

F.No.276/262/2015-CX.8A Pt. III
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect taxes& Customs)
Legal Cell

Wing 5 'C' HUDCO-VISHALA Building
Bhikaji Cama Place, R.K. Puram
New Delhi, the 15th October'2020.

To,

All Principal Chief Commissioners/ Chief Commissioners of Central Tax & Customs
All Principal Director Generals/ Director Generals of Central Tax & Customs
webmaster.cbec@icegate.gov.in

Sir/Madam,

Sub:Review Petition/ Writ Appeal/ SLP against the directions of Hon'ble High Courts pertaining to issues related to IT glitches-reg.

The undersigned has been directed to refer to Instructions dated 13.11.2018 and 01.08.2019, vide file of even no., wherein the field formations were directed that wherever Hon'ble Courts have allowed the reopening of portal or manual submission of Transitional Forms, which is against the current statutory framework, the same may be agitated by filing Review Petition/ Writ Appeal, as the case may be, and if the Review Petition/ Writ Appeal is not possible, a self-contained SLP Proposal may be forwarded to Board.

2. Board has been filing SLPs regularly on the said issue. However, one of the SLP filed by the Board viz. SLP (C) No. 4408/2020 in the case of M/s Adfert Technologies, against the common order dated 04.11.2019 of Hon'ble Punjab & Haryana High Court, has been dismissed *in limine* by Hon'ble Supreme Court vide order dated 28.02.2020. In this regard, references have been received in the Board on the future course of action, in light of the dismissal of SLP (C) No. 4408/2020, pertaining to those cases, which were decided by a common order dated 04.11.2019 along with the case of M/s Adfert Technologies. References have also been received in respect of cases where orders have been passed by various High Courts based on order of M/s Adfert Technologies.

3. In this regards, Legal opinion has been solicited by the Board.

4. The law is well settled that when there is *in limine* dismissal of SLP by Hon'ble Apex Court, there is no enunciation of law, no doctrine of merger and accordingly, question of law remains open. Hence, there is no bar on agitating the same question of law before Hon'ble Supreme Court. Infact, while deliberating on another issue of transitional credit in the case of M/s Brand Equity Treaties Limited, vide Interim order dated 19.06.2020 in SLP (C) No. 7425-7428/2020, Hon'ble Apex Court stayed the operation of High Court order and tagged the Brand Equity case to

the matters, which are similar to M/s Adfert Technologies. Further, in other similar cases, Hon'ble Supreme Court has been issuing notices.

5. Accordingly, field formations under your jurisdiction may be directed to follow the contours of Instructions dated 13.11.2018 and 01.08.2019 and necessary action may be taken for safeguarding the interest of revenue. GST Policy Wing, CBIC has already issued comprehensive policy comments on the issue vide Instruction dated 22.06.2020, which may be suitably incorporated in the affidavits filed before Hon'ble Courts.

6. Further, necessary action on such orders wherein Hon'ble High Courts have allowed the reopening of portal or manual submission of Transitional Forms, which is against the current statutory framework, may please be forwarded to Board, in the enclosed format by **23.11.2020** at osd-legal@gov.in.

Yours faithfully,

Encl: As above

(Anish Gupta)
OSD (Legal)
011-26177514

Copy to:

1. Special Secretary, GST Council Secretariat, Jeevan Bharti Building, Janpath, New Delhi 110 001, in continuation of OM dated 02.01.2020 (copy enclosed) vide file of even no. with a request that Commissioner (State Taxes) may be sensitized on the similar lines
2. Commissioner, GST Policy Wing II, CBIC, Department of Revenue, North Block, New Delhi 110 001
3. Director (State Taxes), Department of Revenue, North Block, New Delhi 110 001

Report on remedial action taken after the issue of adverse orders by High Courts in the cases of Transitional Forms.

Zone	Number of adverse orders as mentioned in Para 6 from 01.07.2017-30.09.2020	Credit sanctioned, if any, pursuant to Order at Col 2 (in Rs.)	Remedial action taken
1	2	3	4