

**OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS, MUMBAI ZONE II**  
**JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,**  
**URAN, RAIGAD, MAHARASHTRA 400 707.**

S/V-30-Misc-05/2010 CCO M-II

Date: 03.12.2010

**STANDING ORDER 79 /2010**

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◆ ◆ Subject: Measures to streamline the processing of departmental litigation

◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ before the Courts and Tribunal  
reg.

◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ The Board has issued Circular No. 935/25/2010-CX dated 21/09/2010 from file F. No. 390/Misc./100/2009-JC (Copy enclosed), on the above subject. The following instructions based on the said circular are reiterated with an aim to streamline the processing of departmental litigation before the Courts and Tribunal.

(i). ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ The Commissioners are directed to ensure that an institutional mechanism is put in place within the Commissionerate for receipt of copy of order and other communications from the CDR or Jt. CDR in respect of CESTAT cases. The Legal Cell in the Commissionerate(X) is also required to develop a system for timely receipt of High Court's orders in coordination with nodal Commissionerate ie Commissioner (G), Mumbai Zone-I.

(ii). ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ 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 in filing Special Leave Petition under Article 136 of the Constitution.

(iii). ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ The practice of sending draft SLP/CA should henceforth be strictly discontinued as Central Agency invariably gets the SLP drafted from Drafting Counsels.

(iv). The Commissionerates need not take the legal opinion from the Standing Counsels in respect of the High Court's orders for forwarding proposal to file appeal (Reference Para 2.3 of the Board's Circular).

(v). The Civil Appeal proposals are required to be sent so as to be received in the Board's 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. 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.

**(vi). As per para 3.1 (i) and 3.1 (ii) of the circular dated 21.09.2010, all CA and SLP proposals would henceforth be approved by the Chief Commissioner. All such orders which are against revenue but found acceptable by the Commissioner will be put up to the Jurisdictional Chief Commissioner for concurrence. The Commissioners are therefore directed to send the original files of the Commissionerates containing typed written note sheet with clear recommendation of the Commissioner about the CA proposal/SLP proposal/ acceptance of the order of the Tribunal/High Court alongwith all the relevant documents to the Chief Commissioner. In case of CA proposal, the file must come within ten days from the receipt of order of the Tribunal & in case of SLP approval by the Chief Commissioner related file should be put up within 15 days from the date of High Court Order. All such orders which are against revenue but found acceptable by the Commissioner are to be put up to the Chief Commissioner for concurrence immediately. These files must be put up to the Chief Commissioner within the time limit prescribed above.**

(vii). The Commissioners shall ensure that legal journals such as ELT, RLT etc and software for online services such as Jurix, Manupatra, SCC Online, EXCUS, lawcrux, Taxindiaonline etc. and reference books, law lexicons are available to the branches/officers dealing with SLP/CA.

(viii). The Commissioners shall ensure that complete sets of documents are required to be enclosed with the SLP/CA proposals. 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.

(ix). The 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, cases involving revenue of more than 1 crore as Grade II cases and so on and report the cases, duly classified, to the Chief Commissioner. One time Compliance Report as per Annexure VIII of the above said Board Circular may be forwarded to C.C.O by 15.12.2010.

(x). A database may be maintained at Commissionerate level in respect of orders of High Court/ CESTAT/Commissioner (Appeal) accepted on account of limitation or low amount.

(xi). The proposals having revenue implication of 5 lakhs and below need not be sent for approval by the High Powered Committee in respect of COD matters, (Dispute between Central Government Department and PSU / other Government Departments) unless there are compelling reasons for doing so. The Commissionerates should however, maintain appropriate database in respect of all such cases of litigation with PSUs where it was decided not to file or pursue appeal on account of low amount.

The Commissioners are requested to go through the Board's instruction carefully and ensure that these are implemented immediately.

**(K.R.BHARGAVA)**  
**CHIEF COMMISSIONER OF CUSTOMS**  
**MUMBAI ZONE II**

Encl: As Above

**Circular No. 935/25/2010-CX**

F. No. 390/Misc./100/2009-JC  
Government of India  
Ministry of Finance  
Department of Revenue

◆(Central Board of Excise & Customs)

.....

New Delhi, dated the 21<sup>st</sup> ◆◆September 2010

To,

- 1.◆ All Chief Commissioners and Director Generals under the Central Board of◆◆ Excise and Customs.
- 2.◆ CDR, Customs, Excise & Service Tax Appellate Tribunal.
3. All Commissioners of Customs / Central Excise/ Service Tax / All Joint Chief Departmental Representatives / Commissioner, Directorate of Legal Affairs
- 4.◆ <webmaster.cbec@icegate.gov.in>

**Sub:-◆◆◆ Measures to streamline the processing of departmental litigation before the Courts and Tribunal - reg.**

Sir / Madam,

◆◆◆◆◆ It has been the constant endeavor of the Board to streamline the procedures relating to processing of departmental litigation before the Supreme Court, High Courts and 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 this circular. Needless to say that any deviation, without plausible explanation, would be viewed seriously.

**2.◆◆◆◆◆◆◆◆◆◆ Delay in receipt of proposals in the Board◆s office:**

2.1◆◆◆◆◆◆◆◆◆◆ One major cause of concern is delay in receipt of proposals in the Board◆s 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 are avoidable 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 Court◆s order to respective Commissionerates. The Legal Cell in the Commissionerates will also develop a system for timely receipt of High Court◆s orders.

(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 Court's orders for forwarding proposal to file appeal as the SLPs against the High Court's 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.

2.4 The 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 Court's 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 <http://www.indiancourts.nic.in/> or <http://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 6<sup>th</sup> 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, Lawcruz, Taxindiaonline etc. and reference books, law lexicons are available to the sections/officers dealing with SLP/CA. The Chief Commissioners 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 DR's 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, revenue's 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 Court's 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 <http://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 / <http://www.taxindiaonline.com/>, copies may be sent for publication in these journals/ website.

## 7. Committee on Disputes (COD) matters

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 ₹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 31<sup>st</sup> 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 revenue's 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

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

- (i) Circular No. 313/29/97-CX., dated 6<sup>th</sup> May1997
- (ii) Circular No 33/97- Cus dated 4<sup>th</sup> Sep1997
- (iii) Circular No 332/48/97 CX dt 9<sup>th</sup> Sep 1997
- (iv) Circular No 349/65/97 CX dt 31<sup>st</sup> Oct 1997
- (v) Circular No. 402/35/98-CX., dated 9<sup>th</sup> June1998
- (vi) Circular No 488/54/99 JC dt 12<sup>th</sup> Oct 1999
- (vii) Circular No 517/13/2000 CX dt 2<sup>nd</sup> March 2000
- (viii) Circular No 519/15/2000 CX dt 3<sup>rd</sup> March 2000
- (ix) Circular No 544/40/2000 CX dt 6<sup>th</sup> Sep.2000
- (x) Circular No 550/46/2000 CX dt 18<sup>th</sup> Sep 2000
- (xi) Circular no. 891/16/2005 CX dated 13<sup>th</sup> October 2005.
- (xii) Circular No 835/12/2006 CX dt 6<sup>th</sup> Oct 2006
- (xiii) Circular No 863/1/2008 CX dt 2<sup>nd</sup> 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 6<sup>th</sup> February 2008
- (ii) D.O.F. No.390/Misc/411/07-JC dated 7<sup>th</sup> 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) Letter F No 390/R/187/2009-JC dated 10.8.2009.

13. Receipt of this Circular may please be acknowledged.

14. Hindi version will follow.

(Sunil K Sinha)  
Director (JC)