

DRI - ends will justify means

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ONCE

we invited the DG, DRI for a seminar. He was ready to come, but told us that his boss, the Member, Customs of CBEC should permit him. I was really surprised that the mighty chief of the mighty DRI needs to take permission from his boss to attend a seminar. The very feeling that he had a boss was a little unnerving. To avoid leaving you in suspense, let me complete the story. I called up the Member, Customs and requested him to attend the meeting. He was very apologetic that he couldn't make it and then I requested him,

"if you cannot come, please send your DG, DRI and you can tell me your decision tomorrow." The next day he called me up and said, ***"I cannot come, but I will send my DG, DRI." We all lived happily thereafter. In the meeting during lunch, the DG asked me, "who was that elegant lady you were talking to?"*** I said,

"this, is your problem, you are the best intelligence agency in the country, but you don't know the counsel defending your case in the Tribunal. She is your Departmental Representative in the CESTAT having a tough time defending all your faulty Show Cause Notices."

So, DRI, the super sleuth is a part of the department managed by the CBIC and the DRI chief is a subordinate officer reporting to the Member (Customs) of the Board.

DRI is considered to be **the**

premier investigating agency and it is believed that the DRI sleuths are the best in the world. They have over the years created an awe inspiring image for themselves. The ***taller than you, better than you***

impression they create is really impressive. Even when the officers go back to their parent departments after a stint in DRI, they carry the halo and would like everyone to believe that they are a cut above the rest.

The huge seizures, the good rewards and accolade the officers earn and the might of an investigator - have all made the agency look superhuman and every officer there is a big 007. The agency was not meant for booking cases as seems to be the only goal now.

Why was DRI set up?

A need was felt to have a centralized agency in India to deal with cases of violations of Customs laws, having ramifications beyond the geographical jurisdiction of localized field formations and for collection, co-ordination and correlation of intelligence with respect to violation of these laws and also to furnish specialized know-how. A beginning was made in 1953, when a nucleus cell, christened CRIB (Central Revenue Intelligence Bureau), charged with the responsibility of dealing with all matters connected with anti-smuggling and anti-corruption in the Customs and Central Excise organizations all over India was constituted. It was a small unit consisting of an Assistant Collector and two Superintendents within the Directorate of Inspection (Customs and Central Excise), New Delhi but working directly under the Central Board of Revenue.

By its very composition, a cell like CRIB could have a very limited scope for wider activities. But various studies undertaken in this small Cell itself revealed that the menace of smuggling had established deep roots in India, which, in turn, spelt out the dire need for establishing a well-organized Central anti-smuggling Organization for planning and directing the anti-smuggling efforts of the various Custom Houses and Central Excise Collectorates throughout India in a scientific manner for successfully meeting the menace of organized smuggling.

The then Finance Secretary noted:

The essential features of the proposed organization are: -

- It is designed to collect and collate information and to strike swiftly; It is officer-intensive and the ministerial staff has been kept at a minimum;
- Although small, it is a high-powered organization so that it can issue instructions to Collectors and can command the confidence and respect of the other State and Central organizations with which it has necessarily to deal in order to become effective;
- It will consist of selected officers, that is, those who by temperament and experience, are equipped to do this specialized kind of work;
- It will have no routine job of its own in the sense that it is required to collect a certain amount of revenue. It will have complete liberty **to act on 'hunches' and only the ends will justify the means it adopts."**

The Directorate of Revenue Intelligence was thus constituted on 4th December 1957, for dealing exclusively with the work relating to the collection and study of information on smuggling activities and the deployment of all anti-smuggling resources at the all India level, besides arranging training for the intelligence and Investigation officers of the Custom Houses and Central Excise Collectorates deployed on similar work.

But what are the powers of DRI? Can it issue a Show Cause Notice?

Recently, to be precise, just a week ago on 31 st August 2021, the Supreme Court in a revenue appeal observed - [2021-TIOL-233-SC-CUS-LB](#),

In view of decision dated 09.03.2021 of three judge Bench of this Court in Civil Appeal No. 1827 of 2018 titled as "**M/s. Canon India Private Ltd. vs. Commissioner of Customs**" - [2021-TIOL-123-SC-CUS-LB](#), these appeals must fail as the show cause notice(s) in the present cases was also issued by Additional Director General (ADG), Directorate of Revenue Intelligence (DRI), who is not a proper officer within the meaning of Section 28(4) read with Section 2(34) of the Customs Act, 1962. Hence, these appeals stand dismissed.

This is a long story; please bear with me.

It is the practice for DRI to book cases left right and centre, prepare bulky Show Cause Notices running into hundreds of pages and then make the Jurisdictional Customs or Central Excise officers to adjudicate them. It is an unwritten rule in the field that a Show Cause Notice issued by DRI has to be invariably confirmed.

However, all this changed ten years ago when the Supreme Court in the case of *Sayed Ali* - [2011-TIOL-20-SC-CUS](#) held,

"it is only the officers of customs, who are assigned the functions of assessment, which of course, would include re-assessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Act".

Lo and behold! All the Show Cause Notices issued by DRI, suddenly became illegal.

Government does not tolerate such decisions of the Supreme Court and so it got Parliament to retrospectively confer the power on DRI to issue Show Cause Notices. The Parliament amended Section 28 of the Customs Act by inserting a new clause 11 with effect from 16.09.2011, which reads as:

"(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."

Covering this event in [DDT 1701 27.09.2011](#), I wrote,

"No one should ever dream of challenging this in the High Courts or Supreme Court, for retrospective amendment of law to undo Court Orders, has judicial approval in India."

I was proved wrong. 20 petitioners challenged this and got relief from the Delhi High Court on 3rd May 2016, where the Show Cause Notices issued by DRI were quashed.

The High Court observed in what is now famously known as the 'Mangali Impex' case [2016-TIOL-877-HC-DEL-CUS](#) ;

1. The mere fact that Section 28(11) has been given retrospective effect does not solve the essential problem pointed out by the Supreme Court in the **Sayed Ali** case, which is the absence of the assigning of functions to 'proper officers' under Section 2(34) of the Act.

2. Section 28(11) confers validity only on 'the proper officer'.

In [DDT 2838 04 05 2016](#), I wrote;

This is not positively the end of litigation in this matter. The Government is sure to take the matter to the Supreme Court and/or try another hand at retrospective litigation. Undoing a Supreme Court order requires deft drafting skills, which bureaucrats are not fortunately endowed with.

As expected, the Department took the matter in SLP to the Supreme Court. In one of the SLPs, the Supreme Court on 7.10.2016, stayed the Delhi High Court Order. The Supreme Court ordered,

Delay condoned. Leave granted. There shall be a stay of operation of the impugned judgment and order passed by the High Court of Delhi . - [2016-TIOL-173-SC-CUS](#)

So, the Delhi High Court order is stayed. Does it mean that Show Cause Notices issued by DRI are valid? No. Why?

In **CANON INDIA PVT LTD Vs COMMISSIONER OF CUSTOMS - [2021-TIOL-123-SC-CUS-LB](#)**

, on 9th March 2021, the Supreme Court observed,

20. Section 6 is the only Section which provides for entrustment of functions of Customs officer on other officers of the Central or the State Government or local authority, it reads as follows:-

"6. Entrustment of functions of Board and customs officers on certain other officers - The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act."

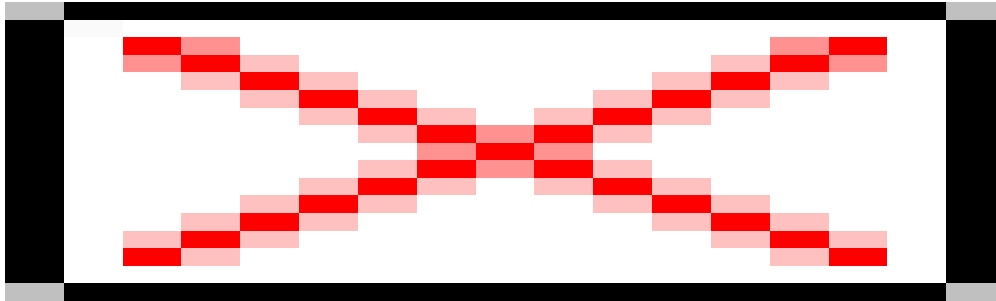
21. If it was intended that officers of the Directorate of Revenue Intelligence who are officers of Central Government should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Act.

Therefore, the Supreme Court held that

the entire proceeding in the present case initiated by the Additional Director General of the DRI by issuing show cause notices in all the matters before us are invalid without any authority of law and liable to be set-aside and the ensuing demands are also set aside.

Now panic buttons are pressed. Fire-fighting is going on. Even while **Mangali Impex** is pending before the Supreme Court, the Apex Court has brought in the new idea of Section 6. Many in the department feel that the Supreme Court is wrong in interpreting Section 6 as they feel it is only for conferring power on other officers, not home officers. DRI officers are born Customs officers and there is no need to specially confer upon them powers under Customs Act. Is it so?

In June 1963, the Government issued a notification



So, in 1963, they were aware that a notification under Section 6 had to be issued for DRI, but over the years somebody forgot to issue the notifications and resultantly, all the show cause notices issued by the DRI are under doubtful hibernation.

Recently, the Supreme Court Chief Justice is reported to have said,

"Some bureaucrats might be there who will advise the government to make the legislation to nullify the judgement. They will say 'pass another legislation if they pass a judgement'. This is how bureaucracy functions, we understand."

Until Next Week.