

Best Practice to Avoid disputes

By: [Madhukar N Hiregange](#)

One of the major challenges for the assessee is – avoiding of the disputes with the department. To avoid/ reduce such disputes with the department, one must understand the reason for such dispute. In this write up, we have analyzed the best practices of avoiding disputes with the department by using alternative measures/policies. We would understand the following in this writeup -

- I. Possible causes for the Disputes along with measures to mitigate them?
- II. How to avoid disputes with the department?
 - a. Oral Communication
 - b. Visits by / to department
 - c. Written Communication with the department
 - d. Search, Seizure, Summons
- III. How to face the departmental audit?
 - I. **Possible causes for the disputes with the department and measures to mitigate them?**

The possible causes for the disputes with the department are as follows.

- i. ***Lack of clarity of the law & provisions & frequent amendments***

In the old service tax law and also in the new service tax law, there was / is no clarity in some of the words / exemption entries provided in the statute / notification which arise scope for different interpretations. To illustrate, classification issues under the old service tax law, applicability of [rule 6 of CENVAT Credit Rules, 2004](#) for the trading activity before 01-04-2011, usage of words 'service should be delivered outside India' in the Export of Service Rules, applicability of [Rule 6 of CENVAT Credit Rules, 2004](#) after 01-07-2012 etc. Accordingly, there exists different view between the assessee and the department and it is one of the main causes for the disputes.

To mitigate the above, the assessee should get adequate training and should be updated with the provisions of law. Further, in case of complicated issues the assessee should get advice in writing from the expert and the same also required to be intimated and confirmation to be taken from the department before execution of the transaction.

- ii. ***Department is yet to explore the loopholes in the Law/provisions***

Another important reasons for the disputes with the department is there are certain loopholes in the law / provision if one considered the verbal reading of the words used in the statute. To illustrate as per the verbal reading of the definition of the exempted service w.e.f. 01-07-2012, as provided under [Rule 2\(e\) of CENVAT Credit Rules, 2004](#), trading activity is not an exempted service. However, the intention of [Rule 6 of CENVAT Credit Rules, 2004](#) is to dis-allow the CENVAT Credit on the activities on which service tax would not be payable to the department.

To mitigate the above, the assessee can ask for clarification to the Central Government through Trade / Industrial Associations. Further, prior intimation to the department is necessary before execution of the transaction.

iii. ***Decisions from Supreme Court / High Court quashing the levy of Tax and retrospective amendment by Central Government***

Another reason for disputes with the department is quashing of levy of Tax by Supreme Court / High Court and assessee would follow such decision and would not pay service tax. However, the department would not accept such decisions and by virtue of the retrospective amendment, the activity would be taxable. In such a case, the assessee would end up in payment of taxes from his own pocket along with interest and penalties. To illustrate, decision of various High Courts on Renting of Immovable Property, quashing of service tax on Members club by Jharkhand and Gujarat High Court, quashing of levy of service tax on Restaurant service by Kerala High Court etc.

To mitigate the above, the assessee requires to intimate the same to the department in writing the understanding and applicability of the decisions to their business and their method of taxation consequent to such decision. Further, the assessee can also examine payment of taxes under protest and the taxation clauses can also be provided in the purchase order entered with the customer.

iv. ***Assessee hesitates to interact with the department and due to such communication gap with the department there is a scope for dispute to arise***

Most of the assessee's would not interact with the department as they hesitate to contact the departmental officials. Due to this, there may be communication gap between the department and the assessee and there may be a scope for the dispute to arise.

To mitigate the above, the assessee can seek the assistance from consultants who can advise what needs to be done and can draft the letter which can be submitted to the department.

v. ***No uniformity in the taxation policy, change in the management of the assessee***

In many organizations, there would be frequent changes in the taxation policy leading to adoption of different method for payment of taxes to the department. Further, there would be a change in the

management of the assessee leading to lack of monitoring on the indirect taxation and lack of MIS report on the IDT area. This would be lack of clarity in the taxation policy of the organization and may lead to disputes with the department.

To mitigate the above, the organization should have Standard Operating Procedures for the major areas of the Indirect Taxation and qualified persons should give charge for the major areas of the Indirect Tax along with sufficient manpower to assist him. Also, proper care to be taken in case of change of an employee and handling over of all the data. Further, right man should be appointed for the right job and also responsibilities should be fixed for each executive.

vi. ***Wrong information provided by the assessee***

In many cases while giving any intimation to the department, replying to the departmental letter, the assessee may provide wrong information on their activities. This would lead to allegation of misrepresentation of facts to the department if noticed.

To mitigate this, adequate care should be taken while having interaction with the department. Further, if the organization aware that the information provided to the department was wrong, the same can be rectified by writing a letter and giving reasons for the same.

vii. ***Books of accounts of the assessee not true and fair***

In many cases, the books of accounts of the assessee would not be true and fair or there may be cases of wrong disclosures in the books of accounts on the activities pertaining to the Indirect Taxation. If department notices the same during their audit, then there may be unnecessary demands which lead to disputes.

To mitigate the above, the organization should have due diligence of their activities from the expert. Further, the IDT area can be included in the Internal Audit. Also, the company can adopt the policy of issuance of MIS reports to the management at adequate intervals on IDT.

viii. ***Non / Wrong disclosure in the returns filed with the department***

In the returns filed with the department, the assessee may disclose wrong information to the department or some of the information will not be disclosed. This leads to frequent queries from the department to the assessee and if proper explanation was not provided, the same may lead to dispute.

To mitigate the above, the assessee requires to take proper training on the disclosure part from the expert and adequate and proper disclosures to be made in the returns filed with the department.

ix. ***Delay in filing of returns & payment of taxes***

There may be a case of delay in filing of returns and delay in payment of taxes and the department may ask clarification / focus much on the assessee. To mitigate the above, the assessee should make the payment of service tax in time to the department and return to be filed within the due date.

x. ***Non submission of adequate information to the dept / letters / during audit***

There may be cases where the assessee would produce inadequate documents / information for the enquiries of the department or during the departmental audit. Due to this, the department would suspect the assessee and can issue the show cause notice based on assumptions and presumptions as they have a time bound of 18 months from the relevant date to issue the show cause notice.

To mitigate the above, the assessee requires to submit adequate information / documents to the departmental letters and also for the documents asked during the audit.

xi. ***Periodical issue of Show Cause Notice for old issue pending at higher forum***

Another reason for dispute with the department is issuance of periodical show cause notice for the old pending issue at the higher forum.

To mitigate the above, the assessee can apply for early hearing of the cases at the higher forums for the old cases. Also, intimation can be provided to the subsequent period on adoption of taxation policies to avoid extended period and also examine payment of taxes under protest.

II. **How to avoid disputes with the Department:** The assessee must ensure and maintain transparency with the department to the extent possible. In order to understand how to avoid disputes, we need to know as to -

- How to interact with the department appropriately for better compliance and smooth functioning.
- How to handle in search, seizure, summon and in audits?
- What are the obligations of tax payers or assessee?

The assessee in order to avoid disputes with the department, have to make necessary initial declarations and other important communications with the department. Here are a few suggestive approaches which could be useful while interacting with the department officials, the given approaches may not be new to the assessee, but using of the said techniques appropriately at the right time in a proper way, would certainly bring in confidence in the assessee while interacting with the department:

- **Oral Communication:**

In this important strategies can be followed by assessee are

- To note down the dates of such oral communication as the same can be used for proceedings if required.
 - The assessee requires to have good relationship with the officer of the department. Even though there is some conflict in the oral communication, the assessee can mention the decision would be taken by management after approaching the consultant.
 - Always requires to be straight.
 - For any advice / demand by oral by department, the assessee should ask for in writing.
 - After the oral communication, the important discussion if any to be intimated in writing.
- **Letters and notices from the department:** All letters received are to be marked with date of receipt and especially for Show Cause Notice / Adjudication/Appeal Order; the envelope cover should be retained as evidence for date of receipt. All letters from the department should invariably be replied within one month (unless otherwise specified), by way of registered post with acknowledgement due. If required, the assessee should seek extension of time in replying to the letter received from the department. All communications should be perused to see which are in the direction of the enquiry. If the communication is with respect to possible Show Cause Notice, Assessee may take legal advice wherever required and file a comprehensive reply providing the facts clearly along with the reasonable justifications and related legal grounds. This could avoid the issues of the Show Cause Notice (SCN), which consumes time, effort and money.
 - **Visit by the department:** In normal course, the officers are not supposed to visit the assessee at his premises even for verification of the address. Therefore in case of any visit, the identity of the officer maybe verified preferably by the security personnel who need not let them enter unless the same is produced. Any document provided should be on a written request and duly acknowledged. The type of document provided may also be considered prior to handing over. A report to higher officer / for record wherever there is any doubt as to the straight forwardness of the inquiry is also advisable. It is also advisable to assessee not to follow the Oral instructions of departmental officers as that may not be in accordance with the law. Instead they can insist on written communication or write back to them stating that they have instructed them to do so, seeking their confirmation.
 - **Visit to the department:** All the statutory requirements can be fulfilled online itself like registrations, submissions of returns, forms and making payments. This would save the precious time of the officers as well as the assessee. Also avoid unnecessary travel as also discussion with the tax authorities which normally does not serve any purpose. Also, in case of

any intimation, the same can be sent through RPAD.

Further, if the assessee visits to the department in case of unavoidable circumstances, following things to be taken care.

- Entering in visitor register for visits to the department
- Meet only the concerned officer
- Discuss the purpose of visit and to be straight in communication
- After the visit, important discussions, suggestion, if any can be intimated to the department
- **Search & Seizure:** In case of search and seizures from the department, following things to be taken care.
 - The assessee requires to check whether the search is authorized by the proper authority and the department can search and seize for documents, books or things which may relevant for the proceedings
 - The assessee requires to provide adequate support at the time of search
 - If summon is issued for the statement after search, the assessee should not accept the demand at straight and they requires to explain grounds for non- payment of tax
 - In case of seizure of documents, request can be made to take only sample copies of documents
 - If the important documents are seized, the assessee can request the department to take the photocopy of the documents
 - Also, for the important documentation having confidence information of the business, the Non-disclosure agreement can be asked from the department
 - After the search, the assessee should ask for issuance of the mahazar report
 - Also, followup requires to be made to the department for the release of seized documents
- **Handling of Summons:** In case of summons from the department, following things to be taken care.
 - The assessee should check whether the summons issued by the authorized officer
 - The assessee should check whether the summon is issued for documents / evidences / or for any inquiry
 - If any documents asked, the same can be submitted at the earliest to the department
 - If the assessee requires any additional time to attend the documents, additional time requires to be asked in writing
 - Before attending of the summons, the assessee should analyze the possible questions / issues from the department and to be prepared in advance for the same. Also, can have discussion with the department for the preparation made and also can examine to authorize consultant to attend the summons.
 - In the statement, the assessee should not accept the service tax liability, rather requires

- to provide reasons for non-payment of service tax. In case of surprise question, diplomatic answer to be provided to the department
- Also, the statement to be checked before signing the same to ensure accuracy and completeness. Further, after providing the statement, in case of any wrong statement, the can be rectified in writing within 24 hours.

“Prevention is better than cure.” If the assessee is ethical and diligent while interacting with the department, disputes would be reduced to a great extent. If any dispute arises inspite of his diligence, he should take necessary measures and resolve it. Interaction with the department is the key to avoid disputes with the department.

Finally to summarize, to avoid disputes, the assessee should interact on record with the department before any dispute arises itself. The assessee must intimate the department before hand about its nature of activity, method of maintaining books of accounts, initial disclosure letter, records maintenance, etc. The assessee should emphasize on handling the interactions with the department in order to avoid disputes. Though the laws are made user friendly, both for Central Excise and Service Tax, assesseees are still finding difficulties in interacting with the departmental officials. This may be due to lack of awareness of related law or psychological image about the department. The assessee tends to hesitate to approach the department at the right time which creates many more unexpected problems for assessee leading to unnecessary litigation which may also include attracting penal provisions under both laws on charges of suppression / misrepresentation.