Of Sense & Servers

AUGUST 04, 2021

By Vijay Kumar

A hearing was fixed on 11th June, 2021. The assessee on 31st May 2021 around 02:00 p.m. asked for an adjournment and extension of time to submit his reply citing the reason that the Resolution Professional was unable to access the records of the Petitioner-Company due to various lockdown restrictions imposed by the State.

On the same day i.e., 31st May 2021 around 04:00 p.m., the Department had granted an adjournment, by an email, till 14th June 2021. However, on 2nd June 2021 the assessee received an Assessment Order dated 1 st June 2021.

Remember, the adjournment sought had been granted and the matter had been adjourned for 14th June 2021. And, the Adjudicating Authority passed the Assessment order on 1st June 2021.

When the case came up for hearing before the High Court on 11th June 2021, the Counsel for Revenue vehemently argued that the alleged email had not originated from the office of the respondent and therefore prayed that the writ petition be dismissed. In subsequent hearing also it was reiterated that the mail was not sent by the respondent and that the assessee had committed the following offences under the IPC:

(i) ***S. 191 -Giving False Evidence***

(ii) ***S. 192 -Fabricating False Evidence***

(iii) ***S. 196-Using evidence known to be false***

Even after a couple of hearings, the Revenue stuck to its stand that the email in question was not sent by the respondent.

The High Court observed, - **2021-TIOL-1615-HC-DEL-IT**

> Keeping in view the aforesaid controversy, this Court is of the view that the matter is serious in nature as one of the parties has either forged the document in question and/or is not telling a complete truth. The respondent's (DCIT, CC-06) offer to now ascertain source of the email from the Directorate of Systems, who is having control over all income tax systems is too late in the day. Any reasonable official would have conducted the said enquiry before filing his counter affidavit and before making a serious allegation of perjury and forgery,
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> even if prima facie, against the deponent of the writ petition. Consequently, in the opinion of this Court, the said offer of DCIT, CC-06 lacks bonafides.
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> Moreover, as the allegation pertains to a sensitive server belonging to the Ministry of Finance/Department of Income Tax and involves a senior official of the Income Tax Department holding a sensitive post, this Court directs the Central agency, namely Central Bureau of Investigation (CBI) to enquire as to whether the email dated 31 st May, 2021 had been issued to the petitioner or not, and if so, by whom. The CBI shall file its enquiry report with this Court within four weeks.

This Court clarified that in the event it is found that the email dated 31st May, 2021 had been forged and fabricated by the petitioner, it would initiate action under Sections 191/192/196 of the IPC. However, if it is found that the email dated 31st May, 2021 had been issued by the Income Tax of India's e-filing portal, then it would not hesitate to take action against the Deponent of the counter affidavit for stating half-truths.

The Court added that it
is constitutionally bound to ensure that citizens of this country who invoke the extra ordinary jurisdiction of this Court are not intimidated by allegations of forgery and prosecution and that too by officials who do not exercise the duty of care by enquiring as to whether the email had been issued by another wing or Department of Revenue.

The case was posted for further hearing on 6th September 2021.

In the meanwhile, the Revenue Department filed a miscellaneous application seeking modification/recall of the above-mentioned order whereby the Central Bureau of Investigation was directed to enquire as to whether the email dated 31st May, 2021 had been issued to the petitioner or not by the respondent and/or Tax Department.

The ASG, on instructions from the respondent-Revenue, admits that the aforesaid email is a genuine one from the Department. He, however, states that it was triggered due to a systems error. He emphasises that in the present case, the assessee had made an application for adjournment on 31st May, 2021.

The ASG states that the respondent/applicant was under a bona fide belief that any communication issued in response to petitioner's request for adjournment would be issued with respondent's express consent alone.

The deponent of the counter-affidavit, who is personally present in Court by way of online video link, acknowledges that the allegation of perjury, without verification of facts, should not have been made and seeks permission to unconditionally withdraw the same. He expresses his regrets for the same and undertakes to be more careful in the future. **Â**

Keeping in view the aforesaid, the unconditional apology offered by the respondent is accepted by the Court and the allegations against the petitioner that he had prima facie committed penal offences under Section 191, 192 and 196 of the IPC are deleted.

Consequently, the order dated 16th July, 2021 directing the Central Bureau of Investigation to enquire as to whether the email dated 31st May, 2021 had been issued to the petitioner by the respondent-Tax Department is recalled. - **2021-TIOL-1616-HC-DEL-IT**

This was an Income Tax case and the culprit was the system, the portal which was recently launched at a huge cost replacing an absolutely fine portal, where taxpayers had no complaint.

In this case,

1. The adjournment was given by email from the official website of the Income Tax Department.

2. The Adjudicating Authority was not aware of this and proceeded to adjudicate the case.

3. The party had to go to the High Court for justice.

4. In the High Court, the department alleged perjury and forgery on the part of the assessee without even verifying whether the e-mail from the department was genuine.

5. The High Court ordered CBI enquiry.

6. Department's machinery got activated and they found out that it was the computer that messed up.

7. The assessee had to go through all the misery, just because the human side of the system did not know what the AI (Artificial Intelligence) of the system was doing.

Around the same time an interesting ST case came to light. **2021-TIOL-1563-HC-AHM-ST**

Superintendent of Central Tax Audit, visited the office of the petitioners and handed over a copy of the letter dated 12.4.2019 at 13.55 hours, calling upon the petitioners to remain present on the same day at 14 (16) hours before the respondent No. 2. It was stated in the said letter/notice that if the petitioners did not appear for such pre-show-cause notice consultation, it would be presumed that the petitioners did not wish to be consulted before the issuance of show-cause notice. The petitioners, therefore, addressed a letter to the authority requesting for another date for pre-show-cause notice consultation as it was not possible to effectively make any representation on such a short notice. However, the respondent No. 2 issued the show-cause notice on the same day demanding service tax to the tune of Rs.1,13,47,313/- along with interest and penalty.

The short question, for consideration before the High Court was, whether the pre-show-cause notice consultation dated 12.4.2019 calling upon the petitioners at 13.55 hours to remain present before the respondent No. 2 at 16.00 hours on the same day, could be said to be an illusory or an eye-wash notice only with a view to show the compliance of the Circular dated 10.3.2017 issued by the Board?

At the outset, the High Court noted that as per the settled legal position, the Circulars issued by the Board are binding to and have to be adhered to by the respondent authorities.

The High Court observed,

> it is clear that the Board had made issuance of pre-show-cause notice consultation mandatory for the Principal Commissioner/Commissioner prior to the issuance of show-cause notice in cases involving the demands of duty above Rs.50 lac and that such consultation was to be done by the adjudicating authority with the assessee as an important step towards the trade facilitation and for promoting necessary compliance, as also to reduce the necessity of issuing show-cause notice. Despite such mandatory requirement of the pre-show-cause notice consultation at the instance of the respondent authority, in utter disregard of the said mandate, and without considering the laudable object behind issuing such circular, the respondents issued the impugned pre-show-cause notice consultation dated 12.4.2019 delivering the same to the petitioner assessee at 13.55 hours and calling upon them to remain present before the respondent No. 2 at 16.00 hours. The petitioners having requested for reasonable time for the effective consultation, without considering the said request, the respondent No. 2 issued the show-cause notice on the same day i.e. on 12.4.2019. Such a high-handed action on the part of the respondent No. 2, not only deserves to be deprecated but to be seriously viewed.

Before parting, the Court was constrained to observe that such an action on the part of the respondent No. 2 in issuing the illusory pre-show-cause notice for consultation only two hours before the hearing is not only arbitrary, but is in utter disregard and in contravention of the very object and purpose of the circular which mandated such consultation with the assessee as an important step towards trade facilitation, for promoting voluntary compliance and for reducing necessity of issuing show-cause notice. The action of the respondent authority in not taking timely action after the audit report and in issuing the impugned notice in contravention of the mandatory instructions given by the Board, therefore, is required to be seriously viewed.

The Court ordered,

> The present petition, therefore, is allowed, subject to the payment of cost of Rs.20,000/- to be deposited by the respondent in the Court within eight weeks from today.

The High Court order states that ***the petition is allowed subject to the payment of cost of Rs.20,000/- to be deposited by the respondent***. What will happen if the respondent revenue does not deposit the cost?

We hear too many jokes about departmental officers being facilitators, ease of doing business, digital empowermentâ€¦â€¦..

And still hear incidents of the type noted above.

If the government becomes the lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

Late Fee on Income Tax Return:

By Circular No. **9 of 2021**, the CBDT extended the due date of furnishing of Return of Income for the Assessment Year 2021-22, which is 31st July 2021 under sub-

section (1) of section 139 of the Act, to 30th September 2021.

But the revised, modified, improved, advanced, enhanced, renovated, ruined e-filing portal of the Income Tax Department seems to be unaware of this extension of due date and it is reported that the portal charges late fee for the returns filed after 31st July 2021. Be assured this is only a minor mistake in the portal which will eventually be corrected.

Until Next Week.