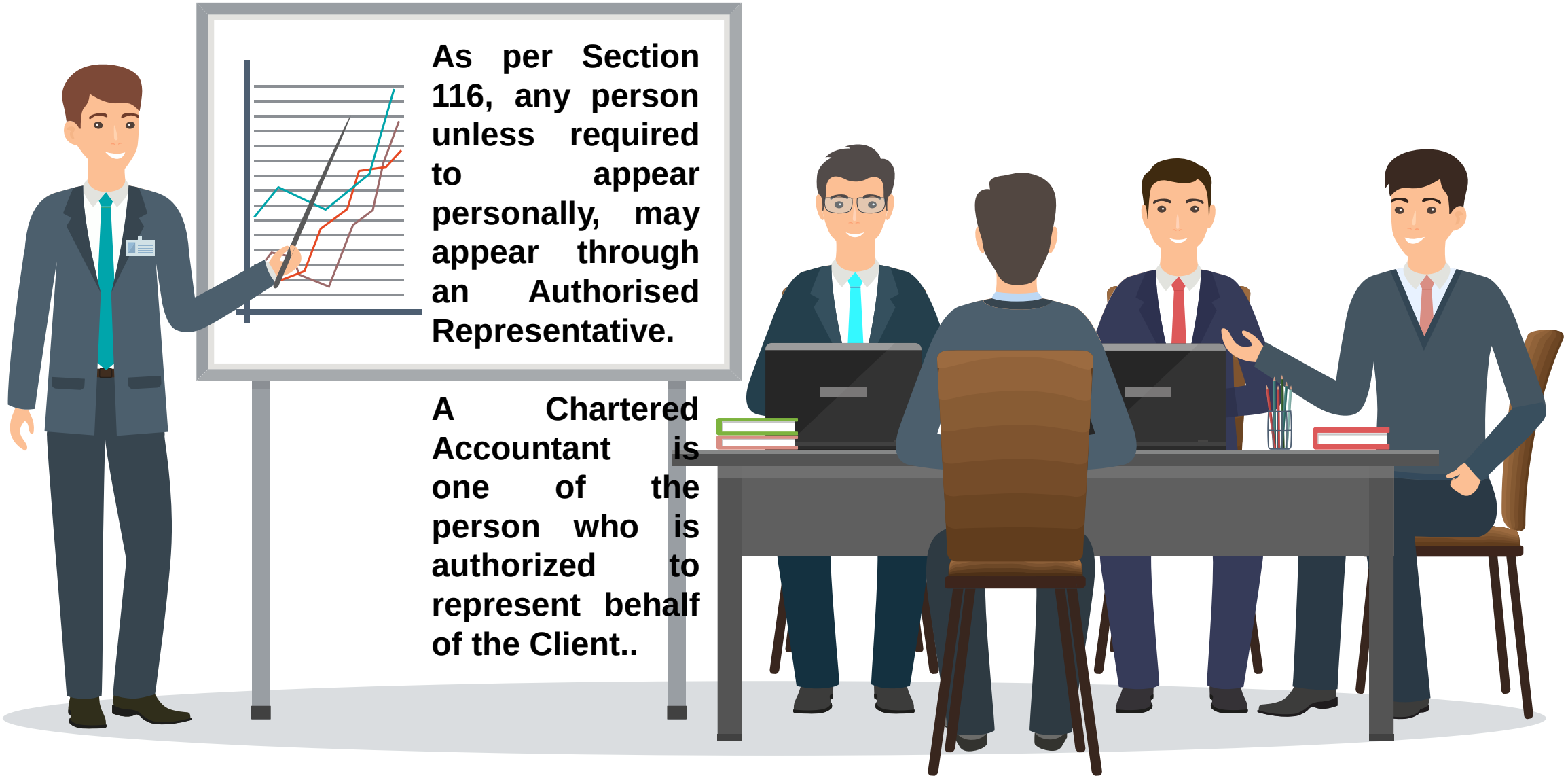
Lead assistance in discovering the facts and the Interpretation of law and *the application of law to the facts of the case.* The outcome is the by-product of the exercise.

Legal Authority and Limited Liability of CA’s



CAs are empowered to represent their clients before tax authorities, tribunals, and appellate bodies. This legal authority stems from **Sec 116(2)(c) of the CGST Act** under the GST law and other related regulations. However, this authority comes with limitations, particularly in terms of liability.

Limited Liability: While CAs are responsible for their professional actions, **they are not liable for the taxpayer’s obligations.** Their role is to guide,



Authorship and Answerability to Postion Taken

ADJUDICATING AUTHORITY

Pursuant to a GST Notice issued as per Sec 73/74 or who is desires to issue SCN

Audit Authority

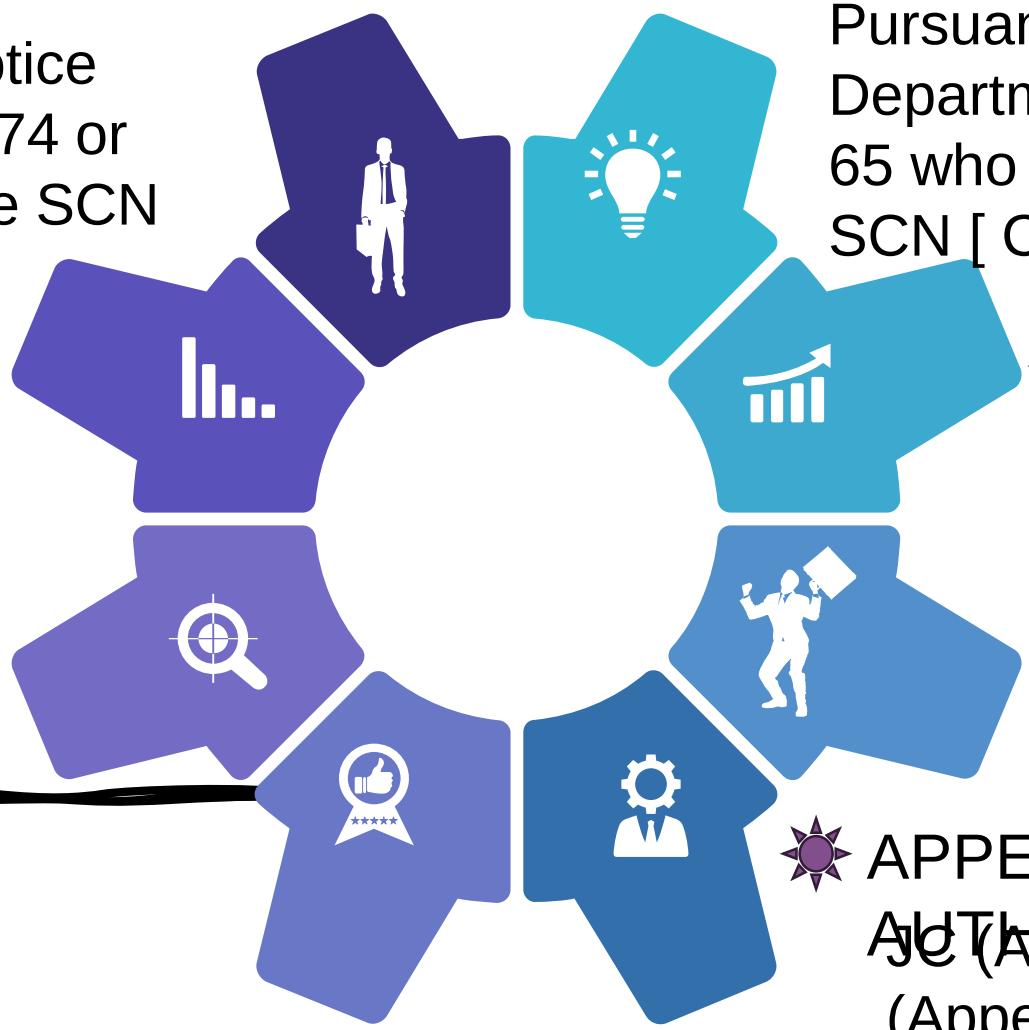
Pursuant to a GST Department Audit as per Sec 65 who is desires to issue SCN [CGST / SGST]

Appeal to HC / sc

Where a GST Appeal is filed against an Order passed by the GST Appellate Tribunal

INVESTIGATING AUTHORITY

Pursuant to a GST Department Search / Inspection or Survey as per Sec 67 who is desires to issue SCN [DGGI / DRI / CGST / SGST]



APPELLATE TRIBUNAL

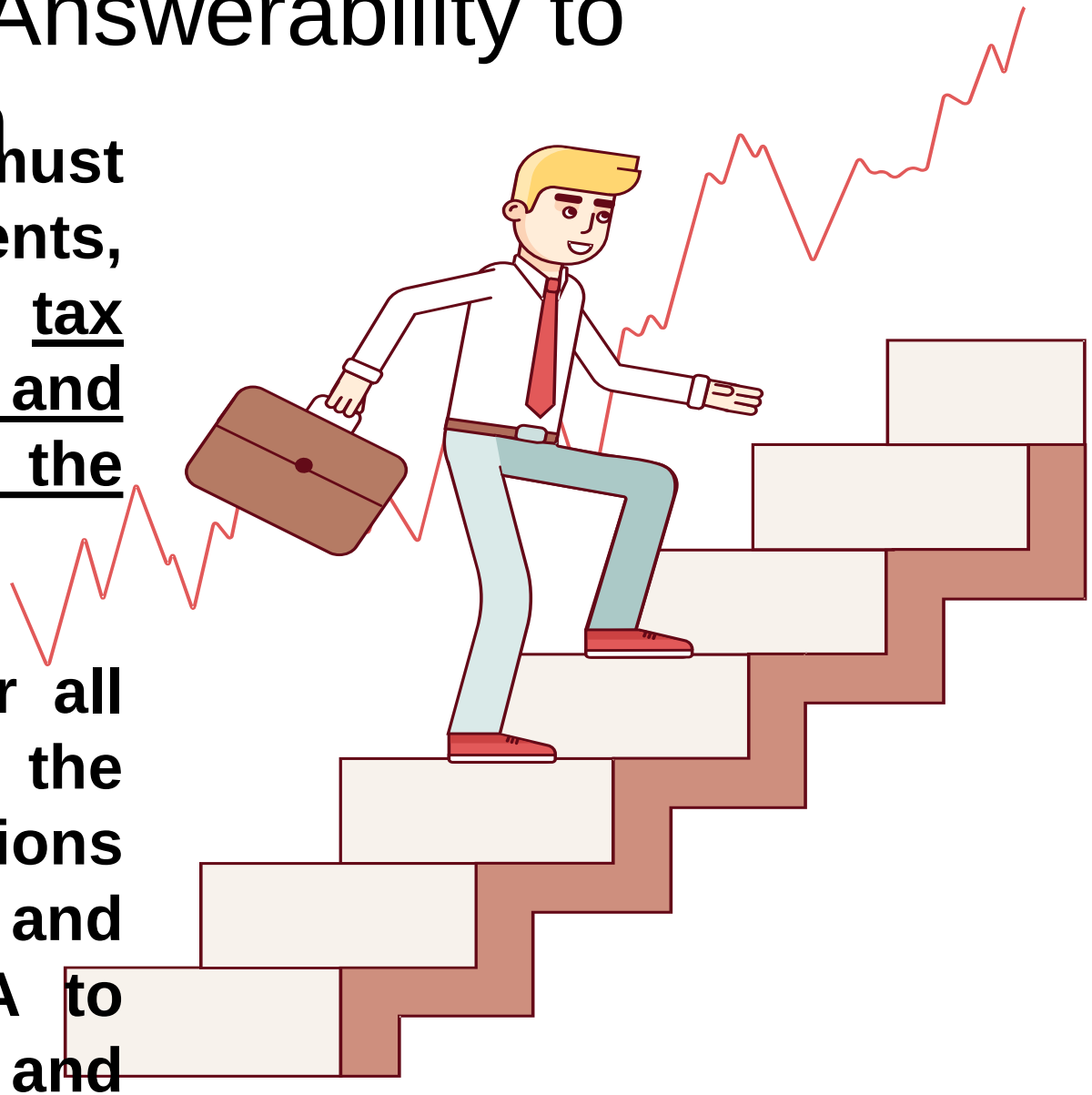
Where a GST Appeal is filed against an Order passed by an Appellate Authority or Revisionary Authority

APPELLATE AUTHORITY

JC (Appeals) or Comm (Appeals) where an GST Appeal is filed if the assesses is aggrieved by the Order has been

Authorship & Answerability to Posting Taken

When representing clients, CAs must ensure that all submissions, arguments, and correspondence with tax authorities are carefully drafted and reflect a sound understanding of the law.



Authorship: The CA should author all documents submitted on behalf of the client. This ensures that the positions taken are consistent, legally sound, and defensible. It also allows the CA to maintain control over the narrative and strategy.

DRAFTING Correspondence with Tax Authorities

Brevity is the soul of wit…

01 Effective correspondence with tax authorities

02 EC is a key element of successful client representation.

03 During pre-notice stages, it is essential to present facts clearly and concisely.

04 **In response to formal notices, the CA must address each point raised by the department**

05 **PLD & New Documents are submissions - Sufficient Copies**

06 **When drafting appeals, the CA should focus on highlighting errors in the lower authority's**

Benefits of preparing Synopsis

1._Clarity & Focus: A synopsis helps to clearly define the key points and objectives of the representation, ensuring that all relevant issues are addressed succinctly.

2. Efficient Communication: It allows for effective communication with stakeholders, including clients, tax authorities, and legal advisors, by summarizing complex information into an



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Benefits of preparing synopsis

4. Organization: It helps in organizing the information logically, making it easier to follow and understand the flow of arguments and data presented.

5. Preparation & Planning: A well-prepared synopsis ensures thorough preparation and planning, which can improve the chances of a successful representation by anticipating possible questions and objections.



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Benefits of preparing synopsis

7. Strategic Advantage: By having a concise summary, representatives can better strategize their approach, highlighting strengths and addressing weaknesses in their arguments.

8._Record Keeping: It serves as a useful record for future reference, helping in the maintenance of documentation and facilitating any future representations or audits.

9.__Persuasion: A well-crafted synopsis can be more persuasive, presenting a clear and compelling





Limitations of Proceedings Under (Section 161 of the CGST Act, 2017)

Section 161 of the CGST Act, 2017, provides for the rectification of errors apparent on the face of the record. **However, the scope of this provision is limited.**

Limitations: **Rectification under Section 161 is restricted to errors that are obvious and do**

Preparation against possibility of adverse decision



1. Comprehensive Review: Ensuring nothing is overlooked that could strengthen your case against an adverse decision.

2. Identification of Weaknesses: By summarizing the entire representation, you can identify any weaknesses or gaps in your arguments that may be exploited by the opposing party or the authorities. This allows you to address these issues proactively.

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Preparation against possibility of adverse decision

4. Legal Precedents & References: Including relevant legal precedents and references in your synopsis can strengthen. Being prepared with these references ensures you can quickly respond to any adverse rulings.

5. Strategic Planning: A synopsis helps in strategic planning by mapping out different scenarios and the corresponding responses. This ensures you are well-prepared for various outcomes, including adverse decisions.

Conflict of Interest, Ethical Considerations & PROFESSIONAL CONDUCT

Professionalism

High level of Professionalism in your demeanor, dress appropriately, etc.

CONFIDENCE

Display of confidence in Knowledge and preperation

RESPECT & BODY LANGUAGE

Shows respect to the authorities and all participants involved in the representation



CLARITY & Conciseness

Avoid jargon and ensure your arguments are easy to understand and to structure your presentation logically.

PREPERATION

Know your case inside out, and be ready to answer any questions that may arise.

VISUAL AID & KEY POINTS

Use visual aids like charts, graphs, and slides if allowed.



Conflict of Interest & Ethical Considerations

Maintaining ethical standards is paramount in client representation. CAs must be vigilant in identifying and managing conflicts of interest.

<u>Conflict of Interest:</u> CAs should avoid situations where their professional judgment could be compromised by conflicting interests. If a conflict of interest arises, the CA must disclose it to the client and take appropriate action, which may include recusal from the engagement.

<u>Mid-Way Acceptance/Transfer of Engagement:</u>

Cont

Accepting or transferring an engagement mid-way



PROFESSIONAL CONDUCT

CAs must adhere to high standards of professional conduct in their representation of clients.

<u>Presenting Alternatives & Client Decision:</u> The CA should present all viable alternatives to the client, allowing them to make informed decisions. The CA's role is to explain the implications of each option without imposing their own preference.

<u>Acting as Instructed but Not Under Dictation:</u> While the CA should follow the client's instructions, they must maintain independence and not act under dictation, especially if the instructions are legally or ethically

Cont

Approach to Representation: Soft and Traditional or Firm and Judicious



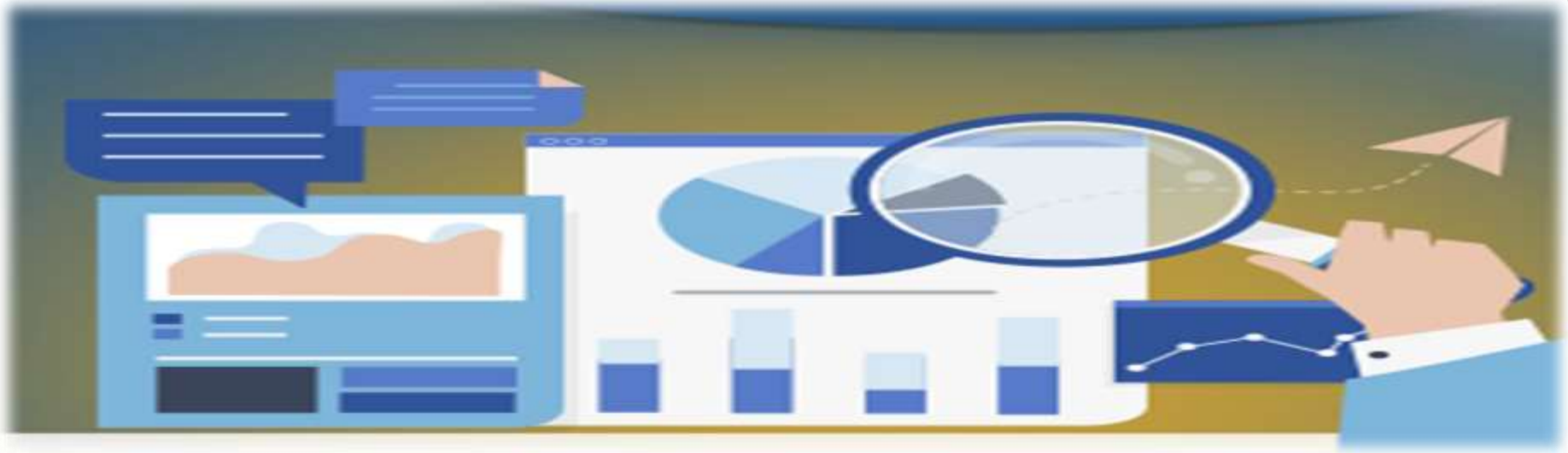
The approach to representation should be tailored to the specific circumstances of the case.

Soft and Traditional Approach: This approach is conciliatory and aims to resolve issues amicably. It is suitable for minor disputes or when maintaining a good relationship with tax authorities is crucial.

Firm and Judicious Approach: A more assertive and legally rigorous approach is necessary when significant amounts are in dispute or when the tax

GST DEPARTMENT SCN





GST Notices & SCN – Basics & Technical Grounds

Notices issued in connection with GST Departmental Audit, Assessment, Inspection, Search are discussed.

Notices issued after conducting of Audit by GST Department

Form GST ADT 01 Notice for Conducting GST Audit by Proper Officer

Reply to Audit Objection

7 Days

The proper officer will conduct the GST Departmental Audit in the business premises of the RP.

Sec 65(3)

Rule 101(2)

In case of any discrepancies or audit objection if any raised, an Audit Memo or Intimation of Tax Liability under Form GST DRC 01A (Part A) is issued to the RP.

Reply to such objection to be submitted, if aggrieved by the notice. Audit Report will be issued in **Form GST ADT 02.**

P

Non-Compliance will attract Penalty U/s.122 or Initiate Action U/s. 73 or 74

Notice issued by the PO Demanding Tax, Interest & Penalty or Wrong Claim of ITC or Refund

Form GST DRC 01 Summary of SCN is issued by the PO demanding Tax, Interest, Penalty is issued by the Proper Officer.

Reply in Form GST DRC 06

30 Days

The PO has issued an SCN based on inspection, inquiry, search or audit towards Non-Payment of Tax or wrong claim of ITC or refund.

Sec 73/74

Rule 142

A detailed Reply to SCN to be submitted establishing the facts as to why the said demand is not sustainable or the RP is eligible to claim ITC or Refund or explaining the facts as to why the RP is not liable to pay the tax so demanded by the PO.

P

Non-Compliance will attract Penalty U/s.122 or 124 or 125 or 127 or 129

Technical Grounds on SCN issued by PO

- In the SCN issued for the FY 17-18, It is written that ***it is crystal clear that you have violated the provisions of Section 16(2)(c) of the CGST Act, 2017*** and liability of CGST of Rs.7,62,000/- & SGST of Rs.7,62,000/- is confirmed.

  Can the SCN Pre -Judge the Issue ?

- In the SCN issued for the FY 17-18, ***STO has equated short claim of ITC to purchase suppression and has added gross profit and arrived*** at the GST on such estimated Sales Turnover?

  Can the SCN be issued based on hypothetical Assumptions?

Technical Grounds on SCN issued by PO

- Form GST DRC 01 has been issued without a speaking SCN ? **Is the summary of SCN valid?**
- SCN & DRC 01 has been issued but a copy paste of Inspection Memo? **Is that a an SCN?**
- Can SCN call for Additional Documents & Reports?
- Annexure to Form GST DRC 01 contains the copy paste of Form GST DRC 01A whether it can be called a valid SCN?
- SCN has not been uploaded on the portal? Whether SCN is valid?
- In the SCN demand has not be quantified whether such SCN valid ?

General Principles of SCN

- SCN A CHARGE SHEET
- SCN A FOUNDATION TO ADJUDICATION PROCEEDINGS
- SCN SHOULD BRING OUT NATURE OF CONTRAVENTION & CAUSE OF ACTION
- **TAX** DEMAND SHOULD BE QUANTIFIED IN THE SCN
- SCN CANNOT PRE-JUDGE THE ISSUE
- SCN CANNOT BE BASED ON ASSUMPTIONS & PRESUMPTIONS
- DUE PROCESS OF LAW SHOULD BE FOLLOWED *[Rule 142 of the CGST Rules]*

Technical Grounds on SCN issued by PO

- Notice Is issued under Section 74 of the CGST Act, 2017 without Justification for SUPRESSION ? Is the SCN Valid ?

- Further, based on the above, PO wants to proceed to pass under Section 73 of the CGST Act, 2017 against such SCN issued under Section 74 ? Can the PO do so ?



Thank You!!!

CA Ganesh Prabhu Balakumar

Mobile: +91 98404 71139

E- Mail : ganeshprabhu.b@gmail.com



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