

INDIRECT TAXES UPDATE - 14

EXCISE DUTY AND CUSTOMS DUTY

Monetary limits provided for filing appeals by the Department before CESTAT and High Courts

In view of the National Litigation Policy formulated by the Government of India to reduce Government litigation, following monetary limits have been prescribed vide an Instruction in respect of appeals to be filed by the Department in High Courts and Tribunal :

High Courts: Appeals would not be filed in cases where the duty involved or total revenue including fine or penalty is Rs 2 lakhs and below.

Tribunals: Appeals in the Tribunal would not be filed where the duty involved or the total revenue including fine and penalty is Rs 1 Lakh and below.

In case of appeals to be filed in the Supreme Court, the old policy as provided in *Instruction vide DO F No. 390/170/92-JC dated 13.1.93* of not filing appeals in cases where the duty involved is Rs 5 Lakhs or less will continue to be followed.

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 filed under Section 35L(b) of the Central Excise Act, 1944 and Section 130E(b) of the Customs Act, 1962 respectively 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 Ld. Law officer from the Ministry of Law.

However, Adverse judgments relating to the following would 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

Wherever appeals would not be filed in pursuance of these instructions, which are aimed solely at reducing Government litigation, such cases will not have any precedent value. In such cases, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assessees, if the amount involved exceeds the monetary limits.

Instruction issued vide *F No. 275/55/CX 8A dated 10.11.2008* has been rescinded and the above Instruction will be adhered to strictly for all appeals filed on or after 1.11.2010.

[F.No.390/Misc./163/2010-JC dated 20.10.2010]

The complete text of above instruction is available at www.cbec.gov.in

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Feedback

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