SC adverse observations - Need for proper selection of Officers for sensitive posts - Former CBEC Member writes to FM

TIOL-DDT 2085

15.04.2013
Monday

FORMER
CBEC Member, SK Choudhury has in a letter to the FM suggested that it is time for the Ministry to identify officers found fit for being sent home under Rule 56J which has not been invoked against any Group 'A" officer in the last over twenty five years. He tells the FM that some of the officers facing prosecutions and included in the list of "Officers with Doubtful Integrity (ODI) are being rewarded with plum postings including in the DRI making mockery of its own policy which mandates that officers in ODI list should not be assigned any sensitive charge. One of them, an Additional Commissioner level officer had the temerity to refuse to join when posted to what is considered to be a non-sensitive charge and such is his clout that flaunting his connections he continues to be in an important executive charge in a metro city. And no questions are asked.

Though the immediate provocation for the Former Member to write to the FM is the recent judgement of the Supreme Court in its recent judgment on 21-3-2013 on the role of certain customs officials in the serial bomb blasts of March 1993.

He has made several suggestions to the FM to find officers of integrity for sensitive posts.

The anguish of a former Member at the tarnished image of his former department is understandable, but transfer has become a major commercial activity and those who want to buy the posts know how to do it, whatever be the currency.

Letter to FM

Salient features of new forms for filing appeal to CESTAT

A
day after issuance of the notification trio viz. Nos. 6/2013-Central Excise (N.T.), 37/2013-Customs (N.T.) and 5/2013-Service Tax, all dated 10.04.2013, the Board has come out with a Circular 969/03/2013-CX explaining the salient features of the new forms, the manner one has to go about it and the usefulness of the same. Officers and assessees would be required to be educated about it and the Board should conduct some training sessions at their national academy for the benefit of all. What we like is the content of the paragraph which would help us go green. It reads –

¶*(4) The above changes may be taken note of by the field formations as well as trade for proper usage of the new forms from 1.6.2013. However, the old forms may continue to be used for a period of three months from the date of coming into effect of the new forms, i.e. till 31.08.2013.* ***From 01.09.2013 onwards, no appeal shall be filed in the old forms.***¶

We know for sure that this date may see an extension but nonetheless it is a laudable gesture.

The Circular also mentions –

(6). The pre-figured alpha numeric numbers for all the 139 Commissionerates and 8 Commissioners (Adjudication) are being uploaded on the websites - **http://www.cbec.gov.in** under Legal Affairs and **http://www.cdrcestat.gov.in**

Incidentally, we visited the CDR site which although proudly gives out a disclaimer mentioning that the contents of the site do not constitute advice and should not be relied upon in making any decision, yet we feel that since traffic to the site would increase pursuant to the Board Circular, it would be prudent

to make corrections in the information doled out as under –

 # In Delhi CESTAT there are Larger Benches/ Double Benches/ Single Benches are constituted for expeditious disposal of cases involving revenues.

 # The Central Excise And Salt Act, 1944 (referred to for convenience as the Central Excises Act) and

Be that as it may, we wish that the new forms bring about quick disposal of cases pending in the CESTAT and the **Draconian Circular 967** loses its poisonous fangs.

Last but not the least, 'Ahmadabad' could have been spelt as 'Ahmedabad' and it could also have been mentioned in explicit terms that **old appeals** do not have to go through this churning process and that they may continue to sulk?

Circular 969/03/2013-CX dated 11th April, 2013

IRS (C&CE) Officers disappointed with appointment of Chairman of GSTN

THE
IRS (Customs & Central Excise) Officers Association expressed its disappointment that a non-IRS officer has been appointed as the Chairman of GSTN and that no IRS (C&CE) officer (serving or retired) was found suitable for the post of the Chairman, despite the nominated officers (by CBEC) having longer track record of overseeing implementation of large IT projects within the Government, and besides being backed by long years of experience far more relevant to the task at hand.

The Association in a letter to the FM expressed its unhappiness and concern the marginal role given to IRS (C&CE) *vis-a-vis* other services in the running of the GSTN.

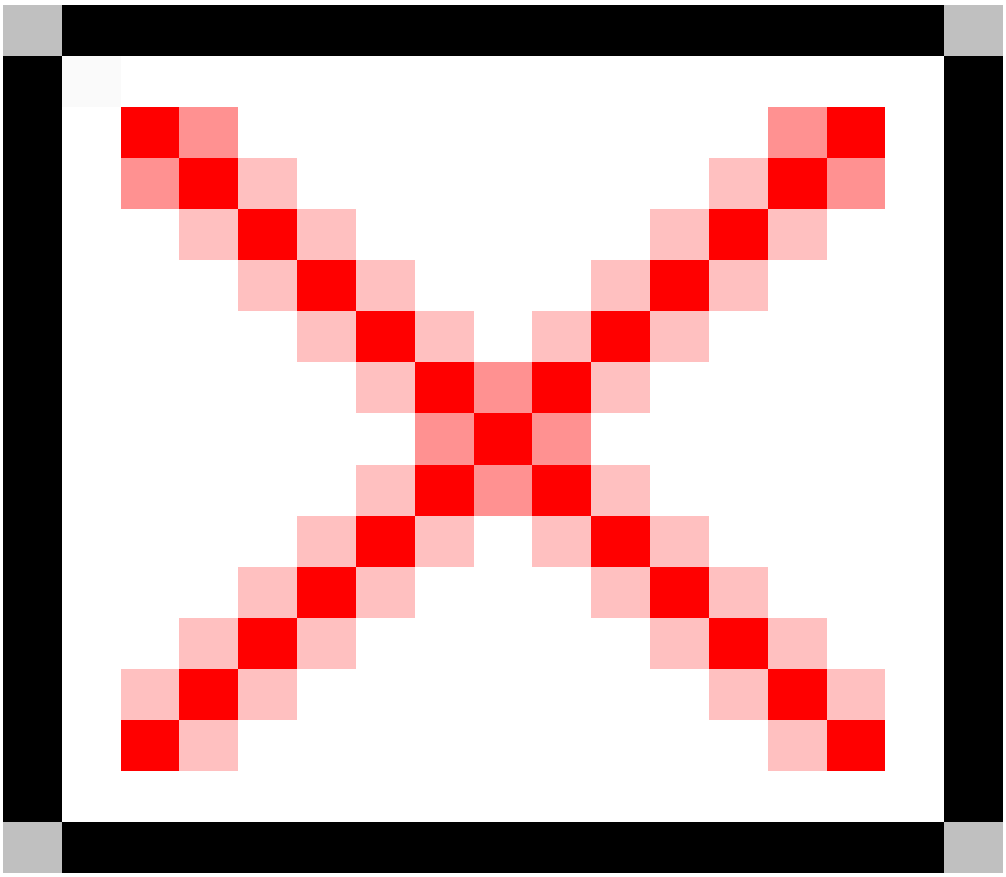
The Association wants that:

1. The remaining Director to be nominated by the Centre on the Board of GSTN should be a senior official of CBEC, instead of the Financial Advisor. The Director's post should preferably go to the DG (Systems), CBEC since he/she is the senior-most official in the country today working full-time on all aspects of IT-systems for indirect tax administration.

2. At least three of the independent Directors in the Company should be people with long experience in indirect tax administration within CBEC formations, preferably in IT, Audit (CAAP), DRI (RMS), etc.

3. The post of the CEO should be based on open selection process as has been already decided by the Cabinet.

4. The post of Chairman should be given to the IRS (C&CE) cadre-serving or retired as our service is the exclusive specialist in tax administration and has abundant experience in electronic clearance of goods for the last one decade or so.



As jurisdictional Commissioner he reviews order and as Commissioner(A) allows Revenue's appeal - CESTAT orders remand and

HISTORY repeats itself well almost!

Seven years ago we reported the case 2006-TIOL-174-CESTAT-MUM wherein the CESTAT, WZB observed –

> *" It is strange that this appeal has been filed under authorization by the applicant Commissioner, Central Excise, Belapur, Shri xxx against the impugned order in appeal passed by no other than himself in his earlier capacity as Commissioner of Central Excise(Appeals), Mumbai. It is not as if he has been directed by any superior authority to file this appeal as was confirmed by the learned SDR. Filing of such an appeal as this against his own order clearly indicates that some of the Commissioners in the field are not willing to take responsibility for accepting even their own orders and they perhaps want that every decision to allow relief should be approved at the Tribunal level. Such tendency on the part of the departmental authorities is perhaps the cause of numerous avoidable departmental appeals filed in the Tribunal."*

The aforesaid phenomenon was repeated after a couple of months in the case reported by us as 2006-TIOL-552-CESTAT-MUM with the caption "I pass an order as Commissioner (A) in assessee's favour - Now as jurisdictional Commissioner, I file an appeal praying for setting aside the same."

A diagonally opposite situation took place some months back. The lower adjudicating authority dropped the proceedings initiated under a SCN and this order was reviewed by the jurisdictional Commissioner necessitating filing of an appeal by the Revenue before the Commissioner(Appeals).

Before the Commissioner(Appeals) could decide the Revenue appeal, he probably got transferred and the Commissioner who had earlier ordered the review above stepped into his shoes.

Needless to mention, the decision was a foregone conclusion **- he allowed the appeal of the Revenue.**

And the assessee was not ready to take things lying down.

They filed an appeal to the CESTAT and narrated the facts beginning from the very beginning.

The Bench found merit in the contention of the appellant and held that **the same authority who reviewed the order cannot decide the appeal.**

Holding so, the Bench set aside the order and remanded the matter to the Commissioner(A) to decide afresh.

The matter did not end there because the seat of the Commissioner(A) was still being occupied by the same Commissioner who passed the order in the first place.

So, the Bench has requested the jurisdictional Chief Commissioner of Central Excise to entrust the appeal to the Commissioner(Appeals) other than the lower appellate authority in question.

The appeal was disposed of by way of remand.

But is wearing two caps illegal? For an answer kindly see 2002-TIOL-397-CESTAT-DEL.

(See 2013-TIOL-607-CESTAT-MUM)

Capital goods installed in adjacent plot which plot was later merged with the factory – CENVAT credit prima facie admissible

The appellant availed *CENVAT credit* on capital goods installed at the plot adjacent to their factory and which plot was finally merged with the factory of the applicant.

It is the allegation of the revenue that *CENVAT credit* is taken prior to intimation to the department and prior to amendment in the Central Excise registration certificate and, therefore, the credit is inadmissible.

The Bench observed –

> *"4. Considering the fact that the it is not denied that the said capital goods and the storage tank has merged with the factory of the applicant and if the same are merged with the factory of the applicant, prima facie, I am of the view that applicants are entitled for CENVAT credit. Accordingly, applicant has made out a case for 100% waiver of pre-deposit and I do so and I waive the requirement of pre-deposit of entire amount of duty, interest and penalty and stay recovery thereof during the pendency of the appeal."*

See 2013-TIO-606-CESTAT-MUM

Citizen's Charter

Our Vision

To be a modern, progressive, effective, autonomous and credible organization for optimizing revenue by providing quality service and promoting compliance with tax and related laws.

Our Mission

Enhance the capability of the tax system to collect due taxes through application of modern techniques, providing taxpayer assistance and by creating a motivated, satisfied, dedicated and professional workforce.

Our Values

Integrity, Professionalism, Teamwork, Courtesy, Fairness, Transparency, Responsiveness.

The above is an extract from the *Taxpayer's Facilitation Guide* published by the Central Revenue Board. We are referring to the ***Government of Pakistan***.

Service Tax

Petitioner blamed for 'killing small businessman and their business' and held liable for payment of ST without notice - Whether order in question has been passed in *bonafide*
exercise of power under statutory provision or it is something else - notice issued to Additional Commissioner, CE, Ranchi for answer as he has right to be heard before any observation is made: HC

IT
will be appropriate to give notice to the Assessing Officer-Rajiv Kumar Mishra, Additional Commissioner, Central Excise, Ranchi so that certain allegations may also be examined against the officers whether the order in question has been passed in bonafide exercise of power under the Statutory provision or it is something else, which would be adequately answered by the said officer himself, who has right to be heard before any observation. Therefore, issue notice to Rajiv Kumar Mishra, Additional Commissioner, Central Excise, Ranchi, who may meet with the allegation of the petitioner questioning the passing the order against petitioner without given opportunity of hearing to the petitioner and also passing stricture that too without factual finding of the said authority.

Income Tax

Whether expenditure incurred by assessee on borrowed funds for financing in respect to purchase and sell of shares on behalf of others can be denied, even if income earned from brokerage has been taxed: ITAT

THE assessee has borrowed huge funds from banks and also in the form of inter Corporate deposits etc. The AO has referred the matter to special audit u/s 142(2A), to study issue of utilization of the borrowed funds. The AO passed his order placing reliance on the findings of the Special Auditor, in which it was observed that the interest incurred by the assessee was in excess of the brokerage income. The issue before the Tribunal is - Whether the expenditure incurred by the assessee on borrowed funds for financing in respect to purchase and sell of shares on behalf of others cannot be allowed, although the income earned from brokerage has been taxed. And the answer goes against the Revenue.

Customs

It can be no defence to urge that Customs Act does not provide for payment of interest on balance of sale proceeds - order awarding payment of interest would be necessary: HC

THE
Petitioner has been deprived of a refund of its monies legitimately due to him in pursuance of an order of the Settlement Commission. There is absolutely no reason or justification for the unexplained delay. Hence, in exercise of the jurisdiction of this Court under Article 226 of the Constitution, an order awarding the payment of interest would be necessary.

See our Columns Tuesday for the judgements

Until tomorrow with more **DDT**

Have a nice day.

Mail your comments to **vijaywrite@taxindiaonline.com**