

## Section 73(4B) of FA, 1994 needs an explanation : 25-02-2015



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THE Government introduced sub-section (4B) to Section 73 of the Finance Act, 1994, with effect from 6-8-2014. It seems that the purpose of introducing this sub-section was to make the Service Tax Department adhere to some deadlines for completion of the adjudication matters. The said Sub-section reads as follows:

[(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)

(a) within six months from the date of notice where it is possible to do so, in respect of cases whose limitation is specified as eighteen months in sub-section (1);

(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A).]

One would have been amused to go through the language used in the sub-section, inasmuch as, the sub-section which uses the word 'shall' also states that, the time frame mentioned therein is applicable, only where it is possible for the Central Excise Officer to do so. This is a typical case of the all powerful Tax Babu thwarting any attempt by the newly elected political establishment to impose any time frame on the adjudication system, which in any case, is proceeding at a snail's pace. I have seen the Departmental officers including the Commissioners trying to adhere to the time frames set up by this sub-section in respect of show cause notices issues after August 2014. But, it seems clear that, they are not bothered about the show cause notices issues prior to August 2014 as there are cases which are pending to be decided, even after the conclusion of personal hearings, for years together. There are also instances, where, show cause notices (I am not referring to protective show cause notices here) have been issued years ago and replies submitted, awaiting intimation of personal hearings for years.

There are also cases where the Commissioners are taking up for adjudication, show cause notices issued after 6-8-2014, courtesy Section 73(4B), while show cause notices issued for the past periods on the same issues, are pending at the desks of our super-efficient Commissioners. It seems that the Commissioners are clear that, this sub-section is not applicable to show cause notices issues prior to August 6, 2014, while such an inference does not flow from a plain reading of the sub-section.

Be that as it may....most unfortunately, the sub-section (4B) is ludicrously worded, to be of any use. The time frame for completion of adjudication proceedings cannot be left to the mercy of the adjudicating

officers. One can draw a parallel from Sections 143 and 144 of the Income tax Act, 1961, in terms of which, it is mandatory for the Income tax Department to complete scrutiny assessments within two years from the end of the relevant assessment year. In fact, we see time frames being fixed for assessments and re-assessments including those involving complicated transfer pricing cases, under the income tax law. Where then, is the justification to give a long rope to our most brilliant service tax Commissioners to complete adjudication proceedings only when, it is 'possible to do so'?

The Government should also extend the provisions of Section 73(4B) to show cause notices prior to 6-8-2014, as well. An Explanation below this sub-section should make matters clear.

As all of us know, refund claims filed by exporters are left pending for years together, at the offices of the Service Tax Department. It is very important that provisions similar to sub-section (4B) are introduced to ensure speedy disposal of refund claims filed by exporters. It would also be good to have such provisions for disposal of appeals by the Appellate Commissioners, as well. It does not augur well for a Government which, talks of a non-adversarial tax administration every now and then, to fix a time frame for completion of adjudication proceedings involving levy of and collection of tax and keep mum in respect of proceedings involving granting of refunds.