

F No 390/Misc/163/2010-JC/Pt. I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi 03 April 2018

INSTRUCTION

To

1. All Principal Chief Commissioners/ Chief Commissioner of Customs/ Central Excise & Service Tax and Directors General under the Central Board of Excise and Customs.
2. DG, Directorate of Systems and Data Management
3. CC (AR), Customs, Excise & Service Tax Appellate Tribunal.
4. All the Principal Commissioners/ Commissioner of Customs/ Central Excise & Service Tax/ All Joint Chief Departmental Representatives/ Commissioners, Directorate of Legal Affairs.
5. webmaster.cbec@icegate.gov.in; Webmaster, CBEC

Madam/ Sir,

Subject: Reduction of litigation in Central Excise and Service Tax by omission of Exclusion Subclause 'c' in para 3 of the Instruction dated 17.08.2011 by amending instruction dt 17.12.2015 from F No 390/Misc/163/2010-JC for legacy matters and approval to extend withdrawal on the basis of identical matters (as per Instruction dt 18.12.2015, from F No 390/Misc/67/2014-JC) to Commissioner (Appeals) : Regarding

1. Deletion of sub clause 'c' of para 3 of the Instruction dated 17.08.2011, introduced vide Instruction dated 17.12.2015.:

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 and Section 131BA of the Customs Act, 1962 and in partial modification of earlier Instruction dated 17.12.2015 from F No 390/Misc/163/2010-JC the Central Board of Excise & Customs has decided to omit para 2 of the instruction dt 17.12.2015 from F No 390/Misc/163/2010. This para introduced a sub clause 'c' in the instruction dt 17.08.2011 from F No 390/Misc/163/2010-JC that was an exclusion clause that operated as an exception to the general monetary limits instruction. By this exception, adverse judgements pertaining to *"classification and refunds issues which are of legal and/or recurring nature"*, were to be contested irrespective of the amount involved. This sub clause 'c' stands withdrawn with effect from the date of this instruction.

2. Withdrawal of Departmental cases from Commissioner (Appeals) on the basis of decision of the Supreme Court upon an identical matter

As per Instruction dt 18.12.2015, from F No 390/Misc/67/2014-JC field formations had been directed to withdraw cases pending in High Court/Cestat, where the Supreme Court has decided on an identical matter and the decision has been accepted by the Department. This was only in respect of High Court and CESTAT cases. The Central Board of Excise & Customs has decided to extend this decision to Departmental cases with the Commissioner (Appeals) as well.

4.Other conditions:

Para 1 above, is applicable to legacy matters only. Both paras 1&2 would be applicable to pending matters as well. Except for above mentioned changes , all other terms and conditions of concerned earlier instructions continues.

5.Monthly reports in MPR:

Since withdrawal of Departmental Appeals is a long drawn activity requiring routine and constant monitoring, formats have been introduced in the Monthly Performance Report for all field formations to send monthly reports regarding status of withdrawal of appeals to Directorate of Data Management (refer table A to C). Details of the said cases should also be available in a separate register for further perusal by the Board as and when required. Tables are in the **Annexure –A** attached. The description of the Tables in brief is provided below:

i. Table A

Position of withdrawal of Departmental cases within monetary limits but excluding clause c cases in the HC (0-20 Lakh/Cestat (0-10 Lakhs)

ii.Table A- 1

Position of withdrawal on account of removal of clause 'c' cases only .

iii. Table A-2

Combined position (tables A plus A-1)

iv. Table A-3

Remaining to be filed and withdrawn (wrt Table A-2).

v.Table -B

Position of withdrawal of Departmental Appeals on Identical matters in HC/CESTAT/Commissioner (A).

vi.Table B 1

Analysis of Cases Remaining to be filed/withdrawn in Departmental Appeals on identical matters in HC/CESTAT/Commissioner (A).

vii.Table C

Overall Position of all cases identified, filed and withdrawn by the Department in SC/HC/CESTAT and Commissioner (A) on monetary Limits/exclusion clause 'c'/ Identical matters.

6. Difficulties faced any in implementation of the above Instruction may be brought to notice of the Board.

(RanjanaJha)
JS (Judicial Cell)

Annexure –A

Table A Existing limits

As on (Last working day) --/--/--

Position of withdrawal in Departmental Cases existing limits (excluding clause c cases) in High Court(0 to 20 lakh)/CESTAT(0 to 10 lakhs)(as per instructions dated 17/12/2015, 30/12/2016 and 08/02/2017)										
S No	I. Zones (in alphabetical order)	II. Identified			III. Filed			IV. Withdrawn		
		HC	CESTAT	TOTAL	HC	CESTAT	TOTAL	HC	FILED	WITHDRAWN
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Table A-1 of clause "c" within existing monetary limits only

As on (Last working day) --/--/--

Position of withdrawal on account of removal of sub clause "c" (existing monetary limits only) of para 3 of the instruction dated 17/08/2011										
S No	I. Zones (in alphabetical order)	II. Identified			III. Filed			IV. Withdrawn		
		HC	CESTAT	TOTAL(a+b)	HC	CESTAT	TOTAL(d+e)	HC	CESTAT	TOTAL(g+h)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Table A-2 Combined position (Tables A plus A-1)

As on (Last working day) --/--/--

Total Position of withdrawal in Departmental Cases (existing limits Table A and exclusion sub clause c cases Table A1)										
S No	I. Zones (in alphabetical order)	II. Identified			III. Filed			IV. Withdrawn		
		HC	CESTAT	TOTAL(a+b)	HC	CESTAT	TOTAL(d+e)	HC	CESTAT	TOTAL(g+h)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Table A-3 Remaining to be Filed/Withdrawn

As on (Last working day) --/--/--

Cases remaining to be filed and withdrawn vis a vis Table A-2							
S No	I. Zones (in alphabetical order)	II. Remaining to be filed*			III. Remaining to be withdrawn**		
		HC	CESTAT	TOTAL	HC	CESTAT	TOTAL
		(a)	(b)	(c)	(d)	(e)	(f)

*identified minus filed in Table A-2

**filed minus withdrawn in Table A-2

Table B Identical Matters

As on (Last working day) --/--/--

Position of Withdrawal in High Court/CESTAT/Commissioner of Appeal(as per instructions dated 18/12/2015 and current instruction)													
S No	I. Zones (in alphabetical order)	I. Identified				II. Filed				III. Withdrawn			
		High Court	CESTAT	Commr(A)	Total	High Court	CESTAT	Commr(A)	Total	High Court	CESTAT	Commr(A)	Total
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)

Table B -1

As on (Last working day) --/--/--

Remaining to be Filed /Withdrawn in Identical matters									
S No	I. Zones (in alphabetical order)	I. Remaining to be filed*				II. Remaining to be withdrawn**			
		High Court	CESTAT	Commr(A)	Total	High Court	CESTAT	Commr(A)	Total
		(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)

*identified minus filed in Table B

**filed minus withdrawn in Table B

Table C Overall Position

At- A- Glance as on --/--/----

S N O	I.For um	II. Identified				III. Filed				IV.Withdrawn				V.Remaining							
		Belo w Mo net ary limi t	Ide ntic al ma tter s	Cl au se c	T ot al	Belo w Mo net ary limi t	Ide ntic al ma tter s	Cl au se c	T ot al	Belo w Mo net ary limi t	Ide ntic al ma tter s	Cla use c	T ot al	To be Filed *				To be Withdrawn **			
														Belo w Mo net ary limi t	Ide ntic al ma tter s	Cl au se c	T ot al	Belo w Mo net ary limi t	Ide ntic al ma tter s	Cl au se c	T ot al
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)
	SC																				
	HC																				
	CES TAT																				
	Com mr(A)																				
	Tota l																				

*identified minus filed in Table C

**filed minus withdrawn in Table C

