

F. No. 390/Budget/1/2012-JC
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

Circular No. 993/17/2014-CX

New Delhi, dated the 5th January, 2015

To,

1. All Principal Chief Commissioners, Central Excise & Service Tax/Customs
2. All Chief Commissioners, Central Excise and Service Tax/ Customs.
3. Chief Commissioner (AR), CESTAT, New Delhi.
4. All Principal Commissioners of Central Excise & Service Tax/Customs.
5. All Commissioners of Central Excise, Service Tax and Customs
6. All Commissioners (AR), New Delhi, Mumbai, Chennai, Kolkata, Bangalore & Ahmadabad
7. Webmaster

Sub: Mandatory pre-deposit of duty or penalty for filing appeal– reg.

Attention is invited to Circular No 984/08/2014-CX dated 16th September, 2014 on the captioned subject. While para 6 of this Circular laid down the procedure and manner of refund, para 7.2 clearly directed that the Commissionerates should maintain a database of the record of deposits made so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.

2. In order to maintain uniformity in the database being maintained, the following columns are suggested to be maintained in a separate register (e-register preferably) in the Review Cell of each Commissionerate. The following columns need to be filled in on receipt of each appeal memo as directed in Para 6.2 of the Circular mentioned above. The data should be maintained separately in respect of appeals before CESTAT and Commissioner (Appeals)-

- (i) Sl. No.
- (ii) Name of the Appellant/ Party
- (iii) Details of duty paying document viz Challan etc
- (iv) Amount of pre-deposit paid
- (v) Order No and date of the order of Commissioner(A)/Tribunal

3. Rule 17 of the CESTAT (procedure) Rules, 1982 stipulates that a copy of the appeal memo is to be sent to the Departmental Representative as well as to the Executive Commissionerate. This is required to be done by the Tribunal registry where

the appeal memo is received. It has been brought to the notice of the Board that appeals filed before the Tribunal on or after 6th August are not being sent to the Commissionerate. Therefore, it is emphasized that Rule 17 *ibid* has to be followed and the Tribunal Registry must send a copy of the appeal memo to the Commissionerate immediately after receipt. Similarly, a copy of the appeal memorandum filed before the Commissioner (Appeal) must be sent to the Commissionerate concerned by the office of the Commissioner (Appeals). This would help in processing the refund claims quickly.

4. Para 1.2 of the Circular *ibid* stated that amended provisions would apply to appeals filed after 6th of August, 2014. An Act of Parliament comes in to effect on the date it received the assent of the President of India. Hence, the amended provisions regarding filing of appeal along with stipulated percentage of pre-deposit shall apply to all appeals filed on or after 6th August, 2014. Para 1.2 of the earlier Circular stands suitably modified.

5. Several representations have been received by the Board stating that some Commissioners (Appeals) have been insisting on pre-deposit in cases of demand of erroneous drawback granted. It has been represented that drawback is not a duty and hence the amended provisions would not apply to such cases.

6. The issue has been examined. Drawback, like rebate in Central Excise, is refund of duty suffered on the export goods. Section 129E stipulates that appellant filing appeal before the Commissioner (Appeals) shall pay 7.5% of the duty demanded where duty and penalty are in dispute. Accordingly, it is clarified that mandatory pre-deposit would be payable in cases of demand of drawback as the new section 129E would apply to such cases.

7. The ambit of the Section 129E of the Customs Act, 1962 in the legislation does not extend to appeals under section 129DD before Joint Secretary (Revision Application). Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner(Appeals), no pre-deposit would be payable in such cases while filing appeal before the JS(RA).

(Archana P Tiwari)
Joint Secretary (Judicial/Review)