

## Does your Decision represent viewpoint of Department? JULY 30, 2014

**By Dr G Sreekumar Menon**

**THIS** Article is a humble response to Shri S Sivakumar's learned Article "[Some Out Of the Box Thinking For Reducing Litigation](#)". With all modesty and humility I state that having had the distinction of having passed a record 7000+ Orders-in-Appeals, and having passed 1000 Orders-in-Appeal for two consecutive years, I can take the liberty of expressing my views, on this contentious topic.

Why is tax-litigation increasing by leaps and bounds and pendencies accumulating at every level? The problem lies in the interpretational chaos generated across the nation, by, officers at all levels, Advocates, Tax-practitioners, Quasi-judicial officers and Judges. Every rule/circular/notification issued by the Department becomes the subject matter of a multi-pronged interpretational assault, lasting for well over a decade. There is a marked reluctance to accept any interpretational decision as the final word, hence, necessarily, matters have to end up at the footsteps of the Apex Court. Strangely, the Department, which conceived the rule/circular/notification, has absolutely no opinion of its own. It watches with supine indifference the chaotic drama that unfolds before every adjudicating authority. Reviewing authorities spread across the country add to the litigation bonfire by routinely filing Appeals. The situation has reached unmanageable proportions and the Department's only response is to seek more officers for adjudications, more Commissioner Appeals, and more CESTAT Benches. This has not ameliorated the situation but rather aggravated the problem.

*"We do not give any decision*

*Nor will we accept anybody's decision"*

This appears to be the guiding philosophy of the Department.

### **Why this problem?**

A few years back, a Lawyer, narrated to me the aggressive posture of an Assessee who was summoned by an Income Tax Officer. They got into a verbal spat about whose interpretation was correct. Ultimately, after prolonged altercation, the Assessee stumped the officer by confronting him as to whether his interpretation represented the official view of the Department? Herein lies the crux of the litigation chaos plaguing the Department.

Should we not stop this mass meaningless interpretational chaos? Why can't we have a Single Authority for the entire country, which will pronounce its decision and will be binding on all Departmental authorities? This will obviate multiple litigations before multiple authorities and mass churning of Show Cause Notices. Litigations will then be initiated only by the Assessee, who would need to challenge the Department's view before a Single designated Court. Department being the initiator of countless Show Cause Notices, across the country will become a thing of the past, as also, superfluous adjudications and wasteful reviews. Litigation would get slashed and would become issue based and we can become a litigation free Department.

It is also necessary to address the issue of revenue biased adjudications (though it will become redundant if the Single Authority system is adopted) which has become like an epidemic and creating a mirage of crores of rupees locked up in litigation. We need to explore the creation of a new cadre of specialist Tax Adjudicators, distinct from the

present system of Tax collectors cum adjudicators. The dual role of tax collectors cum adjudicators have become incompatible in the present work culture. Also, vindictive superiors often initiate vigilance proceedings to intimidate subordinates. Personal vendetta is sought to be settled through official files.

The new government, at the helm of affairs, can give a new direction to unshackle the self made chains that is incapacitating the Department in performing its preeminent role as tax collectors.

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