

LICENCE TO KILL

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Zamindar Lagaan Singh Bahadur roared "What? He did not pay in PLA?? WHY???" His courteous aide politely answered, "Respects to the Chair! He has crores of balance in his CENVAT credit and so he refused". "Refused!!!" Zamindar turned red and shouted, "Issue a show cause notice. Attach all his property. From his car to commode". "Hail your orders!" left the ever-loyal aide, searching for stationery, to draft a show cause notice on some frivolous grounds and a panchanama to attach the property to the rebellious (!!!) taxpayer.

With a mixed feeling of panic and perplexity, I woke up from this awful dream. Then I presumed that the reason of this funny dream could be my late night browsing of the latest " The Taxation Laws (Amendment) Bill, 2005.

The Taxation Laws (Amendment) Bill, 2005 has been introduced with a series of serious changes, under both the Direct and Indirect taxes. The proposed new Section 11DDA of the Central Excise Act (& Section 28BA to the Customs Act,) is a horrifying poltergeist that turns the Bill into a Taxation **CLAWS** (Amendment) Bill.

The proposed Section 11DDA of the Central Excise Act reads as:

"11DDA. (1) Where, during the pendency of any proceeding under Section 11A or Section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement of case under section 32E is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 32F is made shall be excluded from the period specified in the preceding proviso."

The above Section is nothing but a killer tool from the Revenue foundry. By this menacing Section, under the famous garb of "protecting the interest of revenue", the Central Excise officer is given sky high discretionary powers, to provisionally attach **ANY** property belonging to a person, on whom a Show Cause Notice is issued under Section 11A of the Central Excise Act. Such "provisional attachment" has to be with the prior approval of the Commissioner and shall continue to be in force, for a period of six months from the date of the order of such attachment. If need be, such "provisional attachment" could also be extended to a further period of two years, with the written consent of the Chief Commissioner.

Let us now analyze the possible injury and repercussions, this killer Section would beckon on the trade, if it becomes a Law.

Section 11 DDA shall come into play only "during the pendency of any proceeding under Section 11A (& Section 11D)." First let us understand, what is a "proceeding" under Section 11A? Section 11A deals with the demand of duty, said to have been short levied, short paid, not levied, not paid or erroneously refunded. Any proceeding under Section 11A shall commence with a show cause notice, which is the Gangothri of any Excise proceeding. It is by way of such notice, an assessee is alleged against any irregularity, leading to a demand of duty or recovery of Cenvat Credit. Thus a "proceeding" under Section 11A, is a show cause notice issued for such demand of duty or recovery of Cenvat Credit. Such "proceeding" would be considered as "pendency", till the adjudicating authority decides it. Once the adjudicating authority adjudicates the show cause notice and passes an order, the "proceeding" under Section 11 A would no longer be considered as "pendency". As such, the present Section 11 DDA, seeks to "protect the interest of revenue", from the date of issue of show cause notice till its adjudication. So far so good. But what would be the status of such "provisional attachment", already effected during the "pendency", after the case has been adjudicated? Going by the present trend of "Err on the Revenue", irrespective of the baseless allegations, most of the notices get confirmed at the adjudication stage. In such circumstances, the Knights of the Revenue would never release the " provisionally attached" property but would try to convert it into a "permanent attachment" under Section 11.

In the absence of any statutory remedy, the only solace to this holocaust seems to be the Writ jurisdiction of the High Courts. Shall the hapless assesseees have to pursue parallel remedies against a single show cause notice, viz., one before the adjudicating authority defending the allegations and another before the High Court to protect their properties?

It is an unwritten fact that the show cause notices are the most misused and abused weapons in the Revenue battlefield. It is also everybody's knowledge that the bulk of the show cause notices are often issued for fragile and frivolous reasons, which are ultimately thrown out at the threshold in higher Appellate and judicial fora. Netizens may recall the notices being issued on "wire drawing community", fixation of MRP abatements being objected to by the supreme auditors – CERA, "Manipur Lottery" demands issued by the supreme sleuths – DGCEI, etc., which hinges upon whimsical interpretations and astronomical guesstimates.

Also this ruthless Section does not differentiate between the notices based on arguable interpretations, audit objections, etc, but has gone only by the need for "protecting the interest of revenue". In all such cases, if the revenue lieutenants take the mantle and go all out to "protect the interest of revenue", the result would be much more terrifying than the calamitous tsunami. This phenomenal discretion sans any guidelines only reminds me of the words of Lord Acton, "Power tends to corrupt; Absolute power corrupts absolutely".

Coming to the repercussions, it is a known fact that, most of the industries thrive by raising their resources on the strength of their properties. Any such arbitrary "attachment" of such properties would not only result in a fiscal chaos but also in a societal bias. It is also a fact that, in most of the cases, the allegations would ultimately end up in smoke. Then, what would be the compensation for such victims, for the irreparable socio-economic damage caused, for "no cause?"

Of course, the "interest of the revenue" has to be protected. For that, such "interest" has to be first determined and established. When the proceeding for such determination is itself in womb, any attempt to "protect" such interest would only "devastate" the interest of the genuine and hapless assesseees.

The entire trade fraternity shall realise that this is a colossal distrust on their genuineness and an utter shame on their integrity. If it is not condemned with heart and will, this "silent killer" would get enacted in the next session of the Parliament without a hiss, thus making the new age baseline "era of trust" a mere hypocrisy. But, my dear brethren, if the said Bill is allowed to be enacted, my Mid Summer Nights' dream would definitely transform into a cruel nightmare, in reality.

Before Parting....

No doubt, there are a few fly-by-night assesseses, against whom the "interest of the revenue" has to be really protected. For this, the need of the hour would only be a codified judicial process and not this fenceless provision.