

INDEX

Sl.No.	Topic	Page No.
1.	General importance of adjudication	4
2.	Scope of instructions	5
3.	Adjudicating authority	5
4.	Monetary limits for the purpose of adjudication	8
5.	Adjudication of remand cases	8
6.	Multiple scns involving identical issues	9
7.	The powers of adjudication under Customs Act, 1962	9
8.	The powers of adjudication under Customs Act, 1962	10
9.	Framing of charges	11
10.	Adjudication of the one and the same case twice	12
11.	Principles of natural justice	13
12.	The statutory provisions	16
13.	Relevancy of statement recorded under Central Excise Act, 1944 and Finance Act, 1994	19
14.	Relevancy of statement recorded under Customs Act, 1962	20
15.	Relevancy of evidences other than statements such as documents / microfilms/ fax	20
16.	Absence of quantification of demand in the SCN	23
17.	Recommendations by the office assistants or other subordinates for the final decision of the cases	25
18.	Expeditious disposal of cases of offences under the act and rules	25
19.	Time schedule for expeditious adjudication of offences and seizure cases	26
20.	Issue of show cause notice on receipt of audit objections from cera and adjudication thereof	28
21.	Speaking order	29
22.	Form of adjudication order in Central Excise cases	29

23.	Corrigendum	31
24.	Penalties and Confiscation	33
25.	Mandatory penalty under section 11AC of Central Excise Act, 1944	33
26.	Disposal of goods confiscated	36
27.	Penalties and confiscation in customs	37
28.	Mandatory penalty under section 114 A of Customs Act, 1962	38
29.	Presumption of culpable mental state	39
30.	Penalties in the case of service tax	39
31.	Provisional release of things seized	44
32.	Redemption fine	46
33.	Release of confiscated goods beyond the time limit prescribed in the order-in-original/ordering appeal clarification regarding	46
34.	Interest	46
35.	Refunds	50
36.	Refund of duty paid in case of time- barred demand	54
37.	Determination of mens rea in departmental adjudications	55
38.	Confiscation of goods	56
39.	Whether warnings are punishments under section 33 of the Central Excises Act, 1944	56
40.	Passing of conditional orders in adjudication and appeals	56
41.	Despatch of adjudication order by registered post acknowledgement due	57
42.	Despatch of orders to counsel or advocate	57
43.	Offences punishable under the Central Excises Act 1944 not subject to departmental adjudication	58
44.	Distinction between confiscation under the central excise rules, and forfeiture by a court under section 10 of the central excises act	58
45.	Prosecutions	58
46.	General guidelines for launching prosecution	60

47.	Instructions as to conduct of cases in criminal courts	62
48.	Time-limit for an appeal against acquittal	62
49.	Pendency of departmental proceedings till the court case is over	63
50.	Remission of duty-passing of appealable orders	64
51.	Monitoring and adjudication of call book cases	64
52.	Service of decisions, orders, summons, etc.,	65
53.	Instructions to central excise officers	66
54.	Instructions to officers of customs	67
55.	Date from which notifications and orders issued under central excise rules etc. Take effect	67
56.	Enforcement of orders of adjudication	68
57.	List of Circulars referred	71
58.	List of Notifications referred	72
59.	List of Case Laws referred	73

INTRODUCTION

General importance of Adjudication: - Adjudication of offences under the Central Excises Act, 1944, or the Customs act 1962 or the Finance Act, 1994 (Service Tax) are important functions of the officers of the Central Excise, Customs and Service Tax competent to adjudge offences. It seeks to ensure that no economic loss is caused by the alleged contravention by the imposition of an appropriate penalty after an adjudication. If an innocent person is punished or the punishment is more than warranted by the nature of offence it may undermine the trust between the government and the public. If, on the other hand, a real offender escapes the punishment provided by law, it may tend to encourage commission of offences to the detriment both of the government and the honest tax payers.

The authorities exercising quasi-judicial function are duty bound to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The public is entitled to have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. These functions, therefore, cast a heavy responsibility on the officers invested with the powers of adjudication and confiscation to use it with utmost care and caution, free from any prejudice or bias, so that the innocent does not suffer by any injustice done to him and the real offender does not escape the punishment provided by law.

Central Excise, Customs and Service Tax laws are self-contained laws. Besides containing the provisions for levy of duty, adjudication of matters relating to the provision of the Law is also provided for in the legal provisions e.g. for demand of duty, credit availed, determination of classification, valuation, confiscation and imposing penalty. The adjudication is done by the departmental officers, and in this capacity they act as quasi-judicial officers. It is an important function of the officers and casts heavy responsibility on the officers invested with the powers of adjudication to use it with utmost care and caution, free from any prejudice or bias. It is important to know and understand the facts of the case, processing them properly and to apply correctly the sections and rules of Central Excise law or Notifications that may be relevant to the facts of each case. Care should be

taken to ensure that wrong sections of acts are not applied to a case which attracts some other provisions of law.

Scope of Instructions:-

The instructions contained in this Manual are for the guidance of the Departmental Officers competent to adjudicate offences and confiscate goods under the Central Excises Act, 1944, the Customs Act, 1962 and the Finance Act, 1994 (Service Tax) and rules made thereunder. Besides ensuring uniformity across the length and breadth of the country, these instructions seek to achieve two objectives (a) that the principles of natural justice are fully observed in substance and in form, and (b) that an offender does not escape due to technical and/or procedural defects. All officers charged with the function of adjudication of offences and confiscation of goods under the Act and Rules mentioned above must, therefore, follow these instructions so that any lapses, wherever they exist, in the mode and procedure of adjudication are avoided. These instructions are supplemental to, and should be read in conjunction with the Central Excises Act, 1944 and the rules framed thereunder; the Customs Act, 1962 and the rules framed thereunder; and, the Finance Act, 1994 (Service Tax) and the rules framed thereunder and other supplementary instructions issued under the said Acts and Rules, and should not be departed from without strong reasons to be recorded in writing by the officer concerned; any such departure must be reported immediately by the officer concerned to his immediate superior. The Commissioner of Central Excise/Customs/SERVICE TAX should ensure that any departure from these instructions should immediately be reported to the Zonal Chief Commissioner.

Adjudicating Authority

3. The officers of the Central Excise, Customs and Service Tax are empowered to adjudicate the cases under law. Important and relevant provisions in this regard are as follows:

(i) As per SECTION 2 of Central Excise Act, 1944

(a) "Adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), Commissioner of Central Excise (Appeals) or Appellate Tribunal;

(b) "Central Excise Officer" means the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, [Joint Commissioner of Central Excise] [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act.

(ii) As per section 2 of Customs Act, 1962:

"adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal:

"Commissioner of Customs", except for the purposes of Chapter XV, includes an Additional Commissioner of Customs;

Moreover, section 4 of Customs Act, 1962 empowers the Central Board of Customs and Excise to appoint such persons as it thinks fit to be officers of customs. Also, the Board authorizes a Chief Commissioner of Customs or a Commissioner of Customs or a Joint or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs. Several notifications have been issued, particularly with respect to appointment of Customs Officers as adjudicating authorities in specified cases.

Further, appointment and jurisdiction of Central Excise officers is governed under rule 3 of Central Excise Rules, 2002 which provides as follows:

Rule 3: Appointment and jurisdiction of Central Excise Officers. — (1) The Board may, by notification, appoint such person as it thinks fit to be Central Excise Officer to exercise all or any of the powers conferred by or under the Act and these rules.

(2) The Board may, by notification, specify the jurisdiction of a Chief Commissioner of Central Excise, Commissioner of Central Excise or Commissioner of Central Excise (Appeals) for the purposes of the Act and the rules made thereunder.

(3) Any Central Excise Officer may exercise the powers and discharge the duties conferred or imposed by or under the Act or these rules on any other Central Excise Officer who is subordinate to him.

Still further, vide Notification No. 16/2007-ST Dated 19/4/2007, the Central Board of Excise and Customs has appointed the officers of Central Excise, specified therein, and invested them with all the power of Central Excise Officer, also specified therein, to exercise within such jurisdiction and for such purposes as specified, as follows:

S.No.	Central Excise Officer	Central Excise Officer whose power are to be exercised	Jurisdiction	Purposes
(1)	(2)	(3)	(4)	(5)
1	All the Commissioners of Central Excise	The Commissioner of Central Excise	Throughout the territory of India	Investigation and adjudication of such cases, as may be assigned by the Board
2	The Commissioners of Central Excise (Adjudication)	The Commissioner of Central Excise	Throughout the territory of India	Investigation and adjudication of such cases, as may be assigned by the Board

[F. No. 137/60/2007-CX.4]

Further Vide Notfn No. 38/2001-CE (NT) dt 26.06.2001 the Central Board of Excise and Customs has appointed the officers specified therein as Central Excise Officers and invested them with all the powers, to be exercised by them throughout the territory of India, of an officer of Central Excise of the rank also specified therein, with the powers of a Central Excise Officers conferred under the said Act and rules made thereunder with effect from 1st July, 2001.

(F.No.208/10/2001-CX.6)

Vide Notfn No. 39/2001-CE (NT) dt 26.06.2001 the Central Board of Excise and Customs has appointed for specified purposes the officers of Central Excise specified therein and invested them with all the powers of Central Excise Officers also specified therein to be

exercised within such jurisdiction and for such purposes as specified with effect from 1st July, 2001. (F.No.208/10/2001-CX.6)

Rate of duty in case of clandestine removal:- For determination of tariff valuation or the rate of duty under rule 9A (present Rule 5) in cases of unauthorized, illegal or clandestine removal of goods, if the date of removal of goods is known then it would be determined under clause (ii) of sub-rule (1) of rule 9A (present Rule 5). Where, however, the date of removal is not known then duty liability will be determined in terms of sub-rule(5) of rule 9A and as per existing provision, under Rule 5A of Central Excise Rules, 2002.

MONETARY LIMITS FOR THE PURPOSE OF ADJUDICATION

Adjudication of the case where anything is liable to confiscation or any person is liable to penalty has to be done by Officers specified in section 33 of the Central Excise Act, 1944. Central Excise Officers have the power to determine whether duty of excise has not been levied or short paid or not paid, erroneously refunded under section 11A of the said Act. For this purpose, the Board has prescribed monetary limit to different categories of officers for the purpose of deciding the competence of adjudication of cases without differentiating whether or not cases involve fraud, collusion, any wilful mis-statement, suppression of facts or contravention of Central Excise Act/Rules with an intent to evade duty and/or where extended period has been invoked. Uniform monetary limits have been kept for adjudication of Central Excise Cases under Section 11A and/or Section 33 of the Central Excise Act, 1944, whether or not the cases involve fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made there-under with intent to evade payment of duty and whether or not extended period has been involved.

For this purpose, the Board has decided that the powers of adjudication and determination of duty shall be exercised, based on monetary limit (duty involved in a case) as under Circular No. 752/68/2003-CX., dated 1-10-2003 (F.No. 208/27/2003-CX.6) revised by Circular No. 865/3/2008-CX., dated 19-2-2008 (F.No. 208/27/2003-CX.6)

Also, Superintendents have been conferred the adjudication power for cases involving duty upto Rs. 1 lakh vide Circular No. 922/12/2010-CX., dated 18-5-2010 (F.No. 208/2/2009-CX-6) issued by the Central Board of Excise & Customs, New Delhi.

Adjudication of remand cases:

It has been clarified that for cases where the appellate authority remand the case with the direction mentioning specifically the level of officer who has to adjudicate the case, then those cases should be adjudicated by the level of officer specified in the said appellate authority's order. It is also clarified that the cases remanded back for de novo adjudication should be decided by an authority which passed the said remanded order. *[Circulars Nos. 762/78/2003-CX., dated 11-11-2003 (F. No. 208/27/2003-CX.6(Pt.) and No. 806/3/2005-CX., dated 12-1-2005 (F.No. 208/27/2003-CX.6)]*

Multiple SCNs involving identical issues:

In case where a number of show cause notices have been issued depending on monetary limits, period of time, etc. but on the same issue answerable to different adjudicating authorities, attention is invited to CBEC's Circular No.362/78/97-CX dated 9.12.97 (F.No. 208/03/95-CX.6) whereby it has been clarified that all the show cause notices involving the same issue will be adjudicated by the adjudicating authority competent to decide the cases involving the highest amount of duty.

Determination of competent adjudicating authority in cases where the excisable goods are non-existent and the question whether value of such goods or magnitude of offence should be the Criterion :

The value of goods is not relevant for the purpose of determination of the competence of the adjudicating authority when it is not proposed to confiscate the goods; either because the goods are not available for confiscation or for any other reason. The amount of penalty to be imposed must, however, be within the powers of that authority. The value of goods involved, no doubt, may be criterion for imposing a heavier penalty and if the proper amount of the penalty is beyond the competence of the authority concerned, the officer should refer the case to his superior with a forwarding note to that effect.

The powers of adjudication under Customs Act, 1962

Similarly the Board vide Circular No. 23/2009-Cus Dated 1/9/2009 has prescribed the Powers of adjudication of the officers of Customs by reviewing the monetary limits prescribed for adjudication of cases by Additional / Joint Commissioners of Customs and it has been decided to enhance the powers of adjudication of these officers. Accordingly, under Section 28 of the Customs Act, 1962, the powers of adjudication of various categories of officers shall be as per the said Circular.

In the case of Baggage, the Additional Commissioner or Joint Commissioner shall continue to adjudicate the cases without limit, since such cases are covered by the offences under Chapter XIV and it is necessary to expeditiously dispose off the cases in respect of passengers at the airport. In other cases, such as short landing, drawback etc., the adjudication powers shall continue to be the same as provided under the Customs Act, 1962 or the Rules/Regulations made thereunder.

As per definition under section 2(8) of the Customs Act, 1962, Commissioner of Customs includes an Additional Commissioner of Customs except for the purpose of appeal and revision. Therefore, respective Commissioners may review the status of cases pending for adjudication, which fall within the powers of Commissioners only, and depending on the workload may consider allocating some of these cases to Additional Commissioners working under their charge to ensure speedier disposal. An appeal against the Order-In-Original passed by an Additional Commissioner shall lie before Commissioner of Customs (Appeal) and not before the CESTAT.

In so far as the issuance of Show Cause Notice for demand of duty under Section 28 is concerned, the same can be issued by the respective adjudicating officers depending upon the powers of adjudication.

The powers of adjudication under Finance Act, 1994

In cases of Service Tax, in terms of section 83A of the Finance Act, 1994 (32 of 1994), the Central Board of Excise and Customs vide Notification No. 48/2010-ST Dated 08/09/2010 has made the following further amendments in the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 30/2005 – Service Tax, dated 10th August 2005, published vide No. G.S.R. 527(E), dated the 10th August,

2005, namely in the said notification, for the Table therein, the following Table has been substituted:-

Table

Sr.No	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A
(1)	(2)	(3)
(1)	Superintendent of Central Excise	Not exceeding Rs. one lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)
(2)	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. five lakhs (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner of Central Excise	Above Rs. five lakhs but not exceeding Rs. fifty lakhs
(4)	Additional Commissioner of Central Excise	Above Rs. twenty lakhs but not exceeding Rs. fifty lakhs
(5)	Commissioner of Central Excise	Without limit.

(F. No. 137/68/2010 - CX.4)

Further vide Circular No. 130/12/2010-ST Dated 20/9/2010 (F. No. 137/68/2010 – CX. 4) the instructions in respect of Powers of adjudication of Central Excise Officers in Service Tax cases specifying uniform monetary limits for adjudication of cases under section 73 and section 83 A of the Finance Act, 1994. The adjudication powers in Service Tax cases have been delegated upto the level of Assistant Commissioners and

Superintendents as per the monetary limits for adjudication of cases revised vide Notification No. 48/2010-Service Tax dated 8th September 2010.

Further, the Chief Commissioner of Central Excise have been empowered to exercise the powers of the Board for assigning the Central Excise cases for adjudication (vide Notfn No. 11/2007-CE (NT)). This provision also applies to cases of Service Tax in terms of section 83 of Finance Act, 1994.

Framing of Charges:-

The following principles should be observed by the Central Excise officers in framing charges and adjudicating offences; these principles may be usefully adopted with necessary modifications for adjudication of offences under the Customs Act and Service tax:

(i) A clear distinction should be drawn between a transaction and an act; a transaction may involve a series of separate and distinct acts of commission or omission. Thus, disposal of matches without payment of duty constitutes a transaction which involves the commission of different acts, e.g. (1) removal without a transport document; (2) falsification of statutory accounts.

(ii) If one and the same act constitutes an offence under two or more rules, only a single penalty can be imposed in respect of that act under any one of the rules, which the adjudicating officer may choose to apply, and not a separate and distinct penalty under each of the rules.

(iii) (a) If in the course of a investigation, a number of separate and distinct acts are detected, each such act may be separately punished in the manner provided in (ii) above.

(b) If such acts constitute a single transaction they must be adjudicated upon together, and while in accordance with (a) above a separate punishment may be awarded in respect of each such act, the total of the penalties in respect of all the acts together should not exceed the maximum limits wherever prescribed.

(c) If on the other hand, the acts constitute more than one transaction each set of acts constituting one transaction should be adjudicated upon separately and penalties

totaling up to the maximum limits where ever prescribed may where necessary be imposed in respect of acts constituting each transaction in the manner provided in (b) above.

(iv) Where an adjudicating officer considers that a penalty exceeding the maximum limit prescribed for him in Section 33(B) of the Central Excises Act, 1944, Sections 28 and 122 of Customs Act, 1962 or Section 83A of Finance Act, 1994 is deserved in respect of acts constituting any particular transaction, he should refer the case for original adjudication to a superior officer competent to adjudge the desired penalty.

Adjudication of the one and the same case twice:-

Adjudicating officers should guard against passing two formal adjudication orders on one and the same case. The legal position in this respect is that, where a matter has already been adjudicated by the competent authority, and another order of adjudication is passed relating to the same transaction subsequently, the second order is a nullity. The authority who undertakes the enquiry resulting in the second adjudication acts without jurisdiction. The second order being a nullity, it should be taken as not to exist at all. When the fact of such an order having been passed is brought to light, the records should be corrected, the order deleted from the record and the party affected informed accordingly. (Board's F.No.18/18/65-CXIV dt. 29.4.65)

Principles of Natural Justice:

The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. Adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Central Excise Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. Natural justice is an uncodified law purely based on principles of substantial justice and judicial spirit. It has no fixed definition or specific connotation and will depend on the circumstances of each individual case. It has certain cardinal principles, which must be followed in every

proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased arbitrary or based on mere conjectures and surmises. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case, must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. The Show Cause Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. The order should not travel beyond the SCN. However, if a new ground is required to be considered, the same could be done by way of putting the party to notice subject to law of limitation. [refer SURESH SYNTHETICS 2007 (216) E.L.T. 662 (S.C.)]. Further, time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. Secondly, the orders so

passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself.

This has been uniformly applied by courts in India and abroad. The Supreme Court in the case of *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said “administrative process will best be vindicated by clarity in its exercise”. To enable the Courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastise. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing. The Hon’ble Supreme Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment

The Hon'ble SC has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under :-

“6.....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. ...”

It is important to bear in mind that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice. By practice adopted in all Courts and by virtue of judge made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision.”

In cases where the Commissioner or any other departmental adjudicating authority makes a confidential enquiry or receives secret sources of information and such secret information is to be used as a guide for further investigation and no material can be relied on to support a finding unless the party has an opportunity to rebut the conclusion that flows from said material or bring forward other material. All adjudicating officers should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material.

Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All

that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

The Statutory Provisions

Statutory provisions have been provided under SECTION 33A of Central excise act, 1944 in respect of Adjudication procedure. It requires that the Adjudicating authority shall, give an opportunity of being heard to a party in a proceeding, if the party so desires. Further, section 35Q of the Central Excise Act, 1944 provides for appearance by authorized representative before a central excise officer or Appellate Tribunal in connection with any proceedings. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to above, grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a party during the proceeding.

The above also applies to cases of Service Tax in terms of section 73 of the Finance Act, 1994, wherein sub-section (2) reads as follows:

“(2) The Central Excise Officer shall after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.”

Moreover, the provisions of section 35Q of the Central Excise Act, 1944 with regards to appearance of authorized representatives apply mutatis mutandis to cases of Service Tax.

Similar provisions have also been made in respect of cases of Customs under section 28(2) of the Customs Act, 1962 which reads as follows:

“The proper officer, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), shall determine the amount of duty or interest due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.”

Also, in case of seizure of goods, the issue of show cause notice is required before any order for confiscation of goods is given. The section 124 of Customs Act, 1962 provides as follows

“124. Issue of show cause notice before confiscation of goods, etc. - No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

Still further, section 146A of Customs Act, 1962 subject to certain conditions provides for appearance by authorised representative:

“146A. Appearance by authorised representative. - (1) Any person who is entitled or required to appear before an officer of customs or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under section 108, to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

Whether on transfer of the officer who recorded decision on the file his successor can issue the formal order of adjudication without rehearing the party:-

When an adjudicating officer is likely to be transferred or promoted, it should be ensured that in all cases, where a hearing has been given on request, but formal orders have not been issued, the drafting of these orders is also on a top priority basis so that formal orders in all such cases are issued by the outgoing officer before relinquishing charge. If despite this precaution, old case remain undisposed of, the successor in office should offer a fresh hearing to the party as mentioned hereinabove before issuing the formal order. A special mention of such cases should be made in the handing over notes of the outgoing officer so that they do not escape the notice of the successor. (F.No. 100/1/62 L.C.I.)

Right to Inspect: The noticee has a right to inspect or to get copies of all the documents/records relied upon in the show cause notice (refer 1993 (65) E.L.T. 357 (S.C.), 1989 (39) E.L.T. 329 (S.C.) and 1997 (95) E.L.T. 251(Tri).

Cross Examination: The right to cross-examination is not an absolute right and the question whether the petitioner was entitled to cross-examination is a question which may largely depend on the facts of the case. Hence, the adjudicating authority shall take a decision on requests for cross-examination is a question which may largely depend on the facts of the case and circumstances of each case. Cross examination of witnesses, whose statements are relied upon in the proceedings, shall be allowed if there is any request in this regard from the defendant [2002 (143) E.L.T. 21 (S.C.), 2002 (146) E.L.T. 248 (S.C.), 2000 (122) E.L.T. 641 (S.C.)]. The Allahabad High Court in [1993 (68) E.L.T. 548 (All)] has held that *“Moreover, the right to cross-examination is not an absolute right. The question whether the petitioner was entitled to cross-examination is a question which may largely depend on the facts and it is for the Tribunal to adjudicate while deciding the appeal finally. A perusal of the impugned order shows that the Tribunal did notice the petitioner’s submission about the cross-examination which was allegedly denied to him and it is only after considering the totality of circumstances of the case and the material on record that the Tribunal passed the impugned order directing the petitioner to deposit a sum of Rs. 80,000/- and thus granting the application of the petitioner for stay-cum-waiver in part.”*

Relevancy of Statement recorded under Central Excise Act, 1944 and Finance Act, 1994

SECTION 9D of the Central Excise Act, 1944 provides that a statement made and signed by a person before any Central Excise Officer of a gazzetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any proceeding including adjudication proceedings under this Act, for an offence under this Act, the truth of the facts which it contains:

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the adjudicating authority considers unreasonable; or*
- (b) when the person who made the statement is examined as a witness in the case before the adjudicating authority and the adjudicating authority is of opinion that, having*

regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

The legality and scope of Section 9D has been elaborated by the High Court of Delhi in the case of M/s J&K Cigarettes vs. CCE [2009(242)ELT 189(Del)]. As such , applicability of statement(s) relied upon while proving the offence should be discussed in the adjudication process. The relevant para is quoted below:

“32. Thus, we summarize our conclusions as under :-

(i) We are of the opinion that the provisions of Section 9D(2) of the Act are not unconstitutional or ultra vires;

(ii) while invoking Section 9D of the Act, the concerned authority is to form an opinion on the basis of material on record that a particular ground, as stipulated in the said Section, exists and is established;

(iii) such an opinion has to be supported with reasons;

(iv) before arriving at this opinion, the authority would give opportunity to the affected party to make submissions on the available material on the basis of which the authority intends to arrive at the said opinion; and

(v) it is always open to the affected party to challenge the invocation of provisions of Section 9D of the Act in a particular case by filing statutory appeal, which provides for judicial review.”

The provisions of section 9D of Central Excise Act, 1944 apply mutatis mutandis to cases of Service Tax in terms of section 83 of Finance Act, 1994.

Relevancy of Statement recorded under Customs Act, 1962

The provisions of section 138B of Customs Act, 1962 in customs cases are para-material to provisions of 9D of Central Excise Act, 1944 and are to be interpreted and followed accordingly.

Relevancy of evidences other than statements such as documents / microfilms/ fax

The statutory provisions in this regard are provided under sections **36A** and **36B** of the Central Excise Act, 1944.

SECTION 36A. Presumption as to documents in certain cases.

Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,

(a) unless the contrary is proved by such person, presume

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

SECTION 36B: *Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.*

(1) Notwithstanding anything contained in any other law for the time being in force,

(a) a micro film of a document or the production of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely :-

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, -

(a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

The provisions of section 36A and 36B of Central Excise Act, 1944 apply mutatis mutandis to cases of Service Tax in terms of section 83 of Finance Act, 1994.

The statutory provisions in this regard in customs cases are provided under sections 138C and 139 of the Customs Act, 1962 which are para-materia to provisions of 36A and 36B of Central Excise Act, 1944 and are to be interpreted and followed accordingly.

Absence of quantification of demand in the SCN:

It is desirable that the demand is quantified in the Show Cause Notice (SCN), however, if due to some genuine grounds or to avoid time limit, it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. The amount could be quantified and informed to the noticees before adjudication. In this regard the Hon’ble tribunal’s Larger Bench judgment in the case of BIHARI SILK & RAYON PROCESSING MILLS (P) LTD. Vs COLLR. OF C. EX., BARODA [2000 (121) ELT 617 (T-LB) referred] is notable. The relevant extracts are reproduced below:

"21. It is seen that the matter is entirely covered by the Delhi High Court decision in the case of Hindustan Aluminium Corporation Ltd. (HINDALCO) v. Supdt. of Central Excise, Mirzapur, 1981 (8) ELT 0642 (Delhi). Under the then existing Rule 10 of the Rules, central excise duty (CED) was demanded for the period 17-5-1969 to 23-6-1979 under show cause notice dated 31-10-1979. The said show cause notice did not specify the amount which M/s. HINDALCO were required to pay. The appellants has referred to the Bombay High Court single Judge decision in the case of J.B.A. Printing Inks Ltd. v. Union of India, 1980 (6) ELT 0121 (Bombay), wherein the assessee had been called upon to pay duty under the then Rule 10 of the Rules for the period 7-1-1972 onwards. The Delhi High Court in two Judge decision observed that the Bombay High Court decision was of no assistance when though the exact amount in terms of rupees and paisas was not specified, the specification was broadly done by pointing out that the duty payable was the differential between the duty leviable and the amount of CED rebatable in terms of applicable exemption notification. The High Court observed "though it would have been certainly better if the exact amount was specified, it cannot be said that the petitioner cannot know as to how much duty is being demanded or in what manner to calculate the duty demanded of it." It was added after referring the single Judge decision of the Bombay High Court -

The whole purpose of the show cause is to indicate the amount that is demanded of the petitioner. If instead of mentioning the amount, the show cause indicates the difference between the duty demanded and the duty not paid that would be sufficient compliance. Even if there was a total silence to specify any amount all that this would mean that the petitioner would be entitled to ask the respondents to indicate the specified amount to the petitioner and then to give his reply to it. But that would not mean that the notice per se would become illegal. The requirements of specifying the amount is a salutary one and must in all cases be followed but the absence of it would not make the notice bad.

The Delhi High Court ruled that the Bombay High Court decision in J.B.A. Printing Inks Ltd. v. UOI, 1980 (6) ELT 0121 (Bom.), did not lay down the correct law.

Thus the single Judge decision of the Bombay High Court has been clearly over ruled by the two Judge decision of the Delhi High Court.

22. In the case of Gwalior Rayon Mfg. (Wvg.) Co. v. UOI, 1982(04)LCX0015 Eq 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur had also affirmed the same position when it was held that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient. The assessee had contended before the High Court that the necessary particulars to enable them to show cause have not been stated in the show cause notice. The High Court held that this cannot be a ground for quashing the notice.

23. It is also seen that this Tribunal has been consistently taking a view that the contention that the show cause notice did not mention the amounts and hence the show cause notice was bad in law, was a untenable contention. In this connection, reference may be made to the following decisions -

(1) *Tinplate Co. of India Ltd., Jamshedpur v. CCE, Patna, 1983(08)LCX0016 Eq 1983 (014) ELT 1807 (T) (para 7);*

(2) *Chokshi Tube Ltd., Bombay v. CCE, Bombay, 1983(08)LCX0054 Eq 1983 (014) ELT 2362 (T) (para 7);*

(3) *M/s Entremonde Polycoaters Pvt. Ltd., Nasik v. CCE, Pune, 1983(12)LCX0035 Eq 1984 (016) ELT 0389 (T) (para 8); and*

(4) *Sundaram Fasteners Ltd. v. CCE, 1992(10)LCX0055 Eq 1993 (064) ELT 0087 (T).*

In the last mentioned decision of *Sundaram Fasteners Ltd.*, supra, the Tribunal had referred to the Supreme Court decisions in the case of (i) *M/s. N.B. Sanjana, Asstt. Collector of Central Excise, Bombay v. The Elphinstone Spinning & Weaving Mills Co. Ltd., 1978 (2) ELT (J 399) (S.C.);* and (ii) *J.K. Steel Ltd. v. UOI, 1978 (2) ELT (J 355) (S.C.).*

Accordingly, the question referred to in para 2(a) above is answered as follows -

A show cause notice issued without quantification of demand is not illegal or invalid.

24. By majority it is held that *A show cause notice issued without quantification of demand is not illegal or invalid."*

Recommendations by the office Assistants or other Subordinates for the final decision of the cases:

An officer when adjudicating a case under the Central Excise Act and Rules or the Customs Act or Finance Act, 1994, acts in a quasi-judicial capacity and that he should, after the enquiry, take an unbiased decision in each case applying his own mind to the materials disclosed in enquiry independently. He has to apply his own mind to the facts and circumstances of the case and reach at his own decision unfettered by anything else. From this it follows that even the narration of facts in an adjudication order has to be drafted by the adjudicating officer himself. From this point of view, any positive suggestion in regard to the penalty etc. whether in an office note or elsewhere is liable to be regarded as an interference with the functions of the Adjudicating Officer thereby vitiating the decision. Office notes should not, therefore, go to the extent of recommending the final decision or the actual penalty, in the adjudication of offence cases.

Expeditious Disposal of cases of offences under the Act and Rules:-

Offences under the Act and Rules cited in the preceding paragraph can be mainly divided into two parts (1) cases where offending goods exist and are available for seizure, and (2) cases where the goods are not involved. Most of the cases under the Central Excise Act, 1944 and Rules made thereunder and the Customs Act, 1962 and Rules made thereunder would be covered by item (1). In cases involving seizure of goods the responsibility of the officers is much more than in the cases covered by item (2), for the reason that any delay in the process of adjudication, is likely to cause deterioration of the goods pending adjudication. If the goods deteriorate by lapse of time, not only the party concerned but the Government also stands to suffer if the party does not redeem them. Officers should, therefore, see that all offence cases, especially those in which any goods have been seized or detained, are decided with utmost expedition.

Time Schedule for expeditious adjudication of offences and seizure cases:-

(i) In order to effect expeditious disposal of the Central Excise offences and demands the sub-section (2A) of section 11A of Central Excise Act, 1944 provides that in case any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, where it is possible to do so, the adjudicating authority shall determine the amount of such duty, within a period of one year; and, in any other case, where it is possible to do so, he shall determine the amount of duty of excise which has not been levied or paid or has been short-levied or short-paid or erroneously refunded, within a period of six months, from the date of service of the notice on the person under sub-section 11A(1).

(ii) Further, the Board has issued Orders in which it has been directed that in all such cases where personal hearing have been concluded it is necessary to communicate the decision immediately or within a reasonable time of 5 days. Where for certain reasons, the

above time limit cannot be adhered to in a particular case, the order should be issued within 15 days or at most one month from the date of conclusion of personal hearing.

Circular No. 732/48/2003-CX., dated 5-8-2003 (F.No. 208/17/2003-CX.6)

(iii) Similar provisions are contained for Customs cases under Section 28 (2A) of the Customs Act, 1962

(iv) Further, the Board has prescribed time limit for seizure cases vide Circular No. 3/2007-Cus Dated 10/1/2007 as follows:

(a) for cases to be adjudicated within the competence of Commissioner of Customs or an Addl./ Joint Commissioner of Customs, one year from the date of service of the show cause notice;

(b) for cases to be adjudicated within the competence of Assistant Commissioner of Customs or Deputy Commissioner of Customs, six months from the date of service of the show cause notice;

(c) for cases to be adjudicated within the competence of a Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs, three months from the date of serving of the show cause notice.

In case the above time period cannot be observed in a particular case, the adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly.

Option to redeem: The confiscated goods should be permitted to be redeemed in accordance with the provisions of Central Excise Act, 1944. The relevant provisions read as follows:

SECTION 34. Option to pay fine in lieu of confiscation. — Whenever confiscation is adjudged under this Act or the rules made thereunder, the officer adjudging it, shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

If the goods are not re-deemed they should be disposed of in auction within one month from the date of expiry of the period fixed for redemption of goods, which has been provided under the Central Excise Rules, 2002:

RULE 29. Disposal of confiscated goods. —

(a) Confiscated goods in respect of which the option of paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct.

(b) Supervisory Officers like Assistant Commissioners, Deputy Commissioners and Commissioners should keep a special watch during their inspections to see how closely the time-table has been maintained. These officers should also make detailed scrutiny of the cases which are being long delayed in order to give suitable directions to the subordinate officers for dealing with the cases mere expeditiously.

(c) The procedure contained in this paragraph should also be followed mutatis mutandis in respect of Customs Cases in terms of Section 125 of Customs Act, 1962.

Issue of show cause notice on receipt of Audit objections from CERA and Adjudication thereof:

On receipt of the Audit objection, Demand-Cum-Show cause notice should be issued promptly in all cases, that is to say even in cases where the Audit's point of view is not found agreeable or the matter involves interpretation of provisions and scope of exemption notification, etc. This will help prevent demands getting time-barred. Following further clarification has been issued in respect of Adjudication of SCNs when Local Audit Paras not converted to Statement of Facts or Draft Audit Para:

F.No. 206/2/2010-CX. 6, dated 3-2-2010

Government of India, Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject: Modification of Circular No. 5/83-CX.6, dated 10-3-83 - Issue of show cause notice on receipt of Audit objections from CERA.

Attention is invited to Board's Circular No. 5/83-CX.6, dated 10-3-83, as amended, wherein instructions have been issued to issue show cause notice immediately on

receipt of an Audit objection from CERA, even if the objection is not admitted. The field formations have also been directed to issue protective demand notices and transfer the same to Call Book, till the settlement of the objection.

2. *It has been noticed that during audit by C&AG officers. Local Audit Paras (LAR) are initially raised, some of them are converted to Statement of Facts (SOF). A few SOF are made into Draft Audit Para (DAP). Generally, a LAR is converted into SOF within a period of 6 months. In some cases, it has been noticed that objections raised in LAR is not accepted by the department but the reply given by the department is also not accepted by AG's office. Further, if the said LAR is not converted to SOF/DAP, the said objection remain unsettled and these show cause notices are transferred to Call Book. For these cases, jurisdictional Commissioners are required to hold meeting with local DAGs to settle the objection. However, in many cases, these issues are not settled for a long period.*

3. *The issue has been examined. It is clarified that in cases where a LAR has not been admitted by the department, and the same is not converted into SOF/DAP by CERA, then the SCNs issued on account of said LAR may be adjudicated after a period of one year from the date of sending the reply to the LAR. However, before adjudication, it must be ensured that the LAR has not been converted into SOF/DAP.*

4. *Instruction issued by Circular No. 5/83-CX.6, dated 10-3-83 is modified accordingly.*

5. *Receipt of this circular may kindly be acknowledged.*

SPEAKING ORDER

The adjudication order must be a speaking order giving clear findings of the adjudicating authority and he shall discuss each point raised by the defense and shall give cogent reasoning in case of rebuttal of such points. The duty demanded and confirmed shall be quantified correctly and the order portion must contain the correct provisions of law under which duty is confirmed and penalty is imposed. Adjudication orders shall be issued under the signature of the adjudicating authority. If confiscation is adjudged during adjudication proceedings, an option shall be given to the owner of the goods to redeem the goods on payment of a fine in lieu of confiscation. In this regard the judgment of the Apex Court in the case of Shukla & Brothers [2010 (254) ELT 6 (SC)] cited hereinabove is notable.

Form of adjudication order in Central Excise Cases:-

(i) All adjudications should be in the form Annexed (Annexure A1) and should invariably contain a clear direction setting out the procedure of filing an appeal as contained in Rule 213 or Rule 216 of earlier Central Excise Rules, 1944 read with Govt. of India, Ministry of Finance (Department of Revenue) Notifications No. 69/5 J.S.R.No. 8/22) dt. 18.7.59; and, Rule 3 or Rule 6 of the Central Excise (Appeals) Rules, 2001.

(ii) An original order of adjudication should be self-contained and unambiguous. The order should quote the Rules or Sections violated, discuss in brief all the contentions put forward in defence, and indicate clearly all the grounds on which penal action has been taken and should be closely reasoned. In all such proceedings it is necessary that there should be a charge (offence against the relevant law), a finding and establishment of the charge of offence supported by proper evidence, as a foundation for imposing any punishment. It should:

(a) briefly state the essential facts of the case and the issues involve,

(b) discuss each issue separately,

(c) specify the Rules or Sections of the Act which are held to have been contravened, and

(d) specify the Rules or Sections of the Act under which the penalty is imposed or the goods confiscated.

(iii) While discussing the facts of the case in the order of adjudication, the dates of occurrence or any important happenings that may form important link in the facts of the case, the places of occurrence, the designation of the officers who seized the goods etc. or have any other relevance to the facts of the case must be specifically stated in the order of adjudication. In short an adjudication order would not be considered to be complete unless it answers the questions-what, who, how, when, where and why?

(iv) General principles of adjudication set out in sub-paragraph (ii) & (iii) above should be followed in respect of Service Tax or Customs cases as well.

(v) A direct penalty may be adjudged in addition to the confiscation of the goods if the merits of the case so warrant. Orders of confiscation should, however, invariably prescribe an amount of fine in lieu of confiscation as required by Section 34 of the Central Excises

Act, 1944 or Section 125 of Customs Act, 1962; the amount of such fine should not exceed the value ('value' here means ex-duty value) of the goods. However, the confiscation held in cases of importation or exportation of prohibited goods is absolute and can not be allowed to be redeemed.

Demand for Central Excise Duty on confiscated goods not to be included in the body of the adjudication order:-

In respect of those goods which are confiscated and an option for the redemption of the goods by the owner on payment of fine in lieu of confiscation has been given and such goods are also adjudged to be liable to pay the Central Excise duty, the demand for such duty should not be made a part of the adjudication order i.e., such demand should not be made a part of the order of confiscation itself. In such cases a separate endorsement on the following lines may be made in the forwarding memo:

"The goods are dutiable and proper duty will have to be paid before they are cleared."

Officers should, however, take care that the need of insisting upon recovery of duty on the goods concerned before their clearance will not arise in those cases where the facility for warehousing the goods, confiscated and redeemed, is allowed.

Above instructions should be followed in respect of Customs cases as well. It may however be noted that normally goods seized in town and held to be smuggled goods are confiscated absolutely. However, in several cases option to redeem goods on payment of fine are being ordered and goods are thus released. However, these orders are silent about recovery of duty under section 125(2) of the Customs Act, 1962 which is required to be paid in terms of Supreme Court orders in the case of CC(Imports) vs Jagdish Cancer Research Centre [(132) ELT 257]. It is thus incumbent on the adjudicating authority to determine assessable value of goods and the duty leviable while ordering redemption of such goods as laid down in Mohan Meakins Ltd. vs CCE, Kochi [2000(115) ELT 3]. Such assessable value and duty liability should be incorporated in the adjudication order.

CORRIGENDUM

Adjudicating authority is not empowered to issue any subsequent corrigendum making material changes in the order already passed and issued (Board's Circular

No.502/68/99-CX dated 16.12.1999). Where any significant change in the order becomes necessary after the order has been issued which cannot be termed as clerical or arithmetical or typographical mistake, proposals for review may mooted to appropriate authority instead of taking recourse to corrigendum.

Circular No. 502/68/99-CX

F.NO. 389/44/99-JC(BME) Government of India Ministry of Finance Department of Revenue Central Board of Excise & Customs, New Delhi, the 16th, December, 99

Subject: Adjudication order --- corrigendum – not to be issued by adjudicating officer

While reviewing an Order-in-Original passed by a Commissioner, it was observed that the said Commissioner made substantive changes in his order by issuing a corrigendum nearly 10 months after issue of the order-in-original. It was felt, prima facie, that the substantive changes brought about by the corrigendum may be beyond the scope of Section 154 of the Customs Act, 1962 and may thus not stand judicial scrutiny by the appellate authorities.

The Board, therefore, referred the matter to the Law Ministry and sought their opinion whether the corrigendum issued subsequent to Adjudication Order passed by the Commissioner is legally valid and tenable considering its nature and relevance to the adjudication order as well as the Provisions of Section 21 of the General Clauses Act. The opinion received from the Law Ministry is reproduced below for your information and guidance.

The above advice of the law Ministry may please be noted by all concerned for information guidance and necessary action. Where any significant change in the order becomes necessary after the order has been issued which cannot be termed as clerical or arithmetical or typographical mistake, proposals for review may mooted to appropriate authority instead of taking recourse to corrigendum.

Law Ministry's Opinion Ministry of Law, Justice & C.A. Department of Legal Affairs

The referring Department has sought our advice whether the corrigendum issued by the Commissioner of Customs, dated 12.8.99 to its earlier order dated 16.10.98 is legally valid and tenable.

2. *The Commissioner of Customs, vide his order dated 16.10.98 adjudicated the matter and passed the orders as can be seen at pages 23-24 of his order placed in the file. Subsequently, almost after 10 months, he has issued a corrigendum wherein the rate of duty and penalty indicated in the earlier order were substituted. Now, the question for consideration us whether this is a valid order.*

3. Admittedly, Commissioner of Customs is not a court and he exercise only a limited quasi-judicial function. In a number of cases, it has been held that the order of customs authorities imposing confiscation and penalties are quasi-judicial in nature and the customs authorities have the duty to act judiciously in deciding the question of confiscation and penalty. The quasi-judicial decision is subject to some measures of judicial procedure such as the principle of natural justice. In this instant case, the penalty and duty were enhanced without hearing the parties and therefore, prima facie, we are of the view that the principles of natural justice have not been followed.

We, in this regard advert to a Supreme Court judgment in *Lala Shri Bhagwan Vs Ram Chand and other* (AIR 1965 SC 1767) wherein their Lordship have held that..... "on the other hand, authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizens, may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers, but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose and limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal, would depend the nature of the power conferred on the authority or body, the nature of the rights of citizens, the decisions of which falls within the jurisdiction of the said authority or body, the other relevant circumstances....."

4. Commissioner of Customs is no doubt a quasi-judicial body required to work within the provisions of law. Neither the powers of review nor correction to the order is available under the Customs Act to the Commissioner of Customs to exercise such powers. He becomes *functus officio* after signing the adjudication order and, therefore, he cannot lay his hands again on the order. The corrigendum is tantamount to review of the decision which is not provided under Law, and therefore, we are of the view that this impugned order is not legally sustainable notwithstanding Section 21 of the General Clauses Act".

Sd/- Addl. Legal Advisor

Penalties and Confiscation

Penalty is imposable under Section 11AC of Central Excise Act, rule 25, rule 26 and rule 27 of Central Excise Rules, 2002 and rule 15 of CENVAT Credit Rules, 2004. Confiscation is provided under rule 25 and rule 27 of Central Excise Rules, 2002 and rule

15 of CENVAT Credit Rules, 2004. Rule 25 of the Central Excise Rules, 2002 provides for confiscation of goods under specified circumstances. In all other circumstances not specified in Central Excise Act, 1944 or Rules made thereunder, the confiscation should be in terms of Section 12 of Central Excise Act, 1944 read with Notification No.68/63 dated 4.5.1963 applying provisions of Customs Act, 1962. There is no specific provision in the Central Excise Act, 1944 when read with earlier Central Excise Rules, 1944 for confiscation. Section 12 of Central Excise Act, 1944 read with Notification No.68/63 dated 4.5.1963 as amended provides for adopting certain provisions relating to confiscation under the Customs Act, 1962 in respect of Central Excise.

Mandatory Penalty under Section 11AC of Central Excise Act, 1944

Section 11AC prescribes a mandatory penalty equal to the duty not levied or paid or has been short levied, short paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement, suppression of facts or contravention or any of the provisions of the act or the rules made there-under with intent to evade payment of duty. The adjudicating authority has no discretion to reduce mandatory penalty under Section 11AC of Central Excise Act, 1944. (Para 2 of Circular No. 889/09/2009.CX dated 21.05.2009)

The Budget 2011 proposes certain legislative changes to the Central Excise Act, 1944. The following important amendments have been proposed in this section:

(a) A separate category has been carved out from cases involving extended period of limitation (fraud, collusion, willful mis-statement etc.) wherein a lower mandatory penalty of 50% of the duty (rather than 100% of the duty) would apply. These would cover cases where it is noticed during an audit, investigation or verification that duty has not been levied, short levied, not paid or short paid or erroneously refunded but the transactions to which such duty relates are entered in the specified records.

(b) While a provision has been made for issuance of show cause notice invoking the extended period for recovery of duty with interest under section 11AC and penalty equivalent to 50% of the duty, it has also been specifically provided that even in cases where show cause notice has been issued involving extended period of limitation (fraud, collusion, willful mis-statement etc.) with penalty equal to the duty, the penalty can be

remitted to 50% if the Central Excise officer is of the opinion that the details of the transactions in respect of which the demand notice has been issued have been duly recorded by the person charged with duty in the specified records.

(c) The provisions of the existing sub-section (1A) of section 11 have been omitted. The facility of compounding the penalty amount has been confined only to this new category and if the person chargeable with duty (for an extended period) pays the duty in full or part along with interest before the issuance of a show cause notice, the penalty shall stand reduced to 1 % per month but not exceeding 25% of the duty. However if the duty alongwith interest is paid within thirty days of the issuance of adjudication order, the penalty would be 25% of the duty.

(ii) Rule 25 of the Central Excise Rules, 2002 provides for penalty on any producer, manufacturer, registered person of a warehouse or a registered dealer not exceeding the duty on the excisable goods in respect of which any of the specified contravention have been committed, or rupees ten thousand, whichever is greater. The penalty is subject to the provisions of Section 11AC of the Central Excise Act, 1944. The offending goods are also liable to confiscation. The specified contraventions are:

(a) Removal of any excisable goods in contravention of any of the provisions of the said rules or the notifications issued under the said rules; or

(b) Non-accountal of any excisable goods produced or manufactured or stored; or

(c) Manufacture, production or storage of any excisable goods without having applied for the registration certificate required under Section 6 of the Central Excise Act; or

(d) Contravention of any of the provisions of the said rules or the notifications issued under the said rules with intent to evade payment of duty.

(iii) Under rule 26 of the Central Excise Rules it is provided that any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to

confiscation under the Act or the said Rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater.

- (iv) Rule 27 of the Central Excise Rules provides for imposition of a general penalty which may extend to five thousand rupees and with confiscation of the goods in respect of which the offence is committed. This is attracted when no other specific penalty is provided for.

If penalty is imposed under Section 11AC, penalty under rule 25 will not be imposed. This, however, does not preclude the Department from confiscating the goods, imposing any fine in lieu of confiscation and prosecuting a person.

Rule 26 of the Central Excise Rules also provides that before any order of penalty or confiscation is passed the adjudicating authority shall follow the principles of natural justice. In other words, a notice explaining the reasons why penalty should not be imposed or goods confiscated has to be given to the person. Thereafter, reasonable opportunity shall be given to such person to explain or defend his case. The adjudicating Officer shall pass a reasoned order, incorporating the defence arguments given by such person or his authorised representative.

As per Rule 28 of the Central Excise Rules, when any goods are confiscated under these rules, such thing shall thereupon vest in the Central Government. Accordingly, the Central Excise Officer adjudging confiscation shall take and hold possession of the things confiscated, and every Officer of Police, on the requisition of such Central Excise Officer, shall assist him in taking and holding such possession.

Rule 30 of the Central Excise provides that if the owner of the goods, the confiscation of which has been adjudged, exercises his option to pay fine in lieu of confiscation, he may be required to pay such storage charges as may be determined by the adjudicating officer.

Disposal of goods confiscated:

Provisions for disposal of goods confiscated are contained in rule 29 of the Central Excise Rules. Goods of which confiscation has been adjudged and in respect of which the option of

paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct.

If the offence relating to any seized goods is proved, the Adjudicating Authority should necessarily adjudicate the case for ordering confiscation. (*reference Board's Circular No.5/89, dated 19.1.1989 (From F.No.208/2/89-Cx.6).*)

CIRCULAR No. 5/1989 DT 19.01.1989 (F.No. 208/2/89-Cx.6)

Confiscation of seized goods

A case has come to the notice of the Board where a Collector while adjudicating a case though held that the seized goods were liable to confiscation, but did not pass any order in regard to confiscation of seized goods because such seized goods were destroyed in fire. At the time of destruction in fire, the seized goods were lying deposited in a Government Warehouse. Since the seized goods had not been ordered to be confiscated by the Collector, the title/ownership of the seized goods continued to vest with the assessee from whom the seizure was affected. Now the assessee has come up with a request for compensation in respect of the seized goods destroyed in the fire. The claim for compensation is being examined in consultation with Ministry of Law. It has been observed by the Board that had a clear order for confiscation been made by Collector while adjudicating the case, the claim for compensation would not have arisen at all.

2. It has been directed by the Board that if the offence relating to any seized goods is proved, the Adjudicating Authority should necessarily pass an order for confiscation. The physical presence of the seized goods is not necessary for ordering confiscation. By the order of confiscation, the ownership of the seized goods is transferred to the Central Government by virtue of rule 211 of Central Excise Rules, 1944. In the instant case, since the seized goods were destroyed in fire, the proper course of action on the part of the Collector should have been to order confiscation but refrain from giving the assessee any option to redeem the confiscated goods on payment of fine because the goods had been destroyed in fire.

3. The above principles should be kept in mind while deciding similar cases in future.

In adjudication proceedings, reliance cannot be placed on Section 9C of the Central Excise Act, 1944, and powers under this Section is available only to a court of law in prosecution proceedings. However, mens rea is not a pre-requisite to impose penalty under Central Excise law.

Penalties and Confiscation in Customs

Penalty is imposable under Section 114A of Customs Act. As also penalties are imposable under sections 30 upon the person-in-charge of a vessel; or an aircraft; or a vehicle carrying imported goods or any other person as may be specified for delay or failure to deliver to the proper officer an import manifest or import report upon the arrival of the vessel or the aircraft or a vehicle; under section 112 for improper importation of goods; under Section 114 for attempt to export goods improperly; under Section 114AA for use of false and incorrect material; under Section 116 for not accounting for goods; under Section 117 for contravention, etc., not expressly mentioned.

Confiscation is provided under Customs Act, 1962 in terms of sections:

111. Confiscation of improperly imported goods, etc.

113. Confiscation of goods attempted to be improperly exported, etc.

115. Confiscation of conveyances.

118. Confiscation of packages and their contents.

119. Confiscation of goods used for concealing smuggled goods.

120. Confiscation of smuggled goods notwithstanding any change in form, etc.

121. Confiscation of sale-proceeds of smuggled goods.

Mens rea is not essential condition for imposing penalty on the importer under the Customs Act, 1962 has been confirmed. The Supreme Court in the case of UOI vs Z.B. Nagarkar [112 ELT 772(SC)] has observed that once an offence is proved, the imposition of penalty is a mandatory requirement and, as such, non imposition of penalty may not be legally proper.

Mandatory Penalty under Section 114A of Customs Act, 1962

Section 114A prescribes a mandatory penalty equal to the duty not levied or paid or has been short levied, short paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement, suppression of facts or contravention or any of the provisions of the act or the rules made there-under with intent to evade payment of duty. Under Section 114A penalty is imposable for short-levy or non-levy of duty in certain cases, where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason

of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114. However, in the event the duty and interest thereon is paid within 30 days from the date of the communication of the order, the penalty shall be 25% of the duty subject to it being paid within the said period of 30 days [Section 28(1A) of Customs Act, 1962]. The adjudicating authority has no discretion to reduce mandatory penalty under Section 114A of Customs Act, 1962.

As per section 126 of Customs Act, 1962, when any goods are confiscated under the said Act, such thing shall thereupon vest in the Central Government. Accordingly, the Officer adjudging confiscation shall take and hold possession of the things confiscated.

If the owner of the goods, the confiscation of which has been adjudged, exercises his option to pay fine in lieu of confiscation in terms of Section 125 of the Act, *ibid*, he may be required to pay such storage charges as may be determined by the adjudicating officer.

Provisions for disposal of goods confiscated are contained in rule 29 of the Central Excise Rules. Goods of which confiscation has been adjudged and in respect of which the option of paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct.

If the offence relating to any seized goods is proved, the Adjudicating Authority should necessarily adjudicate the case for ordering confiscation. (reference Board's Circular No.5/89, dated 19.1.1989 (From F.No.208/2/89-Cx.6) should be followed in Customs cases as well.

In adjudication proceedings, reliance cannot be placed on section 138A of Customs Act.

Presumption of culpable mental state. –

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Powers under this Section is available only to a court of law in prosecution proceedings. However, mens rea is not a pre-requisite to impose penalty under Customs, Central Excise and Service Tax law.

Penalties in the case of Service Tax

Section 70, 76, 77, and 78 of Finance Act, 1994 provide for penalties in cases of Service Tax.

The Budget 2011 proposes legislative changes to the Finance Act, 1994 relating to penalties in cases of Service Tax, which are as follows:

The maximum penalty for delay in filing of return under section 70 is proposed to be increased from Rs.2,000/- to Rs.20,000/-. However, the existing rate of penalty is being retained under rule 7C of the Service Tax Rules, 1994. The maximum penalty is presently reached after a delay of 40 days. The new limit will impact only those who delay filing of return for longer durations.

The provisions of section 73(1A) and both the Provisos of section 73(2) are proposed for deletion. As a result, the benefit of reduced penalty shall not be available in cases of fraud, mis-statement, suppression, collusion etc. in the ordinary course. However, revised benefit will be available under the new sub-section 4A of section 73 in situations where the true and complete account of transactions is otherwise available in the specified records and the assessee during the course of audit, verification or investigation pays the tax dues, together with interest and the reduced penalty. It is also clarified that the assessee can also avail this benefit on his own also. The extent of penalty is being further reduced to 1% per month of the tax amount for the duration of default, with an upper ceiling of 25% of the tax amount.

Penalty for failure to pay tax under section 76 is being halved.

The maximum penalty under section 77 for contravention of various provisions is proposed to be increased from Rs.5000/- to Rs.10000/-. However, the daily rate of penalty, wherever applicable, is being retained.

Penalty under Section 78 is being altered from upto twice the amount of tax to an amount equal to the tax. Moreover, in situations where the taxpayer has captured the true and complete information in the specified records, penalty shall be 50% of the tax amount. The latter penalty (only) shall be further reduced to 25% if the tax dues are paid within a period of one month together with interest and reduced penalty. For assesseees with turnover upto Rs.60 lakh the period of one month shall be increased to ninety days.

Section 80 is being amended by substituting section 78 with the words "proviso to section 78" and thus the power to waive penalty shall be available only in cases where the information is captured properly in the specified records.

The revised position relating to penalties and their mitigation or waiver is summed up in the following table (portion in italics being the changes):

Situation	Position in records	Penalty & Provision	Mitigation	Complete Waiver
No fraud, suppression etc.	Captured	<i>1% of tax or Rs zoo per day upto 50% of tax amount: Sec 76</i>	Totally mitigated if tax and interest paid before issue of notice: Section 73(3)	On showing reasonable cause under section 80

Cases of fraud, suppression etc.	<i>Captured true & complete position in records</i>	<i>50% of tax amount: Provisos to Section 78</i>	<i>(a) 1% per month; max of 25% if all dues paid before notice: Sec 73(4A); (b) 25% of tax if all dues paid within 30 days (90 days for small assesses): Provisos to Section 78</i>	<i>- -</i>
	<i>Not so captured</i>	<i>Equal amount: Section 78</i>	<i>No mitigation at all</i>	<i>Not possible</i>

Provisions relating to prosecution are proposed to be re-introduced and shall apply in the following situations:

- (i) Provision of service without issue of invoice;
- (ii) Availment and utilization of Cenvat credit without actual receipt of inputs or input services;
- (iii) Maintaining false books of accounts or failure to supply any information or submitting false information;
- (iv) Non-payment of amount collected as service tax for a period of more than six months.

However, there shall be no power of arrest and the prosecution can be launched only with the approval of Chief Commissioner.

Competent authority for Adjudication of an offence committed in one Commissionerate but Seizure of Goods made in another Commissionerate.

- (i) If excisable goods are dispatched from one Commissionerate to another and it is discovered at the place of destination that the goods were dispatched by the consignor in

contravention of certain provisions of the Central Excise Act, 1944 and/or the Rules made thereunder, which rendered such goods liable to seizure, it is the officer in whose jurisdiction the offence was committed (place of removal in this context) is competent to adjudicate the cases. The chief criterion to determine jurisdiction in Central Excise cases is thus the place where the offence is committed.

(ii) In respect of Customs cases, however, the principle to be applied in respect of seizure and adjudication is not the same as stated in the preceding sub-paragraph. Section 110 of the Customs Act, 1962 gives power to the proper officer to seize any goods if he has reason to believe that such goods are liable to confiscation under the Act. There is no reference in this Section to the place at which such seizure can be effected. As such the seizure can be effected at any place and the case adjudicated by the competent officer under whose jurisdiction the goods were seized.

Provisional release of things seized:

Provisional release of things seized pending adjudication on deposit of security-execution of bond

(i) According to sub-rule (3) erstwhile of Rule 206 of Central Excise Rules 1944 anything seized by a Central Excise Officer, may, pending the orders of the adjudicating Central Excise Officer, be released to the owner on taking a bond from him in the proper Form, with such security as the Commissioner may require. These provisions are available in terms of para 3.2 of Part I of Chapter 17 of Central Excise Manual (CBEC - Supplementary Instructions) 2010-11. As prescribed in the said "rule, seized goods, irrespective of the value thereof, can, pending adjudication" be released to the owner, if he so desires on taking a bond from him in Form B-11 (Sec.) with sufficient security. As a working rule, the option to take delivery of the seized goods before adjudication or to leave the goods in the custody of the Department till adjudication, should be left to the owner. If, however, the officer competent to grant release under erstwhile Rule 206(3) thinks that by releasing the goods provisionally, some important evidence material and relevant to the case would be lost, such officer may, in his discretion, refuse to grant such release. This procedure should be made known to the party concerned every time a seizure is made and the two alternative modes of dealing with the seized goods should be specifically brought to the notice of the owner, Soon after the seizure, by the seizing authority, a practical difficulty

may arise when at the time of adjudication, it is felt necessary by the adjudicating authority to confiscate the goods in question, if they had already been released to the owner. The question will then arise as to how goods which have already been released and which are no longer in the custody of the Department can be formally confiscated. In order to overcome this difficulty the adjudication order may contain inter alia, the following:

".....that the goods are liable to be confiscated but as the goods were released provisionally to the owner, before Adjudication, the owner was asked to produce the goods in terms of the bond within....On his failure to produce the goods interms of the bond [appropriate an amount of Rs towards duty Rs towards value, Rs ...towards penalty and Rs.....towards other charges due on the excisable goods released. The balance amount of Rs..... is ordered to be refunded."

(ii) The power of the Commissioner to release seized goods pending adjudication on execution of bond in Form B 11 (Sec.) with suitable security under erstwhile Rule 206(3) of Central Excise Rules 1944 has been delegated to officers competent to adjudicate the case. The bond, should however, be accepted by the Competent Officer of Central Excise. The competence of the adjudicating officer should be determined with reference to the value of the goods liable to confiscation as a whole including vehicles used in the transportation of goods, notwithstanding the amount of fine (in lieu of confiscation of the conveyance) which may be fixed by the adjudicating authority. The Officers releasing the goods should take care that, while determining the amount of the deposit they bear in mind the seriousness of the offence, the value of the goods seized and whether the goods are duty-paid or not. Care should also be taken to ensure that by releasing the goods some valuable evidence in the case is not extinguished.

Similar provisions have been made under section 110A of Customs Act, 1962 which allows provisional release of goods, documents and things seized pending adjudication. Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.

The Budget 2011 proposes amendment to Section 110A so as to empower the adjudicating authority to allow release of seized goods instead of Commissioner of Customs.

Where offending goods are released provisionally against Bond, the goods should be held to be liable to confiscation and appropriate redemption fine should be imposed and ordered to be appropriated in terms of the Bond filed. The Supreme Court have confirmed this view in the case of M/s Weston Components [2000(115) ELT 278]

Redemption Fine

SECTION 34 of Central Excise Act, 1944 provides for giving an option to pay redemption fine in lieu of confiscation whenever confiscation is adjudged under this Act or the rules made thereunder, such fine as the adjudicating authority thinks fit.

Section 125 of Customs Act, 1962 provides for option to pay fine in lieu of confiscation in Customs case. Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

Fines in lieu of confiscation- Date of disposal of confiscated goods

(i) Wherever confiscation is ordered under the Central Excises Act, 1944, or the Rules made thereunder the adjudicating officer is required, under Section 34 of the Act, to give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. The period within which this option can be exercised by the owner of the goods has not been laid down in the Act or the Rules. Under Rule 28, confiscated goods vest in the Central Government, and there is no legal bar to their being disposed of, at any time, after the order of confiscation is passed, but the order of confiscation and the consequent vesting of the property in Government are subject to two qualifications, namely-

(1) The order of confiscation is liable to be set aside or annulled on appeal or revision, in which event, that order would be deemed in eye of Law to have never been made, and the goods to which it should be held likewise never to have vested in Government.

(2) (i) The mandatory provision of giving owner of the confiscated goods an option to pay a fine in lieu of confiscation shall be real, and not merely formal that is to say, the option should truly enable the owner of the goods to redeem them on payment of fine specified. Having regard to these qualifications, it is necessary to give the owner of the goods sufficient and reasonable time to redeem the goods on payment of the fine in lieu of

confiscation. This time-limit should ordinarily be three months, and should be specified in the order of adjudication itself. But in the case of perishable goods, or of goods which are likely to depreciate quickly in value under normal storage conditions, the time-limit should be fixed in each case on its merits, and should also be specified in the adjudication order.

(ii) If the owner fails to redeem the goods within the time-limit so fixed, the adjudicating officer should proceed to dispose of the goods according to the provisions after giving a fresh notice to the owner of the goods, specifying the date fixed for sale, If the owner requests an extension of time, it may be granted on the explicit understanding that Government accepts no responsibility for any risks to which the goods may be exposed, and that the owner will, be required to pay such storage and other charges as may be incurred in respect of the goods.

(iii) In order that, in any appeal or revision application which the owner may have filed and which has not already been decided prior to the disposal of the goods, an order may not be made by the appellate or revisional authority in terms setting aside the order of confiscation, adjudicating officer must promptly inform the appellate authority that the goods have been sold already, so that an appropriate order can be made by such authority, having regard to the facts of the case. Such order, for instance, may require that net sale proceeds of the goods may be paid to the owner.

Release of confiscated goods beyond the time limit prescribed in the order-in-original/order-in- appeal, clarification regarding:-

In cases where the party (ies) has/have gone in appeal, the time limit specified for redeeming the goods in the order-in-original will have no relevance as the same is under challenge, before the higher authority. Where the party has not gone in appeal, as the statutory limit for filing the appeal is three months, the party is eligible to get the goods redeemed within 'the appeal period, irrespective of the time limit specified in the order-in-original. In any case wherever any time/limit is fixed by the adjudication officer or appellate authority for payment of fine it is desirable to use the expression (or any extended time limit as may be fixed by me (i.e. the adjudicating or appellate authority).

In this regard the judgment of the High Court of Allahabad in the case of Mangaldas vs Collector 1989 (43) ELT 636 (Allh.) is notable. The Para 4 of the judgment is reproduced below:

“4. The controversy raised by the petitioner is that the Collector, Central Excise has no power to fix the period of three months of taking of the confiscated gold and as the order granting time was illegal and was beyond his jurisdiction, it was open to the petitioner to deposit the amount at any point of time which he desired. This bald argument is not acceptable to us. To make an order effective, the Collector could have fixed the time as was done in the instant case. This point of time was ancillary and accidental to the main power. We find substance in the submission of the petitioner that since by the letter dated October 10, 1979, the Superintendent had granted ten days time for complying with the order dated 6th April, 1967 and that whatever amount was due from the petitioner, the whole of it was deposited within that period, the petitioner be entitled to get back the confiscated primary gold.”

The above may be followed in Customs case as well.

INTEREST

(i) Provision exists in the Central Excise statute for charging interest on duty not paid in time. Thus, it is in the interest of an assessee to discharge duty liability at the earliest and not to prolong the dispute only for the sake of delaying payments.

(ii) Penalty and confiscation of offender's goods are the outcome of the adjudication proceedings. There is provision for mandatory and general penalty. Penal provisions are also there in the Central Excise Rules for certain offences. These are deterrents aimed at cautioning the dishonest tax payers.

(iii) The goods in respect of which any contravention of Central Excise Rules have been committed are liable to confiscation.

Interest

1 Interest is chargeable in the following instances:

(i) On the delayed payment of duty under the provisions of Section 11AA, 11AB and Rule 8.

- (ii) On CENVAT Credit taken or utilized wrongly under the provisions of Section 11A and 11AB.
- (iii) On the excess amount collected in excess of the amount of duty assessed and determined and paid on any excisable goods, from the buyer of the goods under Section 11DD.

Interest is also payable by the Department in delayed refund cases under the provisions of Section 11BB.

As per Section 11AA inserted with effect from 26.5.1995 by the Finance Act, 1995, interest is chargeable on delayed payment of duty after three months from the date of determination of duty liability by the Central Excise officer under sub-section (2) of Section 11A.

Section 11AB was inserted by the Finance Act, 1996 with effect from 28.9.1996 as per which interest will be charged from the first date of the month following the month in those cases where the duty was not paid on account of fraud suppression etc. [Sec. 11AB(1)].

As a result of the insertion of Section 11AB by the Finance Act, 1996 for the period from 28.9.1996 to 11.5.2001 {substitution of Section 11AB(1) and 11AB(2) vide Finance Bill, 2001 interest is chargeable as follows:

- (a) In the normal case, interest will be charged for the period of delay after three months from the date of such determination of the duty liability till the date of payment of duty.
- (b) In cases where the duty is not paid on account of fraud, suppression etc., the interest will be charged from the first date of the month following the month in which the duty was not paid.

Retrospective application of Section 11AB of the Central Excise Act, 1944. - Regarding application of Section 11AB, Board issued clarification vide F.No.354/118/96-TRU dated 6.1.97 to the effect that it would apply even to past cases where duty under Section 11A(2) is determined on or after 28.9.96. The decision of CEGAT was confirmed by the Hon'ble High Court and Supreme Court subsequently.

In the light of the aforesaid decisions, Section 11AB can be invoked only in respect of clearances effected on or after 28.9.1996 irrespective of the date of passing of the adjudication order of a case.

Section 11AB(1) and Section 11AB(2) have been substituted w.e.f. 11.5.2001 by the Finance Act, 2001 making it now clear that Section 11AB as amended, will apply only to cases where duty has become payable or ought to have been paid on or after 11.5.2001. Accordingly, provisions of Section 11AA will not apply to case where duty becomes payable on or after 11.5.2001.

Proviso to Section 11AB(1) inserted with effect from 11.5.2001 makes it clear that duty becomes payable on the basis of instructions or directions of the Board also and not necessarily because of adjudication of a case.

The Budget 2011 proposes legislative changes to the Central Excise Act, 1944 in respect of sections 11AA and 11AB. The provisions of sections 11AA and 11AB have been merged into a revised section 11AA. Under the proposed provision, interest would be payable on any duty not levied, shortlevied, not paid, short paid or erroneously refunded from the first date of the month succeeding the month in which the duty ought to have been paid under the Act or from the date of erroneous refund. The provisions of the existing section 11AA are proposed to be omitted. Pending enactment of the Finance Bill, 2011, the rates of interest are being revised with effect from the 1st of April, 2011 to a uniform rate of 18 per cent per annum under the existing provisions of sections 11AA and 11AB.

Presently, as per Rule 8(3), when assessee fails to pay duty by the due date, he shall pay the outstanding amount with interest @ 2% per month for the period starting with the first day after due date till the actual payment.

CENVAT Credit taken or utilized wrongly shall also be recovered with interest as per the provisions of Section 11A and Section 11AB. (Rule 14 of CENVAT Credit Rules).

Under Section 11DD, Interest is to be charged for the excess amount collected in excess of the amount of duty assessed and determined and paid on any excisable goods, from the buyer of the goods, from the first day of the month succeeding the month in which the amount ought to have been paid.

There may not be need for any explicit mention of the interest liability in the show-cause notice since the legal provisions are explicit. However, the same may be done as a matter of abundant precaution. Likewise, the adjudicating officer may incorporate the fact about the interest liability in the order confirming the demand.

No interest is chargeable or payable in respect of fines and penalties.

Amount deposited under Section 35F as a condition precedent to hearing an appeal does not bear the character of Duty but has character only of Security Deposit. Such Deposit not governed by provisions of Section 11B relating to refund of Duty or 11BB - Interest on delayed Refunds.

Interest chargeable under the Sections is simple interest and the rate will be fixed by the Government from time to time between the lower limit of 10% and upper limit of 36% per annum.

Under Section 11BB interest is payable by the Department in delayed refund cases. Interest is payable for the period of delay after 3 months from the date of receipt of application of refund.

Interest payable by the Department as delayed refunds as per Section 11BB will be not below 5% and not exceeding 30% per annum, fixed by the Government from time to time.

CUSTOMS ACT, 1962

Interest is chargeable on the delayed payment of duty under the provisions of Section 28AA and 28AB.

The Budget 2011 proposes legislative changes to the provisions relating to charge of interest on the delayed payment of duty. Section 28AA and 28AB are being substituted with a revised section 28AA so as to make the provisions relating to interest more coherent and clear. It is being provided that interest would be payable from the first day of the month succeeding the month in which the duty ought to have been paid or erroneously refunded. Pending enactment of the Finance Bill, 2011, notifications revising the rate of interest to 18% per annum has been issued under the existing provisions.

Interest is also payable by the Department in delayed refund cases under the provisions of Section 27A and delayed Drawback cases under the provisions of Section 75A and on delayed refund of amount deposited under the proviso to section 129E in terms of section 129EE.

SERVICE TAX (FINANCE ACT, 1994)

Interest is chargeable on the delayed payment of service tax under the provisions of Section 75 of the Finance Act, 1994.

Interest rate for delayed payment of service tax is being increased to 18% per annum, effective 01.04.2011 (Notification 15/2011-ST). A concession of 3% has been proposed in the Finance Bill, 2011 for tax-payers whose turnover during any of the years covered in the notice or the preceding financial year is below Rs 60 lakh.

REFUNDS

The provisions for Claim for refund of duty have been provided under SECTION 11B of the Central Excise Act, 1944.

- (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date. The limitation of one year shall not apply where any duty has been paid under protest.
- (2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and refund be paid to the applicant if the incidence of duty has not been passed on by the persons concerned to any other person and in any other case the amount so determined shall be credited to the Consumer Welfare Fund established in terms of section 12C of the Central Excise Act, 1944:
- (3) The Section 12B provides for presumption that the incidence of duty has been passed on to the buyer. Thus, unless the contrary is proved by the applicant, it

should be deemed that the full incidence of duty has been passed on to the buyer of such goods.

Interest on delayed refunds.

The Section 11BB provides that if any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, interest is required to be paid to the applicant at such rate for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

The provisions for Claim for refund of duty provided under SECTION 11B, Section 11BB and 12B of the Central Excise Act, 1944 apply mutatis mutandis to the cases of Service Tax in terms of Section 83 of Finance Act, 1994.

Customs Act, 1962

The Budget 2011 proposes changes to section 27 of the Customs Act, 1962. Sub-section (1) of section 27 is being substituted so as to enhance the time limit for claiming refund of duty and interest from six months to one year for all categories of importers. This would unify the provisions with regard to raising of demands and claiming of refund.

27A. Interest on delayed refunds — If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date Immediately after three months from such date, till the date of refund of such duty.

Explanation. — Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

Grant of personal hearing before a refund claim is rejected/modified.

Where under Section 11B of the Central Excises Act, 1944 a refund claim (including a rebate claim) is sought to be rejected or modified, it is necessary for the Asstt./Deputy Commissioner to comply with the principles of natural justice. Hence, all cases of rejection or modification of refund claims should be decided after issue of show cause notice and/or grant of personal hearing. The adjudication order passed in such cases should be a speaking order clearly stating the grounds on which the refund claims has been rejected or modified.

The above instructions are to be followed in Service Tax and Customs cases as well.

Refund under Section 11C-Instructions regarding [F.No.210/8/86-CX.6, 24.2.1988 (Cir.No.13/88) referred]

A case came to the notice of the Board wherein a notification under Section 11C was issued, not to collect duty for certain period in accordance with the general practice of non levy of duty on an excisable product. However some assesseees had paid the duty on the product during the relevant period. The question that arose was whether the assesseees who had paid the duty would be entitled for refund.

2. The matter was referred to Law Ministry who have opined that refund would not be admissible once the duty has been paid. The Board has accepted the advice of the Law Ministry.
3. Pending cases may be disposed of on the basis of these instructions.

The instructions above under the Central Excise Act, 1944 apply mutatis mutandis to the cases of Service Tax in terms of Section 83 of Finance Act, 1994.

Customs Act, 1962

28A. Power not to recover duties not levied or short-levied as a result of general practice. -

[(1)] Notwithstanding anything contained in this Act, if the Central Government is satisfied -

(a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from, India; and

(b) that such goods were, or are, liable -

(i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty than was, or is being, levied, according to the said practice, then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.]

[(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 27:

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Customs

or Deputy Commissioner of Customs, in the form referred to in sub-section (1) of section 27, before the expiry of six months from the date of issue of the said notification.

Refund of duty paid in case of time- barred demand:

Refund is not admissible if demand, though legally due but time-barred, was paid by assesses without coercion (voluntary deposits)

The Hon'ble Tribunal in a three members Special Bench decision in the case of M/s India Cements Ltd. vs Collector of Central Excise, Madras [1984 (18) E.L.T. 499 (Tribunal) referred] observed that the refund is not admissible if demand, though legally due but time-barred, was paid by assesses without coercion - Rule 10 of the Central Excise Rule. The excerpts are given below:

"The demand, therefore, was quite correct to the extent that the money demanded was due to the Central Excise revenue. The only flaw in the demand was that it was issued outside time. In normal circumstances, if the demand is barred by time, it is a dead demand and no more need be said about it and the demand issuing office cannot enforce such a demand. However, this demand was paid by factory, although it says it paid it 'under protest'. Having paid the demand, therefore, and seeing that the money rightfully belonged to the department, we cannot say that the department had no claim to it and should refund it. As we have said, it is money that was due and can be lawfully received into the revenue treasury. It was received not on account of any enforcement of the demand or any coercion applied by the department. Had there been such coercion or enforcement, this Tribunal will not hesitate to order to immediate return of the money, because coercion/enforcement makes receipt of such money, even if lawful due, illegal. There were no such steps in the recovery of this money : the factory voluntarily paid it even if 'under protest'. Since the money is lawfully and justly receivable into Central Excise account it will not be correct to pass an order to Central Excise to return it.

It is nowhere on record that the appellants were forced to pay this duty amount or that any coercive measures were adopted by the department to make the appellants to pay that duty amount. What is apparent is, a demand was raised by the Department for the payment of the duty amount which the appellants were to pay and in pursuance of that demand, the appellants paid that duty amount which might be barred by time. There is nothing on record to show and prove that the payment was made under protest and even if it was so, it does not make any difference.

The question arises whether the appellants can now come forward with the plea that the time barred duty amount, which they had paid in pursuance to the demand notice, should be ordered to be refunded back to them?

The answer is no. As has been laid down in a decision of Kerala High Court, Official Liquidator Palai Central Bank Ltd. v. Josef/August Kayalo Ckakan House Palai (AIR 1966 Kerala 121), limitation only bars the remedy, the right is not extinguished. If the claim of duty amount was barred by time, the remedy to recover that amount was barred but the right was still in existence. So, the department is well within its right to retain the time bar duty amount which was legally due to it from the appellants."

Determination of mens rea in departmental adjudications:-

The penal provisions in the Central Excises Act, 1944, or the Customs Act, 1962 or Finance Act, 1994 mostly do not contain any reference to a criminal intention or knowledge. The Central Excise and Customs Department are concerned solely with those penal provisions which do not define offences triable by Magistrate. Section 33 and 122 of the respective Acts and Section 83A of Finance Act, 1994 confer upon the Central Excise and Customs Officers the power to adjudge penalties and confiscations for contravention of certain rules/sections. In the discharge of this function, these officers are not required to adopt the procedure prescribed for the trial of a criminal offence or any procedure laid down by law. Such officers, it has been ruled, are purely administrative and executive authorities and their function is not a criminal prosecution (vide Supreme Court Judgment in Maqbool Hussain Vs. Union of India). The rules and provisions in question are consequently only quasi-criminal prohibitions enacted in the interest of revenue and defined mostly in absolute terms without reference to a mental element (mens rea). The authority of the Statute is, therefore, paramount and mens rea is not a necessary ingredient. Therefore, even if mens rea has not been established, personal penalties as prescribed in the Central Excises Act, 1944, or the rules framed thereunder or under the Customs Act or under the Finance Act, 1994 can still be imposed for any established contravention of the Central Excise Rules or the Customs Act or Finance Act, 1994.

Confiscation of goods:-

The expression 'shall be liable to confiscation' occurring in the Rules or Acts should not be construed to mean that the goods must invariably be confiscated though in most cases confiscation of non-duty paid goods should be ordered as a matter of routine. Where, however, there is no evidence of evasion of duty and there is a clear proof that duty has been paid, confiscation should not be necessary.

Whether warnings are punishments under Section 33 of the Central Excises Act, 1944:-

There has been a practice in some Central Excise Commissionerates to administer warnings in certain small cases of offences against Central Excise Rules and such warnings have been issued in regular adjudication forms. This is a wrong practice. Since there is no provision either in the Central Excise Act, or the Rules made thereunder regarding warning, they are not punishments within the meaning of Section 33 of the said act. To administer a warning is purely an administrative act and, therefore, is also not appealable. Warning, therefore, should not be included in a formal adjudication order under Section 33 of the said Act, but be issued in a simple memo form if administration of such a warning is at all considered to be necessary.

Passing of conditional orders in adjudication and appeals:-

In cases where some verification is required to be carried out by the field formations and which is likely to affect the very nature of the order, conditional orders should not be issued and in such cases the adjudicating authority should first get the facts verified and pass orders thereafter. As per the provisions of Section 11A of the Central Excise Act, wherein duty has not been levied or paid or has been short-levied or short-paid, a notice has to be served on the person chargeable to such duty and thereafter the officer, after considering the representation, shall determine the amount of duty due from the person, whereupon the noticee should pay up the amount so determined. The provisions of this Section clearly indicate that the final determination of the duty amount has to be done by the person adjudicating the case after receiving the representation and cannot be left to the Investigating officer.

Despatch of Adjudication Order by Registered Post Acknowledgement Due:-

(1) Every adjudication order should be sent to the party concerned by registered post acknowledgement due and the acknowledgement receipt when received should be kept on the relevant file. If there is any unreasonable or undue delay in the receipt of the acknowledgement of the party, the matter should be taken up immediately with the Post Office concerned. Acknowledgement receipt of the party is an important document as it

shows the actual date of receipt of the adjudication order and computation of the period of appeal is to be made from this date.

(2) Instructions should be issued by the Commissioner to the staff to keep a proper track of acknowledgment cards when received back from postal authorities and for placing them in the proper files on their receipt in order to have a record about the dates of actual receipt of the Adjudication Orders by the parties. For the sake of immediate identification of such acknowledgment cards, the concerned branch may stamp such acknowledgement due cards indicating Central Excise Adjudication Branch, Customs Adjudication Branch or Service Tax Adjudication Branch at the time of despatch so that the cards we received back from the postal authorities may be delivered to the branches concerned immediately on their receipt. It is felt that the practice of serving the Adjudication Order through the postal authorities may be continued. However, in important cases the Commissioner/Additional Commissioner can decide that the Adjudication Orders may be served through the local range offices. It may be mentioned that in such cases, another copy of the order should not be sent through postal authorities in order to avoid confusion as regards the date of actual receipt of the order by the party which is very much material in case an appeal is filed by the party. But, a proper receipt signed by the party should be obtained and placed in the file.

Despatch of orders to Counsel or Advocate:-

In cases where a valid Vakalatnama is filed and a Counsel or an Advocate appears on behalf of the party, the Counsel or the Advocate becomes the authorised representative of the party for that case. So long as the Vakalatnama remains unrevoked by the party, the proper course would be that all correspondence in that particular case should be conducted with the authorised Counsel and copy of the order meant for the party should also be sent through him.

Offences punishable under the Central Excises Act 1944 not subject to departmental adjudication:-

Offences against the rules made under Section 37 of the Central Excises Act, 1944 can be adjudicated upon by a competent Officer under Section 33 of the said Act. If however, an offence does not involve contravention of any of the Central Excise Rules but is otherwise

punishable under a section of the said Act, such an offence is outside the jurisdiction of departmental adjudication and is triable by a court of law. For example, in a case where excisable goods have been unauthorisedly removed without payment of duty, from a place where they are produced, cured or manufactured, action can be taken departmentally against the producer or manufacturer under Rule 25; if, however, the Department decides to proceed against such a person for evading the payment of excise duty then the offence would fall under Section 9(b) of the said Act and, hence, outside the scope of departmental adjudication.

Similarly, offences under section 132, section 133, section 134 or section 135 or section 135A of Customs Act, 1962 are outside the jurisdiction of departmental adjudication and is triable only by a court of law.

Distinction between confiscation under the Central Excise Rules, and forfeiture by a Court under Section 10 of the Central Excises Act:-

In a departmental confiscation the officer is bound to give an option to the offender to redeem the confiscated goods by paying a fine in lieu of confiscation but the forfeiture to government ordered by a Court is absolute and unqualified.

Prosecutions:

Prosecution under the Central Excises Act and imposition of penalties under the Central Excise Rules should, as far as possible, be avoided in petty cases. All important contraventions of the Act should be immediately reported through proper channel by the officer who first detects them to the Commissioner for orders. The Commissioner will institute such enquiries as may be necessary and obtain the Chief Commissioner's sanction for prosecution where necessary.

Prosecution can be launched under section 9 for the offences covered under section 9(1) of the Act. As per provisions of section 9AA, prosecution may be launched against any person, Director, Manager or any other person who is responsible for conduct of business of the company/firm and is found guilty of the offences under the Act/Rules. It has been provided that prosecution may be launched in cases involving duty amount of Rs. 25 lakh or more. However, prosecution can be considered in case of habitual offenders irrespective of monetary limit prescribed, if circumstances so warrant. As per the procedure laid down

for launching of prosecution, the Commissioner of Central Excise should process and forward the proposal to the Chief Commissioner (or the Director General of Central Excise Intelligence as the case may be) in cases which are fit for launching of prosecution. As per the instructions issued in this regard, the Chief Commissioner or DG, (CEI) has power to sanction prosecution. It is also mentioned that the decision to launch prosecution should be taken by the adjudicating authority immediately after the passing of adjudication order. (M.F. (D.R.) Letter F. No. 208/21/2007-CX. 6, dated 15-6-2007)

Further, the said Letter stipulates that the guidelines regarding arrest and launching prosecution issued by the Board from time-to-time are followed scrupulously. All the cases involving duty amount of more than Rs. 25 lakhs should be examined from the point of view of launching prosecution. Further, once the prosecution is sanctioned, the complaint should be filed in court immediately. (*Prosecution and arrest under Central Excise - M.F. (D.R.) Letter F. No. 208/21/2007-CX. 6, dated 15-6-2007 of Central Board of Excise & Customs, New Delhi, Subject : Instructions regarding launching of prosecution and arrest under the Central Excise Act, 1944 referred*)

Conduct of prosecution :- As per the procedure laid down for launching of prosecution, the Commissioner of Central Excise should process and forward the proposal to the Chief Commissioner (or the Director General of Central Excise Intelligence as the case may be) in cases which are fit for launching of prosecution. As per the instructions issued in this regard, the Chief Commissioner or DG, (CEI) has power to sanction prosecution. It is also mentioned that the decision to launch prosecution should be taken by the adjudicating authority immediately after the passing of adjudication order.

General guidelines for launching prosecution:

Prosecution should be taken up only under the following conditions and the general guidelines as enumerated below should be observed for launching prosecution in central excise offences:

- (a) Prosecution should be ordered only when guilty knowledge/fraudulent intention/mensrea is present.
- (b) In order to avoid prosecution in minor cases, monetary limit has been prescribed. It has been provided that prosecution may be launched in cases involving duty

amount of Rs. 25 lakh or more. However, prosecution can be considered in case of habitual offenders irrespective of monetary limit prescribed, if circumstances so warrant.

- (c) The evidence is considered sufficient to obtain the conviction.
- (d) Prosecution should be launched against top management when there is adequate evidence/material to show their involvement in the case.
- (e) Persons liable to prosecution should not normally be arrested unless their immediate arrest is necessary. Arrest should be made with the approval of the Commissioner. Cases of arrest should be reported at the earliest opportunity to the Commissioner who will consider whether the case is fit one for prosecution.
- (f) Decision on prosecution should be taken immediately on completion of the adjudication proceedings. In order to avoid delay, the case should be processed even when the adjudication proceedings are in progress
- (g) Prosecution should normally be launched immediately after adjudication has been completed. However, if the party deliberately delays completion of adjudication proceedings, proceedings may be launched even during the pendency of the adjudication proceedings as undue delay would weaken the department's case.
- (h) Prosecution should not be kept in abeyance on the ground that the party has gone in appeal/second appeal. However, in order to ensure that the proceedings in appeal/second appeal are not unduly delayed because the case records are required for the purpose of prosecution, a parallel file containing copies of the essential documents relating to adjudication should be maintained.
- (i) Persons liable to prosecution are not required to be normally arrested unless their immediate arrest is necessary. A large number of cases are detected for removal of excisable goods clandestinely or manufacture of goods without obtaining the licence and without payment of central excise duty. In such cases, the guilty knowledge/fraudulent intention is prima facie there. In order to have an immediate impact and to make evasion of duty uneconomical and creating the fear of spoiling their image in the trade and social circle, the person concerned for removing the

goods clandestinely or manufacturing without licence and clearing them without payment of duty should be arrested even before the issue of show cause notice. All steps should be taken to finalise the investigation and adjudication of the case expeditiously and prosecution of the guilty persons in the court of law.

- (j) It has been observed that there is considerable time lag between the day on which an offence case is adjudicated and the date on which prosecution is sanctioned and the complaint filed in the court of law. To overcome this time lag, where the Commissioner or the Additional Commissioner is the adjudicating authority, he should pass an order sanctioning prosecution against the accused only where there is evidence to indicate guilty knowledge/fraudulent intention/ mens rea. In case where the adjudicating authority is Deputy Commissioner/Assistant Commissioner, the adjudication authority should send a proposal within a fortnight, after adjudication to the Commissioner. A register should be maintained in the Commissionerate Headquarters. This register should be reviewed by the Commissioner once in a month to ensure that prosecutions are pursued vigorously.

The above guidelines cannot cover all the situations. The Commissioners will have to take the decision in a case in the light of the Government's general policy indicated above. In case, where the departure is made from the above general guidelines for sanctioning prosecution or otherwise, reasons for his decision should be recorded by the Commissioner in the relevant file.

The Asstt./Deputy Commissioner will appoint an officer to conduct the prosecution. But in important court cases involving complicated legal issues the Asstt./Deputy Commissioner, with the previous permission of the Commissioner, may arrange to secure the help or advice of the local public prosecutor or of any other competent lawyer. Assts./Deputy Commissioners should invariably watch closely the progress of cases during all stages and render all necessary assistance to the subordinate officers to ensure that offenders do not escape conviction through any defect in the conduct of the case. When the case has been completed the bill of the costs of legal advice should be submitted to the Commissioner for sanction.

Instructions as to conduct of cases in Criminal Courts :-

Officers should normally be in uniform while appearing before a court. They should address the court in a straight forward and respectful manner. They may politely submit any point of law or fact to the Magistrate. If officers are dissatisfied with any proceedings in Court, or if the Court does not order confiscation of the goods and other property in respect of which an offence has been committed, the fact should at once be reported to the Asstt./Deputy Commissioner through proper channel. No officer may disclose to persons outside the Department the name of an informant. Section 125 of the Indian Evidence Act Provides that the officer shall not be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Time-limit for an appeal against acquittal:

The period of limitation for an appeal against acquittal is three months from the date of order appealed against, if the appeal is filed by the State. If the prosecution was upon complaint by the Department, an application has to be made to the High Court for special leave within 60 days of the date of the order of acquittal.

In the circumstances, a copy of judgment in cases of acquittal should be obtained as quickly as possible and submitted to the Board not later than a month from the date of order mentioning particularly in cases of acquittal as to what further action is proposed to be taken and whether or not the same has been initiated. In case an appeal against the acquittal has to be preferred, the possible grounds thereof should also be stated.

Procedure when prosecution not ordered:- When prosecution in respect of an offence is not ordered, the imposition of a penalty and the confiscation of the goods must be considered. The offender should invariably be given an opportunity to explain his case.

Where an adverse decision is given against the Department, the Commissioner should immediately initiate action to secure a copy of the order and to consider in consultation with the counsel who represented the Department as to what appellate remedies are to be resorted to, so that the required action may be taken well in time.

- (a) Any reference made in this behalf to the Ministry should explain the reasons for the adverse decision and the proposal for pursuing the appellate remedies or not doing so, and should have as its enclosures,

- (b) A copy of the adverse decision, and the opinion of the Counsel who appeared on filing such an appeal or revision.
- (c) In cases of urgency and where the stakes are heavy, the Commissioners should themselves discuss with the Counsel and report the gist of discussion and the advice of the Counsel to the Board/Government while seeking orders.

Pendency of departmental proceedings till the Court case is over:-

(1) In the absence of an order of Interim Stay by the Court, the departmental authority is not debarred from proceeding with the case, appeal or revision petitions even when it comes to know that the party has, during the pendency of the case or in appeal or revision moved the court for a writ. Difficulties would however arise if, after the writ is filed, the adjudicating officer or the appellate or the revising authority decided the case in a particular way, and, subsequently, the court comes to the opposite conclusion. The practical difficulty of the records being called for by the Court is also relevant

(2) The Ministry of Law have, advised that each case should be considered separately and the authority may decide whether, even in the absence of a stay order from the court, it should not stay its hands and defer its decision until the Court has decided the case.

(3) It is presumed that such cases where parties go to Court during the pendency of their cases, appeals or revision petitions may not be many. To expedite such matters, therefore, the Central Government Counsel who would be opposing the proceedings in Court can be instructed to make a preliminary objection inviting the Court's attention to the fact that the party has already filed an appeal or revision petition before the statutory quasi-judicial authority and has rushed to the Court during the pendency of such proceedings and, therefore, the Court should not decide the matter but direct the party to pursue its remedies before the appellate or revising authority. If such procedure is followed, the Court would probably be inclined to accept the suggestion and refer the party back to the appellate or revision authority.

Remission of duty-Passing of appealable orders:-

In all cases of losses involving remission of duty regular procedure of settlement of dispute under Section 33 of Central Excise Act, 1944 and in terms of the rules made under

this Act should be followed. The application of the parties should not be disposed of as a representation and a proper order-in-original should be issued to enable the Commissioner (Appeals)/Government of India to consider the application on further appeal/revision.

Monitoring and Adjudication of Call Book cases

The Board has issued Circular No. 719/35/2003-CX., dated 28-5-2003 (F.No. 101/2/2003-CX.3) for monitoring and disposal of Call Book cases, which are reproduced below:

“Subject : Checks on delays — Maintenance of ‘Call Book’ instructions — regarding

Kindly refer to Board’s Circular No. 53/90-CX. 3, dated 6-9-1990 specifying the circumstances under which a pending case can be transferred to call book that if a current case has reached a stage where no action can or need be taken to expedite its disposal for at least 6 months (e.g. cases held up in law Courts) it may be transferred to the call book with the approval of competent authority and instructions issued vide Board’s D.O. Letter F.No. 101/2/92-CX. 3, dated 4-3-1992 directing that a case should be transferred to the call book with the approval of Commissioner/Commissioner (Judicial/ Director General etc. as the case may be. It was further clarified vide Circular No. 162/73/95-CX., dated 14-12-1995 [1996 (81) ELT T9] that only following type of categories of cases can be transferred to Call Book :-

- (i) Cases in which the Department has gone in appeal to the appropriate authority,*
- (ii) Cases where injunction has been issued by Supreme Court/ High Court/CEGAT, etc.*
- (iii) Cases where audit objections are contested.*
- (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.*

2. The matter has again been examined with reference to PAC’s recommendation on Paras 2.5 and 2.6 of the C & AG Report for the year 1998-99 relating to inordinate delay for recovery of confirmed demands and non-adjudication of demands respectively contained in 39th Report. In this regard it is found that the existing instructions of the Board on the issue are not being scrupulously followed by the field formations. The pendency of call book cases continues to be very high. Therefore, the Board while reiterating its earlier instructions, has decided that the respective Chief Commissioner should monitor progress of disposal of call book cases specifically to see whether -

- 1. Call Book cases have been reviewed by the CCEs.*
- 2. Any appreciable progress is noticed.*

3. *Any avoidable delays are there.*

3. *It is further directed that a one-time comprehensive review of all the pending call book cases will be done by respective CCEs. The Chief Commissioner may monitor such review periodically in their respective zones. The progress report of the call book cases should continue to mention in the MTR as well as in the monthly statements of the progress achieved in "Key Result Areas".*

Service of decisions, orders, summons, etc:

The statutory provisions for Service of decisions, orders, summons, etc. have been provided under SECTION 37C of the Central Excise Act, 1944 whereunder

(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1).

The provisions for service of decisions, orders, summons, etc. provided under SECTION 37C of the Central Excise Act, 1944 apply mutatis mutandis to the cases of Service Tax in terms of Section 83 of Finance Act, 1994.

Instructions to Central Excise Officers.

SECTION 37B. — *The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or*

expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board :

Provided that no such orders, instructions or directions shall be issued:

So as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

The provisions regarding instructions to Central Excise Officers under Section 37B of the Central Excise Act, 1944 apply mutatis mutandis to the cases of Service Tax in terms of Section 83 of Finance Act, 1994. Similar provisions are available under section 151A of the Customs act, 1962.

Thus, the Circulars and instructions issued by the Board are binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law{ RATAN MELTING & WIRE INDUSTRIES, 2008 (231) E.L.T. 22 (S.C.)}

Whether non-observance by the Trade or Licensee of Supplementary Instructions Issued under Rule 233 of Central Excise Rules (Present Rule 31) is Punishable:-The Central Board of Excise and Customs and the Commissioners of Central Excise have been authorised by Rule 233 (Present Rule 31) of Central Excise Rules to issue written instructions providing for any supplemental matters arising out of the Central Excise Rules, 1944. Failure to conform to the instructions issued under this Rule is not a breach of any

substantive rule of Central Excise Rules. Non-observance of the instructions issued under this rule cannot, therefore, be penalised under Section 33 of the Central Excises Act, 1944

151A. Instructions to officers of customs. -

The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued -

- (a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or
- (b) so as to interfere with the discretion of the # [Commissioner of Customs (Appeals)] in the exercise of his appellate functions.

Date from which Notifications and Orders issued under Central Excise Rules etc. take effect:

In order to avoid unnecessary disputes and adjudication resulting from bringing into effect on a wrong date of various Notifications, Rules, Acts passed by Parliament or ordinances issued by the President it is necessary for the officers to know the date from which these Rules, Notifications etc. should take effect.

(i) Acts passed by the Parliament and Ordinances issued by the President:-

Unless otherwise provided for in such statutes, all acts passed by Parliament and Ordinances issued by the President come into effect on the date on which they receive the assent of the President.

(ii) Rules made under the Acts such as the Central Excise Rules amendments to Rules, Notifications in the Gazette of India issued by the Govt. Under the Act or Rules:-

Unless the appropriate date is specified in the Notifications of Rules, all such Rules and Notifications issued under this item become effective only from the date on which they are published in the Gazette of India and not from the date on which they were signed by the appropriate authorities.

(iii) Notification and supplemental Instructions such as under Rule 233 or under any other Rule of Central Excise Rules, issued by the Central Board of Excise and Customs and Commissioners:- The same as under item (ii) above.

These principles are applicable to the Notification etc. issued on the Customs side as well.

Enforcement of orders of adjudication:

(a) When an offence, or any. Central Excise matter involving duty, is adjudicated, the order passed may take one or more of the following three forms:

(i) A personal penalty may be imposed.

(ii) Excisable goods may be confiscated, and a fine in lieu of confiscation may be imposed.

(iii) Excise duty and additional excise duty may be ordered to be paid.

(b) Enforcement of payment of personal penalties:

(i) Where a personal penalty has been imposed the order passed by the adjudicating authority should not specify the period within which the penalty should be paid.

(ii) Steps to effect recovery of a personal penalty, by any of the means provided in section 11 of the Central Excises Act, 1944, should not be taken in any case, until the period for preferring an appeal has expired.

(iii) A distinction should be made between personal penalties imposed on (a) "owners of goods" in respect of which the offence was committed (whether such goods are under detention or not) and (b) others.

(iv) In the case of (a) if the owner has preferred an appeal, and the appellate authority has fixed a time within which the penalty should be deposited before the appeal can be considered, payment of the penalty should be enforced by application of section 11, after the expiry of such period.

(v) In all other cases, where an appeal has been preferred, steps to enforce payment by application of section 11 should not be taken, before orders on the appeal have been passed.

(vi) There is no legal objection at any time, and in any case, to the detention of goods under Sec. 142(1)(b) of the Customs Act, 1962. as made applicable by notification issued under Section 12 of the Central Excises and Salt Act, 1944 until the penalty is paid. It should be noted in this connection that

(1) Section 142(1)(b) of the Customs Act, 1962 permits not only the detention of goods in respect of which the penalty has been imposed, but also of other goods belonging to the person penalised which are under excise control;

(2) This section permits not only detention but also disposal of goods by sale;

(3) The detention of goods may take the form of stopping all clearances of the owner's goods from licensed or approved premises, i.e., a factory, a warehouse, bonded store room etc.

(d) Enforcement of Payment of Excise Duty

(i) The principles contained in sub-paragraphs (b)(i) to (v) above should also be followed in regulating recovery of excise duty ordered to be paid.

(ii) Excisable goods whether duty paid or not, belonging to the person who has been ordered to pay the duty may be detained under Rule 230 of the Central Excise Rules, 1944. The principles contained in sub-paragraph (b)(vi) above are all applicable to such cases of detention.

(iii) Where the goods in respect of which the duty has been ordered to be paid are under excise control, they should be detained pending payment. It would not ordinarily be necessary to detain other goods.

CIRCULARS/INSTRUCTIONS REFERRED			
Sr. No.	CIRCULARS/INSTRUCTIONS REFERRED	Date	Page No.
1	752/68/2003-CX	01-10-2003	8
2	865/3/2008-CX	19-02-2008	8
3	922/12/2010-CX	18-05-2010	8
4	762/78/2003-CX	11-11-2003	9
5	806/3/2005-CX	12-01-2005	9

6	362/78/97-CX	09-12-1997	9
7	23/2009-CUS	01-09-2009	9
8	130/12/2010-ST	20-09-2010	11
9	F.No.18/18/65-CXIV	29-04-1965	13
10	F.No. 100/1/62 L.C.I.		18
11	732/48/2003-CX.	05-08-2003	26
12	3/2007-Cus	10-01-2007	26
13	32/80-CX. 6	26-07-1980	26
14	206/2/2010-CX. 6	03-02-2010	28
15	5/83-CX. 6	10-03-1983	28
16	F.No. 307/14/2000-FTT	02-08-2002	
17	122/95, [1996 (81) ELT T21]	28-11-1995	
18	502/68/99-CX	16-12-1999	31
19	889/09/2009-CX	21-05-2009	34
20	5/1989-CX	19-01-1989	36
21	F.No. 354/118/96-TRU	06-01-1997	48
22	13/88; F.No. 210/8/86-CX.6	24-02-1988	53
23	F.No. 208/21/2007-CX.6	15-06-2007	59
24	719/35/2003-CX.3	28-05-2003	64
25	53/90-CX. 3	06-09-1990	64
26	F.No. 101/2/92-CX. 3	04-03-1992	64
27	162/73/95-CX.	14-12-1995	64

NOTIFICATIONS REFERRED			
Sr. No.	NOTIFICATIONS REFERRED	Date	Page No.
1	16/2007-ST	19-04-2007	7
2	38/2001-CE (NT)	26-06-2001	7
3	39/2001-CE (NT)	26-06-2001	7
4	48/2010-ST	08-09-2010	10

5	30/2005-ST	10-08-2005	10
6	11/2007-CE (NT)		11
7	69/5 J.S.R. No. 8/22	18-07-1959	29
8	68/63-CE	04-05-1963	33
9	15/2011-ST	01-04-2011	50

CASE LAW REFERRED			
Sr. No.	CASE LAW REFERRED	CITATION	Page No.
1	Suresh Synthetics	2007 (216) ELT 662 (SC)	14
2	S.N. Mukherjee vs. UOI	(1990) 4 SCC 594	14
3	Siemens Engineering and Manufacturing Co. of India Ltd. vs. UOI	AIR 1976 SC 1785	15

4	SANGHI TEXTILE PROCESSORS (P) LTD.	1993 (65) E.L.T. 357 (S.C.)	18
5	HARIDAS AMARCHAND SHAH	1989 (39) E.L.T. 329 (S.C.)	18
6	ROTEX TEXTILE MILLS	1997 (95) E.L.T. 251 (Tri)	18
7	LAKSHMAN EXPORTS LIMITED	2002 (143) E.L.T. 21 (S.C.)	18
8	SHALIMAR RUBBER INDUSTRIES	2002 (146) E.L.T. 248 (S.C.)	18
9	SWADESHI POLYTEX LTD.	2000 (122) E.L.T. 641 (S.C.)	18
10	SHYAM LAL BIRI MERCHANT	1993 (68) E.L.T. 548 (All)	18
11	J&K Cigarettes vs. CCE	2009 (242) ELT 189 (Del)	19
12	BIHARI SILK & RAYON PROCESSING MILLS (P) LTD. Vs COLLR. OF C. EX., BARODA	2000 (121) ELT 617 (T-LB)	23
13	Hindustan Aluminium Corporation Ltd. (HINDALCO) vs. Supdt. of Central Excise, Mirzapur	1981 (8) ELT 0642 (Delhi)	23
14	J.B.A. Printing Inks Ltd. vs. Union of India	1980 (6) ELT 0121 (Bom.)	23
15	Gwalior Rayon Mfg. (Wvg.) Co. vs. UOI	1982(04)LCX0015 Eq 1982 (010) ELT 0844 (MP)	23
16	Tinplate Co. of India Ltd., Jamshedpur vs. CCE, Patna	1983(08)LCX0016 Eq 1983 (014) ELT 1807 (T) (para 7)	24
17	Chokshi Tube Ltd., Bombay vs. CCE, Bombay	1983(08)LCX0054 Eq 1983 (014) ELT 2362 (T) (para 7)	24
18	M/s Entremonde Polycoaters Pvt. Ltd., Nasik vs. CCE, Pune	1983(12)LCX0035 Eq 1984 (016) ELT 0389 (T) (para 8)	24
19	Sundaram Fasteners Ltd. vs. CCE	1992(10)LCX0055 Eq 1993 (064) ELT 0087 (T)	24
20	M/s N.B. Sanjana, Asstt. Collector of Central Excise, Bombay vs. The Elphinstone Spinning & Weaving Mills Co. Ltd.	1978 (2) ELT (J 399) (S.C.)	
21	J.K. Steel Ltd. vs. UOI	1978 (2) ELT (J 355) (S.C.)	24
22	Shukla & Brothers	2010 (254) ELT 6 (SC)	29
23	CC (Imports) vs. Jagdish Cancer Research Centre	20XX (132) ELT 257 (SC)	31
24	Mohan Meakins Ltd. vs. CCE, Kochi	2000 (115) ELT 3	31
25	Lala Shri Bhagwan vs. Ram Chand and other	AIR 1965 SC 1767	32
26	UOI vs. Z.B. Nagarkar	xxxx (112) ELT 772 (SC)	38
27	Weston Components	2000 (115) ELT 278 (SC)	44
28	Mangaldas vs. Collector	1989 (43) ELT 636 (All.)	46
29	India Cements Ltd. vs. CCE, Madras	1984 (18) ELT 499 (Tri.)	54

30	Official liquidator, Palai Central Bank Ltd. vs. Josef/August Kayalo Chakan House, Palai	AIR 1966 Kerala 121	55
31	Maqbool Hussain vs. UOI	(SC)	55
32	Ratan Melting & Wire Industries	2008 (231) ELT 22 (SC)	67