

## **Departmental Representative and Proper Attitude**

There are always two parties stand for the disputes before any Customs Excise & Service Tax Appellate Tribunals (known as 'CESTAT'). One of the common parties is Central Government through their Ministry & Department.

There is always Central Government Servant or any person authorized by Central Government representing the Departmental side. Usually, these persons are known as 'Departmental Representatives'.

Appearance by authorised representative is listed under Section 35Q of Central Excise Act, 1944. Usually, these persons are known as 'Advocates or Consultants'.

The Rules framed under Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 are followed scrupulously in all the Branches of CESTAT.

The Members of the CESTAT consider the arguments at length from either parties at the time of Regular matters. After length of arguments from both the sides, orders are usually dictated in the open court or may be kept reserve as per the discretion of Hon'ble Member.

It is understandable that some time while dictating the order, DRs or authorized representatives of assessee suggested the modifications or additions of some more points and the Hon'ble members recorded the same. It may happened some time that after dictating the order also any party make a special prayer and the Hon'ble member may consider the same and adding few lines in the order thereafter.

Normally, either side not object for the same, because the act of Hon'ble members are nothing but to meet the end of justice.

It was seen in one case where one of the DR directly objected the Hon'ble member remarking that 'this court have a regular practice to record and consider the argument of assessee's Advocates even though it was not argued by them before the order is dictated'. The such remark is made in such a ruthless manner that any Hon'ble member may loose temper.

The outcome of the same incidence forced the Hon'ble member to write the Joint CDR that 'No matters will be heard by this court where the said DR represents the case'.

We consider that DRs are representing the Central Government protecting 100 Crores of Revenue but this is not a way to protest against the Hon'ble member of CESTAT, who is sitting for the justice.

The question remained unanswered that in such situation whether the act of said DR amounts to contempt of court or not?

Let me put it from different angle that, if suppose this incidence or remarks made by authorized representative then what would be the consequences?

I left it to you, the readers may suggest the outcome as per their ghost imaginations.

For me, the above incidence may not be repeated forever. The autorised representatives of assessee or even DRs should always demand the merits of the case as per their study and understanding.

No doubt, the ATTITUDE should not always be of body language but it should be of your inner qualities supporting in correct manner on the right occasion. If you failed to react correctly with proper manner, it seems that you are no where.....

---