



INDIAN DRUG MANUFACTURERS' ASSOCIATION

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PARTNERS IN GLOBAL HEALTHCARE

18 January 2013

Hon'ble Shri. P. Chidambaram,
Finance Minister,
Government of India,
Room No. 134, North Block
New Delhi - 110 001

Delivered on 21/01/2013.

Respected Sir,

Ref : CBEC Circular No 967/01/2013 CX dt 1/1/13 - Recovery of confirmed demand during pendency of stay application

By the captioned Circular, the field formations have been directed to initiate recovery in cases where 30 days have expired after the filing of the appeal by an assessee. This is totally unjust and unfair giving rise not only to penal consequences for reasons beyond the control of an assessee but also negating the statutory right of appeal. We, therefore, make this representation, on behalf of the Pharma Industry to reconsider the captioned Circular, which has been issued in supersession of 7 previous circulars on the same subject by CBEC.

While we fully recognize that, Government is empowered under the relevant statutory provisions to collect and recover legitimate taxes due from the assessees, at the same time we do feel that it is essential that in regard to tax demands which are pending in appeal before various appellate authorities, the legitimate rights of the assessees under the relevant statutory provisions are also recognized, before initiating coercive actions for recovery of tax dues.

The captioned CBEC Circular which seeks to instruct Department Officers to initiate recovery actions, if no stay is granted by concerned appellate authorities within 30 days of filing of appeal, is likely to result in severe hardships inasmuch coercive actions for recovery of tax like attachment of Bank Accounts, Assets etc of assessees pending disposal of stay applications would adversely impact businesses in a significant way. It is also likely to result in filing of Writ Petitions before High Courts across the country in large numbers. (In fact the Hon'ble Andhra Pradesh High Court has granted an interim stay based on a writ petition)

The Government needs to appreciate the fact that, the principal cause for extensive tax litigations is high pitched adjudications which do not fully appreciate the correct legal position in a matter. A statistical analysis of the outcome of the tax litigations would clearly reveal that, in over 80% of tax litigations, the matters are finally decided against the revenue and in favour of the assessee. Hence, when tax demands are unrealistic, and sustained in a very minority number of cases by the Appellate Authorities, it is very unjust & unfair for Govt. to pressurize the assesseees for payment through coercive methods.

Initiation of coercive actions to recover tax dues in regard to which appeal and stay application is pending disposal before the concerned appellate authorities, would not be in consonance with the settled principles of Natural Justice laid down by the Supreme Court of India from time to time.

It also needs to be appreciated that, in large number of cases stay applications are not disposed off due to inactions at the end of the concerned appellate authority and for no fault of the assessee.

In this regard, the captioned CBEC Circular refers to Supreme Court ruling in Krishna Sales (P) Ltd. (1994) 73 ELT 519 (SC) where in it was observed as under :

“As is well known, mere filing of an Appeal does not operate as a stay or suspension of order appealed against”

However, the significant observations (reproduced hereafter) made by the Hon’ble Supreme Court of India in Commissioner of Custom & Central Excise vs Kumar Cotton Mills Pvt. Ltd. (2005) 180 ELT 434 (SC), seem to have been ignored.

Para 6

“The Sub-section which was introduced in terrorem cannot be construed as punishing the assesseees for matters which may be completely beyond their control For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified.

The aforesaid observations ought to be appropriately recognized by the Government.

There are large number of judicial decisions including of the various High Courts [refer - Legrand (India) v UOI (2007) 216 ELT 678 (Bom HC DB); Shree Cement Ltd v UOI (2002) 126 STC 324 (RAJ HC DB); Delhi Acrylic Mfg Co. v CC (2002) 144 ELT 24 (DEL HC DB)] that no recovery action should be taken until the disposal of the stay

application by the Appellate Authorities. The CBEC cannot in disregard of these binding judgments issue a Circular in total disregard for judicial precedence.

In light of the foregoing, we have to make the following Suggestions, so as to ensure that undue hardships are not caused to Trade & Industry:

- CBEC Circular No 967/01/2013 - CX dt. 1/1/13 be withdrawn / appropriately modified immediately to provide that no recovery action should be initiated until the disposal of the stay application by the Appellate Authorities.
- Suitable Instructions be issued that recovery actions need to be restricted to cases where stay applications are disposed off and stipulated conditions are not complied with
- All Stay Applications pending before appellate authorities be disposed off, in terms of existing provisions under the relevant law, within a stipulated time frame.

Thanking you,

Yours Sincerely,



Manish U Doshi,
President

Encl: circular No. 967/01/2013 - CX dt. 1.1.13.