भारत संचार निगम लिमिटेड
(भारत सरकार का उद्यम)
**BHARAT SANCHAR NIGAM LTD.**
(A Government of India Enterprises)

***THROUGH INTRANET/CR***

***Company's Secretariat and Legal Division***

**No.BSNL/SECTT/54-2/2010.** **Dated: 29.06.2011.**

**Subject:-** **Hon'ble Supreme Court's Order** dated 17th February 2011 in Appeal Civil No.1903 of 2008 between CCE Vs BPCL – recalling their earlier directions in the case of ONGC Vs CCE and ONGC Vs CIDCO Maharashtra **regarding non-insistence of CoD approval for pursuing litigation by PSU/Government Departments**

As all concerned may be aware that pursuant to the Orders of the Hon'ble Supreme Court dated 11.10.1991 in the matter of ONGC Vs CCE and ONGC Vs CIDCO Maharashtra, the mechanism of "Committee on Disputes (CoD)", under the Cabinet Secretariat was established, for processing and sanctioning of approvals to the Public Sector Enterprises for initiating litigation in the Hon'ble Courts / Tribunals against the Government / Government Bodies.

2. **The Hon'ble Supreme Court,** while dismissing IA No.4 in Civil Appeal No.1903/2008 filed by Bharat Petroleum Corporation Limited ***has recalled their earlier orders reported in*** (i) ONGC Vs CCE [1995 Suppl(4) SCC 541 dated 11.10.1991], (ii) ONGC Vs CCE [(2004) 6 SCC 437 dated 7.1.1994]; and (iii) ONGC V CIDCO [(2007) 7 SCC 39 dated 20.7.2007], wherein the Hon'ble Apex Court had directed that prior approval of the Committee on Disputes needs to be obtained before the filing of a case in the Court.

3. Ministry of Law and Justice, Department of Legal Affairs OM No.F-34(4)/2011-Judl., dated 3rd March 2011, while circulating the latest orders of the Hon'ble Apex Court has advised all concerned to ensure compliance of the same **[Copy at Annexure A].** In accordance therewith, the Cabinet Secretariat's Committee on Disputes Mechanism have displayed in their website that "the Secretariat's earlier orders issued vide OM no.53/3/6/91-Cab.I dated 31st December 1991 and OM No.53/3/6/91-Cab.I dated 24th January 1994 stand superseded **[Copy at Annexure B]. All concerned are advised to take note and act accordingly.**

[H.C.Pant]
CS & Sr.GM(L)

To

1. All the PGMs/Sr.GMs/GMs of the Corporate Office
2. All the Chief General Managers of the Circles/Regions/Projects/Factories etc.

ANNEXURE A

**Most Immediate**

No.F.34(4)/2011-Judl.
Government of India
Ministry of Law and Justice
Department of Legal Affairs
Judicial Section

New Delhi, 3rd March, 2011

**OFFICE MEMORANDUM**

Sub: Hon'ble Supreme Court's Order dated 17th February, 2011 in Appeal Civil No.1903 of 2008 between CCE Vs. BPCL – recalling their earlier directions in the case of ONGC Vs. CCE and ONGC Vs. CIDCO, Maharashtra regarding non-insistence of CoD approval for pursuing litigation by PSU/Government Departments.

*****

The undersigned is directed to state that Hon'ble Supreme Court while dismissing IA no. 4 in Civil Appeal no.1903/2008 filed by Bharat Petroleum Corporation Ltd., has **recalled their earlier orders** reported in (i) ONGC vs CCE [1995 Supp(4) SCC 541 dated 11.10.1991], (ii) ONGC vs CCE [(2004) 6 SCC 437 dated 07.01.1994] and (iii)ONGC vs CIDCO [(2007) 7 SCC 39 dated 20.07.2007] wherein the Hon'ble Court had directed that prior approval of the "Committee on Disputes" need to be obtained before the filing of a case in the Court.

II. The text of the said order is reproduced below:-

"CIVIL APPEAL NO.1883 OF 2011
(arising out of S.L.P. (C) No. 2538 of 2009)

Electronics Corporation of India Ltd. ... Appellant(s)

versus

Union of India & Ors. ... Respondent(s)

with

Civil Appeal No. 1903 of 2008

Coram: S.H. Kapadia, CJI, Mukundakam Sharma, K.S. Panicker Radhakrishnan, Swatanter Kumar and Anil R. Dave, JJ

**ORDER**

**S.H. KAPADIA, CJI.** - Leave granted.

2. Electronics Corporation of India Ltd. ("assessee" for short) is a Central Government Public Sector Undertaking ("PSU"). It is registered as a Government Company under the Companies Act, 1956. It is under the control of Department of Atomic Energy, Government of India. A dispute had been raised by the Central Government (Ministry of Finance) by issuing show cause notices to the assessee alleging that the Corporation was not entitled to avail/utilize Modvat/Cenvat Credit in respect of inputs whose values stood written off. Accordingly it was proposed in the show cause notices that the credit taken on inputs was liable to be reversed. Thus, the short point which arose for determination in the present case was whether the Central Government was right in insisting on reversal of credit taken by the assessee on inputs whose values stood written off.

Contd....

3. The adjudicating authority held that there was no substance in the contention of the assessee that the write off was made in terms of AS-2. The case of the assessee before the Commissioner of Central Excise (adjudicating authority) was that it was a financial requirement as prescribed in AS-2; that an inventory more than three years old had to be written off/derated in value; that such derating in value did not mean that the inputs were unfunctionable; that the inputs were still lying in the factory and they were useful for production and therefore they were entitled to Modvat/Cenvat credit. As stated above, this argument was rejected by the adjudicating authority and the demand against the assessee stood confirmed. Against the order of the adjudicating authority, the assessee decided to challenge the same by filing an appeal before CESTAT. Accordingly, the assessee applied before the Committee on Disputes (CoD). However, the CoD vide its decision dated 2.11.2006 refused to grant clearance though in an identical case the CoD granted clearance to Bharat Heavy Electricals Ltd. ("BHEL"). Accordingly, the assessee herein filed Writ Petition No. 26573 of 2008 in the Andhra Pradesh High Court. By the impugned decision, the writ petition filed by the assessee stood dismissed. Against the order of the Andhra Pradesh High Court the assessee has moved this Court by way of a special leave petition.

4. In a conjunct matter, Civil Appeal No. 1903 of 2008, the facts were as follows. Bharat Petroleum Corporation Ltd. ("assessee" for short) cleared the goods for sale at the outlets owned and operated by themselves known as Company Owned and Company Operated Outlets. The assessee cleared the goods for sale at such outlets by determining the value of the goods cleared during the period February, 2000 to November, 2001 on the basis of the price at which such goods were sold from their warehouses to independent dealers, instead of determining it on the basis of the normal price and normal transaction value as per Section 4(4)(b)(iii) of Central Excise Act, 1944 ("1944 Act" for short) read with Rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In short, the price adopted by the assessee which is a PSU in terms of Administered Pricing Mechanism ("APM") formulated by Government of India stood rejected. The Tribunal came to the conclusion that the APM adopted by the assessee was in terms of the price fixed by the Ministry of Petroleum and Natural Gas; that it was not possible for the assessee to adopt the price in terms of Section 4(1)(a) of the 1944 Act; and that it was not possible to arrive at the transaction value in terms of the said section. Accordingly, the Tribunal allowed the appeal of the assessee. Aggrieved by the decision of the Tribunal, CCE has come to this Court by way of Civil Appeal No. 1903 of 2008 in which the assessee has preferred I.A. No. 4 of 2009 requesting the Court to dismiss the above Civil Appeal No. 1903 of 2008 filed by the Department on the ground that CoD has declined permission to the Department to pursue the said appeal.

5. The above two instances are given only to highlight the fact that the mechanism set up by this Court in its Orders reported in (i) 1995 Suppl.(4) SCC 541 (ONGC v. CCE) dated 11.10.1991; (ii) 2004 (6) SCC 437 (ONGC v. CCE) dated 7.1.1994; and (iii) 2007 (7) SCC 39 (ONGC v. City & Industrial Development Corpn.) dated 20.7.2007 needs to be revisited.

Contd...

6. Learned Attorney General has submitted that the above Orders have outlived their utility and in view of the changed scenario, as indicated hereinafter, the aforestated Orders are required to be recalled. We find merit in the submission made by the Attorney General of India on behalf of the Union of India for the following reasons. By Order dated 11.9.1991, reported in 1992 Supp (2) SCC 432 (ONGC and Anr. v. CCE), this Court noted that "Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court". Consequently, the Cabinet Secretary, Government of India was "called upon to handle the matter personally".

7. This was followed by the order dated 11.10.1991 in ONGC-II case (supra) where this Court directed the Government of India "to set up a Committee consisting of representatives from the Ministry of Industry, Bureau of Public Enterprises and Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation".

8. Thereafter, in ONGC-III case (supra), this Court directed that in the absence of clearance from the "Committee of Secretaries" (CoS), any legal proceeding will not be proceeded with. This was subject to the rider that appeals and petitions filed without such clearance could be filed to save limitation. It was, however, directed that the needful should be done within one month from such filing, failing which the matter would not be proceeded with. By another order dated 20.7.2007 (ONGC-IVth case) this Court extended the concept of Dispute Resolution by High-Powered Committee to amicably resolve the disputes involving the State Governments and their Instrumentalities.

9. The idea behind setting up of this Committee, initially, called a "High-Powered Committee" (HPC), later on called as "Committee of Secretaries" (CoS) and finally termed as "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee. [see : para 3 of the order dated 7.1.1994 (supra)] Whilst the principle and the object behind the aforestated Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinabove. They indicate that on same set of facts, clearance is given in one case and refused in the other. This has led a PSU to institute a SLP in this Court on the ground of discrimination. We need not multiply such illustrations. The mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases,

Contd...

grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various Orders reported as (i) 1995 Supp (4) SCC 541 dated 11.10.1991, (ii) (2004) 6 SCC 437 dated 7.1.1994 and (iii) (2007) 7 SCC 39 dated 20.7.2007.

10. **In the circumstances, we hereby recall the following Orders reported in : (i) 1995 Supp (4) SCC 541 dated 11.10.1991(ii) (2004) 6 SCC 437 dated 7.1.1994 (iii) (2007) 7 SCC 39 dated 20.7.2007**

11. **For the aforestated reasons, I.A. No. 4 filed by the assessee in Civil Appeal No. 1903/2008 is dismissed."**

III. All the Law Officers and Incharge(Litigation) of Supreme Court and High Courts/Tribunals are requested to ensure compliance of the above Order of the Apex Court.

IV. This issues with the approval of Law Secretary.

**(Ashok Kumar)**
Joint Secretary & Legal Adviser to the Government of India

To

1. PS to Attorney General for India, Supreme Court , New Delhi.
2. PS to Solicitor General of India , Supreme Court, New Delhi.
3. All the Additional Solicitors General as per the list.
4. All Assistant Solicitors General as per the list.
5. Incharge, Branch Secretariats, Mumbai, Kolkata, Chennai and Bangalore.
6. Incharge, Central Agency Section, Supreme Court Compound and Incharge, Litigation (HC/LC) Sections, Delhi High Court Building, New Delhi.
7. All ILS officers of Department of Legal Officers.
8. Shri Braj Mohan, Deputy Secretary, Cabinet Secretariat, Sardar Patel Bhawan, New Delhi with reference to OM No.1/126/7-C/10-LC dated 18th February, 2011.
9. NIC Cell with the request to upload this OM in the website of the Department under, 'circulars pertaining to litigation'.

**(Ashok Kumar)**
Joint Secretary & Legal Adviser to the Government of India

ANNEXURE B.

# Cabinet Secretariat - Committee on Disputes

## Committee on Disputes

In view of the order dated 17.2.2011 of the Hon'ble Supreme Court in Civil Appeal No. 1883 of 2011 (arising out of S.L.P. (C) No. 2583 of 2009) in the case of Electronics Corporation of India Ltd. Vs. Union of India & others recalling its earlier directions regarding the approval of the Committee on disputes (COD), Cabinet Secretariat, for pursuing litigation by PSUs/Government Departments, henceforth Government entities will not require permission of the Committee on Disputes before approaching Courts/Tribunals. This Secretariat's earlier orders issued vide OM No. 53/3/6/91-Cab.I dated 31st December 1991 and OM No.53/3/6/91-Cab.I dated 24th January 1994 stand superseded. A reference is also invited in this regard to the ministry of Law, Department of Legal Affairs' OM No. F-34 (4) /2011-Judl. Dated 3rd March 2011.