

Justice by weight

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HERE

is a case which was won by an assessee based on the weight of the envelope in which the Show Cause Notice was sent. A petitioner who was imposed with a penalty of Rs. 3.5 crores pleaded before the High Court that the **relied on** documents were not furnished to him and since this is a grave violation of the principles of natural justice, he is entitled to maintain the writ petition. The Department's Counsel based on the counter affidavit contended that the relied upon documents were very much served on the petitioner along with show cause notice.

Therefore, the issue before the High Court boils down to this:-

Whether the relied on documents were served on the petitioner or not?

The petitioner was served with the show cause notice dated 25.02.2020. The said show cause notice contains an annexure which refers to as many as 24 documents. The petitioner after receiving show cause notice sent a reply dated 10.06.2020. The final paragraph of the reply requested the department to furnish copies of the entire documents relied in the show cause notice.

The stand of the Department in the counter affidavit is that all the documents that were relied upon while issuing show cause notice were provided. The Standing counsel took the position that the relied on documents were enclosed along with the show cause notice.

The High Court noted,

in reply to the show cause notice, the specific prayer for supply of the documents was made. In the impugned order, though it is admitted that the reply was received in response to the show cause notice from the petitioner, this contention as regards the non-supply of the relied on documents was not dealt with or controverted. Nothing stopped the adjudicating authority from averring in the impugned order that the contention taken by the noticee/petitioner herein was false. He could have also furnished proof of having served the documents in question on the petitioner. Such an averment or finding is totally absent in the impugned order.

The High Court further noted,

The petitioner's counsel also drew my attention to yet another aspect. At page No.85 of the typed set of papers, the Speed Post cover in which the show cause notice was sent has been enclosed. It is seen therefrom that the said show cause notice was despatched on 26.02.2020. It is seen in the postal endorsement that the weight of the contents was 110 gms. and 50 Rupees stamp was affixed on the cover. The show cause notice runs to 36 pages. It is stated by the petitioner's counsel that the weight of the show cause notice alone would come to 110 gms. If all the 24 documents had been enclosed, the weight would have been much higher and that would have been reflected in the stamp value also.

The Court found this circumstance to be quite interesting and indicative of the truth of the version projected by the petitioner.

The Court came to the conclusion that the writ petitioner was not served with copies of the documents relied upon by the department^Â and so quashed the order impugned in this writ petition.

Even when the assessee asks for the copies of documents in reply to the Show Cause Notice, what was the problem in giving them? Perhaps the adjudicating authority and the officers assisting him in preparing the Order-In-Original (nothing original about it) had not read the reply and perhaps the order was made much before getting the reply. Is it an issue for which we should waste the time of a High Court? And who pays for all this unproductive taxation? - [2021-TIOL-430-HC-MAD-CUS](#)

What happens to seized/detained vehicles?

Four Ambassador cars, One Maruti van, one jeep and four two-wheelers were **found** lying at the premises of GST & Central Excise, Chennai for many years.

Who found them?

Obviously, the Departmental officers. It didn't require much intelligence, summons, statements, show cause notices. These vehicles were literally right under the noses of the most brilliant investigators. Why didn't they bother about these vehicles all these years? Somebody did now and the Joint Commissioner (Preventive/Vehicles) of the Commissionerate had issued a circular recently that ***any claim on these vehicles are welcome with valid documents. If no response is received within 7 days from the date of receipt of this communication, above vehicles will be disposed off, on as is where is basis, in accordance with rules.***

It could be possible that these vehicles relate to some pending cases or the vehicles were abandoned. In many of the departmental offices, you can find this kind of unaccounted vehicles crying for attention.

Just in 2019, the CBIC issued a "[Disposal Manual](#)"

prescribing the procedure for disposing of seized goods, based on the provisions of the Customs Act, 1962; the CGST [Act, 2017](#); the IGST [Act, 2017](#); the Central Excise Act, 1944 and the Allied Acts. The CBIC observed:

- Seized conveyance are, in many cases, not being disposed of, pending completion of adjudication proceedings, Court cases, etc., for a long time, leading to deterioration **without any benefit to anyone**.
Continued storage of such conveyances may also result in considerable expenditure on garaging facilities and maintenance charges.
- Utmost care should be taken to ensure that conveyances are sold at the earliest and at the best available market price, after giving wide publicity, so as to avoid any loss to the owner in the event of the adjudication order being set aside on appeal or revision, and to avoid any possible dispute with the owner regarding the adequacy of the price at which the conveyance or vessel was sold.
- The seized/ confiscated conveyance should be properly looked after during storage. Whenever there is a delay in the disposal of vehicles, vehicles should be jacked and wherever garage facilities are not available, temporary sheds should be erected for their proper storage.
- For the proper upkeep and maintenance of seized/ confiscated vehicles/ vessels, the Head of the Department has been delegated powers for incurring expenditure upto Rs. 2,000/- per two-wheeler, Rs. 5,000/- per four-wheeler, Rs. 10,000/- per six-wheeler and Rs. 50,000/- per vessel per annum.
- The conveyances which have been finally confiscated and have become Government property, can be used for Government purposes in any exigency. However, the use of the seized conveyances should, be kept to the minimum and these should only be run from time-to-time to keep them in proper working condition and prevent their deterioration. The Heads of the Department should personally ensure that seized conveyances, etc., are not run unnecessarily.

There was a Commissioner who would ask his preventive staff to detain/seize some foreign cars on the roads, so that he could drive them for a few days!

Until next week