

## **MALICE IN BLUNDERLAND**

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Corruption! To me, corruption is becoming a way of life, slowly but steadily. In many ways and in many forms, it has infiltrated into our life, so inseparably. May be the situation and the degree varies, but corruption has spread its tentacles into the system and has become an integral part of our life. Many a time, we are so insensitive to it that we are unable to even identify its co-existence. From getting a movie ticket in black to jumping a signal for urgency, from luring the priest in the temple for a privilege ahead of the crowd to asking the TTE for allotting a berth for our family, we pay bribes, in different forms and different means and for different purposes.

In this piece, I had attempted to identify the top 3 drivers of corruption in tax administration.

### **Pre-deposits:**

Once when my mentor asked me to design a cartoon about the current situation of departmental adjudication, I conceived it as an adjudicating authority sitting in a chair wearing a blind man's goggles and the counsel sitting opposite explaining the case in the sign language for the hearing impaired! To top it, the photo of Mahatma would be 'hanging' behind his chair!!!

When I was presenting a multi crore case of high complexity, the adjudicating authority was busy searching his silver tooth pick!!! When I paused, he was benevolent enough to ask me to go ahead with my arguments and curiously continued with his search.

Today, the quality of adjudication in the department is at its deepest ebb, whereby, once the show cause notice is received, the clients first draw demand drafts for the Tribunal fees. This erosion of the quality of adjudication has resulted in a mind blowing litigation inflow in the Tribunals, the first hope of real justice.

As every other case comes to the Tribunal, the mandate under Section 35F of Central Excise Act (and its *pari materia* provisions in Customs and Service Tax), which mandates pre- deposit, comes as a deadly spoke. As per Section 35F of the Central Excise, an appellant is required to pre- deposit the entire duty, penalty and interest, while filing the appeal. With the quasi- adjudication reduced to a mockery, such a mandate at the threshold of litigation is a huge liability for the appellant. This menace creates a cold shiver in the spine of every appellant and the panic – stricken mind chooses the path of corruption, at the stage of adjudication.

To me, if this pre-deposit mandate is taken away, 80% of the corruption in tax administration would evaporate. Instead of the pre deposit of

duty/penalty/interest being a pre-requisite for an appeal to the Tribunal, alternatively, the law shall be a minimum (say 10%) pre deposit of duty, as a matter of routine, with the liberty to both the department as well as the appellant, to argue their cases to increase/decrease such percentage of pre-deposit, on *prima facie*/financial hardships, as the case maybe.

### **Refunds:**

Once when I had been with my family on a vacation to a boating tour, a co-traveller with whom we were chatting during the entire tour, suddenly fell into the water. In panic, I stretched out of the boat to rescue him and yelled, "Give me your hand" but he never responded. Suddenly, I remembered about his profession and immediately started shouting, "Dude, take my hands" and he immediately sprang out of water and took my hands and got saved!!!

Yes. You got it right. He is a tax officer!!!

Indian Tax administration is based on a "give and take" policy. It is always we give and they take!!! And once we give and they have taken, getting it back, even legitimately, is a synonym to IMPOSSIBILITY!!!

Refunds have been a perennial source of corruption in the department that, today, even the cleanest company, makes a provision!!! This includes all sorts of getting money from the department including drawbacks etc, whereby, even the legitimate sanction comes with an illegitimate fees!!! Few have tried to resist but had finally got the realisation and succumbed. After all, here we need to give "Prasad" even to the GOD!!! Any defiance against the established practice, would only inextricably delay the refunds/drawback, that the so-called honest beacons of the trade has ultimately succumbed in different camouflages justifying it as "reality" and "penny wise is only pound foolish". If this lube is not applied, then on a trivial spoke, huge sums would be blocked by a stupid show cause notice and would get disallowed for some frivolous reasons, and would wait in the queue, at the corridors of CESTAT. Today with the huge piling of cases in CESTAT, these cases would take near to a decade to see its light. And what would be the impact of blocking such huge money for years, in today's competitive world!!!

As there is a mandate for pre deposits for cases involving demand of duty and penalty, there shall also be a pre deposit for the Government for the refund cases and also a separate/ special bench to deal with the refund cases.

Though there are many circulars stating that interest would be given if the refund is not sanctioned within the stipulated time and the erring officers would be penalised, many a times, it remains to be in print rather in practice.

The Department of Revenue has proclaimed in its commentary to the First Discussion Paper on GST that the refund administration in Indirect taxes is one

of the best today in the world and hence the same model may be adopted in the GST regime also!!! Humour at its best!!!

### **Transfers:**

In this whole world, only here, we would be having such a wonderful and a transparent transfer policy for the officers of the most lucrative vertex of the socio-economic triangle, the IRS. This should also get the unique admiration for classifying the posts into categories such as, "sensitive" and "non-sensitive". (A mother cat classifying its kitten based on their spots.) Shall anyone tell me as to what this "sensitive" and "non-sensitive" would mean? It is nothing but a euphemism of "money-yielding" and "dry" posts. I just have only one thing to say - whoever has made such categorisation should hang him in shame!!!

Many a times corruption is buried in peace but whenever this ugly goose is caught by the destiny noose, it is blown out of proportions, where all and sundries cry from the rooftop, against the victim's skin disease ignoring their own leukaemia!

*"Whoever is without sin among you, let them cast the first stone."*

- **Jesus Christ**

### **Before parting...**

When I wrote "Bribe and Prejudice", it invoked mixed responses, most of them caustic. In fact, many thought that I was chastising corruption. To me, any writing shall be a modern art, allowing the reader's intellect to interpret, the author's intent, notwithstanding!!! Wish all beloved netizens a Happy Diwali.