

Sharing insights

News Alert
26 February 2014



Tribunal has no power to grant stay beyond a period of 365 days; no prohibition on High Courts (in a writ jurisdiction) to issue directions and grant interim stay even beyond 365 days

In brief

The Delhi High Court (HC) in the case of Maruti Suzuki (India) Limited and Bose Corporation India Private Limited¹ (the taxpayer), has held that the Income-tax Appellate Tribunal (Tribunal) has no power to grant stay beyond a period of 365 days even where the delay in disposing the appeal is not attributable to the taxpayer. In such cases, the taxpayer can approach the HC through its writ jurisdiction and thereby seek interim stay, as the HC has inherent powers to issue necessary directions and grant stay for a period beyond 365 days.

¹ CIT v. Maruti Suzuki (India) Limited (W.P (Civil) No. 5086 / 2013) & CIT v. Income tax Appellate Tribunal & Bose Corporation India Private Limited (W.P (Civil) No. 5003 / 2013)

Facts

The tax department filed a writ petition before the Delhi HC against the orders passed by the Tribunal extending stay on recovery of demand beyond 365 days.

Issue

Whether the Tribunal has the power to extend / grant stay for a period beyond a period of 365 days subsequent to the amendment in section 254(2A) of the Income-tax Act, 1961 (the Act) *vide* Finance Act, 2008?

Revenue's contentions

- The power of the Tribunal to grant stay on recovery of demand, pending consideration of appeal, had to be circumscribed and exercised within the four corners of section 254(2A) of the Act.
- The language of section 254(2A) of the Act mandated that no stay order could exceed a total period of 365 days, and that the Tribunal was barred from passing an order extending stay on recovery of demand beyond 365 days.
- The Tribunal being a creation of the statute, was bound by the said proviso and could not violate and negate the law.

Taxpayer's contentions

- The section 254(2A) of the Act was not clear. The larger bench of the Supreme Court (SC) had examined similar provisions in the Central Excise Act, 1944 (CE Act), and had approved the ratio as laid down by the decision of the larger bench of the Tribunal², wherein it had been held that stay orders could be extended if the delay was not attributable to the taxpayer.
- The Tribunal's power to grant interim stay was also recognised by the SC³ wherein it had been observed that power granted to the Tribunal under section 254 of the Act was of the widest amplitude and therefore, carried with it by necessary implication, all powers and duties incidental necessary to make the exercise of power fully effective.
- The taxpayer relied on the decision of the Bombay HC⁴ wherein it had been held that the amendment to section 254(2A)⁵ of the Act was intended to extend interim relief to 365 days with the intent that the Tribunal should take note of

the delay, and not with the objective of defeating the taxpayer's rights when the appeal could not be disposed off even when there was no omission or failure on the taxpayer's part.

- Provision after the amendment to section 254(2A)⁶ of the Act was unduly harsh, if not draconian as the taxpayer would now suffer for no fault or even when faults or delays are directly attributable to the tax department. There could be faults or delay such as when the Bench of the Tribunal may not be able to hear the appeal or the upper limit specified may come to an end when the judgement is reserved or judgement of the HC or of Special Bench is awaited.

High Court's ruling

- The HC noted the ratio laid down by the Bombay HC⁴ was similar to the ratio laid down by the SC⁷ on similar provisions of the CE Act, where the issue had been examined, and where the SC held that the amendment could not be construed as punishing the taxpayer for acts beyond its control.
- The Delhi HC took note of the decision of the Karnataka HC⁸ which dealt with the interpretation of provisos to section 254(2A) of the Act after the amendment *vide* Finance Act, 2008. This amendment had made a substantial difference and had to be duly noted as reflecting a different legislative intent consequent to the amendment. Accordingly, the Karnataka HC dissented from the decision of the Bombay HC⁴.
- The HC observed that the SC⁷ had drawn a distinction and held that the proviso did not prohibit the Tribunal from extending the interim order beyond 365 / 180 days if the taxpayer was not at fault. However, the legislature, in

² IPCL v. Commissioner of Central Excise, Vadodara [1969] 169 E.L.T. 267

³ ITO v. M.K Mohammed Kunhi [1969] 71 ITR 815 (SC)

⁴ Narang Overseas Private Limited v. ITAT and others [2007] 295 ITR 22 (Bombay)

⁵ Amendment *vide* Finance Act, 2007

⁶ Amendment *vide* Finance Act, 2008

⁷ Commissioner of Customs and Central Excise, Ahmedabad v. Kumar Cotton Mills Private Limited [2005] 180 E.L.T 434

⁸ CIT v. Ecom Gill Coffee Trading Private Limited [2012] 252 CTR 281 (Karnataka)

view of the said judgement, had specifically introduced and added the words “not attributable to the taxpayer”. This amendment / substitution made in the third proviso were significant. These words were not redundant or inconsequential and in fact had been added in view of the ratio and the reasoning given in the aforesaid SC and HC decisions.

- The provision will propel and ensure that the Tribunal will try and dispose off and decide appeals within 365 days of the grant of the stay order.
- Having said the above, the HC held that it had the power to grant and extend stay beyond the period of 365 days where the appeal was pending before the Tribunal. The constitutional power and right was available and had not and could not be curtailed. The powers of the HC under Article 226 and 227 formed a part and parcel of the basic structure of the Constitution of India, and it could not be overwritten and nullified as held by the SC⁹.
- The HC also held that in cases where stay period of 365 days was expiring, taxpayers can exercise writ jurisdiction and file stay extension / application, and the tax department should examine and, in appropriate cases, make a statement before the Tribunal that no coercive steps would be taken to recover the demand as the delay was occasioned and attributable to their fault and lapse.
- In view of the above, the HC summarised as under:
 - With effect from 1 October 2008, Tribunal could not extend stay beyond 365 days from the date of first order of stay.
 - In case default and delay was due to lapse on the part of the tax department, the Tribunal was at liberty to conclude the hearing and decide the appeal, if there was likelihood that the duration of stay would extend beyond 365 days.

- Third proviso to section 254(2A) of the Act did not bar the tax department from making a statement that they would not take coercive steps to recover the impugned demand, and on such statement, it would be open to the Tribunal to adjourn the matter at the request of the tax department.
- A taxpayer could file a writ petition in the HC pleading and asking for stay

PwC comments

- It may be noted that there are now two adverse HC rulings being Karnataka HC decision in the case of Ecom Gill⁸ and this case decided by the Delhi HC. Both have examined the provisions existing as on date. Bombay HC¹⁰ however, has taken a contrary view in the matter in favour of the taxpayer.
- There will be increase in the number of writ petition filings before the HC pleading for extension of stay on recovery of demand. Further, it will also have a cascading effect, and the Tribunal will be required to expedite many matters.
- In our experience, it is observed that there are matters which are stayed by the Tribunal as an identical issue is pending before the Special Bench of the Tribunal or a larger Bench of the HC. This decision will impact such cases as well, where again the delay in disposing the appeal in such cases is not attributable to the taxpayer. Though it may be worth mentioning that the Bombay HC¹¹ has held that the Division Bench of the Tribunal should not wait for the decision of the Special Bench and should decide the matter on merits.
- HC has not examined the constitutional validity of the provisos to section 254(2A) of the Act, and the issue is left open.

⁹ L. Chandra Kumar v. Union of India [1997] 3 SCC 261

¹⁰ CIT v. Ronuk Industries Limited [2011] 333 ITR 99 (Bombay)

¹¹ Jethamal Faujimal Soni v. ITAT [2011] 333 ITR 96 (Bombay)

About PwC

PwC helps organisations and individuals create the value they're looking for. We're a network of firms in 157 countries with more than 184,000 people who are committed to delivering quality in Assurance, Tax and Advisory services.

PwC India refers to the network of PwC firms in India, having offices in: Ahmedabad, Bangalore, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, please visit www.pwc.in.

*PwC refers to PwC India and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details. Tell us what matters to you and find out more by visiting us at www.pwc.in.



Our offices

<p>Ahmedabad President Plaza, 1st Floor Plot No 36 Opp Muktidham Derasar Thaltej Cross Road, SG Highway Ahmedabad, Gujarat 380054 Phone +91-79 3091 7000</p>	<p>Bangalore 6th Floor, Millenia Tower 'D' 1 & 2, Murphy Road, Ulsoor, Bangalore 560 008 Phone +91-80 4079 7000</p>	<p>Chennai 8th Floor, Prestige Palladium Bayan 129-140 Greams Road, Chennai 600 006, India Phone +91 44 4228 5000</p>	<p>Hyderabad #8-2-293/82/A/113A Road no. 36, Jubilee Hills, Hyderabad 500 034, Andhra Pradesh Phone +91-40 6624 6600</p>	<p>Kolkata 56 & 57, Block DN. Ground Floor, A- Wing Sector - V, Salt Lake. Kolkata - 700 091, West Bengal, India Telephone: +91-033 - 2357 9101/4400 1111 Fax: (91) 033 - 2357 2754</p>
<p>Mumbai PwC House, Plot No. 18A, Guru Nanak Road - (Station Road), Bandra (West), Mumbai - 400 050 Phone +91-22 6689 1000</p>	<p>Gurgaon Building No. 10, Tower - C 17th & 18th Floor, DLF Cyber City, Gurgaon Haryana -122002 Phone : +91-124 330 6000</p>	<p>Pune GF-02, Tower C, Panchshil Tech Park, Don Bosco School Road, Yerwada, Pune - 411 006 Phone +91-20 4100 4444</p>	<p>For more information contact us at, pwctr.knowledgemanagement@in.pwc.com</p>	

For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

©2014 PricewaterhouseCoopers. All rights reserved. "PwC", a registered trademark, refers to PricewaterhouseCoopers Private Limited (a limited company in India) or, as the context requires, other member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.