

Short-living Stay orders

(G. Natarajan, Advocate, Swamy Associates)

Sub section 2 A of Section 35 C of the Central Excise Act, 1944 reads as below:

(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed :

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order :

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.

Similar provisions are available under the Customs Act also.

It is an admitted fact that the pendency of appeals in all benches of the Tribunal are so much and only appeals of 2005 to 2008 are being heard in many of the benches. Further, only now, almost all benches of the Tribunal are functioning, which were so far crippled with vacancies in the posts of Members.

In such circumstances, after the expiry of 180 days from the grant of stay, upon applications made by the appellants, the stay was being extended by the Tribunal till the disposal of appeal. It has also been held by the Hon'ble Apex Court in the case of Kumar Cotton Mills Pvt. Ltd – 2005 (180) ELT 434 SC that the Tribunal has got such inherent power to extend the stay. The relevant observations of the Hon'ble Apex Court are reproduced below:

The sub-section which was introduced in terrorem cannot be construed as punishing the assessee 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 reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely, IPCL v. Commissioner of Central Excise, Vadodara (supra) cannot be faulted. However we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee.

Now, this power of extending the stay beyond 180 days is also sought to be curtailed by introducing the following provision under the said section, vide the Finance Bill 2013.

Provided also that where such appeal is not disposed of within the period specified in the first proviso, the Appellate Tribunal may, on an application made in this behalf by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party, extend the period of stay to such further period, as it

thinks fit, not exceeding one hundred and eighty-five days, and in case the appeal is not so disposed of within the total period of three hundred and sixty-five days from the date of order referred to in the first proviso, the stay order shall, on the expiry of the said period, stand vacated.

Will not the ratio laid down by the Hon'ble Apex Court enable the Tribunal to extend the stay even beyond 365 days? Then what is the purpose of this amendment?

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