

F No 390/CESTAT/24/2016-JC  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of excise and Customs

New Delhi the 13 April 2016

**INSTRUCTION**

To

1. All the Principal Chief Commissioners/ Chief Commissioner of Customs/ Central Excise/ Service Tax
2. DG DRI/ DGCEI/ Audit/ Performance Management/ ST / GST
3. Commissioner Legal/ DLA/ Coordination
4. [webmaster.cbec@icegate.gov.in](mailto:webmaster.cbec@icegate.gov.in); Webmaster, CBEC

Madam/ Sir,

Subject: Decision of the CESTAT Final Order No 40344/2016 in case of Commissioner of Customs (Import) Vs Do Best Infoway, reg-

CESTAT Final Order No 40344/2016 dated 29<sup>th</sup> February 2016 in the case of Commissioner of Customs (Import) Vs Do Best Infoway has commented adversely as paras 9 to 13, the casual manner in which the matter was handled by the Adjudicating Authority and the Commissioner (Appeal). CESTAT has in para 14 asked CBEC to issue appropriate guidelines to the quasi judicial authorities to discharge their duties publicly keeping in view the spirit of the ratio laid down by Apex Court in the case of Gordhandas Bhanji [1952 AIR 16 SC]. The said paras are quoted as under:-

*“9. Perusal of the content of the order sheet as above indicates that there was noting on 22.12.2014 for fixation of hearing on 23.12.2014. But no such hearing was granted on that date i.e. 23.12.2014, in absence of any recorded action by the Commissioner (Appeal). A sheet showing grant of hearing on 24.12.2014 without any authentication by signature of Commissioner (Appeals) appears on record. One day before the hearing fixed on 23.12.2014 record was submitted to Commissioner (Appeals) by one ADO under his signature on the*

*order sheet. Fair copies of Order-in Appeal was put up to Commissioner (Appeals) on 21.1.2015 for signature and approval of Commissioner (Appeals). There is no signature of Commissioner (Appeals) on order sheet on that date.*

*10. Above manner of maintenance of public record shows that an empty formality was followed by the Commissioner (Appeals) for disposal of appeal. The appeal order was signed by Commissioner (Appeals) undated and that appears to have been issued on 28.1.2015 as per preamble to the impugned order.*

*11. Aforesaid factual matrix discloses that entire action of Commissioner (Appeals) is contrary to law and there is no disposal of appeal as yet on his record. If this is the manner an appellate authority acts, and his undated order comes for judicial review, it is difficult to appreciate the very existence of the impugned order itself as to whether that has seen the light of the day.*

*12. The jurisprudence that flows from the judgement of Apex Court in the case of Gordhandas Bhanji 1952 AIR 16 SC that when a thing is required to be done in the manner required by law and a public authority should pass public order publicly and public orders made by public authorities as meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself, it can be said that order of learned Commissioner (Appeals) has no existence in law. Accordingly, the remarks made by appellate Commissioner shall also have no legs to stand.*

*13. Perusal of the adjudication order throws light that the adjudicating authority summarily disposed of the proceeding without a speaking order. Therefore, he is directed to issue appropriate notice to the importer clearly bringing out allegations if any for the defence of the later and granting reasonable opportunity of hearing shall pass a reasoned and speaking order considering defence plea as well as evidence if any led by the importer.*

*14. Before parting with this order, it is necessary to inform the Central Board of Excise & Customs (CBE&C) that appropriate guideline may be issued to the quasi Judicial Authorities in administrative justice system to discharge their duties publicly keeping in view the spirit of the ratio laid down by Apex Court in the case of Gordhandas Bhanji (supra) and in accordance with law. Also the*

*manner how order sheet of public record shall be maintained by such authority while they discharge public duty may be advised.”*

2.0 The decision of the CESTAT as noted above points out severe lacunae in the functioning of quasi judicial and appellate authorities in the department. Poor maintenance of records interalia in the discharge of the functions of these authorities has been a cause of concern. In this case CESTAT has found lacunae not only in the orders passed by the Commissioner (Appeal), but has also pointed to the deficiencies noted by them in performance of the assigned public duties. From the perusal of note sheet reproduced in the order of the CESTAT it is evident that the said Commissioner (Appeal) was performing his assigned public functions in a pre-functory and casual manner.

3.0 As per (40) and (41) Chapter II of Central Secretariat Manual of Office Procedure containing definitions in respect of various terms used in the said manual, terms “note” and “noting portion” have been defined as follows:

*“(40) ‘**Note**’—The remarks recorded on a case to facilitate its disposal; it includes a summary of previous papers, a statement or an analysis of the questions requiring decision, indication of the rules/precedent/resource position, suggestions regarding the course of action and final orders passed thereon.*

*(41) ‘**Notes portion**’ of a file—The portion containing notes or minutes recorded on a case.”*

4.0 Thus the file and notes on the file should not only be concise but should also contain the details of minutes recorded in a case. Fixing/ Re-fixing of personal hearing is a vital step towards the disposal of the case by the quasi judicial / appellate authority. There can be no casual approach towards it. The file notings should clearly indicate the same under the signature of the said authority who is fixing the dates for personal hearing. In case no personal hearing is held on the date on which the personal hearing has been fixed, the same should also be recorded on the file. In absence of all these details on the file, the order passed by the said authority cannot be said to be passed complying with laid down procedures and in accordance with the sound legal principles. Every record leading to passing of any order by a quasi judicial authority should be minuted on the case file which is also a record in the case. The courts and appellate authority may at time call for the case records and

files to satisfy themselves with regards to the manner in which proceedings have been conducted by the public authority.

5.0 It is a settled principle in law, that:

a. Justice has not only to be done but seem to have been done in the performance of quasi judicial functions.

b. If the law prescribes a manner of performance of a function, then that manner is only manner for performance of the same and every other manner is mandatorily barred by law.

c. Thus if the quasi judicial authority has to grant the personal hearing on the date and time decided by him while deciding the case, then that authority alone can grant the said personal hearing on that date and time. The record of such hearing should be essential part of the record of the case under the signature of the said authority in person.

d. The quasi judicial orders subject to judicial review have to be necessarily a speaking orders recording every fact and reason leading to the final decision in the matter. Non speaking orders or the orders passed without recording the submissions and reasons for passing the final order is non est in law.

6.0 You are requested to bring these instructions to the notice of all the officers functioning in your jurisdiction. You should also cause sample verification of records of the adjudication and appellate proceedings in your jurisdiction from time to time to time to ensure compliance with these instructions.

7.0 This issues with the approval of the competent authority.

(Rohit Singhal)  
Deputy Secretary (Judicial Cell)

