

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