

F.No. 276/125/2012-CX.8A, CVS  
 Government of India  
 Ministry of Finance  
 Department of Revenue  
 Central Board of Excise & Customs  
 Legal Section  
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Wing 5 'C' HUDCO-VISHALA Building  
 Bhikaji Cama Place, R.K. Puram,  
 New Delhi, the 25<sup>th</sup> August, 2014.

To,  
 All Chief Commissioners of Customs/Customs (Prev.)/Central Excise & Service Tax/DG RI/DGCEI.

Sir/Madam,

**Sub:- Proposal for filing of Review Petition before the Hon'ble Supreme Court against order dated 15.02.2013 passed by the Hon'ble Supreme Court in SLP (C) CC No. 3741/2013 filed by the Department in the case of UOI Vs M/s Gujarat Ambuja Exports Ltd.- reg.**

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I am directed to say that Board's Circular No. 18/2006-Cus dated 05.06.2006 clarified that the SAD is payable by the importer on the imports made under DEPB scheme. The said circular was challenged before the Hon'ble High Court of Gujarat, which vide its order dated 25.07.2012 quashed the said Circular dated 05.06.2006. The SLP (C) CC No. 3741/2013 filed by Department against the said order of High Court was dismissed by Hon'ble Supreme Court vide their order dated 15.02.2013 (copy enclosed).

2. Further, Board received a proposal from the Commissioner of Customs, Ahmedabad for filing of Review Petition against order dated 15.02.2013 passed by the Hon'ble Supreme Court. The matter was examined by Board and the case was referred to the Ministry of Law & Justice regarding feasibility of filing Review Petition. The Ld. ASG has opined against filing of Review Petition in the matter stating that no purpose will be served by filing the Review as the Hon'ble Supreme Court will not entertain this matter. In this regard it is also mentioned that other case file of M/s Adani Wilmar Ltd. involving similar issue was also referred to the Law Ministry, wherein, the Ld. ASG has opined as under:


" Even otherwise, I am unable to understand what purpose will be served by filing a review petition in a case where the Hon'ble Supreme Court has dismissed a SLP in limine without assigning any reasons. An in limine dismissal merely means that the Hon'ble Supreme Court did not find it an appropriate case to consider the matter. Such an order does not amount to law declared under Article 141 of the Constitution of India (*Kunhayammed Vs State of Kerala 2000 6 SCC 359 at 371*)"

3. The issue has been further examined in the Board. I am directed to convey that it is felt that since Department have prima facie a strong case on merit in its favour, field formations should take up all such cases (involving aforesaid issue) for filing of Appeal before the Courts/Tribunal

4. This issues with the approval of the Member (L&J).

Encl: As above

Yours faithfully,

  
 ( Dharendra Kumar )  
 OSD(Legal)  
 Tel-011-26177514

Copy to:

1. The JS Drawback, Jeevan Deep Building, Parliament Street, New Delhi with the request to consider suitable amendment in the relevant provisions, to safe guard revenue, if deemed appropriate.
2. The Commissioner (Customs & EP), CBEC, North Block, New Delhi.
3. The Commissioner of Customs, Ahmedabad.
4. The Web Manager, Dte. General of Systems, New Delhi with the request to upload the above instruction on CBEC's Website.