



March 30, 2013

Folly LLB

(Mr. Ashok Bhasin, Partner, *Bhasin Sethi & Associates*)

The recently released movie "Jolly LLB" is stated to be a comedy by critics, while giving commentary in various newspapers. But in the last scene, the judge says in the open court that on the first date, when a case is listed for hearing, he is aware as to who has committed the offence. He says, he cannot, however punish the person without evidence. He keeps waiting for one concrete evidence to be produced before him so that he can hold the accused guilty. How true? The above statement gives two messages. One, the judge had read the case thoroughly before hand so as to be aware as to who had committed the offence. Second, he appreciates the evidence brought to his knowledge.

Once, during a casual discussion, when it was brought before a Chief Commissioner of Customs & Central Excise that the quality of orders passed in the department at different levels, have fallen, his response was that an order is the reflection of show cause notice. If show cause notice is bad, order is bound to be bad.

His response came as a shock because as an English statement, it may look like a good quotation but then who had drafted or issued the show cause notices. It is the same set of officers. If they are to be blamed, the blame falls back on the adjudicating/appellate authority. Let us focus on the quality of orders.

The demands are sometimes confirmed even for the period which is beyond the limitation. An advocate keeps on telling in replies or at hearing that so much amount is not sustainable because of time limitation, the officers would agree with him, but when it comes to passing the order, even the said part of demand which is beyond limitation is also confirmed.

During investigation of a case, the officers are impressed upon to collect the amount of duty expected to have been evaded. The performance of an investigating officer is judged by the amount of duty collected and not by how good the case he has made. Due to this reason the assesses are made to part with bigger and bigger amount on the first day of visit. The investigation is yet to



be made. The expected amount of evasion is yet to be seen. Thereafter attempts are made to somehow justify the amount so collected on account of duty evasion. These attempts include various methods. One of such methods is to get the incriminating documents fabricated. It may sound nonsense to some but it may not surprise many. When show cause notices are made on these investigations, some of the relied upon documents are intentionally or unintentionally not supplied. The demands are confirmed by the adjudicating officers in the absence of the said documents.

There are examples when penalties are imposed more than it is provided in the statute. There are examples, when penalties are imposed on the persons who are not party to show cause notice. There are examples when excise duty demands are confirmed on traders or in respect of goods which are duly imported. In all these examples, the decisions are beyond the power/jurisdiction of the officer. The merit of a case is not being questioned. Why it happens? Simple. There is no accountability. No one senior in the hierarchy even questions his junior as to why he is passing such blatantly wrong orders. Such wrong orders, not only speak about the quality of officer, but it is dangerous in a way that one wrong order justifies the wrong investigation, encouraging the lower formations to keep doing wrong deeds.

One may react to above follies by saying that these may be isolated incidences but in general, it is not so. Ask the officers deciding the cases, one simple question. Have they read the facts of the case, when it is listed for hearing. You would get the answer. The rustic looking judge in "Jolly LLB" is far better. He is aware of the facts on the first date and he appreciates the evidence produced before him.

Disclaimer: Information in this newsletter is for educational purpose only. Bhasin Sethi & Associates assumes no responsibility of any mistakes which, despite of all precautions, may be found therein. The material contained in this document does not constitute any professional advice that may be required before acting on any matter.

401, Satyam Cineplexes, Ranjit Nagar,
New Delhi - 110008
Phone No. : 011-25895998, 25894899
Email: delhi@bsalaw.in

Website : www.bsalaw.in

C-20/1 (Lower Ground Floor),
Ardee City, Near Gate-3,
Sector-52, Gurgaon - 122011
Phone No. : 0124-4275494, +91-9910044272
Email: gurgaon@bsalaw.in