

Circular No. 1035/23/2016-CX

F. No. 208/36/2012-CX.6
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, dated the 4th July, 2016

To,

The Principal Chief Commissioners/ Chief Commissioners of Central Excise (All)
The Principal Chief Commissioners/ Chief Commissioners of Central Excise and Service Tax (All)
The Principal Chief Commissioners/ Chief Commissioners of Service Tax (All)
The Principal Chief Commissioners/ Chief Commissioners of Customs (All)
The Directors General (All)

Sub: Recovery of confirmed demands during the pendency of stay application-reg.

Madam/ Sir,

Kind attention is invited to Board Circular No. 967/1/2013-CX dated 01.01.2013 on the issue of recovery of confirmed demands during the pendency of stay application filed by the assessee. Since then important changes in law have been made and important judgments have come on the subject. Accordingly, it has been decided to review the Circular.

Part I: When stay application is pending before Commissioner (Appeals) or CESTAT:

2.0 The circular dated 01.01.2013 was examined by Hon'ble High Courts in situations where stay applications was pending before Commissioner (Appeals) or CESTAT. In this regard some of the important judgments are L&T vs. UOI [2013-TIOL-99-HC-CX] and Karnavati Club ltd. Vs UOI (SCA No. 2422/2013), wherein the Courts held that recovery could be made only in cases where delay in deciding the stay could be attributed to the conduct of the assessee. No appeal was filed against these judgments of the Hon'ble High Courts by the Department and thus these judgments attained finality.

3.1 However Hon'ble High Court of Punjab and Haryana judgment in case of **M/s PML Industries Ltd. Vs Commissioner of Central Excise [2013-TIOL-201-HC-P&H-CX]** pronounced that during the pendency of stay, irrespective of the conduct of the assessee, no recovery could be made. In para 46, Hon'ble Court observed that :-

"...we are of the opinion that right of consideration in appeal on an application for waiver of pre-deposit, is a right conferred by the Statute and such right cannot be defeated on the basis of Circular..."

3.2 SLP filed by the Department [SLP (Civil) 765/2014] against the judgment of Hon'ble High Court of Punjab and Haryana, has been dismissed by the Hon'ble Supreme Court, thus upholding the decision of the Hon'ble High Court. The relevant observation of the Hon'ble Supreme Court while dismissing the SLP, is reproduced below:-

"In view of the judgment and order passed by this Court in Commissioner of Customs & Central Excise, Ahmedabad v. Kumar Cotton Mills Pvt. Ltd. [2005 (180) ELT 434 (SC)/2005-TIOL-42-SC-CX], we find no reason to interfere with the impugned order passed by the High Court. The special leave petitions are dismissed..."

4.1 In light of the above judgments, the Circular No. 967/1/2013-CX dated 01.01.2013 is hereby rescinded and following fresh instructions are given on the subject. It is also clarified that seven circulars which had been rescinded vide Circular No. 967/1/2013-CX dated 01.01.2013 shall continue to remain rescinded.

4.2 In cases where stay application is pending before Commissioner (Appeals) or CESTAT for periods prior to 06.08.2014, no recovery shall be made during the pendency of the stay application.

4.3 For subsequent period i.e. from 06.08.2014 onwards, instructions contained in Circular No. 984/08/2014-CX dated 16.09.2014 shall continue to be followed. Section 129E of the Customs Act, 1962 and Section 35F of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994, was amended vide Finance Act, 2014 with effect from 06.08.2014.

Part II: When demand is confirmed by Hon'ble CESTAT or Hon'ble High Court & stay is pending before Hon'ble High Court or Hon'ble Supreme Court:

5.1 Attention is invited Sl. No. 11 of the Circular No. 967/1/2013-CX dated 01.01.2013 providing that when a demand is confirmed by a Hon'ble CESTAT or a Hon'ble High Court, recovery may be initiated immediately on the issue of order by the Hon'ble Tribunal or the High Court, if no stay is in operation. Hon'ble High Court of Gujarat in case of Karnavati Club Ltd. (SCA No. 2422/2013) examined the entire Circular dated 01.01.2013 and in relation to Sl. No 11, in para 29 of the judgment, upheld the direction contained in the circular, without any modification.

5.2 As a measure of liberalization and to ensure uniformity of practice, it is hereby directed that, recovery proceeding in relation to an order of Hon'ble High Court or Tribunal confirming demand of duty, may be initiated only after a period of sixty days from the date of order of the Hon'ble Tribunal or Hon'ble High Court, as the case may be, where no stay has been granted by Hon'ble High Court or Hon'ble Supreme Court against the order of Hon'ble Tribunal or Hon'ble High Court, respectively.

6.0 Instructions in CBEC's Excise Manual of Supplementary instructions on the above subject or any other circular, instruction or letter contrary to this circular stand amended to the extent of the conflict.

7.0 Difficulties, if any, in the implementation of above instructions may be brought to the notice of the Board. Hindi version will follow.

(Shankar Prasad Sarma)
Under Secretary to the Govt. of India