

By Speed Post

F. No. 275/14/2015-CX.8.A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Legal Cell)

5th Floor, Wing 'C', Hudco Vishala Building,
Bhikaji Cama Place, R.K. Puram,
New Delhi, Dated the 29th July, 2016.

To,

1. All Chief Commissioners of Customs/Central Excise/Service Tax.
2. Director General, DRI/CEI.
3. Web Master, CBEC for uploading on CBEC website under the Legal Affairs.

Sir/Madam,

Subject: Instructions regarding filing of reply/counter affidavit & imposing heavy cost to be recovered from the officer concerned-reg.

I am directed to forward herewith a Copy of O.M. F.No. 296/11/2016-CX.9 (pt.II) dated 19/07/2016 enclosing therewith a copy of D/o Revenue O.M. dated.15.07.2016 and copy of D.O. letter No. J-12/2/2016-Judl dated 09.06.2016 of Dr. G. Narayana Raju, Secretary, Ministry of Law & Justice, D/o Legal Affairs and also a copy of D.O. letter No.35(1)/2015. Judl. dated. 27.08.2015 of Sh.P.K. Malhotra, Secretary, D/o Legal Affairs on the subject matter for necessary action.

Yours faithfully,

(S. Vijayarani)

Senior Analyst (Legal)

Tel: 011-26195405

Encl: as above

File No. 296/11/2016-CX9 (pt.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

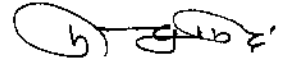
New Delhi, dated 19th July, 2016

OFFICE MEMORANDUM

Subject:- Instructions regarding filing of reply/counter affidavit & imposing heavy cost to be recovered from the officer concerned.

The undersigned is directed to forward herewith a copy of OM No. 0-21030/5/2016-Coord. dated 15.07.2016 received from Coord. Section alongwith enclosure on the above mentioned subject for information and necessary action.

Encl: As above


(Surendra Singh)

Under Secretary to the Govt. of India (CX-9)
Tel: 23092413


Commissioner (Legal)/ JS (Review)

2440
15/7/16

MOST IMMEDIATE

F. No. O-21030/5/2016-Coord
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 15th July, 2016.

Office Memorandum

Subject: Instructions regarding filing of reply/counter affidavit & imposing heavy cost to be recovered from the officer concerned.

The undersigned has been directed to enclose a copy of Secretary, Department of Legal Affairs D.O. No. J-12/2/2016-Judl, dated 9th June, 2016 on the subject mentioned above.

2. Addresses are requested to take further necessary action and issue suitable instructions to all concerned officers/organisation under their control.

Encl. As above.

Narendra Kumar
15/7/2016
(Narendra Kumar)
Under Secretary (Coord)
Telefax: 2309 5539.

1. The Chairman, CBDT.
2. The Chairman, CBEC.
3. Director, Enforcement Directorate.
4. DG, CEIB
5. Director, Financial Intelligence Unit – India
6. Director (Hqrs), Revenue Hqrs.
7. Director (Narcotic Control), Revenue Hqrs.
8. Director (Admn), Revenue Hqrs.

Copy to:-

1. Commissioner (Coord and System), CBDT.
2. Commissioner (Coord), CBEC.

By no 2453 ca-9
Dtd. 19-7-2016

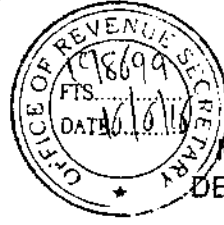
PR Singh
Pl forward to Legal/Review
section for W.S.

(b)
19-7

DSD M
15/7
US

Sd B
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डॉ० जी० नारायणा राजू
सचिव
Dr. G. Narayana Raju
Secretary



भारत सरकार
विधि और न्याय मंत्रालय
विधि कार्य विभाग
GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS

D. O. No. J-12/2/2016-Judl.

June 9th, 2016

Dear Secretary,

It may be recalled that this Department vide DO letter No. 35(1)/2015-Judl. dated 27.08.2015 apprised about the serious view taken by the court in respect of filing reply/counter affidavits & imposing heavy cost to be recovered from the officer concerned & has requested to sensitize your officers that court cases are properly monitored and replies are filed on time to avoid passing of such orders in future (copy enclosed).

2. Despite above, in one more case before the Bench of Hon'ble Mr. Justice Tripathi of the High Court of Patna has taken a serious view in the matter and passed the order as under:

"Let the matter be listed on 11th of March, 2016 as the Union of India has failed to file the counter affidavit on the ground that the counter affidavit has gone for vetting and it has not been returned. Such a plea or excuse is unacceptable. Cases cannot remain pending on the ground of vetting or drafting of counter affidavit."

Let a copy of this order be marked to the Secretary, Department of Law, Government of India, New Delhi.

It is further painful to note that statements are blatantly made that cases remain pending and there are backlogs. But nobody has bothered to even verify the reasons thereof. Most of the time the cases remain pending because the pleadings are not completed on behalf of the official respondents."

3. This Department has been issuing instructions from time to time that the Nodal Officers of the Ministry / Department should remain in touch with the Government Counsel for proper handling of the matter. Such coordination with the Government Counsel will surely help in reducing delay in filing of reply/counter-affidavits.

4. I shall be grateful if the instructions in this regard may once again be brought to the notice of all the Departments/PSUs under your administrative control with the direction for proper monitoring of court cases & replies / counter-affidavits be filed on time to avoid such orders in future.

With regards,

Encls: As above.

Yours sincerely,

All the Secretaries to the Govt. of India

प्रेम कुमार मल्होत्रा
सचिव
P. K. Malhotra
Secretary



भारत सरकार
विधि और न्याय मंत्रालय
विधि कार्य विभाग
GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS

August 27, 2015

D.O. No.35(1)/2015-Judl.

Dear Secretary,

It has been brought to my notice by the field Offices of Ministry of Law and Justice and by Government Counsels appearing on behalf of Union of India in various Courts / Tribunals that many a time the reply / counter-affidavits are not filed in the court within the time granted by the Court causing inconvenience to the Court, delay in proceedings and unnecessary embarrassment to the Government. Of late, Courts have been taking serious view of delay in filing / counter-affidavits and imposing heavy cost to be recovered from the officer concerned.

One such case pertaining to Ministry of Environment and Forests came before the Bench of Hon'ble Chief Justice of Madras High Court in which the Hon'ble Court has taken a serious view in the matter and passed Order as under:-

"Learned Assistant Solicitor General seeks additional time to file the counter-affidavit. This is not the only matter where we are faced with this position i.e. counter-affidavits not being filed in time, despite time period being granted as requested by the Ld. Government Pleaders for the Central Government. Whether it is six weeks or eight weeks, whatever time we grant, in every case, there is second request made for filing the counter-affidavit, causing inconvenience to Court, delay in proceedings and unnecessary embarrassment even to the Law Officers. This issue needs to be set right.

2. We are given to understand that once a matter pertains to a particular Ministry, Nodal officer of that Ministry is expected to coordinate the matter. Thus, it is stated that the Law Ministry really does not hold the matter once it is entrusted to the Ministry concerned.

3. We call upon the Law Secretary to look into the matter for the purpose of ensuring a better coordination and put the officers concerned to notice that this Court would have no other option, but to impose exemplary costs for the delay in filing the counter-affidavits and that costs would be recovered from the officer concerned for not ensuring the affidavits being filed in time. We want to emphasize that the date of filing of the affidavit must be complied with and not that it is produced on the date of hearing.

Contd:2/-

4. As a last chance, we grant four weeks' time to file the counter-affidavit. Thereafter it will be taken on record only subject to the deposit of costs of Rs.10,000/- to be recovered from the officer concerned and the Recovery Certificate be also filed.
5. Re-joinder, if any, be filed within two weeks thereafter.
6. List on 18.8.2015"

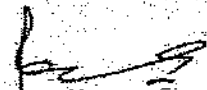
This Department has been issuing instructions from time to time that the Nodal Officers of the Ministry / Department should stay in touch with the Government Counsel for proper handling of the matter. Such coordination with the Government Counsel will surely help in reducing delay in filing of reply / counter-affidavits.

I shall be grateful if you can sensitize your officers that court cases are properly monitored and replies are filed on time to avoid passing of such orders in future. If any officer is found negligent in handling court matters, the administrative Ministry may consider taking appropriate action against him in accordance with the rules.

I shall be grateful if these instructions can be brought to the notice of all Departments / PSUs under your administrative control.

With regards,

Yours sincerely,



(P.K. Malhotra)

All Secretaries to the Government of India.