

**GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
OFFICE OF THE DIRECTOR GENERAL OF FOREIGN TRADE
UDYOG BHAWAN, NEW DELHI-110011**

Dated 5.2.2003

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O&M INSTRUCTION No. 2/2003
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Subject: Handling of court matters- instructions regarding

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As per DG's directions in the Senior Officers Meeting held on 21.10.2002, comprehensive guidelines/procedures on handling of court matters are enclosed for strict compliance and adherence while dealing with such cases.

Encl. As above

Sd/-
(V.B. SAXENA)
DY. DIRECTOR GENERAL OF FOREIGN TRADE

To

All Officers/Sections at DGFT HQs.
All RLAs (By name)

Copy for information to:

PPS to DG
PS to Addl. DG(AKP)
PS to Addl. DG(KGU)
PS to Addl. DG(RDM)
PS to Addl. DG (MLB)
PS to EC

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(Issued from file No. 1/69/12/00011/2002/O&M)

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Subject: Handling of Court matter – instructions regarding.

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The Litigation Section of the HQs. Office of DGFT is headed by a Joint Director General of Foreign Trade who would be the overall in charge of coordinating and conducting of all Litigation

work concerning DGFT organization and is authorized to issue directions from time to time as considered appropriate and necessary.

2. The responsibility of dealing with Court Cases lies with the Head of the Regional Office and he is accountable for all actions and omissions. In all the writ Petitions/Plaints / Suits/Applications, the Union of India/ DGFT are invariably made respondents and hence copies of such petitions are received in the Litigation Division at HQs . In most of these petitions/ complaints/suits/applications, the decisions/actions of the Regional Offices are challenged. These petitions are normally forwarded to the concerned Regional Offices or Sections concerned at the HQs for taking necessary action. The detail of petitions/ complaints/suits/applications, may be entered in computer immediately on receipt of it, for which software is already available, so that the proper monitoring can be done by the respective licensing authority as well as Litigation Division (HQ). For the purpose MIS report in the prescribed Performa may be furnished o Jt. DGFT (Lit.) in HQ by 10th of every month. The pendency of Litigation cases will be reviewed at DG's level on a monthly basis.

3. While the Litigation Division at the HQs. Would be responsible for handling court cases where the decision at HQs. has been challenged, the other kind of court cases may be dealt with in the following manner:

- (i) Since legal notices generally precede the filing of cases in the Court against the Government, the moment a legal notice is received, it should be examined carefully and after preparing the comments, the Regional Office should seek legal advice from the Branch Sectt. oOf the Law Ministry covering the area and only if considered necessary it should be referred to respective wing of Headquarters Office for examination in detail regarding Policy/ Administrative/ Rule portion through HQ's Litigation wing. Litigation wing will thereafter examine, seek the advice of JS&LA and convey the same to the respective wing of Headquarters for necessary action.
- (ii) In case it is determined that though the writ petition preferred is against the decision of Regional Offices but there are certain paras for which HQs. has to respond, a copy of Writ Petition would be referred to the concerned Subject Division under intimation to HQ's Litigation Wing pointing out the paras on which their comments are specifically required. While doing so the subject matter division would be requested that the comments should be sent to concerned Regional Office directly with a copy to the Litigation Division at Hqs
- (iii) One of the first and the foremost steps to be taken in attending to a litigation matter either by or against the Government is to engage a Counsel through Ministry of Law, and to ensure that he files Written Statement./Counter affidavit/appeal in the Court for protecting the Government interests and for projecting the Government's stand thereto.

The Ministry of law, in discharge of its functions to effectively control and supervise the Central Govt. Litigation in Courts, maintains a list of Govt. Counsels for various High Courts who are to handle Govt. cases. In Delhi, Bombay, Calcutta, Madras and Bangalore, Central Govt. Litigation is handled directly by the Litigation sections of the Law Ministry Branch Secretariat located there. Same way the Law Ministry Branch Secretariat located there. Same way the Law Ministry Branch Secretariat of the State Govt. can be requested to direct their Litigation Sections in the State to nominate counsel to defend the case in the various Courts.

- (iv) In each of the court case a responsible officer conversant with the facts of the case (preferable one who is dealing with it) shall be appointed as Officer In-Charge (O.I.C.) of the case. In the Regional Offices, the Regional Officer shall appoint either himself or other suitable officer as the O.I.C. in each case.
- (v) Parawise comments relating to matters in any wing of the HQs. office would be furnished by the respective wing, briefing on policies/ Administration Rules/ matters and oral instructions, to Central Govt. Counsel during conferences with them would be given by the O.I.C. of the respective case of the Hqs. Or by the Regional Offices. The counter Affidavit will be affirmed by the concerned

Officers of the concerned wings of HQs./ Port Offices. Important matters having high stake where constitutional validity of Act or Policy has been challenged, it is appropriate to request one of the Law Officer (A.G./S.G./Addl.S.G.) to protect Govt. interest.

(vi) However if any subsequent reference is received the same also, in original, would be forwarded to the concerned division as in the case of main petition, with the same request that the reply would be sent directly to the Port Office concerned under intimation to the Litigation Division by endorsing a copy.

(vii) Where the Litigation Section comes to conclusion that there is no issue pertaining to HQs. the copies of the Writ Petitions received would be forwarded, in original, to the concerned Port Offices with the advice to take necessary action at their end under intimation to Litigation Division of HQs.

(viii) Whenever a Judgment/Order of the High Court goes against the interest of the Govt., steps should be taken to approach the concerned Branch Sectt. of the Law Ministry (after examining the views of the Govt. Counsel handling the matter with a self contained detailed note giving the stand proposed to be taken, for obtaining an opinion in regard to filing an appeal against the order of the High Court.

In case, the port Offices/Licensing Offices are satisfied and desires to file an SLP, it should be done without loss of time. They should forward the relevant papers as given below concerning the matter with justification to the Litigation Division of HQs.:-

- (a) The copies of the Writ Petition/Plaints/suits/applications;
- (b) Copies of Counter Affidavits/written statements;
- (c) Copies of Rejoinder/Replication;
- (d) Copy of any other pleadings;
- (e) Copy of any other relevant documents referred to and submitted before the court;
- (f) Copy of judgments against which SLP is proposed;
- (g) Advice of Government Counsel who conducted case before the Lower/Higher Court;
- (h) Copy of advice of Branch Secretariat of Law Ministry regarding feasibility of filing SLP or otherwise;
- (i) Whether certified copy of judgment against which SLP is proposed, has been obtained, if not whether application for certified copy of judgment, was submitted by Government Counsel before Registrar of High Court, along with written advice of Government Counsel that the certified copy has not yet been made available by the Registrar of High Court; and
- (j) Statement of case to be prepared by respective Port/Licensing offices regarding feasibility of filing SLP or otherwise substantiating reasons/grounds for filing SLP and also annexing the documents relied upon for filing SLP.

4. The aforesaid relevant documents along with the views/decision of the respective wing of the Headquarters Office would be examined in Litigation Wing and submitted for the advice of JS&LA attached to DGFT (Minister of Commerce and Industry) who, if needed, will obtain the advice of Law Officer. Help/guidance of JS&LA will also be taken in appointing government counsel.

5. It must be ensured by all Regional Officers that Court matters are given utmost attention and priority and no lapse occurs in protecting the interests of the Government on account of delays or any other reason. Steps should be taken to keep continuous liaison monitoring the progress of the case with the Govt. Counsel who handles the same. In case of any delay or laps Joint Director General in-charge of Regional Office or the Division at Headquarters as the case would be held responsible.

6. In order to keep the number of cases limited, utmost care should be taken to present the case effectively so that petitions are rejected at the admission stage itself . In particular, if the appellate provision in the FT(DR) Act has not been used by the petitioner, we should try to get the petition rejected on this ground only. Also, to limit the number of frivolous Litigation we must insist on award of costs in such cases.

7 If the concerned Port Authority/Office considers filing an appeal is not feasible, after obtaining legal advice of Branch Secretariat of Law Ministry, the matter should be invariably referred to concerned wing of the Headquarters for taking a final decision. Reference should be made after drawing up a statement of the

case and also enclosing a certified copy of the High Court's Order or at least a carbon copy or a kaccha copy. However before implementing the adverse order, HQs. May be consulted.

8 Stay and other interim orders should not be allowed to stand indefinitely. Appropriate applications may be moved without loss of time, in consultation with the standing counsel, before the courts for vacation of such stays and other interim orders.

9. While making any reference to the Litigation Branch of the Headquarters of any matter for legal advice or for directions on the conduct/defense or a Court case, a self-contained note containing, in detail, the facts and circumstances of the case, the points of Policy/Administrative Rules and Law involved, comments on all such points raised, should be annexed specifying the point on which advice is sought. Opinion of the Government Counsel handling the matter and advice of the Branch Secretariat of the Law Ministry should also be enclosed to enable better appreciation of the issues involved.

10. Draft parawise comments prepared for the purpose of filing any affidavit need not be sent to the Headquarters as a matter of routine and the responsibility for sending, incomplete and or in correct note would rest with the office which prepared them. Draft affidavits got prepared from the respective Central Government Counsel in any area where there is no Branch Secretariat of Law Ministry be sent to the respective wing of the Headquarters for vetting, only when the policy or procedure or action of the Headquarters are specifically raised or involved or otherwise important for respective wing of Headquarters to examine the same. After the vetting/modification of the draft Counter Affidavit by the respective wing of the Headquarters office, the same would be examined by the Litigation wing in consultation with JS&LA

11. Plaints, written statements and affidavits for and on behalf of the Government are to be signed and verified by officers not below the rank of Deputy DGFT as prescribed in O.M. SRO 351 dt. 25.1.1958 as revised up to date and issued by the Deptt. of Legal Affairs, Ministry of Law.

12. Draft affidavits are to be affirmed by the concerned JT.DGFTs or Dy. DGFTs at the Headquarters and the Regional Officers, who are in charge of the disputed matters in the Court. Briefing the Govt. Counsel has also to be done by the concerned Senior Officer dealing with the case.

13. Whenever a petition/application filed in the Court or order/judgment or the Court is received, the concerned office should ensure that adequate number of typed/photo copies of the same are made for reference to other concerned Governmental Organization/ respondents and/or Headquarters for further action in the matter.

14. In the matters of serious doubt or difficulty even after obtaining the opinion of the Govt. Counsel handling a Court matter or the Branch Secretariat of the Law Ministry, reference must invariably be made to the respective wing of Headquarters for direction.

15. Since limitation questions would be involved, it must be ensured that steps are taken immediately and it should be noted that delays caused are accountable and responsibility would be fixed.

16. This procedure will apply to cases in High Courts, Sub-ordinate Courts and Supreme Court matters as detailed above.

INSTRUCTIONS REGARDING SEEKING LEGAL ADVICE AND CONSULTATION IN COURT MATTERS;

17. At the Headquarters Jt. DGFTs heading the Divisions may refer to the Jt. Secretary & Legal adviser any specific issue regarding Legal advice and also regarding the advisability of filing/ contesting Court cases and to obtain the approval of the DGFT and Ministry of Commerce whenever considered necessary. All the Regional Licensing Offices through Zonal Offices under whose administrative jurisdiction it falls, will refer the matter to Branch Secretariat concerned in all matters of litigation and for obtaining legal advice. In places where Branch Secretariat of Law Ministry is not available all matters requiring advice may be referred to the respective wings in Headquarters office for examining the matter from Policy/Administrative angle and if some points arise for legal advice same should be referred to Litigation Wing for obtaining advice of

JS&LA. While seeking the advice of JS&LA a self-contained note detailing all points giving policy provisions, wherever recovery, should be submitted. The note should also mention whether an appeal is sought to be made and if so harm caused to government by the judgment sought to be appealed against, should be splat out. The note should be well documented and the point on which advice is sought should be clearly highlighted.

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MIS XII

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Name of the Port Office.....

Cases under Litigation during the Month of _____

Category	O/B	Fresh Cases	Total	Hearing Stage	Judgment Reserved	Judgment Passed	Cases Pending (Col. 4-Col.7)
1	2	3	4	5	6	7	8
Administrative							
Disciplinary							
Trade related							
Other(specify)							