

A DEED, IN NEED, INDEED - I

(By S. Jaikumar, Advocate, Swamy Associates)

Prologue: Trilogies have always thrilled me, from the legendary God Father to the evergreen Tin-Tin! This is another trilogy, where I had tried to address the issues relating to the temple rather than the deity!

REPAIR THE GUTTER

CESTAT! Born in 1982 as CEGAT, over the period, this handsome tricenarian – to – be, had lived upto to its expectations, rather exceeded it, as the premier appellate institution, in the field of Central Excise, Customs and Service Tax in India! Though, time and again, this fabulous institution is tainted, because of the constant vigil and agile works of legendary whistle blowers, it had always maintained its glory! To me, the following are the nagging potholes in the institution, which needs to be remedied immediately!

Today, the quality of adjudication in the department is at its deepest ebb, whereby, once the show cause notice is received, the clients first draw demand drafts towards the Tribunal fees. This erosion of the quality of adjudication has resulted in a mind blowing litigation inflow in the Tribunals, the first hope of real justice.

As every other case comes to the Tribunal, the mandate under Section 35F of Central Excise Act (and its *pari*

materia provisions in Customs and Service Tax), which mandates pre- deposit, comes as a deadly spoke. As per Section 35F of the Central Excise, an appellant is required to pre- deposit the entire duty, penalty and interest, while filing the appeal. With the quasi- adjudication reduced to a mockery, such a mandate at the threshold of litigation is a huge liability for the appellant. This menace creates a cold shiver in the spine of every appellant and the panic – stricken mind chooses the path of corruption, at the stage of adjudication.

To me, if this pre-deposit mandate is taken away, 80% of the corruption in tax administration would evaporate. Instead of the pre deposit of duty/penalty/interest being a pre-requisite for an appeal to the Tribunal, alternatively, the law shall be a minimum (say 10%) pre deposit of duty, as a matter of routine, with the liberty to both the department as well as the appellant, to argue their cases to increase/decrease such percentage of pre- deposit, on prima facie /financial hardships, as the case maybe.

Further, today around 90% of the time is spent on disposing off these pre deposit petitions and effectively the Tribunals are not clearing off any of the real pendency. The above proposition would not only reduce the stay petitions but would help the Tribunals to concentrate and dispose of the regular matters, which is main purpose.

The second most time consuming, rather time wasting, event happening today in the Tribunal is the "Miscellaneous applications filed for the extension of stay". Section 35C(2A) is such a foolish section, that it wastes the precious time of the Tribunal, for such a trivia. Despite the Supreme Court ruling in the case of **Kumar Cotton Mills - 2005 (180) ELT 434 (SC)**, the department is still issuing letters, left, right and centre proposing recovery in cases where the stay has been originally granted by the Tribunal but for the reason that 180 days has lapsed as per the above stupid section, and because of no fault of the hapless assessee! To me, this section has to be immediately scrapped from the statute.

Last but not the least, I pray the Almighty Board to fill up the vacancies of the Members to CESTAT as early as possible. Statistics say that the inflow of the cases to Tribunal vis-à-vis the disposal is 50:1, thanks to the Revenue Brigadiers' devoted assault on adjudication, without any reasoning or application of mind.

If I were asked to design a cartoon about the current situation of departmental adjudication, I shall portray it as if an adjudicating authority sitting in a chair wearing a blind man's goggles and the counsel sitting opposite explaining the case in the sign language for the hearing impaired! This is not an imagination but based on my hands-on experience many times! When I was presenting

a multi crore case of high complexity, the adjudicating authority was busy searching his silver tooth pick!!! When I paused, he was benevolent enough to ask me to go ahead with my arguments and curiously continued with his search.

This being the pathetic situation of adjudication, every Tom, Dick and Harry has to necessarily visit the gates of CESTAT today. If the Board hibernates on the posting of the Members and incubate vacancy for a longer time, the plight will take its flight, making assesses' situation - frying pan to fire!

Before parting...

With the judgement of the Andhra Pradesh HC in the case of **Chaitanya Educational Society**, the Munnabhai I.R.S across the nation, are busy in initiating recovery proceedings, even if the appeal is filed with the Tribunal and the case has not been listed due to non sitting of the bench!!!