

WEL COME





# APPEAL MECHANISM

BY

K. SEETHA LAKSHMI ,

APPELLATE DEPUTY COMMISSIONER(CT) Sec'd

O/o COMMISSIONER OF COMMERCIAL TAXES

GOVT. OF TELANGANA

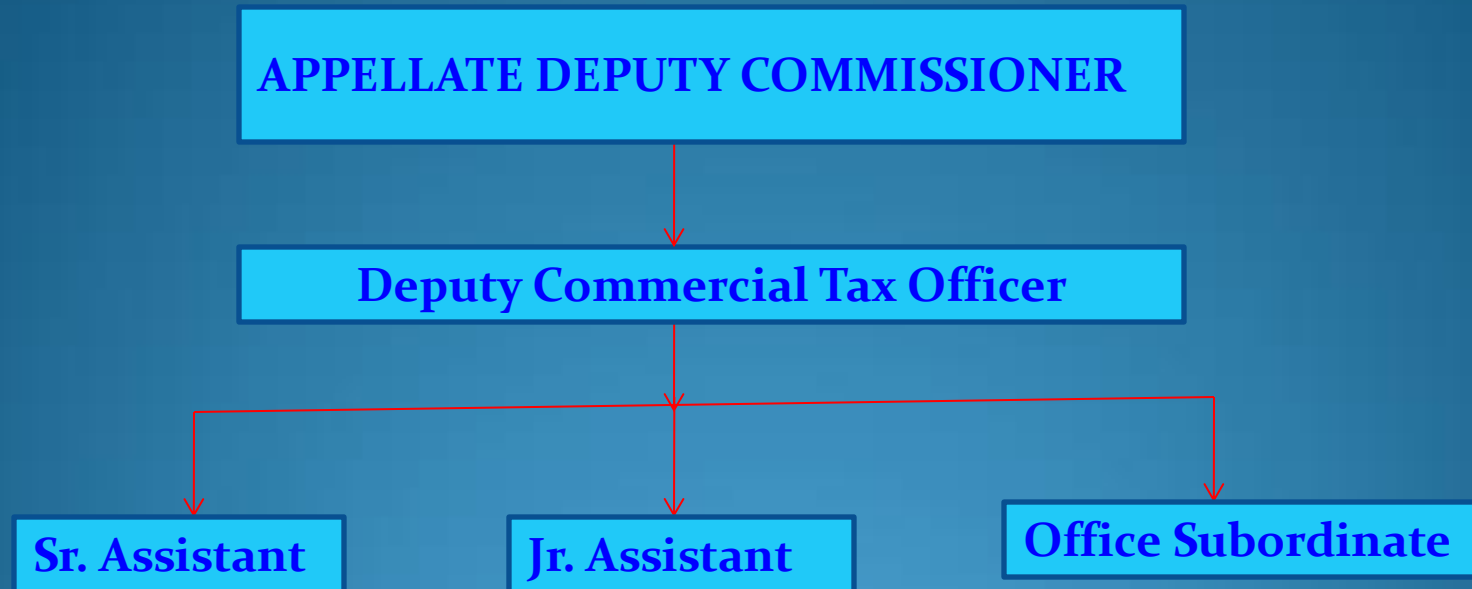


# APPEAL

**An application to an appellate authority for a decision to be reversed on the orders passed against the provisions of the Act.**

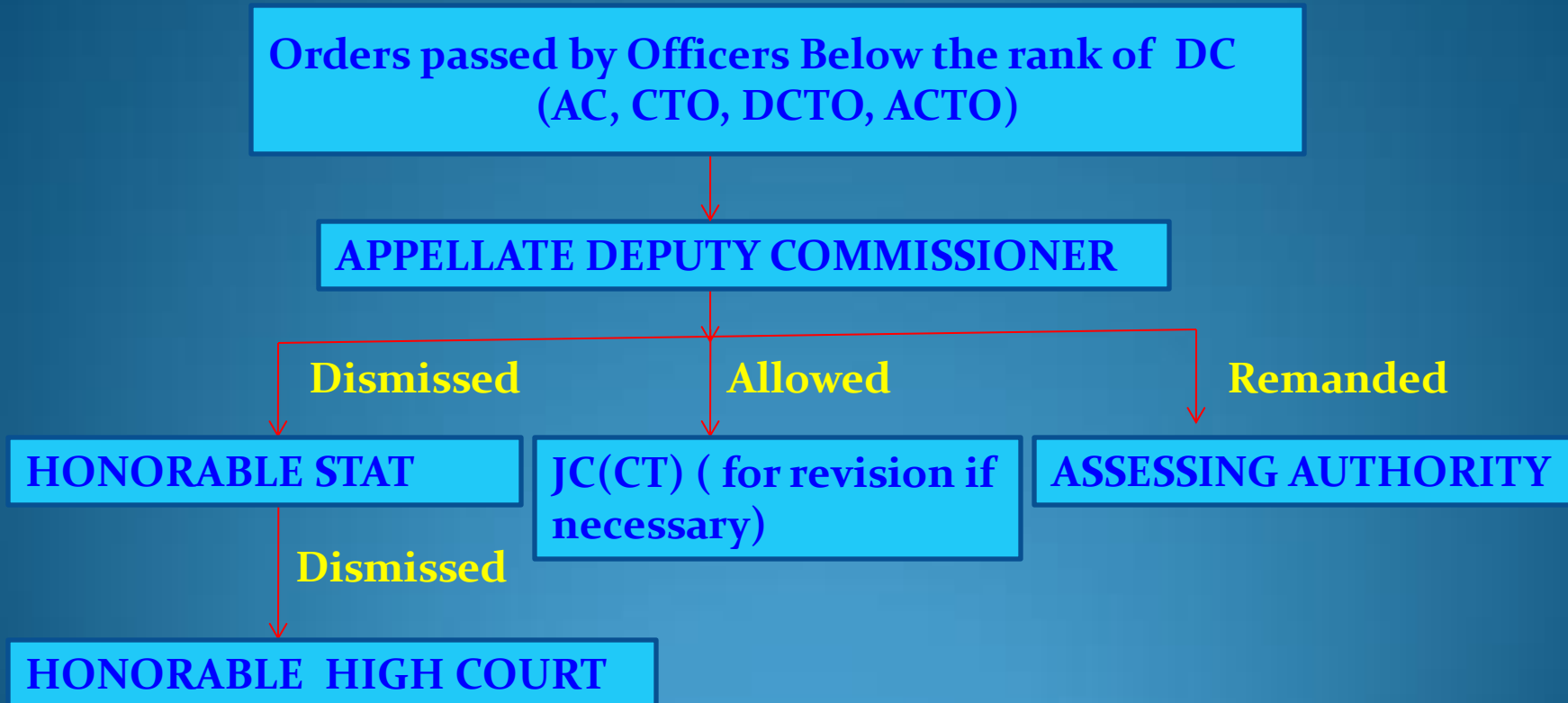


# Organizational Structure:





# Hierarchy in appeal:





## Relevant Provisions of Act (Sections & Rules )

Sec.31	Rule	Description
31(1)	38(1)	Appeal to appellate authority in prescribed time & with payment details
31(2)	38(2)	Appeal shall be in Form 400, appeal fee @2% on disputed amount(subject to mini Rs.50/-and max Rs.1000/-
31(3)a	39	ADC may grant stay of collection till disposal of Appeal. Stay application in Form 406
31(3)b		Rejection of Stay of collection, appellant may prefer revision petition to the JC(CT) or Addl. Commissioner within 30 days
31(4)	41	Time limit for disposal (within 2 yrs from date of admission
31(4)a		ADC can confirm, reduce, enhance or annul the asst.
31(4)b		ADC can set aside the asst. with direction to AA to pass fresh order
31(4)c		ADC can pass such other orders as it may think fit
31(5)		ADC may call for Para wise remarks
31(6)	43	Every order passed by ADC shall subject to the provisions of sec. 32,33,34,35 be final.

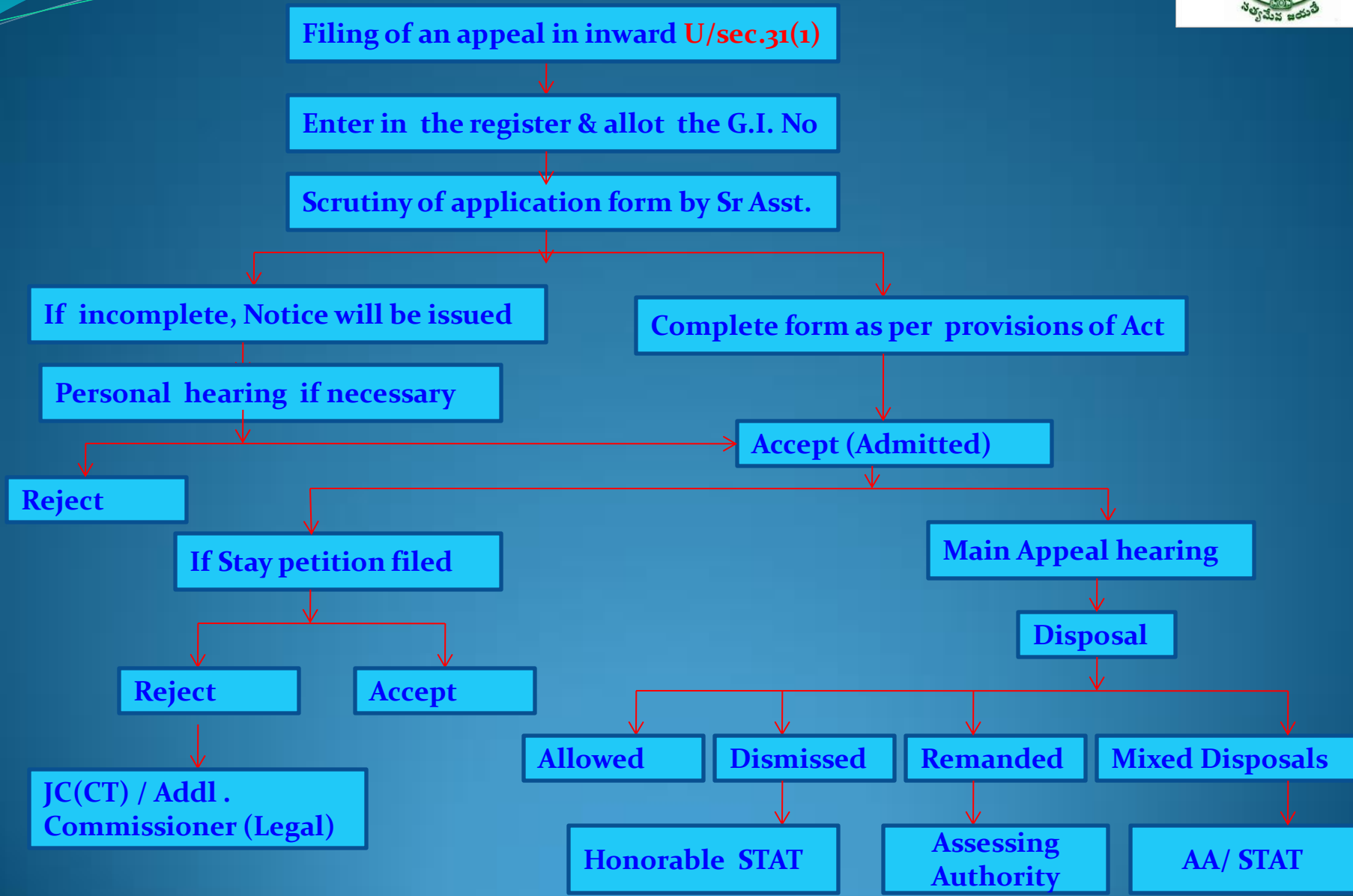


# Relevant Forms

Forms	Description
<b>400</b>	Application Form of Appeal
<b>400A</b>	Declaration of proof of payment
<b>401</b>	Form of appeal memorandum to Appellate Tribunal
<b>402</b>	Revised petition in the High Court (appellate side)
<b>403</b>	Before the High Court (appellate side)
<b>404</b>	Review in the High Court (appellate side) under sec. 34(7)
<b>405</b>	Review in the High Court (appellate side) under sec. 35(4)
<b>406</b>	Application for stay of collection of disputed Tax



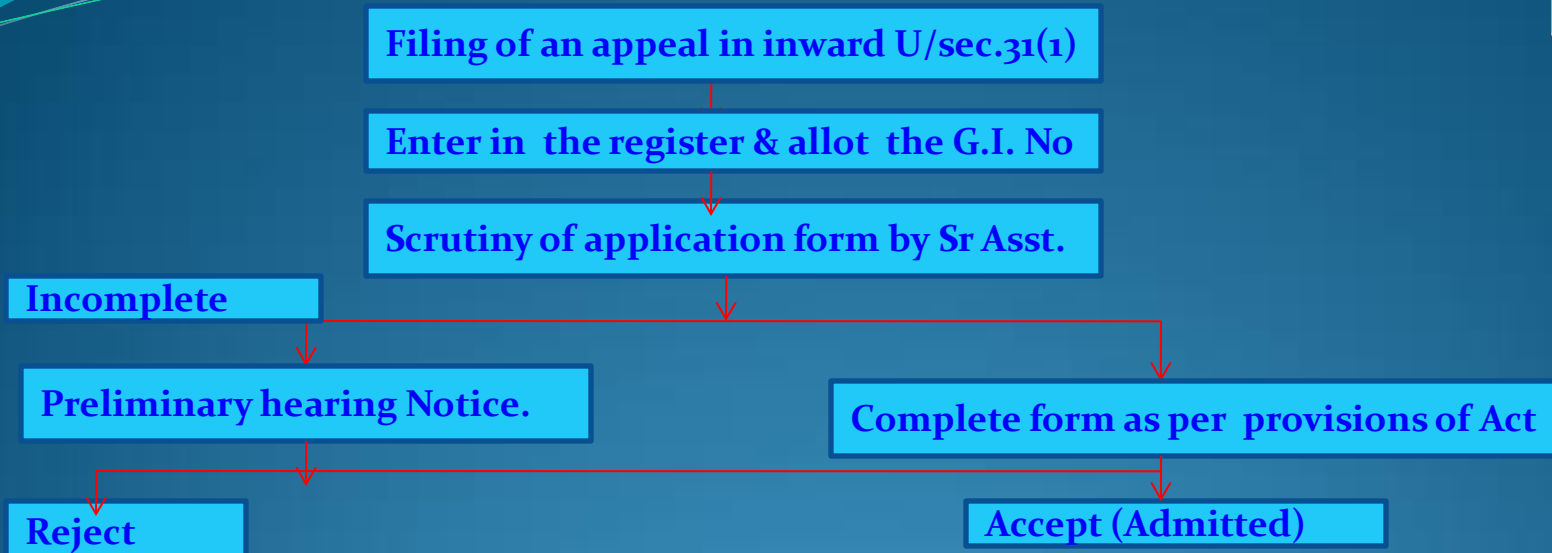
# Procedure in Appeal section







# Procedure in Admission of Appeal



- An appeal has to be filed in the prescribed Form 400, 400A, 406(if stay petition) along with order in original appealed against, grounds of appeal, proof of payment of prescribed fees as per sec31(2) in inward section
- In ward assistant will receive appeal petition and enter in to the register and allot the General Index Number and forwarded to Sr. asst.
- The appeal memo is incomplete or if there is any omission or it is not in prescribed time as per provisions of Act, a preliminary hearing notice will be issued.
- Documents produced by the appellant relating to the preliminary notice are verified and report submitted to ADC.
- The ADC is satisfied with report appeal will admit if the report is incomplete as per provisions of the Act shall be rejected



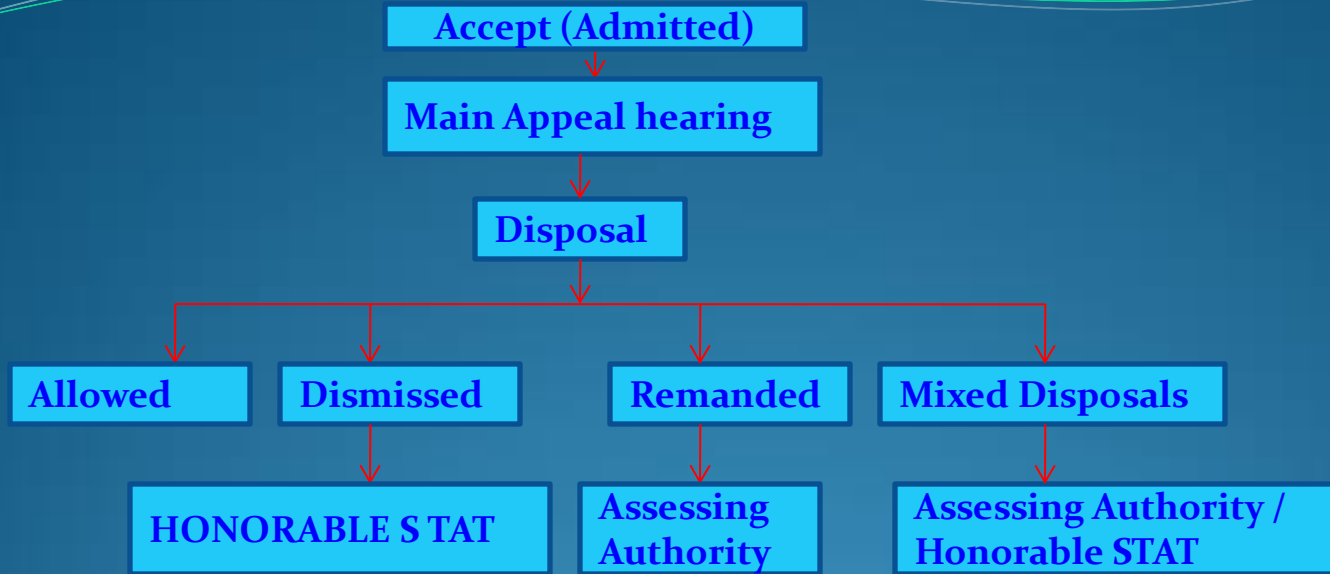
# Procedure in Stay of Appeal



- Appeal and stay proceedings are separate and they are decided independently. Where the stay application filed, it should be decided first.
- Separate Form is prescribed(From 406) for filing of grant of stay.
- The appellant may be called for hearing, after which the part payment is fixed. After the part payment is made, then final stay is granted up to the disposal of appeal
- If the stay petition is rejected, the appellant may prefer a revision petition within 30 days from the date of order to the JC(CT)/ Addl. Commissioner



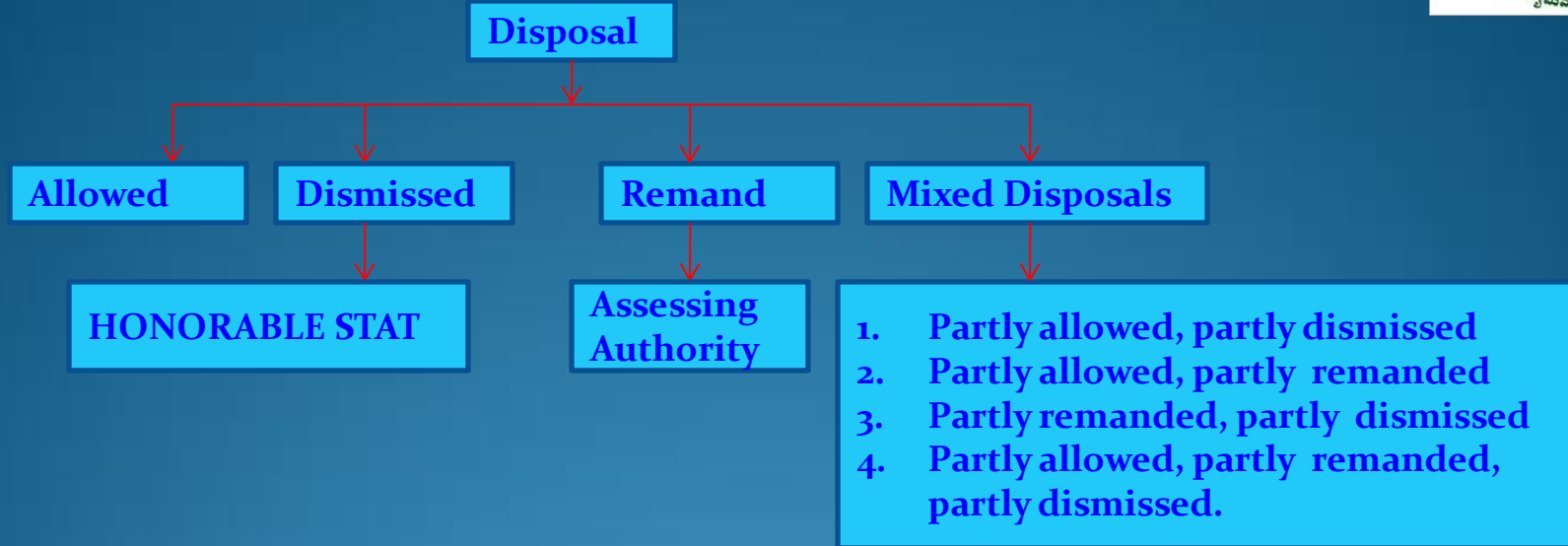
# Procedure in Appeal Disposal



- ADC shall fix the appeals for final hearing (maximum hearings 3) and inform the place, time and date.
- Where the dealer or his authorized representative attends with the relevant documents and evidence in his support for personal hearing.
- After hearing the appellants contents ADC shall decide the appeal accordingly pass the appeal order. While pursuing the case The ADC should act in interest of natural justice with the evidence produced by the appellant before the appeal
- The Appellate authority should dispose the case keeping in view of the provisions in the Act, judgments rendered by the Honorable Courts, GO's issued by the Govt., advance rulings/circulars issued by the Commissioner of commercial Taxes.



# Types of Appeal Disposal



- After passing the appeal order by appellate authority, the order should be uploaded in [www.ctdo.telangana.gov.in](http://www.ctdo.telangana.gov.in)
- As per **Rule 60 of Act.**, the authority may rectify any clerical or arithmetical mistake apparent from the record
- If ADC passing the dismissed order, appellant may prefer an appeal before the Appellate tribunal as per **Sec. 33 of Act.**
- As per **Sec. 32** The Commissioner may suo moto call for revision proceedings passed by Appellate authority is prejudicial to the interests of revenue



# Proceedings of the Appellate Dy. Commissioner (CT)

## Present:

Appeal No. A/ /year  
ADC Order No.

Date of Hearing:  
Date of Order :

1. Name and address of the appellant :
2. Name and designation of the officer whose order is appealed against with section :
3. Year and Date of Order :
4. Date of Service of Order :
5. Date of filling of appeal :
6. Turnover determined by the AA :
7. Amount of relief claimed :
  - a) Disputed turnover :
  - b) Tax on disputed tax :
8. Result of Appeal :
9. Represented by :



**NOTE :** An appeal against this order lies before the Sales Tax Appellate Tribunal, Telangana. Hyd. Within (60) day from the date of receipt of this order.

---

## ORDER

**Introduction:**

**Facts of Case :**

**Appellant objections :**

**Point wise discussion to each objection :**  
(arithmetical conclusions, Sections/ Rules,  
Case Laws, Advance rulings, Circulars, GO's

**Conclusion :**

**Type of Disposal :**



# DO's by Assessing /Appellate authority

1. Admission U/sec. 31
2. Hearing notices minimum 3 with a gap of one week
3. Preparation of orders
  - a) Speaking order
  - b) Factual data
  - c) Explanation of proposals
  - d) Mentioning of relevant sections/rules , Advance rulings, G.O's CCT  
Circulars and interpretation
4. Following the principles of Natural Justice
5. Proper service of Orders as per **Rule 64** (On Authorized person / by Registered post / by affixer at last known place as per records with witness / at Local Chamber of Commerce)



# **DON'T's by Assessing Authority**

- 1. Without issuing show cause notice order should not be pass**
- 2. Without issuing revised show cause notice, order should not be passed U/ Rule 60 if any corrections.**
- 3. Without separate authorization for assessment the authority should not assess the assessment.**





## Case Laws for Appeal Admission

- **Sujana Metal Products Vs State of AP. 11 VST 476 (AP 2008)** Legislature can impose conditions for exercise of right of appeal.
- **Ankamma Trading Co. Vs of ADC Guntur 53 AP STJ**  
1- 12.5% on disputed Tax shall be paid not beyond  
60days



# Case Laws for Stay of Collection

- **Anab-E-Shahi Wines Vs. ADC 21 AP STJ 98 – Pending orders on the stay petition filed by an appellant it is not open to the assessing authority to take coercive methods to recover the disputed tax**
- **Katuri Medical College & Hospital Vs CTO, Lalapet, Guntur. 57 AP STJ 175 – The action of authorities in recovering Taxes without awaiting the orders on revision was strongly deprecated and the said action is held to be arbitrary and high handed**

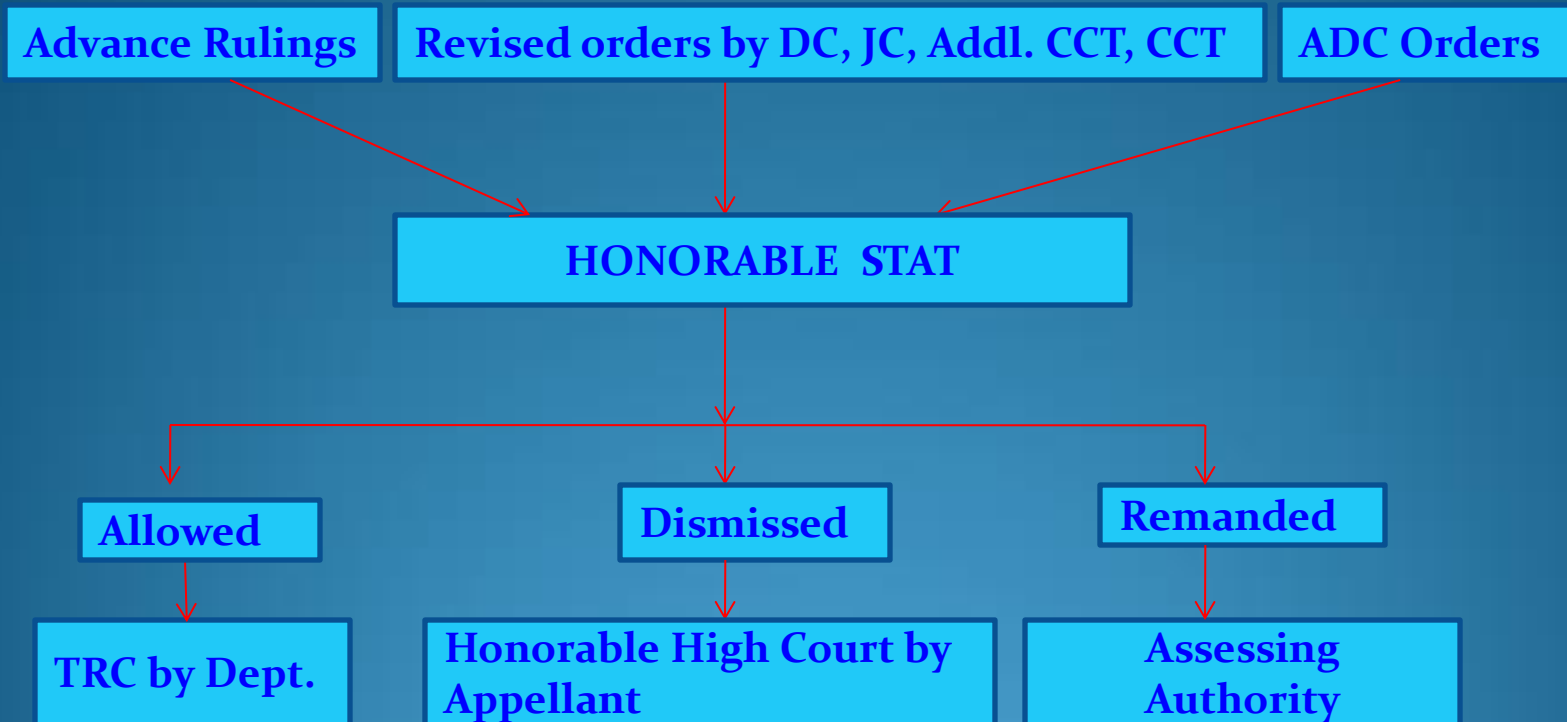


## Case Laws for Service of Order:

- **Oriental Enterprises Vs CCT, A.P. 133STC 218 (2003 AP)**  
Only Administrative Delay – No irregularity.
- **Kanakadurga Binny Rice Mill Vs State of AP. 112 STC 77 (AP 1999) -**  
5 weeks is reasonable period service of Notice of Assessment should be in conformity with Rule 64 of the APVAT Rules, 2005 or otherwise the order of assessment passed thereon is violate of the procedure prescribed and vitiated providing opportunity of hearing



# Procedure of Appeal Before Honorable STAT





# TAX REVISION CASE`S

Honorable STAT allowed orders

TRC Clerk

Preparation of Notes

Submitting to TRC Committee

Minutes of TRC Committee

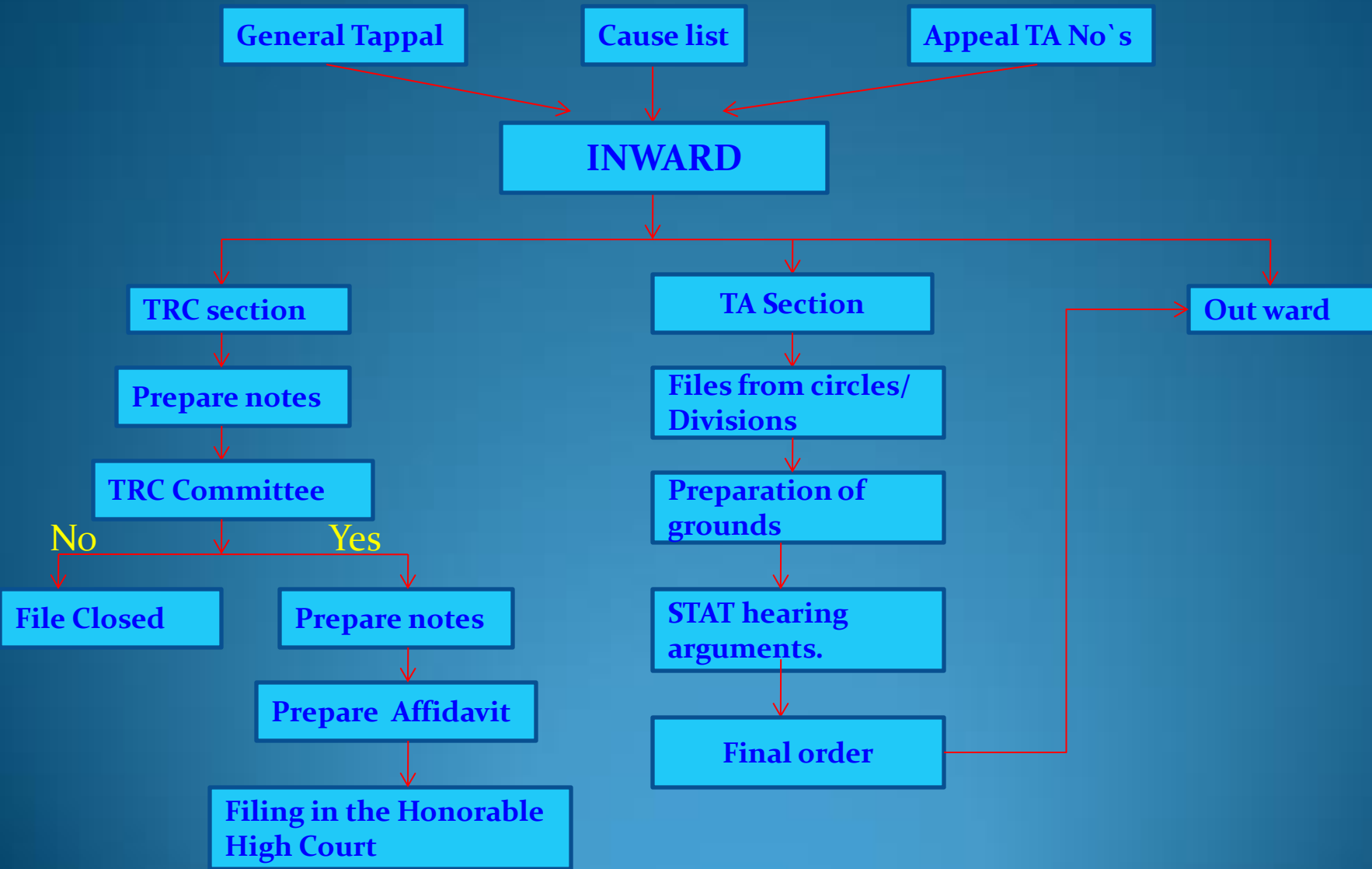
Preparing Draft Affidavit

Filing in the Honorable High Court



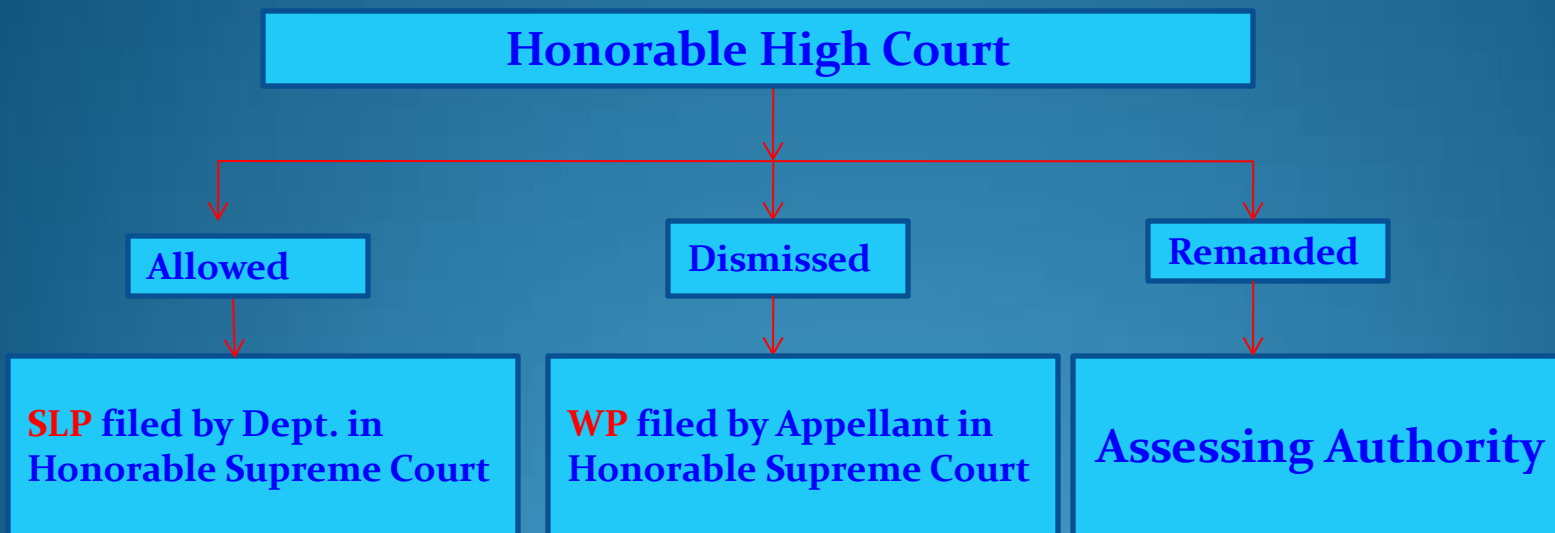


# STATE REPRESENTATIVE (SR) OFFICE





# HONORABLE HIGH COURT





## Differences between the Telangana & Bihar VAT Act for procedure of Appeal before the Appellate Authority

	TELANGANA VAT Act.	BIHAR VAT Act.
<b>Appeal to</b>	DC	DC/JC
<b>Time for appeal</b>	30 days from receipt of the order passed by Assessing authority	45 days
<b>Delay condonation</b>	30 days	No time limit
<b>Payment</b>	12.5% of the difference of the tax assessed by the authority prescribed and the tax admitted by the appellant	25% of tax assessed or full amount of admitted tax whichever is higher
<b>Hearing for</b>	Reasonable opportunity to appellants as also the Assessing authority(if necessary)	Reasonable opportunity to appellants as also the Assessing authority
<b>Time for disposal</b>	Within 2 yrs from the date of appeal admitted	no time limit for disposal





## Differences between the Telangana & Bihar VAT Act for procedure of Appeal before the Appellate Tribunal

	TELANGANA VAT Act.	BIHAR VAT Act.
<b>Time for appeal</b>	60 days from receipt of the order passed by Appellate authority	90 days
<b>Delay condonation</b>	60 days	No time limit
<b>Payment</b>	50% of the disputed amount as ordered by the Appellate authority	25% of the disputed amount
<b>Hearing for</b>	Reasonable opportunity to appellants as also the Appellate authority	Reasonable opportunity to appellants as also the Appellate authority
<b>Time for disposal</b>		Within 6 months from the date of appeal admitted



# Important Books & Websites

1. Sales Tax Cases (**STC**)
2. VAT & Service Tax (**VST**)
3. Classification of goods& Interpretation of Taxing Statutes **by Prakash Sahay**
4. Law of SALE of Goods **by Avtar Singh**
5. Taxmann's CST Law & Practice **by V.S. Datey**
6. [www.manupatra.com](http://www.manupatra.com)
7. [www.vatonline.com](http://www.vatonline.com)



THANK YOU