IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Miscellaneous Application (Stay) No.40871/2024
in
Customs Appeal No. 40893/2024

(All arising out of Order in Appeal No. C. Cus. I/608 – 613/2024 dated 12.9.2024 passed by the Commissioner of Customs (Appeals – I), Chennai)

Commissioner of Customs **Appellant**
Chennai IV (Exports),
Custom House, Chennai – 600 001.

Vs.

M/s. SKOT India **Respondent**
No. 8A, Govardhan Street
Royapettah, Chennai – 600 014.

With

(i) Customs Miscellaneous Application (Stay) No.40868/2024 in Customs Appeal No. 40892/2024 (Commissioner of Customs (Exports), Chennai IV, Chennai)
(ii) Customs Miscellaneous Application (Stay) No.40873/2024 in Customs Appeal No. 40894/2024 (Commissioner of Customs (Exports), Chennai IV, Chennai)
(iii) Customs Miscellaneous Application (Stay) No.40872/2024 in Customs Appeal No. 40895/2024 (Commissioner of Customs (Exports), Chennai IV, Chennai)
(iv) Customs Miscellaneous Application (Stay) No.40870/2024 in Customs Appeal No. 40896/2024 (Commissioner of Customs (Exports), Chennai IV, Chennai)
(v) Customs Miscellaneous Application (Stay) No.40869/2024 in Customs Appeal No. 40897/2024 (Commissioner of Customs (Exports), Chennai IV, Chennai)

APPEARANCE :

Smt. Anandalakshmi Ganeshram, Authorized Representative for the Appellant
Shri Hari Radhakrishnan, Advocate for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

MISCELLANEOUS ORDER NOS. 40825-40830/2025

Date of Hearing : 12.03.2025
Date of Decision: 31.07.2025

Per M. Ajit Kumar,

Revenue has filed these miscellaneous applications for stay of operation of the impugned order passed by the Commissioner of

Customs (Appeals), Chennai. Since all the appeals deal with the identical legal issue regarding the grant of stay, we take Customs Miscellaneous Application (Stay) No.40871/2024 as the lead case while deciding the issue.

2. The facts of the case are that the respondents exported mango/guava pulp and claimed a higher RoDTEP incentive (2.5%) by allegedly misclassifying their products under CTH 0804 5040 / 0804 5090. The Adjudicating Authority held that, due to sterilization, the correct classification of the impugned goods would be under CTH 2008 9994/9999 as 'other fruit pulp', allowing only a 1.4% benefit. However, the Commissioner (Appeals) after examining the issue classified the goods under CTH 0804 5040 and ruled in favour of the respondents. Aggrieved by the decision, the department is now seeking a stay on this order.

3. Ld. AR Smt. Anandalakshmi Ganeshram, appearing for revenue, argued that the processed export goods do not meet the criteria listed in the HSN Explanatory Notes to Chapter 08, so Mango Pulp should be correctly classified under Customs Tariff Item 2008 9999, and Guava/Fruit Pulp under 2008 9994. She requested a stay of the impugned order citing a strong chance of the department succeeding in the appeal. She stated that the judgment in **J.K. Synthetics Ltd** [1996 (86) ELT 472 (SC)] affirms that **Rule 41 of CESTAT Rules, 1982** grants power to the Tribunal to issue orders or directions necessary to implement its decisions, prevent misuse of its process, or ensure justice. The Ld. A.R, stated that it included the power to grant a ‘stay’ when needed to secure the ends of justice.

4. The Ld. Advocate Shri Hari Radhakrishnan appearing for the respondents, submitted that the Tribunal lacks statutory authority under the Customs Act, 1962 to grant stay orders, as there is no explicit provision enabling this power. As confirmed in **C.C. (Import), ACC, Sahar, Mumbai Vs Parksons Packaging Ltd.** [2015 (326) E.L.T. 177 (Tri. - Mumbai)], the Tribunal cannot grant stays against orders from the Commissioner (Appeals). He stated that Rule 41 of the CESTAT (Procedure) Rules, 1982, allows the Tribunal to issue orders necessary to enforce its decisions and secure justice but does not override statutory limits set by **Section 129E**. Established principles dictate that a rule cannot grant powers removed by statute. The Ld. Counsel stated that the stay application is futile as the goods have already been exported, making enforcement of the duty or penalty irrelevant at this stage. He further contends that the Commissioner (Appeals) issued a well-reasoned and legally sound order, and that the stay application lacks compelling grounds for a stay. The plea appears only to be an attempt to delay the order's implementation. He prayed that the Miscellaneous Application may be dismissed.

5. We have heard the rival parties.

6. The right to appeal under the Customs Act, 1962 is conditional and not absolute. Where statutory provisions grant a right of appeal subject to specified conditions, such right shall vest and may be exercised by any person aggrieved only when those conditions are met. Section 129E ibid is hence the enabler of the right to appeal under the Customs Act, subject to compliance with the pre-deposit of adjudged dues. However, the amount to be actually deposited was subject to the

discretion of the appellate authorities. Once this amount is deposited, no further payment is needed until the appeal is resolved. The section hence only determines the amount to be deposited for the right of appeal to vest in a person seeking to appeal against an order. This has hence been treated by the respondent as the provision of stay under the Act. The legal issue shall be discussed below.

7. The Customs Act also aims to collect taxes and protect government revenue. The pre-deposit of adjudged dues required as per Section 129E ibid hence also serves this requirement. Notably, revenue is not required to make any deposit when appealing against an order. Tax departments are held to be instrumentality of the State [**Smt. Ujjam Bai v. State of U.P.** 1963 (1) SCR 778 = AIR 1962 SC 1621 at para 118]. They are tasked with the collection of taxes and the appeals filed by them are towards this purpose.

7.1 After the Finance Act (No.2), 2014, came into force on 06.08.2014, Section 129E mandated a fixed percentage pre-deposit of adjudged dues as a prerequisite for appeals. The discretion of the appellate authorities was removed. The position of an appeal filed by revenue continued without change. Similarly, if revenue had a right to seek a 'stay' before the amendment, as per law, it continued unchanged after the amendment also. Thus, this negates the respondents stand on revenue's right to seek a stay of an order post the amendment, as per their own understanding of the section, since the rights of revenue prior to 06.08.2014 continue unchanged after the amendment also.

7.2 Before examining the issue further and for clarity, the relevant provisions of section 129E pre and post amendment are stated below:

Legal Provisions prior to 06.08.2014

> **"129E:** Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or the penalty levied:
>
> Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.
>
> Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

Legal provisions with effect from 06.08.2014

> **"129E.** The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,–
>
> (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;
>
> (ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;
>
> (iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. Of the duty, in case where duty or duty and penalty are in

> dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:
>
> Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:
>
> Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."

7.3 The power to levy taxes and its collection are an attribute of sovereignty. [See: **State of West Bengal Vs Kesoram Industries Limited & others** - (2000) 1 SCC 710 / **Yadlapati Venkateswarlu Vs State of Andhra Pradesh & another** - 1992 Supp (1) SCC 74]. Hence revenue's right for seeking a stay is an important measure in furtherance of the objective of collecting tax and the search for an answer to the lis need not be confined only to Section 129E.

7.4 The question raised by the respondent, that has come up for our consideration is whether revenue can seek a stay of an order after the mandatory provisions of pre-deposit has come into force from 06.08.2014? Although we had previously stated that if revenue had a vested right to seek a stay order prior to 06.08.2014 it remains unaffected by the amendment, it is still necessary to clarify whether such a general power ever existed and if so, its legal basis.

7.5 We find that Section 129E allows for further dues to be dispensed during the period of the appeal, on the payment of a statutory amount as a percentage of the adjudged dues but does not suspend the order under appeal. As stated by a five Judge Bench of the Hon'ble Supreme Court in **Smt Ujjam Bai** (supra), the characteristic attribute of judicial act or decision is that it binds, whether it be right or wrong. Such bodies are deemed to have been invested with power to err within the limits

of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal. Hence the order remains valid and binds the parties on other issues it addresses, such as classification, exemption eligibility, or related party determinations etc.

7.6 In contrast, as noted by the Hon'ble Supreme Court in **Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board** (1997) 5 SCC 772, a 'stay' of an order may be granted in various forms, but its effect is consistent: during the period a stay operates, the stayed order is considered non-existent in the eyes of the law. Once the stay is lifted, the order becomes effective again and can be enforced. Hence Section 129E of the Customs Act 1962, cannot be stated to be the source of power for grant of stay of an order or a part of it, by the Tribunal, in the manner the scope of the term is stated in **Kanoria Chemicals** above.

8. Revenue has drawn attention to **Rule 41 of the CESTAT (Procedure) Rules, 1982** as being applicable for the grant of stay. The said section is reproduced below;

> RULE 41. Orders and directions in certain cases. – The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.

9. Per contra the respondent is of the view that Rule 41 (supra) does not override statutory limits set by Section 129E. That the amendment to Section 129E has eliminated the Tribunal's authority to grant a stay and hence Rule 41 cannot be interpreted to restore this power from 06.08.2014. They have relied on the judgment of a

Coordinate Bench of this Tribunal in **C.C. (Import), ACC Sahar, Mumbai Vs. Parksons Packaging Ltd**., 2015 (326) ELT 177 (Tri. Mumbai). The short order is reproduced below:

> 3. We find that Revenue has not referred to any provisions of law under which it seeks stay of the order. We find that w.e.f. 6-8-2014, Section 129E of the Customs Act was amended. Prior to this date Section 129E provided that where in a particular case the Appellate Tribunal is of opinion that the deposit of duty, penalty, etc., would cause undue hardship to a person, the Appellate Tribunal can dispense with such deposit under conditions to be satisfied. However, from 6-8-2014 there is no provision under new Section 129E that provides for stay by the Tribunal against order of the Commissioner or Commissioner (Appeals). There being no such provisions in Customs Act, we find it appropriate to dismiss the stay application. (emphasis added)

9.1 It is seen that the above interim order examines a question of law on the power of 'stay' by the Tribunal, confining it to Section 129E and does not examine any other provision of law or any of the leading judgments on the subject and does not discuss the principle of law applicable to the case, as the same was not brought to the Tribunal's notice and would hence not serve as a precedent. The Hon'ble Supreme Court in its recent judgment in **Secunderabad Club Vs CIT**, [Civil Appeal Nos. 5195-5201 of 2012, Dated: 17.08.2023] examined the issue of precedent and stated as under;

> "14. . . . According to the well-settled theory of precedents, every decision contains three basic ingredients:
>
> (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts;
>
> (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
>
> (iii) judgment based on the combined effect of (i) and (ii) above.
>
> For the purposes of the parties themselves and their privies,

> ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. **However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision.** This is the ratio decidendi. It is not everything said by a judge when giving a judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi."
>
> (emphasis added)

Thus a precedent can only be inferred from a detailed, analytical order of a Co-ordinate Bench and not by a mere dismissal, as in **Parksons Packaging** above, without clear discussion or analysis on the legal provisions and principles involved. Further there is nothing in section 129E to show that it overrides the provisions of rule 41 or that the said rule conflicts with it.

10. We find that a three Judge Bench of the Hon'ble Supreme Court in its judgment **Income Tax Officer Vs M. K. Mohammed Kunhi** - (1969) 2 SCR 65], laid down that an express grant of statutory power carries with it, by necessary implication, the authority to use all reasonable means to make such grant effective. It was held that the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This stated the basis of the rule, that the incidental and ancillary powers of the Tribunal will include a power to grant stay of the order under appeal. The judgment held;

> "**The argument advanced on behalf of the Appellant before us that in the absence of any express provisions in Sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity inasmuch as it assumes and proceeds on the premise that the statute confers such a power on the Income tax Officer who can give the necessary relief to an**

Assessee. The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the appellate tribunal. Indeed the tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay or recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The Assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the appellate tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. . . . . Maxwell on Interpretation of Statutes, Eleventh Edition, contains a statement at p. 350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdiction data est, ea quoque concessa esse videntur, sine quibus jurisdiction explicari non potuit." . . . .ower to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.

A certain apprehension may legitimately arise in the minds of the authorities administering the Act that if the Appellate Tribunals proceed to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunals. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue. laws. It will only be when a strong prima facie case is made out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered

> nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."
>
> (emphasis added)

The judgment though rendered in an Income Tax case is relevant here as it delineates the scope of implied/ inherent powers of a Tribunal. [Also see **M/s Tecnimont Pvt. Ltd. (Formerly known as Tecnimont ICB Pvt. Ltd.) Vs The State of Punjab** - Civil Appeal No.7358 of 2019 @ SLP(C) No.27072 of 2016, Dated: 18.09.2019]

11. While dealing with the scope of 'implied powers', the **Constitution Bench** of the **Apex Court in Matajog Dubey Vs H. C. Bhari** [1955 (2) SCR 925] held:

> "Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. The true position is neatly stated thus in Broom's Legal Maxims, 10th Ed., at page 312 : "It is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command."
>
> (emphasis added)

12. Further the Hon'ble Supreme Court in **M/S J.K. Synthetics Ltd vs Collector Of Central Excise** [AIR 1996 SUPREME COURT 3527 / (1996) 86 ELT 472] after citing the judgment of **'Mohammed Kunhi'** (supra), examined the powers of the Tribunal to set aside an ex-parte order although the erstwhile CEGAT (Procedure) Rules did not expressly provide so. It held:

> "Rule 20 of the CEGAT (Procedure) Rules deals with cases where the appellant has defaulted. Rule 21 empowers CEGAT to hear appeals ex-parte. The fact that Rule 21 does not expressly state that an order on an appeal heard and disposed of ex-parte can be set aside on sufficient cause for the absence or the respondent being

> shown does not mean that CEGAT has on power to do so. **Rule 41 gives CEGAT wide powers to make such orders or give such directions as might be necessary or expedient to give effect or in relation to its order or to prevent abuse of its process or, most importantly, to secure the ends of justice."**
>
> (emphasis added)

13. The power of taxation including its collection being an inherent attribute of sovereignty, the right of revenue to seek a stay of an order determinantal to the collection of taxes, cannot be lightly dismissed. Based on the judgments cited above we find force in the plea made by the revenue that Rule 41 of the CESTAT (Procedure) Rules, 1982 also contains the power for grant of a stay against an order or its part. In any case such a power is inherent in the powers of the Tribunal.

14. We now examine the prayer of revenue. The only reason stated by revenue for their prayer for grant of stay, is that the probability of the case is in favour of the department. We find that the 'duty dropped' in the individual cases are as below;

TABLE

Respondents	Duty Dropped	Penalty	Fine
Tasa Foods	46,79,025/-	12,00,000/-	4,70,000/-
TMN International	23,68,641/-	6,00,000/-	2,40,000/-
ABC Fruits	1,24,23,034/-	31,00,000/-	12,50,000/-
ACME Harvest	28,39,036/-	7,00,000/-	2,80,000/-
Skot India	15,62,443/-	4,00,000/-	1,60,000/-
Rockmount Enterprises	87,137/-	9,000/-	10,000/-

From the perusal of the 'Table' it is seen that only in the case of ABC Fruits is the 'duty dropped' above Rs one crore. The stay application does not disclose whether the said amounts already stand collected and would have to be refunded as a result of the impugned order.

15. A reading of the impugned order shows that it is reasoned and references various judgments and circulars. It cannot be said that the order is illegal or perverse in the sense that a reasonably informed

person will not enter such a finding and if allowed to stand, it would result in gross miscarriage of justice. Revenue has provided no evidence or claims suggesting that the respondents will evade payment if the appeal succeeds, nor have they indicated any risks to revenue collection at a later date or specified any potential refund that is substantial and has become due. A stay would in any case not help in the collection of pending tax or fine or penalty consequent to the impugned order and which purpose may have been better served through a prayer for an 'early hearing'.

15.1 The respondents, having won before the first appellate forum, also feel that they have a reasonable chance of succeeding in the appeal filed by revenue before us. Finances are the life blood of any industry and are critical resources that enable businesses to operate, grow, and compete. Hence the same should not be blocked without sufficient cause being shown by revenue. **Article 19(1)(g)** of the Constitution of India protects the right of citizens to practice any profession, occupation, trade, or business. While levy and collection of tax is an inherent attribute of sovereignty, **Article 265** of the Constitution of India states that taxes can only be imposed by authority of law. Hence while examining the request for a stay of an order, it is required that a reasonable decision needs to be taken which balances both the rights, based on sufficient cause being shown by revenue for urgent intervention by the Tribunal.

15.2 The Hon'ble High Court of Andhra Pradesh in **PATEL ENGINEERING LTD Vs THE COMMISSIONER OF CENTRAL**

EXCISE, CUSTOMS AND SERVICE TAX [2014 (2) TMI 392 - ANDHRA PRADESH HIGH COURT / 2014 (35) S.T.R. 297 (A. P.)], held;

> "Just as levy of taxes is an attribute of sovereign power, adjudication of disputes is equally an important attribute of the same species. The only difference is while the former partakes the character of the right of the sovereign Government, the latter is in the form of its duty. Unless it is tempered with an element of reasonableness, the adjudicatory mechanism is prone to be just an eye-wash."
>
> (emphasis added)

Hence merely stating the probability of revenue succeeding in their appeal, is a bald statement which cannot be stated to be a reasonable plea and is just not enough. Every appellant is bound to have such a conviction on the probability of his success in the appeal proceedings. The proof of there being 'sufficient cause' is a condition precedent to the exercise of discretionary jurisdiction by this Tribunal on a stay application and it is lacking in these applications. Some more homework needs to be done by revenue if such applications are to succeed and are not seen to be filed as a mere formality. Hence on balance it is felt that revenue has not made out a case for stay of the impugned order.

16. Based on the discussions the stay applications are dismissed and disposed of accordingly.

(Order pronounced in open court on 31.07.2025)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex