

F.No.276/109/2007-CX.8A

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

5-‘C’ Wing, HUDCO Vishala Building,

Bhikaji Cama Place, R. K. Puram,

New Delhi, the 27th August, 2009.

To

1. All Chief Commissioners of Central Excise
2. All Chief Commissioners of Customs
3. All Chief Commissioners of Customs (Preventive)
4. All Chief Commissioners of LTU
5. All Commissioners of Customs / Central Excise / Service Tax.

Madam / Sir,

Sub:- Amendment in Section 35G / 35H of Central Excise Act and Section 130 / 130A of Customs Act regarding powers of the High Court to condone delay in filing Appeal / Reference Application – Reg.

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Attention is invited to Section 86 & 107 of the Finance Act, 2009 vide which amendment with effect from 1st July, 2003 has been carried out under Section 130 of the Customs Act, 1962 and Section 35G of the Central Excise Act, 1944 respectively to the effect that the High Court may admit an appeal after the expiry of the period of one hundred and eighty days if it is satisfied that there was sufficient cause for not filing appeal within the stipulated period. Similarly, vide Section 87 & Section 108 of the Finance Act, 2009, amendment has been carried out with effect from 1st July, 1999 under Section 130A of the Customs Act, 1962 and Section 35H of the Central Excise Act, 1944 to the effect that the High Court may admit reference application or permit the filing of memorandum of cross objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for not filing the same within that period. The Notes on Clauses to the Finance Bill, 2009 may also be referred to in this regard.

2. In respect of pending Appeals / Applications filed with delay, if any, amendments as above may be brought to the notice of the Court by way of filing of Interim Application. Further, in respect of Appeals / Applications filed with delay by the Commissionerate which were dismissed by the High Court by invoking the limitation clause under the Act, the filing of Review Petition may be contemplated as per procedure in the respective High Court in consultation with the empanelled Sr. Standing Counsel in this regard.

3. The amendments as above have been brought out in the statute consequent upon the judgement of Larger Bench of the

Hon'ble Supreme Court in the case of Commissioner of Customs & Central Excise Vs. M/s. Hongo India Pvt. Ltd. [2009(236) ELT.417(SC)] wherein it was held that the High Courts have no power to condone the delay in filing the reference application beyond the prescribed period of one hundred and eighty days. Vide the amendment as above, the High Courts have been assigned the powers to condone the delay in filing of reference applications/appeals. However, the Commissionerates must ensure that appeals are filed within the stipulated period of one hundred and eighty days under all circumstances. The litigation mechanism of the Commissionerates before the High Courts must be closely monitored so that the appeals are filed in time.

4. This circular is issued in supersession of Board's Circular No. 888/8/2009-CX. dated 21st May, 2009.

5. Hindi version will follow.

Yours faithfully,

Sd

(**M.D. Singh**)

Commissioner (L&J)

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