

# FUNDAMENTALS OF DRAFTING IN GST

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# INTRODUCTION TO LITIGATION

- What is litigation?
- Need for Litigation?
- Advantages and Disadvantages associated with Litigation?
- Process involved in Litigation?
- Appropriate Forums to litigate?

# FUNDAMENTALS OF LITIGATION

Administrative  
Principles

Natural Justice

Non-Speaking  
Order

Statutory  
interpretation

Legal  
Doctrines

Condonation  
of Delay

Service of  
Notice

Quasi Judicial  
Authorities

Filing of Writ  
Petition

Inherent  
Power of  
Authorities

# PRINCIPLES OF STATUTORY INTERPRETATIONS

- Interpretation is required when there exist ambiguity.
- The purpose of interpretation of statute is to help the judge ascertain the intention of legislature.
- The purpose of interpretation is not to limit or confine the legislation but to provide a reasonable meaning a provision/section/notification etc.
- Interpretation is an art of finding out the true sense of any form of words whereas construction is drawing out the conclusions beyond the direct expression or text.

## Primary Rules of interpretation:

- **Literal Rule:** Giving the words ordinary and natural meaning.
- **Mischief Rule:** Giving the words a meaning while considering the purpose of the statute.
- **Golden Rule:** A compromise between the literal rule and mischief rule. We shall first determine the meaning based on literal rule, however, if interpretation is leading to absurdity, interpretation shall be done based on purpose of a statute.

# AIDS TO INTERPRETATION

## Internal Aid

- Long title of the statute
- Preamble of the statute
- Chapter heading of the statute
- Marginal Notes to every section of the statute
- Punctuations
- Illustrations given below in the sections
- Definitions
- Provisos
- Explanation
- Saving Clauses and non-obstante clauses

## External Aid

- Historical Background
- Statement of objects and reasons
- The original bill as drafted and introduced.
- Debates in the legislature.
- State of things at the time particular legislation was enacted
- Judicial Construction
- Legal Dictionaries
- Common sense.

# LEGAL DOCTRINES

- A “Doctrine” is a principle or position or the body of principles in a branch of knowledge or system of belief.
- The Doctrines are derived from the courts. The judicial opinions create the rules or standards that comprises the legal doctrine.
- Doctrine are also considered as an important tool in order to pass a sound and reasonable decision.
- Some of the common legal doctrines comprises of:
  - **Doctrine of Noscitur a Sociis:** the meaning of a word must be judged by the company that it keeps.
  - **Doctrine of Eiusdem Generis:** General words should be interpreted in a way so as to restrict them to include the items or things which will be of same type as those of the specific words.
  - **Doctrine of Mutuality:** A person cannot trade with himself.
  - **Doctrine of Quid pro Quo:** Something in return for something.
  - **Piercing the corporate veil:** Basis this doctrine, the Courts put aside limited liability of a corporation and hold a corporation's shareholders or directors liable.

# QUASI JUDICIAL AUTHORITIES

- An administrative function is called as Quasi Judicial when there is an obligation to assume a judicial function and to comply with the principle of natural justice.
- The term “*quasi judicial*” refers to the actions of an agency, boards, or government entity performing the judicial functions similar to those conducted by the courts.
- Quasi-judicial authorities are restricted to the issues that concern the particular administrative agency. These bodies are established to reduce the burden of the courts.
- In Quasi Judicial Adjudication, the evidence are not taken on oath.
- Further, the rules of evidence, CPC, Cr.P.C, are not strictly followed.
- A *Lis* between two parties is not an essential characteristics of a quasi-judicial body.

# WHEN A WRIT CAN BE FILED?

- The Supreme Court and the High Court has been empowered with writ jurisdiction under Article 32 and Article 226 the Indian Constitution.
- This is not available as a matter of right but is **at the discretion of the court**.
- The practice of filing of writ petition in cases where alternative remedy has been provided by the statute – avoided by the court.
  - Exclusion of writ jurisdiction when alternative remedy is present is not a rule of compulsion but a rule of discretion – *Harbanslal Sahnia vs. Indian Oil Corpn. Ltd.*, [(2003) 2 SCC 107].
- Several High courts have issued guidelines stating the matters on which a writ petition can be filed.



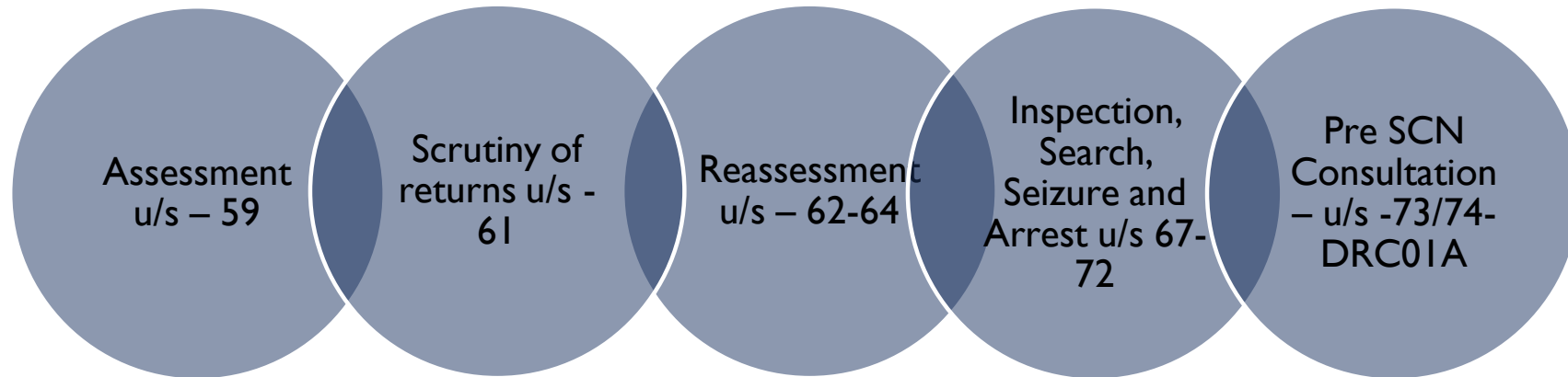
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# TAX LITIGATION

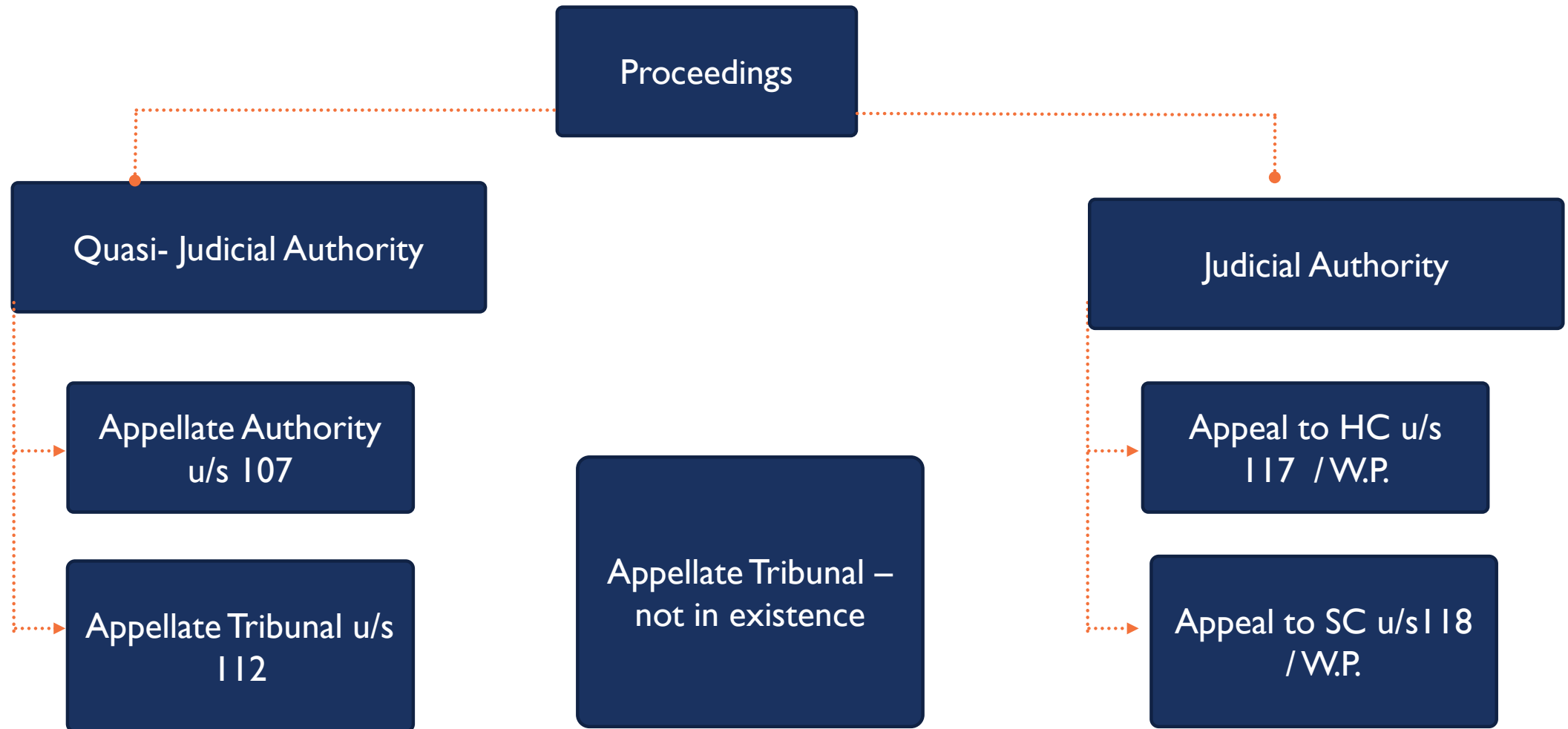


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# PRE COURT PROCESS



# ADJUDICATION OF TAX LITIGATION



# ADJUDICATION OF TAX LITIGATION

## Section 73

Penalty: If paid,

- Before SCN – Nil
- Within 30 days from SCN – Nil
- Otherwise – 10% Penalty

## Section 74

Penalty: If paid,

- Before SCN – 15%
- Within 30 days from SCN – 25%
- Within 30 days from Order – 50%
- Otherwise – 100% Penalty

- Proceedings shall conclude once tax, interest and penalty paid
- Proceedings for other than main Noticee shall also be concluded
- No immunity from Prosecution u/s 132

# SHOW CAUSE NOTICE

# ISSUANCE OF SHOW CAUSE NOTICE

SCN -To produce a satisfactory explanation or excuse usually in connection with motion or application to a court.

## Section 73

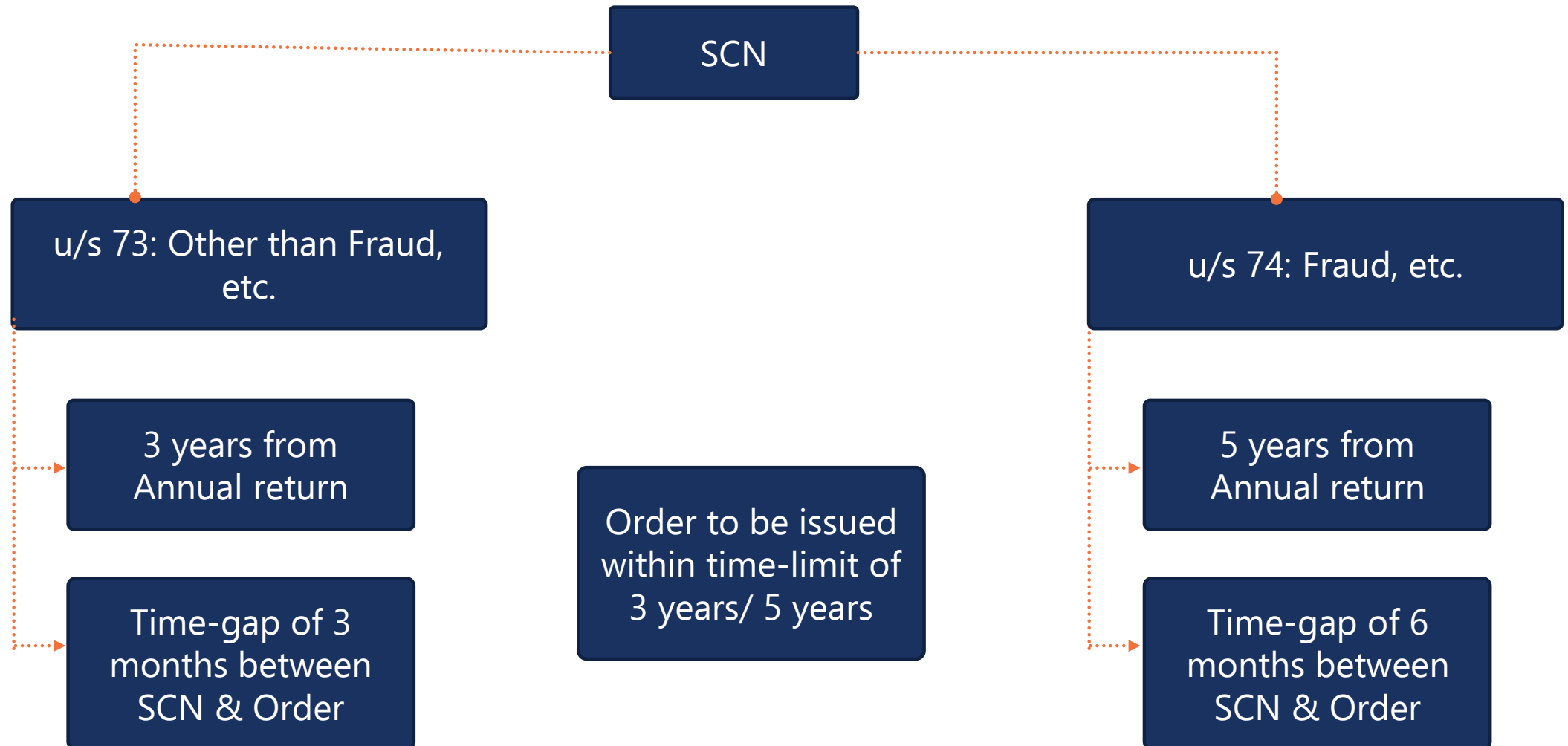
- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

## Section 74

- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason fraud or any wilful misstatement or suppression of facts.

Different officers are assigned with different powers in respect of issuance of SCN based on the position, type of tax, and monetary value involved.

# ISSUANCE OF SCN UNDER GST



# FRAUD AND WILLFUL SUPPRESSION

- **Fraud** is defined as “knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment” (*Black’s Dictionary ((8th ed. 2004))*)
- “Fraud” and “collusion” - Intent to evade duty is built into these very words [*Cosmic Dye Chemical vs. Collector of Central Excise, Bombay 1995 (75) E.L.T. 721 (S.C.)*]
- **Wilful Suppression** is understood as “Failure to speak, where there is obligation to speak” (*P. Ramanatha Aiyar’s (1997)*)
- Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty [*M/s. Continental Foundation Joint Venture Holding, Naphtha H.P. vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.)*]
- Not having the appropriate column in the return to disclose a particular information can be a good ground to defend any willful suppression.
- When the issue stands decided by the Higher Court, it can be a good ground to defend that there exist a bonafide belief on the part of assessee.



# PRE-SHOW CAUSE NOTICE CONSULTATION NOTICE

- Pre-SCN mandatory in Customs.
- No concept of Pre-SCN in GST.
- DRC-01A – intimate details of tax demand prior to SCN.
- DRC-01A was mandatory earlier; made optional since 15.10.2020

# COMMON GROUNDS ON WHICH PROCEEDINGS ARE ISSUED AGAINST THE TAXPAYER UNDER GST

- is liable to get registered under GST, but not registered
- not discharged the GST on any supply
- has availed/ claimed the ineligible/excess ITC/ refund
- has failed to file the return in time
- failed to produce the relevant documents
- has wrongly classified the goods/ service and wrongly availed exemption on goods/ services

# THINGS NEED TO BE SEEN AS SOON AS SCN IS ISSUED

- In case of notice issued by CGST/Central Excise/Service tax officers whether DIN number is available or not?
- Whether DRC-01A or pre SCN consultation Notice is issued or not?
- Whether procedure prescribed in the Act and Rules for issuing the SCN is followed or not?
- Whether SCN is properly served or not?
- Whether issuing authority has jurisdiction to issue SCN or not?
- Whether officer who has issued SCN is a proper officer or not under the provisions of Act?
- Whether SCN is issued within time?
- In case of wrong avilment of credit whether credit was utilized or not?
- Calculation of demand and rate of tax applied to be checked.

## POINTS TO BE NOTED BY ASSESSEE

If the notice is not issued within 6 months of seizure – goods shall be returned to the assessee.

The assessee is entitled to make copies of the documents that have been seized.

The assessee may get his goods released on provisional basis by executing a bond and furnishing security.

The officer has to carry a valid search warrant for conducting search.

# COMMON GROUNDS TO BE TAKEN WHILE REPLYING TO AN SCN

- Period of Limitation
- Natural Justice Principles were not followed
- No Document Identification Number
- No Proper reasoning assigned against the demand raised
- Revenue Neutrality
- No jurisdiction of Issuing authority
- Grounds in respect of penalty and interest

# REPLY TO SCN

## Points to be considered while preparing written reply –

### Facts:

- Brief facts.
- Summary of the allegations put forward in the show cause notice.

### Merits:

- Validity of show cause notice.
- Examine if facts improperly stated/twisted in notice.
- Examine if the officer has relied on assumptions/presumptions.
- Application of law to the facts.
- Examine if the tax liability has been correctly determined by the officer.
- Read all the RUDs and relevant documents related to SCN.

# REPLY TO SCN

## Points to be considered while preparing written reply –

### Allegations in the SCN:

- In this heading summarize the allegation alleged in SCN.
- Allegation with respect to demand, extended period, interest and penalty should be mentioned separately.

### Submission:

- Deal with each allegations made in the SCN.
- Procedural and Substantive grounds need to be bifurcated.
- Divide the ground in sub-headings wherever required.
- Always conclude the ground with concluding para.
- Para wise Comments to be given in separate heading.

# REPLY TO SCN

## Points to be considered while preparing written reply –

### **Penalty:**

- Examine if the penalty has been wrongly imposed.
- Absence of fraud/willful misrepresentation/suppression of facts - if show cause notice issued under Section 74.

### **Evidence:**

- Attach documents which shall support the contentions raised.
- Example – invoices raised, agreements entered into by the parties, bill of supply, etc.

**Prayer:** In this heading mention the relief which is sought from the authority including the alternate relief, if any.



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# FILING OF APPEAL AGAINST AN ADVERSE ORDER

# MECHANISM PRESCRIBED UNDER GST

Appeal to Appellate Authority  
by assessee against the order  
of AA (S-107)– FORM GST  
APL – 01.

To be filed within 3 months  
(may extend to another 1  
month).

If order by Additional/Joint  
Commissioner – appeal to  
Commissioner (Appeals).

If order by Deputy/Assistant  
Commissioner/ Superintendent  
– appeal to any officer not  
below the rank of Additional  
Commissioner (Appeals).

# APPEAL TO APPELLATE AUTHORITY

Adjournment

- Allowed up to 3 times for each party.

Pre-deposit

- Full amount – as admitted by the assessee
- 10% of disputed amount

Decision time

- Hear and decide the matter within a year (wherever possible).

Remand of the matter

- No remand to adjudicating authority is allowed.

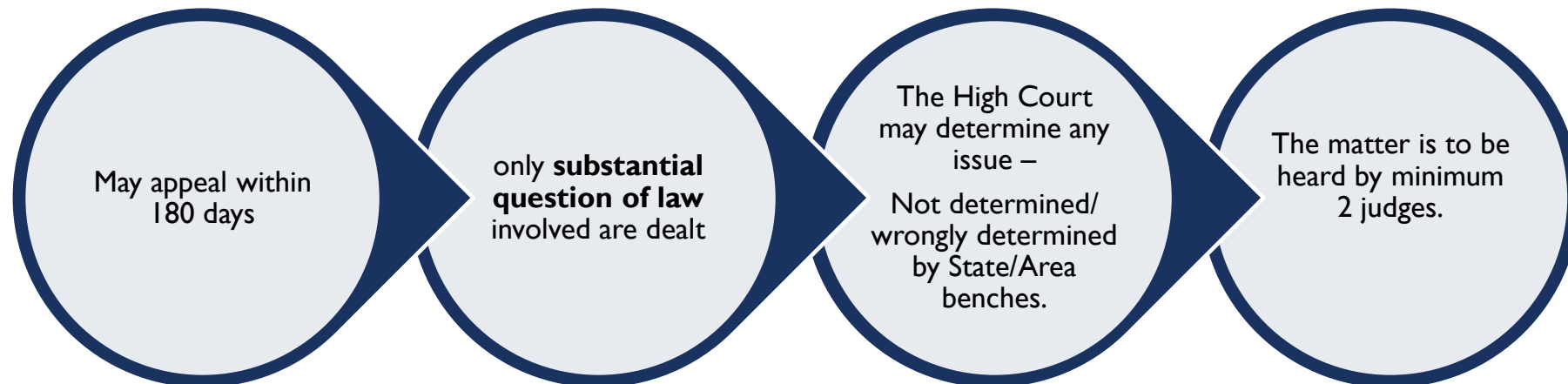
# HOW TO DRAFT AN IDEAL APPEAL

- **Statutory Form** . This form is prescribed in statute. Latest form must be filled. All the details filled must be correct. Any portion of the form should not be left blank.
- **Brief Facts:** In this heading mention about Appellant business in brief, registration under the statute, return filing etc , facts relevant to the issue in dispute, issuance of SCN and brief of the submissions. Facts which are not relevant must be avoided. Facts must be precise and must be supported with evidence.
- **Order against which appeal is filed** In this heading summarize the order and its reasoning provided in the order.

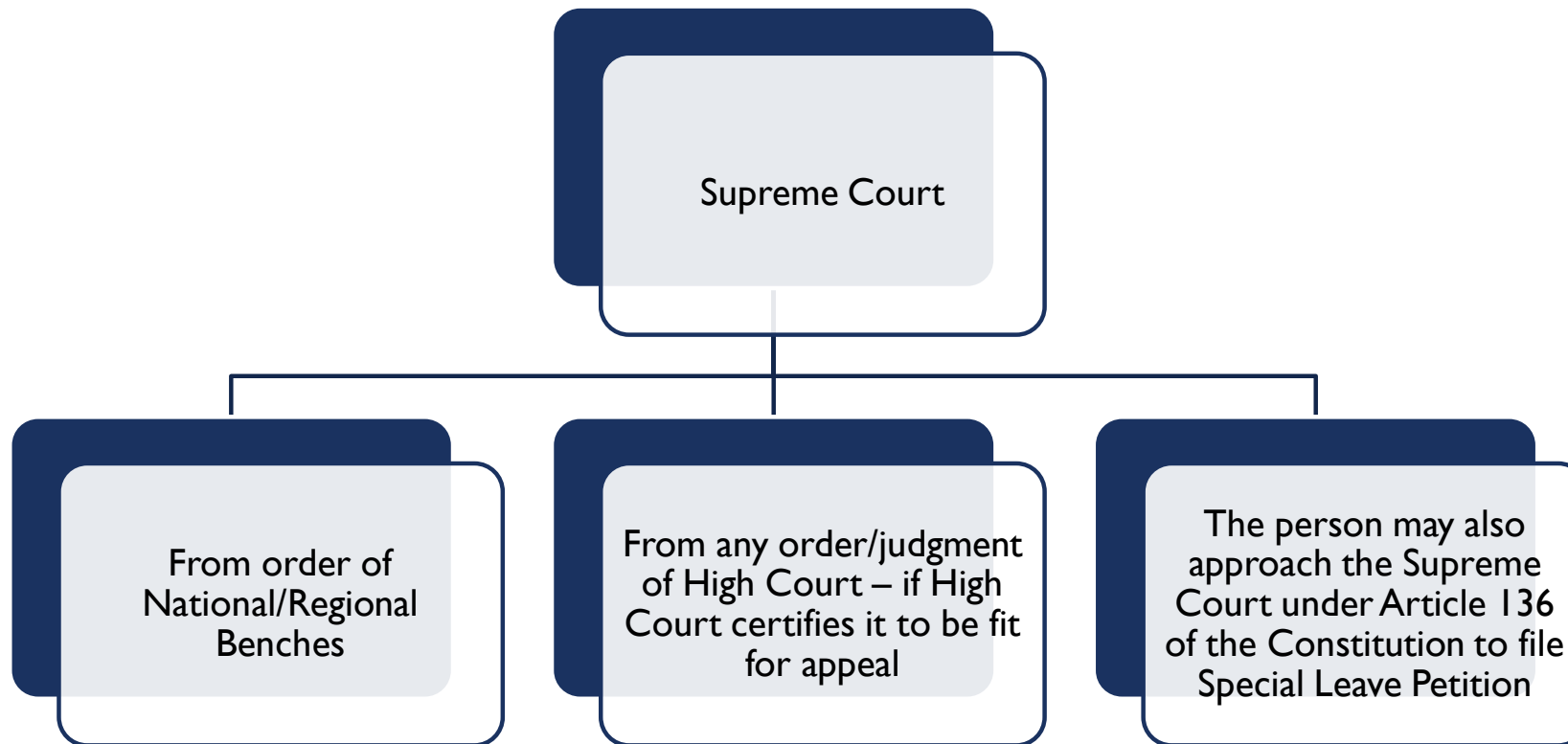
# APPEAL TO APPELLATE TRIBUNAL

- Appellate Tribunal – divided into two:
  - **National and Regional Benches.**
  - **State and Area Benches.**
- National and Regional Benches has the jurisdiction to hear appeal -
  - against orders of Appellate Authority/ Revisional Authority
  - where issue relates to place of supply.
- State and Area Benches has jurisdiction in all the other matters.
- The appeal has to be filed in FORM GST APL – 05 within 3 months (may be extended).
- When appeal filed by Department – FORM GST APL – 07 within 6 months.
- If tax/ITC involved/fine/fee/penalty – less than Rs. 50,000 – Tribunal may refuse to admit appeal.
- The respondent within 45 days (may be extended) of receipt of notice of appeal – file memorandum of cross objections in FORM GST APL -06.

# APPEAL TO HIGH COURT



# APPEAL TO SUPREME COURT

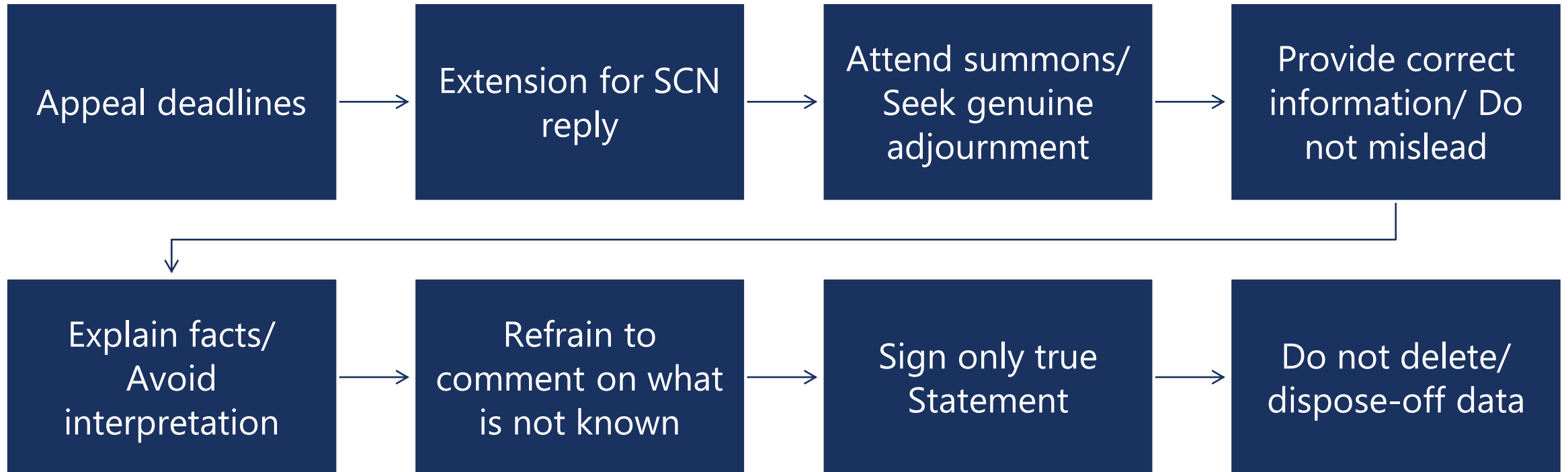


# SUBSTANTIAL QUESTION OF LAW

- When it indirectly/directly affects substantial right of parties
- ➤ When the question is of general public importance.
- ➤ When it is an open issue which has not been settled by the Supreme Court.
- ➤ When the issue is not free from difficulty.
- ➤ When the issue calls for a discussion for alternate view.



# BEST PRACTICES



# PROSECUTION



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# PROSECUTION UNDER THE GST

## Offence

- Supply without invoice
- Invoice without supply for ITC availment
- Fraudulent ITC
- Fraudulent refund
- Tax collected not paid within 3 months
- Evidence/ Data tampering or falsification
- Failure to supply data
- Obstructing tax authorities

## Imprisonment

- Above 5 crore: up to 5 years + fine
- 2 crore to 5 crore: up to 3 years + fine
- 1 crore to 2 crore: up to 1 year + fine
- Data tampering or falsification/ obstruction: 6 month + fine or both
- Subsequent offence: 5 years + fine
- Tax dispute:
  - Minimum term for 6 months
  - + 5 crore cases: Non-bailable
- Approval of Commissioner

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# OPPORTUNITIES FOR CHARTERED ACCOUNTANTS

Thank You

# OUR OFFICES

## INTERNATIONAL

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