

F.NO.390/122/2000-JC  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, the 24th July, 2000

**Subject: Filing ROM applications before CEGAT in respect of CEGAT Orders contrary to Apex Courts" Orders - Instruction - Reg.**

Your attention is invited to the DO letter F.No. 385/62/99/JC/2000 dated 17.2.2000 from Shri P.N. Malhotra, Member (L&J) and addressed to all Chief Commissioners of Customs and Central Excise. Through the said letter, Board had informed the Chief Commissioners about the out-come of our SLP and related CAs on the question whether the principles of unjust enrichment would be applicable in respect of cases of refund of duty paid on imported raw-materials even if captively consumed in the manufacture of final product. This famous judgement of Apex Court in the case of Union of India vs. Solar Pesticides has decided this important question of law in favour of revenue.

2. The Apex Court in the case of Commissioner of Central Excise, Kanpur Vs Venus Castings (P) LTD also decided another question of special importance in the month of April. The Apex Court set aside the Tribunal judgement on the question whether the assessee can ask for re-determination of production capacity u/s 3 A (4) of the Central Excise Act once he has opted for assessment u/s 96 ZO (3). This judgement of the Apex Court dated April 5, 2000 was sent to all Chief Commissioner of Customs and Central Excise vide F.No. 387/55/99/JC dated 1.5.2000 by the Joint Secretary (Review).

3. Yet another landmark judgment of the Supreme Court has settled the question whether limitation as provided under section 11A of the CE Act would apply to recovery under rule 571 of credit wrongly availed prior to the amendment of rule 571 on 6-10-1988. The apex court decided this Excise Reference Case (C) No 3 of 1995 on 11-5-2000. This order is reported in 2000(118) ELT 311 (SC).

4. There may be cases under your charge where CEGAT might have decided either of these issues in favour of the assessee following the ratios of Bombay High Court judgement in the Solar Pesticides or Tribunal judgement in the case of Meenakshi Castings or other similar decisions. It is also likely that you may not have been able to file any CA against such Tribunal Order. It is possible to remedy the situation by filing a rectification of mistake application under section 129B(2) of the Customs Act or section 35C(2) of the Central Excise Act requesting the CEGAT to recall its order as the orders of the Supreme Court on the issues make valid basis for rectifying the earlier orders passed by the CEGAT.

5. The following decisions of the High Courts or the Supreme Court have dealt with similar question on the Income Tax or the Sales tax side. A similar issue on our side is also under consideration of the larger Bench of the CEGAT.

1. B.V.K. SESHAVATRAM Vs. C.I.T. 1994 (210) ITR 633 (AP)
2. KILKOTAGIRI TEA & COFFEE ESTATE Vs ITAT - 1988 (174) ITR 579 (KER).
3. PARSHURAM POTTERY WORKS Vs. D.R. TRIVEDI - 1975 (100) ITR 651 (GUJ).
4. M.K. VENKATACHALAM Vs. BOMBAY DYEING - AIR 1958 SC 875
5. S.A.L. NARAYAN RAO Vs. MODEL MILLS - 1967 (64) ITR 67 (SC).
6. POOTHUNDU PLANTATION P. LTD Vs. ITO - 1966 (66) ECR 224 (SC).
7. RAM DASS RICE & GEN. MILLS vS. STATE OF PUNJAB - 1966 (100) STC 211 (P7H).
8. HERO CYCLES Vs. STATE OF PUNJAB - 1995 (99) STC 611 (P&H).
9. RAM KIRPAL Vs. UOI - 1988 (103) ELT 8 (GUJ).
10. AaMRUTA Vs. KONDABAI AIR 1994 BOB. 293.

(MRS. NISHA MALHOTRA)  
JOINT SECRETARY