# GST Appellate Tribunal –

## The Road Ahead New Opportunity in the Chartered Accountancy profession for young talents

**14th June**

Deliberation by: –

**CA. Vishal Poddar**

The TAXYOGI ™

ASHVA LEGAL
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***Handling Litigation***

# CA. Vishal Poddar

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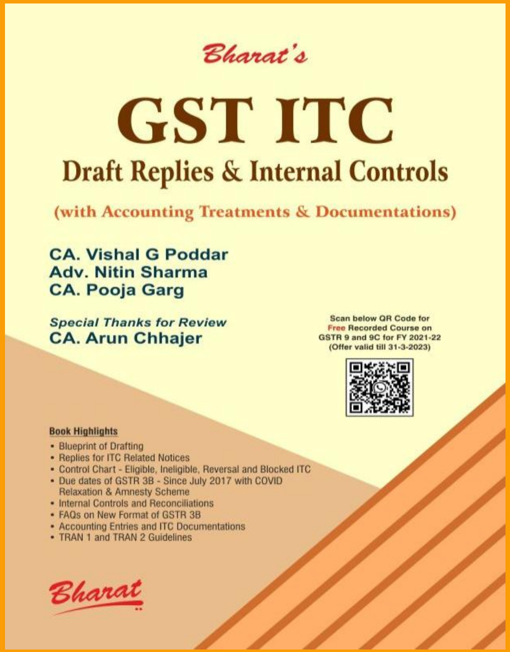


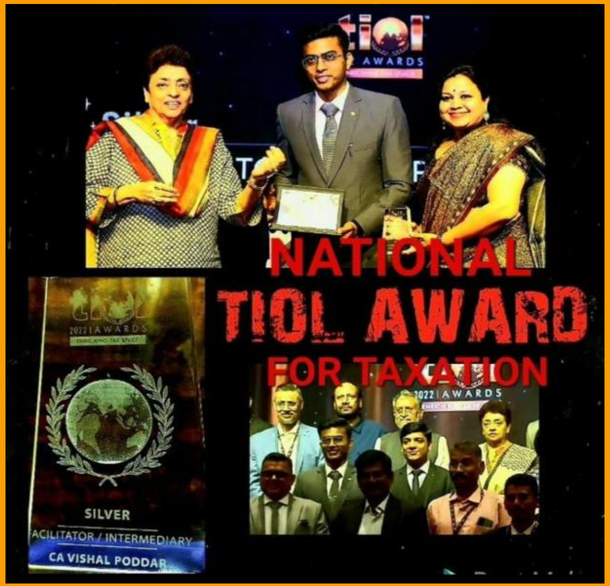


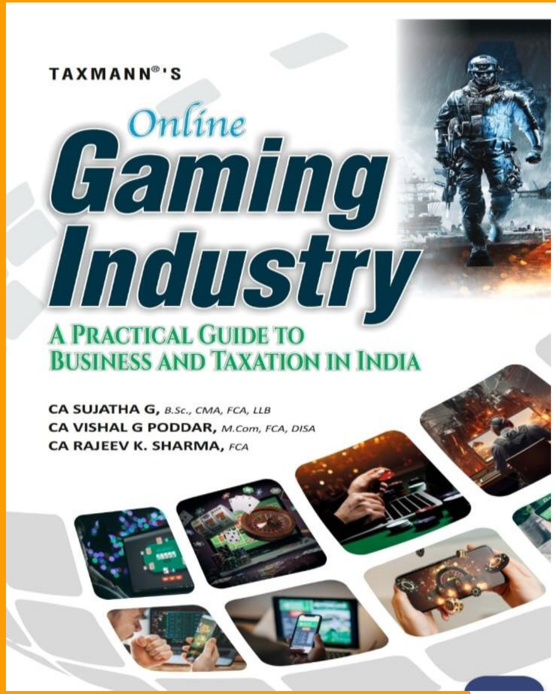


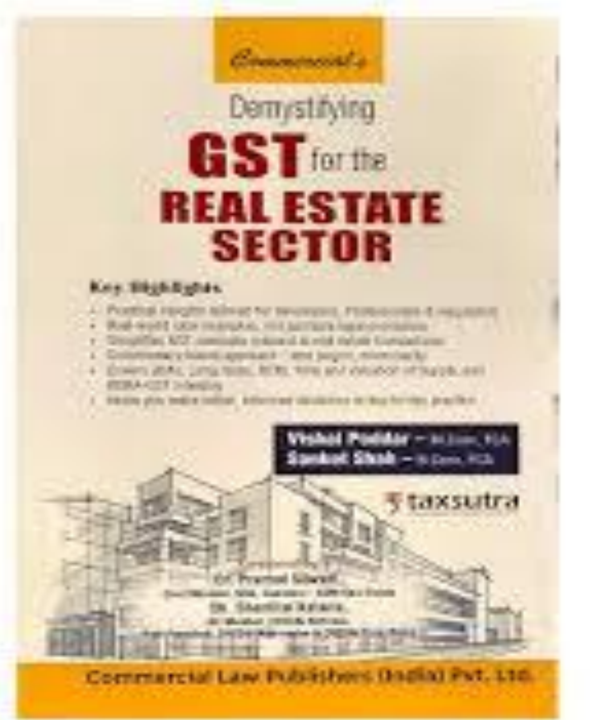

## Before we start

***There have never been more possibilities and opportunities for you to achieve more of your goals than exist today***

# Agenda Today

- Why CAs for Litigation Handling
- Being GSTAT Ready
- Approach in handling Litigation under different scenarios

# Why CAs for Litigation Handling

# Why CAs for Litigation Handling

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- Deep Understanding of Financial Records, Books of Accounts & Commercial Transactions – The CA's Edge in GST Litigation
- Ability to Interpret GST Law in Conjunction with Accounting Standards & Business Reality
- Knowledge of Allied Laws
- Dual Role: Compliance Practitioner Turned Skilled Litigator with 360° Case Perspective
- Trusted Advisor Who Understands Both the Taxpayer Position and the Departmental Viewpoint
- Blending Technicals with Use of AI Tools

# Being GSTAT Ready

# Levels of Existence Vs GST Issues

Physical – Portal Related

Intellectual – Interpretation Challenges

Spiritual – Constitutional Validity

# Being GSTAT Ready



**Drafting GSTAT Appeal :**

- Statement of facts (do's and don'ts)
- Grounds of appeal (do's and don'ts)
- Prayer (do's and don'ts)

**Presentation in appellate hearing (physical / virtual)**

# Statement of Facts

| Do's | Don'ts |
| --- | --- |
| | |
| | |
| | |
| | |

# Statement of Facts

| Aspect | DO's (What You Should Do) | DON'Ts (What to Avoid) | Why It Matters |
|---|---|---|---|
| Fact Selection | | | |
| Brevity & Precision | | | |
| Cross-reference to Records | | | |
| Reference to Previous Proceedings | | | |

# Statement of Facts

| Aspect | DO's (What You Should Do) | DON'Ts (What to Avoid) | Why It Matters |
|---|---|---|---|
| Compliance History | | | |
| Lead-in to Grounds | | | |
| Language & Formatting | | | |

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# Grounds of Appeal

| Aspect | DO's (What You Should Do) | DON'Ts (What to Avoid) | Why It Matters |
|---|---|---|---|
| Legal Framing | | | preparation. |
| Specificity | | | |
| Legal Language | | | |
| Factual Support | | | |
| Use of Case Law | | | |

# Grounds of Appeal

| Aspect | DO's (What You Should Do) | DON'Ts (What to Avoid) | Why It Matters |
|---|---|---|---|
| Clubbing of Grounds | | | |
| Consistency with Facts | | | |
| Drafting Style | | | |
| Grounds on Jurisdiction | | | |
| Clarity in Relief Claimed | | | |

# Prayers

| Aspect | DO's (What You Should Do) | DON'Ts (What to Avoid) | Why It Matters |
|---|---|---|---|
| Clarity in Relief Sought | | | |
| Alignment with Grounds | | | |
| Specificity | | | |
| Multiple Reliefs | | | |
| Alternative Relief (if | | | |

# Prayers

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| Aspect | DO's (What You Should Do) | DON'Ts (What to Avoid) | Why It Matters |
|---|---|---|---|
| Legal Respectfulness | | | |
| Jurisdictional Limitation | | | |
| Format & Politeness | | | |

# Presentation in appellate hearing (physical / virtual)

| Aspect | Best Practices | Cautions / Don'ts |
| --- | --- | --- |
| Preparation | | |
| Documents | | |
| Communication | | |
| Presentation Style | | |
| Virtual Hearings | | |
| Physical Hearings | | |
| Engagement with Authority | | |

# Approach in handling Litigation under different scenarios

# Issue 1

## Supplier hasn't paid GST. Can my ITC still be denied despite having invoice, payment, and receipt of goods/services?

### Applicable Provisions

**Section 16(2)(c)** — tax has been actually paid by the supplier
**Section 41 rwr 37A**
**Section 155 CGST Act** — burden of proof

### *Jurisprudence*

***D.Y. Beathel Enterprises v. State Tax Officer***
Madras HC | 2021 | W.P.(MD) 2127/2021
***Suncraft Energy Pvt. Ltd. v. Assistant Commissioner,***
Calcutta HC | 2023
**Maruti Enterprises Gujrat HC**

### Defense Strategy

Build a paper trail: tax invoice, e-way bill, lorry receipt / delivery challan, bank payment proof, GST-paid GSTR-3B of supplier (if accessible via GSTIN portal), and GSTR-2A/2B matching.
File a detailed reply citing D.Y. Beathel and demand that the department first initiate action against the defaulting supplier under Section 79.

# Issue 2

## What documents should a taxpayer maintain to prove bona fide ITC receipt?

**Applicable Provisions**

**Section 16(2)(a)–(d) CGST Act — six** conditions for ITC eligibility.

**Section 155 CGST Act —** burden of proof

- **Tax invoice compliant with Rule 46 (supplier's GSTIN, HSN, rate, amount, place of supply)**
- **Proof of payment: bank transfer statement / RTGS / NEFT — cash payments above ₹10,000 are risky (Section 40A(3) Income Tax)**
- **E-Way Bill (where applicable under Rule 138) showing movement of goods**
- **Goods Receipt Note (GRN) / Delivery Challan signed by recipient**
- **Lorry Receipt (LR) / Transporter's acknowledgement**
- **Stock register entries showing receipt and consumption/utilisation**
- **GSTR-2A / GSTR-2B records showing invoice reflected (even if delayed)**

***Jurisprudence***

***State of Karnataka Versus M/s Ecom Gill Coffee Trading Private Limited*** *(CIVIL APPEAL NO. 230 OF 2023 (Arising from SLP(Civil) No. 2572/2022) Supreme Court Order dated 13th March 2023*

- **Purchase orders / work orders / contracts with the supplier**
- **Supplier's registration certificate (GST), PAN, and Aadhaar-linked details**
- **Supplier's GSTR-1 filings showing outward supply declared**
- **Email / WhatsApp correspondence (subject to digital evidence rules)**
- **Insurance covering goods in transit**
- **Weighment slips, quality inspection certificates for bulk goods**
- **For services: completion certificate, work completion report, utilisation certificate**

# Issue 3

## Can ITC be denied merely because the supplier's registration has been cancelled retrospectively? NGTP Cases? Supplier is non-existent/bogus

<u>Applicable Provisions</u>

**Section 16(2)(b) – Goods Not received**

**Section 155 CGST Act —** burden of proof

***<u>Jurisprudence</u>***

*Commissioner Trade and Tax, Delhi v. M/s Shanti Kiran India (P) Ltd Civil Appeal No.9902 of 2017 dt.9.10.2025.*

**Sanchita Kundu & Anr.; M/s LGW Industries Ltd & Ors.**

## When can it be said that supplier has discharged its burden of Proof under section 155?

# Issue 4

## Handling SCN defects vis a vis Sec 160 (2) vis a vis WRIT jurisdiction

***Section 160. Assessment proceedings, etc., not to be invalid on certain grounds.- (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.***

### SCN Defects

- **Jurisdiction:** CGST vs. SGST jurisdiction under Section 6 read with Circular No. 01/01/2017
- **Officer's designation incorrect:** Monetary Jurisdiction
- **Dual Authority :** SCN signed by correct authority by DRC 01 signed by junior
- **Limitation:** Time limit breach
- **SCN Uploaded** in time but DRC 01 uploaded later
- **Vagueness:** allegations cannot be vague, general, or ambiguous. Eg. "Non-payment of tax" without specifying which transactions, which invoices, which period is legally infirm

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# Issue 4

## Handling SCN defects vis a vis Sec 160 (2) vis a vis WRIT jurisdiction

- **Absence of specific documents:** statement which is basis of allegations
- **Section 74 jurisdiction :** Notices have been issued for mismatches, audit based issues, classification
- **Section 74 jurisdiction:** Notices simply reciprocate Section 74 provisions without justifying fraud, wilful misstatement, suppression. Further any short/non-payment is alleged as tax evasion.
- **Show Cause does not specify interest or penalty separately:**
- **Pre-SCN consultation skipped**
- **Multi-Year SCN**
- **Issue settled in Audit – ASMT 10 issues/ SCN Issued**

# Issue 5

## What should be the strategy when allegations in DRC-01 and the final order are different?

| Applicable Provisions | *Jurisprudence* |
|---|---|
| Section 73, 74, 75 | Plethora of judgements quashing the order on grounds of being violative of PONJ |

## Action Points for Challenging in Appeals/Tribunals

- ***Prepare a detailed comparison table: SCN allegation vs. Order finding — column by column***
- ***Highlight every new charge / new calculation / new period introduced in the order but absent from SCN***
- ***In the first appellate authority (AA), specifically raise this as a ground of jurisdictional error***
- ***Seek quashing of the order to that extent (not just remand)***
- ***If the core demand itself is based on a new ground not in the SCN — pray for setting aside the entire order***

## Issue 10

## Issues in GSTAT Proceedings

- *1st Appeal rejected as filed post 4 months period – Tax payer accepts delay*
- *- TaxPayer contests that communication is late and hence his appeal is within time*
- *1st Appeal rejected - Pre-deposit not made*
- *Pre - deposit - Amount paid under protest through DRC 03 during investigation.*
- *- Amount in 1st appeal say Rs 5Cr is reduced to 3 Cr. Now while filing 2nd appeal is additional 10% of 3 Cr required or can we say since 50L is already paid at 1st appeals stage, now only balance 3Cr * 20% = 60L - 50L = 10L to be paid as pre-deposit*
- *Grounds not raised in 1st Appeal*
- *Facts not stated in 1st Appeal and has significant impact on the decision*

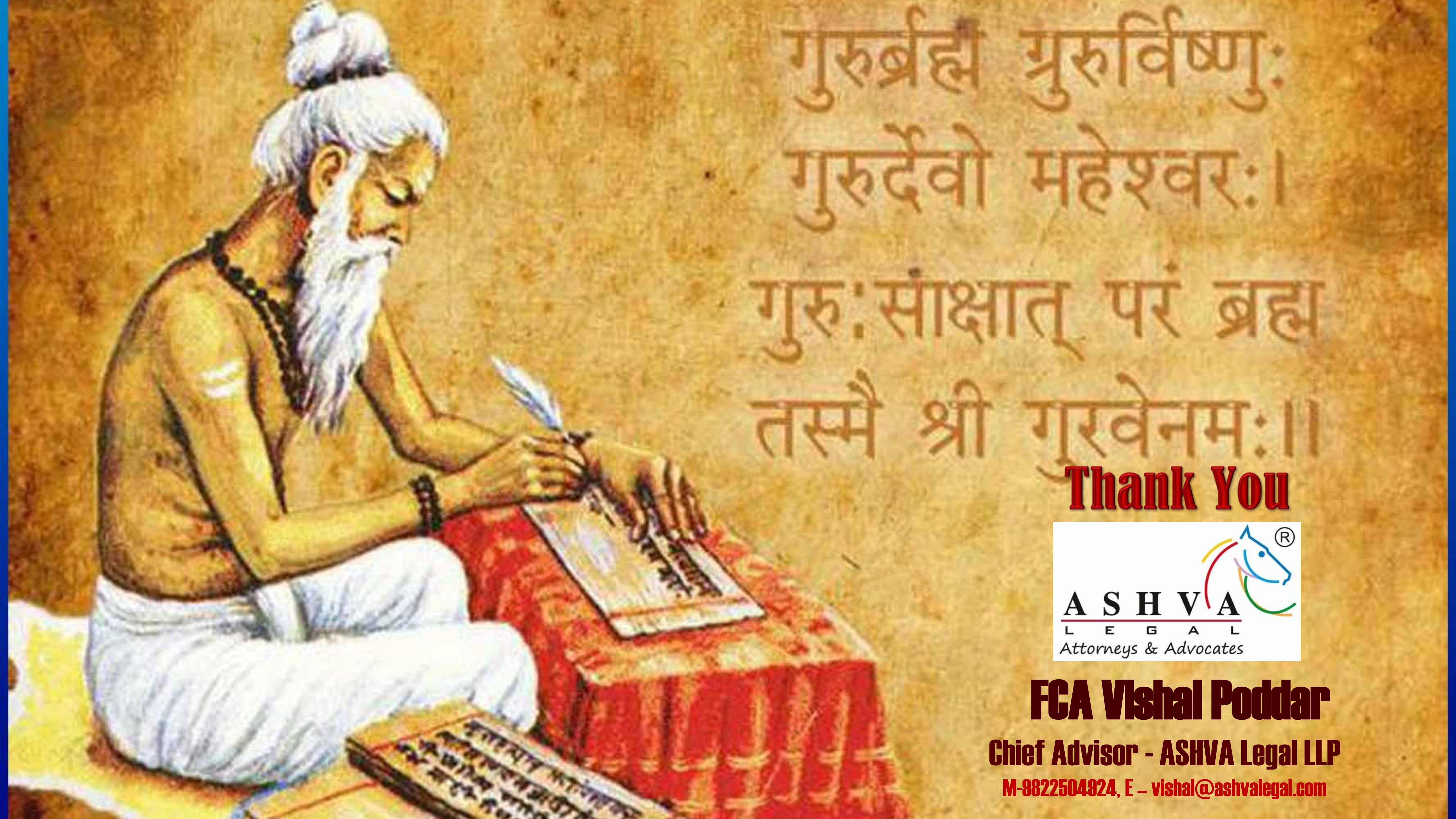
## *Before we Conclude...*

**गौरवशाली था भूत,**

**भविष्य भी महान है**

**आप केवल इतना कीजिये**

**सम्भालिये जो वर्त्तमान है**




# Thank You

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