

F.No.276/262/2015-CX.8A (Pt. III)  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect taxes& Customs)  
Legal Cell  
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Wing 5 'C' HUDCO-VISHALA Building  
Bhikaji Cama Place, R.K. Puram  
New Delhi, the 27<sup>th</sup> October'2020

To,

All Principal Chief Commissioners/ Chief Commissioners of Central Tax & Customs  
All Principal Director Generals/ Director Generals of Central Tax & Customs  
webmaster.cbcc@icegate.gov.in

Sir/Madam,

Sub:Residual action by CGST Commissionerates in respect of the adverse orders of Hon'ble High Courts, wherein the taxpayer is assigned to respective State tax administration-reg

References have been received in the Board regarding the action required to be taken by CGST Commissionerates in respect of adverse orders of Hon'ble High Courts, wherein the taxpayer is assigned to the respective State tax administration.

2. In this regard, it is informed that whenever GST related petitions are filed before respective High Court, Union of India is usually made one of the Respondents. In such cases, even if the jurisdiction of the Petitioner lies with the State Government, Central GST Commissionerate are authorized to defend the issue before respective High Court as CGST Act and ensuing Rules are akin to respective State/UT GST Acts and ensuing Rules, and also in terms of DoR Master Instructions dated 14.08.2019, as amended from time to time.

3. The said authorization does not cease to exist at the disposal of the Petition by the High Court. Rather, remedial judicial action, for protection of the interests of Revenue continue to rest with the authorized Commissionerate. Infact, Board has been processing SLP proposals and filing SLPs pertaining to the orders by the High Courts wherein the Petitioners fall under respective State Jurisdiction. In such case, where an appeal is proposed to be filed, it shall be desirable that the Zone concerned interacts with the officials of the State GST so that there is no divergence of views while filing the appeal.

4. Specifically, on the issue of TRAN-1, a number of SLPs have been filed, in terms of Board's Instructions dated 13.11.2018 and 01.08.2019 vide file of even no, by Board, wherein the tax payers are assigned to State Jurisdiction. Since the order issued by the High Courts, irrespective of the jurisdictional control of the taxpayers, holds a precedence value, GST Council Secretariat has also been requested to sensitize the

respective States/UTs to take necessary steps, including filing of Review Petition/Writ Appeal/ SLP, as the case may be, to safeguard the interests of Revenue.

5. Further, it has been observed that in some cases, Union of India/ Department of Revenue/ CBIC has not been made as respondents, even though some central legislation/ delegated legislation is under challenge. At the outset, such practice is against the Principles of Natural justice as Union should be made a Respondent before assailing any law enacted by Union. Nevertheless, to ensure efficacious defence pertaining to GST related petitions, Addendum to Master Instruction dated 14.08.2019 was issued vide the letter dated 17.08.2020 (copy enclosed), which makes it imperative for Commissioner (State Taxes) to request policy comments directly from CBIC Policy wings in such cases.

Yours faithfully,

Encl: As above

(Anish Gupta)  
OSD (Legal)

Copy to:

1. Special Secretary, GST Council Secretariat, Jeevan Bharti Building, Janpath, New Delhi 110 001
2. Commissioner, GST Policy Wing II, CBIC, Department of Revenue, North Block, New Delhi 110 001
3. Director (State Taxes), Department of Revenue, North Block, New Delhi 110 001