

Service Tax Adjudication System needs complete overhaul – Aug 21, 2013

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By S Sivakumar, Advocate

ONE very disturbing feature of the current adjudication system involving service tax matters, over the last few years, is the manner in which it is implemented.

If one is to go by the adjudication proceedings emanating out of the internal audit system of the Service tax Department, the fact invariably comes out that the audit objections raised at the initial stages by the Internal Audit Party are confirmed in perhaps, 95 out of 100 cases. As we know, the procedure of the internal audit process of the Department involves a team of the Department, headed by a Superintendent, to undertake the audit of the accounts of the assessee and issue an Audit Enquiry asking the assessee to explain/respond to the queries raised by the Department. Based on a 'consideration' of the reply filed by the assessee, the Internal Audit Party issues an Audit Note to the jurisdictional Group Superintendent, with a copy to the assessee, confirming the audit paras. Based on the audit note, the Department issues a show cause notice to the assessee, which sets in motion, the adjudication process. Though we know, of course, that 'several factors' determine the coverage and the output emanating out of the audit process including lack of time, one unfortunate fact remains that, in many cases, the Internal Audit Teams are neither aware of the law and the latest developments in terms of the case laws nor are they interested in getting the factual matrix of the assessee's correct.

I am told that there is an internal review of the internal audit issues within the Department, in an open hall procedure. However, the impact or outcome of this review is not very clear as in most cases findings of the Internal Audit Teams are confirmed in the show cause notices issued by the Department. One would have expected a robust system of superintendence and control of the manner in which these audits are conducted, within the Department, given the fact that we have brilliant IRS officers at the level of Joint Commissioners, Additional Commissioners and Commissioners. One would be happy if these officers are to spend their tremendous intellectual prowess in regulating and reviewing the quality of work done by the Superintendents of the Audit Teams, but this unfortunately, is not the case. Taking this discussion forward....the unfortunate fact remains that, in a vast majority of cases, the findings contained in the audit paras, as covered in the show cause notices, get confirmed even in adjudication proceedings, whether they are at the level of the Commissioners or at lower levels.

The story related to adjudication proceedings arising out of the Anti-Evasion wings of the Department is no different. Here again, it is the Superintendents who call the shots. Right from summoning top executives of even listed companies to recording statements and to issue show cause notices, it would seem that the Superintendents decide the issues and all further proceedings including personal hearings at the level of the Commissioners/Additional Commissioners/Joint Commissioners are merely confirmatory in nature. It is very sad to see these IRS officers not applying their mind, in an independent manner, in handling these proceedings, despite the law expecting them to do so, as these proceedings are quasi-judicial in nature. I have come across highly learned and informed Commissioners confirming show cause notices based on completely incorrect facts (without even taking the minimal trouble to verify the basic facts) merely on the ground that the issues raised by the junior officers have proceeded on these lines.

The story related to the adjudication of refund claims filed by the exporters, by the Department, is no different, Sir. The exporter's refund claims are decided solely at the mercy of the *concerned* Superintendent and if this gentleman (or gentle woman) decides that the exporter's claim is to be rejected for whatever frivolous reasons, be sure, that the same view will be confirmed during the proceedings before the concerned Assistant or Deputy Commissioners.

This, in my humble view, is a sad state of affairs prevailing, in terms of the adjudication system involving service tax. If the IRS officers are there only to conform to and confirm the views of the Superintendents, why does the Government need them, in the first place? One would definitely expect the adjudication system to encourage the IRS officers to use and apply their own minds to issues that are brought before them, rather than, get into a mode of blindly confirming issues raised in show cause notices.

One does not, by the way, understand as to why Adjudicating Officers cannot apply their own independent minds and pass orders that are just and fair, rather than toe the views of the Superintendents. Some of my friends tell me that the current dispensation is heavily loaded against Adjudicating Officers who pass orders favouring the assesseees and no honest officer wants to risk his further career or retirement benefits, let alone, have the CBI and other Agencies behind him.

This then, to reiterate, is the sad state of affairs. The piling up of the appeals before the CESTAT benches is proof of the current ills of the adjudication system concerning service tax. It is high time the Government took a serious look at this important matter and took remedial steps, which would result in a fair and transparent system where the senior officers of the Department can apply their minds independently.

Before concluding...

The people who are benefitting most of the current system are the Advocates and Tax Practitioners, as it is gala time for most of us, given the significant growth in professional opportunities.

Some of my friends tell me that, the 'S and S' system prevails in respect of service tax. The finality in respect of service tax matters can come only, from either the Superintendent (the first 'S') or the Hon'ble Supreme Court (the second 'S').

The Government also needs to keep in mind the fact that a brand new service tax law has already come into effect from July 1, 2012. Most of the Departmental officers are still living in the past and are blissfully aware of the new law including the provisions of important rules such as the Place of Provision of Services Rules, 2012. As such, with its unclear provisions, the new law is bound to create uncertainty and the consequent litigation. If the fate of the hapless assesseees is going to be determined solely by how the junior officers like the Superintendents interpret the law, the Government would seriously need to think of doubling the CESTAT benches where these benches are already working and open new benches in a large number of cities.

By the way I have nothing against the Superintendents, many of whom are highly learned. Some of them have gone on to become successful Advocates, competing with us, in the Tribunals and Courts. I am only against the current system which does not allow the senior officers to apply their minds independently, in adjudication proceedings.