

Is mandatory pre-deposit slowing down indirect tax collections? : 16-02-2015



FEBRUARY 16, 2015

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THE Government, as we know, amended Section 35F of the Central Excise Act, with effect from 6-8-2014, to provide for a mandatory pre-deposit to be effected, without which, the appeals filed are not to be 'entertained' by the Appellate Authorities. Of course, this pre-deposit is 7.5% of the duty or penalty in the case of the first appeal and 10%, in the case of the second appeal before the CESTAT. Many of us thought that this was a master stroke aimed at significantly reducing litigation in the CESTAT by obviating the need for hearings related to stay petitions filed by the appellants as also to garner additional revenue to the Government, by way of the pre-deposit.

Though there is no denying the fact that litigation before the CESTAT would come down, as no stay petitions would be filed after this amendment, it does seem that, the very idea of having a pre-deposit as a pre-requisite for the appeal to be admitted/entertained has not worked in terms of garnering additional indirect tax revenues for the Government. In fact, some of my friends at the level of the Commissioners, do admit in private that, the pre-deposit scheme has actually resulted in a slowdown of revenues for the Government. One such senior officer was narrating the case of a service provider, who, having collected service tax from his clients, did not remit the same to the Department, despite threats of arrest, etc. The Department, it seems, had to be content with collecting the pre-deposit even in such a case. One is sure that, in the pre-pre deposit era, the Department would have coerced the service provider into parting with the entire quantum of service tax collected and not remitted. It also seems that, the threat of the very high interest rate of 30% for delays in remittance of service tax beyond one year, is not actually resulting in the reduction of litigation, sadly enough, though it is early days to gauge the impact of very high interest rate vis-à-vis frivolous litigation.

The main problem with the pre-deposit scheme is that, it does not distinguish between an honest tax payer who is litigating and a dishonest tax payer, who is using the system to evade or postpone payment of taxes.

Be that as it may.... one hopes that, the FM, with an eye to garner more revenue, does not fall into the trap of increasing the pre-deposit percentages in the forthcoming Budget, as this would send a very wrong signal to the Industry. Stability of the tax regime is a *sine qua non* for Industry to function and the last thing one would expect is the increase in the pre-deposit percentages.

Before concluding...

While it may be true that the pre-deposit scheme has contributed, in some way, to the reduction in the indirect tax collections, there can be no doubt that this scheme would work out well in the long run. It is also heartening to note that all CESTAT Benches are disposing the pending stay petitions quickly and once the same are dealt with the Benches would be taking up the regular appeals for disposal.