



Government of India
Central Board of Indirect Taxes & Customs
Directorate of Legal Affairs,
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F. No. 1080/2/DLA/Tech/Action Taken/2019 | 3514

Date: 18/7/2019

To:

All Pr. Chief/Chief Commissioners of CGST & Customs,
Pr Director Generals, DRI & DGGI
All Pr. Commissioners/Commissioners of CGST & Customs.

Madam/Sir,

Sub.: Applicability of the ratio of judgment dt. 28/3/2018 of the Hon'ble Supreme Court of India in Criminal Appeal Nos. 1375-1376 of 2013 (in re: Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs CBI) --- Clarification --- Reg.

Please refer to this office letter F. No. 1080/42/DLA/SC/2018 dt. 17/8/2018, whereby the advice of Dr. Justice Arijit Pasayat, Vice Chairman, SIT on Black Money was communicated to all field formations with instructions to file applications for vacation of stay making a specific reference to the captioned judgment of the Hon'ble Supreme Court. In the cited judgment, a three Member Bench of the Hon'ble Supreme Court had directed that the stay on investigations granted by a Superior Court in a civil or criminal trial case would be valid for a period of six months only from date of order, unless extended by a subsequent well reasoned order. Further, vide letter of even no. dated 18/01/2019, the field formations were directed to examine such cases and initiate recovery proceedings in light of the aforesaid judgement.

2. CESTAT Bangalore, vide Misc Order Nos. 20104-20106/2019 dt. 9/3/2019 in the case of M/s Vijaynagar Sugars Pvt Ltd & Ors Vs Commissioner of Central Excise, Customs & Service Tax, Belgaum & Anr has held that the ambit of the decision of the Hon'ble Supreme Court in Criminal Appeal Nos. 1375-1376 of 2013 (in re: Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs CBI) is restricted to one aspect of the appeals pertaining to trial courts only, and has gone on to clarify that the Tribunal is not a Trial Court. The Tribunal has further held that the facts of these cases are not congruent with the template of law laid down by the Hon'ble Supreme Court in the cited Judgment, and has directed that:

- (a) all such instructions issued by heads of Commissionerates (presumably for recovery action) be withdrawn with immediate effect; &
- (b) a copy of the Order is to be served on the Chairman, CBIC to enable appropriate guidance to field formations.

CESTAT has further directed that *"the proper course of action for the officials was to approach the Tribunal for vacation of stay. In the absence of such application, we hold that the stay order will continue to operate till the appeals therein are disposed off."*

3. In view of the divergent views being taken by field formations, the Board decided to seek legal opinion from the Ministry of Law and Justice, Department of Legal Affairs on the following two questions, as to whether:

- (i) the cited Judgment of the Hon'ble Supreme Court dt. 28/3/2018 was applicable only to cases where trial in a civil or criminal matter had been stayed by a Superior Court, and as a corollary, whether it was applicable to stays granted on recovery proceedings by CESTAT or the High Court; and
- (ii) whether the Order of the CESTAT dt. 9/3/2019 was legally correct or not.

4. In reply, Ministry of Law and Justice, Department of Legal Affairs has opined that:

".....The judgment of the full Bench of the Hon'ble Supreme Court is very clear that stay granted by the higher Court against trial court pending matters either in civil or criminal cases, stay is valid only for 6 months. From this date of judgment to all pending matters of trial Court and if any stay is granted, ie. after this judgment is valid only for 6 months unless the stay is extended with proper reasons. This direction was given in order to avoid pending cases for several years in trial Court itself and to avoid the criminals may abscond after getting stay. The ratio decidendi could not be drawn from this judgment was that to avoid exorbitant delay caused in trial Courts either in civil or criminal matters. Therefore, the order of the Hon'ble Supreme Court is applicable only to cases where trial in a civil or criminal matter has been stayed by a superior court.

6. It is pertinent to mention here that the Hon'ble Supreme Court in the matter of Nahar Industrial Enterprises Ltd Vs Hong Kong and Shanghai Banking Corporation (2209) 8 SCC 646 held that "under Code of Civil Procedure, the terms "tribunal", "court", and "civil court" has been used in CPC differently. All "courts" are "tribunals" but all "tribunals" are not "courts". Therefore, CESTAT will not come under the purview of category of trial court, therefore, the judgment of the Hon'ble Supreme Court will not have any effect on the stay granted by the Tribunal or High Court in recovery proceedings. Hence, the answer to Qn. No. 1 is "yes".

7. In view of this, we could not find any infirmity in the order dated 7/3/2019 passed by CESTAT, Bangalore in the case of Vijaynagar Sugars Pvt Ltd & Ors and is legally valid."

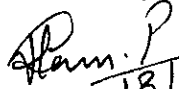
5. In view of the above, it is brought to the notice of all the field formations that, as directed by CESTAT Bangalore in the Order under reference:

(i) That the Judgment of the Hon'ble Supreme Court would apply to cases pending in Trial Courts only. Where any stay has been granted on recovery of revenue by the CESTAT or the High Court, the proper approach would be to file an application for vacation of stay at the appropriate forum and obtain suitable directions of the Tribunal or High Court, as the case may be, before initiating any recovery action; and

(ii) Any instructions to the contrary issued by any Commissionerate to field formations under its jurisdiction on the above issue may be promptly withdrawn.

This issues with the approval of Member (Legal), CBIC.

Yours faithfully,


18/7/19.
(Harbinder K Prasad),
Commissioner (DLA)