

Safeguarding Judicial Rulings – Revenue Officers Excesses

In the pandemic and earlier due to confusion in GST, the revenue officers have been instructed not to harass the tax payers. However, the need to follow up for non or short payment of tax is an ongoing activity which is necessary. Therefore, it is expected that come 2021, the revenue officers activity would be at full speed. Tax payers would need to reply to the emails / letter promptly explaining the factual position if incorrect in the communication. The fact that in case of dispute one has to pay in normal circumstances 30% as pre deposit means that one should ensure that they are not stuck with frivolous demands. One needs to be extra vigilant in cases like these.

In recent times, the refusal for accepting the refund claims for those under inverted duty structure and exports has spread. It is based on internal circulars to dissuade refunds. Many compliances which are not needed by law are imposed, which limit the claim of refund. [No refund if not in GSTR2A!!]

Unfortunately, the old mischiefs have continued as the automatic refund route are compromised and rent seeking has again resurfaced in a big way now that discretion to pay the refund is firmly back in place. This misery has been compounded by the similar %age wise bribery in the DGFT at most locations in India.

The few wealth creators of this country are continuing to get a raw deal. Assuring on public platforms, spewing unverified refund amounts being given instead of being transparent on how many case delayed by 1 year, 2 years, service tax refunds (files lost for 1000s of crores!!) ... & specifying % age of refund given.

In this scenario have attempted to share a few of the decisions (under relevant categories) laid down for the honest tax payer on being able to avoid pressure and not give in to the brow beating tax terrorism carried out by some errant officers.

Natural Justice Paramount

1. Elementary Principles of Natural Justice and fairness have to be adhered to. Otherwise it would lead to unnecessary and avoidable litigation. Ahnas Md. V AST – 2020(36) GSTL 181(Ker)
2. Non provision of relied on documents in SCN. Dept. cannot proceed. JVS Foods P Ltd v UOI – 2018 (11) GSTL 291(Raj)
3. Certified copies of SCN/ order not provided- asked to get from adjudicating authority forcing assessee to approach HC. Appellate Authority to provide the copies. SAS Automotive P Ltd v Supr. GST – 2018(9) GSTL 380(All)
4. Collection of undated cheques on the spot by anti evasion (now DGGI), not in best interest of Govt. CVC to put in place vigilance in view of the number of such search/ seizure instances. Digipro Import & Export P Ltd v UOI – 2017(353) ELT 3(Del)
5. Request for cross examination with reasons on the need of 3 persons denied. Natural Justice violated. It is to be permitted under article 226 of Constitution of India. Nirmal Seeds P Ltd. – 2017 (350) ELT (486)(Bom)

Not following Judicial Discipline

1. Second appeal filed by dept. inspite of 1st appeal having been dismissed by SC due to negligence of officer. Action against officer advised. CCE v Maruthi Udyog Ltd – 2007 (210) ELT 12 (SC)

2. Demand of security/ indemnity of heavy amount in violation of interim court order. Highhandedness of revenue depreciated- Cautioned. RK International v UOI – 2019 (210 GSTL 469 (All)).
3. Judicial rulings thrown to the winds. Callous, negligent and disrespectful behavior towards Courts. Cost of Rs. 1 Lakh imposed on Commissioner (Appeals) to be paid from personal funds. XL Health Corp. I P Ltd. V UOI – 2018 (19) GSTL 611 (Kar)
4. Assessing authority passing orders contrary to settled judgments. Commissioner directed to issue circular on favourable judgments to be followed. If contrary view seen, it would result in contempt proceedings. Kirloskar Electric Co V St. of Karnataka- 2018 (16) GSTL 564(Kar)
5. Frivolous litigation a clear waste of time and locking up resources of the Govt. It amounts to abuse of powers. Rs. 1 Lakh cost imposed on revenue – CCE v Mahindra & Mahindra – 2018 (11) GSTL 126 (Bom)
6. Controversy settled by SC. Dept. again approaches the High Court in a narrow pedantic manner. Need to training for tax collectors in a better manner. CCE v ITI – 2018() GSTL 404(Kar)
7. Skeleton reply to matter of 100's of crores. Parawsie reply insisted one fro dept. Kirit Shrimankar v Com. GST – 2019 (367) ELT 759(MP)
8. High Court set aside order of Dept. Again issued with only change of date to proviosnally attach. Appears that dept. officers think they are above law. Officer who appears comes with non files. Patran Steel Rolling Mill v ACST – 2019 (366) ELT 974(Guj)
9. Non release of seized good despite Appellate Comm. Order. Order not stayed. If not released AGST would be liable for costs. Maa Vindhya Vasani P Lt. v State of UP – 2020 (37) GSTL 406(All)

Collection of Tax contrary to Law

1. Passing of contrary orders for the same issue- forcing the tax payer to appeal. Cargocare Logistics (I) P Ltd v UOI- 2019(21) GSTL 469(All)
Comments: This is unfortunately very common with adjudicating officers as well as officers at 1st appellate levels even after being convinced on the genuineness of tax paper want to play safe or seek rent and pass orders forcing tax payer to go up the ladder.
2. Differential duty and interest collected by DRI (now DGGI) when wedding activities going on which was not payable. DRI had no authority in law to collect. Interest on duty collected to be paid. Calcutta Iron & Steel Co Vs CESTAT – 2017 (350) ELT 327(Mad)
3. State does not have the powers to make rules for interstate movement only for intra state. Detention not permissible on ground of non generation of e-way bill by traders in State. Kaveri Enterprises v State of AP- 2020(38) GSTL 168 (AP)
4. Revenue officers bound by clarification issued under State/ Central tax. Inox Air Products P Ltd v UOI – 2020(38) GSTL 158 (Mad)
5. Recovery of amount by attaching bank a/c during pendency of appeal not normally permissible. Even if so only amount needing deposit for appeal to be heard ONLY can be collected . H.M.Leisure v State of WB – 2020 (37) GSTL 403 (Cal)
6. Dy assistant comm cannot pass order for prohibition as not of rank of Dy Comm who is authorized without reference to written authorization by DC. Mahendra Kumar Indermal v Dy. AC – 2020 (37) GSTL 168(AP)
7. Where powers to arrest u/s 69 delegated, it cannot be done without reasonable belief of the delegated authority. Nathmal Maganlal Chauvan v State of Gujrat – 2020 (35) GSTL 145 – Guj.

8. Bar on attachment of bank a/c to be used sparingly and not to ruin the business. Reasonable opinion based on good fiath and not mere pretense. Bindal Smelting P Ltd. V Addl DGG GST – 2020 (34) GSTL 592(P&H)
9. Matter of classification before the High Court where stay available. Goods cannot be detained. Hindustan Coco Cola P Ltd – 2020 (35) GSTL 545(Ker)

Threats of Closing Down, Arrest

1. Confiscation order passed without findings. Totally bald. Attempt at thought control not in line with freedom of expression. Gajanan Vishveswar Birjur v UOI – 1994 (72) ELT 788(SC)
2. The threats to senior officers of assessee of punishment and prosecution uncalled for. Manner not to be intimidatory or minatory. NBCC v UOI- 2019 (20) GSTL 515 (Del)
3. Sealing of rented premises for indefinite period without completing search not permissible especially for allegations of ITC or tax collected not deposited. Anopsinh Kiritsinh Sarvaiaya – 2020 (37) GSTL 171 (Guj)

Callous, Negligent Behavior

1. E way bill and invoice accompanying goods. Vehicle detained on account of undervaluation in transit. KP Sugandhi Ltd v State of Chhattisgarh – 2020(38) GSTL 317 (Chhattisgarh)
2. There is no mandate that goods cannot be sold below MRP. This type of seizure erodes public confidence. Alfa Group v AST – 2020 (34) GSTL 142 (Ker)
3. Vehicle in interstate movement at destination state found in incorrect address. GST paid again for release. Tax paid again to be refunded with interest. Disciplinary proceedings against AC to be initiated. Commercial Steel Company v AC- State – 2020 (35) GSTL 257(Tel)
4. Search party of 3 including gunman searched in absence of assessee his residence for 8 days checking mobiles and interrogation in night. Violation of right to privacy and an offence against the officers. Action was abhorrent, shocking. Paresh Nathalal Chauhan v State of Gujrat – 2020 (36) GSTL 498 (Guj)

Conclusion:

It is understood that these unethical/ unfair practices are more in the north and are mainly in the aspect of E- way bill where even for petty mistakes- (clearly set out for by CBIC) vehicles detained, uneducated lorry drivers forced to deposit moneys (no possibility of refund), tax compliant assessee unable to travel, explain and fight, customer urgency - chooses to pay. Then find difficult or not worth it to litigate.

Govt Losing credibility of the REFORMS being put in place as time progresses.

It is a fact that Court ruling are dismissed by the majority of revenue officers at the adjudication/ appellate/ advance ruling stage due to basic lack of knowledge as well as no regard for the rule of law. It appears that a spate of contempt proceedings could cure this disease.

Further this could be due to lack of structured teaching[a big failure even after 3 years of GST being in place!! Further no empathy towards those who pay the salaries, keep govt. alive and kicking

We being a democratic country, no authority can take action without adequate opportunity to ensure justice prevails. Tax compliant assesses thereof ore need to insist on this aspect at every

point of item. Unless we stand up to tax terrorism, we may continue to suffer for decades!!. Speak up and complain in writing & escalate if no response/ inadequate response.

There is a largely tax non compliant community in India but the Govt. needs to safeguard the right of the compliant. Unfortunately, unnecessary hardships are encountered as such tax payer would not be pliable and end up having to put up with delay and babuism. This article seeks to provide some instances and the Courts decision to fortify the honest tax payer. Feedback @ madhukar@hiregange.com

A link to a video which could shed some more light on the subject.

<https://www.youtube.com/watch?v=r6SOW18FGXY>