

INSTRUCTION

Action Plan to Reduce Litigations

A broad matrix of action, based on various recommendations of various committees and the procedure followed in the field formations are placed below. They have been divided into 2 categories, one remedial for actions taken in the past, the other preventive which needs to be adopted to avoid unnecessary litigations.

Remedial Action

1. Withdrawal of appeals filed by Department below the threshold limit prescribed by the Board in CESTAT & High Courts (See instruction F.No. 390/Misc/163-2010-JC dated 17.12.2015 in this regard).
2. Withdrawal of appeals in CESTAT and High Courts by the Committee of Principal Commissioners/Chief Commissioners following a Supreme Court decision which has been accepted by the department (See instruction F.No. 390/Misc/67-2014-JC dated 18.12.2015 in this regard).
3. (a) CC's to assign cases of adjudication officer-wise on a monthly basis in personam for disposal and report sent to the respective Zonal Member by 5th of the following month with a copy to JS (Review).
(b) CC's to take up with the Chief Justices of their respective states to setup more benches to deal with taxation matters for quicker disposal.

Preventive Action

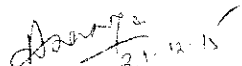
2. Trade & CESTAT have repeatedly voiced concern about the non-observance of principles of natural justice, non-adherence to judicial discipline, lack of analysis/appreciation of the relevant facts, evidence and legal principles which force more appeals/litigation. A bimonthly conference at the level of Zonal Chief Commissioners/Pr. Commissioner to advice and counsel the respective adjudicating authorities/appellate authorities on how to pass good adjudication orders/ appellate orders, is being made mandatory. Persistent ignoring of such advice would render the officer concerned liable to strict action.
3. National Academy (NACEN) to conduct regular training for all adjudicating authorities – former members of the CESTAT (The Appellate Tribunal) to be invitees to lecture the officers.

Intensive training also to AR's in the act of advocacy, interpretation of statues, to be given. Similarly officers working in TRU as well as policy wings in the CBEC to be trained in proper drafting of laws, rules, notification. etc. so that there is little room for disputes arising due to ambiguity or misunderstandings.

4. Adjudicating authorities to be suitably empowered/assured of the backing of the Board, so that they do not succumb to pressure from enforcement agencies like DRI, DGCEI etc. to confirm demands and levy penalties on all the accused. Similarly on non-adherence by the adjudicating authority to these directions, the review committees not to file appeal when it is not warranted.
5. Pre show cause notice consultation with the Principal Commissioners and Commissioners is being made mandatory prior to issue of SCN in the case of demands of duty above Rs. 50 Lakhs (except for preventive/offence related SCN's).
6. Re-examination of all exemption notifications and withdrawal of the same wherever possible. Exemption notifications are a major cause of litigations amongst the trade.
7. Adjudicating authorities should be made accountable for the quality of orders passed by them. With about 70 to 80% of the orders passed by the departmental officers at the level of Commissioners and Commissioner (Appeals) being set-aside by the CESTAT, speaks poorly about the quality of adjudications and the appellate orders. Revenue bias is clearly evident in most of the case. This adds to litigation.

Periodic review of the orders set-aside by the CESTAT should be undertaken by the Zonal CCs of the adjudicating authorities posted under him/her, if the orders are found to be bad in law, a mention of the same made in their APAR's be considered.

This issues with the approval of Revenue Secretary.


(Ananya Ray)
Member (L&J/IT)

Copy to:-

1. All Members of CBEC
2. All Chief Commissioners/Principal Commissioners
3. DG-DRI, DG-DGCEI, DG-NACEN, CC (AR), *DS - vigilance*
4. JS TRU I & II CBEC
5. Commissioner DLA/Commissioner Legal/JS Review