

F.No.6/1/2009-DS(CX.1/IV)

Ministry of Finance

Department of Revenue

Central Board of Excise of Revenue & Customs

North Block, New Delhi

Dated: 8.10.2009

To

Chief Commissioner of Central Excise (All)

Commissioner of Central Excise (All)

Chief Departmental Representative, CESTAT.

Sir,

Sub: Valuation of SKO(PDS), LPG and other goods under Transaction Value System from 01.07.2000.

Attention is invited to the Supreme Court decision in the case of Civil Appeal No. 432/2008 in the case of MRPL regarding valuation of SKO (PDS) and LPG (domestic) for the period 01.07.2000 onward. The Hon'ble Supreme Court in this case has dismissed the department's civil appeal observing that the issue involved was covered by CBEC Circular No. 563/59/2000-CX. dated 21.12.2000.

2. The issue was discussed by the Board. The Board has decided that department should contest the said decision in respect of other appeals which are being filed before the Hon'ble Supreme Court on the identical issue. The Board in BMB No.52/2009 has also directed that the field formations should transfer the cases on this issue to the call book for all pending adjudication cases and wherever the orders have been passed by the adjudicating authority or by appellate authority, the field formation should file appeal against the said order. Board also directed that proper briefing should be made by Commissioners to the DRs in all cases pending before the Tribunal. The DR should also strongly put forward the department's stand that the circular referred by the Supreme Court was issued in the context of erstwhile Section 4 and the provisions of new Section are entirely different. Moreover, the said circular was issued in the context of a specific issue where the Supreme Court has asked the Ministry of Finance and Ministry of Petroleum to sort out the issue. The said circular was not binding for any other case. It is, therefore, requested that the field formation should transfer the cases to call book where notices are pending for adjudication and should file the appeal wherever the cases had been decided.

3. Attention is also invited to recent Supreme Court judgment in the case of Grasim Industries (C.A. No.3159/2004). In this case the Supreme Court has referred three questions for consideration of the Larger Bench and one of the question is whether the concept of transaction value under new Section 4 has made any material departure from deemed normal price concept of erstwhile Section 4(1)(a) of the Act. As the issue involved in the case of valuation of SKO/LPG is also on similar ground, therefore, while filing the appeal or arguing the case before the Tribunal/Court etc., this aspect must be brought to the notice of the appellate authority/court and request them to keep the decision pending till the Larger Bench of the apex court decides the aforesaid issue.

4. If there are some other disputes relating to valuation under present Section 4 and if the decision/order/instruction given in context of old Section 4 is being cited and it is felt that the said decision/order etc. is not applicable to the present Section 4, in that case also the decision in the case of Grasim Industries may be kept in mind for the action as mentioned above in the case of SKO/LPG.

Yours faithfully,

(Madan Mohan)

Under Secretary to the Government of India.

Copy to – All Director Generals (Audit, Inspection, CEI).

(Madan Mohan)

Under Secretary to the Government of India.