

22nd February, 2001.

F.No.201/20/2000-CX.6

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

Subject: Central Excise & Customs - Disposal of refund/rebate claims where application is pending at appellate level - Instructions - Regarding.

I am directed to state that it has come to notice of the Board that doubts prevail in the field formations in regard to action to be taken for disposal of refund/rebate cases where the matter is pending with different appellate authorities. In this regard, attention is drawn to the CBEC Circular No.398/31/98-CX dated 2nd June, 1998 and the CBEC Circular No.76/95-Cus dated 28th June, 1995. After examining the issue in detail and in suppression of the aforementioned Circulars, the Board has decided to issue the following guidelines in this regard, which will be applicable to both Customs and Central Excise matters: -

(1) Cases where it is considered advisable to contest an adverse High Court's Judgement, *inter alia*, involving substantial refund or release of any seized/confiscated goods by filing Special Leave Petition (SLP) including Stay Application, in the Hon'ble Supreme Court.

1. In such cases most speedy action should be taken by concerned Commissioner to submit, considered comments, grounds for appeal and all relevant papers to Board for taking Law Ministry's advice and if agreed filing SLP & Stay Petition against the order of the High Court. (Where appropriate considering the stakes and urgency of the matter conversant officer dealing with the case be also deputed to help expedite the aforesaid action)
2. In terms of the present practice in the Supreme Court Registry, the SLPs/Stay Applications filed in the Supreme Court are listed for hearing in their own turn according to the dates of their filing. However, in case of urgency, there is a procedure of mentioning before the bench headed by the Chief Justice of India for **ad interim stay** till the stay application is heard and disposed of by the Supreme Court. For this purpose, the Central Agency Section is requested to file an application with the Registrar of the Supreme Court giving reasons justifying out of turn hearing of the stay application. In case the Registrar is satisfied about the urgency, the application is included in the "list of cases for urgent mentioning" and it is then possible to mention the case on the following day before the bench headed by the Chief Justice of India.

In view of the aforesaid procedure, it may not be possible to move the Supreme Court for out of turn hearing of stay applications in every case in a routine way. We will have to justify the urgency and serious implications if the adverse order is not stayed. It may also not be always possible to get our applications listed according to our wish. The Commissioners should, therefore, while ensuring submission of proposals for SLP/Stay on top priority basis also take steps simultaneously so that non-implementation of the High Court's Order without obtaining stay from the Supreme Court does not create complications. In such cases, therefore the following action is advised :-

1. Where a High Court has stipulated any time limit for implementation of its order, the Customs House/Central Excise Commissionerate apart from taking steps for filing SLP/Stay Petition before the deadline, as mentioned in para (a) above, should simultaneously file an application before the High Court intimating steps taken for filing SLP/Stay Petition before the Apex Court, and request be made for extension of time limit for implementation of the order till the department's Stay Application is heard or disposed of by the Hon'ble Supreme Court. If the High Court rejects the application, a copy of the application filed and the order of the High Court should be immediately faxed to the Board, so that even this could be produced to Supreme Court Registry, while seeking out of turn/urgent hearing for stay.
2. Where no time limit is stipulated by the High Court for implementing its order, but the petitioner files a contempt petition/notice in the High Court, the same should be immediately faxed to the Board, for similar action as mentioned in (i) above for pressing for urgent hearing of our stay.

It would be possible for the Board's office to file SLP/Stay Petition with relevant documents showing justification for **urgency petition** before the Registrar of the Supreme Court (for inclusion of department's application for out of turn hearing in the 'list of cases for urgent of monitoring'), and to get interim stay in time, from the Supreme Court when we have a good case, only if Commissioners and the Legal Cells keep very strict personal watch for taking time bound & speedy action suggested above.

No unilateral decision should be taken by the Commissioners to release the goods/order refund in a case where it is decided in consultation with our Counsels in the field, and Law Ministry, to file SLP/Stay Application before the Apex Court against the order of the High Court and till this is pending decision before the Apex Court. The decision in such cases where there is any urgency & stay of Apex Court is not forthcoming, should be taken only in consultation with the Board.

(2) Cases where Civil Appeal (CA) is proposed against adverse decision of the CEGAT involving high refund and or release of seized/confiscated goods .

The guidelines applicable to SLPs mentioned above should be followed mutatis mutandis even in such cases involving Civil Appeals/Stay Petitions. The relevant papers relating to Civil Appeals should be sent latest within 2 weeks of the receipt of CEGAT Order and active liaison should be kept with the concerned senior officer in the Board and even Central Agency Section till the Department's Stay/CA petitions is heard and decision given by the Apex Court. Where considered advisable, considering the stakes involved conversant officer to be deputed for briefing the Senior Counsels/Law Officer who may be moving for stay petition.

(3) The cases where refund arises due to order of Commissioner (Appeal) or Commissioner of Central Excise/Customs and decision is taken to contest them before CEGAT.

In such cases appeal/stay application should be filed expeditiously well before the expiry of stipulated period of three months (and not waiting for the last date of filing of appeal). However, no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. It would be the responsibility of the concerned Commissioner to obtain stay order expeditiously where the orders passed by Commissioners (Appeals) suffer from serious infirmities and it involves grant of heavy refunds.

(4) Cases where refund arises due to order of a Central Excise Officer/Customs Officer subordinate to Commissioner of Central Excise/Customs and decision is taken to file appeal before Commissioner (Appeals).

In such cases also, appeal/stay application should be filed expeditiously within the stipulated period (but without waiting for the last date of filing of appeal). However, no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. It would be the responsibility of the concerned Commissioner to move expeditiously and obtain stay order from Commissioner (Appeals), especially where the orders passed by such Central Excise Officer/Customs Officer suffer from serious infirmities and it involves grant of heavy refunds.

(5) General

In all types of cases mentioned above, processing of refund application should simultaneously start separately from the point of view of unjust enrichment provisions and accordingly the assessee/claimant should be asked to submit the evidence to establish his claim that incidence of duties whose refund is claimed has been borne by him and that the same has not been passed on to the buyer(s). Where the claimant is unable to furnish this evidence or otherwise is not entitled to refund, passing of appropriate orders on refund requested could be considered by competent authority irrespective of the outcome of SLP/Civil Appeals/Stay Petitions pending before Supreme Court or other appeals etc. before lower appellate authorities.

In all other cases, not involving any dispute, refund applications should be processed on merits speedily and a decision taken within a period of three months from the date of application to avoid any interest liability - where refund is held admissible.

1. The field formations may suitably be informed.
2. Receipt of this Circular may please be acknowledged.
3. Hindi version will follow.

(P.K. Sinha)

Under Secretary (CX.6)

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