Fraudulent Evasion

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By Vijay Kumar

In a recent Circular (**CIRCULAR NO 13/2022** -Customs, Dated: August 16, 2022), the CBIC clarified:

> ***it is clarified that arrest in respect of an offence, should be effected only in exceptional situations which may include:***
>
> ***(d) Cases involving fraudulent evasion***
> ***or attempt at evasion of duty involving Rs 2,00,00,000/- (Rupees Two Crore) or more;***

A senior officer of the department sent me the Circular and asked me what the meaning of ***fraudulent evasion*** is. Can there be an evasion without fraudulent intentions? Can evasion be accidental? Don't fraud and evasion travel together?

Anyway, this is not the latest brilliance of the Board. The Customs Act in section 135 states,

> Section 135.Â Evasion of duty or prohibitions. -
>
> (1) Without prejudice to any action that may be taken under this Act, if any person -
>
> (a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulentÂ evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods;

In fact, even the old Sea Customs Act, 1878 had a provision in Section 167 (81), which read as:

> If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon â€¦.

In ***State Of Maharashtra vs Umar Badshah Hassan Damudi (1974***), the Bombay High Court observed,

> ***What is fraudulent evasion is nowhere defined in theÂ Customs Act.Â The Customs ActÂ will only give an indication in a given case of a particular prohibition and whether it is contravened or violated. Mere contravention or violation of a certain prohibition may not be an offence unless the act is committed with the knowledge which constitutes the mens rea.***

'Oxford Reference' explains fraudulent evasion as:

> An offence under s 170 of the Customs and Excise Management Act 1979 which prohibits evasion of payment of duty on imported goods or evasion of a prohibition or restriction on the import/export of goods. Under s 170(1), it must be shown that the accused knowingly performed certain acts with intent to defraud Her Majesty or with intent to evade a relevant prohibition or restriction. In relation to knowingly harbouring goods, it is usually enough to show that goods which were subject to duty were found in the possession of the accused. Under s 170(2), the word ***'fraudulent' means dishonest conduct 'deliberately intended to evade the prohibition or restriction with respect to, or the duty chargeable on, goods as the case may be'*** : per Lord Lane CJ inÂ***Attorney General's Reference (No 1 of*** Â***1981***) [1982] QB 848. The offence includes more than merely entering the UK with goods concealed and with no intention of

declaring them; it extends to any offending conduct which was directed and intended to lead to the prohibited importation. Offences under s 170 are continuing offences because, by definition, the evasion of a prohibition or restriction often involves a continuing series of events and is rarely limited to the moment of importation itself; 'it includes anyone who acquires possession of goods unlawfully removed from a warehouse, or anyone who hides goods on which duty has not been paid, or anyone who carries goods the importation of which is forbidden': per Griffiths LJ inÂ***R v Neal*** Â 77 Cr App R 283

The DRI website mentions 'An information is any useful message received from the public or any person for that matter revealing fraudulent evasion of duty.

In 2012, the CBDT issued a white paper on ***black money*** in which it was stated,

The problem of tax evasion and generation of Black Money is not new. As far back as 1936, the Ayers Committee, while reviewing the income tax administration in India suggested large-scale amendments to secure the interests of the honest taxpayer and effectively deal with fraudulent evasion .

In the UK, there are lawyers advertising to assist fraudulent evaders. I could find a couple of samples:

TAX EVASION

Being charged with tax fraud potentially brings with it a risk of a very considerable sentence of several years and/or hefty fines. Tax fraud covers all criminal conduct which involves individuals or businesses paying too little tax or wrongly claiming tax repayments by acting dishonestly.Â It is investigated rigorously by HMRC or by the National Crime Agency (NCA).

If you are charged with tax fraud, it could be in relation to a number of offences: fraudulent evasion of income tax; fraudulent evasion of VAT; cheating the public revenue; providing false documents or information to HMRC; and fraudulent evasion of excise duty on imported goods or smuggled goods. If you are facing any of these charges, or a combination of them, you will need expert and forensic criminal law expertise and representation.Â

Defending such cases calls for a legal team with the ability to sift through vast amounts of financial information to put together the most compelling and effective defence to challenge and defeat the charges being made against you. This is our specialism, and the firm works with the very best forensic accountants and other forensic experts across the UK to this end.

Taking early action is the best way to approach a case and get the best possible outcome. Whatever your position - whether you have been charged or are about to charged with an offence - call us for an initial free and confidential consultation.

Another one:

COMMON TAX EVASION ACTIVITY TYPICALLY INCLUDES:

Deliberately being dishonest about tax reporting in order to pay less tax

Declaring less income than an organisation or person has actually earned

Declaring less profits or gains

Fraudulent evasion of VAT

WE AIM TO PROTECT YOU FROM CRIMINAL PROSECUTION

> We have a team of experienced and dedicated solicitors who provide an excellent legal service to clients across the UK. Our experience means we can represent you at every stage of the investigation process. By negotiating fiercely and providing expert representation, we can help you secure a beneficial outcome for your circumstances. If you want to learn more about how we can assist you with tax evasion, feel free to give us a call.

Fraudulent evasion is neither new noris it of Indian origin.

Until Next week