

I/91208/2021(1)



ಭಾರತಸರ್ಕಾರ, ಹಣಕಾಸು ವಿಭಾಗ, ಕಂದಾಯ ಇಲಾಖೆ
 भारतसरकार, वित्तमंत्रालय, राजस्वविभाग
 Government of India, Ministry of Finance, Department of Revenue,
 ಆಯುಕ್ತರ ಕಛೇರಿ, ನಗರ ಸೀಮಾಸಂಕ್,
 ಅಂಚೆ ಸಂ. 5400, ಕೇಂದ್ರೀಯ ರಾಜಸ್ವ ಭವನ, ಕ್ಷೀನ್ಸರಸ್ತೆ.
 ಬೆಂಗಳೂರು

सीमाशुल्क आयुक्त कार्यालय, बेंगलुरु सिटी सीमाशुल्क आयुक्तालय,
 पी.बी.सं 5400, बेंगलूर

Office of the Commissioner of Customs, City Customs
 Commissionerate,
 P.B. No. 5400, C.R. Building, Queen's Road, Bengaluru – 560
 001

दिनांक/Date: 18.01.2021

STANDING ORDER NO. 03/2021

Sub.: COFEPOSA Act, 1974 - Streamlining and strengthening of COFEPOSA /Preventive Units in all offices of Sponsoring (Preventive) for effective monitoring of COFEPOSA matters - Reg.

Attention is invited to the Board's instruction dated 22.12.2020 issued from F. No. PD-20002/2/2018-COFEPOSA, Central Economic Intelligence Bureau (COFEPOSA Wing) regarding streamlining and strengthening of COFEPOSA /Preventive Units in all offices of Sponsoring (Preventive) for effective monitoring of COFEPOSA matters, indicating the procedural safeguards to be ensured for effective implementation of the COFEPOSA Act, 1974 to disrupt the machinery established for smuggling and foreign exchange manipulation with all its ramifications.

2. All the officers in concerned sections are directed to follow these instructions scrupulously and ensure the implementation of above cited (enclosed herewith) Board's Instructions.
3. Difficulties if any, in following the instructions may be brought to the notice of Joint Commissioner of Customs (Hqrs).

Encl: As above.

(BASWARAJ NALEGAVE)
COMMISSIONER

Copy to: -

1. The Joint Commissioner of Customs, Hqrs & ICD, Bengaluru.
2. All Sections and officers of City Customs Commissionerate, Bengaluru.

File No. PD-20002/2/2018-COFEPOSA

Government of India
Ministry of Finance
Department of Revenue
Central Economic Intelligence Bureau
(COFEPOSA Wing)

6th Floor, B-Wing, Janpath Bhawan,
Janpath, New Delhi.

Dated the 21st December, 2020

To

1. Director General, Directorate of Revenue Intelligence
2. Director, Directorate of Enforcement
3. Chief Commissioner of Customs (All)
4. Chief Commissioner of Customs (Prev.)(All) Chief Commissioner of Customs & Central Excise (All)

Subject: COFEPOSA Act, 1974 – Streamlining and strengthening of COFEPOSA /Preventive Units in all offices of Sponsoring (Preventive) for effective monitoring of COFEPOSA matters regarding.

Sir,

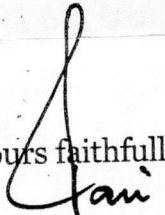
Instructions have been issued from time to time indicating the procedural safeguards to be ensured for effective implementation of the COFEPOSA Act, 1974 to disrupt the machinery established for smuggling and foreign exchange manipulation, with all its ramifications.

2. In the past there have been instances where the counter Affidavit against the Writ Petitions filed by COFEPOSA detainees/absconders, got considerably delayed and could only be filed by this Department after permission by the Hon'ble Court seeking the condonation of delay, which was caused by delayed furnishing of comments by the Sponsoring Authorities despite repeated reminders. Similarly, comments of Sponsoring Authority filing Appeals/SLPs in the Hon'ble Apex Court for challenging impugned Orders of the High Courts also gets delayed despite repeated reminders, which sometimes result into filing Appeals when the limitation period is over. There are also instances where the Apex Court has to be submitted with detailed reasons for such delays to avoid dismissal of SLP at admission stage. Besides, such delayed furnishing of information by the Sponsoring Authority leave very less time for this Department to scrutinize their comments and to draft Counter Affidavit with its ASG/CGSC for processing the same for obtaining the approval of competent authority before filing the same before the respective Courts. It is needless to mention that for considering feasibility to file SLP based upon the comments of the Sponsoring Authority/Counsel, the advice of Department of Legal Affairs is also obtained, i.e., before the time-limit, if any prescribed in such order or before the time-limit for filing appeals. Recently, the Hon'ble bench of the Apex Court has observed that the Government cannot operate as if the 'Statute of Limitation' does not apply to it and once again deprecated the practice of the Government moving the court belatedly only by way of formality and imposed monetary cost to be recovered from the officers responsible for considerable delay in filing the SLP.

3. It is also further observed that the matter gets further aggravated if there is no Nodal officer with the Sponsoring Authority (SA) for coordinating/monitoring such important matters as during the proceedings the concerned dealing officials/ Investigating officials gets transferred or the matter lacks the coordination with the preventive/COFEPOSA units of the Sponsoring Authorities having insufficient staff strength. Nevertheless, it is primarily the combined responsibility of this Ministry as well as the Sponsoring Authority to ensure that the timely action is taken at each stage of a court case in COFEPOSA matters and in no case should the proceeding of the case take considerably such long delays that it results in adverse observations of the Hon'ble Court affecting the outcome of the case in favour of the department. It is felt that the main contributing factor to this scenario is the absence of a proper system having a dedicated COFEPOSA Unit/Wing with most of the Sponsoring Authorities having sufficient staff strength and well-versed with the sensitiveness of the issuance of preventive detention orders issued under the COFEPOSA Act, 1974.

3. In order to keep a careful watch on ongoing litigation of COFEPOSA detention cases so that in no circumstance a case is lost due to administrative infirmities or have negative impact because of delay, there is a need to streamline and strengthen the Preventive COFEPOSA Units/Wings of the Sponsoring Authorities by putting in place a dedicated COFEPOSA Unit having adequate and well experienced officers and staff to address the issues with extreme care, caution and promptitude especially after execution of the Detention Orders and to undertake other follow up and related actions pursuant to representations and writ petitions filed by the detainees or pre-execution writs filed by the COFEPOSA absconders.
4. Further, the concerned investigating officer must also attend all the court proceedings as well as Counsels' briefing, as required to keep abreast the concerned senior Sponsoring Authority officers with due endorsement/intimation to this Ministry on the same date. Nonetheless, while dealing with COFEPOSA matters all stages, monitoring and supervision at a senior level coupled with strict accountability is a must who must be notified by the Sponsoring Authority as Nodal Officer (Preventive)/(COFEPOSA) of sufficiently higher level to this Ministry by indicating mobile No./E-mail Id for coordinating COFEPOSA matters. The nodal officer should give the necessary guidance to the dealing officials and also monitor the progress so that officials at all levels dealing with such COFEPOSA matters develop the proper mindset and approach commensurate with the special and particular requirements of such an important enactment against the smuggling activities. The frequent transfers of the concerned officials/investigating officers, if not having fixed tenure, must also not affect the smooth functioning of such COFEPOSA/Preventive Units considering sensitiveness of preventive detention under the Act *ibid*.
5. All Sponsoring Authorities are, therefore, requested to comply with these instructions with utmost urgency.
6. The receipt of this letter may please be acknowledged.

Yours faithfully,


(R.P. Singh)

Joint Secretary to the Government of India

22/12/2021