

Kolkata Customs Custodial Death - FM deprecates

TIOL-DDT 255

06 12 2005

Tuesday

Since we broke the news of the sad demise of a young man in the Customs office at Malda, a lot of whitewashing activities have been going on – the dead boy is not important, finding a scapegoat is, especially since the matter has reached the FM because of irresponsible journalists! The Board has last week communicated to the field the anguished feelings of the Finance Minister. The observations of the FM as communicated in the Board letter are,

“I deprecate the practice of the Department of taking effective custody of a person and not arresting him and not showing the arrest in the records. From the human rights point of view, there is no distinction between effective custody and arrest. While a person can certainly be asked to go over to an office or Police Station for inquiry/interrogation, after two or three hours, when it is prima facie felt that the person has committed an offence and that he should be arrested, then the accused person should be formally arrested and produced before the Magistrate.”

I think these safeguards are normally honoured more in the breach than in the observance, and this deserves to be deprecated.”

It is heartening that the Finance Minister of the country understands that the safeguards are breached and this is to be deprecated, but the brilliant lawyer that Mr. Chidambaram is, it is surprising that the administrator in him has overshadowed the lawyer. Every person summoned by the department and religiously beaten up is not an accused and they are not interested in arresting him. They only want to obtain a confession from him by plain beating and unethical threats. It is only an accident that once in a while one of these victims are so stupid that they have no respect for customs and instead of boldly withstanding torture they go and die, causing untold misery to the great customs officers especially at the top, who will have to answer embarrassing questions from a Finance Minister who again sadly knows his law. The FM wants the formal arrest to be made within three or four hours of interrogation. But who wants to arrest and follow the entire accompanying nuisance? And once you arrest him you lose your exclusive right over him and further a statement obtained in custody has no significance. So any torture and statement has to be before the formal arrest. And here nobody has respect for the 24 hour requirement. The person is produced before a magistrate only after his statement is recorded and until then he is under illegal detention and many times, he is not even arrested officially.

The FM should have deprecated the practice of obtaining statements by using third degree and all investigation depending on statements alone obtained through third degree. The officers especially those working in the premier investigation agencies like DRI and DGCEI should be sensitized to the fact that recording statements is only part of an enquiry and that is not the whole investigation and every person summoned is not a criminal and not yet an accused. The problem with beating another human being is, after some time you start enjoying it and with good results produced, it becomes a habit, a pastime, a hobby turning otherwise reasonably good people into monsters but

ultimately you will realize that it is the symptom of a deep sickness which will eventually take its toll.

Incidentally in this Malda case, the Board has agreed that a person had been detained for more than the mandatory 24 hours and the Board further concedes that he was not shown as arrested. The opening lines of the Board letter states,

An instance of demise of a person under Customs custody has come to the notice of the Board. In this case, the person was detained by the officers of the Customs for more than 48 hours, but he was not shown arrested nor was he produced before the Magistrate

There is a concept called vicarious liability. Will the Board pay compensation?

“Everything has been said already, but as no one listens, we must always begin again.” Andre Gide, French thinker and writer as quoted on the first page of the report of **Dr. Justice V.S. Malimath Committee on Reforms of Criminal Justice System (2003)**

Experience before legislation

From the debate in the CONSTITUENT ASSEMBLY OF INDIA - **Friday, the 16th September 1949**

Shri Mahavir Tyagi

(United Provinces: General) : Sir, Dr. Ambedkar will please pardon me when I express my fond wish that he and the other members of the Drafting Committee had had the experience of detention in jails before they became members of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: I shall try hereafter to acquire that experience.

Shri Mahavir Tyagi

: I may assure Dr. Ambedkar that, although the British Government did not give him this privilege, the Constitution he is making with his own hands will give him that privilege in his life-time

Duty Free Entitlement Certificate for Status holders and target plus Scheme on supply to SEZ

DGFT has clarified that supplies from DTA to SEZ are eligible for benefits under DFEC and Target Plus Scheme subject to the conditions specified in para 7.1 (b) of Foreign Trade Policy provided the payments are realized in free foreign exchange.

[POLICY CIRCULAR NO. 36 \(RE-2005\)/2004-2009 : Dated Dec 5, 2005](#)

Reimbursement of excise duty paid on Fuels procured from Depots of Domestic Oil Companies.

It has been more than a year since the warehousing facility had been withdrawn for petroleum products and the worst sufferers had been EOUs who used to get their fuel from the depots of oil companies under CT3 without payment of duty. Board had clarified by Circular No. 799/2004 that EOUs can take cenvat credit. But the Board did not realize that no cenvat credit is available for most of the petroleum products especially the fuel. Finally it is left to the DGFT to solve the problem and he has solved it rather well. DGFT has decided

that fuels procured from the depots of domestic oil companies on payment of excise duty by EOU/EHTP/STP/BTP will be eligible for reimbursement in the form of terminal excise duty in addition to drawback rates notified by DGFT from time to time provided the recipient unit does not avail CENVAT credit/rebate on such goods. Supplies taken directly from the refineries will continue to get exemption from payment of excise duty under CT3.

[POLICY CIRCULAR NO . 37 \(RE-2005\)/2004-2009 : Dated : Dec 5, 2005](#)

Nearly Three Crores cases pending in courts

The pendency of cases in the Supreme Court is 33,635 cases, in High Courts is 33,41,040 cases and in Subordinate Courts is 2,53,06,458. As per the information available in the Department of Justice, at present 5359 criminal cases in Supreme Court, 6,37,821 criminal cases in High Courts and 1,80,95,301 criminal cases are pending in Subordinate Courts. This information was given by the Minister of State for law and Justice, Shri K. Venkatapathy in a written reply in the Rajya Sabha yesterday.Â

Please see our Special Column on Custodial dignity by Justice Abichandani, Hon'ble President, CESTAT.

What could be the fee for Subhas Bhowmick from the East Bengal Club? According to The Telegraph, it is Rs. 11 Lakhs a year, or rather it was!

Until tomorrow with more DDT

Have a nice day.

Mail your comments to vijaywrite@taxindiaonline.com