F.No.276/125/2016-CX.8A  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Legal Cell)  

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‘C’ Wing, 5th Floor, HUDCO-VISHALA Building  
Bhikaji Cama Place, R.K. Puram,  

To,

1. All Principal Chief Commissioners/Chief Commissioners of Customs, Central Excise and Service Tax;  
2. Director Generals of DRI/CEI;  
3. The Joint Secretary (RA), Department of Revenue;  
4. <webmaster.cbec@icegate.gov.in>


The Hon’ble Punjab & Haryana High Court vide order dated 22.03.2016 while allowing the Civil Writ Petition No. 24967 of 2015 in case of M/s. NVR Forgings and in CWP No. 26321/2016 in case of M/s. Modi Spring Pvt. Ltd., had observed in para 8 as follows “In the present case, the impugned order was passed by the Joint Secretary to Government of India who was also Commissioner of Central Excise and Customs. Thus, the order in appeal as well as revisionary order has been passed by the officers of the same rank which is not permissible as per law. Adverting to the judgments relied upon by the learned counsel for the respondents, it may be noticed that the said decisions were based on individual fact situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements.”

2. The Department after examining the impugned judgment was of the view that the Hon’ble High Court is not correct in equating a revision order passed by Joint Secretary (RA) under Section 35-EE of Central Excise Act, 1944 to that of a order passed by Commissioner (Appeals), and further holding that a revisionary order passed by an officer of the same rank is not permissible. The matter was referred to Advice ‘B’ Section, Department of Legal Affairs, M/o Law & Justice, for the opinion of the Ld. Law Officer on the feasibility of filing SLP before the Supreme Court. The Ld. Solicitor General of India opined for filing of SLP against the impugned High Court judgment. SLP (Civil) CC 19063/2016 was filed against the impugned High Court Judgment.

3. The Supreme Court vide order dated 17.10.2016 after condoning the delay, dismissed the SLP.

4. The Department after examining the above Supreme Court judgment had referred the matter to Advice ‘B’ Section, Department of Legal Affairs, M/o Law & Justice, for the opinion of the Ld. Law Officer on the feasibility of filing a Review Petition before the Supreme Court. The Ld. Additional Solicitor General of India opined against filing of Review Petition against the said Supreme Court judgment.
5. Further, Hon'ble Supreme Court vide their order dated 07.11.2016 has also dismissed Department filed SLP (C) CC No. 20005/2016 in case of M/s. Modi Springs Pvt. Ltd.

6. In view of above position, Department is in process of taking appropriate remedial measures, for disposal of the Revision Applications, arising out of the orders passed by the Commissioner (Appeals).

7. The above is brought to the knowledge of the field formations and other concerned, for information.

Yours faithfully

(Harsh Vardhan)
Senior Analyst
Tel: 011-26195405

Copy to:
1. The Joint Secretary (Revenue Headquarters), Department of Revenue, North Block, New Delhi for information;
2. The Chairman, CBEC, North Block, New Delhi for information;
3. All the Members of CBEC, North Block, New Delhi for information;
4. The Joint Secretary (Review), CBEC, 4th Floor, HUDCO-VISHALA Building, RK Puram, New Delhi for information;
5. The Commissioner, Directorate of Legal Affairs, Rajendra Bhawan, New Delhi for information.