

OFFICE OF THE COMMISSIONER OF CUSTOMS(EXPORT),
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVASHEVA,
TALUKA URAN, DISTRICT RAIGAD, MAHARASHTRA 400707

STANDING ORDER
NO:02/2011

Subject : Reduction of Government litigations providing
monetary limits or filing appeals by the
Department
before CESTAT and High Courts reg.S

Attention of all the staff and officers is hereby drawn to the Board's F. No. 390/Misc./163/2010-JC dtd. 20th October, 2010, inter-alia, prescribing the guidelines in respect of Reduction of Government litigations providing monetary limits for filing appeals by the Department before CESTAT and High Courts.

The National Litigation Policy formulated by the Government of India aims to reduce Government litigation so that the Government ceases to be a compulsive litigant. The purpose underlying this Policy is to ensure that valuable time of the Courts is spent in resolving pending cases and in bringing down the average pendency time in the Courts. To achieve this, the government should become an efficient and responsible litigant.

Accordingly, the Policy lays down, inter-alia, that in Revenue matters appeal shall not be filed if the amount involved is not very high and is less than the monetary limit fixed by the Revenue authorities. It also states that appeals shall not be filed if the matter is covered by a series of judgments of the Tribunal and the High Courts which have held the field and have not been challenged in the Supreme Court. The Policy also lays down that no appeal shall be filed where the assessee has acted in accordance with the long standing practice and also merely because of change of opinion on the part of the jurisdictional officers.

The Hon'ble Bombay High Court in its order dtd.21.06.2010 in the case of CCE Vs Techno Economic Services Pvt. Ltd. [2010(255)ELT 526(Bombay)] had desired that CBEC consider issuing circular, on the lines of circulars issued by the CBDT, so as to reduce litigations arising out of indirect tax litigations.

In respect of appeals filed in the Supreme Court, the proposals are examined by the Board before filing. The Civil Appeals on matters relating to valuation and classification are filed under Section 35L(b) of the Central Excise Act, 1944 and Section 130E(b) of the Customs Act, 1962. Such appeals are being filed after careful scrutiny by the Board and while examining, the amount involved is kept in mind. On all issues other than those relating to valuation and classification, SLPs are filed by the Board after obtaining the opinion of the Law Officer from the Ministry of Law. However, it may be mentioned that Board had issued instruction vide DO F.No. 390/170/92-JC dtd. 13.01.1993 as modified by D.O. of even number dtd.27.10.1993 advising the field formations that, appeals should not be filed in the Supreme Court in cases where the duty involved is Rs. 5 lakhs or less. The said instruction was issued in the light of observation of the Supreme Court as conveyed by the then Attorney General and was reiterated vide various circulars issued by the Board from time to time. It is therefore, desired that the above instruction must be kept in mind while sending proposals to the Board for filing civil appeal or SLP in the Supreme Court.

The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is

Rs.1 lakh and below. Similarly in the case of High Courts appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs. 2 lakhs and below. While deciding the thresholds mentioned above, the duty involved shall be the decisive element. For example, in a case involving duty of Rs.1 lakh with mandatory penalty of Rs. 1 lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs.1 lakh. Similarly, if the duty involved in a case is Rs. 2 lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court.

Adverse judgments relating to the following should be contested irrespective of the amount involved :

- a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- b) Where notification/instruction/order or Circular has been held illegal or ultra vires.
- c) Where audit objection on the issue involved in a case has been accepted by the Department.

It may also be noted that, wherever it is decided not to file appeal in pursuance of these instructions, which are aimed solely at reducing Government litigation, such cases shall not have any precedent value. In such cases, Commissioners should specifically record that even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit prescribed by the Board. Further, in such cases, there will be no presumption that Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assesses, if the amount involved exceeds the monetary limits. Thus, in case any prior order is being cited on facts and law, it must be checked whether such order(s) were accepted only on account of the monetary limit before following them in the name of judicial discipline.

In respect of an order where it is decided not to file appeal in pursuance of these instruction, a data base needs to be created so that all the Commissionerates are made aware of the orders that are accepted solely on the ground that the revenue involved is below the threshold prescribed herein and which should not be taken as having precedent value. The details of such orders in respect of CESTAT and the High Courts is required to be furnished by the Zonal Chief Commissioners in proforma enclosed (Annexure III E and Annexure III F) which would form part of the Monthly Technical Report being sent to the Directorate of Legal Affairs for posting on the departmental website. These Annexures III E and III F should be sent to the Directorate of Legal Affairs by e-mail also to dla-rev@nic.in. Therefore, all the adjudication authorities within the Mumbai II Zone shall send the details of all such cases in Annexures III E and III F to the Adjudication Cell of the Imports/ Exports Commissionerate who in turn compile the information and send the same to the Office of Chief Commissioner of Customs, Mumbai II Zone by 5th day of the succeeding month for onward transmission to the Directorate of Legal.

The above instruction of the Board must be adhered to strictly for all appeals filed on or after 01.11.2010. The instruction issued vide F.No. 275/55/CX - 8A dtd.10.11.2008 is hereby rescinded.

F.No.

S/26-Misc.-100/2010-

Legal. (SUSHIL SOLANKI)

Date

: 24.12.2010

Commissioner of customs (Export)

Encl. : As above.

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