

Gross abuse of process of law

NOVEMBER 17, 2021

By Vijay Kumar

**ON**

January 11 2018, the Uttarakhand High Court passed an order against Hero Motocorp, relating to National Calamity Contingent Duty (NCCD), Cenvat Credit, Penalty etc., - [2018-TIOL-142-HC-UKHAND-CX](#)

On appeal, the Supreme Court on April 30, 2019, allowed the appeal and ordered that the amount paid to the Department would be refunded back within a maximum period of two months from the receipt of copy of the order. - [2019-TIOL-328-SC-CX](#)

Naturally, Revenue is aggrieved but what can they do if they are aggrieved by an order of the Supreme Court? Well, there is a possibility of a review petition which they filed with a delay of 404 days. The Supreme Court observed on August 25, 2020. (Diary No.13881 of 2020):

***There is delay of 404 days in filing the review petitions for which no sufficient cause has been shown by learned counsel for the petitioner.***

***Therefore, the review petitions are dismissed both on the ground of delay as well as on merits.***

Revenue continues to be aggrieved. What do they do now after the review petition was dismissed? There is still hope; especially if you are the government and hiring lawyers is not at all a constraint for you.

On 10.02.2021 they filed an Application for Modification with a prayer to modify the final judgment of the court dated 30.04.2019. See, even after the review petition was dismissed, they still thought they had an option of asking the Supreme Court to modify its order.

In the meantime, perhaps as a matter of abundant caution, they also issued a Show Cause Notice to Hero Motocorp on 01.07.2021. This time the aggrieved assessee filed an Application on 09.08.2021 for Direction with prayer to set aside the said show cause cum demand notice dated 01.07.2021.

The Supreme Court on 08-10-2021, ordered:

***The impugned show cause notice dated 01.07.2021 is ex facie contrary to the judgment of this Court predicated on a rationale that some applications had been filed seeking recall of that order even though the review petition has been dismissed on merits.***

The Supreme Court stayed the **show cause notice** and observed ,

***We have cautioned the learned ASG, in view of the stand aforesaid that the endeavour in terms of impugned show cause notice may amount to willful disobedience to make recovery contrary to the judgment of this Court in the same matter which would entail natural consequences.***

So, what the Supreme Court clearly stated was that:

1. **show cause notice dated 01.07.2021 is ex facie contrary to the judgment of the Court.** (The Court had ordered that the amount paid to the Department should be refunded, not that a demand should be made. And the Revenue had obviously acted **contrary to the judgment** of the highest Court in the Country.)

2. **The Review petition has been dismissed on merits.**

3. **The Show Cause Notice may amount to willful disobedience to make recovery contrary to the judgment of the Court which would entail natural consequences, like contempt.**

As listed, the case came up on 12.11.2021, when the Supreme Court noticed that:

**The impugned show cause notice has still not been withdrawn despite the caution extended on 08.10.2021.**

And so, the Court ordered:

**Let contempt notice issue to the officers concerned for willful disobedience of the orders of this Court.**

**Reply, if any be filed within two weeks.**

**The officer(s) to remain present in Court on the next date of hearing.**

**List on 26.11.2021.**

So, contempt notices are to be issued to the **officers concerned**. Please note that the notices are to the **officers concerned**, not the **concerned officers**.

And the officers are to be present in the Court on 26.11.2021.

Normally the Supreme Court does not like to summon officers before it. Please see [Summons at the drop of a hat](#)

. But what can the highest Court in the land do when officers of the Tax Department in the country go reckless in disobeying the orders of the Court?

By the way, to take the story to its logical end, what happened to the Modification Application filed by Revenue?

On 12.11.2021, the Supreme Court observed,

**We find this application post dismissal of Review Petition, a gross abuse of process of law.**

**Not only that the review Petition was dismissed on 25.08.2020 both on delay and merits. Despite that in ground 'M' in the application a false averment has been made that the review petition was only dismissed on limitation. That is a ground itself apart from anything else for dismissal of this application.**

**The applications are dismissed accordingly.**

The Supreme Court states that the Revenue has made a false averment in the application that the review petition was dismissed on limitation. This alone was enough for the court to dismiss the application. And this application is **a gross abuse of process of law** - by whom? The State!

Hello, what's happening? The Revenue Department which does not hesitate to hang a taxpayer for minor aberrations is filing a false affidavit in the SUPREME COURT.

In this case, they have tried every weapon to defeat a favourable order given to a taxpayer by the highest court in the country. They filed a

review petition after 400 days and then filed a modification petition with a false averment and in the meantime issued a Show Cause Notice.

What will they tell the Court on 26.11.2021? That may be sub-judice; let's wait.

But if this the way litigation is pursued, we may as well make the Commissioner the supreme power in all tax cases and at least save the Supreme Court from these frivolous, mischievous, purposeless litigation - **gross abuse of process of law.**

In a recent order in BUNDL TECHNOLOGIES PVT LTD vs Union of India - [2021-TIOL-2073-HC-KAR-GST](#), the Karnataka High Court observed,

**The fear of police powers are such that would shake a man irrespective of their position in society.Â**

The Court further observed,

***during all such investigation, it cannot be held that the Fundamental Rights including the right of a bona fide tax payer to be treated with appropriate dignity as enshrined under Article 21 of the Constitution of India would be kept in abeyance. We would not like to elaborate further but to leave it to the wisdom of the respondents as to the manner in which bona fide tax payers are to be treated.***

Thirty-one years ago, in Dabur India Limited and Another v. State of Uttar Pradesh and Others - [2002-TIOL-2781-SC-CX-LB](#), the Supreme Court observed,

***We would not like to hear from a litigant in this country that the Government is coercing citizens of this Country to make payment of duties which the litigant is contending not to be leviable. Government, of course, is entitled to enforce payment and for that purpose to take all legal steps but the Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take steps but not take extra legal steps or manoeuvre...."***

It is not an obligation but a bounden duty that the taxmen should treat the taxpayers with appropriate dignity, But then what about lawyers?

In an order dated 16.03.2021, a Commissioner (Appeals) held:

The objective of imposing a penalty of Rs.15000/- is only to impress upon the appellant that they ought to be more careful in future and do justice to their role and duties rather than take shelter behind technicalities and advocates who think they can defend the indefensible by giving their own skewed understanding of the law and misguiding appellants.

Can a Commissioner impose penalty to impress? Many must have been under the impression that a penalty can be imposed only if there is a contravention and the law provides for it. Anyway, the Commissioner has clarified the position.

But the lawyer took the matter to the High Court and got the remarks about advocates expunged. The High Court observed,

***The legal profession is of vital importance not only to the administration of justice but also for the rule of law & good governance; lawyers are to the civil society what soldiers are to the frontiers of a nation; lawyers profession is the only profession constitutionally recognized; Marcus Tullius Cicero centuries ago called this profession as the 'noble profession'; lawyers lend voice to the voiceless; they stand unfazed during social tumult; our Freedom Struggle was led by lawyers; our Constitution is the child of great legal brains; of course, others too have contributed a lot, cannot be denied; the great principles of governance and constitutional doctrines like the doctrine of Basic Structure are the contribution of tall lawyers; it is they who draw the chariot of law & justice; words fall short to extol the greatness of this profession.***

Yet the Commissioner thought that there are *advocates who think they can defend the indefensible by giving their own skewed understanding of the law and misleading appellants.*

**Until Next Week.**