

Law is same during normal as well as in pandemic times

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By Vijay Kumar

IN *Tvl. Rising* case - [2020-TIOL-1688-HC-MAD-GST](#), the Madras High Court observed,

*Lord Atkin in his celebrated dissent in **Liversidge vs. Anderson (1942) AC 206**, proclaimed that laws speak the same language in war as in peace and that the words have only one meaning. I bow in reverential agreement. Likewise, laws speak the same language during normal as well as in pandemic times. But, contemporary imperatives demand that courts, whenever possible, ought to adopt that approach which will kickstart the economy.*

Salaried classes may not be bearing the brunt. The position of the farmer, manufacturer and the trader is different. This Court is mindful of the pain and suffering experienced by them.

The respondents (Revenue)

have made a cool statement in their para wise comments that no allegation has been made against the petitioner on the matter under investigation merely by issuing orders of seizure and prohibition and that the matter would be decided by proper officer under CGST Act only after completion of the investigation of the case.

The respondents may not be in a hurry. They can afford to wait. Officials who get their salaries in the first week of every month may not be conscious of the cost of delays in such cases.

Adjudication proceedings may go on for months.Â

NACIN should include in its curriculum a compulsory attachment to an assessee/importer. The probationers should work in a firm of an importer/GST assessee for six months and do all the department related work there, including filing of returns, without blaming GSTN. Then they will have some practical experience of how the tax laws work and they will also understand the difficulties of the assessee over whom they are going to exercise their powers. This experience at practically no cost would be far more useful than a foreign sojourn!

Arbitrary Adjudication Unabated

In *Ansari Construction* - [2020-TIOL-2107-HC-ALL-GST](#), the Allahabad High Court observed,

A perusal of the said show cause notice clearly highlights the fact that serious quasi adjudicatory functionaries are being discharged by persons who do not have a legally trained mind and are entrusted in discharging functions affecting huge revenues. The order dated 30.1.2020 passed by the Assistant Commissioner rejecting the application of the petitioner is wholly arbitrary and demonstrates the lack of legally trained mind as there appears to be no effort to verify the correctness of the assertions made by the petitioner at the end of the Department.

I am sorry to record that the appellate authority has also committed the same manifest arbitrariness in deciding the appeal, the recording of the reason that facts cannot be verified at the appellate level is wholly arbitrary and militates against the whole purpose of statutory appeal under an enactment.

The Court cannot overlook the mutually contradictory stands taken by the Department before the Appellate Authority on one hand and the instructions given to this Court.

The callous attitude of the Department has resulted in the assessee being harassed by approaching one forum after the other and wasting his considerable financial resources as well as time.

In view of the specific findings recorded above to the effect that the petitioner was unnecessarily harassed, the writ petition is allowed with a cost of Rs. 10,000/- to be paid to the petitioner within 30 days by the respondent no. 2 from his own salary .

What will happen now? Will the taxpayer be bold enough to collect that cost from the salary of the exalted adjudicating authority. Will the Government take the matter to the Supreme Court? In any case, the officers will get their salary every month and the cost of litigation is borne by the State - only the taxpayer will have to find his own means. But why do these officers work so hard to tarnish the image of the government?

How to serve an order? Paste it on a truck!

In ***Ranchi Carrying Corporation*** - [2020-TIOL-2105-HC-ALL-GST](#), the Allahabad High Court observed,

The Standing Counsel states that the order dated 6.1.2020 was got served on the driver of the truck in question and secondly the order MOV-06 and MOV-07 was also served on the driver of the truck and with regard to the order dated 23.1.2020, MOV- 09, the same was neither served on the driver nor on the owner and was served through a fixation on the truck in question. Counsel for the petitioner argues that Section 169 of the GST Act provides for the manner of service of notice in certain circumstances, the same is quoted hereinbelow:-

Xxx

XXXXX

A perusal of the provisions of Section 169 makes it clear that a manner is specifically provided for service of notices. It is well settled that whenever a manner is prescribed, the thing should be done in that manner alone.

In respect of the order passed by the Appellate Authority dated 5.8.2020, the counsel for the petitioner submits that at the time of the filing of the appeal, the petitioner had submitted the requisite documents justifying his stand, however, the Appellate Authority held that as no reply was filed to the notices sent, the grounds taken in the appeal appear to be afterthought and thus the appeal was also dismissed.

A perusal of the impugned order shows that at no point of time, was the petitioner granted an opportunity of submitting his reply and the grounds taken by the petitioner before the Appellate Authority were not considered recording them to be an afterthought. Thus, on a plain reading, a failure of natural justice has been occasioned to the petitioner.

Accordingly, the order dated 5.8.2020 and the order dated 23.1.2020 are set aside with a liberty to the respondents to conclude proceedings against the petitioner, in accordance with law.

Do they believe that laws are made only for the taxpayers and not tax collectors? After all these years of tax collection, should they still be taught how to serve a notice? Is it ignorance or impertinence?

Interest for Sourav Ganguly

In an order delivered just day before yesterday, the CESTAT - [2020-TIOL-1687-CESTAT-KOL](#) observed,

As the appeal filed by the appellant is being allowed and the demand confirmed by the Commissioner is being set aside, there is no reason why the appellant should not be granted interest on the amount of (Rs. 1,51,66,500 and 50,00,000) deposited with the Government from the date of deposit of the amount upto the date of transfer of the said amount to the Registrar General of the High Court.

Thus, for all the reasons above, the impugned order dated November 12, 2012 passed by the Commissioner is set aside and the appeal is allowed. The appellant shall also be entitled to interest on the amount of Rs. 1,51,66,500/- and Rs. 50,00,000/- from the date of deposit of the amount with the Government upto the date the amount was transferred to the Registrar General of the Calcutta High Court at the rate of ten percent per annum.

This amount shall be paid to the appellant within a period of one month from the date of this order, failing which the appellant would be entitled to get interest at the same rate from the date of this order upto the date of payment of the amount.

This was in the case of cricketer Sourav Ganguly, where the Government seems to have with much efforts hit a self-wicket and Ganguly got an extra six. Howzzat!

Long ago, Nani Palkhivala said,

The health of our economy will not improve until we inject the 'S' factor into our fiscal laws, and make them Sane, Simple and Stable.

Until next week