

# A few tips on art of handling Departmental visits! – Jun 02, 2008

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By **S Sivakumar, CA**

AS part of our professional services, we handle service tax issues related to our 'soft clients' operating in the service sector. More often than not, we handle instances of visits from the various Departments related to service tax, be it Anti-Evasion, Service Tax Audit or Central Excise Intelligence. In many cases, some of our clients have had visits from more than one Department, at the same time. For players operating in the service sector, be they, software companies or marketing companies or manpower supply companies, handling officers from the Service Tax Department could be very traumatic. The reasons for this are not far to seek. It is very uncommon for most of these service companies to be visited by a team of Government officers and in all probability, a visit by the Service Tax Departmental officers would be the first of its kind. The fact that an overwhelming majority of the officers who man the Service Tax Department have been with the Central Excise Department for decades makes matter worse. Many of these officers are not aware of the service tax law, as much as they are, of the Central Excise Law procedures. Words like 'arrest', 'prosecution' and 'clandestine clearance', 'booking of a case', etc. which have relevance only under the central excise law are very frequently used by many of these officers, either out of ignorance or with an attention to pressurize the assessees. A client of mine, a Harvard educated MBA who runs a successful marketing services company recently told me that he found the proceedings with a recent visit of three Superintendents of Service tax more pressurizing that what we had undergone during the final discussions with his US based Venture Capital Investors.

Having participated in a few of these visits, I thought it fit to share my experiences for the benefit of all concerned, as to how the service tax providers should handle these visits, which as I said earlier, could be really nightmarish. We have reports that the visitors from the various Departments concerned with service tax use all kinds of strategies and pressure tactics with the Assesses. Unless the Assesses are aware of the rights that they have and the duties that are owed to them by the visiting Officers, it could become extremely stressful to handle these visits. Based on my experience, I've penned down ten quick FAQs, which the assesses, especially from the services sector, will find interesting and useful, in handling visits by the Departmental officers.

### **FAQS on handling Department visits**

**Q1. How does the Assessee know that the people who are visiting his premises are from the Department?**

A1: The Assessee has every right to request the visiting Officers politely to show their Identity Cards and any approval letter that they are carrying from their Superior Officers. It is important for the Assessee to understand the Officers' names, their Contact Numbers and the Wing from which they are coming (eg Anti-Evasion, Central Excise Intelligence, etc).

**Q2. Immediately on arrival, the Departmental Officers insist on seeing the books of invoices and other documents, Balance Sheets, etc and at times, insist on access to our Computers. How should the Assessee handle this?**

A2. The Assessee is advised to show a copy of the latest Notification no. 45/2007 dated December 28, 2007 issued by the Board, to the visiting Officers and ask them for a reasonable time for production of the books of accounts, information, etc. Since this Notification uses the words "not exceeding 15 days", the intention of the Government is that, the assessee should be given enough time not less than 15 days to provide information and documents to the Department and the Officers are not entitled to ask for information across the table. Of course, the Assessee should always be able to provide whatever information and documents that he immediately can.

**Q3. How should the Assessee handle the situation when the visiting Officers talk about evasion of tax, their powers to arrest, etc.**

A3. Section 13 of the Central Excise Act 1944, which empowers a Central Excise Officer to arrest a person under certain circumstances, is not applicable to service tax law. Hence, there is no way an Assessee or his employees can be arrested under any circumstances. When an Assessee finds that the Departmental Officer is getting into the intimidation mode, as is the case in some instances, he should not hesitate to inform the visiting Officer of his (i.e. the Assessee's) right to take recourse to Section 503 of the Indian Penal Code dealing with criminal intimidation. Alternatively, the Assessee can also consider highlighting the behavior of the Departmental Officers to the concerned Joint Commissioners and Commissioners of Service Tax, who are normally appreciative of the hardships faced by Assesses.

**Q4. How should the Assessee handle the situation when the Departmental Officers threaten with prosecution, etc.**

A4. There is no provision under the service tax law for an Assessee or his employees to be prosecuted for any offences related to service tax law. Of course, there are penalties which can be imposed for failure to follow certain prescribed procedures like obtaining a registration certificate, filing of ST-3 returns, etc. This is a very significant distinguishing feature of the service tax law, as compared to the other laws like Central Excise and VAT, which would need to be known to the Assesses handling proceedings with the Department.

**Q5. On finding that the current service tax dues are pending, the Departmental Officers insist on the dues to be paid immediately. How should the Assessee handle?**

A5. The Assessee should be aware that the service tax dues in respect of a particular month or quarter are to be paid on or before the 5th of the subsequent month or quarter, as the case may be. In the case of delays, he is required to pay mandatory interest @ 13% per annum for the delay. He can also be subjected to various penalties. A practical strategy would be to take some time and pay off the service tax dues, at the earliest. It is not advisable to attract penalties, etc. by delayed payment of service tax.

**Q6. Is penalty mandatorily leviable even for minor delays. The Departmental Officers make effective use of the penalty threat during their visits?**

A6. The Assessee should know that while interest for the delayed period of payment of service tax is mandatory, levy of penalty is not mandatory and is subject to adjudication. The Assessee should be aware that many CESTAT Benches have consistently taken the view that so long as the service tax dues have been paid before

issuance of a Show Cause Notice by the Department, no penalty can be levied under Sections 76 and 78 of the Finance Act, 1994.

**Q7. The Departmental Officer often threatens to summon the Assessee or the Chairman / MD/CEO etc. How should the Assessee handle this?**

A7. The Assessee should be aware that though Sections 14 of the Central Excise Act empowers issuance of summons by a Central Excise / Service Tax Departmental Officer duly empowered by the Central Government, on any person, to give evidence and produce documents in inquiries. Hence, even a Managing Director can be legally summoned by a Service Tax Officer. However, the Board has frowned upon the practice of the Department to summon Company Chairmen / Directors as a routine practice, vide its INSTRUCTION F.NO. 137/39/200-CX-4 dated February 26, 2007. Hence, whenever the Assessee finds that the Service Tax Officer is threatening to issue summons, etc., he should bring the contents of this Instruction to the Officer and in justifiable cases, report to the jurisdictional Commissioner / Joint Commissioner.

**Q8. During the course of their visits, the Departmental Officers say that the Assessee has evaded tax as the Service Tax Registration Certificate has not been obtained after a lot of delay, etc. How should the Assessee react?**

A8. Without getting into legal issues, the Assessee would do well to know that any taxing statute contains two important wings, so to say. These are the substantive provisions which govern the levy of tax and the availability of benefits like cenvat credit, etc. and the procedural provisions which govern obtaining of a registration certificate, filing of ST-3 returns, etc. Failure to comply with the procedural provisions will not impact the levy of tax or the availability of cenvat credit, etc. Thus, so long as service tax has been paid with interest, the delay in obtaining a registration certificate can only invite a penalty prescribed under the law, being a procedural problem, should not be a major issue. Of course, the delay in obtaining the registration could invite a prescribed penalty.

**Q9. The visiting Departmental Officer often threatens that he will seize the books of accounts, if information required by him is not provided across the table? How should the Assessee handle this situation?**

A9. Section 82 authorizes states that when the Commissioner of Service Tax has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding are secreted in any place, he may authorize any Assistant Commissioner or Deputy Commissioner of Service Tax/Central Excise to search for and seize or may himself search for and seize, such documents or books or things.

Assesses would do well to bear in mind that search and seizure provisions are undertaken by the Commissioner in exceptional and extraordinary circumstances. Probably, the Departmental Officers pressurize the Assesses by stating their powers of search and seizure. The Assessee would do well to bear in mind that the search and seizure powers have to be exercised by the Commissioner and to this extent, they are protected under the law.

**Q10. What should the Assessee do when he or his employees get telephone calls from the Departmental Officers about some information to be provided?**

A10. This is a practice which seems to have developed of late, probably due to lack of time on the part of the Departmental Officers. While most of these calls could be genuinely meant for collecting information, some of these could also be made with an

intention to pressurize the Assesses. Wherever possible, the Assessee is advised provide the basic deals about his business, etc. over the phone and when there is a request from the Departmental officer for submission of certain important documents, etc., the Assessee is advised to ask for a request from the Officer, in writing.

**TAIL PIECE :** Some of TIOL's Netizens might be amused with this piece. The intention behind writing this piece is not to deny or delay the information sought by the Department. Rather, it is an attempt to equip the hapless assesseees to better handle these visits and to be aware of their rights under the law.