

STAY AT BAY

(S.Jaikumar & G. Natarajan, Advocates, Swamy Associates)

252. *To expedite the process of disposal of appeals, amendments have been proposed in the Customs and Central Excise Acts with a view to freeing appellate authorities from hearing stay applications and to take up regular appeals for final disposal.*

- Budget Speech of the Hon'ble FM

Of the various proposals in the Budget, the most celebrated is the above one. (Till now, the most number of articles only in TIOL Budget Analysis is also on the same topic).

It's true that pre-deposit has been a menace and the most worrying concern for one and all. It not only substantially consumes the precious time of the CESTAT but had also been a thoroughly unproductive work. Today, much of the time was spent by the CESTAT in disposing of this pre- requirement, leading to a situation where the pendency status has crossed over one-lakh mark. Time and again, it had been a sincere appeal by all concerned to dispense with the same and a prescription of a mandatory deposit like in that of the VAT laws.

Now with this new Section 35F of CEA, the issue has been addressed. By substituting with the new Section 35F of CEA, there has been a mandatory prescription of 7.5% and 10%, as the case may be, of the duty demanded or penalty or both. This bold move would definitely liberate CESTAT from the shackles of "short matters" and would allow them to dispose off the regular matters.

All is well or all in the well???

With the pre- deposit issue being addressed, what about the STAY OF RECOVERY??? Will the Revenue department refrain from proceeding with recovery measures because the appeal has been filed with the prescribed pre-deposit??? If the

revenue brigade proceeds with recovery, what is the remedy available for the assessee?

The pre deposit prescribed in the statute, enables the assessee to pursue his appellate remedy. Otherwise, the appeal will not be entertained. But, how can it act against the revenue from proceeding to recover the remaining demand?

If so, even after paying the prescribed pre deposit, every appellant shall also file a petition for stay against recovery of the confirmed demands before the appellate authorities? If so, what are the guidelines to consider grant of such stay? Is the appellate authority expected to measure the "balance of convenience" and can further deposits be ordered while granting stay?

Though the Tribunal is having an inherent power under Rule 41 of the CESTAT (Procedures) Rules, will the Tribunal be pleased to exercise such discretion in every appeal filed before it? If stay petitions against recovery are filed in respect of all appeals, will not the time of the Tribunal would be spent only on hearing such petitions, as it is happening now in respect of petitions for waiver of pre deposit?

Before parting...

It seems that with the introduction of these new norms for pre deposit, there may not be any requirement for filing any stay petition and section 86 of the Finance Act, 1994 dealing with the fee payable for various petitions excludes "applications for grant of stay" from the applicability of a fee of Rs.500. But no such similar amendments are made under Customs and Excise. Does it mean that while stay petitions can still be filed in Customs and Central Excise and not in Service Tax. Or does it only mean that for filing stay petitions under Service Tax, no fee is payable, but for Customs and Central Excise, still a fee of Rs.500 is payable?