

# Bimal Jain

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

Dear Professional Colleagues,

## **CBEC should withdraw draconian circular - Recovery proceedings during pendency of stay application**

The Central Board of Excise and Customs (“**the CBEC**” or “the Board”) has issued its first Central Excise Circular No. 967/01/2013 - CX, dated January 01, 2013 (“**the Circular**”) 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 The Circular has rescinded seven previous circulars on the subject matter.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.

As per the Circular, if a stay application is filed before the Commissioner (Appeals) and the 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.

The Circular issued by the Board lacks foresight, proper understanding of the real situation and hence a draconian Circular.

Thereafter, interim stay of recovery till the appellate authority disposes of the stay application, granted by the various High Courts, has rescued the trade from so called draconian Circular.

- Punjab & Haryana High Court in the case of **PML Industries Ltd. vs. CCE** [CWP No. 877 of 2013, decided on February 26, 2013] has set aside the Circular and has held that the Department shall not proceed to recover the demand till such time, the stay application for waiver of pre-deposit is pending before the appellant authority. Further, the Hon’ble High Court also held that there would not be any automatic vacation of stay after 180 days, however the Department can move an application for the vacation of stay after 180 days.
- Andhra Pradesh High Court also giving a major reprieve against the Circular vides **WPMP.NO:873 of 2013 dt. 9-1-2013**
- **Larsen and Toubro vs. Union of India and others {2013-TIOL-99-HC-MUM-CX}** - The Circular which is issued by the Board is in terrorem - The protection of the revenue has to be necessarily balanced with fairness to the assessee.
- **Metlife India Insurance Company Ltd vs. UOI {2013-TIOL-235-HC-KAR-CX}**: When the petitioners are not the cause for statutory appellate authorities to hear and pass orders on interlocutory stay applications, petitioners cannot be found fault with.

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Union of India must refrain from initiating recovery proceedings against the petitioners in respect of the amounts due in terms of the order impugned in the appeal until final orders in the appeal or order on interlocutory application for stay. Further, **the Karnataka High Court also observed** that:

*“I am compelled to observe so, regard being had to the fact that the Union of India has failed to set up large number of Tribunals such as CESTAT and if this is done, then there would be no cause for complaint over the non-consideration of the applications for stay, in appeals, by only one Tribunal, presently functioning at Bangalore. This should be an eye opener for Union of India to establish and constitute any number of Tribunals in all the States in the Country.”*

Hope the CBEC will wake up and passed appropriate instructions at field level – Not to enforce recovery proceedings during pendency of stay application for no fault on the part of assessee.

*Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards.

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