

Qualitative measurement of SCN/OIO/Review orders

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Procedure

- Issue of Show Cause Notice (SCN)/demand notice
- Adjudication proceedings (Quasi-judicial)
 - Reply from party
 - Personal hearing
 - Passing of Order-in-Original (OIO) confirming or dropping the demand
- Review of OIO by department
 - whether to file an appeal against the OIO
- Party, if aggrieved, can file an appeal

Procedure

- Either party can go in appeal
 - Appeal by Department
 - Appeal by assessee
- Appeal against OIO
 - Commissioner (Appeals) or CESTAT (Tribunal)
- Appeal against CESTAT order
 - High Court or Supreme Court
- Appeal against High Court order to Supreme Court

Procedure

- Review by Commissioner
 - Orders passed by authorities below
- Review by Chief Commissioner
 - Orders passed by Commissioner
- Review by committee of Commissioners
- Review by committee of Chief Commissioners
- Judicial cell
 - Appeals to Supreme Court

Stakeholders

- Officers proposing and issuing SCN
 - investigations or audit & approval SCN
- Quasi-judicial departmental officers
- Review authorities
- Legal cell
- Judicial cell
- **ASSESSEE**

What is measured now?

- Timely issuance of SCN
 - issues get time-barred
- Timely adjudication
 - Key Performance Indicator
 - More than year, six months, one month etc.,
- Timely review
 - Statutory requirement

How it is measured..?

- Metrics for measuring issuance of SCN
 - period for which investigation pending
 - period for which draft SCN pending
- Metrics for measuring adjudication
 - adjudication pendency
 - process of adjudication
- Metrics for review
 - review before statutory time limit

Prevalent attitudes

- Issue SCN – we'll **look at it later**
 - Invocation of extended period
- Confirm SCN – Let them **get relief from higher forum**
 - Why should I take the **decision** - I am a revenue collector; cannot drop demand
 - **Vigilance?**

Prevalent attitudes

- Review the dropped demand and file an appeal
 - **Protect** the interest of revenue
 - It is **safe** - I have not taken an anti-revenue stand
- Attitudes pervade all stages of hierarchy

What suffers?

- **Ease of doing business**
 - Party gets relief only after spending significant amounts in litigating the case at various fora
- **Credibility of department/quasi-judicial process**
 - Assessee feels that departmental process is a waste of time
 - First relief is only from Tribunal

What suffers?

- **Judiciary**
 - Unwarranted litigation
 - Clogging the Tribunal/High Court/Supreme Court
- **Department**
 - Officers spend a lot of time and energy preparing appeal papers and defending unworthy cases
 - Periodical notices
 - Filing early hearing petitions
 - Costs of Government in litigating
 - Inflated arrear list

Statistics in support...

- Null hypothesis
- April 2013 – January 2017

	Allowed	Rejected	Partly allowed	Remand	Success rate
Commissioner (Appeals)					
CESTAT					
High Court					
Supreme Court					

Statistics in support..

- Success of Income Tax Department (2014-'15)
 - 42% in Tribunal
 - 41% in High Court
 - 57% in Supreme Court
 - [Indian Express report](#)
- CBI conviction rate under PoCA, 1988
 - 68% since 2006
 - [Times of India report dt.16.09.2016](#)

Changes to improve quality..

- Extension of normal period of limitation in service tax from 18 months to **30 months**
 - To avoid invocation of extended period in technical cases
- **Monetary limits** have been introduced for appeals
- Has situation changed??
 - **No**

Why this happens?

- No **deterrent** for issuance of weak SCN
 - plausible reasons espoused for issuance of weak SCN
- No **incentive** for passing a quality order dropping a demand
 - More work by way of filing appeals
 - Vigilance?
- Drop a demand only if **110%** sure
- No **deterrent** for doing a feeble review
 - seen as **protector** of revenue

Why this happens?

- Officers work is predominantly **quantified** by the number of orders passed and adjudication pendency
 - Adjudication pendency is a key **performance** indicator
- No incentive for passing a **reasoned** order even if it means dropping the demand
 - threat of review and more work

Why this happens?

- No data with regard to SCNs issued, OIOs passed, Review Orders issued and the ultimate status of the such decisions
- No database of orders
- **No data = No measurement**

The idea!!!

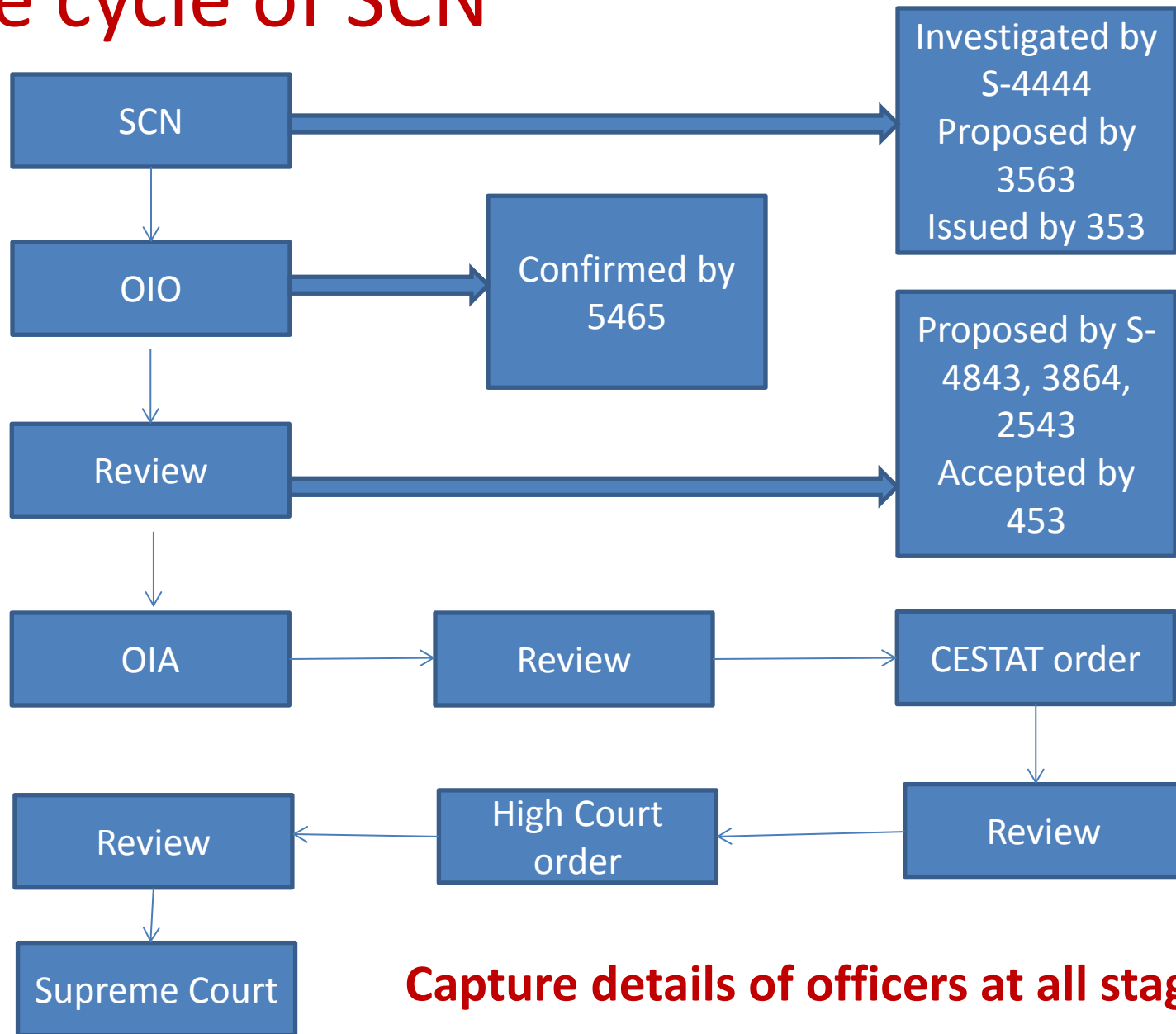
Batting Career Summary									
	Matches	Innings	Not Out	Runs	High Score	Avg	SR	100	200
Tests	200	329	33	15921	248	53.79	54.08	51	6
ODI	463	452	41	18426	200	44.83	86.24	49	1
T20I	1	1	0	10	10	10	83.33	0	0
IPL	78	78	9	2334	100	33.83	119.82	1	0

Who is he?

How it can change?

- **Build a database**
 - simple stand alone software?
 - can be integrated in GST back-end
- **Quality of SCN, OIO and Reviews tracked**
 - upheld by a higher forum
- **Recognition for a good order**
 - irrespective of whether the demand is confirmed or dropped

Life cycle of SCN



Capture details of officers at all stages

Database

- Capture the details of SCN and **all subsequent stages** of SCN (OIO, Review, OIA)
- Capture the details of **all officers involved** in issuance of SCN and Review of OIO/OIA..
 - Administrative functions
- Details of officer issuing **OIO or OIA**
 - Quasi-judicial function

What can be the metrics?

- **Duty** involved in SCN
- Invocation of extended **period**
 - It is proposed to make invocation of extended period a separate metric because, confirmation of extended period and resultant penalties, is a major cause of litigation

The process..

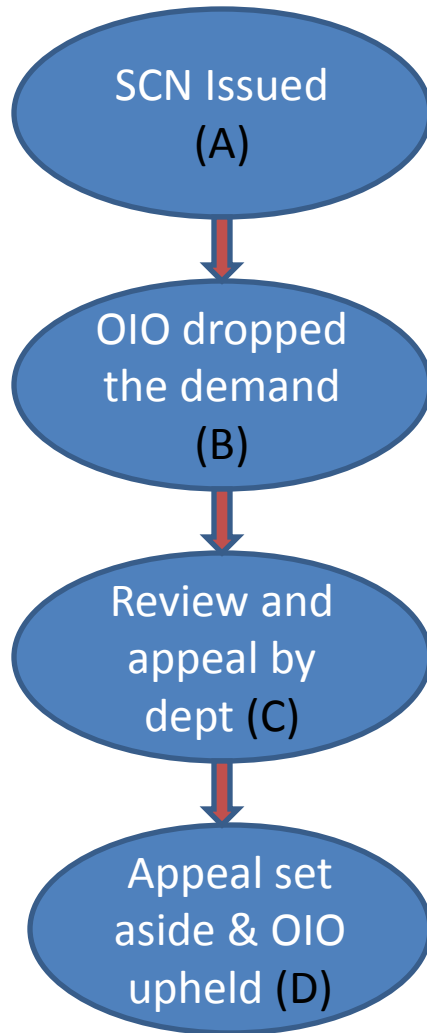
- Scoring

- Total points for SCN/OIO/Review
 - 10 points
- Breakup of points when extended period is involved
 - 6 points for duty
 - 4 points for extended period
 - Redemption fine & penalty generally depend on extended period
- Points when extended period NOT involved
 - Full 10 points for duty

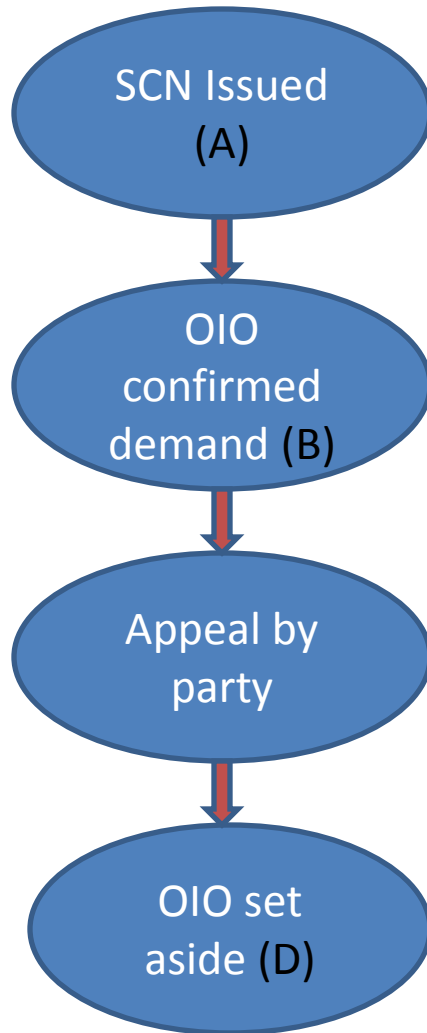
The process..

- Every **SCN issued** will add points to the profile of the officer
- Every **subsequent stage** of SCN (OIO, Review, OIA, decisions of higher appellate fora) is captured as detailed before
- The points will stay with the officer **as long as the SCN/OIO is upheld** by subsequent fora
- The points will be **deducted if the SCN/OIO is dismissed at any later stage**; they will be added back if the SCN/OIO is upheld by higher fora

How it works?



How it works?



Complex issues..

- **Partial** upholding/setting aside of OIO
- SCNs on account of **AG Audit objection**
 - recorded as such in the database along with acceptance or otherwise of department
- Orders for **de-novo** adjudication
 - It is as good as the OIO being set-aside; Hence, points deducted for OIO but points against SCN remain
- **Settlement Commission**
 - Party accepts; so SCN points will remain
 - settlement commission will become Adjudicating authority
 - Subsequent process will remain same

Complex issues..

- **Part acceptance** or appeal in review
- **Committee reviewing** the OIO
 - Difference among committee members
 - Do we have these committees in GST?
- **Incentive for accepting** the OIO in review
 - Should there be an incentive for merely accepting the order?
 - In the present framework no points

Partial confirmation/review..

- It cannot be 0 or 10
- Proportionate allotment of points?

Total points for duty is 6 and extended period is 4

Only 5 lakhs out of 10 lakhs confirmed

Hence the points for duty is $6 * (5/10) = 3$

Extended period dropped by adjudicating authority

Hence no points for extended period

Total points for SCN = $3 + 0 = 3$

B

OIO
confirmed
(B)

Confirmed Duty:
5lakhs
Extended period
dropped

3

10

Incentive for good OIO..

- A **monthly edition** of good OIOs passed by departmental officers may be circulated
- How to **decide** good orders?
 - Officer, who opines, that he/she has passed a good order may “directly” submit the order to a committee specially constituted for the purpose
 - The committee will examine the order and include the same in the monthly edition if deemed fit
- Income tax has similar arrangement?

Conclusion..

Dispute Resolution Performance Aman Garg IRS Principal Chief Commissioner Emp id: 01234								
SCNs Involved	SCNs Points	Success Rate	OIOs Issued	OIOs Points	Success Rate	Review orders directing appeals	Review Points	Success Rate
1000	2000	0.20	1500	4000	0.27	4000	10000	0.25

Is he good enough?

Thank you