

By Speed Post

F. No. 275/14/2015-CX.8.A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Legal Cell)

5th Floor, Wing 'C', Hudco Vishala Building,
Bhikaji Cama Place, R.K. Puram,
New Delhi, Dated the 29th July, 2016.

To,

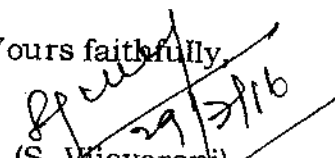
1. All Chief Commissioners of Customs/Central Excise/Service Tax/LTU.
2. Director General, DRI/CEI.
3. Web Master, CBEC for uploading on CBEC website under the Legal Affairs.

Sir/Madam,

Subject: Instructions regarding unified stand of Ministries/ Department in litigation; resolving the differences and common counter reply vetted through M/o Law-reg.

I am directed to forward herewith a Copy of O.M. F.No. 296/11/2016-CX.9 (pt.II) dated 18/07/2016 enclosing therein a copy of D/o Revenue O.M dated 12.07.2016 and a copy of D.O. letter No. 1/50/03/2016-Cab. dated 16.06.2016 from Sh Pradeep K. Sinha, Cabinet Secretary, Govt. Of India on the subject matter for necessary action.

Yours faithfully,


(S. Vijayarani)

Senior Analyst (Legal)

Tel: 011-26195405

Encl: as above

File No. 296/11/2016-CX9 (pt.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

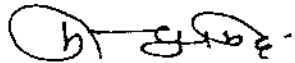
New Delhi, dated 18th July, 2016

OFFICE MEMORANDUM

Subject:- Filling counter affidavit/reply by Ministry/Department - reg.

The undersigned is directed to forward herewith a copy of OM No. 0-21026/2/2015-Coord. dated 12.07.2016 received from Coord. Section alongwith enclosure on the above mentioned subject for information and necessary action.

Encl: As above



(Surendra Singh)

Under Secretary to the Govt. of India (CX-9)

Tel: 23092413

All JS/Commissioners in CBEC

FTS-218539

Off Commissioner (Coord) CBEC
Dy/Files No. 2353
Date 14-7-16
FTS No. 218539/2016

File No. O-21026/2/2015-Coord.
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 12th July, 2016

OFFICE MEMORANDUM

Subject :- Filing counter affidavit/reply by Ministry/Department – reg.

The undersigned is directed to enclose a copy of Cabinet Secretary's D.O. No. 1/50/3/2016-Cab. dated 16th June, 2016 on the above mentioned subject for its strict compliance.

Encl : As above

Narendra Kumar
12/7/2016

(Narendra Kumar)

Under Secretary (Coord.)
Telefax No.-23095539

*Ch(24) in inty
Lenon (Coord) D.O. us(149)*

1. Chairman, CBDT
2. Chairman, CBEC
3. Director, Enforcement Directorate
4. Director, Narcotic Control
5. DG, CEIB
6. Director, FIU-IND
7. Director (HQ)

Copy to:-

1. Commissioner (Coord.), CBDT
2. Commissioner (Coord.), CBEC

ANOS

14/7

A.B.

15/7

15/7

MOST IMMEDIATE

प्रादीप कुमार सिन्हा
PRADEEP K. SINHA



मंत्रिमंडल सचिव
भारत सरकार
CABINET SECRETARY
GOVERNMENT OF INDIA

D.O. No. 1/50/3/2016-Cab.



16th June, 2016

Dear Secretary

I would like to draw your attention to this Secretariat's D.O. letter No. 6/1/1/94-Cab. dated 25.02.1994 (copy enclosed) wherein it was mentioned that the business of the Government of India is transacted in the Ministries and Departments in accordance with the Allocation of Business Rules, 1961. As the Ministries and Departments conduct the 'allocated' business on behalf of the Government of India, all Ministries / Departments were requested to ensure that (i) a unified stand is taken before Courts of Law rather than bringing out the point of view of each Ministry/Department in the counter-affidavit/reply; and (ii) a common counter-reply is filed on behalf of the Union of India by the Ministry/Department concerned instead of separate affidavits being filed by each Ministry/Department named as Respondents.

2. It has, however, been observed that at times different Departments take up divergent positions/ individual interpretations in court cases thereby causing avoidable confusion in the submissions finally deliberated upon before the Courts. It may be noted that it is primarily the responsibility of the Administrative Ministry/ Department to take timely action at each stage including filing of a counter affidavit during a Court case after completing necessary consultations with the other Ministries/ Departments concerned.

3. If in any case, separate counter-affidavits are required to be filed by orders of the Court, it should be ensured that this is done in consultation with the Ministries/ Departments concerned for a coordinated approach. In such cases, a short affidavit endorsing the views of the Administrative Ministry/Department can also be filed.

4. In this regard, attention is also drawn to instructions issued by the Ministry of Law, Department of Legal Affairs from time to time where it has been stipulated that the Ministry/ Department is required to get the counter affidavit vetted from the Department of Legal Affairs before filing.

I would therefore request you to ensure that differences, if any, in the stand of Ministries/ Departments in any particular court matter are resolved through mutual consultation, as brought out above. It may also be ensured that the counter affidavits are filed only after appropriate vetting by the Department of Legal Affairs.

6. Please ensure that these instructions are noted and disseminated to all concerned for strict compliance.

With regards,

Yours sincerely,

Encl. - As above.

Dr. Hasmukh Adhia
Secretary,
Department of Revenue
New Delhi

Pradeep K. Sinha
16/6/2016

Handwritten notes and signatures on the left margin, including '23/6/2016' and 'US (C) 1-11'.

Handwritten signature and date: '27/6/2016'.

Handwritten signature and date: '27/6/16'.

Handwritten signature and date: '16/6/2016'.

Handwritten notes: 'File with US (C) 1-11' and 'ATB'.

IMMEDIATE

S.No.2(P)



P.P. Prabhu,
Additional Secretary
(Tel. 3012697)

अपर सचिव

मंत्रिमण्डल सचिवालय
राष्ट्रपति भवन, नई दिल्ली
ADDITIONAL SECRETARY
CABINET SECRETARIAT
RASHTRAPATI BHAVAN
NEW DELHI

D.O.No.6/1/1/94-Cab.

25th February, 1994.

Dear Shri

The business of the Government of India is transacted in the Ministries and Departments in accordance with the Allocation of Business Rules, 1961. In other words, Ministries and Departments conduct the 'allocated' business on behalf of the Government of India. It was in this spirit that the Ministry of Finance, Department of Expenditure issued instructions vide their D.M.No.7(32)-E.III/92 dated 24th May, 1993 (copy enclosed) that (i) a unified stand should be taken before Courts of Law rather than bringing out each concerned Ministry's/Department's point of view in the counter-affidavit; and (ii) a common counter-reply should be filed on behalf of the Government by the concerned Ministry/Department instead of separate affidavits by each Ministry/Department named as Respondents.

2. It has come to notice that these instructions are not being followed by a number of Ministries/Departments. There have been instances where statements/submissions made before Court/CAT indicated that the matter has been recommended to the Ministry of Finance or the Department of Personnel & Training or that while the Administrative Ministry/Department recommended the proposal, Ministry of Finance had not approved. In one case where certain employees had filed an Application before the CAT for revision of scales of pay, the administrative Ministry made a submission that the cadre review proposals had been submitted for approval of the Ministry of Finance. Ministry of Finance could not, however, agree to the recommendations of the administrative Ministry in this case and the Secretary of that Department was put in an embarrassing position. In another case, a submission was made before the CAT that they had found the Applicant suitable and had recommended to the Ministry of Finance to extend the Flexible Complementing Scheme to the Applicant. The above affirmation led the Tribunal to decide the matter in favour of the Applicant even though the Ministry of Finance held a view to the contrary. Such situations could have been avoided had the administrative Ministry/Department given the final view of the Government of India rather than their individual position.

3. It is, therefore, desirable that counter-replies filed before Courts/CAT are carefully dealt with at appropriate level, strictly in accordance with the Ministry of Finance, Department of Expenditure O.M. No.7(32)-E.III/92 dated 24th May, 1993 referred to above.

This issues with the approval of Cabinet Secretary.

With regards,

Yours sincerely,

(P.P. Prabhu)

All Secretaries to Govt.

Separate Note to Ministry
D.