

# Bimal Jain

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

Dear Professional Colleague,

## **AP High Court grant interim stay against CBEC's Circular on recovery of confirmed demand during pendency of stay application**

The Central Board of Excise and Customs (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 The Circular has rescinded seven previous circulars on the subject matter.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.

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.

The stated Circular issued by the Board lacks foresight, proper understanding of the real situation - draconian Circular

***Big Relief is coming from the Andhra Pradesh High Court giving a major reprieve against the recent circular issued by CBEC {WPMP.NO:873 of 2013 dt. 9-1-2013}***. The Court has passed a brief one-page order granting interim stay of recovery till the appellate authority disposes of the stay application.

Ultratech Cement had approached the AP High Court for a stay of the stated CBEC circular. ***"The court has held that no coercive action should be taken by the indirect tax authorities till the time the stay petition is disposed of by the appellate authorities."***

Incidentally, it will not be out of context to highlight another judgement delivered by AP High Court in the case of ***M/S. SIVA SAI CONSTRUCTIONS, HYDERABAD Vs. GOVERNMENT OF INDIA, REP BY ITS (2013-TIOL-09-HC-AP-ST)***, wherein the Court directed the Revenue not to initiate or pursue any coercive steps against the petitioner (or others who owe dues to the petitioner) under Section 87 of the Finance Act, 1994 or any other appropriate provision, till disposal of the petitioner's applications for condonation of delay and for grant of interim relief in the appeal preferred by the petitioner to the Tribunal on 26-9-2012.

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.

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