

Mr. P.C., Your attention please - I

(G. Natarajan, Advocate, Swamy Associates)

Section 35 C (2A) of the Central Excise Act, 1944

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

Section 129 B of the Customs Act, 1962

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 129A, 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

Section 86 (7) of the Finance Act, 1994

Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944).

By virtue of the above provisions whenever any stay / waiver of pre deposit, in full or part has been granted by the Tribunal and if the appeal is not disposed of within 180 days, the stay order shall stand vacated.

It is a known fact that at present thousands of appeals are pending in various benches of the CESTAT and it takes several years for the appeals to be disposed of finally. Vacancies in the posts of Members leading to non functioning of the benches in various places (Example: Bengaluru) further delays the disposal of cases. These reasons are beyond the control of the assesses and hence hardly any appeal would be disposed of within 180 days of grant of stay, except where early hearings are granted due to high stakes.

The department has been routinely writing letters to the assesses to pay the confirmed demands as soon as the expiry of 180 days from the grant of stay. Coercive recovery is also being resorted to. The hapless assesses have no other option but to file a Miscellaneous Petition before the Tribunal for extension of stay and wait for the same to be listed and heard. In the absence of any change in the circumstances in between, the Tribunal would invariably extend the stay, making it a routine feature. But this involves considerable time and efforts on the part of the assesses and their counsels. Further, the precious time of the Tribunal is also wasted in routinely hearing such Miscellaneous Petitions, dictating orders thereon, etc.

The following observations made by the Hon'ble Apex Court in the Kumar Cotton Mills case is worth of reproduction.

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.

The above provisions are intended only to check any tendency on the part of the assesses who dodge final hearing of the appeals, after getting a stay. This does not require any statutory provision and the Tribunal may, in exercise of its inherent powers may withdraw the stay granted if the facts and circumstances warrant. Or, such a power may be expressly vested upon the Tribunal, instead of making a blanket provision for expiry of stay orders after 180 days.

Can we expect Mr. P.C. to pay heed?