

Bimal Jain

FCA, ACS, LLB, B.Com (Hons)

Dear Professional Colleague,

Recovery of Confirmed Demands during pendency of Stay applications

CBEC has issued its first Central Excise Circular No. 967/01/2013 - CX, dated January 01, 2013 on eve of New Year 2013, for recovery of confirmed demands during pendency of Stay applications. The Circular has rescinded seven previous circulars on the subject matter. The said Circular has brought about a significant shift in the timing of recovery of confirmed demands, where the stay applications are not disposed off by the appellate authorities, within a period of 30 days of filing thereof.

The Board has noticed a Supreme Court judgement delivered in case of Krishna Sales (P) Ltd 2002-TIOL-428-SC-CUS wherein the Court observed that *"As is well known, mere filing of an Appeal does not operate as a stay or suspension of the Order appealed against"*.

As per this Circular, if a stay application is filed before the Commissioner (Appeals) and CESTAT and if there is no stay within 30 days, recovery action has to be initiated. In case of stay applications before the High Courts and Supreme Court, even this 30 days' time is not available. Recovery has to be initiated immediately after the orders if there is no stay. A moot question arises → who will come forward to rescue Trade/ Commerce when:

- The Board is aware that CESTAT Bench sitting only intermittently in Bangalore, Chennai & Kolkata and given the pendency of matters before the Appellate Commissioner, it will be very difficult to obtain stay within a period of 30 days after filing of stay petition.
- This Circular is contrary to the provisions of the proviso to Section 35F of the Central Excise Act, in so far as it indirectly imposes a time line of 30 days for disposal of stay petitions by the Tribunal. Hence the same is ex-facie amenable to challenge, being in excess of the statutory provisions.
- The Circular issued by the Board lacks foresight, proper understanding of the real situation - draconian Circular

Members are requested to give their suggestions on said Circular for onward submission to CBEC. Your suggestions may reach us latest by Monday, 7th January 2013 by email.

You may download the Circular from the following link:

<http://www.cbec.gov.in/excise/cx-circulars/cx-circ13/967-2013cx.htm>

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