

Updated on 05.02.2016

[Training Material for Departmental Use]

E-BOOK



Monetary Limits for Filing Appeal
in the
Tribunal / High Courts and the Supreme Court
in
Customs, Central Excise and Service Tax
Cases.

Note:

1. In this E-book, attempts have been made **to explain the concept of the Monetary Limits below which the appeals shall not be filed in the Tribunal / High Courts and the Supreme Court in Customs, Central Excise and Service Tax matters except in certain specified circumstances**. It is expected that it will help departmental officers in their day to day work.
2. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACEN, RTI, Kanpur on the Email addresses: **rtinacenkanpur@yahoo.co.in or goyalcp@hotmail.com**. This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
3. If any officer is interested in preparing E-book on any topic relating to Customs, Central Excise or Service Tax, he may forward the E-book prepared by him to the Email addresses mentioned above. After necessary vetting, we shall include the same in our E-books library for benefit of all Departmental officers.
4. If any officer is interested in preparing E-book on any topic relating to Customs, Central Excise or Service Tax, he may forward the E-book prepared by him to the Email addresses mentioned above. After necessary vetting, we will include the same in our E-book library for benefit of all Departmental officers and name of the officer who has prepared the book will be duly acknowledged.
5. If you feel that this e-book has really helped you in improving your knowledge or understanding of the subject matter, we request you to take few minutes of your precious time and provide us your valuable feedback. Your feedback is important and will help us in improving our e-books.

Sd/-
(C. P. Goyal)
Additional Director General
NACEN, RTI, Kanpur
goyalcp@hotmail.com

INDEX

1. Introduction.....	3
2. Summary of Legal Provisions/Circulars/Instructions at a Glance.....	3
3. Text of Legal Provisions.....	4
3.1 The Section 131 BA of the Customs Act, 1962.....	4
3.2 Text of Section 35 R of the Central Excise Act, 1944	5
3.3 Section 83 of the Finance Act, 1994.....	6
4. Some Important Points	6
Minimum Monetary Limits Prescribed for filing appeal	6
Types of cases to which Monetary Limit are not applicable	6
Precedence Value of Order Accepted on Low Monetary Grounds	7
Creation of national Data Base of Cases Accepted on Low Monetary Limits.....	7
Issues Clarified by the Board	8
5. Text of Instructions issued by the Board	10
5.1 Instruction F.No.390/Misc./163/2010-JC, dated 20.10.2010	10
5.2 Instruction F.No.390/Misc./163/2010-JC dated 17.08.2011	12
5.3 Instruction F.No.390/Misc./163/2010-JC, dated 03.06.2013	14
5.4 Instruction F.No.390/Misc./163/2010-JC, dated 12.12.2013	15
5.5 Instruction F. No. 390/Misc/163/2010-JC, dated 26.12.2014	16
5.6 Instruction F.No.390/Misc./163/2010-JC, Dated 17.12.2015.....	17
5.7 Instruction F.No.390/Misc./163/2010-JC, Dated 01.01.2016 ^{New}	17
5.8 Instruction F.No.390/Misc./163/2010-JC, Dated: 04.02.2016 ^{New}	18
5.9 Proforma Prescribed by the Board for reporting orders to Directorate of Legal Affairs which have been accepted on low revenue grounds.....	18

Monetary Limits for Filing Appeal in the Tribunal/ High Courts and the Supreme Court in Customs, Central Excise and Service Tax.

1. Introduction

- 1.1. The Government of India has formulated a National Litigation Policy with an aim to reduce Government litigation so that the Government ceases to be a compulsive litigant. The purpose underlying this Policy is to ensure that valuable time of the Courts is spent in resolving pending cases and in bringing down the average pendency time in the Courts.
- 1.2. Accordingly the Policy lays down, inter alia, that in Revenue matters appeal shall not be filed, -
- (a) if the amount involved is not very high and is less than the monetary limit fixed by the Revenue authorities.
 - (b) if the matter is covered by a series of judgments of the Tribunal and the High Courts which have held the field and have not been challenged in the Supreme Court.
 - (c) where the assessee has acted in accordance with the long standing practice and also merely because of change of opinion on the part of the jurisdictional officers

2. Summary of Legal Provisions/Circulars/Instructions at a Glance

S. No.	Sections/ Rules/ Notification/Circulars /Instructions	Subject
1.	Section 131 BA of the Customs Act, 1962	Empowered Board to issue orders / instructions or / directions fixing monetary limits, for the purposes of regulating the filing of appeal, application, revision or reference by the Principal Commissioner /Commissioner of Customs
2.	Section 35 R of the Central Excise Act, 1944	Empowered Board to issue orders / instructions or / directions fixing monetary limits, for the purposes of regulating the filing of appeal, application, revision or reference by the Principal Commissioner /Commissioner of Central Excise.
3.	Instructions issued by the CBEC	
3.1	Instruction F.No.390/Misc. /163/2010-JC, dated 20.10.2010-	Reduction of Government litigations - providing monetary limits for filing appeals by the Department before CESTAT and High Courts

Monetary Limits for Filing Appeal in the Tribunal / High Courts and the Supreme Court

3.2	Instruction F.No.390/Misc./163/2010-JC, dated 17.08.2011	Reduction of Government litigations - providing monetary limits for filing appeals by the Department before CESTAT and High Courts
3.3	Instructions F.No.390/Misc/163/2010-JC, dated 03.06.2013	Clarified issues raised by the field formations
3.4	Instructions F.No.390/Misc./163/2010-JC, dated 12.12.2013	Issued instructions to the field formation on “no precedence value of the orders accepted on low revenue grounds
3.5	Instructions F.No.390/Misc/163/2010-JC, dated 26.12.2014	Clarified issues raised by the field formations.
3.6	Instruction F. No. 390/Misc/163/2010-JC, dated 17.12.2015	Reduction of Government litigations - providing monetary limits for filing appeals by the Department before CESTAT and High Courts
3.7	Instruction F. No. 390/Misc/163/2010-JC, dated 01.01.2016	Reduction of Government litigations – applicability of monetary limits upon the old Departmental appeals pending before CESTAT and High Courts.
3.8	Instruction F. No. 390/Misc/163/2010-JC, dated 04.02.2016	Instructions regarding sending copies of applications filed for withdrawal of appeals before CESTAT to the Chief Commissioner (AR), CESTAT.

3. Text of Legal Provisions

3.1 The Section 131 BA of the Customs Act, 1962

The Section 131 BA of the Customs Act, 1962 provides as under:-

Appeal not to be filed in certain cases,-

131BA. (1) **The Board** may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the **Principal Commissioner of Customs or Commissioner of Customs, as the case may be,** has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, **it shall not preclude such Principal Commissioner of Customs or Commissioner of Customs, as the case may be, from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.**

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the **Principal Commissioner of Customs or Commissioner of Customs, as the case may be,** pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or

Monetary Limits for Filing Appeal in the Tribunal / High Courts and the Supreme Court

reference shall contend that the **Principal Commissioner of Customs or Commissioner of Customs, as the case may be,** has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Appellate Tribunal or court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the **Principal Commissioner of Customs or Commissioner of Customs, as the case may be,** in pursuance of the orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Board on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing appeal, application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

Note: The section 131 BA was inserted in the Customs Act, 1962 vide section 50 of the Finance Act, 2011 (w.e.f. 20.10.2010).
Vide Finance Act, 2014, the words “ Commissioner of Customs” have been substituted with words “ Principal Commissioner of Customs or Commissioner of Customs, as the case may be,”

3.2 Text of Section 35 R of the Central Excise Act, 1944

The Section 35 R of the Central Excise Act, 1944 provides as under:-

Appeal not to be filed in certain cases.—

(1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly

Note: The section 35 R was inserted in the Central Excise Act, 1944 vide section 69 of the Finance Act, 2011 (w.e.f. 20.10.2010).

3.3 Section 83 of the Finance Act, 1994

Vide Section 83 of the Finance Act, 1994, the provisions of section 35 R of the Central Excise Act, 1944 has been made applicable to service tax.

4. Some Important Points

Minimum Monetary Limits Prescribed for filing appeal

4.1 The Board has fixed the following monetary limits below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

Sl.No.	Appellate Forum	Monetary limit
1.	CESTAT *	Rs.10,00,000/-
2.	HIGH COURTS*	Rs.15,00,000/-
3.	SUPREME COURT	Rs.25,00,000/-

Note*: The monetary limits below which appeal shall not be filed in the Tribunal and High Court has been revised vide Board's instruction issued from F. No. 390/Misc/163/2010-JC, dated 17.12.2015. In case of CESTAT, the monetary limit has been revised upward from Rs.5,00,000/- to 10,00,000/-. In case of High Courts, the monetary limit has been revised upward from Rs. 10,00,000/- to Rs. 15,00,000/-.

4.1.1. CBEC issued another Instruction vide F. No. 390/Misc/163/2010-JC, dated 01.01.2016 wherein it was provided that the aforesaid instructions dated 17.12.2015 prescribing revised monetary limits "will apply to all pending appeals in High Courts / CESTAT". It also instructed all the Principal Chief Commissioner /Commissioners to take immediate necessary action in this regard for cases which are below the new threshold limits **subject to the conditions of the instructions of even no. dated 17.08.2011 and 17.12.2015.**

4.1.2 Further, CBEC also issued Instructions vide F.No. 390/Misc/163/2010-JC, dated 04.02.2016 requesting all Principal / Chief Commissioners to send a copy of each application filed for withdrawal of appeal before CESTAT to the Chief Commissioner (AR), CESTAT.

Types of cases to which Monetary Limit are not applicable

4.2 Adverse judgments relating to the following should be contested irrespective of the amount involved:-

- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- (b) Where notification/instruction/order or Circular has been held illegal or ultra vires.
- (c)* **Classification and refunds issues which are of legal and/or recurring nature.**

Note*: Clause (c) above was added *vide* CBEC Instruction F. No. 390/Misc/163 /2010 -JC, dated 17.12.2015.

Precedence Value of Order Accepted on Low Monetary Grounds

4.3 Wherever it is decided not to file appeal in pursuance of these instructions, which are aimed solely at reducing Government litigation, **such cases shall not have any precedent value.** In such cases, Commissioners should specifically record that **“even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit prescribed by the Board.”** Further, in such cases, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assessee, if the amount involved exceeds the monetary limits. Thus, in case any prior order is being cited on facts and law, it must be checked whether such order(s) were accepted only on account of the monetary limit before following them in the name of judicial discipline.

4.4 Sub-Section 3 of Section 35R and Section 131BA provides that if an appeal has not been filed by the Department following Instructions issued for not filing appeal below the monetary limit, no person, being a party in appeal, shall contend that the Department has acquiesced in the decision on the disputed issue by not filing appeal. **In effect, the decisions / judgments accepted for reasons of monetary limit do not have precedent value.**

4.5 The Board *vide* instructions dated 12.12.2013 reiterated that the Departmental Counsels and the DRs in the Tribunal must plead that a judgment accepted for reasons of low amount should not be relied upon by the appellate forum and that the Department is at liberty to agitate the issue in subsequent proceedings till the matter is settled on merits.

Creation of national Data Base of Cases Accepted on Low Monetary Limits

4.6 In respect of an order where it is decided not to file appeal in pursuance of these instructions, a data base needs to be created so that all the Commissionerates are made aware of the orders that are accepted solely on the ground that the revenue involved is below the threshold prescribed herein and which should not be taken as having precedent value.

4.7 The details of such orders in respect of CESTAT and the High Court are required to be furnished by the Zonal Chief Commissioners in Proforma prescribed i.e. Annexure III E & Annexure III F. These proforma form part of the Monthly Technical Report being sent to the Directorate of Legal Affairs for posting on the departmental website. These Annexures III E and III F are also required to be sent to the Directorate of Legal Affairs by e-mail also to dla-rev@nic.in. The details of orders accepted on low revenue grounds are available on Directorate of legal affairs website i.e. http://www.cbec.gov.in/htdocs-cbec/legalaffairs/dla_idx

Issues Clarified by the Board

4.8 In the past, certain doubts have been raised by the field formation. The issues raised and clarifications issued by the Board are given in Table below:-

Table

Issues	Clarifications
(a) Whether duty involved mentioned in the Instruction dated 20.10.2010 refers to duty outstanding to be collected or the total duty demanded for deciding the threshold limit prescribed therein. (Ref: Instruction dated 17.08.2011)	In a case where a part of the duty demanded is not disputed and is paid and the outstanding duty under dispute is less than the monetary limit prescribed by the Board, no appeal shall be filed. In other words, monetary limit shall apply on the disputed duty and not on the total duty demanded in a case.
(b) Whether monetary limits would apply to cases of refund. (Ref: Instruction dated 17.08.2011)	It is clarified that the monetary limits being prescribed by the Board would apply to cases of refund as well.
(c) Whether applications being filed by the Department before office of Joint Secretary (Revision Application) would also be covered under the stipulation of monetary limits. (Ref: Instruction dated 17.08.2011)	The limit specified herein will not be applicable to application filed before the Joint Secretary (Revision Application).
(d) Whether exclusion of audit objections mentioned in para 6(c) of Instruction dated 20.10.2010 would cover internal audit objection cases also or whether they would be limited to cases of revenue audit alone. (Ref: Instruction dated 17.08.2011)	The intention was to apply the exclusion clause mentioned at para 6(c) only to disputes arising out of revenue audit objections accepted by the Department. It has now been decided to delete the said exclusion clause (refer para 3 of this Instruction). Therefore, in all cases of audit objections accepted by the Department, while protective demands may continue to be issued but the same would be subjected to the monetary limits for filing appeal in the Tribunal, High Courts and the Supreme Court.

<p>(e) whether the word “penalty” mentioned in para 2 of the Instruction <i>ibid</i> would include redemption fine or otherwise. (Ref: Instruction dated 03.06.2013)</p>	<p>Redemption fine is an option in the hand of the owner of goods to redeem goods confiscated by the department for violation of any provisions of the Customs Act. On the other hand, penalty is imposed on any person who violates the provisions of the Customs Act while importing or exporting the goods out of India. Therefore, the nature and scope of penalty is different from that of the redemption fine. While penalty is <i>in persona</i>, redemption fine is on goods. However, both redemption fine and penalty are imposed for violations of the statutory provisions. Therefore, even though redemption fine cannot be said to be covered under the word ‘penalty’ the treatment given to both redemption fine and penalty is required to be identical and hence, redemption fine and penalty would need to be clubbed to decide the applicability of threshold limit prescribed.</p> <p>Accordingly, it is clarified that if the imposition of redemption fine alone is the subject matter of dispute, and if such redemption fine exceeds the monetary limits prescribed, then the matter could be litigated further in Courts and Tribunal. Further, if both the amount of redemption fine and penalty are in dispute and if such redemption fine and penalty is in dispute, taken together, exceed the prescribed monetary limit then the matter should be litigated further</p>
<p>(f) whether cases of recurring nature, whether involving the same party or even other parties, need to be pursued in litigation irrespective of the amount involved in such cases. (Ref: Instruction dated 26.12.2014)</p>	<p>The existing Instruction regarding applicability of monetary limits to cases of recurring nature would continue. Therefore, all cases, including cases of recurring nature, are covered under the Instruction on monetary limits and appeal is not to be filed in such cases except those falling in the two exclusion clauses mentioned above. Even if an appeal is pending in the higher appellate forum, subsequent case of the same party or other party shall not be pursued further in litigation if the case falls below the monetary limit prescribed by the Board</p>
<p>(g) The second issue relates to applicability of the threshold limits in various situations, mostly where the adjudicating/appellate authority</p>	<p>In respect of a composite order which disposes of more than one appeal/SCN and the Department contemplates filing of appeal, every appeal would be a “case” and should be subjected to the threshold limit prescribed. To</p>

<p>disposes of more than one appeal in a common order which is sought to be challenged. Such order, generally involve cases of more than one parties, some of which fall below the monetary limit fixed for filing appeal in the forum of appeal (Ref: Instruction dated 26.12.1014)</p>	<p>illustrate, if the Tribunal passes one composite order disposing of more than one appeal filed before it, and if the Department being aggrieved is required to file more than one appeal against the said Tribunal order, then each appeal shall be subject to the monetary limit prescribed</p>
---	---

5. Text of Instructions issued by the Board

5.1 Instruction F.No.390/Misc./163/2010-JC, dated 20.10.2010

Sub:- Reduction of Government litigations - providing monetary limits for filing appeals by the Department before CESTAT and High Courts - Regarding

The National Litigation Policy formulated by the Government of India aims to reduce Government litigation so that the Government ceases to be a compulsive litigant. The purpose underlying this Policy is to ensure that valuable time of the Courts is spent in resolving pending cases and in bringing down the average pendency time in the Courts. To achieve this, the Government should become an “efficient” and “responsible” litigant.

2. Accordingly the Policy lays down, inter alia, that in Revenue matters appeal shall not be filed if the amount involved is not very high and is less than the monetary limit fixed by the Revenue authorities. It also states that appeals shall not be filed if the matter is covered by a series of judgments of the Tribunal and the High Courts which have held the field and have not been challenged in the Supreme Court. The Policy also lays down that no appeal shall be filed where the assessee has acted in accordance with the long standing practice and also merely because of change of opinion on the part of the jurisdictional officers.

3. The Hon’ble Bombay High Court in its order dated 21.06.2010 in the case of CCE Vs Techno Economic Services Pvt. Ltd. [2010(255) ELT 526 (Bombay)] had desired that CBEC consider issuing circular, on the lines of circulars issued by the CBDT, so as to reduce litigations arising out of indirect tax litigations.

4. In respect of appeals filed in the Supreme Court, the proposals are examined by the Board before filing. The Civil Appeals on matters relating to valuation and classification are filed under Section 35L(b) of the Central Excise Act,1944 and Section 130E(b) of the Customs Act, 1962. Such appeals are being filed after careful scrutiny by the Board and while examining, the amount involved is kept in mind. On all issues other than those relating to valuation and classification, SLPs are filed by the Board after obtaining the opinion of the Ld. Law officer from the Ministry of Law. However, it may be mentioned that Board had issued Instruction vide DO F No. 390/170/92-JC dated 13.1.93 as modified by D.O. of even number dated 27.10.1993 advising the field formations that appeals should not be filed in the Supreme Court in cases where the duty involved is Rs 5 Lakhs or less. The said instruction was issued in the light of observation

of the Supreme Court as conveyed by the then Ld Attorney General and was reiterated vide various Circulars issued by the Board from time to time. It is, therefore, desired that the above instruction must be kept in mind while sending proposals to the Board for filing civil appeal or SLP in the Supreme Court.

5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs 1 Lakh and below. Similarly in the case of High Courts appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs 2 lakhs and below. While deciding the thresholds mentioned above, the duty involved shall be the decisive element. For example, in a case involving duty of Rs 1 lakh with mandatory penalty of Rs 1 lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs 1 lakh. Similarly, if the duty involved in a case is Rs 2 lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court.

6. Adverse judgments relating to the following should be contested irrespective of the amount involved:

- a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- b) Where notification/instruction/order or Circular has been held illegal or ultra vires.
- c) Where audit objection on the issue involved in a case has been accepted by the Department

7. It may also be noted that, wherever it is decided not to file appeal in pursuance of these instructions, which are aimed solely at reducing Government litigation, such cases shall not have any precedent value. In such cases, Commissioners should specifically record that “even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit prescribed by the Board.” Further, in such cases, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assessees, if the amount involved exceeds the monetary limits. Thus, in case any prior order is being cited on facts and law, it must be checked whether such order(s) were accepted only on account of the monetary limit before following them in the name of judicial discipline.

8. In respect of an order where it is decided not to file appeal in pursuance of these instructions, a data base needs to be created so that all the Commissionerates are made aware of the orders that are accepted solely on the ground that the revenue involved is below the threshold prescribed herein and which should not be taken as having precedent value. The details of such orders in respect of CESTAT and the High Court is required to be furnished by the Zonal Chief Commissioners in Proforma enclosed (Annexure III E & Annexure III F) which should form part of the Monthly Technical Report being sent to the Directorate of Legal Affairs for posting on the departmental website. These Annexures III E and III F should be sent to the Directorate of Legal Affairs by e-mail also to dla-rev@nic.in.

9. The above instructions of the Board must be adhered to strictly for all appeals filed on or after 1.11.2010.
10. Instruction issued vide F No. 275/55/CX 8A dated 10.11.2008 is hereby rescinded.
11. Hindi version follows.

5.2 Instruction F.No.390/Misc./163/2010-JC dated 17.08.2011

Sub: Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme court - Regarding

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 the Central Board of Excise & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

Sl.No.	Appellate Forum	Monetary limit
1.	CESTAT	Rs.5,00,000/-
2.	HIGH COURTS	Rs.10,00,000/-
3.	SUPREME COURT	Rs.25,00,000/-

2. For ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/tax under dispute. To illustrate it further in a case involving duty of Rs. 5 lakhs or below with equal penalty and interest, as the case may be, no appeal shall be filed in the Tribunal. Similarly, no appeal shall be filed in the High Courts if the duty involved does not exceed Rs.10 lakhs with or without penalty and interest. Further, the Commissionerates shall not send proposal to the Board for filing Civil Appeal or Special Leave Petition in the Supreme Court in a case involving duty up to Rs.25 lakhs, whether with penalty and interest or otherwise. However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. Similarly, where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

3. Adverse judgments relating to the following should be contested irrespective of the amount involved:

Monetary Limits for Filing Appeal in the Tribunal / High Courts and the Supreme Court

- a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires

4. Several queries connected with application of monetary limits have been raised by the field formations which were considered by the Board and are being clarified as below:-

Issues	Clarifications
a) Whether duty involved mentioned in the Instruction dated 20.10.2010 refers to duty outstanding to be collected or the total duty demanded for deciding the threshold limit prescribed therein.	In a case where a part of the duty demanded is not disputed and is paid and the outstanding duty under dispute is less than the monetary limit prescribed by the Board, no appeal shall be filed. In other words, monetary limit shall apply on the disputed duty and not on the total duty demanded in a case.
b) Whether monetary limits would apply to cases of refund.	It is clarified that the monetary limits being prescribed by the Board would apply to cases of refund as well.
c) Whether applications being filed by the Department before office of Joint Secretary (Revision Application) would also be covered under the stipulation of monetary limits.	The limit specified herein will not be applicable to application filed before the Joint Secretary (Revision Application).
d) Whether exclusion of audit objections mentioned in para 6(c) of Instruction dated 20.10.2010 would cover internal audit objection cases also or whether they would be limited to cases of revenue audit alone.	The intention was to apply the exclusion clause mentioned at para 6(c) only to disputes arising out of revenue audit objections accepted by the Department. It has now been decided to delete the said exclusion clause (refer para 3 of this Instruction). Therefore, in all cases of audit objections accepted by the Department, while protective demands may continue to be issued but the same would be subjected to the monetary limits for filing appeal in the Tribunal, High Courts and the Supreme Court.

5. The revised monetary limits shall come into force from 1.9.2011.

6. This Instruction is in continuation of earlier Instruction of even number dated 20.10.2010 and seeks to revise the monetary limits, exclusion clauses and clarifies the doubts raised by the field formations on this issue.

5.3 Instruction F.No.390/Misc./163/2010-JC, dated 03.06.2013

Sub:- Reduction of Government litigation- providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme court - Regarding

I am directed to refer to Instruction of even number dated 17.8.2011 on the captioned subject.

Reference has been received regarding the application of the threshold limit prescribed vide Instruction ibid to cases where either redemption fine alone is in dispute or both redemption fine and penalty are in dispute. For example, in one case the Tribunal confirmed the duty but set aside the penalty of Rs. 5 lakhs and redemption fine of Rs. 15 lakhs imposed by the adjudicating authority. As the Instruction ibid did not specifically mention about redemption fine a clarification has been sought whether the word “penalty” mentioned in para 2 of the Instruction ibid would include redemption fine or otherwise.

The matter has been examined. Redemption fine is an option in the hand of the owner of goods to redeem goods confiscated by the department for violation of any provisions of the Customs Act. On the other hand, penalty is imposed on any person who violates the provisions of the Customs Act while importing or exporting the goods out of India. Therefore, the nature and scope of penalty is different from that of the redemption fine. While penalty is in persona, redemption fine is on goods. However, both redemption fine and penalty are imposed for violations of the statutory provisions. Therefore, even though redemption fine cannot be said to be covered under the word ‘penalty’ the treatment given to both redemption fine and penalty is required to be identical and hence, redemption fine and penalty would need to be clubbed to decide the applicability of threshold limit prescribed.

Accordingly, it is clarified that if the imposition of redemption fine alone is the subject matter of dispute, and if such redemption fine exceeds the monetary limits prescribed, then the matter could be litigated further in Courts and Tribunal. Further, if both the amount of redemption fine and penalty are in dispute and if such redemption fine and penalty is in dispute, taken together, exceed the prescribed monetary limit then the matter should be litigated further.

Instruction ibid stands suitably modified.

This issues with the approval of Chairperson (CBEC).

Director (JC)

5.4 Instruction F.No.390/Misc./163/2010-JC, dated 12.12.2013

Sub:- Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme court – Regarding.

The Instruction issued from F. No.390/Misc/ 163/2010-JC dated 20.10.2010 which was modified by Instruction of even number dated 17.08.2011 prescribed the monetary limits below which appeal shall not be filed by the Department in the Tribunal / Courts. Section 35R of the Central Excise Act, 1944 made applicable to the Finance Act, 1994 vide Section 83 of the said Act, and Section 131BA of the Customs Act, 1962 vest power with the Board to regulate filing of appeals in the Tribunal and the Courts by specifying monetary limit below which appeal need not be filed.

2. Sub-Section 3 of Section 35R and Section 131BA provides that if an appeal has not been filed by the Department following Instructions issued for not filing appeal below the monetary limit, no person, being a party in appeal, shall contend that the Department has acquiesced in the decision on the disputed issue by not filing appeal. **In effect, the decisions / judgments accepted for reasons of monetary limit do not have precedent value.**

3. Instances have come to the notice of the Board where while arguing on the legal effect of an order accepted on account of low amount, the Department has failed to emphasize the relevant provisions of Section 35R as above before the Courts / Tribunal. In a recent case, the Hon'ble High Court dismissed an order passed by the adjudicating authority and even quashed the Show Cause Notice on the ground that an earlier Tribunal order which had decided the issue was not challenged by the Department. The duty involved in the said case was below the threshold limit prescribed for filing appeal. The plea that non-filing of appeal against the said Tribunal order was on account of low amount and did not have any precedent value in the light of the provisions of Section 35R *ibid* and that the merits of the case are not finally settled, however, was not pleaded, resulting in two such judgments of the High Court.

3.1. It was further noticed that the issue involved in the said case was already before the Supreme Court in a Departmental appeal. As per the Board's extant Circular No. 162/73/95-CX dated 14.12.1995 relating to Call Book, Show Cause Notices in question should have been transferred to Call Book awaiting the decision of the higher appellate forum.

4. In view of the above, the Departmental Counsels and the DRs in the Tribunal must plead that a judgment accepted for reasons of low amount should not be relied upon by the appellate forum and that the Department is at liberty to agitate the issue in subsequent proceedings till the matter is settled on merits. The officers in the field formations are hereby directed to take note of the statutory provisions mentioned in the Para 1 & 2 above and prepare the grounds of appeal / defense in suitable cases quoting the relevant provisions.

5.5 Instruction F. No. 390/Misc/163/2010-JC, dated 26.12.2014

Sub: Monetary limit for filing appeal in the Tribunal/Courts- – reg.

Your attention is invited to [Instruction of even number dated 20.10.2010](#) modified vide Instruction dated 17.8.2011 by which the Board had fixed monetary limits below which appeal shall not be filed in the Tribunal/Courts by the Department. As stated in the Instruction dated 17.8.2011, the present monetary limits are Rs 5 lakhs/Rs 10 lakhs/ Rs 25 lakhs respectively for appeal to be filed in the Tribunal/High Courts and the Supreme Court. Appeal is not required to be filed in cases below these monetary limits unless the dispute falls in the two exclusion category mentioned in para 3 of [Instruction dated 17.8.2011](#).

2. The Board has been receiving letters from the field seeking clarifications on various aspects relating to implementation of the Instructions governing monetary limits for filing appeal in the Tribunal and Courts. Mostly, the clarifications sought is **whether cases of recurring nature, whether involving the same party or even other parties, need to be pursued in litigation irrespective of the amount involved in such cases. The second issue relates to applicability of the threshold limits in various situations, mostly where the adjudicating/appellate authority disposes of more than one appeal in a common order which is sought to be challenged. Such order, generally involve cases of more than one parties, some of which fall below the monetary limit fixed for filing appeal in the forum of appeal.**

3. It is hereby clarified that the existing Instruction regarding applicability of monetary limits to cases of recurring nature would continue. Therefore, all cases, including cases of recurring nature, are covered under the Instruction on monetary limits and appeal is not to be filed in such cases except those falling in the two exclusion clauses mentioned above. Even if an appeal is pending in the higher appellate forum, subsequent case of the same party or other party shall not be pursued further in litigation if the case falls below the monetary limit prescribed by the Board.

4. The Instructions mentioned above used the word “case”. However, the same was not defined. The term “case” needs to be interpreted in the context of National Litigation Policy which aims at reduction of litigation. In respect of a composite order which disposes of more than one appeal/SCN and the Department contemplates filing of appeal, every appeal would be a “case” and should be subjected to the threshold limit prescribed. To illustrate, if the Tribunal passes one composite order disposing of more than one appeal filed before it, and if the Department being aggrieved is required to file more than one appeal against the said Tribunal order, then each appeal shall be subject to the monetary limit prescribed.

5. There is no change in the monetary limits prescribed by the Board.

6. The above clarification may be taken note of while processing appeals before the Tribunal and Courts. Difficulties faced, if any, may be brought to the notice of the Board.

Joint Secretary (Review)

5.6 Instruction F.No.390/Misc./163/2010-JC, Dated 17.12.2015

Sub:- Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court - Regarding

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, 1944 and Section 131BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F.No. 390/Misc./163/2010-JC dated 17.08.2011, the Central Board of Excise & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

S.No.	Appellate Forum	Monetary Limit
1.	CESTAT	Rs. 10,00,000/-
2.	High Courts	Rs. 15,00,000/-
3.	Supreme Courts	Rs. 25,00,000/-

2. In para 3 of the instruction dated 17.8.11 a sub clause 'c' shall be added which shall read as "classification and refunds issues which are of legal and/or recurring nature".
2. Except for above, all other terms and condition of instruction dated 17.8.11 stands.

F.No.390/Misc./163/2010-JC

(Deputy Secretary (Review))

5.7 Instruction F.No.390/Misc./163/2010-JC, Dated 01.01.2016 **New**

Sub:- Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court – Regarding

Kind attention is drawn towards the Board's Instruction of even no. dated 17.12.20015 on the above mentioned subject. In this regard, I am directed to inform that the said instructions will apply to all pending appeals in High Courts/ CESTAT. Principal Chief Commissioners/ Chief Commissioners are required to take immediate necessary action in this regard for cases which are below the new threshold limits subject to the conditions of the instructions of even no. dated 17.08.2011 and 17.12.2015.

(Archana Pandey Tiwari)
Joint Secretary (Review)

5.8 Instruction F.No.390/Misc./163/2010-JC, Dated: 04.02.2016 New

Sub:- Reduction of Government litigation – withdrawal of appeals by the Department before CESTAT – regarding

I am directed to invite your kind attention towards Board’s instructions dated 17.12.2015 & 18.12.2015 regarding the withdrawal of cases. 2. All the Principal Commissioners/ Chief Commissioners are requested to send a copy of each application filed for withdrawal of such appeal before CESTAT to the Chief Commissioner (AR), CESTAT.

(Rohit Singhal)
Dy. Secretary (Review)

5.9 Proforma Prescribed by the Board for reporting orders to Directorate of Legal Affairs which have been accepted on low revenue grounds.

PROFORMA-III E

Part A

LIST OF CESTAT ORDERS ACCEPTED ON ACCOOUNT OF LOW REVENUE

Sl.No.	Zone	Commissionerate	CESTAT Order No. & Date	Appeal No.	Cause Title	Issue Involved	Amount Involved	Date of Acceptance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Part B

LIST OF CESTAT ORDERS ACCEPTED FOR REASONS OTHER THAN LOW REVENUE

Sl.No.	Zone	Commissionerate	CESTAT Order No. & Date	Appeal No.	Cause Title	Issue Involved	Amount Involved	Date of Acceptance	Reasons for acceptance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

Part A

LIST OF HIGH COURT ORDER/JUDGEMENT ACCEPTED ON ACCOOUNT OF LOW REVENUE

Sl.No.	Zone	Commissi onerate	High Court Order No. & Date	Appeal		Cause Title	Issue Involved	Amount Involved	Date of Acceptance
				Type* e*	No. o.				
(1)	(2)	(3)	(4)	(5)(a)	5 (b)	(6)	(7)	(8)	(9)

Part B

LIST OF HIGH COURT ORDERS/JUDGEMENT ACCEPTED FOR REASONS OTHER THAN LOW REVENUE

Sl. No.	Zone	Commissi onerate	High Court Order No. & Date	Appeal		Cause Title	Issue Involved	Amount Involved	Date of Accepta nce	Reasons for acceptan c e
				Type* e*	No. o.					
(1)	(2)	(3)	(4)	(5) (a)	5 (b)	(6)	(7)	(8)	(9)	

* Type of appeal should indicate Central Excise Appeal (CEA), customs Appeal (CA), Service Tax Appeal (STA), Civil Writ Petition (CWP) OR Letter Patent Appeal (LPA) or Others, as the case may be.

**