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How to  
do...?

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FOLLOW UP OF TAX  
LITIGATION & COURT  
CASES

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State GST  
Department  
Government  
of Kerala

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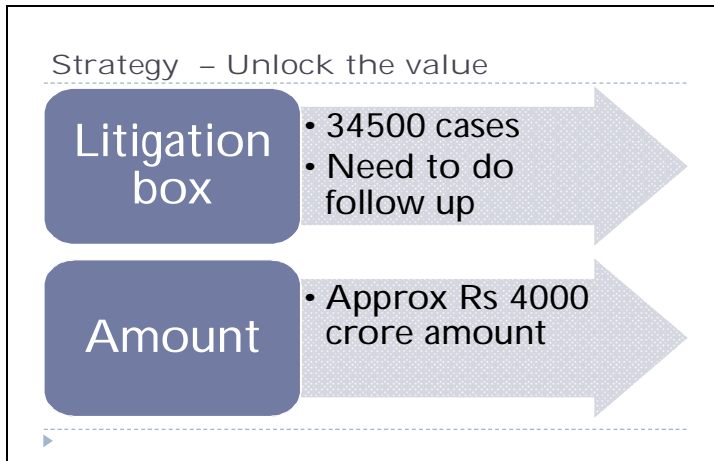
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## **Introduction**

State GST Department is one of the major revenue contributing departments of Government of Kerala. There were around 2.4 lakh registered dealers during VAT regime. All these dealers return filing goes through series of actions such as scrutiny, issuing notices, hearing, assessments, orders etc. However after completing all these steps over a period of time, many cases go on litigation trajectory. There are many cases in first appeal, second appeal in Tribunal and cases in Hon High Court and Supreme Court. At any given point of time there are sizable numbers of cases pending at all these levels. There are 34525 cases pending at various appellate forums.

Therefore, it is important to have a systematic approach to follow up the cases under litigation. The Department has decided to bring out How to do...? Series. In this series the next important publication is on How to do...? Follow up of tax litigation and Court cases. It will act as a guideline to understand the actions to be taken at Assessing authority, supervisory authority, Dy Commissioner, Law officer, Dy Commissioner Law, Jt Commissioner Law, Commissioner's and Government level.

It was decided to identify the cases having high revenue potential. Accordingly cases involving amount more than crore, more than 50 lakh, more than 25 lakh and less than 25 lakh have been identified. All the Assessing authorities have been instructed to follow up the cases to know the present stage of the case with the respective authorities. The monthly meetings on the cases under litigation is institutionalized in all the districts where the Law division from Head Quarter participation is also ensured. The identified cases have been informed to the Advocate General for filing advancement petition as well as for follow up. It is expected that such multi prong approach with a team work will enable to unlock sizable value and improve revenue performance of the Department.



Need to follow up:

- Huge pendency of Tax appeals/Revisions cases.
- Large amount of money is locked up in tax appeals/ revision.
- Low success rate of Tax department in tax litigations.
- Low success rate reflects poor follow-up by tax authorities and also quality of assessment. It also reflects gaps in processes.

## **1. How to follow up tax litigations before 1<sup>st</sup> appellate forum.**

- 1<sup>st</sup> Appellate Authority shall send a copy of appeal memorandum to the AA/DC for remarks.
- AA/DC shall record the same in the register for further follow up.
- The assessing authority / Intelligence Officer shall prepare detailed remarks.
- The remarks shall be sent to the appellate authority within 10 days.
- The DC/IAC shall file advancement petition in fit cases.
- The DC/IAC shall prepare a list prioritised cases in consultations with AA/IO and forward a copy to the AA for early disposal.
- A copy of the prioritized list shall be forwarded to the CCT in every month.
- If any stay is granted DC/AA shall take necessary steps to vacate the stay.
- The AA/IO shall have the right to be heard.
- The DC(Appeal)/AC(Appeal) shall send a copy of the posting notice for hearing to the concerned AA/IO.
- The assessing authority/Intelligence Officer shall attend the hearing and defend the case properly.
- Details of the appellate order shall be entered in the "Appellate order receiving register".
- Compliance to order within 3 days if no further verification of records is necessary.
- The compliance to orders as per the specific directions in the order.
- The AA/IO shall give reasonable opportunity of hearing to the party.
- If time limit is not specified, the modifications shall be completed within two weeks.

- Proposal for 2<sup>nd</sup> appeal within 7 days.
- Remarks from Law Officer shall be forwarded to the DC along with the above proposal.
- Deputy Commissioner should decide whether to prefer 2<sup>nd</sup> appeal.
- The time limit for filing second appeal is 60 days.
- The direction given from the Office of the CCT shall be complied with.
- Suo motu proposals U/s 56 and 58 shall be sent to DC/CCT within one month.

## **II. How to follow up tax litigations before 2<sup>nd</sup> appellate forum.**

- A copy of the appeal memorandum shall be sent to the concerned authority by Tribunal Secretary.
- The assessing authority shall prepare detailed parawise remarks.
- The Deputy Commissioner shall prepare cross objections on the basis of the remarks within 10 days and forward the same to the Law Officer.
- The Deputy Commissioner shall file advancement petition in fit cases.
- If any stay is granted the DC / assessing authority shall take necessary steps to vacate stay/early disposal.
- The DC/IAC shall prepare a list prioritised cases in consultations with AA/IO and forward a copy to the Law Officer for early disposal.
- A copy of the prioritized list shall be forwarded to the CCT in every month.
- When a Tribunal order is received the same shall be entered in the register maintained for that purpose.
- Compliance to appellate orders within 3 days if no further verification of records is necessary.
- The assessing authority shall comply strictly specific direction given by the Tribunal.
- The assessing authority shall give reasonable opportunity of hearing to the party if necessary.
- If the time limit is not specified in the Tribunal order the modification shall be completed within two weeks.
- TRC proposal within 7 days.
- The time limit prescribed for filing TRC is within 90 days.

- The time limit prescribed for filing review before Tribunal is within one year.
- A monthly report as to the implementation of Tribunal orders and filing of TRC in fit cases shall be submitted to the CCT.



### III. How to follow up Court cases.

- A copy of writ petition received from the High Court of Kerala shall be entered in the Register maintained for that purpose.
- The assessing authority/ Intelligence Officer shall return the signed copy of the accepted notice to the Registrar, High Court of Kerala within 3 days.
- The assessing authority/ Intelligence Officer shall prepare a clear and comprehensive parawise statement of facts within 7 days.
- SF shall be sent to the DC(Law), Ernakulam together with the relevant records.
- Delay should be avoided
- Assessing authority/DC may requests a detailed discussion with GPs on important cases before hearing by Court.
- Discussion on important issues with GP may be engaged by DC(Law).
- DC(Law),Ernakulam would arrange to obtain copies of judgments.
- Assessing authority shall obtain legal opinion through the O/o DC(Law), Ernakulam for seeking further remedy.
- If any interim direction (stay) is received without instructions appeal shall be filed against such interim orders.
- Advancement petition shall be filed through DC(Law) in fit cases.
- If there is scope for filing Wit Appeal/Revision/ Review the same shall be filed through the O/o the DC(Law), Ernakulam.
- When the High Court judgment is received the same shall be entered in the register maintained for that purpose.
- The assessing authority shall give effect to directions contained in the judgment within 3 days if no further verification of records is necessary.

- The assessing authority shall comply all specific direction given by the High Court strictly.
- The assessing authority shall give reasonable opportunity of hearing to the party if necessary.
- If the time limit is not specified in the judgment the modification shall be completed within two weeks.
- If there is scope for filing Writ Appeal against the High Court decision the proposal together with details of remarks, assessment records, appellate orders to the Deputy Commissioner (Law), Ernakulam within 7 days of receipt of the appellate order.
- The time limit prescribed for filing Writ Appeal before the High Court is within 30 days.
- Remarks if any as to the filing of Writ Appeal received from the Office of the CCT shall be strictly complied with.
- A monthly report as to the implementation of judgments and filing of writ appeal in fit cases shall be submitted to the CCT.
- The time limit prescribed for filing review before Hon'ble High Court is within 30 days and for filing SLP before Hon Supreme Court is 90 days.
- If direction of the court is not complied within the time limit prescribed by the Court a non compliance statement as to the reasons for the delay in complying the direction along with an affidavit to be filed by assessing authority.
- If Tribunal dismisses a case on delay OP Tax is filed. Copy of delay condonation petition and Affidavit filed before the Tribunal shall be forwarded along with grounds to the Deputy Commissioner (Law), Ernakulam.
- Monthly report as to the list of cases and date of hearing shall be submitted to CCT well in advance.

- The list of prioritised cases shall be forwarded to CCT every month for discussion with GP before hearing by Courts.
- Deputy Commissioner (Law) and Assistant Commissioner (Law) shall prepare bunch of judgments rendered by High Court and Supreme in favour of the State and forward the same to all Deputy Commissioners.
- SLP shall be filed if aggrieved by the order of High Court where a question of law is involved.
- Proposal for filing SLP shall be forwarded to Advocate General. Wherever the Government is the respondent, in such cases the proposals shall be filed through Government.
- Signed Vakalathanama shall be forwarded to the Standing Counsel, New Delhi.
- Jt Commissioner Law/ Dy Commissioner shall do liaison with the law officer in Kerala house regarding cases in Hon Supreme Court.

In short

- ▶ Monitor cases under litigation
- ▶ Sr GP – GP allocation of Districts
- ▶ Briefing to Government pleaders regarding the cases
- ▶ Identify cases clear in law and very strong in terms of assessment done with chances to get decisions in favor of the Government and follow up such cases
- ▶ Prioritize high revenue cases and follow up
- ▶ Implementation of the judgment in favor of the Government in time.
- ▶ Scrutiny of appellate orders and filing the appeals well in time

▶

**Other important follow up actions:**

- Preparation of statement of facts and filing affidavit is the most important action at the time of any litigation follow up.
- Dy Commissioner at the district level may constitute a group of officers (2-3 officers) having sound legal knowledge. The first draft preparation is done by the concerned assessing authority. Dy Commissioner may have weekly meeting on a fixed day fixed time basis of these group of officers and concerned Assessing authority. This group can go through the statement of facts and give inputs / citation reference etc to strengthen the statement of facts/ affidavit.
- At State level in the Web portal under Legal section maintain a repository of important cases/ case laws/ model statement of facts/ detailed affidavits.
- Once in a month a work shop at State level to be arranged to discuss legal issues/ cases/ case studies on a fixed day fixed time basis.

### **1. Judgment Information System of High Court**

- Designed to provide information on judgments of High Court of Kerala.
- The required information is derived from the large database created in the High Court of Kerala by NIC.
- Maintained by the Registry of High Court of Kerala.
- Cases can be retrieved through:
  - a. Case No.
  - b. Judge Wise
  - c. Date Wise
  - d. Party Wise

### **2. Judgment Information System of Supreme Court**

- It is an information system designed to provide information on pending and disposed cases of Supreme Court of India.
- The required information is derived from the large database created in the Supreme Court of India by NIC.
- Maintained by the Registry of Supreme Court.
- Cases can be retrieved through:
  - a. Case No.
  - b. Title (Petitioner / Respondent name)
  - c. Advocate name
  - d. Lower Court details

### **3. Website details**

- [www.highcourtofkerala.nic.in](http://www.highcourtofkerala.nic.in)
- [www.casearch.in](http://www.casearch.in)
- [www.indiankanoon.org](http://www.indiankanoon.org)
- [www.judis.nic.in](http://www.judis.nic.in)
- [www.supremecourtfindia.nic.in](http://www.supremecourtfindia.nic.in)

### **4. Journals / Periodicals**

- Kerala Tax Reporters
- VAT and Service Tax Cases.
- All India Reporter
- Supreme Court yearly Digest.
- Kerala Law Times

**Data**

Sl No	Appellate forum	Number of cases	Amount involved ( Rs in Crore)
1	Appellate authority	24899	2188.19
2	Tribunal	6643	400.8
3	High court	2879	1266.6
4	Supreme Court	104	142.1
	<b>TOTAL</b>	<b>34525</b>	<b>3997.69</b>

## **Acknowledgement**

This booklet will give guidance to all to follow up all appeal and court cases properly.

I appreciate the works done by the section and the officers who have contributed for preparation of this booklet.

**Dr Rajan Khobragade**  
**PrI Secretary & Commissioner**  
**State GST Department.**