Circular No. 76-95-Cus.
dated 28/6/95

F.No. 494/1/95 - Cus. VI

Government of India
Ministry of Finance
Department of Revenue, New Delhi

Subject :- Procedure to be followed in cases where the implementation of the High Court's judgement is pending for want of stay from the Hon'ble Supreme Court - instructions reg.

The undersigned is directed to say that some instances have come to the notice of the Board where proposals were sent to the Board for filing SLP with stay application against the judgement/ order of the High Court directing release of goods / refund of duty or penalty and although SLP with stay application had been filed in the Supreme Court, the Commissioner released the goods/ refunded the duty o penalty resulting in the SLP/stay application becoming infructuous. The stand taken by the Commissioner was that as stay could not be obtained in time from the Supreme Court, the High Court's ordered to be implemented. The matter has been examined by the Board in consultation with the Ministry of Law, Justice & Co. Affairs. The following instructions are issued on the subject for strict compliance.

2. In terms of the present practice in vogue in the Supreme Court Registry, the SLPs/stay applications filed in the Supreme Court are listed for hearing in their own turn according to the dates of their filing. However, in case of urgency, there is a procedure of mentioning before the Bench headed by the Chief Justice of India for *ad interim* stay till the stay application is heard and disposed of by the Supreme Court. For this purpose, the Central Agency Section is required to file an application with the Registrar of the Supreme Court giving reasons justifying out turn hearing of the stay applications. In case the Registrar is satisfied about the urgency, the application is included in the "list of cases for urgent mentioning" and it is then possible to mention the case on the following day before the Bench headed by the Chief Justice of India. In view of this procedure, it is not possible to move the Supreme Court for out of turn hearing of stay applications in a routine way. At the same time, non-implementation of the High Court's order without obtaining stay from the Supreme Court may create complications.

3. To obviate this situation, it is directed that in cases where the High Court has stipulated any time limit for implementation of its order, the Customs House/ Central Excise Commissionerate should file an application before the High Court requesting for extension of time limit for implementation of its order till the Department's SLP / stay application is heard and disposed of by the Hon'ble Supreme Court. If the High Court rejects the application, a copy of the application filed and order of the High Court should be immediately faxed to the Board. Similarly, in cases where no time limit is stipulated by the High Court for implementing its order but the petitioner files contempt petition/ notice in the High Court, the same should be immediately faxed to the Board. It would then be possible for the Board's office to use these documents for filing urgency petition before the Registrar of the Supreme Court for inclusion of the Department's application for out of turn hearing in the "list of cases for urgent mentioning", and get interim stay from the apex court.

5. In view of the procedure prescribed above, no unilateral decision should be taken by the Commissioner to release the goods/ order refund in a case where SLP/ stay application of the Department against the order of the High Court is pending a decision before the apex court. The decision in such cases should be taken only in consultation with the Board.

Sd/-
(T.R. Kapur)
Under Secretary (Cus. VI)