

# ROLE OF ADJUDICATORS<sup>(1)</sup>

- Adjudication is a quasi-judicial function;
- Adjudicator should follow the principles of natural justice; he should proceed in an unbiased, impartial and fair manner;
- Adjudicator should be governed by the rule of law;
- Adjudicator should follow binding judicial precedents;

# ROLE OF ADJUDICATORS<sup>(2)</sup>

- Adjudicator while exercising discretion should balance the interests of the Revenue and the Citizens;
- At the end of the due process of law, the adjudicator should pass a speaking order based on the relevant facts and evidence in the case.

# BALANCING THE INTERESTS OF REVENUE & CITIZEN

## ❑ In provisional assessments:

- Section 18(1), Customs Act --- “... if ... furnishes such security as the proper officer deems fit for ...”
- Rule 7(2), Central Excise Rules, 2002--- “... if ... with such surety or security in such amount as the AC or DC ... deems fit ...”

## ❑ Old sec. 129E of Customs Act; old sec. 35F of Central Excise Act

New provisions indicate a new trend of the legislature itself balancing the interests of the Revenue and the tax-payers.

- ❑ It is the adjudicator that balances the interests by administering justice in each case in accordance with law and the principles of natural justice.

# DRAFTING OF REASONED ORDER<sup>(1)</sup>

❖ Supreme Court, in “*Agricultural Produce Market Committee v. Salamulla*” (2009) 9 SCC 219, held:

“Courts whose judgments are subject to appeal have to remember that the functions of a reasoned judgment are:

- To inform the litigant the reasons for the decision;
- To demonstrate fairness and correctness of the decision;
- To exclude arbitrariness and bias; and
- To enable the appellate/revisional court to pronounce upon the correctness of the decision.

# DRAFTING OF REASONED ORDER<sub>2</sub>

- ❖ “Non-giving of reasons by adjudicatory bodies strikes at the very root of the rule of law”- *MPS Kumar v. State of UP* : (1970) 1 SCC 764.
- ❖ “The requirement of recording reasons by every quasi-judicial or even an administrative authority is one of the recognized facets of natural justice”  
*Vallikumari v. Andhra Education Society* : (2010)2 SCC497.
- ❖ “A third principle added to natural justice is the duty to give reasons in support of decision”- *Dharampal Satyapal Ltd. V. Dy. Commissioner of CE* : 2015 (320) ELT 3 (SC).

# DRAFTING OF REASONED ORDER<sub>3</sub>

## ❖ How to draft :

- ❑ Give a brief 'business profile' of the party in the opening paragraph;
- ❑ Then, briefly state the Revenue's case as made out in the show-cause notice(SCN);
- ❑ Next, state the submissions of the party as contained in their reply to the SCN and in any written submissions / arguments subsequently made by, or on behalf of, them;

# DRAFTING OF REASONED ORDER<sub>4</sub>

- ❑ Now, state the undisputed facts relevant for a decision; in case of any dispute of fact, the same needs to be settled at this stage by the adjudicator on the basis of reliable evidence adduced in the case; and the settled fact(s) should also be recorded;
- ❑ To the whole set of facts (including undisputed and settled), the relevant law (statutory provisions, notifications, judicial precedents etc.) should now be applied so as to arrive at a correct decision on the point(s) in controversy;
- ❑ Record the decision and the reasons in support thereof.

# DRAFTING OF REASONED ORDER<sub>5</sub>

## ❖ Things to remember as to the order:

- Clarity and readability;
- No prolixity or verbosity [] at the same time, brevity bordering upon obscurity should be avoided [] the order to be well-considered and balanced, not to be lopsided;
- Application of appropriate rules of interpretation;
- Adherence to judicial discipline while applying precedents.



# NATURAL JUSTICE<sub>1</sub>

## ❖ PRINCIPLES OF NATURAL JUSTICE:

- *nemo iudex in causa sua* = No man may be a judge in his own cause [The rule against bias];
- *audi alteram partem* = Hear the other side [The rule of fair hearing];
- order of adjudication to be reasoned.

# 'NJ' IN TAX ASSESSMENTS<sub>2</sub>

- ❖ **A tax assessing authority discharges a quasi-judicial function and therefore the authority is bound to observe natural justice in reaching its conclusions:**
- Duties of excise: [i] *R.C.Tobacco v. UOI* : (2005) 7 SCC 725; [ii] *CCE v. Brindavan Beverages* : (2007) 5 SCC 388; [iii] *Dharampal Satyapal v. DC of CE* : 2015 (320) ELT 3 (SC).
- Duties of Customs : [i] *Siemens v. UOI* : (1976) 2 SCC981; [ii] *Kothari Filaments v. CC* : (2009) 2 SCC 192.

# 'NJ' IN TAX ASSESSMENTS<sub>3</sub>

- ❑ Any authority empowered under a statute to do any act which would prejudicially affect the subject is required to act judicially, although this requirement is not explicit in the statute and the contest is between the authority and the subject.
- ❑ The authority has to follow the rules of 'NJ'.
- ❑ This requirement of 'NJ' would be read into the statutory provisions unless excluded explicitly or by implication.

# 'NJ' IN TAX ASSESSMENTS<sub>4</sub>

- Some provisions which expressly or impliedly require the principles of 'NJ' to be followed:
  - Rule 25(2) of CE Rules, 2002 [confiscation/penalty];
  - Sec. 23 of Customs Act; Rule 21 of CE Rules, 2002 [remission of duty];
  - Sec. 72 of Finance Act, 1994 [best judgment assessment];
  - Sec. 17(4) of Customs Act [re-assessment];
  - Sec. 14A of CE Act; Sec. 72A of Finance Act, 1994 [special audit provisions].

# 'NJ' IN TAX ASSESSMENTS<sub>5</sub>

- Sec. 11A of CE Act; Sec. 28 of Customs Act; Section 73 of Finance Act, 1994 [adjudication of demands of duty etc.];
- Sec. 11B of CE Act; Sec. 27 of Customs Act [adjudication of claims for refund of CE duty, service tax and Customs duty];

# ENDEMIC PATHOLOGIES IN ASSESSMENT PROCEEDINGS<sub>1</sub>

- ❑ Plea for provisional assessment rejected by the DC of CE in a bid to salvage an appeal pending before CESTAT:

*CCE v. Shyam Steel Industries* : 2016 (331) ELT 73 (Cal) [Writ Appeal dismissed]

DC of CE directed to dispose of the application for provisional assessment under Rule 7 within 4 weeks by passing a reasoned order after giving the party an opportunity to be heard.

# ENDEMIC PATHOLOGIES<sub>2</sub>

- Inaction on importer's applications for provisional assessment and storage of goods in warehouse:

*Continental Carbon India Ltd. V. UOI : 2016 (335) ELT 423 (All.) [WP allowed]*

The competent authority by not passing order was refusing to exercise the power granted under the Act. Respondent's plea rejected as afterthought.

**Lack of bona fides found on their part.**

# ENDEMIC PATHOLOGIES<sub>3</sub>

- Regardless of Board's circulars which favored release of imported goods (not being prohibited goods) on provisional assessment in certain circumstances that existed in the case on hand, DRI caused the goods to remain in detention for months together.

*Shri Lakshmi Steels v. UOI* : 2017 (345) ELT 363 (P&H):  
[Petitions allowed]

**Lack of bona fides found.** Detention charges demanded by Shipping Line to be paid by Customs, who should also pay the petitioners' costs.



# ENDEMIC PATHOLOGIES<sub>4</sub>

- Reopening of assessment after 5 years on alleged ground of misdeclaration:

*CC (Port) v. Cosmo Steel* : 2015 (324) ELT 417 (SC): [Civil Appeal dismissed]

CESTAT's findings (that goods were examined in great detail, samples were tested, SIB of the Customs House also was involved in the process, and the assessments were finalized in consultation with SIB) were affirmed and no justifiable reason was found for reopening the assessments after a lapse of 5 years.

# ENDEMIC PATHOLOGIES<sub>5</sub>

- Assessing officer not passing re-assessment order sec. 17(5) of Customs Act, maintaining that the deposit of re-assessed duty by the party was tantamount to acceptance of re-assessment:

*Durgesh Merchandise v. UOI :2014 (305)ELT 439 (Cal)*

[WP allowed]

Statutory requirement of written confirmation of acceptance of reassessment cannot be obliterated by the deposit of the reassessed duty.

# ENDEMIC PATHOLOGIES<sub>6</sub>

□ Show-cause notice vitiated by unfairness and bias:

*SBQ Steels v. CCE* : 2014 (300) ELT 185 (AP).

□ Real likelihood of bias found in this case:

*Jindal Drugs v. UOI* : 2008 (223) ELT 561 (Bom).

□ Denial of the right to cross-examine:

(1) *Andaman Timber v. CCE*: 2015(324) ELT 641(SC);

(2) *Manek Chemicals v. UOI*: 2016(334) ELT 302(Guj).