

## CESTAT trashes CBEC Recovery Circular

Lawyers & Consultants are in mourning as their easy income is gone. Everyone who approached Courts was getting automatic stay against recovery notices sent by Department where stay applications in appeals were pending. First, Bombay High Court made it applicable to all, even if they did not approach Court. Now Bangalore CESTAT has done it. Assesseees are going to display the laminated order in their premises. **South Indian based Indirect Tax Officials will have to first give a certificate, as prescribed, before issuing such a notice to assessee, or else strictures would be passed against such officers.** Excerpts :

### Landmark order from Bangalore CESTAT - No coercive action during pendency of stay application - Board's draconian circular Goes for a Toss

THE Bangalore Bench of the CESTAT yesterday passed a landmark order virtually nullifying the Board's New Year circular 967 dated 1-1-2013.

The Tribunal noted that the circular directed officers of the department to recover confirmed demands wherever there is no order staying recovery. The Tribunal observed that because of increased coverage of services for levy of service tax and increase in industrial activity, number of appeals and stay applications have gone up with no corresponding increase in number of benches of the Tribunal. The number of appeals pending before the Bangalore Bench of the CESTAT is 12932 and stay applications pending is 3521 as of February 2013. Consequently for no fault of the assesseees, stay applications remain pending for long periods which created no problems before 1-1-2013. But after the issue of the Board's circular, officers can resort to detention, attachment, freezing of bank accounts etc. to recover dues during the pendency of stay applications.

Appreciating the difficulties of the assesseees, the Bangalore Bench had been granting ad interim stay after a brief hearing in deserving cases. The Tribunal found that even after 3 months of issue of the circular, such mentions seeking intervention show no sign of abatement. For example, on 27-3-2013 the Bench spent one full hour on such cases only and could take up listed matters only after that.

The Tribunal found that this benefits neither the assesseees nor the revenue. Assesseees continue to get notices and approach the Tribunal and officers continue to issue notices generating a lot of additional work for the registry and the Bench adding thereby to the already grim pendency situation. The Tribunal noted that if the time spent on such mentioned matters could be used to hear the listed stay applications, the revenue can legitimately expect to gain some pre deposit in cases where the assesseees fail to make a prima facie case. **The circular and actions in pursuance thereof have mostly spoiled these chances of the revenue.**

Based on the experience gained over the last three months, the Tribunal felt that the time was ripe to pass a general order which would ensure that the department cannot resort to coercive action in cases where stay applications/stay extension applications are pending.

The Tribunal directed that the **department should not resort to coercive action during pendency of stay applications;**

- a) Unless the case is one where service tax/central excise duty has been collected but not paid.
- b) Unless the case is one of admitted duty/service tax liability yet to be discharged.
- c) If the case is one where the assessee has deposited the entire duty/service tax liability.
- d) Unless the case is one where the commissioner(Appeals) has rejected the appeal on the ground that the appeal was filed beyond the time limit

The Tribunal has directed that in the cases falling within the exceptions listed above, the field formations coming within the jurisdiction of the Bench (the states of Kerala, Karnataka and Andhra Pradesh) shall not resort to any action as proposed in the Board's circular. The Tribunal further directed that where such action is proposed, the officer initiating action shall clearly indicate that he is satisfied that the assessee does not fall in any of the exceptions above. The Tribunal directed that copies of the order shall be sent forthwith to all the chief commissioners within the jurisdiction of the Bangalore Bench of the CESTAT.

We will bring you the full text of this unprecedented order as soon as it is released. Every assessee should keep a laminated copy of this order prominently displayed in his registered premises and any officer not prepared to accept this order should be enlightened that he would be liable for contempt.

Whether the Tribunal has the power to issue such a sweeping order : Rule 41 of the **Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982**, reads as:

**RULE 41.Orders and directions in certain cases.** - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.

In any case, the Tribunal has liberated the assessee, Revenue and the Tribunal itself from the huge burden of wasted money and time, caused by the Frankenstein Circular. At least now the Board should graciously withdraw the mischievous circular which has only caused havoc without a single rupee of Revenue.

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