

Interesting provisions related to disposal of appeals by CESTAT – Mar 1, 2013



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IN what could be seen as a major development in terms of handling of appeals by the CESTAT Benches, Section 129C of the Customs Act, 1962 is proposed to be amended to allow Single Members of the CESTAT Benches to dispose of, appeals, involving amounts of up to Rs 50 lakhs, as against the current limit of Rs 10 lakhs, except in cases involving disputes related to classification or valuation of goods or services. As we know, Section 129C has been made applicable to central excise appeals in terms of Section 35D of the Central Excise Act, 1944.

This is a hugely welcome step which would result in appeals filed with CESTAT, getting decided on a more expeditious basis.

In cities like Bangalore and Chennai, we have had cases where, the Bench was operating with a Single Member for long periods of time, resulting in inordinate delay in terms of disposal of the appeals. Now, with this proposed increase in the limit up to which a Single Member can hear appeals, to Rs 50 lakhs, one would presume that, a significant quantum of appeals which are now being handled by the two member Bench, can now be handled by the Single Member. One could see about 50% to 60% of the volume of appeals pending with the Bench, being shifted to the Single Members.

One presumes that, this provision would, on its coming into effect, would also cover all appeals and stay petitions pending to be heard by the CESTAT Benches.

In another interesting development, Section 35C (2A) of the Central Excise Act, 1944 and the corresponding provisions under Section 129B (2A) of the Customs Act, 1962 are being amended to provide for a maximum ceiling of 365 days up to which the Tribunal can grant stay of recoveries. By inserting a proviso in the abovementioned sections, it is being stipulated that after 365 days from the stay order, this stay shall stand vacated even if the disposal of the case is pending for no fault of the assessee. By virtue of stipulation under section 86(7) of the Finance Act, 1994, the provisions of the Central Excise Act would be applicable for dispute in Service Tax matters. This provision, in terms of which, the Department can take recovery action after 365 days from the date of the stay order would seem to be unconstitutional, in as much as, the appellant cannot be faulted for any delay on the part of the CESTAT.

It is interesting to note that the CESTAT is not legally bound, in terms of these proposed provisions, to dispose of the appeals, within 365 days. Perhaps, the Government thinks that, with the increase in the limit to Rs 50 lakhs for disposal of appeals by Single Members, it would be possible for the CESTAT to dispose of, the appeals, within 365 days from the date of passing of the stay orders.

It however, remains to be seen, as to how these provisions actually work, given the fact that the CESTAT Benches are already sitting on a mountain of appeals.

Will these proposals affect the validity of the draconian Circular dated 1-1-2013 issued by the Government? Perhaps, not. Unfortunately, these proposals do not deal with the disposal of stay petitions by the CESTAT /

Appellate Commissioners and hence, the assesseees would continue to be harassed by the Department, for not getting stay orders within 30 days of the filing of the stay petitions.

I am wondering if, there could be cases where the individual CESTAT Members could take different stands, in respect of the same or similar matters coming before them. Since, there is no provision for filing of an appeal before the two member CESTAT Bench, decision of the Single Member would still be the decision of the CESTAT. Can we then have contradicting decisions from the same CESTAT. Perhaps, yes. But, for more of this, later.