

Circular No. 612/3/2002-CX
17-1-2002

F. No. 390/121/2001-JC

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Appeal against order passed by Commissioner (Appeals) - Proper authorisation by Commissioner - regarding.

Larger Bench of CEGAT in Appeal No. E/505/93-BOM in the case of *CCE, Mumbai v. M/s. Bombay Switch Gears* has passed an Order No. A/888/2001-NB(DB), dated 29-10-2001. The said decision is also reported in [2001 (134) [E.L.T.](#) 658 (Tri.-LB)].

In the above-mentioned case, the order passed by Commissioner (Appeals) was initially accepted by the jurisdictional Commissioner of Central Excise. The Chief Commissioner, however, desired that appeal should be filed against the said order of the Commissioner (Appeals). Accordingly, the Commissioner of Central Excise passed an order authorising Assistant Commissioner of Central Excise to file appeal before the Tribunal. The said authorisation did not show that the Commissioner of Central Excise had applied his mind and formed an opinion to the effect that the Order-in-Appeal was not legal and proper. The Tribunal in the facts and circumstances of the case observed that the suggestion on the part of the Collector regarding legality or propriety of the order appealed against was not reflected from the file and in fact the file showed otherwise. The Tribunal, therefore, held that there was no proper authorisation for filing appeal as contemplated by Section 35B(2).

The Board has issued instructions in the past reiterating the importance of language used in the authorisation. Circular No. 413/46/98-CX, dated 6-8-1998 (F. No. 390/120/98-JC) [1998 (102) [E.L.T.](#) T31] & Circular No. 560/56/2000-CX, dated 30-11-2000 (F. No. 387/269/2000-JC) [2000 (122) [E.L.T.](#) T28] in this regard are relevant. There may be cases, as happened in the instant case, where even though the Commissioner was inclined to accept the order of Commissioner (Appeals), the Chief Commissioner feels otherwise and on his advice appeal is filed and authorisation for that purpose is issued by the Commissioner. In such circumstances, it would be prudent if Chief Commissioner himself passes an authorisation indicating therein that he had applied his mind and he found the order to be not legal and proper. In case the Commissioner decides to himself issue authorisation on the advice of the Chief Commissioner the file and the order of authorisation have to indicate that the Commissioner had indeed applied his mind and found the order of the Commissioner (Appeals) not to be legal and proper.

Commissioners are also advised to keep in mind the provision of law and the previous instructions in this regard which very clearly stipulate that the authorisation should show Commissioner's opinion that the order passed by Commissioner (Appeals) is not legal or proper.