

CBIC - Largest Litigant

JULY 07, 2021

By Vijay Kumar

IN a recent judgement - [2021-TIOL-1445-HC-DEL-MISC](#), the Delhi High Court observed,

As per **Legal Information Management & Briefing System**

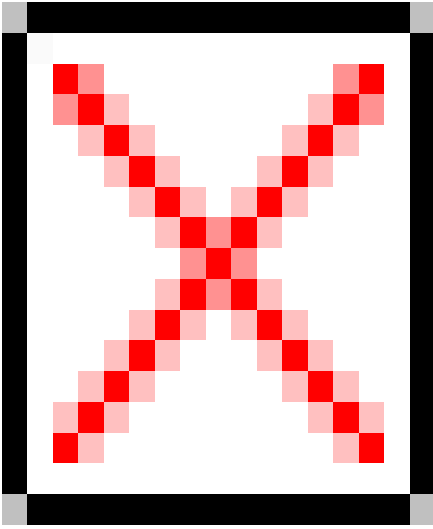
(LIMBS) which is a web-based portal developed by Department of Legal Affairs, Ministry of Law & Justice for monitoring and handling of various Court cases of Government Departments and Ministries 4,79,236 cases of Government, 2055 cases for compliance and 975 cases of contempt were pending as on June 08, 2021. Finance Ministry has highest number of 1,17,808 cases, whereas Railways has 2nd highest pendency with 99,030 cases.

That was on June 08 2021. The latest tally as on 06 July 2021 in the LIMBS website is:

Pendency	4,85,124
Pending Compliance	25,968
Contempt Cases	2,064

Finance Ministry has highest number of 1,21,564 cases, and Railways has 2nd highest pendency with 99,597 cases.

In the Finance Ministry, the CBIC has 1,09,746 cases that is 90.27% of all the cases in the Ministry. The contribution of CBDT is very poor with only 15,952 cases. But the figures in the site do not add up. Well, that's another litigation. Nearly a quarter of the entire government litigation is contributed by CBIC.



Before proceeding further, some observations of the Delhi High Court are worth absorbing.

- In all these cases, the Government raised false claims/ defenses before this Court which is a matter of grave concern. All these cases shocked the conscience of this Court. It appears that the false claims are raised with impunity because there is no accountability of any Government officer for raising the false claims and Courts seldom take any action against the person concerned for raising false claims/ defences.

- This Court is of the *prima facie* view that whenever a false claim is raised by the Government, it causes immense injustice to the litigant seeking justice; it also puts unnecessary burden on the Court and the Government also suffers but the concerned officer who has raised the false claim, does not suffer any action. If the facts given by the officers are found to be false/incorrect by the Court, the Government shall consider taking action and the copy of the judgment be kept in the ACR file of the officer. This will ensure that the officer is

held accountable for the actions taken by him in the Court case.

- This Court should take judicial notice of the fact that Government of India, State Governments and Public Sector Undertakings are involved in more than 50% of the litigations pending in the Courts and are the biggest litigants. Experience shows that indifference of the Governments has been compelling the citizens in search of reliefs and thus, the Governments / Public Sector Undertakings enjoy the distinction of being the largest litigants in the Courts involving a big draw on public exchequer.

- Mr. Kirtiman Singh, learned Central Government Standing Counsel submits that there is no litigation policy of the Government at present. It is further submitted that the National Litigation Policy, 2010 was never implemented.

Just a week ago, in an appeal filed by the Principal Commissioner, Central Excise - [2021-TIOL-188-SC-CX](#), the Supreme Court observed,

The impugned order was passed by the CESTAT on 20-05-2019 and the proposal is stated to have been sent by the applicant to the Ministry of Finance on 06-01-2020, after six months.

The plea raised by the learned counsel for the petitioner is that similar matters are pending in Civil Appeal No. 6550/2015 and other connected matters.

Merely because similar matters are pending is not a ground to grant leave and take the matter when the authorities have been negligent in filing the appeal. We have repeatedly emphasized that unless the case is brought within the parameters of *Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.* - (2012) 3 SCC 563 $\hat{=}$ [2012-TIOL-123-SC-LMT](#), we would not be inclined to condone the delay and have in fact dismissed the special leave petitions with cost categorizing them as "**certificate cases**" only brought before the Court to complete a formality and save the skin of the officers concerned.

The learned counsel for the petitioner submits that more than Rs. 5 Crores is at stake. If that be, the authorities should recover it from the officer concerned.

Before we proceed with the application further, we would like to know the steps which have been taken by the appellant against the officers concerned!

If it has not been done, then an inquiry must be held, responsibility fixed and the action taken against the officers be placed before us.

The learned Additional Solicitor General requests for three months' time to complete the process.

We may only note that it has taken a year's delay apart from the 90 days period to file the special leave petition and now three months further are required to complete action against the officers concerned. So much for the anxiety about the revenue!

List on 03-09-2021.

Central Board for Indirect Taxes Litigation - CBIL

Maybe we should establish a new Board called CBIL - Central Board for Indirect Taxes Litigation, to handle all this humungous litigation establishment. I will give below three sample cases that show the seriousness of litigation in the tax department.

Right up to the Supreme Court for 68000 rupees:

On 03.12.2015, on an appeal from the Commissioner of Central Excise, Ahmedabad-II against a CESTAT Order, the Gujarat High Court passed a brief order that as per Board circular dated 17.08.2011, appeal involving tax amount of less than 10 lakhs cannot be filed and the tax here was Rs. 68,630/- and so the appeal was dismissed.

Obviously, the Commissioner was not happy with this order of the High Court. So, he filed a review petition against the order in the same High Court. The High Court in its order dated 11.03.2016, observed,

1. The delay condonation application is filed by the Revenue. In filing review petition, there is a delay of 6 days. We would have readily condoned the same after hearing the other side. However, we also perused the review petition and the ground, on which, the Revenue seeks recall of our order dated 03.12.2015 in Tax Appeal No. 928 of 2015. Such tax appeal was disposed of on the ground of low tax effect recording that the disputed amount is only Rs. 68,630 /-. The CBEC circular dated 17.08.2011 would not permit filing of appeals before the High Court involving tax effect of less than Rs. 10 lacs.

2. In the result, delay condonation application and the review petition both are dismissed.

A double dismissal is not what the Revenue can easily accept. So, they took the matter in appeal to the Supreme Court, as usual with an application for condonation of delay. The Supreme Court heard the matter and ordered:

As the tax effect is approximately Rs. 68,000/-, we are not inclined to interfere in the impugned order. The special leave petition stands dismissed accordingly.

For Rs. 68,000, they took the matter to the High Court twice and even after the High Court emphatically dismissed their appeal and review petition, they with singular determination took the matter to the Supreme Court where the Additional Solicitor General of India along with three other lawyers represented the mighty Revenue Department. How much money they must have spent on this case for the lofty goal of recovering a paltry sum of Rs. 68,000 and that too after the Board has clearly told them that they cannot go to the High Court if the amount involved is less than 15 lakh rupees and to the Supreme Court if the amount is less than 25 lakh rupees. If they did not understand the Board or has no respect for it, the High Court told them twice that they should not have filed the appeal and yet they took the matter to the Supreme Court. Ironically, the Board did not follow its own instructions and allowed the SLP to be filed in the Supreme Court. Perhaps they don't realize that it was the taxpayers' toil that they were squandering with impunity.

Appeal to CESTAT relating to Refund - No Fee - litigation is legacy:

This is a trivial issue, but has been a matter of litigation for many years. The Larger Bench of the CESTAT in -

[2013-TIOL-1103-CESTAT-DEL-LB](#)

, emphatically held that in Customs, Excise and Service Tax appeals, no fee is payable if the appeals pertain to refunds.

The matter should have ended there, but NO; a litigation loving Government took the matter in appeal to the High Court. The Central Excise Commissioner was aggrieved with the order of the Larger Bench and appealed to the High Court with the usual condonation of delay application.

The High Court found no substantial question of law and therefore dismissed the Commissioner's appeal thereby upholding the order of the Larger Bench of the Tribunal.

Was the Commissioner aggrieved? The fee collected by the CESTAT does not come to the CBEC or the Commissioner. In what way is the Commissioner concerned with the fee collected or not collected by the CESTAT? Has the Commissioner taken it upon himself to protect the Revenue of the Central Government in all the Departments of the Government? Is the Commissioner Government of India?

In this case, just imagine the amount of time, money and paper the Department has wasted in protecting the fee to be paid to the Tribunal which the Tribunal itself held was not required!

In this case before the High Court, the assessee was not represented. The maximum fee payable for an appeal before the Tribunal is Rs. 10,000/-. He would rather lose the case in the High Court than spend more than the fee payable, if at all, to defend the case.

The Commissioner has no such problems - for him every adverse order should be escalated to the next higher level - after all he is spending our money, not his. Please see - [2014-TIOL-525-HC-ALL-ST](#)

Praying for stay of order in favour of Revenue

In [2008-TIOL-152-CESTAT-MAD](#)

, the Revenue prayed that the operation of the Order-in-Appeal No.14/2006 dated 23.06.2006 of the Commissioner (Appeals) and the Order-in-Original No.12/2006 dated 30.03.2006 upheld thereunder may please be stayed till such time the main appeal is disposed of. The same relief

has been prayed for in the accompanying affidavit also.

The Tribunal observed,

After examining the records, we note that the Order-in-Original is totally in favour of the Revenue and that a part of the Order-in-Appeal is also in their favour. Upon being queried on this aspect, JDR realizes the blunder made by the Asst. Commissioner (Review), Customs House, Tuticorin and proposes to file fresh application. In the circumstances, the present application is dismissed .

Litigation continuesâ€¦.

Until Next Week.