

F.NO. 390/34/99-JC
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, the 19th, May, 2000

Subject: Appeal against CEGAT's orders—filing in proper forum and on proper issues

Your attention is invited to the provisions contained in Sections 35G and 35L(b) of the Central Excise Act, which Sections clearly stipulate the types of cases where statutory appeal against the Tribunal's order lies before the Supreme Court. A question of law could be referred to the High Court in respect of issues other than those relating to the rate of duty or to the valuation of goods as these are covered under Section 35L(b) of the Act. Analogous provisions exist under Chapter XV of the Customs Act, 1962.

The Board has issued various instructions from time to time on the need for careful scrutiny of CEGAT orders and sending timely proposals for filing of Civil Appeal in the Supreme Court where warranted. However, it has come to the notice of the Board that the above provisions of the Act are either lost sight of or at times not properly understood and we are getting in the Board proposals against CEGAT orders for filing Civil Appeals when even remotely it is not attracting Section 35L of Central Excise Act, and at best it could be a case of warranting a Reference Application before jurisdictional High Court, Board is also sometimes coming across cases where because of improper appreciation of the facts and legal provisions, Reference Applications are being inadvertently filed, where Civil Appeal should have been proposed. Obviously by the time CEGAT/High Court decide that Reference Application is not entertainable, the civil appeal time limit is over by the huge margins and we lost the chance of contesting in Supreme Court. Recently one of the Commissionerates had sent one such case where they had application against CEGAT order on the issue of whether cutting/drilling/punching etc. of Aluminum Sections amounts to manufacture. The Tribunal rejected the said reference Application on the ground that the matter pertained to bringing into existence of new goods and hence related to classification and valuation, for which separate provisions existed under Section 35L(b) of the Act. The Commissioner thereafter had forwarded a proposal recommending filing of Civil Appeal in this matter, but the C.A. proposal involved a delay of 472 days, which could not be explained to the Supreme Court, as pursuing of appeal before a wrong forum is not considered to be a sufficient reason for condonation of delay, no appeal could, therefore, be filed before the Supreme Court in the said case.

Board is not happy with such cases of delay and wrong filing of Reference Application or wrong recommendation for Civil Appeals. All Commissioners are requested to carefully go through the facts of each case and legal issues on which we have differences of opinion vis-à-vis order taken by CEGAT so that errors of the type mentioned above are avoided in future.