Proliferate Litigation as much as you can

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By Vijay Kumar

THE Government loves litigation, COVID notwithstanding.

Delhi High Court in theÂ Brand Equity TreatiesÂ case -Â **2020-TIOL-900-HC-DEL-GST** observed,

> ***The transition from the erstwhile regime to GST for the availment of the CENVAT credit was to be by way of a declaration to be submitted electronically in Form GST TRAN-1. The date prescribed for filing of the said Form was extended several times by way of orders issued from time to time. Several taxpayers however could not meet the deadline. This was on account of several factors - predominantly being inadequacies in the network of the respondents, which failed to meet the expectations and serve the needs of taxpayers. Thousands of taxpayers complained that there was low bandwidth and despite several attempts being made on the GST Network, they were unsuccessful in filing the statutory GST TRAN-1 Form online. Many such matters travelled to courts. Majority of them were allowed in favour of the taxpayers, and directions were issued to the respondents to permit the filing of TRAN-1 Form beyond the extended date.***

The High Court directed the Government to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually. The High Court held that other taxpayers who are similarly situated should also be entitled to avail the benefit of this judgment. The High Court further directed the Government to publicise this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 till date are permitted to do so on or before 30.06.2020.

Did you see any government website carrying this judgement? So much for the respect the government has for the judiciary.

As expected, the government took the matter in SLP before the Supreme Court in this matter and several similar cases.

In ***ADFERT TECHNOLOGIES*** case **- 2019-TIOL-2519-HC-P&H-GST,**
the Punjab & Haryana High Court, while disposing of 102 writ petitions, ordered,

> ***Accordingly, we direct Respondents to permit the Petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30th November 2019. The Respondents are at liberty to verify genuineness of claim of Petitioners but nobody shall be denied to carry forward legitimate claim of CENVAT/ITC on the ground of non-filing of TRAN-I by 27.12.2017.***

The Government took this also by SLP to the Supreme Court, which in **2020-TIOL-64-SC-GST** dismissed the Revenue SLP.

Now what?

The CBIC had in November 2018 and August 2019 directed the field formations that
"wherever Courts have allowed the reopening of portal or manual submission of Transitional Forms, which is against the current statutory framework, the same may be agitated by filing Review Petition/ Writ Appeal, as the case may be, and if the Review Petition/ Writ Appeal is not possible, a self-contained SLP Proposal may be forwarded to Board."

When the Board's SLP in the ***Adfert Technologies*** case has been dismissed ***in limine*** by the Supreme Court, what is the option before the GST Department? What is the future course of action? Board has sought legal opinion and it is in its favour.

The Board in a communication **(F.No.276/262/2015-CX.8A Pt. III**, dated 15th October 2020) passes on a lot of wisdom to the field formations. Board informs the field formations that:

1. The law is well settled that when there is ***in limine*** dismissal of SLP by the Apex Court, there is no enunciation of law, no doctrine of merger and accordingly, question of law remains open.

2. Hence, there is no bar ***on*** agitating the same question of law before the Supreme Court.

3. In fact, while deliberating on another issue of transitional credit in the case of M/s ***Brand Equity Treaties Limited***, Hon'ble Apex Court stayed the operation of High Court order and tagged the Brand Equity case to the matters, which are similar to ***Adfert Technologies***.

4. Further, in other similar cases, Hon'ble Supreme Court has been issuing notices.

Thus, the matter is very much alive and it is your duty to keep it alive.

The Board wants the field formations to take necessary actions for safeguarding the interests of revenue as per earlier instructions. Board had earlier informed the field that:

- it has been noticed that many High Courts are issuing orders whereby the direction is given to open the portal for filing GST Tran-1 declaration and/or allowing manual declaration of GST TRAN-1 even in the cases wherein, after the scrutiny, it was identified that the non-filing of the requisite declaration is not traceable to the glitches in the system.

- In fact, in many cases, it was identified that the declarations were not filed, mainly due to error committed on the part of the tax payers.

- Under these circumstances, re-opening of the portal for filing requisite declaration or allowing manual declaration of the requisite form may not be in consonance with the current statutory framework of GST law.

- Accordingly, if it was identified that error is not attributable to the Department /GSTN, the Commissionerates concerned are hereby directed to follow the following course of action

- The issue may be **scrupulously** examined and an appropriate legal remedial action including filing of a Review Petition or a writ Appeal, as the case may be, undertaken immediately, after consultation with the Government Standing Counsel. The said action may also be intimated to Board.

- If Review Petition/ Writ Appeal is not possible, a self-contained SLP proposal, may be forwarded to the Board.

Board is determined to fill the Supreme Court and High Courts with dockets - all for a paltry sum of credit, which the government wants to deny on mean technical grounds.

GSTN is overloaded: Fresh Glitches - who's to blame - taxpayer, naturally!

Another GLITCH happened yesterday. The portal simply could not manage the flow of returns.

Why did you all choose to file your returns on October 20th? The GSTN simply cannot take such last minute rush. Yesterday was a terrible day for the filers as filing a return would take hours - if you are lucky.

The Portal ***"GST Tech@Infosys_GSTN"*** tweeted late in the night,

Till now (11:00 PM) today 11,02,388 GSTR-3B returns have been filed compared to 4,85,563 last month on same day. In last 2 hrs 91,799 returns have been filed.

This shows that 91,799 people were busy from 9 pm to 11 pm filing returns and not engaged in useless activities like having dinner, watching TV to know what the nation wants to know or simply sleeping.

An earlier tweet read

Till now (5:00 PM) today 5,94,242 GSTR-3B returns have been filed compared to 3,04,847 last month on same day. In last 2 hrs 1,60,476 returns have been filed

Before that they had announced,

Message from Infosys Team:

Today we are getting intermittent complaints of slowness and timeout in the services at the portal for some taxpayers. Till 2:00 PM today 3,27,000 returns have been filed compared to 2,38,000 at the same time last month. In last one hour more than one lakh returns have been filed. Infosys team is constantly working to ensure better return filing experience. Also we will keep you posted of the developments. Inconvenience caused is deeply regretted.

What was happening? Mayhem and nobody to save.

Agitated taxpayers took to twitter to reply to @Infosys_GSTN.

At least 10 attempts required to file a return. Professionals are still at work to comply with due date. Portal is down for 4 days.
God give them some sense!!! 3 attempts to make payment in between 10 and 11.30. All failed, still they are ***twitting*** that site is working fine
That's not an achievement to boast or be proud of. Had the site been working for the past few days, then the results would have been pretty different. The returns filed in last two hours signifies that the professionals had to stay long to compensate someone else's incompetence.
Professionals are sacrificing their sleep to file returns at late night and GSTN is claiming it as their success story.
If GST portal works properly then there is no need of filing after office hours. Due to portal technical glitches, professionals are working late nights to save your huge late fees. Instead of resolving portal glitches, you are providing only clarifications.
Nothing to boast about bcoz
1. Professionals need to work late night for ur tech glitches

2. Back to back justification will improve nothing

3. Denying people hardships will raise more frustration among people

4. Portal is for taxpayer, not the other way round to waste man hours

You should be ashamed of that. The dealers and professionals had to wake-up till now and file GST returns. Since July 2017 we could not celebrate any festival or could spend a day with family.

So, you mean to say that the persons filing the return should work for late nights or till the early mornings due to your failure.

That Means People are Working till late Night instead of Sleeping or Giving time to their Own Family. That's What Mental Harassment one is facing working till last Minute so to avoid Penalties. The Pressure to File Returns are too high that One can't Even Spend time with Family.

If your site is working during the day, people won't be filing return between 9 pm to 11 pm.

Ok. So conclusion is GST return should be filed at mid night or early morning like 2 am. And fools try to file return during day time when obviously 1.5 lakhs are already filing returns.

We expect portal to run properly between 10 am to 7 pm and not between 9 pm to 11 pm

Will somebody listen to all these woes or are they busy planning for the next round of litigation?

Until next week