



महेन्द्र रंगा
MAHENDRA RANGA
मुख्य आयुक्त
CHIEF COMMISSIONER



For departmental use only

भारत सरकार
वित्त मंत्रालय
मुख्य आयुक्त कार्यालय
सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क
जयपुर
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE CHIEF COMMISSIONER
CGST & CENTRAL EXCISE
Jaipur

09th August, 2024

D.O. No. GCCO/TECH/MISC/440/2023

Dear *Colleagues,*

'SAMVAAD' : August, 2024

The Paris Olympics 2024 are on! Though a sporting spectacle, however, these offer us great insights into managerial and administrative aspects. Ms. Manu Bhaker has been the trailblazer in shooting. Her dual bronze medals have not only etched her name in the annals of Olympic history but also inspired a nation. She is a story of resilience and never-say-die spirit. Swapnil Kusale's unprecedented success in the 50m rifle teaches us about virtues of being calm. The Indian hockey team successfully defended their bronze medal, marking a historic back-to-back Olympic medal win for the first time since 1972. The hockey team also inspires us to work harder to ensure India's rightful place in the world. Neeraj Chopra's silver medal in men's javelin throw prods us to always strive better as our competitors may improve upon their game. As such we cannot rest on past laurels. The Indian athletes, with their unwavering commitment and exceptional talent, are indeed creating a legacy of excellence at the Olympics inch-by-inch. However, we need to strive creatively to take giant strides for success commensurate with our strength.

2. The Union Budget of 2024, presented by Hon'ble Finance Minister Smt. Nirmala Sitharaman, focuses on bolstering India's economic growth. The Finance Bill has introduced pivotal amendments to the CGST Act, 2017, reflecting the 53rd GST Council's recommendations. Notably, the new Section 74A streamlines the process for tax demand issuance and adjudication, replacing Sections 73 and 74. Additionally, Section 128A offers an amnesty scheme, waiving interest and penalties under Section 73 on certain demand notices for fiscal years 2017-18 to 2019-20. Furthermore, insertion of Sub Section (4) in Section 16 extends the deadline for availing Input Tax Credit for the fiscal years 2017-18 to 2020-21 until 30.11.2021, facilitating compliance and easing the tax burden on businesses.

3. Shri Shashank Priya, Member CBIC, recently visited the Jaipur Zone. During his visit, he interacted with senior officers and provided valuable guidance on

केन्द्रीय राजस्व भवन, स्टेच्यू सर्किल, सी-स्कीम, जयपुर-302005

CENTRAL REVENUE BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR-302005

Off. : 0141-2385155, Fax : 0141-2385130, e-mail : ccu-cexjpr@nic.in, Twitter Handle : @CGSTJAIPURZONE

various issues, including reducing the pendency of DRC-03, investigations, and recovery of arrears. He appreciated the performance of the zone in various key areas and emphasized the need of increasing efforts in the disposal of appeals and cancellation of registration applications. He also approved a pilot project named 'Fused Division- Metro Model' in Division-A of CGST, Jaipur, aimed at reorganizing Ranges on a functional basis. The Member also interacted with the representatives of Trade & Industry in Jaipur. He expounded on various steps taken by the Government for ensuring ease of doing business for taxpayers. He also took note of issues raised by various chambers of Trade & Industry with an open mind and transparency. We also need to adopt similar approach in our dealings with Trade & Industry.

4. The Board has concluded AGTs in all Group 'A' cadres. Consequently, we have some change in the Group 'A' cadres. We welcome the incoming officers with a hope that they will serve the Zone with aplomb. We wish success to the outgoing officers in their future endeavors. Such transitions are crucial for our growth as professionals. I am delighted to note that we had already finished the AGT exercise for cadres other than Group 'A'. But for the election related embargo, we would have achieved the ideal timelines. However, we hit the best possible timelines. I hope, in future also, we will be able to conduct our AGT with similar efficiency. We have also finished the consequential AGT's in Group 'A'. With the transfer exercise coming to its conclusion for the year, it is time to regain focus on the Key Result Areas.

5. The revenue collection for this month stands at Rs. 1973 Crores, marking a significant increase from Rs. 1687 Crores collected in the same period of last year. This year's growth rate up to July is a robust 16%, in stark contrast to the previous year's growth of just 2.4%. This substantial growth indicates a strong upward trend in revenue generation.

6. The issue of fake invoices and the fraudulent passing of ITC is critical to economy in general and tax administration in particular. It not only undermines the integrity of the tax system but also results in significant revenue losses for the government. CGST, Jaipur has made substantial progress in combating this malpractice by identifying and busting a large network of fake or shell companies. A total of 1196 firms have been implicated in the fraudulent activities, involving fake ITC transactions amounting to Rs.1230 Crores. CGST, Jodhpur, acting on intelligence provided by Central Intelligence Unit of CCO, have detected two cases against M/s R. L. Traders and M/s Dashmesh Traders, where Rs.5.15 Crores worth of fake ITC was passed on. Similarly, CGST Udaipur have identified three non-existent entities M/s Shri Vinayak Enterprises, M/s Kaveri Trading, and M/s Shivam Sales, engaged in similar fraudulent activities of passing on fake ITC by issuing bogus invoices involving ITC of Rs.4 Crores. In case of M/s Kaveri Trading, the State Goods and Services Tax (SGST) department provided crucial information that aided in the detection of the fraud. These actions are part of a concerted effort by the Zone to eradicate the issuance of fake invoices and the wrongful passing of ITC. This will

also have a positive effect on our revenue. We need to continue our drive against unscrupulous operators.

7. In a significant case, CGST, Jodhpur have uncovered non-payment of GST amounting to Rs.99 Crores by AIIMS, Jodhpur on infrastructure services, received from CPWD in terms of entry no. 5 of Notification No. 13/2017-Central Tax (Rate). Additionally, AIIMS have failed to discharge GST of Rs.5 Crores, on recruitment application fee and sale of scrap etc. also. Similarly, CGST Jaipur's operations led to the discovery of Rs.121.79 Crores in tax evasion by M/s Vikash Traders related to the transportation of tobacco products without e-way bill, with a recovery of Rs.1.35 Crores made thus far. Furthermore, CGST Alwar have identified a significant case of tax evasion where M/s Hero MotoCorp Limited misclassified motorcycle parts under HSN 39, 40, 48, 65, 84, 85 & 90 attracting GST @18% instead of HSN 8714 attracting GST @28%. This misclassification led to an evasion of Rs.569.17 Crores.

8. DGGI, Jaipur has also uncovered a racket of fake firms that facilitated the transfer of ITC to existent firms operated by one Shri Rajendra Khandelwal. Shri Khandelwal acknowledged the fraudulent claim of ITC worth Rs.10.66 Crores and has since deposited Rs. 7.70 Crores as voluntary tax payment. In another case, Shri Ronak Kumar Jain, mastermind of the case against M/s Shankar Traders admitted fraudulent availment of ITC of Rs.20.99 Crores from 12 supplier firms and passing on ITC to the tune of Rs.21.07 Crores to 32 beneficiary firms merely on the basis of invoices without receipt or supply of any goods/ services.

9. Board has initiated a comprehensive Action Plan to enhance the professional skills of departmental officers. This plan mandates completion of 20 courses on the **iGOT Karmayogi** platform, with a structured timeline for the financial year 2024-2025. The curriculum is designed to cover various competencies, ensuring a well-rounded development in domain knowledge, functional abilities, and behavioral skills. Officers are encouraged to adhere to this schedule and contribute to the fortnightly progress reports, aligning with the organization's commitment to continuous learning and excellence in service.

10. DG Systems have established a new policy, approved by the Chairman of CBIC, to streamline the procurement and distribution of endpoint devices (Hardened devices supplied by DG Systems for GSTN BO + Laptops provided by DoL under 1% incremental revenue scheme + PCs procured by field formations under local IT budget). This policy aims to maximize the efficiency of government funds and create a standardized process across departments. A web portal is being developed to facilitate this policy and will serve as a digital register for all endpoint devices. Although the portal's full implementation will be online from 01.10.2024, the policy is currently in effect offline since 01.07.2024. All Commissioners are advised to comply with the policy immediately.

11. Natural disasters such as landslides are deeply distressing events. The recent landslides in Kerala have been a source of sorrow. Our hills have also witnessed abnormal patterns of rain, resulting in loss of life and property. These tragic times

test our resilience and compassion for each other. Our thoughts and prayers are with the people of India in this difficult time.

12. This month's edition of 'Gyan Sangrah' is enriched with following three write-ups reflecting the dedication and expertise of the contributing officers:-

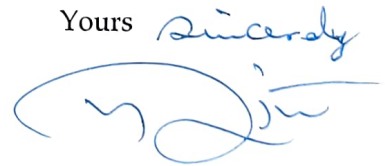
- (a) *Machinery provisions for raising of demand of tax and imposition of penalty - Inter-relation between Section 73/74/127 and Section 122 of the CGST Act, 2017* - by Shri Devi Dutt Sharma, Superintendent, CGST Division-E, Behror;
- (b) *एनडीपीएस एक्ट 1985 के दौरान की जाने वाली कार्यवाही - अनुभव के पिटारे से थोड़ी सी जानकारी-* लेखक श्री सुनील कुमार वर्मा, अधीक्षक, सीजीएसटी, अलवर
- (c) *Problem Structuring and Decision Making* - by Shri Ravindra Khokhar, Inspector, CCO, Jaipur.

Such contributions are the backbone of 'Gyan Sangrah', making it a treasured resource for readers seeking wisdom and guidance.

13. *Superannuation is not the end of the road; it is the beginning of the open highway.* We bid farewell to our colleagues Shri Ashok Kumar, Assistant Commissioner, Shri Seeta Ram Meena, Assistant Commissioner, Shri Satyaveer Singh Arya, Superintendent, Shri Kunj Bihari Sharma, Inspector, Shri Babu Lal Rajoria, Tax Assistant, Shri Dinesh Chand Kalyani, Lower Division Clerk and Shri Satya Narayan, Head Havaladar on their superannuation in last month. Shri Rajendra Kumar Jain, Superintendent has also taken voluntary retirement from service during July. May the road rise up to meet them and may the wind be always at their back. We offer our sincere wishes for their continuous happiness as they enter a new chapter of their lives.

Till next month,

Yours



(Mahendra Ranga)
Chief Commissioner

To:- Team Jaipur Zone.

Copy for information to:-

- (i) OSD to the Chairman, CBIC, New Delhi.
- (ii) PS to the Member (GST & Zonal Incharge), CBIC, New Delhi.
- (iii) Chief Commissioner, State Tax, Rajasthan, Jaipur
- (iv) Pr. ADG, NACIN/ DGGI, Jaipur.

ज्ञान संग्रह

अगस्त, 2024

GYAN SANGRAH

AUGUST, 2024

Machinery provisions for raising of demand of tax and imposition of penalty - Inter-relation between Section 73/74/127 and Section 122 of the CGST Act, 2017

*By – Devi Dutt Sharma, Superintendent,
CGST Division-E, Behror*

Machinery provisions for determination of demand of tax and imposition of penalties under the CGST Act, 2017 are contained in **Chapter- XV**, titled **“Demands and Recovery”**, which covers sections 73 to 84 of the CGST Act, 2017. However, prescription of the quantum of penalties for different types of offences is covered separately in sections 122 to 138 under **Chapter- XIX**, titled **“Offences and Penalties”**, of the CGST Act, 2017. Thus, the prescription of penalties is separate from the machinery provisions for the imposition of penalties.

2. In certain situations, the prescription of penalties and machinery provisions for its imposition are contained in the same section such as sections 123, 129 and 130 of the CGST Act, 2017. Further, in some specific situations such as assessment of non-filers or unregistered persons etc. the determination of tax has to be made under the relevant section (62, 63 and 64) itself without resorting to the machinery provisions under section 73 or 74 of the CGST Act, 2017.

The Question- Imposition of penalty alone (ITC based on goods-less invoices)

3. The question of inter-relation of section 73/74/127 with section 122 of the CGST Act, 2017 arises in situations where it appears that an offence has been committed by a person and such offence attracts penalty as provided in section 122 of the CGST Act, 2017 but the demand of tax/ ITC is not required to be made from such person as some other person is liable to pay the tax or ITC involved. Cases involving availment of ITC on invoices raised without underlying supply of goods or services or cases of passing on of ITC through invoices without underlying supply of goods or services fall under the instant category.

Situations where sections 73/74 apply

4. Machinery provisions concerning determination of demand of tax and imposition of penalty are contained in section 73 and 74 of the CGST Act, 2017 which are part of Section- XV. Both these sections provide (similarly) for determination of demand in the following situations:-

- (A) Any tax has not been paid;
- (B) Any tax has been short paid;
- (C) Any tax has been erroneously refunded;
- (D) Input tax credit has been wrongly availed or utilised.

Similarity of language employed (Sections 73/74 vis-à-vis Section 122)

5. The situations as described above are similar to the situations specified as constituting offences attracting penalty in sub-section (2) of section 122 of the CGST Act, 2017 which reads as follows:-

“any tax has not been paid or short paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized”

6. Though neither section 73 nor section 74 refers to sub-section (2) of section 122 but the language employed in sections 73/74 indicates that the machinery provisions prescribed therein apply to the offences as mentioned in the said sub-section (2) of section 122, though, besides applying to some other situations as well.

No independent prescription of penalty under section 73

7. Though sections 73 and 74 do not refer to section 122, or more precisely, sub-section (2) thereof, but the language employed in section 73, sub-section (1), indicates that section 73 does not prescribe any independent penalty rather the penalty prescribed under clause (i) of sub-section (2) of section 122 has to be imposed by following the procedure prescribed under section 73. This is evident from the language employed in last leg of sub-section (1) of section 73, which reads thus:-

“XXXXX, requiring him to show cause as to why he should not pay the amount as specified in the notice along with interest payable thereon under section 50 **and a penalty leviable under the provisions of this Act** or the rules made thereunder.”

8. Thus, it is evident that section 73 itself does not prescribe any penalty rather the same prescribes the procedure for determination of demand and imposition of penalty for the offences which have been specified somewhere else in the Act (section 122) for the circumstances mentioned therein. Since the circumstances for imposition of penalty as specified in section 73 and 74 are no different and the same find mention in sub-section (2) of section 122, it follows that section 73 and 74 are the machinery provisions for imposition of penalty for the offences specified in section 122, especially sub-section (2) and, also, sub-section (1) thereof.

Scope of sections 73/74 is wider than sub-section (2) of section 122

9. From comparison of the language employed, it can be inferred that while section 122, in sub-section (2), prescribes penalties for the offences committed by **“any registered person who supplies any goods or services or both”** (where tax has not been paid etc.), the procedure for determination of demand and imposition of penalty as prescribed in sections 73 and 74 is wider in scope as the same applies, not only to a registered person who effects outward supplies, but to any person and any situation involving **“any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized”**.

10. Thus, it can be inferred that all cases of non-payment/ short payment of tax or wrong availment of ITC are covered by section 73/74 if demand of such tax or ITC is required to be raised irrespective of whether supply of goods or services is involved or not. Thus, in cases of availment of ITC without underlying (inward) supply of goods if a demand of ITC is to be raised the same can be raised under sections 74 though such cases are covered by sub-section (1) of section 122 of the CGST Act, 2017 [in clause (vii)] for the purpose of prescription of penalty for the

offence and not by sub-section (2) of section 122 whose language has been employed in section 74.

11. Similarly, there are many other situations where the demand may have to be raised on the person other than the taxable person who supplies goods or services (section 51- TDS or section 52- TCS) and such situations will also be covered under section 73/74 for determination of the demand and imposition of penalty.

CBIC's Circular No. 171/03/2022-GST dated 6th July, 2022

12. CBIC has issued the circular referred to above for clarifying the applicability of demand and penalty provisions on the following three issues arising out of different types of situations in respect of transactions involving fraudulent ITC:-

Issue-1: Where a registered person issues tax invoice to another registered person without any underlying supply of goods or services;

Issue-2: Where a registered person issues tax invoices to another person without underlying supply of goods or services and such another person further issues invoices alongwith underlying supply of goods or services and utilises ITC availed on the basis of goods-less invoices; and

Issue-3: Where a registered person issues tax invoices to another person without underlying supply of goods or services and such another person passes on such ITC to yet another person by issuing invoices without underlying supply of goods or services.

13.1. The said circular, while clarifying the issue raised at serial number 2 of the table in para-1 thereof states as follows:-

“Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. **Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of CGST Act, including under section 122.**”

13.2. The circular further clarifies that the taxable person in Issue-1 will be liable for penal action under section 122(1)(ii) and in Issue-3 will be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, 2017.

Imposition of penalty under section 122(1)(ii)/ (vii)- Proper Officer

14. According to the clarification referred to above, in cases where ITC has been availed on the basis of goods-less invoices or where ITC has been passed on by way of issuing goods-less invoices, the taxable person is liable to penalty under section 122 [sub-section (1), clauses (vii) or (ii)] but provisions of section 74 for raising of

demand do not apply to such cases. Therefore, it is necessary to find out the machinery provisions applicable and proper officer for the purpose of imposing penalty in such cases.

15.1. Wherever, in the CGST Act, 2017, any action has been authorised to be taken in any situation, the section itself mentions that the “Proper Officer” shall do something as prescribed therein. **Accordingly, CBIC has assigned “Proper Officers” for the purposes of different sections of the CGST Act, 2017.**

15.2. As per Board’s Circular No. 3/3/2017- GST, dated July 5, 2017 as amended by Circular No. 31/05/2018- GST, dated February 09, 2018:-

(i) A Superintendent of Central Tax is the “Proper Officer” for the functions under sections 73 and 74 of the CGST Act, 2017, to be specific, for sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of both sections 73 and 74;

(ii) For optimal distribution of work, these functions have been assigned to Additional/ Joint Commissioner, Deputy/ Assistant Commissioner and Superintendent by prescribing monetary limits;

(iii) **However, no Proper Officer has been assigned any functions under section 122 of the CGST Act, 2017 and, to be specific, the said section does not direct that the proper officer shall do something (take any action).**

16. Thus, while the machinery provisions under sections 73 and 74 shall apply for imposition of penalty where demand of tax or ITC is also involved, machinery provisions under some other section may have to be applied for conducting proceedings for the imposition of penalty for the other offences specified under section 122 where demand of tax or ITC is not involved.

Imposition of penalty in residual cases- Section 127

17. In order to understand as to which are the different sections that authorize a proper officer to initiate proceedings under the CGST Act, 2017 for determination of demand of tax and imposition of penalty, one may refer to the section which deals with **cases of residual nature requiring imposition of penalties**. Such provisions are contained in **section 127 of the CGST Act, 2017** which reads thus:

“Where the proper officer is of the view that **a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64, or section 73 or section 74 or section 129 or section 130**, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.”

18. That being the section governing residual cases, it can be inferred that proceedings for imposition of penalties in cases of specified nature, and by implication, for demand of tax whose determination precedes the imposition of penalty, can be conducted under the following sections only:-

(A) Section 62: Which deals with cases of best judgment assessment against registered taxpayers, independent of section 73 or section 74;

(B) Section 63: Which deals with cases of best judgment assessment against unregistered (including cancelled) persons, independent of section 73 or section 74;

(C) Section 64: Which deals with cases where a summary assessment of tax is necessary to protect the interests of revenue, and where section 73 and 74 do not apply in the first place but recourse to section 73 or section 74 can also be taken if the order passed under this section is sought to be withdrawn;

(D) Section 73: Which deals with determination of tax and imposition of penalty equivalent to ten percent of tax in cases not involving suppressions of facts etc.;

(E) Section 74: Which deals with determination of tax and imposition of penalty equivalent to tax in cases involving suppression of facts etc.;

(F) Section 129: Which deals with cases of goods and conveyances detained in transit but not involving evasion of tax as such; and

(G) Section 130: Which deals with cases deserving confiscation of goods and conveyances and levy of penalty where intent to evade tax is involved.

19. From the provisions of section 127 and the provisions of other sections mentioned therein it comes out that proceedings for imposition of penalty in cases of specified nature can be conducted under the said seven sections mentioned in section 127 and if any liability to pay penalty is not covered by those seven sections, then proceedings can be conducted under the eighth section, which is the said section 127 itself.

How to apply section 127

20.1. It is pertinent to mention that proper officer for the functions under section 127 of the CGST Act, 2017 is Assistant Commissioner. However, the machinery provisions under the said section 127 simply provide that “he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.” Thus, except for (i) the issuance of an order and (ii) opportunity of being heard, no other provisions concerning adjudication of penalty are contained in the said section.

20.2. For the purpose of adjudication of any penalties generally, or under section 122(1) (ii) and 122(1)(vii) as well, it is required that:-

- (i) A show cause notice is issued to the person against whom there is a proposal to impose penalty;
- (ii) The show cause notice is issued within the limitation of time prescribed for raising a demand or proposing imposition of penalty;
- (iii) Determination of relevant date for calculation of the limitation of time is done; and
- (iv) Determination of the amount of ITC availed of or passed on irregularly is done for calculating the penalty equivalent to ITC availed or passed on.

20.3. However, such provisions are not there in section 127 of the CGST Act, 2017 though section 73 and 74 of the CGST Act, 2017 contain such provisions. By the way, section 122 itself also does not contain such provisions. In such a situation it seems logical that the provisions of section 74 of the CGST Act, 2017 concerning limitation of time, issuance of show cause notice, representation against the proposal and its consideration are applied to the show cause notice issued for imposition of penalty for the offences under section 122, sub-section (1), clauses (ii) and (vii). Provisions concerning monetary limit and conclusion of proceedings may not apply as no demand of tax/ ITC is being raised.

Judgment in NAVAYUGA Engineering CO. LTD. case

21. The above view finds support from a recent judgment dated 23.07.2024 of Hon'ble Supreme Court in Civil Appeal No. 1024 of 2014 titled M/s Navayuga Engineering Co. Ltd. vs Union of India and Ors. wherein the question arising for consideration, in the matter of inter-play between section 125 and 28 of the Customs Act, 1962 for the purpose of demand of duty under section 125 upon redemption of goods after confiscation, was:-

“(i) Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962? and (ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act?”

22.1. It was the contention of the importer in the said case that:-

“(i) as this judgment (referred to by the importer) holds that duty liability in confiscation proceedings arises because of Section 125 and not Section 28, there is no liability to pay interest on delayed payments under Section 28AB; and (ii) as there is no notice under Section 28, the demand and collection of duty are impermissible.”

22.2. Important observations of Hon'ble Supreme Court in the said judgment are as follows:-

“8.2. the Act must always be read as a whole. Once the liability of confiscation is withdrawn after the option to pay fine is exercised and the goods are redeemed, it is natural for the goods to be subjected to duty. The power and the machinery provisions for imposition and collection of duty liability exist only under Section 12 and/or Section 28 and not under Section 125.”

“8.9. An important principle that needs to be recognised is that, the customs duty obligation in confiscation proceedings does not occasion either under Section 12 or 28. It has arisen because of the option available and exercised under Section 125. This obligation should not be confused with the method and procedure by which that customs duty is assessed and determined, which is provided under Section 28. It is in this context that we need to consider and explain the decision of this court in Jagdish Cancer case.”

23. Vide the said judgment dated 23.07.2024, Hon'ble Supreme Court has held that:-

“1.1. XXXXX the owner of goods has a liability to pay customs duty, even

after confiscated goods are redeemed after payment of fine under Section 125 of the Act. Furthermore, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125 will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepts it. Liability to pay customs duty in such confiscation proceedings under Section 125(2) is distinct from the assessment and determination of duty, which can arise only under Section 28. The duty liability arising under Section 125(2) must be assessed under Section 28. Thus, we answer the second question by holding that once Section 28 applies for determination of duty, interest on delayed payment of duty under Section 28AB follows. XXXXX”

24. By the said judgment dated 23.07.2024, the proposition that when the liability to pay customs duty arises under Section 125(2), the calculation, determination or the assessment of such duty cannot be made under Section 28 has been negated.

Conclusion

25. Thus, in view of the law laid down by Hon’ble Supreme Court as above, it seems appropriate to apply the machinery provisions of section 74 concerning (i) issuance of show cause notice, (ii) limitation of time for passing of order imposing penalty, and (iii) determination of the amount of ITC wrongly availed or passed on (for arriving at the amount of penalty equivalent to such ITC to be imposed) to the proceedings to be conducted by the proper officer for taking penal action under section 122, sub-section (1), clauses (ii) and (vii) in cases of fraudulent ITC based on goods-less invoices not involving demand of ITC or tax.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)

एनडीपीएस एक्ट 1985 के दौरान की जाने वाली कार्यवाही - अनुभव के पिटारे से थोड़ी सी जानकारी

लेखक - सुनील कुमार वर्मा
अधीक्षक, सीजीएसटी, अलवर

हममें से बहुत से साथियों ने एनडीपीएस एक्ट, 1985 के प्रावधानों के अंतर्गत अफीम, हेरोइन, चरस, डोडा पोस्त, केटामाइन, ड्रग्स, एसेटिक एन हाईड्राइड और इनके साथ नकदी और अन्य निषिद्ध वस्तुओं के छोटे-बड़े प्रकरण सीमावर्ती क्षेत्रों, एयरपोर्ट, ट्रांज़िट और रिहायशी इलाकों में दर्ज कर अभिग्रहण और अनुवर्ती कार्यवाही में भाग लिया है। मेरा अनुभव है कि इस प्रकार के प्रकरणों में अधिकतर लोग सक्रिय रूप से भाग लेना नहीं चाहते हैं या फिर अभिग्रहण के दस्तावेज़ जैसे पंचनामा, टेस्ट मेमो, कई तरह की फर्द, बयान लिखना आदि, जब तक मजबूरी नहीं हो, बनाने में रुचि नहीं दर्शाते, जिससे कि अदालतों में सवाल ज़वाब और पेशियों पर आने जाने से बच सके। लेकिन मेरा मानना है कि मौके पर विवेक, विधि और तर्क सम्मत कार्यवाही न केवल केस को मजबूत करेगी वरन ट्रायल और साक्ष्य के दौरान अनुसंधान और बरामदगी करने वाले अधिकारियों/ गवाहों का बचाव भी करेगी, इसी उद्देश्य से ही यह लेख प्रस्तुत है।

मैंने भी विभाग जॉइन करने के प्रारम्भ से ही एनडीपीएस एक्ट, 1985 और सीमा शुल्क अधिनियम, आईपीआर, ड्रग्स एंड कॉस्मेटिक्स एक्ट, CITES, विदेश व्यापार नीति, वन्यजीव (संरक्षण) अधिनियम, वाइल्ड लाइफ एक्ट, फ्रेमा, पीएमएलए, जाली मुद्रा से संबंधित अपराधों की रोकथाम के लिए कई अभियानों में सक्रिय रूप से भाग लिया है और परिणाम स्वरूप कई लोग गिरफ्तार हो कर सजा के भागीदार बने और उनकी चल अचल संपत्तियां कालांतर में राज्यसात भी हुई।

मेरी नौकरी कुछ माह की थी तब श्री गंगानगर में, बार्डर पर एक बार 4 तस्कर, सीमा के पास स्वर्ण बिस्किट, स्कूटर, ट्रक, एसेटिक एन हाईड्राइड के 202 जरीकेन पकड़े और इस मामले में बीएसएफ़ के 4 जवान भी पकड़े। तब मुझे और टीम के किसी भी सदस्य को एनडीपीएस प्रकरण का कोई खास अनुभव नहीं था और उस समय संचार माध्यम भी सीमित थे फिर भी यथा समझ सबके सहयोग से मौके पर ही कागजात बनाए और झिझक खत्म हो गई। प्रत्येक प्रकरण चाहे बरामदगी, गिरफ्तारी, अनुसंधान, ट्रायल और अदालतों के आदेश हमें सीखने और बेहतर तरीके से कार्य करने का अवसर देते हैं। प्रचलित विधि-विधान, अनुभव और ट्रायल से सीखने और अच्छी प्रेक्टिसेज शेर कर रहे रहना चाहिए और यह उनके लिए भी आभार होगा जिनसे हम सीखते आये हैं।

ज़रूरी है कि इस प्रकार के मामलों में ज़्यादातर कार्यवाही पूर्व सूचना के आधार पर की जाती है इसलिए संभावित कठिनाइयों का भी आकलन ज़रूरी है और दल को पूर्ण तैयारी के साथ जाना चाहिए। टीम का कोई एक साथी ज़रूरी सामग्री जैसे तराजू, सील, डीडी किट, मोहर, पैकिंग सामग्री, पर्याप्त खाली फॉर्म, एक्ट, आदि सीज़र बैग में सुनिश्चित करे। हम लोग सीज़र बैग के लिए एक चेक लिस्ट से यह देखते आए हैं। दल में पर्याप्त सदस्य और तलाशी के लिए एक अतिरिक्त राज पत्रित अधिकारी की उपलब्धि भी तय की जानी चाहिए। जांच दल में महिला सदस्य की सहभागिता का आकलन भी ज़रूरी है। कई बार घर या कार्यालय की तलाशी के दौरान महिला सदस्य टीम में नहीं होती थी इसलिए हमने अक्सर थाने या किसी भी सरकारी या अन्य संस्थान से लिखित अनुरोध किया और उसका उल्लेख पंचनामे में भी किया। जांच दल में से यदि कोई सदस्य प्रस्थान करे या नया सदस्य शामिल होतो टाइम सहित उनका उल्लेख करने में कोई हानि नहीं।

इस लेख में संबन्धित धाराओं का उल्लेख इस दृष्टि से नहीं किया गया है कि स्थायी प्रावधान और मौके पर तैयार किए जाने वाले ज़रूरी दस्तावेज़, फ़र्द, जैसे प्राप्त सूचना को रिकॉर्ड पर लेना और उच्च अधिकारी को

भेजना, गवाहों को अनुरोध पत्र और उनकी लिखित सहमति, तलाशी वारंट दिखाने गया और स्वतंत्र स्थानीय गवाहों और परिसर स्वामी /कब्जाधारी के हस्ताक्षर,राजपत्रित अधिकारी के समक्ष तलाशी का विकल्प और लिखित सहमति, बरामद मादक पदार्थको प्रथम दृष्टया पहचानने की फर्द (देखकर, सूँघकर, अनुभव से ...), मुहर के प्रतिदर्श की फर्द, टेस्ट मेमो, बरामदगी के उपरान्त उच्च अधिकारी को सूचना, मौका नक्शा, रुट मैप टाइम लाइन सहित, सेम्पल सीआरसीएल भेजने का पत्र, गिरफ्तारी के आधार लिखित में बताने - सूचित होने के ज्ञापन और उस पर गवाहों का लेख कि उनके सामने बताया गए, गिरफ्तारी उपरांत परिजनो को सूचना का रिकॉर्ड, सेंपल ड्रॉ करने के लिए मजिस्ट्रेट को उपस्थित अनुरोध पत्र इत्यादि बेहद ज़रूरी है और संभवतः हम सब इनके जानकार भी हो।

बरामद ड्रग्स की मात्रा अधिक हो तो वज़न करने की मशीन बाहर से मंगा लेनी चाहिए और उसका स्रोत और लाने वाले सदस्य का कागजात में उचित अंकन किया जाए। उदाहरण के लिए एक बार थानागाजी में अफीम की पूर्व सूचना पर तलाशी ली गई और बड़ी मात्रा में डोडा पोस्त भी बरामद हुये जिसके वजन के लिए पहले से उपलब्ध मशीन सक्षम नहीं थी, इसलिए एक साथी किराए पर तराजू लाये। इसके साथ नमूने के सेंपल 25 ग्राम ड्रॉ करने के लिए उपलब्ध मशीन सक्षम नहीं थी और 25 ग्राम का बाँट नहीं था, इसलिए किराए की तराजू - बाँट से 50 वजन कर, उसे दो भाग में फिर तोला और इसलिए और नमी के कारण वजन में अन्तर की संभावना दस्तावेजों में अंकित की। बाद में सीआरसीएल की रिपोर्ट में दर्ज वजन और टेस्ट मेमो में दर्ज वज़न में अंतर की वजह से ट्रायल में प्रतिकूल प्रभाव नहीं पड़ा। बरामद सामग्री में नमी का उल्लेख, इनवेंटरी सत्यापन और डिस्पोज़ल प्रक्रिया में अंतर पाये जाने पर हमेशा कारगर ही सिद्ध होता है। तराजू के किराए की रसीद साक्ष्य स्वरूप रेकॉर्ड पर होना भी ट्रायल में सहायक रहा। हाल ही उच्च न्यायालय ने भी ठहराया है कि फोरेंसिक लैब में भेजे गए नमूने के वजन में मामूली विसंगति अभियोजन पक्ष के मामले की जड़ें नहीं हिला सकती, इसलिए सही और पारदर्शी तरीके से कार्यवाही ही करनी चाहिए।

माननीय न्यायालयों के हाल के निर्णयों के अनुसार नारकोटिक्स और साइकोट्रोपिक पदार्थ अधिनियम की धारा 52 (ए) के अनुसार, नमूने मजिस्ट्रेट की उपस्थिति में लिए जाने चाहिए और केवल जब्त करने के बाद अदालत के समक्ष नमूने पेश करना पर्याप्त नहीं है, और जागरूकता के अभाव में इन निर्देशों की पालना कई मामलों में देखी गई है, इसलिए प्रचलित नियमों और निर्देशों का ध्यान रखना बेहद ज़रूरी है।

कई बार इन्फोर्मर से मिलने, संभावित खतरे या किसी आक्षेप को नकारने, सूचना देने वाले की निष्ठा संदिग्ध होने की आशंका, और मिलने की जगह के आस पास सीसीटीवीआदि को ध्यान में रखकर किसी अन्य साथी को नज़र रखने के लिए ले जाना और उच्च अधिकारी को जानकारी देना बेहतर ही होता है।

एक बार श्रीगंगानगर के पास एक छोटे स्टेशन से एक संदिग्ध का पीछा ट्रेन में शुरू किया। संदिग्ध अबोहर स्टेशन पर उतर एक कार से जाने लगा। इस पर कार से उनका पीछा फिर शुरू किया। हमारी कार का नंबर राजस्थान का था। संदिग्ध की कार में कुछ लोग और आए। इनको कहीं कोई डील करनी थी। पीछा करने का संदेह होने पर वो लोग होटल, घरों, सड़कों और गलियों में हमें घुमाते रहे और बाद में मोटर साइकिल से लुका छिपी पर आ गए। संदिग्ध लोगों के पास हथियार भी थे। राजस्थान नंबर का वाहन और टीम के चार लोग पीछा करने के लिए अपर्याप्त पाए गए। दूसरी और डीआरआई टीम को ही संदिग्ध मान कर पंजाब पुलिस भी हमारा पीछा कर रही थी। ऐसे में जन हानि की सम्भावना भी प्रतीत हुई। इसलिए पर्याप्त सावधानी बेहद ज़रूरी है। दूसरी ओर हमें निर्देश देने वाले अधिकारियों को ग्राउंड रियलिटी और बाहरी परिवेश में अपनी हदों के बारे में बताया जाना, सबकी सुरक्षा के लिए भी बेहद ज़रूरी है।

बरामद करेंसी नोट में कटे, फटे, और नकली नोट भी हो सकते हैं इसलिए पंचनामे में साफ उल्लेख करना चाहिए कि बरामद करेंसी की genuineness की जांच नहीं की गई। इससे बरामद राशि को बैंक,

मालखाने, न्यायालय में जमा कराने पर पंचनामे और डिपॉज़िट स्लिप में अंतर मिलने पर बरामदगी की सत्यनिष्ठा प्रभावित नहीं होगी।

अभी हाल ही में माननीय राजस्थान उच्च न्यायालय ने आदेश दिनांक 08/05/2024 और 17/07/2024 में एनडीपीएस मामलों में जमानत स्वीकार करते समय बरामदगी के स्थान और पंचनामे के स्थान में अंतर पाये जाने पर प्रतिकूल टिप्पणी की है। इस बारे में उल्लेखनीय है कि एक बार, देर रात को हेरोइन की सूचना पर जयपुर में पोलो विक्ट्री सिनेमा के पास, प्राइवेट बस से नॉर्थ ईस्ट के एक युवक को दिल्ली से आते हुये रोका और पूछताछ की। सार्वजनिक और असुरक्षित, भीड़-भाड़ वाला क्षेत्र होने के कारण, उस युवक को गवाहों के साथ कार्यालय लाये और अभिग्रहण की कार्यवाही पूरी की। इस प्रकरण में टाइम लाईन के साथ रूट का नक्शा भी बनाया था। इस मामले में किसी भी स्तर पर और ट्रायल में परेशानी नहीं आई, क्योंकि दस्तावेज़ घटनाक्रम से सुसंगत थे। इस प्रकरण में जिस युवक से हेरोइन बरामद की, उसका फोन बंद नहीं किया और उसे सामान्य रूप से बातचीत करने का अवसर दिया जिसके कारण, दिल्ली में एक विदेशी नागरिक(सप्लायर) सतर्क नहीं हो सका और पकड़ा गया।

एक दूसरे प्रकरण में पकड़े गए लोगों के बयानों में शिक्षा, व्यवसाय, परिजनो का पूरा विवरण उम्न सहित रिकॉर्ड दर्ज किया जिससे बाद में, एक अभियुक्त ने बच्चे के विवाह के आधार पर पैरोल, अन्तरिम जमानत मांगी जो कथित बाल विवाह सिद्ध होने कारण अस्वीकृत हो गई क्योंकि बयानों में संतान की आयु का उल्लेख था।

बीएसएफ़ कार्मिको के कोर्ट मार्शल की कार्यवाही और कस्टडी के दौरान, बयान गवाहों के समक्ष दर्ज बयानों में इसका उल्लेख होने से, रिट्रैक्शन निष्प्रभावी रहा और ट्रायल में सहायक रहा।

एक बार गढ़ हिम्मतसिंह गांव में एक कमरे से करीब 9.5 किलो चरस बरामद हुई। परिसर में एक वाहन भी था, जिसमें कुछ नहीं पाया गया, लेकिन उसकी छत के कुछ स्कू का रंग उतरा हुआ था और कुछ स्कू नए नए थे, टीम और हमारे वाहन चालक के संदेह पर, रंग उतरे हुए स्कू खोलने पर छत का एक भाग लटक गया और चरस के कुछ पैकेट गिरे। केविटी की गहन तलाशी से 160 किलो चरस का बड़ा केस बना। इसी प्रकार जयपुर में 100 किलो केटामाइन के केस में वाहनों से साक्ष्य, आपत्तिजनक और अभिग्रहण योग्य सामग्री मिली, इसलिए हर तलाशी में सजगता ज़रूरी है।

कई बार सीमावर्ती क्षेत्र में NDPS के प्रकरण में सीमा शुल्क अधिनियम के प्रावधानों का भी उल्लंघन पाया जाता है और इसके लिए विशिष्ट न्यायालय में परिवाद के साथ सीमा शुल्क अधिनियम के अन्तर्गत कारण बताओं ज्ञापन भी दिया जाना ज़रूरी होता है। यदि आयात-निर्यात और विदेशी संपर्क, भुगतान आदि पाये जाए तो सीओआईएन के द्वारा विदेश से साक्षी संकलन के लिए भी त्वरित कार्यवाही अपेक्षित है जिससे ट्रांसिट में कोई पार्सल है तो विदेश में डिलीवरी रोकी जा सके। तलाशी की जगह स्पीड पोस्ट या कोरियर की रसीद मिले तो अनदेखी न करे। ऐसी रसीदों से नारकोटिक्स बाहर भेजना पाया है और पोर्ट/ विदेशी डाक घर में पड़े कंसाइनमेंट वापिस लाये जा सके।

जब भी किसी बाहरी स्थल पर कोई भी कार्यवाही की जाती है तो वहाँ आराम से या धीरे धीरे कागजात बनाने की बजाय, सारी ज़िम्मेदारी केवल उस अधिकारी पर न छोड़े जिसके नाम सर्च वारंट है। आपरेशन थियेटर की तरह सभी अपना अपना काम बाँट ले और सक्रियता दिखाये। मौके पर ज्यादा अनावश्यक रुकने और भीड़ भाड़ होने से किसी भी अप्रिय घटना की सम्भावना टालने के लिए, केस प्रॉपर्टी, दस्तावेज की सुरक्षा ज़रूरी है इसलिए जो कार्य दफ्तर में हो सकते हैं उनको टाला जाना ज़रूरी है। सौभाग्य से मुझे हमेशा ऐसे साथी मिले जिनको तलाशी और बाद की कार्यवाही के लिए अलग से कुछ कहने की ज़रूरत नहीं पड़ी उसके लिए उन सबका आभार। स्थान छोड़ने से पहले यह सुनिश्चित करना ज़रूरी है कि मौके पर सभी कागजों, आर्टिकल/

पैकेज सभी जरूरी लोगों के हस्ताक्षर हो गए हैं और कोई भी कागज या बरामद वस्तु छूटी तो नहीं है। कोर्ट में यह सवाल किया जाता है की कार्यवाही किस अधिकारी के समक्ष या निर्देशन में संपन्न हुई और कागजातों पर उसके हस्ताक्षर कहाँ है, मैंने पाया की मौजूद कुछ सहायक / उप आयुक्त ने अदालती कार्यवाही में पक्षकार न बने इसलिए आना कानी की , इस अवस्था में विवाद करने की जगह पंचनामे में यह उल्लेख किया कि कार्यवाही के दौरान अमुक सहायक / उप आयुक्त भी मौजूद रहे।

बरामदगी के बाद, ऑफिस पहुँचने, सेम्पल लेबोरेटरी भेजने और ड्रग्स के पैकेट मालखाने में जमा करने में समय लग जाता है। विभाग में अक्सर ब्रास सील सीज़र बैग में पड़ी रहती है और उसका रिकॉर्ड नहीं रखा जाता है जिसके लिए गाइड लाईन की आवश्यकता है। डीआरआई कार्यकाल में ब्रास सील जारी और जमा कराने का रिकॉर्ड-रजिस्टर रखने और उसकी प्रमाणित प्रति को साक्ष्य बनाने की अलग से पृथा शुरू की। इससे ट्रायल में बचाव पक्ष के टेपरिंग के आक्षेप से पूरे प्रकरण को अप्रभावित रखा।

नारकोटिक्स बरामद करने के कुछ अभियानों में कई बार एक से अधिक प्रकार की कम या ज्यादा ड्रग्स बरामद होती है और कभी कभी कुछ नारकोटिक्स कमर्शियल मात्रा में नहीं होती और इस दशा में निर्धारित मात्रा के सेम्पल नहीं लिए जा सकते इसलिए deviation के कारण सम्बंधित दस्तावेजों में मौके पर दर्शाने चाहिए। कभी कभी बरामद पदार्थ प्रस्तुत करने के लिए, अभिग्रहण या जांच करने वाले अधिकारी को ही निर्देश मिलते है, ऐसे में बरामद पदार्थ को न्यायालय, इन्वेंटरी सत्यापन या प्री-ट्रायल डिस्पोजल आदि के लिए प्रस्तुत करने का भार मालखाना अधिकारियों का होता है। एनडीपीएस अधिनियम की धारा 63 के प्रावधानों के अनुसार, अभिग्रहीत वस्तुओं के राज्यसात का आदेश पारित होने और जब्त किए गए वाहन को नीलाम करने से पहले, संबन्धित व्यक्ति को सुनवाई का अधिकार है। माननीय उच्चतम न्यायलय ने क्रिमनल अपील संख्या 2562/ 2024 में जारी आदेश दिनांक 14.05.2024 में भी कहा है कि वाहन के पंजीकृत स्वामी को सुने बिना राज्यसात का आदेश नहीं करना चाहिए।

इलेक्ट्रॉनिक अभिलेखों (ईमेल, व्हाट्सएप चैट आदि) की स्वीकार्यता के लिए भारतीय साक्ष्य अधिनियम, 1872 की धारा 65बी वर्तमान में भारतीय साक्ष्य अधिनियम 2023 की धारा 63 और हेश वेल्यू प्रमाणपत्र की हमारे द्वारा देखे जा रहे मामले, चाहे किसी भी अधिनियम में हो , पालना की जानी चाहिये।

इसके अलावा जब भी कोई केस बनता है तो फ्रंट में कुछ लोग ही दिखते है, जबकि बहुत से साथी, हमें कई प्रकार का सपोर्ट बरामदगी, गिरफ्तारी, जांच, रिमांड आदि में करते है, इसलिए उल्लेखनीय प्रकरणों में विभाग या उच्चाधिकारियों से जब भी प्रसंशा पत्र जारी हो तो टीम के अन्य लोगों के योगदान को इंडोर्स कर यथोचित श्रेय दिलाते रहें तो हमेशा सबका साथ और सहयोग जारी रहेगा।

नोट:-

- (i) सामग्री में व्यक्त किए गए उपरोक्त विचार या राय आवश्यक रूप से व्यक्ति, विभाग या सरकार के विचारों को प्रतिबिंबित नहीं करते हैं और इसका उपयोग कानूनी सलाह या पेशेवर सलाह के लिए नहीं किया जाना चाहिए।
- (ii) इस लेख को तैयार करने में सहयोग के लिए अधीक्षक श्री उमेश कुमार अग्रवाल को धन्यवाद।

Problem Structuring and Decision Making

*By – Ravindra Khokhar, Inspector,
CCO, Jaipur*

Have you ever been overwhelmed by a problem at work? And wondered where to begin solving it?

Well, you can start with taking a deep breath and then just thinking about the problem. Once you have identified the problem, you can move towards the next critical stage: Structuring it or breaking it down into smaller, manageable chunks.

Basically, a problem is by definition a situation that one desires to change. Moving a system toward a desired alternate state is the goal of problem solving. To solve a problem, however, you need to know where you are, where you want to go, and what your options are for getting there. We call this “structuring the problem”.

For example:- imagine a tree, where the trunk of tree is the main problem and its branches and leaves are the chunks of the problem.

So, first of all you have to identify the problem and then after you have to identify the root causes of the problem. Once you have identified the root causes of the problem then only you can begin work with the ideas which leads you to the desirable solution. As Yogi Berra reputedly said, **“If you don’t know where you’re going, you might not get there.”** To solve any problem, you first need to understand a problem, give it structure, and conceive of ways to solve it, you must also understand its origins and why it has not previously been resolved. Understanding the driving forces that caused your problem should give you some insight into leverage points where you can apply pressure to help solve it.

So, to be a successful problem solver you must go through these stages:

- 1. Recognizing and define the problem**
- 2. Finding possible solutions**
- 3. Choosing the best possible solution**
- 4. Implementing the solution**

Problem solving requires two distinct types of mental skill: analytical and creative.

Analytical or logical thinking includes skills such as ordering, comparing, contrasting, evaluating and selecting. It provides a logical framework for problem solving and helps to select the best alternative from those available by narrowing down the range of possibilities

Creative thinking is a divergent process, using the imagination to create a large range of ideas for solutions. It requires us to look beyond the obvious, creating

ideas which may, at first, seem unrealistic or have no logical connection with the problem.

Tips & Tricks for solving your problem more easily:-

1. Accept the problem :- This is the one I try to do first when I run into a problem and I use it almost every time. When you accept that the problem already exists and stop resisting then you also stop putting more energy into the problem and “feeding it”. Now, you can use the energy you previously fed the problem with – the energy that probably made the problem look bigger than it was – to find creative solutions to the challenge.

2. Gather some good knowledge & Information:- Information about your problem can often decrease that uncertain anxiety and fear we face when we are challenged with something. **Knowledge wisps away the clouds of fear around a problem.** And we often find that the problem might not be as bad as we thought. Open your mind to a solution that may work and try it out instead of just making snap judgments based on little information and experience.

3. Try to figure out possible problems along the way:- This is something you can do before the problem even arises. Be prepared. When you research – as described in point # 2 – also try to find out what others in the same situation ran into, what challenges they faced. Ask people what they did. If you don’t have anyone to ask then books, forums and blogs are good resources for gathering the personal experience of people. Also, be on the lookout for local groups and organizations. Google it and see what you find. **If you keep your eyes and ears open, you are sure to find something helpful.**

4. Ask for help:- You can ask people for advice on what to do and what they did in similar situations like yours. But you can also ask for more practical help. You don’t have to solve every problem on your own and sometimes it feels better to have someone by your side, even if it is just for emotional support.

5. Come up with more than one solution:- You don’t know what will actually work before you try it. What may seem like a good solution in theory doesn’t always work in reality. So brainstorm and come up with more than one solution. If the first one does not work, try the next one.

6. Redefine failure:- This is important both to handle fear of failure for the whole problem and to get you started in trying different solutions without too much hesitation. The definition of failure we are brought up with in society might not be the best and most useful to have. If you look at the most successful people you quickly notice that they have a different response to failure than the more common one. They **don’t take failure or rejection too seriously.** They know it’s not the end of the world if they fail. Instead they look at each failure and see the bright side of them: what they can **learn from it and improve next time.** They have an abundance-mentality.. They learn from it and then they try again. Redefine failure as feedback and as a natural part of successful life.

7. Break down the problem into smaller pieces:- Completing a task or solving a problem can seem overwhelming and impossible if you take it all in at once. **To decrease anxiety and think more clearly try to break the problem down.** Try to identify the different things and people it consists of. Then figure out one practical solution you can take for each of those pieces. Try those solutions. They may not solve the whole problem immediately. But they might solve a few pieces of it. And then you can keep trying other solutions for the rest of the pieces until there are none left.

8. Find the lesson or opportunity within the problem:- There is almost always a good side of a problem. Perhaps it alerts us to a great way to improve our business. Or it teaches us how our lives perhaps are not as bad as we thought. Finding this more positive part of the problem reduces its negative emotional impact and you may even start to see the situation as a great opportunity for you. When you are faced with a problem ask yourself: How can I use this? What is the good thing about this? What can I learn from this? What hidden opportunity can I find within this problem?

9. Talk about the problem and communicate clearly:- Many problems arise because someone misinterpreted what someone else said. One way to make sure that you and everyone else have the same interpretation of the problem. If a conflict arises then maybe you need to just talk it out, let go of a bit of steam, emotion and tension instead of everyone bottling it up. After that the discussion may be less emotionally charged. And it becomes easier to communicate clearly and reach a good solution for everyone involved.

10. Keep your motivation up:- It's easy to be discouraged, especially if you fear failure and your first and second solution to a problem did not work. You might feel like just giving up. Then it's time to give yourself a boost of motivation. Changing your mental state to a brighter, more positive and more motivated one can make all the difference in the world. It will keep you going. Even if just a few minutes earlier you felt that all hope was gone.

SUMMARY

The Solution of a problem always starts with proper identification of the problem and finding out its root causes. It is more efficient to do the right thing slowly than to do wrong thing quickly. Recognition/identification of problem is followed by analysis, based on which, an option tree may be created, which contains all the possible options. Then, we only have to choose the best one using some kind of Decision Making Mechanism. Finally, it is important to appreciate the success of the solution we chose and take notes of whatever we learned from this problem solving method and about its future uses as well.
