

Indirect Tax Administration – Need to recognize honesty and transparency – 24, Sep 2012



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By S Sivakumar

I read with a lot of interest, an item carried by TIOL on September 22, 2012 on the comments made by the Vigilance Commissioner, the CBI Director and the Revenue Secretary in the two day seminar of the CBEC officers on 'Transparent and Robust Vigilance Mechanism'. Of particular interest and relevance are the comments attributed to the CBI Director and the Revenue Secretary. I have reproduced the extracts from the TIOL story:

Addressing the officers, Mr A.P.Singh, Director, CBI, expressed concern over falling rank of India in Transparency International Index. He stressed that bonafide decisions should not be pursued from vigilance angle, as one gets wiser on hindsight. He highlighted about phenomenon of collusive corruption and methods to check it. He expressed that transparency can be enhanced by introducing e-tendering, putting all the websites, disclosure of information etc. He also stressed upon the need for expeditious disposal of vigilance cases.

Revenue Secretary Sumit Bose while concurring with the need for use of technology for improved systems, reduced human interface and transparency also highlighted the need for creating an enabling environment where honest administrators can work without fear and are duly rewarded. He stressed that the bonafide mistakes should be distinguished from the malafide mistakes and genuine decision makers must be encouraged and protected, while guilty should be quickly punished. In this regard, there should be regular interaction with the CVC and CBI, and action plans may be worked out, he added.

One is very happy, especially, to see the comments from the Revenue Secretary that, 'genuine decision makers must be encouraged and protected'. These comments could not have come at a better time. Currently, the system in indirect tax administration is so rotten that, adjudicating proceedings have almost become a farce. That many intelligent and honest Adjudicating Officers are worried about taking fair decisions, while handling adjudication proceedings, is a fact too obvious to be overlooked. We also know for a fact that, in most adjudication proceedings, issues raised in the Show Cause Notices are confirmed by the Adjudicating Officers, even without the slightest consideration of the facts or the law involved. In most cases, the Adjudicating Officers do a good 'cut and paste' job, of the Show Cause Notices. (In some cases, I've found certain glaring grammatical errors found in the Show Cause Notices finding their way also, into the Orders-in-Originals). How could one explain this situation, except to say that, many of these honest and intelligent officers are just scared of the prevailing vigilance system, under which, while there is no reward for a tax officer to be intelligent and honest, he has everything to fear from the repressive vigilance system in terms of which, his actions could be treated as 'malafide'?

Under the current system, no Adjudicating Officer wants to take a risk and prefers passing orders confirming Show Cause notices, as aforesaid, despite that, they know that the facts and the law are in favour of the assesseees. Even if we come across some good and fair orders from Adjudicating Officers, the Department invariably files appeals, confirming the fact that the existing system is not conducive for an honest and transparent administration.

Take the case of refund claims filed by services exporters, for instance. In a typical refund case, assume that the services exporter files a claim, seeking refund of let's say, 10 input services. The concerned Adjudicating Officer, after slapping a lengthy show cause notice which would include a stern warning that action deemed

appropriate can be taken by the Department, would proceed to handle the refund claim. If the claim is not rejected on technical grounds, which happens in most cases, chances are that, some refund could be granted. Let's assume that, the Adjudicating Officer grants refund on 3 services, while rejecting the claim in respect of the other 7 services. The normal follow up action, arising in this case, would be that the, assessee would go on appeal to the Appellate Commissioner against the denial of credit in respect of the 7 services, while the Department would go on appeal against the grant of refund for the 3 services. In some cases, the Appellate Commissioners take a decision to send the file for re-quantification (without involving remands), while fully or partly allowing refund. Even as the Adjudicating Officers pass fresh orders, following the orders of the Appellate Commissioners, these fresh orders are also appealed against, by the Department. Invariably, appeals are filed both by the assessee and the Department, in the CESTAT, against the same Order-in-appeal passed by the Appellate Commissioner. The Department invariably seeks a stay of the operation of the order-in-appeal, in the CESTAT, and as I have seen, these stay petitions come for hearing long after the refunds have already been disbursed to the assessees.

Thus, against a typical refund related order-in-original passed by an Adjudicating Officer, there could be as many as 8 to 10 appeals, including the stay petitions. If this is the sad state of affairs that is currently prevailing now, how can honesty and transparency survive? And, who would gain from this state of affairs other than Consultants, Advocates and Tax Practitioners?

Unfortunately, it would seem that, our bright and intelligent IRS officers are trained to use their knowledge and intelligence, in seeking ways to deny justice to the assessees, rather than promote a fair system of adjudication, where justice prevails. Moreover, most senior officers, especially, those who are approaching 'retirement' seem extremely scared to take a fair view, vis-à-vis adjudication proceedings, for fear of being proceeded against.

It is in this context that, the remarks of the Revenue Secretary assume a lot of significance. The FM has already gone on record, on his eagerness to have an honest and transparent tax administration.

Do I have some practical suggestions to improve honesty and transparency in the indirect tax administration? Well...here are some -

++ Require every Commissionerate to maintain a website containing names of the officers, details of range offices and other critical information.

++ Require Commissionerates to publish data on status of refunds, etc. on their websites. Follow a centralized system of accepting refund claims with a unique inward number and have the Commissionerates to publish data on the status of the orders, etc. on a periodical basis. This can go a long way in ensuring honesty and transparency.

++ CBEC should come out with a common guide which can be used by all the Commissionerates, for processing refund claims. As we know, Adjudicating Officers have more respect for instructions issued by the CBEC than, full Bench decisions of the Supreme Court. CBEC should clearly spell out the process to be followed by the Adjudicating Officers for processing refund claims so that, there claims are not processed at the whims and fancies of these officers. This would also ensure that, there is minimal litigation.

++ Put the officers and especially, those at the level of AC and upwards, through a rigorous training mode so that, they understand that, they are here to serve the tax payers and it is not the other way round. Written communication skills are abysmally absent in the communications sent by the Adjudicating Officers. One cannot understand the need for issuing a show cause notice with direct and indirect threats to an exporter who has filed a refund claim that he is entitled to receive, under the law. Would not a simple communication asking for certain documents and additional information do? A foreign client of mine was so petrified with a

show cause notice issued by an adjudicating Assistant Commissioner, pursuant to a refund claim that, he has stopped filing refund claims for fear of being persecuted by the Department.

++ It would seem that, most Adjudicating Officers suffer from a serious lack of knowledge of the subject and this is one reason as to why, fair orders do not come out of the adjudication system, especially in service tax cases. The current law related to service tax is highly complicated and unless and until the officers are well trained to understand and interpret the law, one cannot expect an honest and transparent tax administration to come into being, let alone, survive.

++ Aggressively push computerization in the range offices. It is sad to note that, computers are used more as typing machines, to generate show cause notices and to promote the rampant use of 'cut and paste' technology. All officers at the level of AC and above should be given laptops so that, they can be abreast of the judicial decisions delivered by the Tribunals and Courts, by accessing TIOL, through the Net. Talking incidentally of the 'cut and paste' technology followed by the Adjudicating Officers..... one would be surprised to see very similar wordings used across orders in originals, despite that the facts could be very different (eg. orders passed denying cenvat credit to Realty Developers on the basis of Circular No. 98/1/2008).

Before concluding ...

One should appreciate the attempts of the Revenue Secretary, the Vigilance Commissioner and the other senior bureaucrats to improve honesty and transparency in the indirect tax administration. The efforts of the FM in this direction are also extremely praise worthy. However, the current situation is unlikely to change, unless the good intent is followed by concrete steps to rectify the situation.

Luckily for the hapless assesseees, the Tribunals and the Courts have been the saviours of justice and have contributed, by and large, immensely to promoting fairness and honesty in indirect tax administration, which the adjudication system has miserably failed.