

Why Blame Defenseless Adjudicators? FEBRUARY 15, 2016

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"WHAT is truth", said Jesting Pilate and would not wait for an answer – famous lines from Lord Bacon's Essays, similarly, our bureaucrats also, are in search of the elusive *"Satyameva jayathe"*, so keep hunting from one judicial forum to another, seeking a *"correct & legal order"*

Recent times have seen a surge in critical evaluation of adjudication orders passed by officers of Customs & Excise Department. The CESTAT, High Court, esteemed readers of Taxindiaonline have all been voicing concern about the pronounced *"revenue bias"* of Departmental Adjudicators. But, why blame the defenseless adjudicators? Let me present another side of this controversial issue.

Scenario I

An esteemed colleague of mine who retired as a Commissioner, had to pass an Adjudication Order, based on a directive issued by the High Court. The case was hopeless, riddled with legal loopholes, that no reasonable Adjudicator could ignore. He courageously dropped the proceedings and rendered justice to the Assessee. However, this invited the wrath of the Department, and on the eve of his retirement, a Charge Memorandum was served on him! His retirement benefits were with held. Ironically the CESTAT upheld his Order and rejected the Departmental Appeal. However, the Departmental Proceedings are continuing and the officer is languishing in the loneliness of retirement. Who will convince the Mandarins of the Directorate of Vigilance and the Central Vigilance Commission that the Order is legally correct? Do they not recognize the CESTAT's Orders?

Scenario II

For taking a correct decision, a group of Officers, including a prominent industrialist (who incidentally occupies a pre-eminent position with the present Central Government) were incarcerated for over 15 days, at the behest of the CBI. Surprisingly, CBEC issued a written clarification that there was no revenue loss in the case. Yet the officers were hounded, spent all their GPF savings paying Lawyer's fees, Bail amount, Surety and other legal charges. I advised one of the officers to approach his former cellmate, the powerful industrialist, who had overnight become the toast of the powers that be, to get the case withdrawn. The officer complied, but only to be told by the industrialist that these are occupational hazards which some are destined to undergo! He never lifted even a little finger to help those officers who were languishing for only having taken a fair decision.

Scenario III

When I was working as Commissioner Appeals, an Appeal came before me, wherein the imposition of fine and penalty was challenged. The Adjudicating Additional Commissioner had imposed about 30% fine and penalty, which the Department had accepted in Review. Party came in Appeal seeking further reduction. However, in the Counter filed by the Department, a strange plea was taken seeking enhancement of penalty and fine. The background story was that the Superintendent who had effected the case was annoyed that 100% fine and penalty was not imposed, so he wrote a series of written complaints, ranging from the Prime Minister to the CVC, under his name, signature and designation, against the Adjudicator. Departmental politics ensured that the same Superintendent appeared before me as Authorized Departmental Representative, to plead the case for

enhancement of fine and penalties. His one and only argument was *"How dare the Additional Commissioner not impose 100% fine and penalty in a case made by me?"* The opposing Lawyer just kept mum and did not refute the asinine plea! Subsequent developments saw the Reviewing Commissioner, who had meanwhile been promoted as Chief Commissioner, being served an Administrative Warning on the day of his retirement! The Additional Commissioner is languishing with a Charge Memorandum, his promotion denied, all because of trying to be just and fair!

Readers may see the pathetic plight of the helpless adjudicators. Disowned by the Department, forsaken by the Lawyers (who conveniently vanish after getting a favorable Order), the helpless officer has to battle for over a decade from one forum to another, trying to prove to a bunch of ignoramuses that he had passed a legally correct Order! Judges refuse to recognize Departmental Adjudicators as Judges, (though they sit in judgment on the Orders passed by these officers), hence they do not get legal immunity.

Why are we encouraging the continuance of this degenerate system? The reason is not far to seek, we Indians celebrate negativity in a big way. In Politics, Bureaucracy, Judiciary, Media and in Society, negative minded individuals are admired and rewarded. As a nation, we rejoice in supreme inaction or negative action as fair, just and proper! Bright youngsters who join the Department transform into stubborn pro Revenue Adjudicators. No amount of strictures is going to change the situation, for they see every day, how their fair minded colleagues and superiors, are hounded and victimized. A young Assistant Commissioner once told me *"Sir, if any CESTAT Member is going to pass strictures on me, I will collect all Orders passed by him in his career and challenge his appointment itself!"* There is a big credibility problem, officers who were routinely passing revenue biased Orders, suddenly transform themselves, upon selection as CESTAT Members, to go on an anti Department mode. Sometimes in their exuberance they rile at former colleagues and subordinates. Departmental officers retaliate by filing further Appeals contending that the Hon'ble Member could not appreciate the facts and law! The diametrically see-saw nature of our judicial pronouncements prompts Departmental officers to keep experimenting till the Supreme Court. What begins with the Inspector ends up in the Supreme Court; such is the system we have perfected. It is this system that needs to be changed, reshuffling bureaucrats, transferring them, expanding bureaucracy, creating more Benches, Commissions and Ombudsmen will never resolve issues. As I had written in a previous Article, we need to *"Change Bureaucracy Change India"*. If the Prime Minister is serious about *"Ease of Doing Business In India"* then he has to change Bureaucracy and the perverted system that is now functioning with clockwork precision. Shri.Anil Ambani spoke of the three C's, namely, CBI, CAG & CVC, which has created a very negative atmosphere for trade, industry and bureaucracy. Decision making is a dreaded word, so everybody prefers to outsource it to the Judiciary. Perhaps, very soon we may need to create an Indian Decision Making Service (IDMS). India's negativity is its biggest problem.

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