

NATIONAL JUDICIAL ACADEMY



**Workshop for Federal Indirect Taxes Adjudicators (Chief Commissioners,
Commissioners) at NJA, Bhopal [SE-8]**

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Programme Report

Submitted by

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Object and Background of the Programme

This workshop was organized by the NJA as a Special Event. The object of the same was to sensitize and educate the Departmental Adjudicators to follow the judicial discipline and not to act as a representative of Revenue while deciding the matters in adjudication proceeding. It was said that almost 85% of the decisions of departmental adjudicators and appellate commissioners are turned down or reversed either at the stage of Tribunal (i.e. CESTAT etc.) or at the stage of High Courts and Supreme Court. It happens because while deciding the cases, departmental adjudicators, most of the times, do not follow the principles of natural justice in letter and spirit in which it ought to be followed by a quasi-judicial body. It was also observed that the departmental adjudicators are unable to be impartial in such assessment proceedings and they tend towards the revenue department. Hence, it was felt necessary by the Central Board of Customs and Excise (CBEC) to provide a training to these departmental adjudicators at a place different than their regular training centre. As while being adjudicators in the assessment proceedings they are acting as quasi-judicial authorities, the NJA was considered as the best institute to impart the training. With this object, as per the request of CBEC and with the approval of Supreme Court of India, National Judicial Academy conducted the said workshop.

Session - 1

Authority to Tax & Basis of Taxation

Speakers: Justice A.K. Patnaik & Justice Rajive Bhalla

Chair: Justice Ruma Pal

Justice A.K. Patnaik started by citing Article 265 of Constitution which reads as “**No tax can be levied or collected except by the authority of law**”. Therefore, there cannot be taxation without legislation. So, he said that the source of all tax collection in India is Article 265 of the Constitution and if any tax is collected without the authority of law then there lies no difference between a tax collector and highway robber since both will be using unlawful coercion to take out money from the pocket of the person.

He further said that in taxation matters involving a huge amount of money, tax adjudicators tend to bend down towards the revenue side to be on a safe side. This is both unethical and unlawful.

He appealed to the participants to do adjudication impartially keeping in mind the source of all tax collection which is the Constitution of India. (Article 265)

Thereafter, he discussed the four components of Taxing Statutes:

- **Charging Provision:** are those which levy tax.
- **Quantifying Provision:** which lays down the rate at which tax will be levied.
- **Collection Provision:** as to who will be the authority to collect tax.
- **Penal Provision:** to prevent tax evasion.

Thereafter, Justice Rajive Bhalla dealt with the the historical basis of taxation system. He elaborated that taxation is not a new phenomenon. It has been present for centuries. He suggested to all the participants that there is an image of Jesus on Wikipedia sitting at a round table with the tax collectors. After that he stated that tax was also prevalent in Mughal times on liquor and also the infamous Jizya tax which was abolished by Akbar. Thereafter, he discussed the tax regime of the British although there purpose of tax collection was completely different. After that he came to the post-independence era and said that the source of all tax collection is Article 265 of the Constitution.

He concluded the session by suggesting the participants to be fearless of the seniors and the department and decide assessment proceedings only in accordance with law.

Session - 2

Core Principles of Interpretation of Taxing Statements

Speakers: Justice A.K. Patnaik & J. R.V. Easwar

Chair: Justice Ruma Pal

Justice A.K. Patnaik started by saying that as a general rule tax statutes should be read strictly and literally. Strict interpretation means going by the letter of law and not to read between the lines.

He suggested to all the participants not to think about the following:

- Do not go into the philosophy to taxation.
- Do not look for doctrine of substance.
- Do not contemplate into the moral perception of taxation.
- Do not think about the hardship.

Thereafter, he said that the departure from strict interpretation is only permissible when it leads to any anomaly, absurdity etc.

After that he discussed how to interpret the various provisions of a taxing statute:

- He said that generally adjudicators levy interest alongwith the penalty which is wrong, since interest can only be levied when it is expressly provided in the act.
- Further he discussed about the exemption provision and said that while there is any ambiguity regarding whether exemption should be given to the assessee or not, then the benefit of doubt should be given to the assessee.
- Penal Provision should be construed strictly as the penal provision is quasi-criminal in nature.
- Refund should be given only when it is expressly provided in the statute.

Thereafter, Justice R.V. Easwar started by saying that we all have decent English, then why are we not able to understand the intention of the draftsmen while construing a legislation, then he jokingly said that we all shall presume that the draftsman did not do his job properly.

Thereafter, he gave the difference between interpretation and construction. Interpretation means finding the true sense of the word whereas construction means drawing of conclusion after ascertaining true sense of the word.

Thereafter, he defined Literal Construction as construction according to the ordinary grammatical sense of the word unless it leads to any absurdity.

He concluded by saying the departure from strict interpretation is only permissible when it leads to any absurdity.

Session - 3

Role of Adjudicators: Balancing the Interests of Citizens and Revenue.

Speakers: Justice Rajive Bhalla & Mr. P.G. Chacko.

Chair: Justice Ruma Pal.

P.G. Chacko started by saying that firstly, adjudication is a quasi-judicial function which means that the adjudicator is bound by the principles of natural justice and therefore he/she should proceed in an unbiased, impartial and fair manner. Secondly, the adjudicator should be governed by the rule of law as imbibed under Article 14 of the constitution. Thirdly, the adjudicator should follow binding judicial precedents i.e, the precedents which are not being overruled.

Then, he discussed about balancing the interests of citizens and revenue and highlighted two provisions:

- **Section 18(1) of Customs Act, 1962** which provides discretion to the authority to ask the assessee to furnish security as the "proper officer deems fit."
- **Rule 7(2) of Central Excise Rules, 2002** which is also on similar lines.

He said that in a provision where discretion is provided, the discretion shall be exercised in accordance with law and not in an arbitrary manner. Therefore, it is the duty of the adjudicator to balance the interest between citizens and revenue in accordance with law and principles of natural justice.

Justice Rajive Bhalla pointed out that 85% of the decisions of adjudicators are reversed on appeal by tribunals, HC & SC as the case may be. Therefore, it is high time for the tax adjudicators to do adjudication in accordance with law and not as per the need of the seniors or the department as it burdens the overburdened judiciary.

Session - 4

Judicial Ethics, Judging Skills & Objectivity in Decision Making

Speaker: Justice Rajive Bhalla

Chair: Justice R.V. Easwar

Justice Rajive Bhalla said that judicial ethics not only apply to judges but to all adjudicating authorities as the term "Judge" in its broadest sense includes adjudicators as they perform quasi-judicial function. The Adjudicators are also expected to do the same thing which the Judges are expected to do i.e, to decide disputes in accordance with law.

Then he highlighted the vices from which judges need to alienate themselves.

- **Raga - Bias**
- **Lobha - Greed**
- **Bhaya - Fear**
- **Dweshya - Prejudice**

He further said that there is no difference between the judging skills of High Court Judges & Tax Adjudicators as they are also expected to do justice morning, evening & night. Furthermore he said that we all are part of the justice administration system.

Thereafter, he gave a very interesting point. He said that the adjudicating authorities are a judge in their own cause and violate principle of natural justice as firstly they issue a show cause notice and then justify it later. So, ultimately you are the tax collector as well as the adjudicator.

Thereafter, he said that ethics are very subjective and there cannot be a straightjacket formula as one has to ascertain their own ethics.

Thereafter, he discussed the Bangalore Principles:

- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence & Diligence

Thereafter, he discussed the three qualities of judging by Socrates

- Hear Courteously
- Answer righteously
- Decide impartially.

He concluded by saying that ultimately it is the principles and ethics which takes us forward and not the violations of it.

Session - 5

Drafting of Reasoned Orders

Speakers: P.G. Chacko & Mr. Vikram Nankani

Chair: Justice R.V. Easwar

Mr. P.G. Chacko started with citing a celebrated Supreme Court Judgement in **Agricultural Produce Market Committee v. Salamulla** in which the court gave the functions of reasoned judgement:

- To inform the litigants the reason for the decision.
- To demonstrate fairness and correctness of the decision.
- To exclude arbitrariness & bias.

- To enable the appellate court to pronounce upon the correctness of the decision.

Then he cited **Dharampal Satyapal Ltd. v. Dy. Comm. of Custom Exercise** “Ratio Decidendi/Speaking Order is the third principle added to the principles of natural justice.”

It was suggested that the adjudicatory authorities perform a quasi-judicial function, therefore it is their duty of give reasons for the decision since non-giving of reasons strikes at the very root of rule of law.

Thereafter, he discussed how to draft a Reasoned Order:

- Give a brief business profile of the party.
- Briefly state the Revenue's Case as made out in the show cause notice.
- State the submissions of the party in response to the show cause notice.
- State the undisputed facts.
- Application of Judicial Precedents
- Record the reasons thereof.

Thereafter, Adv. Vikram Nankani highlighted the significance of recording of reasons:

- To show application of mind of adjudicator.
- To introduce clarity in the decision making
- Parties are entitled to know as to how grievance is addressed or redressed.

Mr. Vikram Nankani concluded by suggesting that there should be a provision regarding interim orders because by not doing so, the assessment is delayed.

Session - 6

Principles of Natural Justice and Application in Tax Assessment Proceedings

Speakers: Adv. Vikram Nankani, Mr. P.G. Chacko & Justice R.V. Easwar

Chair: Justice Rajive Bhalla

Justice Easwar started the session by citing C.G. Gautam's case where it was held that even when observance of Principles of Natural Justice (PNJ) is not expressly provided in the act, even then it needs to be followed. He said that PNJ is the backbone of Justice System and any derogation of it is permitted only when it is expressly provided in the act.

Thereafter, P.G. Chacko talked about the three major components of PNJ:

- *Nemo Judex in Causa Sua.* - No man be a judge in his own cause
- *Audi Alterem Partem.* – No one shall be condemned unheard

- *Ratio Decidendi* – Reason for the decision

Tax Adjudicators perform a quasi-judicial function, therefore they are bound by PNJ, any departure from the PNJ will render the judgement void.

Adv. Vikram Nankani started by saying that natural justice is nothing but the natural sense of what is right & wrong. He discussed the historical background of PNJ.

He discussed the famous case of **Ridge v. Baldwin** where it was held that a decision given without regard to PNJ is void.

Then he discussed Indian Case laws:

- **Uma Nath Pandey v. UP** - PNJ is a flexible phenomenon, not rigid or absolute.
- **CCE v. Sanawalal Purohit** - Applicable in all cases unless expressly barred by the statute.

Thereafter, he explained as to how PNJ should be kept in mind during the different stages of adjudication:

State -1 Investigations

Investigation should be done with fairness, transparency and strict procedural compliance.

State - 2 Show Cause Notice (SCN)

It shall disclose full investigations; summary of allegations and charges must be made known

Stage -3 Disclosure of documents

The disclosure of documents shall be of both kinds i.e., relied upon & un relied upon but received.

Stage -4 Hearing

Reasonable opportunity should be given to the party

Oral Evidence & Cross-examination

Expert evidence etc.

Stage - 5 Order

Then in the end the "Reasoned Order" shall be passed specifically mentioning the reasons for the decision.

Session - 7

Appreciation of Evidence including Electronic Evidence

Speakers: Adv. Vakul Sharma

Chair: Justice G. Raghuram (Director NJA)

Adv. Vakul Sharma started by defining Electronic Evidence as the evidence which existed in electronic form is being produced in tangible form. E.g. print out of e-mail, ATM Transaction, etc. Electronic evidence exists in intangible form: Some e.g. are Emails, Digital photographs, ATM transactions, E-commerce transactions, hard discs, memory cards, pen drives, etc.

Thereafter, he discussed case laws:

- **Md. Ajmal Kasab v. State of Maharashtra-** In this case the SC appreciated the electronic evidence of almost every form like CCTV footage, mobile devices, memory cards, data storage devices, etc. Instrument Manufactured Equipment Identity.
- **Tukaram S. Dighole v. Manilerao Shivaji Kokate-** In this case the SC held that Standard of proof in the form of electronic evidence should be more accurate and stringent.
- **Sanjay Kumar Kedia v. Narcotics Control Bureau & Anr.-** In this case the question was whether the website from which psychotropic substances were sold was hosted by Sanjay Kumar Kedia or not?
- The court held Sanjay Kumar Kedia liable by tracing his IP Address.
- **Gajraj v. State of Delhi-** The court relied on the exclusive nature of IEMI No. and held that no two phones can have the same IEMI No.

Thereafter he discussed Section 65 B of IEA (Admissibility of Electronic Records)

65 (1) Any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document and shall be admissible in any proceedings, without further proof or production of original.

65 (4) which states that a certificate signed by a person occupying a responsible official position in relation to operation of the relevant device for the purpose of identifying the electronic record containing the statement and describing the manner in which it was produced.

The question that arose before various courts was whether the certificate under S. 65 (4) is mandatory to file with the evidence under S. 65?

In certain cases courts said yes, in some other cases the courts said no but the issue was ultimately settled in the case of **Anwar v. P.K. Basheer & Ors-** It was held that certificate shall be produced for the admissibility of electronic evidence.

The session was concluded by Vakul Sharma by saying that in order to appreciate electronic evidence the source & the authenticity are the two things which should be kept in mind as electronic records can be very easily tempered with and ultimately the adjudicators need to become more technocrat and tech savvy in their day to day life in order to test the authenticity and source of electronic evidence.

Session - 8

Endemic Pathologies in Tax Assessment Proceedings

Speakers: P.G. Chacko

Chair: Justice G. Raghuram (Director NJA)

In this session Mr. P.G. Chacko discussed the pathologies in tax assessment proceedings in the Show Cause Notice (SCN). It was discussed that some of the SCN does not disclose the cause of action. Then in some show cause notices allegations are made stating that X or Y are collusively found guilty of the allegations made against you.

After that he discussed as to what should be the correct approach in tax assessment proceedings.

- To issue SCN stating the allegations
- Consider the reply
- Frame points for determination
- Pass a reasoned order.

Justice G. Raghuram concluded the program firstly, by stating that we (Tax Adjudicators and Judges) are all part of the same family and the appeal procedure prescribed by the legislature is the testimony of that. The appeal from the Commissioner (Appeals) goes to the Tribunal then to the High court and ultimately to the Supreme Court.

Secondly, we all are servant of the Republic of India and ultimately our work should be done keeping in mind the poor, the common man and not to please senior or the department.