Circular No. 31/2004-Cus.
26th April 2004.

F. No. 405/2/2001-Cus. III
Government of India
Ministry of Finance
Department of Revenue

Subject: Directions of the Hon'ble Supreme Court of India dated 14.10.2003 in the matter of WP No. 657/95 - Regarding.

I am directed to draw your attention to the judgment dated 4.10.2003 of the Hon'ble Supreme Court of India in WP No. 657 of 1995 in Research Foundation for Science Technology and National Resource Policy vs. Union of India relating to import of hazardous wastes. In this regard, it is mentioned that Board has issued the following instructions till now:

(i)	Board's letter F. No. 478/33/96-LC dated 17.9.97;
(ii)	Circular No. 106 dated 22.12.2000;
(iii)	Circular No. 60/97-Cus. dated 12.11.1997;
(iv)	Circular No. 33/2001-Cus. dated 4.6.2001, and
(v)	Circular No. 66/2003-Cus. dated 28.7.2003.

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2. The above order of the Apex Court has been considered by the Board, and issues pertaining to Customs are mentioned below for information and necessary action in modification of the above instructions/circulars.

3. Vide order dated 24th September 2003, the Hon'ble Apex Court has at page 15 of the order allowed a time period of 12 months for upgradation of Customs laboratories at gateway ports as well as posting of manned staff. Action has been initiated by C.R.C.L. in this regard.

4. The Hon'ble Supreme Court has observed at page 16 of the order that the import of 29 items have already been prohibited under Schedule-8 of the Hazardous Wastes (Management and Handling) Rules, 1989 (as amended by Notification No. 471 dated 20th May, 2003), and desired that Notification under Section 11 of the Customs Act prohibiting the import of the said 29 items should be issued forthwith. Accordingly, Notification No. 35/2004-Cus. (N.T.) dated 19.3.2004 has been issued prohibiting the import of these 29 items. The Hazardous Waste Rules and the relevant Schedules can be accessed at http://envfor.nic.in/ under the sub-heading "Divisions" under which the Hazardous Waste Substances Management (HSM) Division is listed.

5. Pursuant to the directions of the Apex Court dated 4th February 2002 and the affidavits filed on behalf of the Ministry of Environment and Forests, the Hon'ble Apex Court had at pages 19 and 20 of the order found prima facie reasons to believe that fifteen (15) importers had illegally imported waste oil in 133 containers in the garb of lubricating oil through Nhava Sheva Port. Accordingly, the Hon'ble Apex Court had directed the Ministry of Environment and Forests to issue notices to all the fifteen (15) importers as well as to the concerned Commissioner of Customs. The Commissioner of Customs is to file affidavit stating as to what steps have been taken to date in respect of the 133 containers, and the importers are to show cause as to why the imported consignments should not be re-exported or destroyed at their cost and why the amount spent on analysis in the laboratory should not be recovered from them. Vide further order dated 11.3.2004, the Apex Court has directed Customs to adjudicate the cases of the above 15 importers within three months, i.e., by 10.6.2004.

6. At pages 31 and 32 of the order, the Hon'ble Apex Court has observed that unscrupulous traders in the garb of importing used oil or furnace oil, are in fact importing waste oil, which is a banned item. They are also importing zinc wastes illegally despite it being not permissible excepting where more than 65% of zinc can be recovered from the wastes. Accordingly, the Court has directed that where import of hazardous waste has taken place due to non-fulfillment of the requisite conditions required under the Rules, enquiries should be conducted and appropriate action taken against the concerned officer(s) of the Department who have allowed clearance contrary to the provisions of law or the Apex Court's directions.

7. At page 36 of the order, the Hon'ble Apex Court has brought to notice the effect of ship breaking activity which deserves to be strictly and properly regulated, and has directed that concerned authorities be vigilant about hazardous wastes which may be generated by ships arriving at ports for breaking. Such operations are to be carried out in strict adherence to all precautionary principles, CPCB guidelines, and after taking requisite safeguards as dealt with in detail by the HPC in its report, which has been accepted by the Hon'ble Supreme

Court of India. The Member of the Monitoring Committee on Hazardous Waste Management in your area/zone may be consulted in this regard for compliance.

8. At pages 37, 38 and 39 of the order, the Hon'ble Apex Court has referred to instances of disappearance of hazardous wastes from authorized ports/ICDs/CFSs and how to deal with the number of containers lying there. As per the report of the Wadhawan Committee appointed to enquire into the matter, hazardous goods were found lying at ICD Ludhiana, ICD Tughlakabad, ICD Ballabgarh, Kandla Port Trust, Mumbai Port Trust, Jawaharlal Nehru Port Trust, Calcutta Port Trust, Chennai Port Trust, and ICD Bangalore. The report had suggested action against the importers for illegal import as per the Customs Act, 1962, and the Central Board of Excise and Customs was requested to ensure action against the importers of illegal consignments of hazardous waste. In this connection, the Hon'ble Court has outlined two broad aspects of the matter. The first relates to such illegal consignments that have been cleared and have found their way to the market. For such cases, the Court has directed action to be taken against all concerned by the concerned authorities in accordance with law as mentioned in Para 7 above. The second aspect relates to the stocks of hazardous waste lying at various ports/ICDs/CFSs as mentioned above and the manner in which they are to be disposed. The Hon'ble Apex Court has divided such wastes into two categories - those that are banned and those that are regulated. In respect of banned category, the Hon'ble Apex Court has directed that they should be either re-exported, if permissible, or destroyed at the risk, cost and the consequence of the importer. Regarding those that are regulated and are permitted for recycling and reprocessing within the permissible parameters by specified authorized persons having the requisite facilities under the rules as amended, the Hon'ble Apex Court has directed that they be released/disposed of or auctioned as per rules to the registered recyclers/reprocessors. However, before allowing clearance for recycling and domestic use, clearances should be obtained from the Monitoring Committee on Hazardous Waste Management.

9. Where the importer of any of the categories is not traceable, the consignments shall be dealt with at the risk, cost and consequences of the importer. The disposal/auction of the above two categories of hazardous waste shall be carried out under the supervision of the Monitoring Committee on Hazardous Waste Management. The details of the names and addresses of the Committee members are enclosed in Annexure A (No. 23-16/96-HSMD-Vol.III dated 20.11.2003 of Ministry of Environment and Forests, HSM Division). The Committee has been empowered to oversee the implementation of the Hon'ble Supreme Court's orders on hazardous waste management in WP 657 of 1995.

10. At page 46 of the order, the Hon'ble Supreme Court has directed MoEF for making provision for a bank guarantee to be furnished by the importer while seeking permission to import used oil, furnace oil and zinc wastes. Such bank guarantee is to be released only after the imported consignment is found to conform to the declared item of import. This may be referred to the Member of the Monitoring Committee on Hazardous Waste Management in your area/zone for clarification.

11. Henceforth, before clearance of any hazardous waste imported into India, the Hon'ble Court has directed at page 46 of the order that Port and Customs authorities should ensure that the consignment in question corresponds with the details of authenticated copy of Form 7 (as per the Hazardous Waste Rules) sent by the country of export.

12. At page 47 of the order, the Hon'ble Supreme Court has further directed that testing procedure and criteria evolved, or which may be evolved by CPCB, shall be followed by the concerned laboratories. This issue may also be taken up with the Monitoring Committee on Hazardous Waste Management for details of any such procedure or criteria prescribed, if any.

13. The above instructions may also be brought to the knowledge of all concerned and suitable public notices may be issued in this regard.

14. For the full extent and scope of the judgement so far as it relates to customs, you may refer to the full text of the Supreme Court judgement.

15. Hindi version will follow.

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