

**OFFICE OF THE COMMISSIONER OF CUSTOMS (EXPORTS),
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,
TAL-URAN, DIST-RAIGAD, MAHARASHTRA-400707.**

STANDING ORDER NO. 01 /2011

**Sub. : Measures to streamline the Processing of Department litigations before
the Courts and Tribunals-reg.**

Attention of all the staff and officers is hereby drawn to the Boards [Circular No 935/25/2010-CX](#) dated the 21st September 2010 issued under F.No. 390/Misc./100/2009-JC, in respect of Measures to streamline the processing of departmental litigation before the Courts and Tribunal.

It has been constant endeavour of the Board to streamline the procedures relating to processing of departmental litigation before the Supreme Courts, High Court & CESTAT. Several Circulars / instructions have been issued by the Board in the past in this regard prescribing the procedure to be followed and precautions to be taken by the field formations. However, it has been observed that more than 50% of the proposals received by the Board suffer from infirmities including delays beyond limitation period. It has to be appreciated that the Courts take serious note of such procedural infirmities and considerable effort, resource and time go into rectifying them. Further, Courts do not condone delays unless there is adequate justification for the same. The Board has taken a serious note of the matter and it has been decided to fasten accountability wherever SLP/Civil Appeal Proposal is received by the Board without observance of due procedure or with infirmities or later than the prescribed time frame. The field formations are therefore directed to scrupulously follow the instructions contained in Boards circular. Needless to say that any deviation, without plausible explanation, would be viewed seriously.

2. Delay in receipt of proposals in the Boards office:

2.1 One major cause of concern is delay in receipt of proposals in the Boards office. The reason often cited in most of such cases is either non-receipt or delay in receipt of the CESTAT and High Court orders by the Commissionerates. Such delays may be avoided if proper initiatives are taken at local level. Accordingly, the Board desires that following steps be taken on priority,-

- (i) Zonal Chief Commissioners to issue necessary instruction and to ensure that an institutional mechanism is put in place for receipt of copy of order and other communications from the CDR or Jt. CDR, in respect of CESTAT cases.
- (ii) Zonal Chief Commissioner having nodal Commissionerate, assigned coordination work relating to High Court, will ensure putting in place a proper institutional mechanism for timely dissemination of certified copy of High Courts order to respective Commissionerates. The Legal Cell in the Commissionerates will also develop a system for timely receipt of High Courts orders. Therefore nodal officer (Legal Cell) shall request the Counsel concerned to obtain certified copy on urgent basis. Also, the nodal officer shall download the Order copy of the decided case from the Courts website on immediate basis and send the same to the Legal Cell at the JNCH immediately pending receipt of certified copy from the Counsel.

(iii) As certified copy of order is essential for filing Special Leave Petition under Article 136 of the Constitution, the Departmental Counsel may be advised to invariably file an application for obtaining a certified copy on the date of pronouncement of the High Court order or on the following day to avoid delay on this count. Where Government Counsel does not apply for certified copy in the prescribed time-period, his or her fees are required to be subjected to deduction. Repeated instances by a particular counsel may be taken note of while assessing the performance of the counsel in the periodical review exercise.

2.2 It has also been observed that some of the Commissionerates are getting draft SLP prepared at their end and sending the same to the Board along with their proposal. While such effort indicates sincerity for defending cases, it has to be realized that drafting such SLP/CA not only contributes to unnecessary delay but is also a futile exercise as the Central Agency Section of the Ministry of Law does not accept such drafted SLPs / CAs. Central Agency invariably gets the SLP drafted from Drafting Counsels. Therefore this practice of sending draft SLP/CA should be strictly discontinued with henceforth.

2.3. Similarly, the Commissionerates need not take the legal opinion from the Standing Counsels in respect of the High Courts orders for forwarding proposal to file appeal as the SLPs against the High Courts orders are filed by the Board only after obtaining the legal opinion from the Ministry of Law & Justice and Law officers of the Government of India.

2.4. The Civil Appeal (CA) proposals should be sent so as to be received in the Boards office within fifteen days from the receipt of the Order of the Tribunal and SLP proposal are received within twenty days from the date of the order of the High Court. The proposal against the High courts order shall be initiated on the strength of the copy of the order circulated by the Court on its own motion or copy downloaded from the website of the Court i.e www.indiancourts.nic.in or www.court.nic.in without waiting for the certified copy of the order. The certified copy of the order may be sent separately thereafter. It may be noted that in case of CA the period of limitation of 60 days begins from the date of receipt of order. However in case of SLP period of limitation of 90 days begins from the date of order of the High Court.

2.5. All proposals must be sent by the field formations within the prescribed time limits. In case of delay, detailed justification should be furnished and corrective action should be initiated immediately, so that such delays do not occur in future. Delays on flimsy grounds would be viewed seriously.

3. Quality of proposals:

3.1 Quality of proposals sent by Commissionerates is extremely important for preparation of Civil Appeal/SLP. However, it has been observed that proposal lack quality in so far as content is concerned. Therefore, in order to improve the quality of proposals it has been decided to take the following measures,-

(i) All CA and SLP proposals would henceforth be approved by the Jurisdictional Chief Commissioner. While forwarding the proposal a mention must be made in the covering letter to this effect.

- (ii) All such orders which are against revenue but found acceptable by the Commissioner will be put up to the jurisdictional Chief Commissioner for his concurrence.
- (iii) The office of the Chief / Joint Chief Departmental Representative will also examine carefully every judgment which is against revenue and forward their opinion to the concerned Commissionerate if it is felt that an appeal is merited in the matter. The Commissioners, however, need not wait for such comments and the same can be sent even after sending the proposal to the Board, in continuation of the earlier letter forwarding the proposal. The Board, vide its letter F. No. 390/Misc/411/07- JC dated 6th February 2008 had laid down the elaborate mechanism for examination of orders in the CDR/Jt CDR office.
- (iv) To ensure in-depth analysis and for preparation of comprehensive proposals the Commissioner shall ensure that legal journals such as ELT, RLT etc and software or online services such as Jurix, Manupatra, SCC Online, EXCUS, Lawcrux, Taxindiaonline etc. and reference books, law lexicons are available to the sections/officers dealing with SLP/CA. The Chief Commissioner should ensure availability of such books and online journals in the Commissionerates.

4. Documentation required with proposals:

4.1 Another significant aspect that has been found lacking in the proposals is documentation. Often complete sets of documents are either not enclosed or not found legible. The List of documents that are required to be enclosed in SLP/CA proposals is enumerated in Annexure-I. The following measures shall be taken in this context,-

- (i) With every proposal a certificate signed by Commissioner would be enclosed certifying that all relevant documents have been enclosed and that all documents are legible. In case any document is not furnished in the original proposal, the reason thereof would be furnished and such documents shall be furnished as soon as possible.
- (ii) The technical literature, court orders, judgments, copies of written submissions as well as material including technical literature which had been furnished to the Tribunal by the assessee at the time of oral submissions may be required for preparation of appeal proposal by the Department. The Joint Chief Departmental Representatives shall ensure that the documents stated above are preserved and sent to the Commissioner concerned immediately after the pronouncement of the order so that the said documents can be made a part of the Paper Book in case it is decided to agitate the matter before the Supreme Court. In case the documents have not been received by the Commissioner at the time of sending the CA proposal to the Board, the same should be procured by the Commissioners from DRs office and send to the Board as soon as possible.

5. Other measures to improve the processing of litigations:

5.1 Grading of cases pending before the Courts is very important for effective monitoring by supervisory officers and, therefore, the Chief Commissioners are advised to devise an appropriate mechanism to prioritize important cases and classify

them in various categories such as cases involving challenge of constitutional validity of provisions of Act / Rules / Notifications/ Circulars as Grade I cases involving revenue of more than 1 crore as Grade II cases and so on.

5.2 The Directorate of Legal Affairs has been providing assistance and liaising between the field officers and the Central Agency Section of the Law Ministry including the Law Officers and Counsels. It has been felt that field formations are not fully aware of functioning of the Directorate of Legal Affairs, even though it is discharging important functions. Therefore, details of its functioning and its role in dissemination of information, revenues response in parties appeals and curing of defects of Revenue appeals is placed (Annexure VI).

5.3 Directorate of Legal Affairs has taken several initiatives to make the details of ongoing cases in various courts available on the Internet. Considerable progress has been made towards the dissemination of information about various lists on the Courts as well as CBEC websites. A brief on the measures adopted for facilitating monitoring of the cases is enclosed as Annexure VII. Most of the information related to listing of cases is available on the CBEC web site as well as on www.courtnic.nic.in. Officers in the field are expected to monitor cases pertaining to their Commissionerates with the help of the information available on these sites. The field officers can now find online the stage of the case, come forward to assist in proper representation of the case and provide timely response in the event of queries made.

5.4 The Directorate of Legal Affairs will also compile and circulate a list of cases where appeals/ review petitions are not pursued in Supreme Court where amounts are very low or where appeals are dismissed only on grounds of delay or amount being small. Similar database may be maintained at Commissionerate level in respect of orders of High Court / CESTAT /Commissioner (Appeals) accepted on account of limitation or low amount.

6. Dissemination of information regarding cases which are in favour of revenue: In the event it is observed that pro-revenue decisions have not been published / uploaded in the publications or web-sites like ELT/ STR / RLT / www.taxindiaonline.com, copies may be sent for publication in these journals/ website.

7. Committee on Disputes (COD) matter

7.1 In matters of COD, the instructions issued by the Cabinet Secretariat have been circulated by the Board from time to time. However, it is seen that delayed proposals, incomplete or illegible documents and pages not having been numbered, are being received and commented upon by the Committee on Disputes. The enclosures should be legible and all the documents should be page numbered for ease of reference. Also, all the relevant orders should be enclosed. Further, it is once again reiterated that proposals having revenue implication of Rs 5 lakhs and below need not be sent for approval by the High Powered Committee.

8. The above instructions in brief enumerate the steps/measures being taken or to be taken to improve the mechanism of litigation. The comprehensive instructions in details are contained in Annexures as per details mentioned in para 9 below. Further these instructions cast certain responsibilities on Chief Commissioners, Commissioners and CDR office. Therefore, to ensure compliance of these instructions, a one time report on the points mentioned in Annexure VIII will be furnished by all Zonal Chief Commissioners and CDR by 31st December 2010.

9. In order to reduce departmental litigation, Board has decided to fix monetary limits below which appeals shall not be filed before the Tribunal and Courts. Separate instruction in this regard is being issued.

10. The details of Annexures:

- Annexure-I Instruction as regards litigation before the Supreme Court
- Annexure- II Instruction as regards litigation before the High Court
- Annexure III Instructions for improving the quality of Departmental Representation before CESTAT
- Annexure-IV Instruction as regards action for dissemination_of judgments in revenues favour
- Annexure-V Instructions as regards disputes between Government Department and Central PSUs/ other Government Departments
- Annexure-VI The functioning of the Directorate of Legal Affairs
- Annexure-VII The mechanism of listing of appeals / SLPs as followed by Supreme Court Registry, alertness expected from Commissioners and marking of cases to the Counsels
- Annexure -VIII Points on which Zonal Chief Commissioner and CDR will furnish a one time compliance report

All the Annexures as listed above may be downloaded from the Boards website www.cbec.gov.in (Central Excise).

11. The following circulars/instruction on becoming redundant upon issuance of these instructions stand superseded:

- (i) Circular No. 313/29/97-CX., dated 6th May1997
- (ii) Circular No 33/97- Cus dated 4th Sep1997
- (iii) Circular No 332/48/97 CX dt 9th Sep 1997
- (iv) Circular No 349/65/97 CX dt 31st Oct 1997
- (v) Circular No. 402/35/98-CX., dated 9th June1998
- (vi) Circular No 488/54/99 JC dt 12th Oct 1999
- (vii) Circular No 517/13/2000 CX dt 2nd March 2000
- (viii) Circular No 519/15/2000 CX dt 3rd March 2000
- (ix) Circular No 544/40/2000 CX dt 6th Sep.2000 ,
- (x) Circular No 550/46/2000 CX dt 18th Sep 2000
- (xi) Circular no. 891/16/2005 CX dated 13th October 2005.
- (xii) Circular No 835/12/2006 CX dt 6th Oct 2006
- (xiii) Circular No 863/1/2008 CX dt 2nd Jan 2008

12. The following Circulars / letters issued by the Board that find mention in this Circular and its annexures are not being withdrawn.

- (i) Letter F. No. 390/Misc/411/07- JC dated 6th February 2008.

- (ii) D.O.F. No.390/Misc/411/07-JC dated 7th January 2008.
- (iii) Letter F No [390/R/135/2008-JC dated.9.5.08.](#)
- (iv) Circular No 27/27/94-CX dated 2.3.94 as modified from time to time.
- (v) Circular No 156/67/95-CX dated 17.11.95,
- (vi) [Circular No.515/11/2000-CX](#) dated 18.2.2000
- (vii) [Circular No. 578/15/2001-CX](#) dated 20-06-2000
- (viii) LetterF No 390/R/187/2009-JC dated 10.8.2009.

Sd./-

(SUSHIL SOLANKI)
COMMISSIONER OF CUSTOMS (EXPORT)

F.No. S/26-Misc.-100/2010-Legal.

Date : 24.12.2010

Encl. : As above and may be downloaded from the Boards website.

Copy to :

1. The Chief Commissioner of Customs
Mumbai II Zone.
2. The Commissioner of Customs (Import)
3. The Commissioner of Customs (Export)
4. All Additional / Joint Commissioner of Customs
Mumbai II Zone with request to handover
the copy of this S.O. to all the Asstt./Dy.
Commissioner under their charge.
5. Dy/Asstt. Commissioner, Appraising (Main)
Import and Export.
- 6.Master File.

Circular No. 935/25/2010-CX

Annexure I
Litigation before the Supreme Court
Appeal Provisions

(a) Against the order of the High Court appeal can be made to the Supreme Court by way of Civil Appeal u/s 35L(a) of the Central Excise Act, 1944 or u/s 130E(a) of the Customs Act, 1962 or Special Leave Petition under article 136 of the Constitution.

(b) Civil Appeal against any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of Customs / Central Excise or Service Tax or to the value of goods/services for purposes of assessment, appeal can be filed in the Supreme Court u/s 35L(b) of the Central Excise Act, 1944 or u/s 130E(b) of the Customs Act, 1962.

Limitation for filing Civil Appeal/ Special Leave Petition

(c) The limitation prescribed under the Supreme Court Rules, 1966 for filing Civil Appeal before the Supreme Court against the order of Tribunal is 60 days from the date of receipt of the order.

(d) In a case where the High court on its own motion or on an oral application made by the party aggrieved, immediately after passing of the judgment, certifies the case to be fit for appeal to the Supreme Court, a Civil Appeal is filed against the High Court order under Sec. 35L of the Act for which limitation is 60 days from the date of the order (and not the date of receipt of order). However, in most of the cases no such application is made by the aggrieved party before the High court and therefore in such cases, if aggrieved party intends to agitate the order / judgment of the High Court before the Supreme Court, then it can be done by way of filing a Special Leave Petition under Article 136 of the Constitution of India. The limitation for filing of SLP is 90 days from the date of the High Courts order. The time taken by the Court from the date of filing of application for certified copy of the order till the copy is ready for delivery is excluded from the computation of the period of limitation.

(e) It is noticed that many a time the orders / directions given by the CESTAT are not received at all or received late in the Commissionerates. To strengthen the departmental mechanism for obtaining copies of the orders passed by the Tribunal, the Board has decided that JCDR/SDR would directly communicate the orders in important matters to the Commissioners after its pronouncement. For proper co-ordination, the CDR/Jt CDR will hold regular interaction meetings with the Chief Commissioners. The Chief Commissioners would work out a mechanism for making available one officer (for a period of about three months by rotation) for collection of the orders passed by the Tribunal in respect of their Zones.

(f) The delay in applying for the certified copy of the order is attributed on the part of the party. Therefore, the procedure for obtaining the certified copy of the order of High Court should be initiated immediately on pronouncement of the order, preferably the date of pronouncement or a day after. It shall be impressed upon the Standing Counsels appointed by the Board for handling the case of indirect taxation before the High Courts that it is their responsibility to apply for the certified copy of the order in time and to ensure that it is sent to the department immediately. The officers of Legal Cell set up in

the Commissionerate located where the seat of the High court functions should ensure that the certified copy of order is procured in time.

Forwarding of proposal to file Civil Appeal / SLP by the Commissionerate to the Board

(g) In order to improve upon the quality of proposals and also the time limit prescribed and the documentation, Board has decided to involve Chief Commissioners in the process of litigation before the High Courts and Supreme Court. Henceforth, all the proposals to file CAs/SLPs should be sent by the Commissioner only after obtaining the concurrence of the jurisdictional Chief Commissioner. While forwarding the proposal, the Commissioner shall also submit a certificate to the effect that legible copies of requisite documents are enclosed along with the proposal and that the proposal is sent within the time prescribed in the above stated circular.

(h) It is also felt important to put in place a mechanism for examination of CESTAT Orders in the Office of the Chief / Joint Chief Departmental Representative as they would have dealt with the cases before CESTAT and their opinion in the matter will certainly act as a guiding factor/facilitate the Commissioner to take a decision. Needless to say such communication has to be very fast especially where it is proposed to file appeal before the Supreme Court. The Board, vide its letter F. No. 390/Misc/411/07- JC dated 6th February 2008 had laid down the following mechanism in the Office of the Chief / Joint Chief Departmental Representative in this regard:-

- (i) All orders passed by CESTAT will be examined by the concerned DRs and put up to the Jt.CDR to examine the correctness and legality of the Order.
- (ii) In case the Jt.CDR is of the view that appeal needs to be filed against the Order, he will send a letter along with details in the Proforma A given below to the concerned Commissioner giving his opinion about the need for challenging the Order.
- (iii) All orders involving revenue implications over 1 Crore will also be placed before the CDR.

(i) As mentioned in para 2.5 the proposal for filing of appeal before Supreme Court against the order of Tribunal should be sent to the Board within 15 days of receipt of the order. The proposal for appeal against the High courts order should be sent within 20 days of the pronouncement of the order. The proposal against the High courts order shall be initiated on the strength of the copy of the order circulated by the Court on its own motion or copy downloaded from the website of the Court i.e www.indiancourts.nic.in or www.court.nic.in without waiting for the certified copy of the order. The certified copy of the order may be sent separately thereafter. All the proposals should invariably be sent in the proforma B and a flow chart, as per proforma C (which indicates the time allocated at each stage of filing appeal), shall be enclosed.

(j) The Chief Commissioners may strengthen their legal / Review / Judicial sections by re-deploying the staff from the Commissionerates. Sincere efforts must be made to ensure that the time limit is adhered to, however, taking into consideration the geographical constraints, serious view would be taken by the Board if the proposal is received beyond 20 days of the receipt of the CESTAT order / date of the order of the High Court.

(k). The Commissionerates should not take legal opinion from the Standing counsels in respect of the High Courts orders for forwarding proposal to file appeal as the SLPs against the High Courts orders are filed by the Board only after obtaining the legal opinion from the Ministry of Law & Justice and Ld. Law officers of the Government of India. Similarly, the orders of the Tribunal should be examined within the prescribed time without waiting for the recommendations of the CDR/Jt CDR and proposal for filing appeal before the Supreme Court sent as stipulated supra. As and when the recommendation of the DR is received, the same may be sent to Board in continuation of the earlier communication.

(l) In cases where the proposals are sent with delay beyond the prescribed period the Commissioner should, along with the proposal, indicate the reasons for the delay and the action taken / proposed to be taken against the officers responsible for delay.

(m) Where proposal is sent belatedly (beyond 30 days) or where revenue involved is 1 Crore or more, the appeal proposal should be sent through a special messenger. Such messenger should preferably be an officer well conversant with the case. Similarly in matters relating to challenge to constitutional validity of certain provisions of the statute, compliance of directions of Tribunal / High court within certain time less than the period of limitation, filing of contempt petitions against the department, grant of anticipatory bail, return of passports etc, the proposal should be sent through a well conversant officer. He should be prepared to stay in Delhi for 3-7 days with the possibility of making another trip at the time of vetting. It must be ensured that necessary logistic support and advance payment of TA/DA etc. are provided to him in time.

(n) The Commissionerates must send soft copy of all the proposals with statement of facts and grounds of appeal by e-mail to sojc-cbec@nic.in in respect of CA proposals against CESTAT order and to dirlegal_cbec@nic.in in respect of CA / SLP proposals against High Courts order as soon as hard copy of the proposal along with all documents is sent by post or through messenger. This should be followed by sending the soft copy of the impugned order, and orders of the lower appellate authorities such as Commissioner (A) and /or CESTAT as the case may be, order in original and the show cause notice along with all the requisite documents as soft copies of these documents are required while preparing the paper book.

(o) It is noticed many a time that the proposals are sent by the Commissionerates to the sections of the	Category of proposals	Concerned Person/ section of the Board
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<p>Board not dealing with the same and redirection of such proposals adds to delay. Therefore it is important for the field formations to note the sections of the Board to whom the proposals for filing Civil appeals and Special Leave Petitions are to be sent:- S.No</p>		
<p>1</p>	<p>Civil appeals against the orders of CESTAT</p>	<p>JS(Review), CBEC, 4th floor, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110 066</p>
<p>2</p>	<p>Civil appeal / SLP against</p>	<p>Commissioner (Legal), CBEC, 5th floor,</p>