F.No.276/72/2016-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,
New Delhi-66: dated the 18.07.2016.

INSTRUCTION

To,

1. All Principal Chief Commissioners/Chief Commissioners of Customs, Central Excise and Service Tax;
2. All Director Generals of Customs, Central Excise and Service Tax;
3. <webmaster.cbec@icegate.gov.in>

Sub:- Filing of Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court- regarding;

Sir/Madam,

Board has been receiving various proposals from field formations for filing of SLP before the Apex Court against the judgment passed by the various High Courts in Indirect Tax matters. The Ld. Law Officers in a number of cases have opined against filing of SLP, as there was no substantial question of law involved. It has been seen that many a times field formations send proposals for filing a SLP, which are purely within the realm of appreciation of evidence or where no substantial question of law is involved.

2. Article 136 of the Constitution of India, which provides for Special leave to appeal by the Supreme Court, reads as under:

"(1) Nothwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

3. The Apex Court in Indian Oil Corporation Ltd. vs. State of Bihar and Others [1987 (27) E.L.T. 578 (S.C.)] observed *"It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment."*

4. The Apex Court in its judgment dated 08.02.2001 in Santosh Hazari vs. Purushottam Tiwari [Appeal (Civil) 1117 of 2001] has dwelt upon what is meant by a substantial question of law. It was observed *"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."*

It was further observed *"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case."*

5. The field formations are, therefore, requested to keep in mind the above, before sending SLP proposal to Board against the judgment of High Courts. It is reiterated that SLP before the Apex Court can be filed only when a substantial question of law arises. Matters purely relating to the realm of appreciation of evidence, unless there is a gross perversity or illegality in the appreciation of evidence by the High Court, or on settled issues do not fall within the purview of special leave jurisdiction of the Apex Court. SLP should not be proposed in a routine manner, just because some High Court decision is not in Department's favour.

6. It is requested that above instructions may be brought to the knowledge of all formations within your jurisdiction.

Yours faithfully

Charul Baranwal

(Charul Baranwal)
Commissioner (Legal)
Tel: 011-26161042