

Circular No. 967/01/ 2013 – CX

F. No. 208/36/2012-CX.6

Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs, New Delhi

New Delhi, the Dated 1st January, 2013

To,

- (i) The Chief Commissioner of Central Excise (All),
- (ii) The Chief Commissioner of Central Excise & Customs (All),
- (iii) The Chief Commissioner of Customs (All),
- (iv) Directors General (All)

Madam/ Sir,

Subject - Recovery of confirmed demand during pendency of stay application- regarding

I am directed to bring your attention to the following circulars issued from time to time on the above issue and to state that it has been decided to rescind these circulars with immediate effect.

SI No	Date	Circular no and File number of CX-6
1	18-11-88	80/88 and 208/31/88
2	2-3-90	7/90 and 208/107/89
3	21-12-90	23/90 and 209/107/89
4	12-11-92	16/92 and 208/59/92
5	3-8-94	47/47/94 and 208/33/94
6	2-6-98	396/29/98 and 201/04/98
7	25-2-2004	788/21/2004 and 208/41/2003

2) Henceforth, recovery proceedings shall be initiated against a confirmed demand in terms of the following order –

SI No	Appellate Authority	Situation	Directions regarding recovery.
1	NIL	No appeal filed against a confirmatory order in original against which appeal lies with Commissioner (Appeals).	Recovery to be initiated after expiry of statutory period of 60 days for filing appeal.
2	Commissioner (Appeals)	Appeal filed without stay application against a confirmatory order in original.	Recovery to be initiated after such an appeal has been filed, without waiting for the statutory 60 days period to be exhausted.
3	Commissioner (Appeals)	Appeal filed with a stay application against an order in original.	Recovery to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the conditions of stay, if any specified, whichever is earlier.

4	NIL	No appeal filed against an Order in Original issued by the Commissioner.	Recovery to be initiated after expiry of statutory period of 90 days for filing appeal from the date of communication of order.
5	CESTAT	Appeal filed without stay application against an Order in Original issued by the Commissioner.	Recovery to be initiated on filing of such an appeal, without waiting for the statutory 90 days period to be exhausted.
6	CESTAT	Appeal filed with a stay application against an Order in Original issued by the Commissioner.	Recovery to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the conditions of stay, if any, whichever is earlier.
7	NIL	No appeal filed against an Order in Appeal issued by a Commissioner (Appeals) confirming the demand for the first time.	Recovery to be initiated after expiry of statutory period of 90 days for filing appeal from the date of communication of order.
8	CESTAT	Appeal filed without stay application against an Order in Appeal confirming the demand for the first time.	Recovery to be initiated on filing of such an appeal in the CESTAT, without waiting for the statutory 90 days period to be exhausted.
9	CESTAT	Appeal filed with a stay application against an Order in Appeal confirming the demand for the first time.	Recovery to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the conditions of stay, if any, whichever is earlier.
10	CESTAT	All cases where Commissioner (Appeals) confirms demand in the Order in original.	Recovery to be initiated immediately on the issue of Order in Appeal.
11	High Court or Supreme Court	Tribunal or High Court confirms the demand.	Recovery to be initiated immediately on the issue of order by the Tribunal or the High Court, if no stay is in operation.

3) It may be noted that a confirmed demand remains an order in operation till it is stayed. Mere preferment of appeal itself does not operate as a stay. Hon'ble Supreme Court in case of Collector of Customs, Bombay Vs Krishna Sales (P) Ltd [1994 (73) E.L.T 519 (S.C)] has observed that "As is well known, mere filing of an Appeal does not operate as a stay or suspension of the Order appealed against". Accordingly, the above directions are hereby issued for initiating recovery of the confirmed demands.

4) Instructions in CBEC's Excise Manual of Supplementary instructions on the above subject or any other circular, instruction or letter contrary to this circular stand amended accordingly.

Yours faithfully,

(V.P. Singh)
OSD (CX-6)

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