

Ministry of Finance, Department of Revenue, Central Board of Excise & Customs

F.No.390/Misc./100/2010-JC, Dated- 22nd September, 2011

INSTRUCTION

SUBJECT: Filing of appeal in the wrong forum in matters relating to valuation of determination of rate of duty – reg.

Sir/Madam,

Reference is invited to Section 35L (b) of the Central Excise Act, 1944, made applicable to Service Tax vide Section 83 Of the Finance Act, 1994 and Section 130E (b) of the Customs Act, 1962 which stipulates that appeal shall lie to the Supreme Court against a Tribunal order in a case involving determination of any question having a relation to the rate of duty or value of the goods for the purpose of assessment. Your attention is also invited to Circular No 935/25/2010-CX dated 21.09.2010 regarding Measures to streamline the processing of departmental litigation before the Courts and Tribunals.

2. Annexure I of the said Circular deals with provisions for filing of (a) Civil appeals/SLP against the High Court order before the Supreme Court and (b) Civil Appeal against any Tribunal order. It was mentioned therein that Civil Appeal against the Tribunal order is required to be filed in the Supreme Court in cases relating, among other things, to the determination of any question having a relation to the rate of duty or the value of goods for the purposes of assessment as statutorily prescribed.

3. It has come to the notice of the Board that field formations have filed appeals in the jurisdictional High Courts in matters relating either to determination of rate of duty or value of the goods which ought to have been filed in the Supreme Court. Such appeals get dismissed by the High Courts on the ground of jurisdiction alone, invariably after pending for a long time. Civil Appeals filed in the Supreme Court in such cases have frequently been dismissed on the ground of limitation. It may also be noted that the time period for filing Civil Appeal is 60 days from the date of receipt of the Tribunal order in the Commissionerate.

4. The Commissioners are, therefore, directed to examine the issue involved in the dispute very carefully for deciding the appellate forum. The jurisdictional Chief Commissioners, while giving concurrence to the proposal for filing appeal, are expected to ensure that appeal is being filed in the correct forum in order to avoid needless litigation being pursued in the wrong forum and consequent loss of revenue.

5. The above may be brought to the notice of the field formations under your charge for scrupulous compliance.

**Yours faithfully,
(Sunil K Sinha)**

Director (Review)
Tele.No. 26162156

To,

1. All Chief Commissioners and Directors General 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/Commissioners, Directorate of Legal Affairs.
4. <webmaster.cbec@icegate.gov.in>