

No. S-29012/12/2017-ST-1-DoR

Government of India
Ministry of Finance
Department of Revenue
(State Taxes Division)

275, North Block, New Delhi
Dated the 27th November, 2017

INSTRUCTION

To,

1. All the Chief Secretaries of States & Union Territories, Secretary (Finance/Taxation), Commissioner (Commercial Taxes) of the States;
2. All Principal Chief Commissioners/ Chief Commissioners of Customs, GST & CX;
3. All Principal Director Generals/ Director Generals of Customs, GST & CX;

Sir / Madam,

Subject: Master Instruction on Defence against Writ Petitions / PILs relating to GST- regarding.

Kindly refer to Member (Legal), CBEC's D.O. letter of even no. dated the 5th September, 2017 (copy available on CBEC website) on the above subject.

2. In this regard, it is stated that after implementation of GST a number of Writ Petitions / PILs are being filed in Hon'ble Supreme Court & High Court (s) challenging various aspects of GST Law and rates. Since GST is at its nascent stage, CBEC has already issued a number of Instructions laying out the procedure for efficaciously defending the interest of Government before the Court(s).

3. In order to obviate any confusion amongst the field formations and to efficaciously defend the interest of government before the Hon'ble High Court (s), you are requested to direct the formations under your jurisdiction to comply with the following directions:

- a. **Nodal Cell under CBEC** – Nodal Cell headed by Commissioner (Legal), CBEC has been created in order to effectively coordinate and monitor the all GST related cases filed/ pending before the Hon'ble High Court(s). Similarly, Nodal Cell headed by Commissioner (Directorate of Legal Affairs), CBEC has been created in order to effectively coordinate and monitor the all GST related cases filed/ pending before the Hon'ble Supreme Court. The new cases or any updates in other cases, as and when received by the concerned officer / field formations etc, may be intimated to the respective Nodal Cell of CBEC. The phone number of the Nodal Cell for High Court is 011-26161042 and email ID is commr.legal-cbec@nic.in. The phone number of the Nodal Cell for Supreme Court is 011-23219071 and email ID is dla-rev@nic.in.
- b. **Issuance of Unique Index Number** – Commissioner (Legal) / Commissioner (DLA), CBEC will assign a unique Index Number to all High Court(s)/ Supreme Court cases respectively, filed under GST regime, which will remain unchanged and may be used for all future references/ correspondences.

Office of the Commissioner of Taxes
Receipt No. 2331
Date 10.1.18

- c. **Issuance of Authorisation to defend Uol, States & other respondent (s)** - To defend Uol and other Central Government respondents in GST related matters before the High Court(s), Commissioner (Legal), CBEC will issue Authorisation in favour of the jurisdictional Principal Commissioner/ Commissioner. In case no jurisdictional officer is joined as respondent(s), Legal Cell will issue Authorisation in favour of the concerned nodal Principal Commissioner/ Commissioner in whose jurisdiction the bench of the High Court, where petition is filed, is located. In this regard CBEC Instruction of even no. dated 19.06.2015 & 08.12.2015 refers (Copy available on CBEC website and being enclosed herewith). The field formations are also expected to closely monitor GST related petitions being filed in the Hon'ble High Court (s) in their jurisdiction and upon filing of the petition, the same should be immediately brought to the notice of Commissioner (Legal), CBEC for issuance of Authorization. It is stated that it is the prerogative of the CBEC to authorize any Principal Commissioner/ Commissioner to defend the Uol and others before the High Court (s). No transfer of Authorization should be done on unilateral basis and a reference should be made to Commissioner (Legal) clearly pointing out the reasons for change in the Authorization. The decision of the CBEC in this regard would be final. It is also stated that CBEC will not issue authorization for GSTN as it is a Private Limited Company;
- d. **Policy Comments on the impugned issue-** To ensure uniformity of views in all cases filed before the High Court (s) under the GST regime filed across the country, it is desirable that comments should be sought directly from the concerned Wing of the Department as per Table below. It is expected that the authorized Principal Commissioner/ Commissioner will carefully examine the petition and send a self-contained reference directly to the concerned wing as per Table below, under intimation to Commissioner (Legal), CBEC, clearly pointing out the exact policy issue (s) on which the comments are required. The authorized Principal Commissioner/ Commissioner should not mechanically forward the petition for para-wise comments. The mandate of the concerned Wing of the CBEC/ Department of Revenue/ GST Council, is to give inputs on the specific policy issue(s). The subject-wise concerned Policy Wing of the CBEC / Deptt. of Revenue are as follows:

Sl. No.	Designation	Area of Work Allocated
1.	Commissioner (GST)	<ul style="list-style-type: none"> Notifying jurisdiction of formations of GST; All CGST Act related work <u>except</u> in respect of Chapter V (Input Tax Credit), Chapter XIV (Inspection, Search, Seizure and Arrest), Chapter XVII (Advance Ruling), Chapter XVIII (Appeals & Revision), Chapter XIX (Offences & Penalties), and Chapter XX (Transitional Provisions);
		<ul style="list-style-type: none"> All IGST Act related work <u>except</u> in respect of Chapter V (Place of supply).
2.	Commissioner (Service Tax)	<ul style="list-style-type: none"> All IGST Act related work, in respect of Chapter V (Place of supply).
3.	Commissioner (Central Excise)	<ul style="list-style-type: none"> All CGST Act related work in respect of Chapter V (Input Tax Credit) and Chapter XX (Transitional Provisions).

4.	Commissioner (Inv-GST)	<ul style="list-style-type: none"> All CGST Act related work in respect of Chapter XIV (Inspection, Search, Seizure and Arrest) and Chapter XIX (Offences & Penalties).
5.	Commissioner (Legal)	<ul style="list-style-type: none"> All CGST Act related work in respect of Chapter XVII (Advance Ruling) and Chapter XVIII Appeals & Revision (Only in respect of HC & SC).
6.	Commissioner (IT & Compliance Verification) / Member (IT)	<ul style="list-style-type: none"> Coordination with GSTN.
7.	Joint Secretary (Review)	<ul style="list-style-type: none"> All CGST Act related work in respect of Chapter XVIII- Appeals and Revision (Except HC & SC).
8.	Commissioner (Customs & EP)	<ul style="list-style-type: none"> GST related Customs Work
9.	Joint Secretary (Customs)	<ul style="list-style-type: none"> Work related to IGST Customs Interface
10.	Commissioner (PAC)	<ul style="list-style-type: none"> Audit related work in GST by CAG
11.	Joint Secretary (Drawback)	<ul style="list-style-type: none"> GST related work pertaining to Drawback and Export Promotion Schemes
12.	Joint Secretary (TRU-I)	<ul style="list-style-type: none"> Matters pertaining to tax rate on goods
13.	Joint Secretary TRU-II	<ul style="list-style-type: none"> Matters pertaining to tax rate on services
14.	Joint Secretary (Revenue), Department of Revenue	<ul style="list-style-type: none"> Work related to GST (Compensation to States) Act, Compensation Cess and erstwhile Central Sales Tax Act.

- e. **Defence of GST Council wherein it is one of the respondents-** CBEC has already issued Instruction of even no. dated 12.10.2017 (Copy available on CBEC website & enclosed herewith) asking the field formations to take all necessary steps to defend GST Council along with UoI & Others in cases before the Hon'ble High Court (s). The said Instruction should be scrupulously followed;
- f. **Providing all necessary and timely assistance to the Government Counsels-** CBEC has issued Instruction of even no. dated 09.11.2017 (Copy available on CBEC website and enclosed herewith) directing all the field formations to provide all necessary and timely assistance to the Government Counsel in order to efficaciously defend the interest of Government before the Hon'ble High Court (s). Further all efforts should be made to engage senior government counsels to defend GST related cases;
- g. **Coordination with State Governments-** CBEC has issued Instruction of even no. dated 09.10.2017 (Copy available on CBEC website and enclosed herewith) emphasizing that both the Centre and States should take a uniform stand in GST related petitions before the High Court (s) so as to obviate any contradictory orders or judgments. The said Instruction should also be scrupulously followed;
- h. **Filing of Additional Affidavits pursuant to GST Council decisions and the respective Notifications-** GST Council in its recent meetings have taken a number of decisions so as to rationalize and simplify the procedure and rate under the GST Law and Rules. Subsequently, the

respective Policy Wings issues the Notification to give effect to the decisions. The field formations should continuously follow the changes in the law and procedure and file additional affidavits in the related petitions pending in High Court (s), if required.

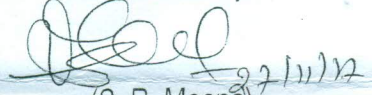
- i. **Filing of SLP in the Hon'ble Supreme Court against Orders of Hon'ble High Court (s) staying collection of Tax under GST-** CBEC has issued Instruction F.No.275/11/2017-CX.8A dated 18.09.2017 (copy available on CBEC website and enclosed herewith) directing the field formations to send a self-contained proposal against interim or final orders of High Court(s) where the levy of GST has been questioned or stayed. The field formations should constantly monitor court proceedings to keep a watch against any such order in the High Court (s).

4. It is once again stated that the jurisdictional Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner should take all necessary measures to efficaciously defend all GST related petitions, in High Court (s) under whose jurisdiction they respectively fall.

5. Commissioner (Commercial Taxes) of the States are requested not to file replies to Writ Petitions/ PILs pending before Hon'ble High Courts pertaining to GST without consulting the authorized Principal Commissioner/ Commissioner of CBEC.

Encl. – As above.

Yours sincerely,


(S. R. Meena)

Under secretary to the Govt. of India

Copy to:

1. OSD to Finance Secretary & Secretary (Revenue) for kind information;
2. OSD to Chairman (CBEC) for kind information;
3. All Members of CBEC for information and necessary action w.r.t. their Zonal Charges;
4. The Additional Secretary, GST Council for information and necessary action;
5. The Additional Secretary (Revenue), DoR for information and necessary action;
6. All the Joint Secretaries/ Commissioners under CBEC for information and necessary action;
7. The Commissioner, Directorate of Legal Affairs, CBEC, 4Th Floor, Rajendra Bhawan, 210, Deen Dayal Upahyay Marg, New Delhi- 110002 for information and necessary action.



AMEETA SURI
Special Secretary & Member

भारत सरकार
GOVERNMENT OF INDIA
(वित्त मंत्रालय/ राजस्व विभाग)
MINISTRY OF FINANCE / DEPARTMENT OF REVENUE
केन्द्रीय उत्पाद एवं सेवा शुल्क बोर्ड
CENTRAL BOARD OF EXCISE & CUSTOMS
नार्थ ब्लॉक, नई दिल्ली-110001
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Tels : +91-11-23092568 Fax : +91-11-23092308

D.O.F.No. 275/65/2013-CX.8A

5th September, 2017

SUB: Defence against Writ Petitions/PILs relating to GST- reg.

My dear Colleague,

After the implementation of GST w.e.f. from 1st July, 2017, a number of Writ Petitions/PILs are being filed in various High Courts challenging or seeking clarification on various aspects of GST Law and rate of tax on some products. As GST is at its inception stage, it is important to defend the issues effectively to defend the interest of Government.

2. Board has already issued Instructions of even no. dated 19.06.2015¹ and 03.12.2015 (Copy available on CBEC website) giving procedural clarifications in respect of the issues relating to 'Authorization' of the Commissioners to represent Union of India and others in matters before the High Court. It is requested to direct all the formations under your jurisdiction to comply with the said Instructions.

3. Further, all Principal Chief Commissioners/Chief Commissioners are requested to keep a special watch on the petitions being filed especially those relating to GST in the Hon'ble High Courts in their jurisdiction and also direct all Principal Commissioners/ Commissioners under their respective jurisdictions for similar close monitoring and liaison with the department/ I/O Counsel. If the Union of India and others, are also one of the respondents, necessary authorisation will be issued by the Board to Principal Commissioner/ Commissioner and a proposal may be sent to the Commissioner (Legal), CBEC, well in time. The Principal Commissioner/ Commissioner in whose favour the authorization is to be issued may also be indicated. Simultaneously, policy comments if any, may be sought directly from the concerned Policy Section of the Board or GST Council, as the case may be. All the petitions filed in the High Courts should be examined carefully and a self-contained reference should be made directly to the Policy Wing/ GST Council clearly pointing out the exact policy issue (s) on which the comments are required.

4. It is expected that Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner will take all measures necessary to efficaciously defend all matters, and in particular GST related petitions, in High Courts under whose jurisdiction they respectively fall.

With best wishes,

Yours sincerely,

(Ameeeta Suri)
(Ameeeta Suri)

To

1. All the Principal Chief Commissioners/ Chief Commissioners of Customs, CGST and CX;
2. All the Principal Director Generals/ Director Generals under CBEC;