

## INDIRECT TAXES UPDATE - 50

### Monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme court revised by CBEC

With effect from 01.09.2011, the Central Board of Excise & Customs has revised monetary limits below which appeal should not be filed in the Tribunal, High Court and the Supreme Court as under:

Sl.No.	Appellate Forum	Monetary limit
1.	CESTAT	Rs.5,00,000/-
2.	High Courts	Rs.10,00,000/-
3.	Supreme Court	Rs.25,00,000/-

The Board has clarified that for ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/tax under dispute e.g, in a case involving duty of Rs. 5 lakhs or below with equal penalty and interest, as the case may be, no appeal can be filed in the Tribunal. Similarly, no appeal would be filed in the High Courts if the duty involved does not exceed Rs.10 lakhs with or without penalty and interest.

Also, the Commissionerates have been instructed not to send proposal to the Board for filing Civil Appeal or Special Leave Petition in the Supreme Court in a case involving duty up to Rs.25 lakhs, whether with penalty and interest or otherwise. However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. Similarly, where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

Adverse judgments relating to the following would have to 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.

Following queries related with application of monetary limits have been clarified by the Board as under:

**Issue:** Whether duty involved mentioned in the Instruction dated 20.10.2010 refers to duty outstanding to be collected or the total duty demanded for deciding the threshold limit prescribed therein.

**Clarification:** In a case where a part of the duty demanded is not disputed and is paid and the outstanding duty under dispute is less than the monetary limit prescribed by the Board, no appeal shall be filed. In other words, monetary limit shall apply on the disputed duty and not on the total duty demanded in a case.

**Issue:** Whether monetary limits would apply to cases of refund?

**Clarification:** It is clarified that the monetary limits being prescribed by the Board would apply to cases of refund as well.

**Issue:** Whether applications being filed by the Department before office of Joint Secretary (Revision Application) would also be covered under the stipulation of monetary limits?

**Clarification:** The limit specified herein will not be applicable to application filed before the Joint Secretary (Revision Application).

**Issue:** Whether exclusion of audit objections mentioned in para 6(c) of Instruction dated 20.10.2010 would cover internal audit objection cases also or whether they would be limited to cases of revenue audit alone?

**Clarification:** The intention was to apply the exclusion clause mentioned at para 6(c) only to disputes arising out of revenue audit objections accepted by the Department. It has now been decided to delete the said exclusion clause. Therefore, in all cases of audit objections accepted by the Department, while protective demands may continue to be issued but the same would be subjected to the monetary limits for filing appeal in the Tribunal, High Courts and the Supreme Court.

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