



Office of the Commissioner of State Goods and Services Tax Department,  
Government of Kerala, Thiruvananthapuram

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Circular No...6.../2019

Sub: KSGSTD- Completion of assessments under legacy statutes-

Best judgment assessments- Compliance of Principles of natural justice-  
guidelines issued- reg.

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All pending assessments have to be completed based on the General Disciplines specified under Kerala Finance Bill, 2019. During the scrutiny of returns, if it is found that the turnover has escaped assessment, under assessed or self assessed at a lower rate of tax, availed ineligible exemption, concession, deduction, availed ineligible input tax credit, special rebate etc., best judgement assessment shall be done. The period of assessment and the place, date and time of hearing should be clearly and specifically stated in the pre-assessment notice and it should be addressed properly. In normal circumstances, pre-assessment notice should be sent at least two weeks before the date of hearing. If there are pending assessments for more than one year, all such cases of the dealer should be posted together and disposed of simultaneously.

As the burden of proof of genuineness of the claim is vested with the assessee, on receipt of the pre-assessment notice, the assessee has liberty either to produce books of accounts or furnish detailed reply. When parties appear in the office, they should not be made to wait indefinitely. On the date of hearing, the officers should take up the cases exactly in time. Prayers for adjournments should be discouraged. At any rate, long adjournments should not be given except under extra-ordinary

circumstances. Very often long adjournments are applied for to get time for 'cooking up accounts' or for delaying completion of assessments. The assessee can appear in the assessment proceedings either in person or through authorized representative. If the assessee is represented by his agent, proper authorization is necessary and it should be in the assessment file.

If the assessee produced the books of accounts, they should be returned immediately after scrutiny of the accounts. Before they are returned, the office seal should be affixed on them in one or two important pages and the books and should be signed by the assessing authority. After due verification, if the irregularity pointed out in the pre-assessment notice is still existing, the assessing authority shall proceed to complete the assessment.

It has been noticed that certain assessing authorities are completing best judgement assessment without affording a reasonable opportunity to the assessee either to file replies to the pre-assessment notices or opportunity of personal hearing. It is highly irregular and amounts to violation of the Principles of Natural Justice, 'audi alterum partem'. The denial of the aforesaid requirements naturally calls for interference by appellate/judicial forums, thereby defeating the very purpose of completing assessment.

On receipt of the reply to the pre-assessment notice, the objections raised by the assessee should be considered most judicially. In case the reply filed is found to be acceptable and sufficient to negate fully the grounds set for rejection of return and accounts, the proposal shall be withdrawn. If any further information is found necessary, the assessee should be asked to furnish the same and further clarify the points.

The assessing officer should bear in mind that assessment is a quasi-judicial proceeding and that sending a pre-assessment notice is not an empty formality. The assessee must have the satisfaction that he has had a proper hearing and his view-points have been placed before the officer. If assessments are made as judicially as possible, the number of appeals can be reduced considerably and collection of revenue can be made easier. After a careful consideration of the objections raised in the reply, the



assessing authority should make definite findings on the points raised in the pre-assessment notice. Violations of natural justice in the assessment process have attracted unfair comments and criticism from various judicial forums. Such unsustainable demands are most often left uncollected, compelling the trade community to seek legal remedies and to pay 20% of such demands to obtain stay against collection. Such assessments, made just for the sake of creation of additional demands, amount to harassment and lead to unrest among the trade community.

The assessment order should then be drawn up as speedily as possible. Assessment order, being a quasi judicial proceeding, must be a self-contained order, discussing briefly how far the accounts/replies are not acceptable as correct and complete. Soon after the assessment orders are drafted, a notice of demand should be drawn up in the appropriate form, if any tax is payable. Copy of the order along with the notice of demand and option for opting amnesty scheme should be served on the assessee on proper acknowledgement.

On the advent of GST, Government have decided to complete all the pending assessments under the legacy statutes on a war footing, and to collect the arrears under the amnesty scheme. The deadline fixed in this regard is 30<sup>th</sup> September of this year. Hence, utmost care needs to be exercised to see that the orders issued are sustainable, and would stand the test of law. With a view to achieving the above object, and to observe a standard methodology for assessment, the following directions are issued:

1. Ensure that sufficient opportunities for hearing and producing relevant records are afforded to the assessee before finalizing assessments. Adjournments may be granted, subject to the genuineness of the reasons adduced. However, it should be ensured that the assessment process is not prolonged unduly due to such adjournments.
2. The general disciplines, relating to assessment under the KVAT Act 2003, prescribed under clause 25AA of the Kerala Finance Bill 2019 should be strictly adhered to.
3. Relevant decisions of the Hon'ble High Court and Supreme Court should be kept in mind and given effect to while finalizing assessments orders. Orders issued contrary to the rulings / decisions of the Hon'ble Courts will not stand the test of law.
4. Pre-assessment notices involving huge tax effect shall be verified

meticulously by the approving authority to see that the demands generated are legally sustainable.

5. In the case of Works Contract assessments, the assessing authority should take note that registration charges collected, deposits for KSEB, KWA etc. do not form part of the contract receipts and hence not liable to Works Contract tax.
6. In the case of contractors opting compounding scheme, actual receipts received during the year is taxable. The opening work in progress, closing work in progress etc. reflected in trading account, shall not be assessed, if the corresponding receipts from such contract are disclosed in the year or subsequent year.
7. In appropriate cases, the Assessing Authority / Intelligence Officer should not refrain from exercising the powers conferred u/s.66 of the KVAT Act 2003 for rectifying the errors apparent on the face of the records.
8. Utmost care should be exercised while drafting assessment orders so as to avoid unnecessary litigation and to ensure prompt collection of the demand generated.



COMMISSIONER