

A CURSE IN DISGUISE - III

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‘Power corrupts, absolute power corrupts absolutely’

- Lord Acton

Corruption! In many ways and in many forms, it has infiltrated into our life so inseparably and has become an integral part of our life that I often wonder if it's still a social evil or a necessity. Maybe the situation and the degree vary, but corruption has spread its tentacles into our eco system with tax administration at the forefront! In this modern age of tax administration, various measures are taken to curb and minimize the interface between the assesseees and the department, at all levels.

It's writing on the wall that the quality of the current adjudication in the department is at its deepest ebb. With this pathetic adjudication, almost all the cases are appealed against and crawl at the corridors of higher appellate forums. Now with the mammoth time taken for the cases to attain their finality at CESTAT, there is every possibility that this mandatory prescription of pre-deposit could be well used by the corrupt in their fishing gear and the poor victims could well take the bait, considering the various financial implications including the interest injury it may cause as their money would get blocked over years.

Now to the climax. We all know that the Indian Tax administration is based on a "give and take" policy. It is always we give and they take!!! And once we give and they have taken, getting it back, even legitimately, is a synonym to IMPOSSIBILITY and today getting a refund from the department is like retrieving a piece of meat from the crocodile's mouth.

Refunds have been a perennial source of corruption in the department. Today, it's very SAD that, even the cleanest of the companies have to make a provision! This includes all sorts of getting money from the department including drawback, rebate etc, whereby, even the legitimate sanction comes with an illegitimate fees!!! Even the few who had tried to resist had finally got the "realization" and had succumbed. After all, in India we need to give "Prasad" even to the GOD!!! Any defiance against the established practice, would only inextricably delay the refunds/drawback and justify the "penny wise is only pound foolish" theory.

With this mandatory prescription of pre-deposit and the nature of adjudication, majority of the cases would land up in a refund of pre-deposit, giving another joyful ride for the department. Having already blocked the money as a pre-deposit for a decade at CESTAT, now it would be the department's turn to put a spoke on the wheel unless the lube is applied. Though there are many circulars stating that interest would be given if

the refund is not sanctioned within the stipulated time and the erring officers would be penalised, many times, it remains to be in print rather in practice.

So what could be the remedy?

1. Prescribe there would be an automatic stay of recovery once the appeal is filed with the mandatory pre-deposit.
2. Give discretion to CESTAT to waive or reduce the mandatory pre-deposit in deserving cases like orders passed ex-parte, violation of PNJ, settled issues, etc.
3. Prescribe time limit to refund the pre-deposits with interest at rates analogous to the rates applicable for duty demands.
4. Provide for interest on such pre-deposits from the date of deposit till the date of return.
5. Last but not the least, penalise the erring officers who passes frivolous orders and recover the interest from their salary.

Lets complete this trilogy with some humor. The Department of Revenue has proclaimed in its commentary to the First Discussion Paper on GST that the refund administration in indirect taxes is one of the best in the world and hence the same model may be adopted in the GST regime also!