

Dated 26.09.2022.

Circular

Sub:	Commercial Taxes Department – Assessment / Adjudication proceedings – Under TNGST Act, 2017 and other legacy Acts – Adherence of the Principles of Natural Justice - Circular Instructions issued – Regarding.
Ref:	1. The Circular No.7 / 2014 dated 03.02.2014. 2. The Circular No.32 / 2015 dated 17.08.2015 3. The Circular No.5 / 2016 dated 04.05.2016.

It has come to notice that, in many cases the Assessment/ Adjudication orders are passed by the Proper Officer without properly following the principles of Natural Justice, in letter and spirit, which results in the challenging the proceedings by the assessees, by way of filing writ petition before the Hon'ble High Court under Article 226 of the Constitution of India. In such cases the Hon'ble High Court has set aside the proceedings and directed to redo the assessment process de-novo.

2. It is imperative to mention that the Natural Justice is the essence of any fair adjudication and it is fundamental for the Adjudication Process. The main purpose of following the principles of Natural Justice is to protect the rights of the assessee against any arbitrary assessment and thereby, ensure fair and equitable administration of justice.

3. The Hon'ble Supreme Court in the case Canara Bank v. Sri Debasis Das, reported in (2003) 4 SCC 557, had analysed, in-depth, the Principles of Natural Justice. The observation in the said Judgment is summarized as below:

" Natural Justice is another name of common-sense Justice. Rules of natural Justice are not codified canons. But they are principles ingrained into the conscience of man. Natural Justice is the administration of Justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of Justice is to be freed from

the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of Justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. The adherence to principles of Natural Justice as recognized by all civilized States is of Supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Precise and unambiguous notice is the first limb of the principle of Audi Alteram Partem. Notice should apprise the party the case he has to meet. Adequate time should be given to make his representation."

4. The two basic rules associated with Natural Justice are:

(i) "No man can be judge in his own cause" (Nemo debet esse judex in propria causa) and it is popularly known as "doctrine of bias";

(ii) "No one should be condemned unheard" (Audi alterem partem). The third rule which has evolved recently is the Rule of Speaking Order.

5. The provisions of the TNGST Act, 2017 as well as the provisions of TNVAT Act, 2006, provides for the issue of notices and also opportunity of being heard, before fastening any liability on the assessee. Section 75 of the TNGST Act, 2017, which deals with **"General provisions relating to determination of tax"** provides for opportunity of hearing, where a request is received or where any adverse decision is contemplated, grant of sufficient time, that no demand shall be confirmed on the grounds other than the grounds specified in the notice and the order shall set out the relevant facts and the basis for the decision.

6. It is utmost important to adhere to the principles of Natural Justice for the reason that "justice must not only be done it must also appear to be done as well". The Adjudication / Assessment process should necessarily include the following, in order to comply with principles of Natural Justice.

a) Proper Service of Notice:

The show-cause notice shall be properly served on the assessee by following the procedure prescribed in the Act and Rules. The notice shall

be drafted clearly, indicating the prima facie lapses / evasion of tax, etc. The use of abbreviation in the show cause notice as well as in the order should be avoided. The notice shall indicate the provision, under which the proposed action is being initiated.

The revision process shall be initiated within the time limit provided as per the provisions of the Act. In the cases where the show cause notice has been issued under Section 74 of the TNGST Act, 2017, wherein extended time limit has been provided for revision, the reason such as fraud or wilful mis-statement or suppression of facts to evade tax, which is a sine qua non for the revision, shall be justified in the notice.

b) Grant of Reasonable Time to file Reply and dealing with Adjournments:

The person to whom show-cause notice is issued should be given sufficient and reasonable time, to prepare their reply. What is reasonable time depend on the facts and circumstances of the each case, however giving too short time for compliance of a notice will amount to a denial of reasonable opportunity. Therefore, the show cause notice shall be issued granting a minimum of 15 days time or such time, as prescribed in the provisions of the Act, to file reply.

Further extension of time/ adjournment shall be granted by the Assessing / Adjudicating officer, on case to case basis, according to the facts and circumstances of the case and duly recording the reasons thereof. Where the Assessing / Adjudicating Authorities refuses any adjournment, such decision shall be exercised with sound reason and not in an arbitrary or capricious manner. Further, the communication of granting time or refusal to grant time shall also be sent to the assessee.

c) Grant copies of documents relied upon for assessment :

Any incriminating records recovered from the assessee or obtained from third party or from other department or from any other source and proposed to be used against the assessee shall be provided to the assessee or atleast shown to him / examined in his presence. The whole idea behind this is to provide an effective opportunity to the assessee to rebut the proposed assessment. Reliance of any document or material without furnishing to the assessee, would render the ultimate decision bad on the principles of Natural Justice. Therefore, the copies of the records shall be provided to the assessee, on his request and at his cost.

d) Grant of Personal Hearing:

Apart from making the written representation, the assessee shall be provided with an opportunity of personal hearing. Such opportunity shall be provided, as per the provisions of the Acts and also, wherever the same was sought for by the assessee. The notice of personal hearing shall specify the date, time and venue and shall be sent well in advance, to the assessee, so as to enable to attend the hearing. A fair, reasonable and patient hearing shall be granted and the proceedings of the personal hearing shall be recorded. If the day fixed for hearing falls on holiday or when a particular time of the day was fixed for hearing and the authority was not available, the assessee is entitled to assume adjournment and fresh notice fixing date and time of next hearing shall be communicated to the assessee.

e) Personal Hearing and Decision by the same officer:

The requirement of fair hearing involves decision being taken by the officer, who heard the case. If after hearing a case that particular officer is transferred, normal rule would be that the successor must hear the arguments afresh and pass orders, as per due procedure.

f) Cross Examination:

The right to fair hearing includes the right of the affected party to cross-examine the third parties such as any other dealer / person whose records or statement are relied upon, for assessment. The Courts have time and again held that, denial of cross examination of witnesses, whose statements were relied upon, amounts to violation of principles of Natural Justice. Further, enquiry and verification made behind the back of the assessee and not providing reasonable opportunity to rebut the evidence is again a violation of Principle of Natural Justice.

The refusal of cross examination may be resorted to, only in exceptional cases, for justifiable reasons or where statute denies such right. However, the reasons for denial should be clearly detailed in the order passed.

g). Issuance of Speaking Orders or Reasoned Decision:-

Another most important aspect of Natural Justice is passing Speaking Orders or reasoned decisions. It has been held by the Hon'ble

Supreme Court of India in the case of Shri Swamiji of Shri Admar Mutt and Others v. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors., reported in (1979) 4 SCC 642 that

"Reason is the soul of the Law, and when the reason of any particular law ceases, so does the Law itself"

After a fair hearing and judicial consideration of the representation, evidence and materials furnished by the assessee, the Assessing/Adjudicating Authority shall pass a reasoned order and such order shall meet out each and every objections raised and supportive evidence filed by the assessee, in a cogent, clear and succinct manner. The Assessing / Adjudicating Authority shall act independently, applying their mind in exercise of their quasi-judicial powers with utmost adherence to the concept of the Natural Justice.

A pretence of reasons cannot be equated with a valid decision making process. When the order passed is an appealable order or whenever Appellate or Revisionary Authority affirms the order of the lower authority, such orders shall be based on sound and justifiable reasons. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative powers. From time to time, Court has held that, the face of an order passed by a quasi-judicial authority or even an administrative authority, affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

The Assessing / Adjudicating Authorities shall verify the objections received through post / courier, etc and wait till the end of the office working hours of the day fixed for filing objections and proceed to pass orders only on the next day.

7. It should also further be borne in mind that the Rules of Natural Justice do not supplant the law of the land but only supplement it. Further the Hon'ble Supreme Court in State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 has held that

"The principles of natural justice cannot put in strait- jacket and their applicability depends on the facts and circumstances of each case."

8. In a nut shell, all Assessing / Adjudicating Authorities shall scrupulously follow the principles of Natural Justice in all the quasi-judicial

proceedings, without any flaw and always pass Speaking Orders, which can withstand the judicial scrutiny

9. The receipt of this circular shall be acknowledged by the Joint Commissioners, immediately, who in turn shall take acknowledgement from each and every Assessing / Adjudicating Authority, under their control. Further, this circular instructions shall be kept in the stock file. Any wilful disregard / disobedience in adherence to the principles of Natural Justice brought to notice would be dealt with severely.

Sd/-Dheeraj Kumar
Principal Secretary/
Commissioner of Commercial Taxes

To

1. All Joint Commissioner (ST) (Territorial & Intelligence) (Including LTU) and Joint commissioner (legal), Madurai.
2. All Deputy Commissioner (ST) (Territorial & Intelligence) (Including DC/ LTU, Appellate DC (GST).
3. All Head of assessment circles.
4. Copy to All Additional Commissioner O/o the Principal Secretary/ Commissioner of Commercial Taxes, Ezhilagam, Chennai -5.
5. Copy to Joint Commissioner (Admin) O/o the Principal Secretary/ Commissioner of Commercial Taxes, Ezhilagam, Chennai -5.
6. Copy to Director, Commercial Taxes staff Training Institute, Nadananam.
7. Copy to the Special Government Pleader (Taxes), High Court of Madras, Chennai and Madurai.
8. Copy to Joint Commissioner (Computer System) for uploading in the intranet website.
9. Copy to Superintendent 'Y' Section.
10. Stock File.

// Forwarded by Order//

Joint Commissioner (Legal)

27/9/2012
27.9.2012