

Assessments

Assessment means determining the tax liability.

Assessment' includes self-assessment of duty made by the assessee and provisional assessment made under rule 7-rule 2(b)



Meaning of 'assessee' - Rule 2(c)

- ◆ any person who is liable for payment of duty assessed
- a producer or manufacturer of excisable goods
- a registered person of a private warehouse in which excisable goods are stored
- includes an authorized agent of above persons.



Types of Assessments

Self Assessment - Rule 6

Provisional Assessment - Rule 7

Best of Judgment Assessment



Self Assessment Rule 6

- ◆ Assessee determines classification
- ◆ Assessee determines Valuation
- ◆ Assessee pays duty at appropriate rate
- ◆ Assessee file Monthly/Qty Returns

Declare in Self Assessment memorandum in the return that

- ◆ Value declared correctly
- ◆ Duty paid correctly
- ◆ GAR 7 Challan are genuine



Self Assessment Contd.,

CEO will scrutinize the return

- ◆ Inspection of assessee premises if require
- ◆ verification of records and document
- ◆ Demand will be issued if necessary



Provisional Assessment Rule 7

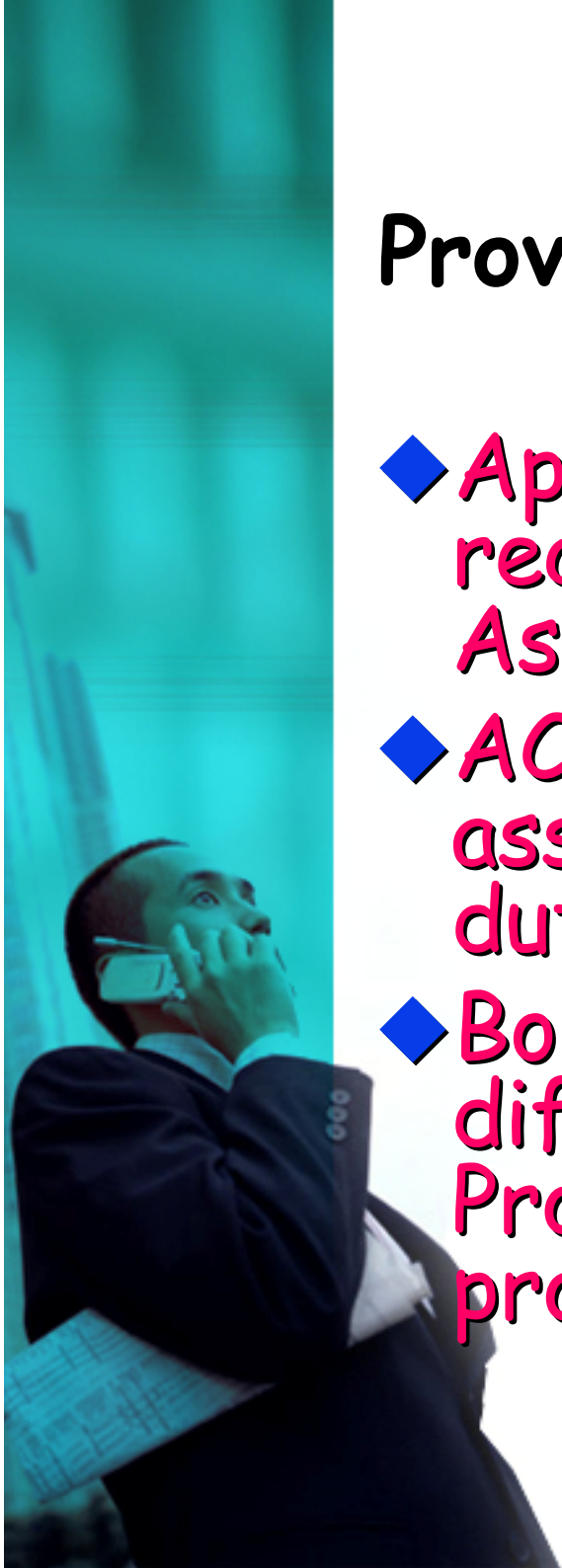
Assessee can request for provisional assessment in following circumstances

- ◆ Assessee is unable to determine the value of excisable goods
- ◆ Assessee is unable to determine rate of duty applicable.



Provisional assessment Contd.,

- ◆ Application should be made to Ac/DC requesting for Provisional Assessment stating reason
- ◆ AC/DC may allow Provisional assessment and state the rate of duty payable
- ◆ Bond (B2) to be executed for differential rate of duty minus Probable final rate of duty and provisional duty.



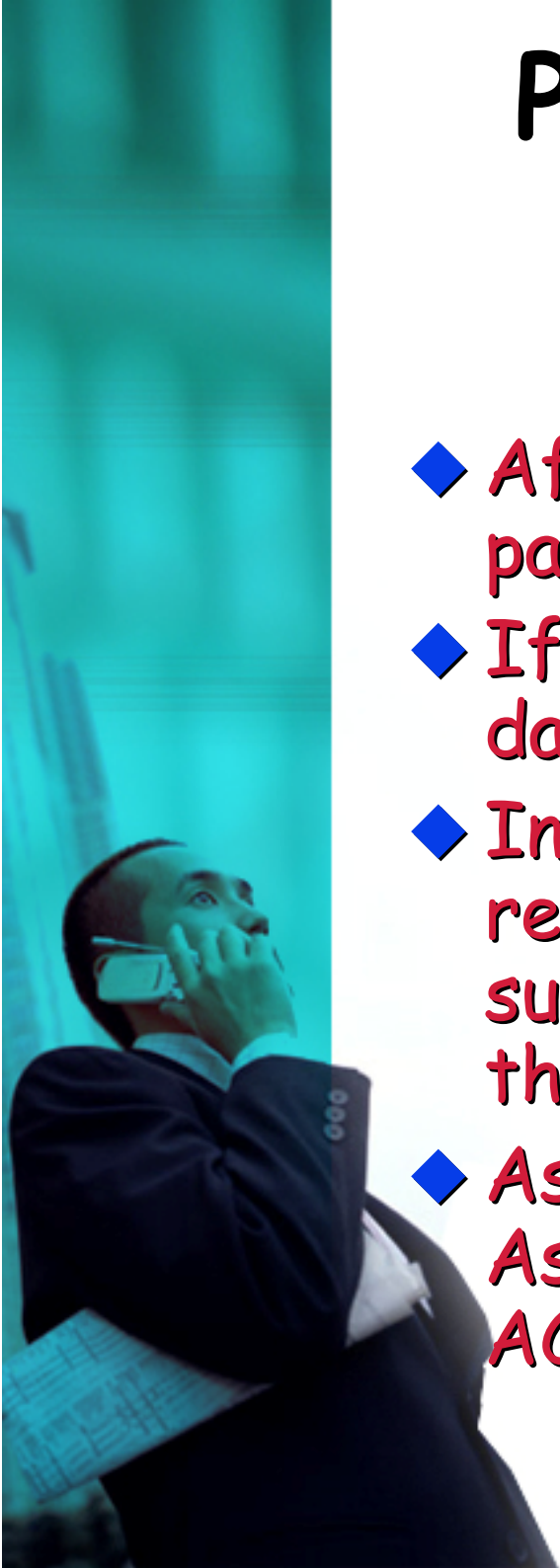
Provisional Assessment Contd.

- ◆ Returns/records should be marked As Provisional Assessed wide order no.....
- ◆ Time limit to complete final assessment 6 months from the date of P A order
- ◆ At assessee request Commissioner can extend further 6 months by writing reasons
- ◆ Chief Commissioner can extend time beyond the period of one year



Provisional Assessment Contd.,

- ◆ After final assessment, difference duty paid/refunded
- ◆ If assessee does not pay duty within 15 days Bond will be enforced
- ◆ Interest Assessee to pay 13% dept on refunds 6%, from the first day of succeeding month amount determined till the date of payment/refund.
- ◆ Assessee cannot do on his own Provisional Assessment only at express order of AC/DC



Best judgment assessment

When B O J Assessment

- ◆ Where assessee fails to provide record /information for the purpose of assessment
- ◆ department is unable to issue demand

Burden on Assessee

- ◆ Burden to provide information for re-determination of duty is on assessee

Assessment done be based on available information. Demand will be issued.



Demands of Central Excise Duty

Sec 11A

- ◆ Excise duty has to be assessed at the time of clearance of goods and paid.
- ◆ It is possible that the duty paid may be lower than the duty actually payable, or
- ◆ Department may erroneously refund duty to assessee.

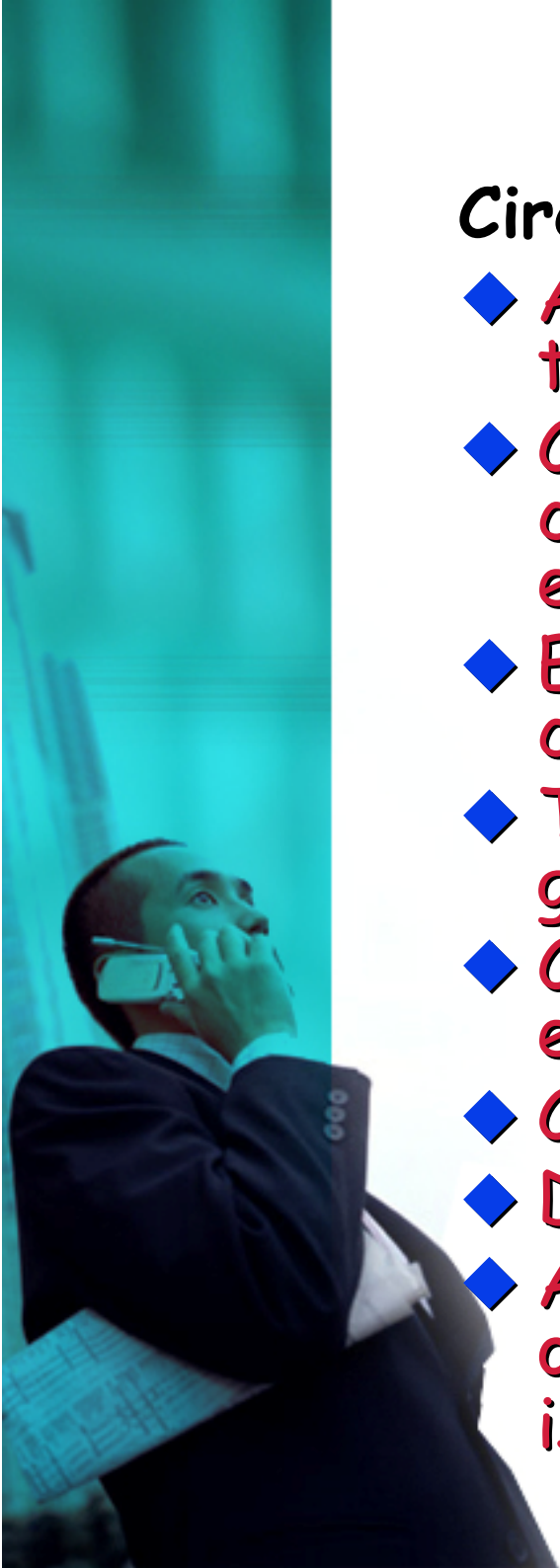
In such cases need for demand of duty will arise



Demand Contd.,

Circumstances resulting demand

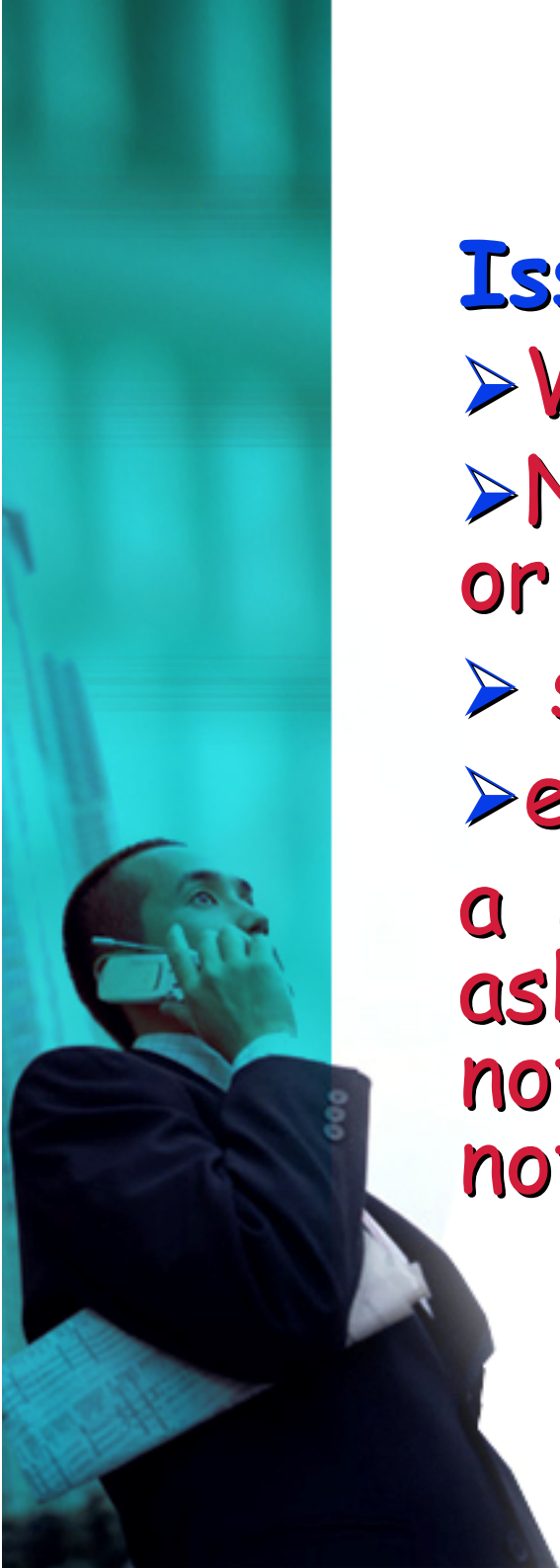
- ◆ Assessable value declared is not acceptable to Excise authorities.
- ◆ Classification and/or exemption notifications claimed by assessee are not acceptable to excise authorities.
- ◆ Excise duty paid at concessional rate though concession was not available.
- ◆ Treating dutiable goods as exempted goods/goods charged to nil rate of duty
- ◆ Clandestine removal, non-accounting of goods etc
- ◆ Clearance in name of dummy units.
- ◆ Duty erroneously refunded.
- ◆ Any other reasons due to which the excise officer is of the opinion that the duty paid is not correct



Demand Contd.,

Issue of Show cause notice

- When duty is not levied or
 - Not paid or has been short levied or
 - short paid or
 - erroneously refunded,
- a notice can be issued by C E O asking the person why he should not pay the amount specified in the notice - sec 11 A(1)



Demand Contd.,

Who can Issue of SCN

- Only CEO can issue
- SCN Contain date, name and address of assessee duty payable along with calculations

Serving of SCN

- By RPAD to Assessee Address
- BY affixing at notable space of Assessee factory
- BY affixing Notice board of Excise office



Time limit to issue SCN

- One year from relevant date (Normal period)
- 5 years from relevant date in case of fraud, collusion, willful misstatement, violation of excise law with intention to evade duty, suppression of facts (Extended period)



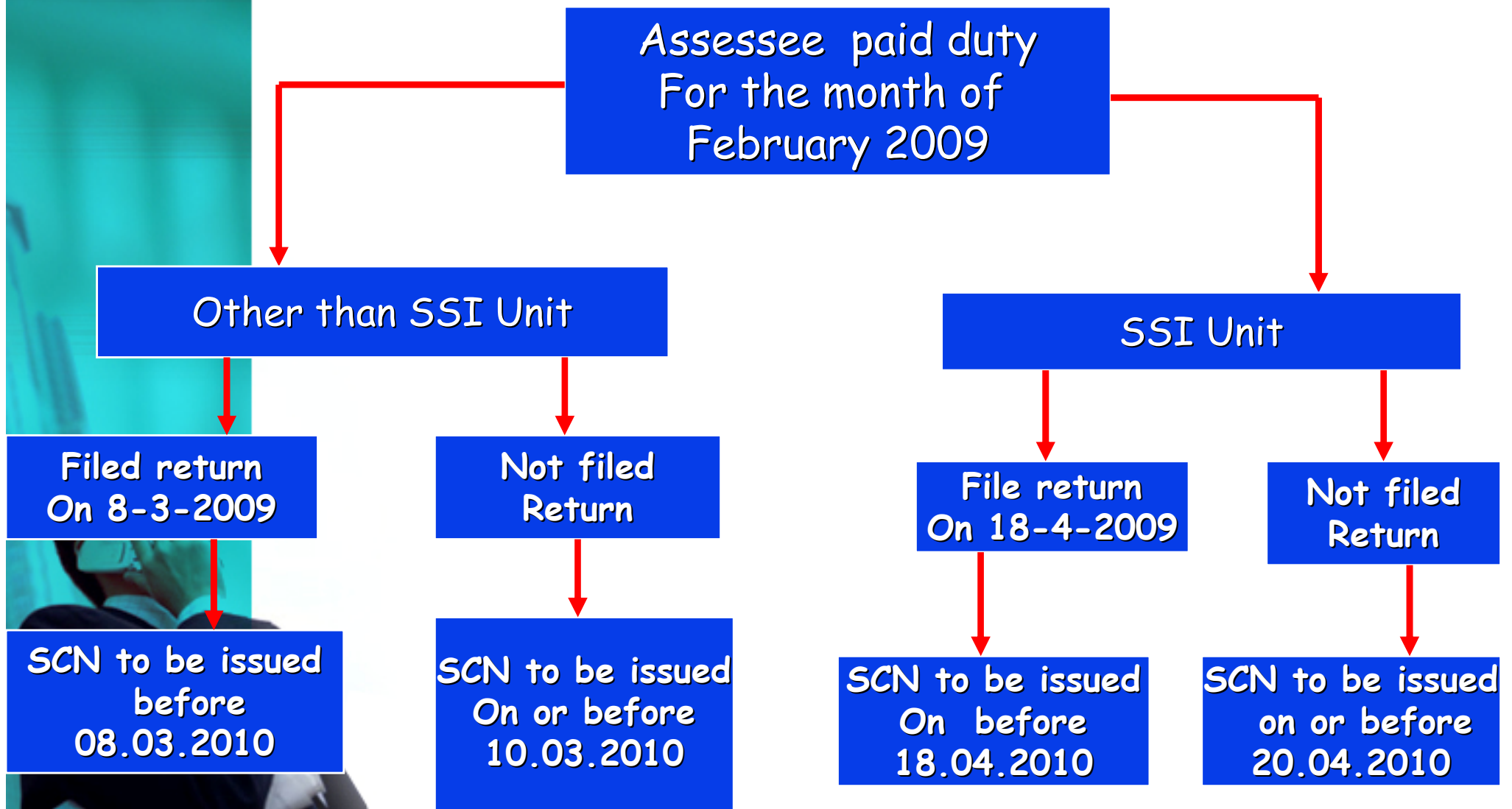
Relevant date means

1	When assessee file return	Date of filling return
2	When assessee does not file returns	Due date of return
3	In case of Provisional assessment	Date of adjustment to final duty
4	In case of erroneous refund	Date of refund
5	In any other case	Date of payment of duty

Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing



Example on time limit



In case of frauds, same date and year substitute 2014 in place of 2010

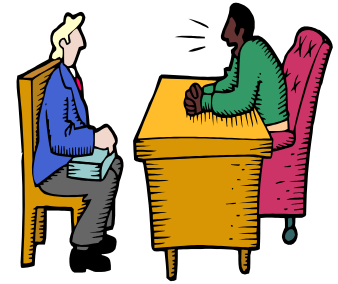
Option to a person to pay duty with penalty after receipt of SCN sec 11A (1A)

- This option available only to assessee involving fraud, collusion mis-statement suppression of facts intention to evade duty etc.,
- Assessee can voluntarily pay duty full or in part as accepted by him with interest and Penalty equal to 25% of duty
- Such payment should be made within 30 days of receipt of SCN
- This is an additional facility given to settle the dispute at an early stage to reduce litigation and also aid in collection of tax dues more expeditiously
- In case of part payment, the remaining amount will be subject to regular proceedings as per the law.



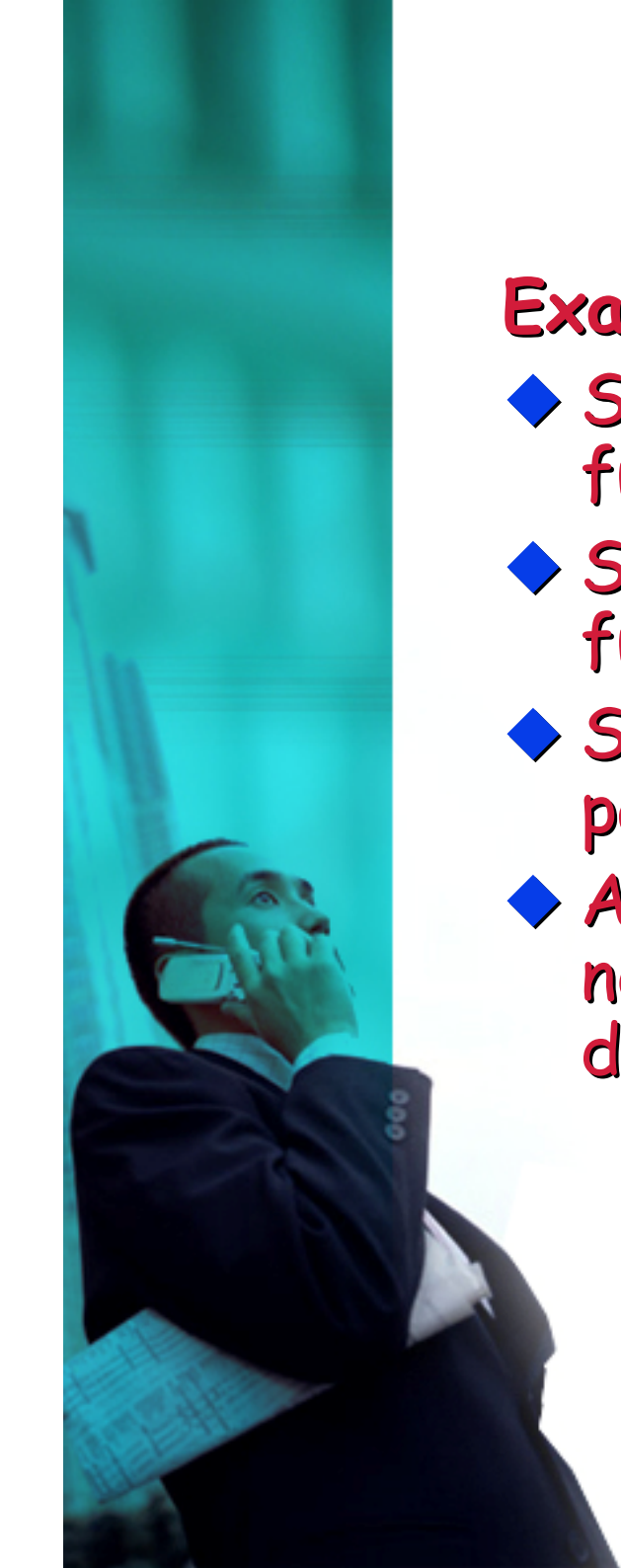
Obligations of CEO after issue of SCN (Adjudication orders of CEO)

sec 11 A (2)



- The CEO has to consider, the representation if any by person whom notice issued
- CEO should determine the duty payable not exceeding the amount specified in notice
- If the duty determined in excess of SCN issued, fresh SCN to be issued for excess amount
- Where it is possible to do so CEO should determine the amount of duty payable within six months or within one year in case of fraud, collusion, intention to evade duty etc., from the date of service of notice.
- The time limit of one year and six months for passing adjudication order are not mandatory,



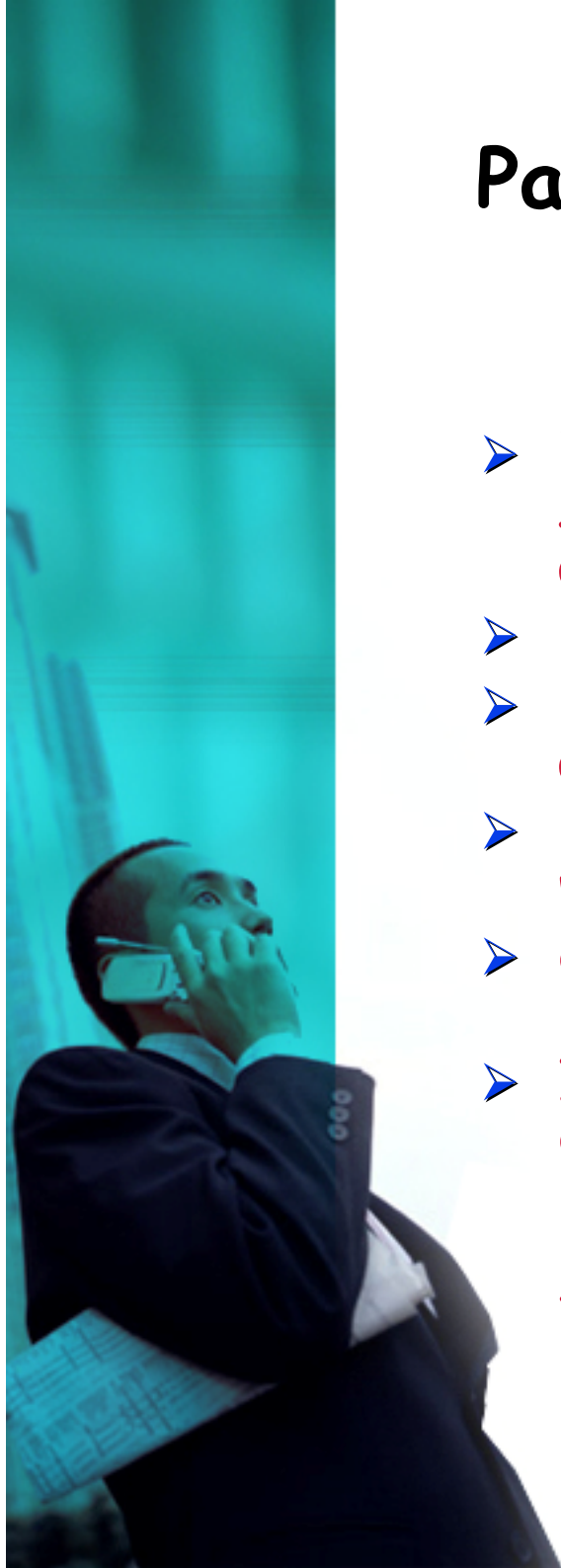


Example:

- ◆ Situation 1- Representation of Assessee fully acceptable- SCN to be dropped
- ◆ Situation 2- Representation of Assessee fully not acceptable-duty to be determined
- ◆ Situation 3- Representation of Assessee partly acceptable and partly not acceptable
- ◆ Acceptable portion SCN to be dropped and non acceptable portion duty to be determined

Payment of duty by a person before receiving SCN Sec 11 (2B)

- This facility available only to person who has not paid short paid duty under normal circumstances. It is not available in case of fraudulent cases
- Assessee can also pay duty before receiving SCN
- Such payment of duty can be on the basis on his own ascertainment or ascertainment by CEO
- Assessee should inform CEO about the payment in writing.
- CEO cannot issue show cause notice after receiving intimation from Assessee.
- If a person does not pay the duty as determined by CEO, CEO can proceed to recover the duty from a person by issue SCN, the time limit of one year will be reckoned from the date of receipt of information from a person



Interest for late payment of duty

- ◆ Sec 11 AB of CEA and 28 of Customs Act
- ◆ Rate- 13% p.a.

Period :

- ◆ from the first day of following month of duty payable till the date of payment
- ◆ Incase of erroneous refund from the date of refund



◆ Example

◆ Situation 1. September month removal-
Due date for payment 5th October

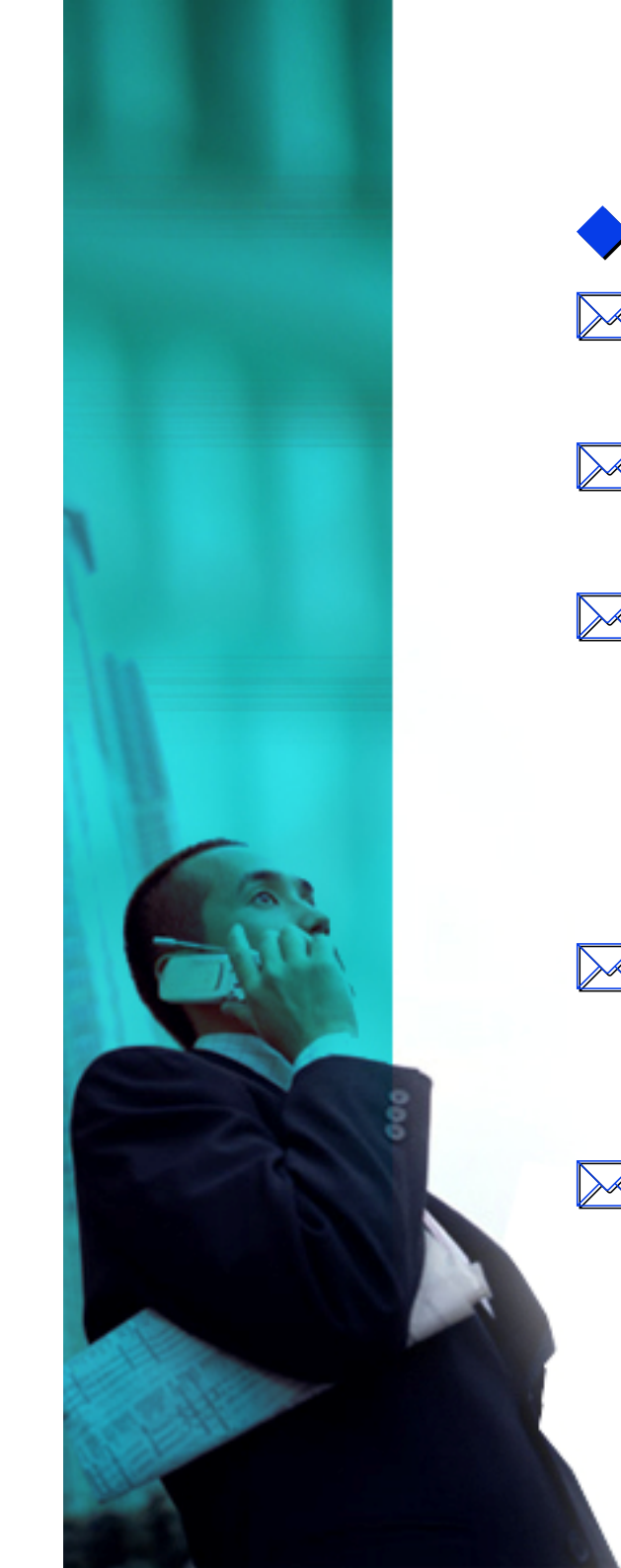
- Interest payable from 1st November

◆ Situation 2. March month removal- Due
date for payment 31st March

◆ - Interest payable from April 1st

◆ Situation 3. Duty erroneously refunded
on April 16th

◆ - Interest payable from April 16th

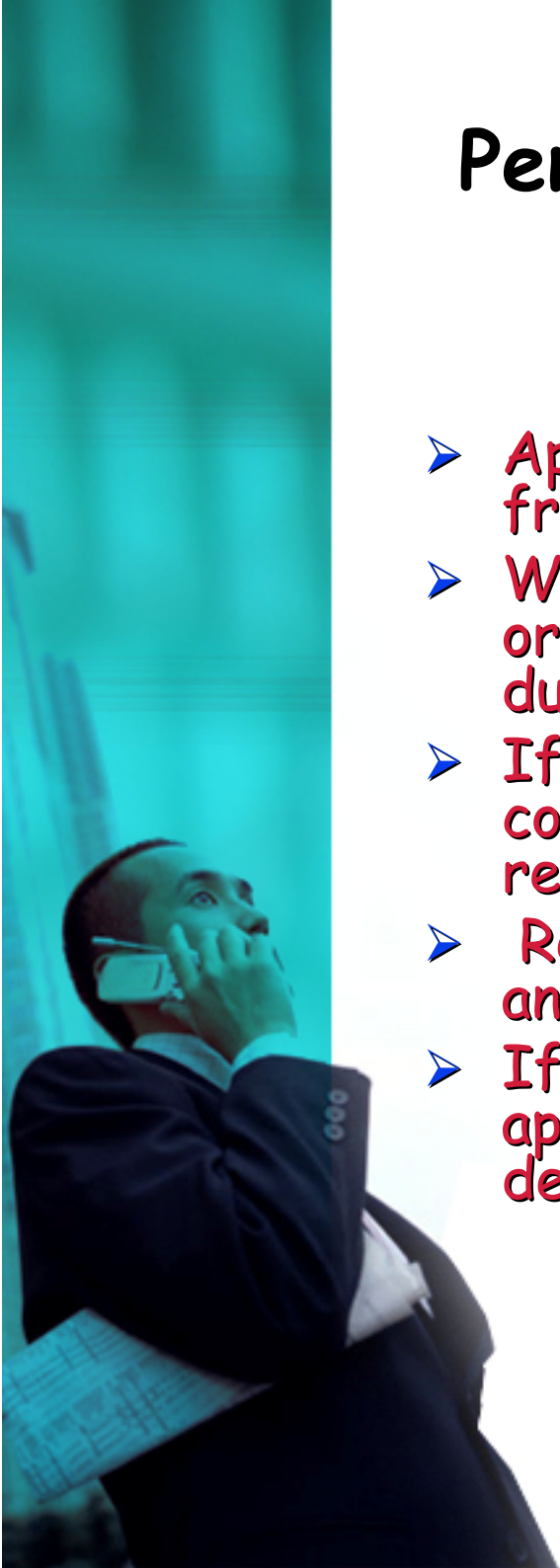


◆ Other points

- ✉ Interest payable even during the period of stay or appeal
- ✉ As per Sec 37 B CBEC has power to issue instructions to Commissioners
- ✉ If a person pays duty voluntarily as per Board instruction within 45 days from the date of issue of board circular, without reserving right to appeal in future, no interest payable.
- ✉ In all other cases interest payable on whole amount including amount already paid
- ✉ Where the duty determined is increased or decreased, interest is payable on the increased or decreased amount.

Penalty for short levy or non levy of duty in certain cases Sec 11AC

- Applicable only in case of demand arising in case of fraudulent cases
- Where the person payable duty as per adjudication order of CEO, person is liable to pay penalty equal to duty so determined.
- If the duty paid with in 30 days from the date of communication of order of CEO penalty will be reduced to 25% of duty.
- Reduction in penalty of 75% is available only if duty and penalty of 25% paid with in 30 days
- If the duty is increased/decreased by the order of appellate authority penalty is also increased or decreased.



Demand based on estimated production

- Applicable in case of clandestine removal,
CE Officer can fix normal production based on
 - installed capacity,
 - raw material utilizations,
 - labour employed,
 - power consumed and
 - such other relevant factors
- CEO will workout production and demand will be issued.



Recovery of Duty- Sec 11

When Assessee fails/ or refuses to pay Duty/any sum due under act

The Case will be referred to recovery cell

Excise recovery cell can recover the duty from any of the following modes

- ❖ By setoff against refund due (duty Interest, drawback etc)
- ❖ Attachment of excisable goods belonging to Assessee
- ❖ As Arrears of Land revenue by issuing certificate (sale of property by auction except cloths and vessels)
- ❖ Recovery from surety in case of Bond
- ❖ Recovery from partner of firm, if firm fails to pay



Recovery of Duty continued.,

- ❖ Recovery from Legal heirs/ Representative from movable immovable property inherited
- ❖ Recovery from successor of business from all assets acquired in succession with the permission of Commissioner.
- ❖ Detain and sale of movable and immovable property of assessee if duty not paid with in 30 days.
- ❖ Chief Commissioner can grant maximum 36 Monthly installments, Mandatory Interest is payable (Hyderabad trade notice)



Payment of Duty Under Protest

Circumstances:

- ◆ If assessee does not agree with classification by Department and he file appeal

Procedure

- ◆ Intimate Ac/DC and Obtain dated acknowledgement.
- ◆ Payment only till appeal decided
- ◆ All Invoices, returns indicate duty paid under protest
- ◆ After appeal disposal- pay duty or refund claim
- ◆ If he does not file appeal, he cannot pay duty under protest after period of appeal is over.

Advantage

- ◆ Time limit for refund one year not applicable



Refund of Duty- Sec 11 B

Assessee can claim refund when he has paid higher duty and interest on duty than required.

Such higher payment may be

- ◆ due to wrong classification,
- ◆ treating exempted goods as dutiable goods etc.,
- ◆ Pays higher duty to clear goods urgently



Refund of Duty continued.,

Who Can Claim Refund

- ◆ Assessee
- ◆ Buyer (FSD/SSD) if he does not pass burden to other

Procedure

- ❖ Application in Form No R along with supporting document as a proof for payment of duty & pre stamped receipt
- ❖ Refund less than Rs. 100 will not be entertained

Time limit to claim refund

- ❖ Within one year from Relevant date



◆ Relevant date means

1 In case of Export Rebate

Export through
aircraft/vessel

Date of leaving
aircraft/Vessel

Export through vehicle

Date of leaving custom
frontier

Export through post

Date of dispatch of article

2 In case of Compound levy scheme

Date of reduction of duty

3 In Case of Exemption u/s 5 A

Date of exemption order

4 In Case of Provisional Assessment

Date of final adjustment of
duty

5 In case of FSD/SSD

Date of Purchase of goods

6 In case of Order of court/Appellate authority

Date of Order

7 In any other case

Date of payment of duty

Refund to assessee/buyer 11 B (2)

Refund of excise duty can be made to assessee /buyer only in following cases:

- ◆ Rebate of duty paid excisable goods exported out of India
- ◆ Rebate of excise on inputs used in manufacture of goods exported out of India (if he has not availed Cenvat credit)
- ◆ Refund of duty paid on inputs (if payable according to any rule or notification)
- ◆ To Manufacturer, if he has not passed on incidence of the duty to another person
- ◆ To Buyer, if he has borne the duty and if he has not passed on incidence of the duty to another person
- ◆ Refund due must be sanctioned within three months from date of application..



Doctrine of Unjust Enrichment

Meaning of Unjust enrichment

- ◆ Duty burden normally pass to consumer
- ◆ In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him.
- ◆ He will get double benefit - One from consumer and again from the Government.
- ◆ At the same time, the duty is illegally collected and hence cannot be retained by Government.
- ◆ In such cases, the refund due should be transferred to a Consumer Welfare Fund instead of paying it to the manufacturer.
- ◆ The fund may be used for activities of protection and benefit of consumers.

Provisions of Unjust enrichment will apply to all types of refund, (Provisional Assessment, Captive consumption Duty paid under protest etc)



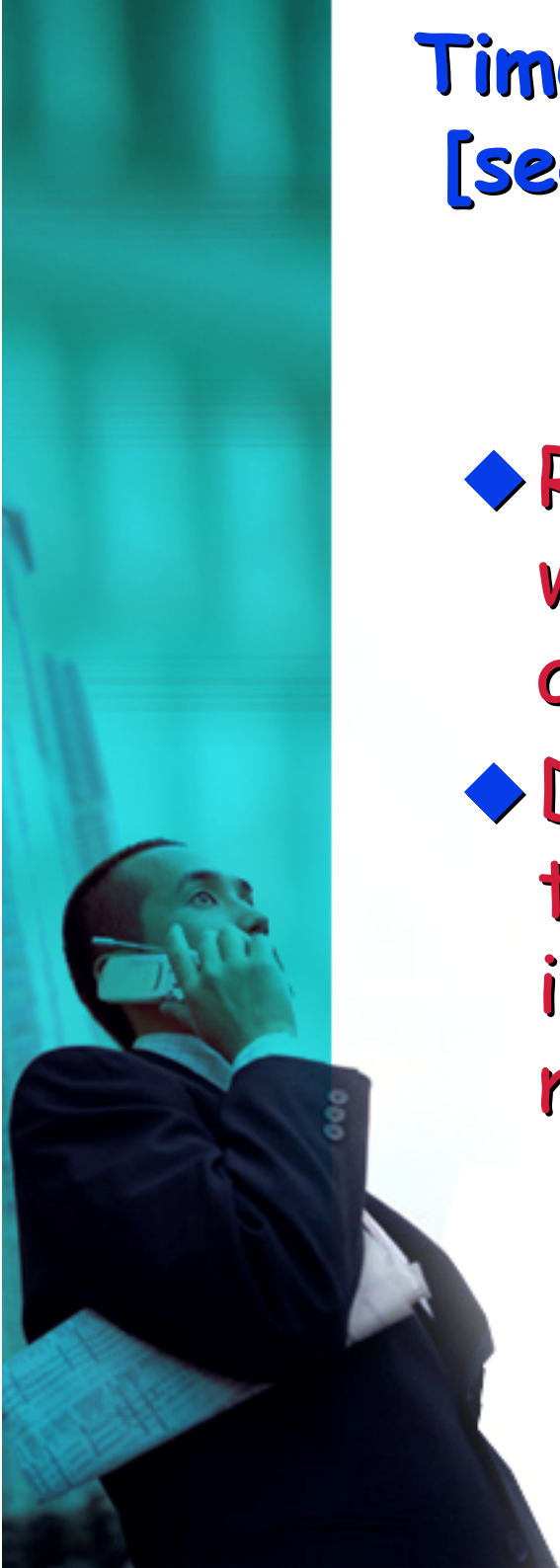
Non Applicability of Doctrine of Unjust enrichment

- ◆ When duty is paid under protest and only lower amount of duty is charged to customer
- ◆ Pre-deposit of duty pending appeal
- ◆ When duty is paid subsequent to clearance
- ◆ When contract is for price inclusive of all duties (cum duty price)
- ◆ When debit note is raised by buyer and amount deducted from bill
- ◆ When credit note issued to buyer
- ◆ Refund of export rebate/incentive.
- ◆ Deposit taken from buyer against possible liability of excise duty. And deposit refunded



Time limit to sanction and pay refund [section 11BB of CEA,/ section 27A of Customs Act

- ◆ Refund due must be sanctioned within three months from date of application.
- ◆ Delay in sanction refund beyond three months interest@ 6% p.a., immediately after expiry of three months till the date of refund



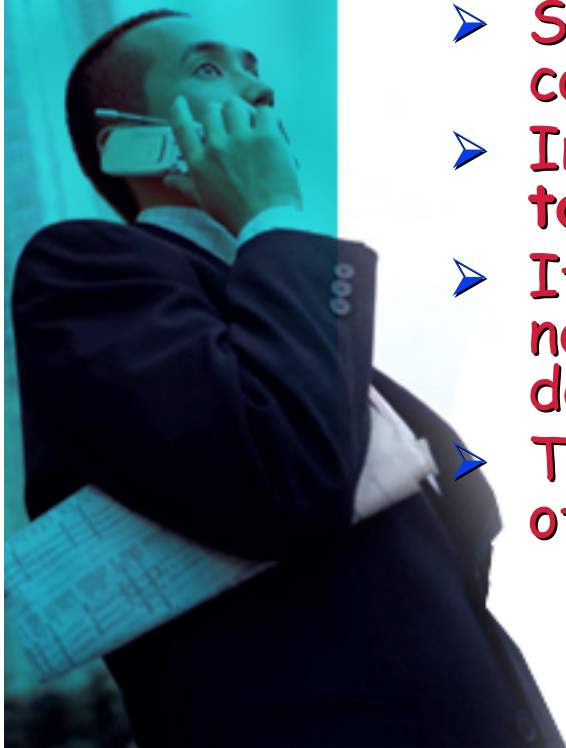
Refund in cases where levy is declared unconstitutional

- ◆ If the levy has been declared as unconstitutional,
- ◆ refund claim can be made by way of suit or a writ petition.
- ◆ Such refund claim will also be subject to provision of unjust enrichment,



Power not to recover duty of excise not levied or short Levied as a result of general practice. Sec 11C/ Sec 28 A of customs

- Applicable in case of misinterpretation or wrong understanding of law both by the manufacturer and CEO
- Such wrong understanding was occurred in assessment resulting short levy of duty
- Wrong understanding was because of Bonafide mistake on either side
- Such mistake should be not because of collusion/fraud cases
- In such cases C G is empowered to make an order not to recover/collect such short levy
- If a manufacturer paid differential duty despite C G notification, he is entitled to refund subject to doctrine of unjust enrichment
- Time limit to claim refund is 6 months from the date of C G Notification



Duties of excise collected from the buyer to be deposited with the Central Government Sec 11D/

section 28B of Customs Act]

- Every person who collected any excess duty than assessed/ determined, paid/ or collected from exempted goods/nil duty goods, he should pay such excess duty to credit of Central Government
- If a person does not pay the duty, CEO can issue SCN
- CEO after representation if any made by person CEO should determine duty
- Delay in payment to credit of Government interest @13% p.a., payable from the first day of succeeding month which duty payable. (sec 11 DD)
- The amount of duty paid by person will be adjusted in the final assessment
- If a person paid excess and if any surplus left after final assessment the excess amount will be refunded subject to doctrine of unjust enrichment



Provisional Attachment of Property in certain cases Sec 11DDA

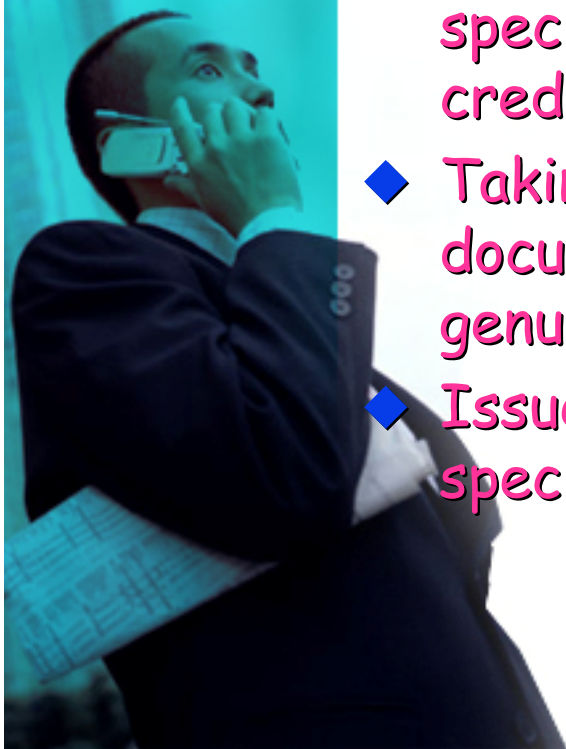
- ◆ CEO can provisionally attach the property of assessee to protect the interest of revenue and if it is necessary to do so
- ◆ Such provisional attachment can be made in the course of proceedings where SCN was issued u/s 11 A and 11D
- ◆ Such provisional attachment can be made with the previous approval of Commissioner of excise by order in writing,
- ◆ Attachment order will be in force for a period of 6 months from the date of order
- ◆ Chief Commissioner has got power to extend time of 6 months, as he think fit.
- ◆ Total extension period by CC will be maximum two years
- ◆ Where the application made by assessee to Settlement Commission the period between from where the application made and order of settlement commission will be excluded in calculating the time limit of 6 months/ two years.



Types of offences which result in provisional attachment

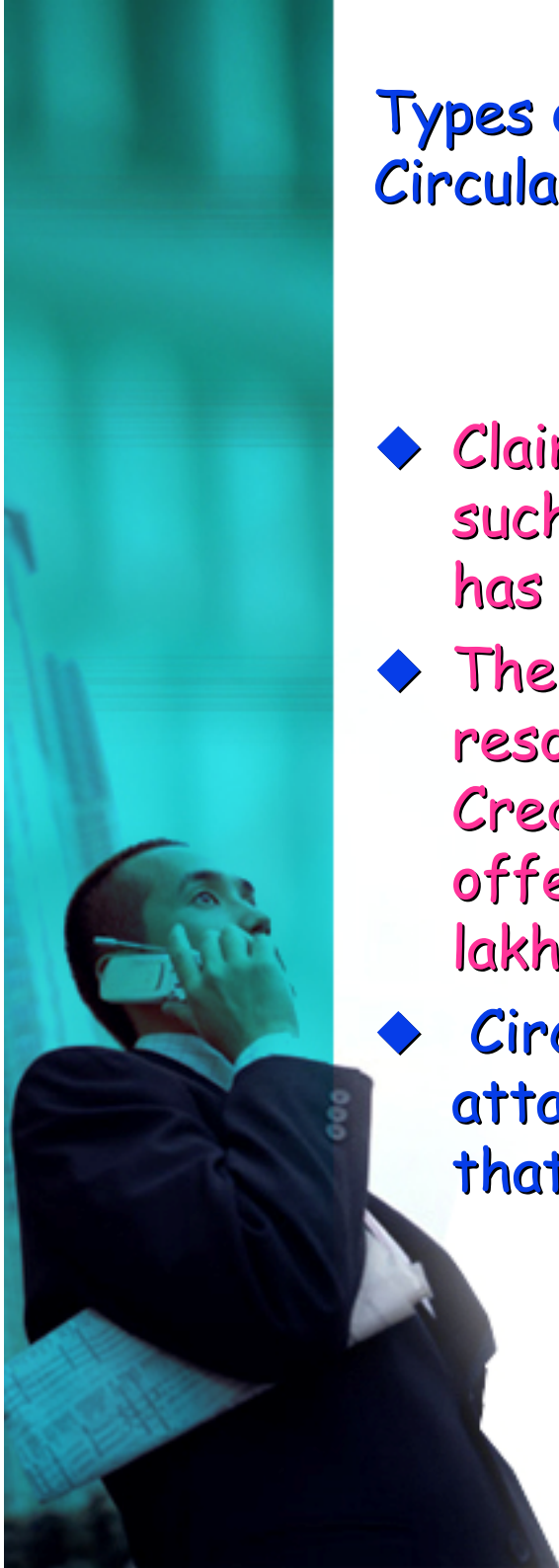
Circular No 874/12/2008 dt 30.06.2008

- ◆ Removal of goods without the cover of an invoice and without payment of duty;
- ◆ Removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
- ◆ Taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;
- ◆ Taking of CENVAT Credit on invoices or other documents which a person has reason to believe as not genuine;
- ◆ Issue of excise duty invoice without delivery of goods specified in the said invoice;



Types of offences which result in provisional attachment Circular No 874/12/2008 dt 30.06.2008 contd.,

- ◆ Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.
- ◆ The provisional attachment of property shall be resorted to only in a case where the duty or CENVAT Credit alleged to be involved in the above specified offences is more than Rs.25 lakhs (Rs. Twenty five lakhs).
- ◆ Circular also explain , the manner in which provisional attachment can be carried out and types of properties that can be attached (May not relevant for exam)



Special audit in certain cases Sec 14 A

Circumstance under which special audit ordered

- ◆ In case of nature and complexity of the case
- ◆ the interest of revenue
- ◆ the value has not been correctly declared or determined

Approval:

- ◆ ordered by AC/DC above rank previous approval of the C C

Areas of Audit: Factory,

- ◆ office, depots, distributors or any other place, as specified by the C E O
- ◆ Audit of the accounts even if the accounts audited under any other law



Special audit contd.,

Period for completion

- ◆ Maximum including extension 180 days.

Who can do the Special audit:

- ◆ Cost accountant, nominated by the C C Excise.

Other Points

- ◆ Audit report will be submitted to C E O.
- ◆ Opportunity to assessee if any material of audit proposed to be utilized



**Special audit in cases where credit of duty
availed utilized is not within the normal**

limits- sec 14 AA

**Circumstance under which special audit
ordered**

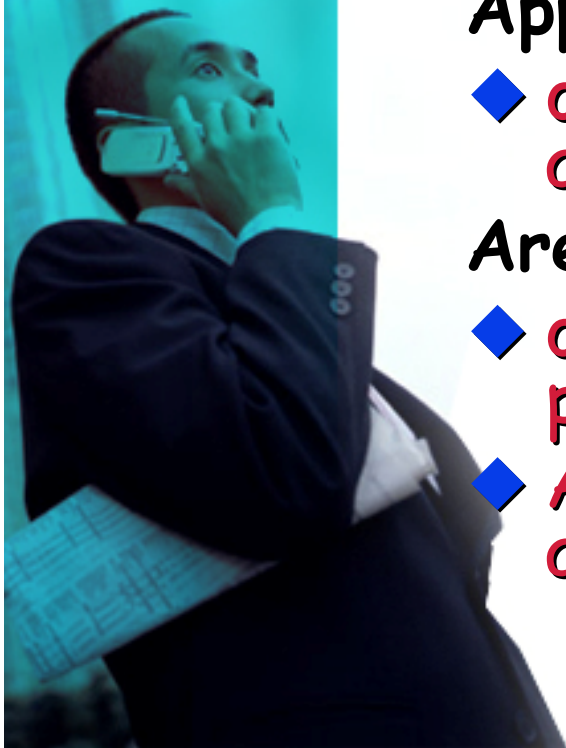
- ◆ **Credit of duty availed /utilized not within limits**
- ◆ **Utilization of credit with fraud, willful misstatement, collusion etc**

Approval:

- ◆ **ordered by AC/DC above rank previous approval of the C C**

Areas of Audit: Factory,

- ◆ **office, depots, distributors or any other place, as specified by the C E O**
- ◆ **Audit of the accounts even if the accounts audited under any other law**



Special audit contd.,

Period for completion

- ◆ Maximum including extension 180 days.

Who can do the Special audit:

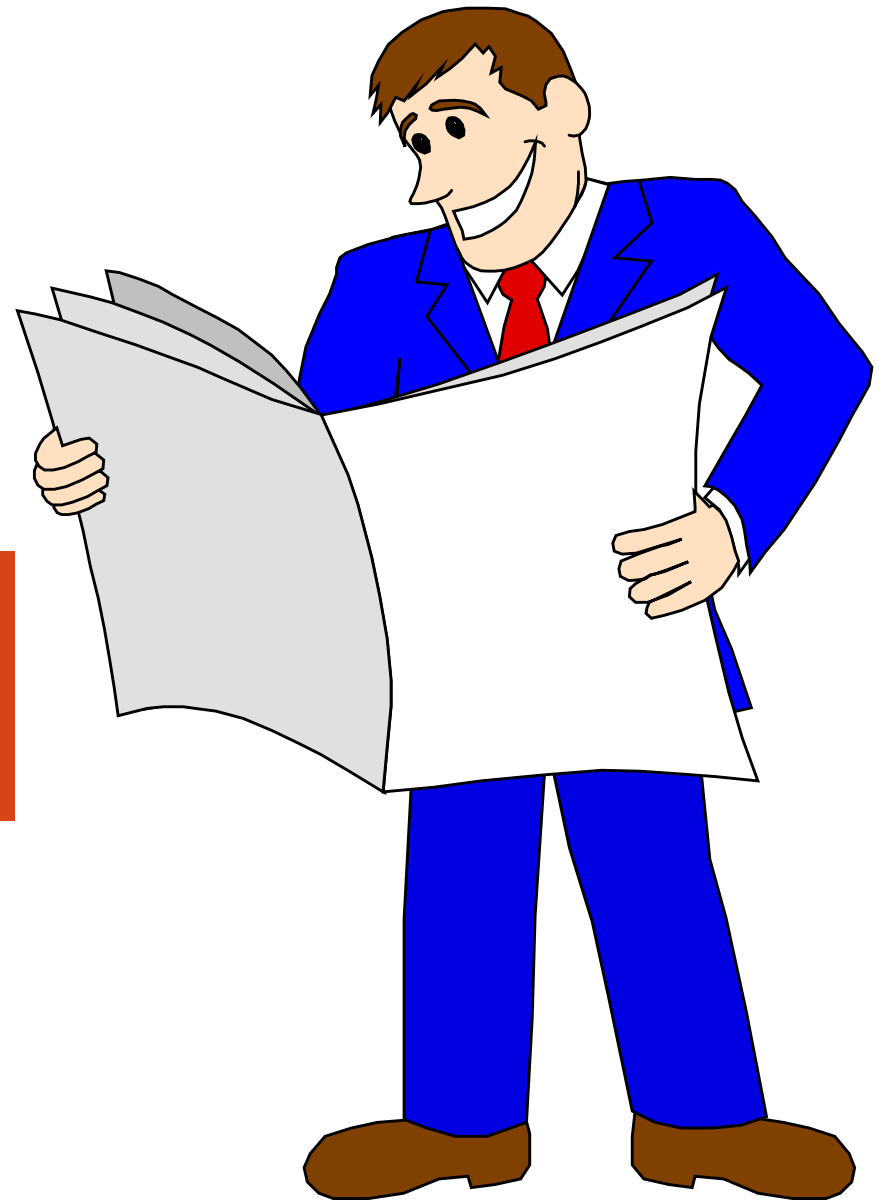
- ◆ Cost accountant, nominated by the C C Excise.

Other Points

- ◆ Audit report will be submitted to C E O.
- ◆ Opportunity to assessee if any material of audit report proposed to be utilized



*End of
Chapter*



CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com

SSI Units-- Notification No 8/2003



The term SSI is not defined in the Central excise Act.

The meaning of SSI can be understood as per notification No. 8/2003 dated 1-3-2003.

- ◆ As per the notification a unit is said to SSI where the **previous financial year turnover** is less than Rs. 400 lakhs



Example

- ◆ Turnover of A Ltd is Rs. 380 lakhs for the previous year 2007-08
- ◆ It is SSI and can avail SSI Benefit in the current year 2008-09



- ◆ All industries irrespective of their investment or number of employees are eligible for concession if its previous turnover is less than Rs.400 lakhs



Concession for SSI-

- ◆ First 150 lakhs turnover No duty
- ◆ Balance turnover Normal duty
- ◆ No cenvat credit on first 150 lakhs,
- ◆ Balance turnover cenvat credit can be availed.



First 150 lakhs means
turnover starting from
1st day of April of
financial year

CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com



Example of first turnover exemption

Month	Turnover(Rs in lakhs)	Cumulative turnover (Rs in lakhs)
April	60	60
May	40	100
June	50	150
July	60	210

Should pay duty on turnover starting from July 1st onwards



SSI Units

Goods Eligible for SSI concession

- ◆ SSI exemption is available only if the goods covered under notification.
- ◆ Many of goods manufactured by SSI are eligible for the concession.

However, some items are not eligible for example goods like

- ◆ Pan masala, matches, watches, some textile products,
- ◆ tobacco products, Automobiles, primary iron and steel etc.
- ◆ Duty payable on goods manufactured for captive consumption, if goods are not eligible for SSI concession



SSI Other Concessions

◆ Other Concessions

- ◆ Quarterly return
- ◆ No registration till crossing 150 Lakhs
- ◆ Duty payment 15th instead of 5th (Except for March)
- ◆ One Consolidated entry in PLA for all day removals
- ◆ SSI premises inspection with Prior Approval of C/CC
- ◆ Audit Once in 2 to 5 years
- ◆ Exemption for payment of duty if goods manufactured under brand name of others in rural area.

Obligation of SSI

- ◆ To file a declaration with Superintendent when turnover crosses 90 lakhs

Clubbing provisions of SSI



While calculating the turnover 150 lakhs and 400 lakhs the following should be clubbed

- ◆ Turnover of all the factories / Units of Assessee
- ◆ Turnover of the all products manufactured by assessee
- ◆ Turnover of factory used by more than one manufacturer
- ◆ Turnover of Clearance in the name of bogus /dummy/sham units
- ◆ Turnover of two units where there is substantial funding between two units.
- ◆ Change of ownership during the previous year



Clubbing provisions contd.,

No Clubbing of Turnover of

- ◆ Turnover of units of relatives
- ◆ Turnover of same management units
- ◆ Units having Separate registration
- ◆ Units having Separate Assessment
- ◆ Units having Common Partners/Common Directors

SSI Other Provisions



- ◆ Availment of concession of duty is not mandatory it is purely optional

Assessee who does not want to avail benefit should intimate.

He should inform in writing to Assistant Commissioner with a copy to Superintendent of Central Excise, the following

- ◆ Name and address of manufacturer
- ◆ Location / locations of factory / factories
- ◆ Description of specified goods produced
- ◆ Date from which option under the SSI exemption notification has been exercised.
- ◆ Aggregate value of clearances of specified goods
- ◆ The second option is available any time during the year,
- ◆ Once option once availed cannot be withdrawn during the financial year.

Reversal of Cenvat Credit on stock when availing benefit subsequent year.



Calculation of turnover for limits

- ◆ Calculations for 150 and 400 lakhs is same except few items .

Exclusions from total turnover

- ◆ Export Turnover Other than exports to Nepal and Bhutan
- ◆ Clearance to SEZ/STP/EHTP/EOU/FTZ/EPZ/United Nations organisation
- ◆ Export under bond through merchant exporter
- ◆ Goods Which are exempt from duty
- ◆ Goods Which are Charged to Nil rate of duty
- ◆ Non Excisable Goods ie which are not included in tariff

Calculation of turnover for limits



Exclusions from total turnover

- ◆ Goods manufactured with other's brand name in urban area (SSI has to pay full duty on these goods)
- ◆ Goods manufactured with other's brand name of packing material (WEF 01.09.2008)
- ◆ Inputs bought by assessee and cleared as such
- ◆ Job work turnover exempt under notification 214/86 ,83/94
- ◆ Goods may be exempt under some other notification, i.e. other than SSI exemption notification Final product of such goods
- ◆ Value of intermediate products manufactured while producing final products which are eligible for SSI exemption
- ◆ Job work of test, repairs, reconditioning, processing etc which is not a manufacture.

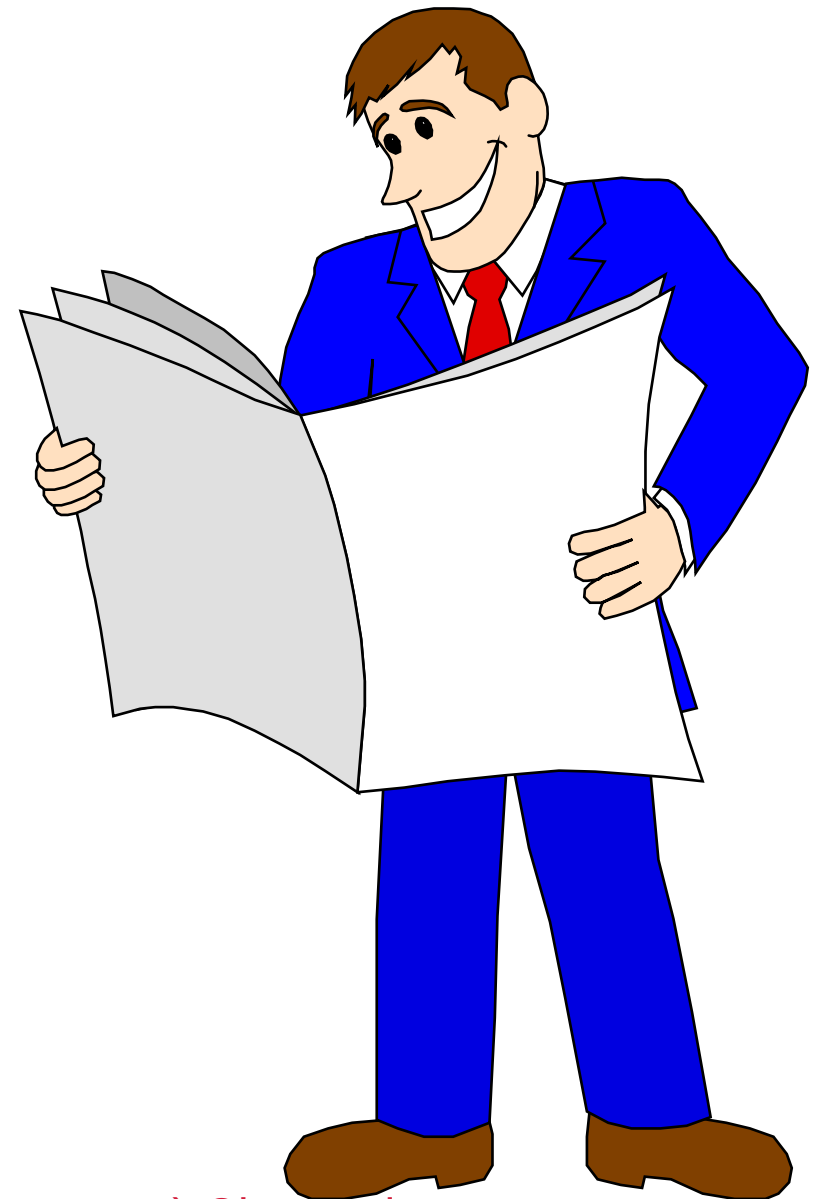
Calculation of turnover for limits

Inclusions

- ◆ Exports to Nepal and Bhutan
- ◆ Goods manufactured with other's brand name in rural area (Includable in for 400 lakhs limits but it will be excludible for 100 lakhs limit ie SSI need not pay duty on these goods)
- ◆ Goods may be exempt under some other notification, i.e. other than SSI exemption notification
Intermediate product of such goods



End of Chapter



CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com



Penalties and Offences

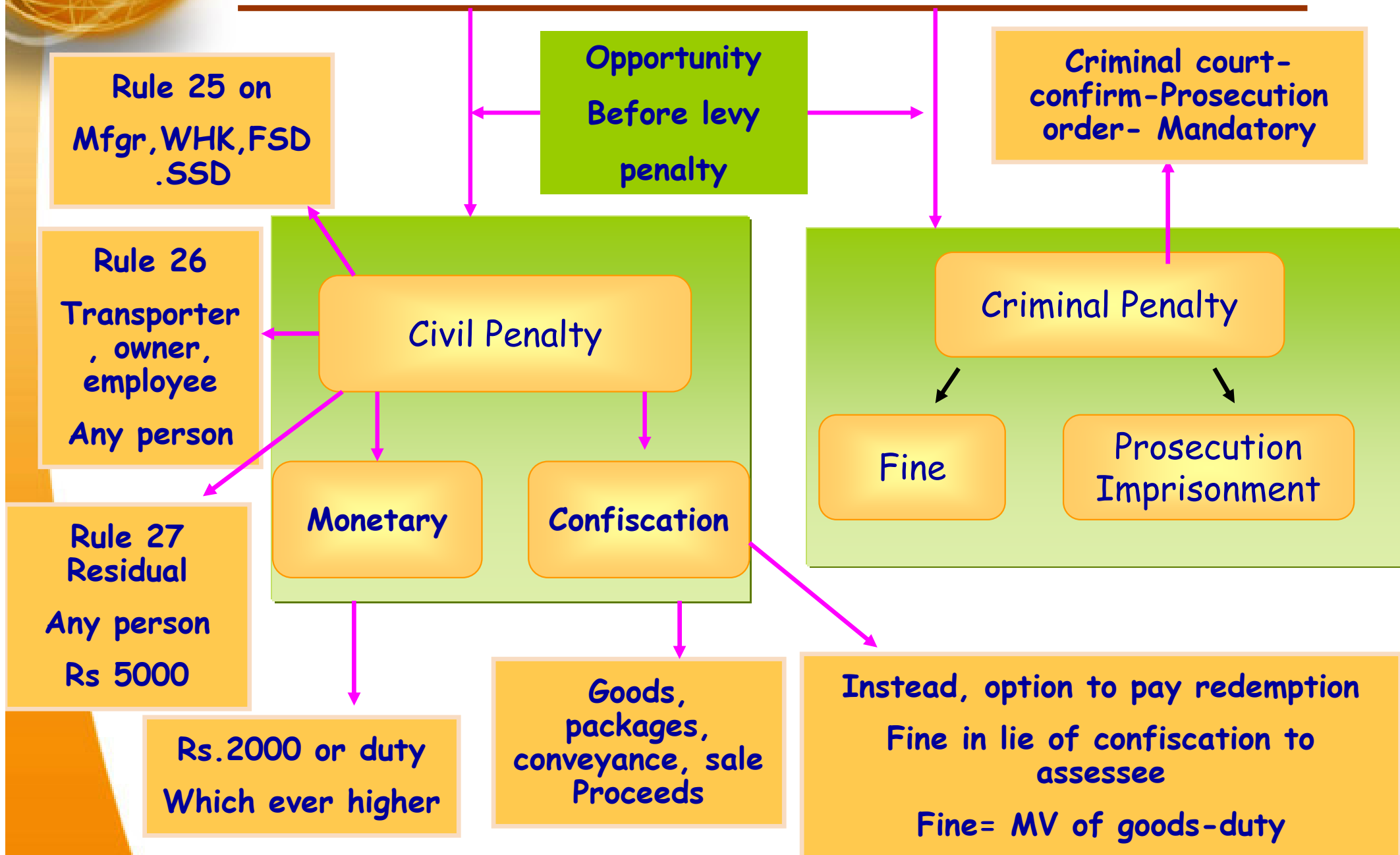
- Offence means violation of law
- Penalty can be levied for offence
- Penalty may be civil penalty or criminal penalty



Penalties and Offences

- CEA provides for penalties and punishments for violation of excise law.
- Penalties can be levied for civil and criminal offence.
- Civil Penalty includes fines, confiscation of goods, etc.,
- Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution.
- both departmental penalties and criminal prosecution for same offence is permissible (Section 34A of CEA and section 127 of Customs Act)

Penalties under excise





Offence under central Excise Rule 25

The following are offences:

- Removing excisable goods in contravention of Excise Rules or notifications issued under the rules.
- Not accounting for excisable goods manufactured, produced or stored
- Engaging in manufacture, production or storage of excisable goods without applying for registration certificate u/s 6 of CE Act
- Contravening any provision of Central Excise Rules or notifications issued under these rules with intention to evade payment of duty.



Penalties imposable under rule 25

- Confiscation of contravening goods
- Penalties up to duty payable on such contravening goods or Rs.2000 whichever is higher.

- 
-
- Penalties can be imposed on manufacturer, warehouse keeper, FSD/SSD

Rules of Natural Justice

- Penalty can be levied only by giving opportunity being heard to assessee



Mandatory penalty in case of fraud, suppression of facts etc.

- Provisions of Rule 25(1) are subject to section 11AC
- Provisions of section 11AC prevail over provisions of rule 25(1).
- The penalty u/s 11 AC is mandatory which is equal to duty evaded - neither more nor less.
- If the duty, interest and penalty are paid within 30 days from communication of order, penalty payable will be reduced to 25%.



Personal penalty on director / partner / employee/ transporter / driver/Any person etc: Rule 26

- Rule 25 is applicable only to manufacturer, producer, warehouse keeper or registered dealer.
- Penalty on others like transporter, person concealing goods etc. can be levied under rule 26
- Any person who acquires possession 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 rules,
- shall be liable to a penalty up to the duty payable on such goods or Rs 2,000 whichever is greater.
- A director or partner or an employee will be personally liable to penalty if he is personally involved in clandestine removal etc.



Penalty on any person Rule 26(ii)

- New penalty effective 2007
- Penalty on any person
- Non issuance of excisable invoice,
- issuance of excise invoice without delivery of goods
- issuance of any documents whereon receiver takes any ineligible benefit of CENVAT or refund.

A penalty on such offence would be Rs.5000 or amount of benefits, whichever is greater.



Residual Penalty – Rule 27

- For breach of excise rules, if no penalty has been prescribed under Act or rules

penalty would be Rs. 5,000 plus
confiscation of goods

CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai

rajdhost@yahoo.com



Confiscation of goods

Section 12 of CEA authorises Central Government to apply provisions of Customs Act These are

- **section 105(1) - Powers of search**
- **section 110 - seizure of goods, documents and things**
- **section 115 - confiscation of conveyances**
- **section 118(a) - confiscation of packages containing goods**
- **section 119 - confiscation of goods for concealing goods**
- **section 120 - confiscation of goods even if form changes**
- **section 121 - confiscation of sale proceeds of contravening goods**
- **section 124 - issue of show cause notice before confiscation of goods**
- **section 142(1)(b) and 142(1)(c)(ii) - Recovery of duty**
- **section 150 - procedure for sale of goods.**



Contravening goods liable to confiscation

- Under rule 25 of CE, following goods are liable to confiscation -
 - Goods removed in contravention of Central Excise rules,
 - Goods not accounted for
 - Goods on which Cenvat credit is wrongfully taken
 - Goods manufactured without registration of the factory.



Confiscation of Conveyance

- Following conveyances are liable to confiscation under section 115(1) of Customs Act, as made applicable to Central Excise:
 - any conveyance from which goods are thrown overboard or destroyed to prevent seizure
 - Conveyance which is required to land or stop for inspection but fails to do so.
 - Conveyance by which warehoused goods are cleared for export, but goods is unloaded without permission.



Confiscation contd.,

Confiscation of packages

- When the goods are liable for confiscation, the packages in which contravening excisable goods are packed, such packages are also liable for confiscation.

Confiscation even form changes

- Contravening goods are liable for confiscation even if there is any change in its form for example mixing with other.

Confiscation of sale proceeds

- If the contravening goods are found to have been sold, sale proceeds of such sale are liable to confiscation



Redemption fine in lieu of confiscation

- Whenever confiscation of goods is ordered, the adjudicating officer *may* give option to owner of goods to pay 'fine' in lieu of confiscation.
- After payment of redemption fine; the goods are returned to the owner of goods.
- Owner/person from whom goods seized has to pay duty charges and redemption fine equal to market price less duty-
Section 125 of Customs Act.

CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai

rajdhos@yahoo.com



Procedure after confiscation Rule 28(1)

- After confiscation, the goods shall vest in Central Government.
- The Central Excise Officer adjudging confiscation shall take and hold possession of things confiscated.
- Every Police Officer is required to assist excise officer in taking and holding such possession. (Parallel provision in Customs section 126.)
- If the assessee does not pay fine in lieu of confiscation, the goods will be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct. [Rule 29].
- If the assessee exercises option to pay fine in lieu of confiscation, he may be asked to pay storage charges as may be determined by adjudicating officer. [Rule 30]



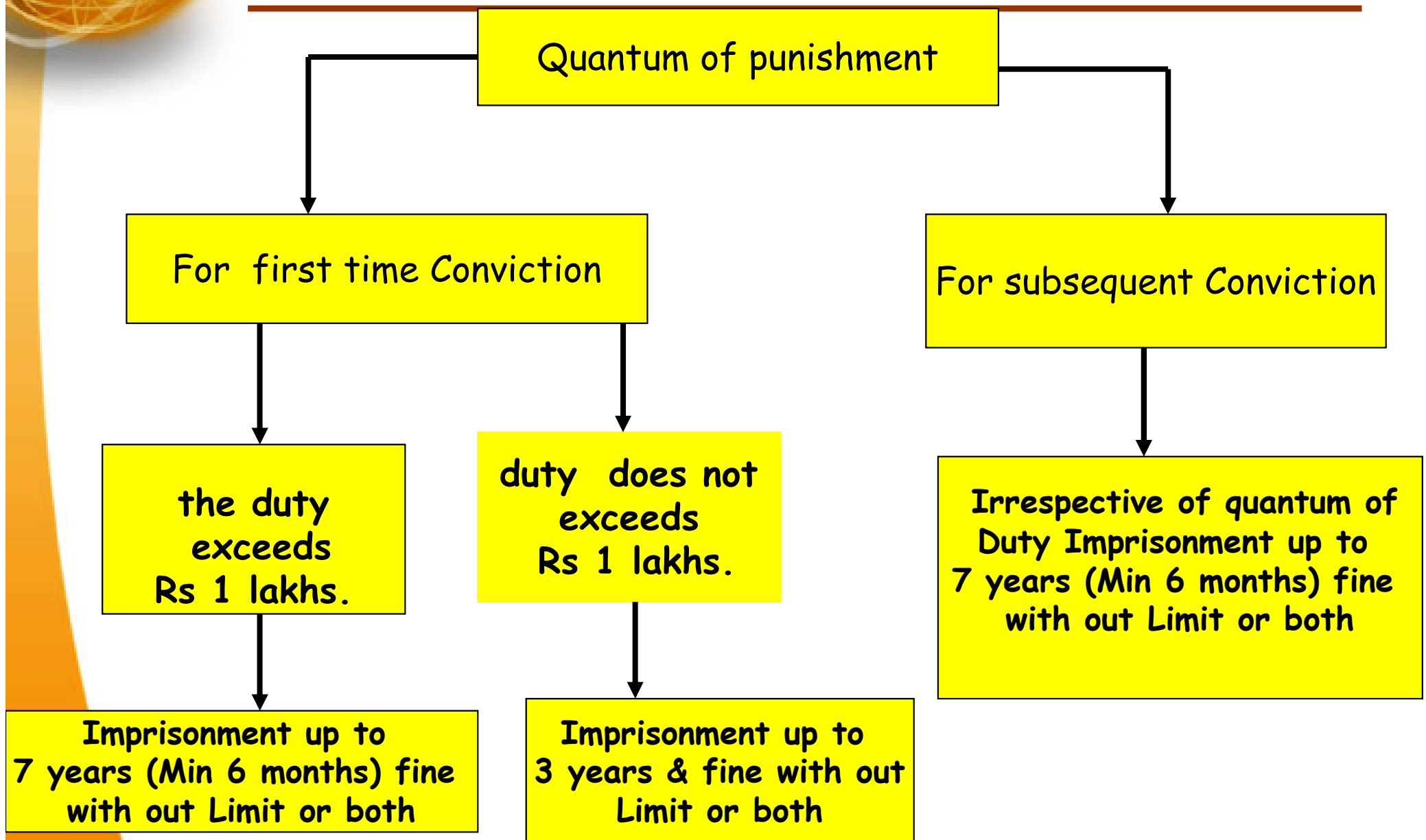
Prosecution for Offences

Section 9 defines following as offences punishable:

When

- 1) Possession of "Tobacco" in excess of prescribed quantity;
- 2) Evading payment of excise duty;
- 3) Removal any excisable goods in contravention of any provisions of CEA / Rules or in anyway concern himself with such removal;
- 4) -- Acquiring possession of, or
 - In anyway concerning himself in Transporting/Depositing/Keeping/Concealing, selling or purchasing, or
 - In any other manner dealing with goods which he knows or has reason to believe are liable to confiscation;
- 5) Contravention of any provisions of Cenvat Credit Rules, 2004;
- 6) Failure to supply the information which he is required to supply under the act or supplying false information;
- 7) Attempting to commit or abetting the commission of, first two categories of offences.

Quantum of punishment





Imprisonment less than 6 months when

If there are special and adequate reasons for granting lesser punishment.

The following are shall not be treated as adequate reasons

- First time offence
- Age of the accused
- Accused is not a principal offender
- Punishment for second time for the same offence under CE Act



Further punishments Sec 9B/sec 135 B-

Court has powers to order for further punishments like revocation of offer of redemption of fine and Publication of names, place of business or residence, nature of contravention etc in news paper.

Burden of proof

- The burden of proof is on Excise department to prove the commitment of offence by a person.
- Similarly accused has to prove that there was no culpable state of mind like intention, knowledge, belief etc.
- Both proofs should be beyond reasonable doubt.



Culpable Mental State - Rebuttable Presumption Sec 9C

- If an act for which accused is charged can constitute offence, only when it was done with Culpable Mental State (Guilty State of Mind), then Court shall presume existence of such culpable mental state on the part of the accused. *(And on that basis, Court shall be entitled to pass prosecution order)*

Defense available to accused::

- *He can prove that he had no such state with respect to act charged as offence.*
- [Prove: Beyond Reasonable Doubt (not that is based on probability)]

relevancy of Statement before Excise Customs Officer [Section 9D of CEA - parallel section 138B of Customs Act].

Statement made and signed before any Central Excise Officer / customs officer of gazette rank is allowed as evidence in the prosecution as follows

- In case of a person who is dead or if he cannot be found or whose presence cannot be obtained without undue delay or expenses, the statement *will be* allowed as evidence
- In case of person who is present before the Court and is examined as witness, Court *may* admit the statement if it is of the opinion that the statement should be admitted in the interest of justice.
- Discretion is given to Court in case of statements made before Excise Officer, only if such person is examined as witness.
- The provisions apply to adjudication and appeal proceedings also.



Presumption regarding Documents seized from a person

- Any document seized from a person shall be *presumed* to be true about the contents therein.
- Signature and other part of hand written document on such seized document, purporting to have been of a person or reasonably assumed to be of that person shall be presumed to be of that person.
- If such person claims that the document is not true or not signed by him, *the burden of proof* is on him



Computer print outs

Statement printed by Computer is admissible if

- Computer print out was produced during the period when the computer was used for storing and processing the information
- The information contained in the statement was regularly supplied to computer during the period
- computer was operating properly during the period or breakdowns were not significant to affect accuracy of documents
- The print out is reproduced in ordinary course of activities

•



Central excise Offence is non-cognizable [Section 9A of CEA]

- As per section 2(c) of Criminal Procedure Code, 'cognizable offence' means an offence for which a police officer may arrest without warrant.
- Offences under section 9 of CEA are non-cognizable.
- For offences under excise action will be taken by police only at the instance of CEO.



Offences by Companies Sec 9AA

- Offence committed by a Company – The person who, at the time of commissioning of offence, was in charge of / responsible for conduct of the business of the company
- [] shall be deemed to be guilty
- [] shall be liable to be proceeded against & punished accordingly.

Defenses available to such person:

- i) He can prove that offence was committed without his knowledge or
- ii) He can prove that he exercised due diligence to prevent the commission of that offence

Offences by Companies Sec 9AA

- Offence committed by a Company – Dept prove that it was committed with the consent/involvement of or it is attributable to neglect on part of
 - - Any Director - Manager - Secretary -
Other Officer of Company

then, such person/s

- shall be deemed to be guilty
- shall be liable to be proceeded against & punished accordingly.



Offences by Companies Sec 9AA

- If offence is committed by Firm, then same principles (as stated above) shall apply – “Director” in relation to firm shall mean a “Partner in Firm”.
- Same principles will also be applicable if offence is committed by Other Association of Individuals / Any Body Corporate. - Expl to Sec 9 AA



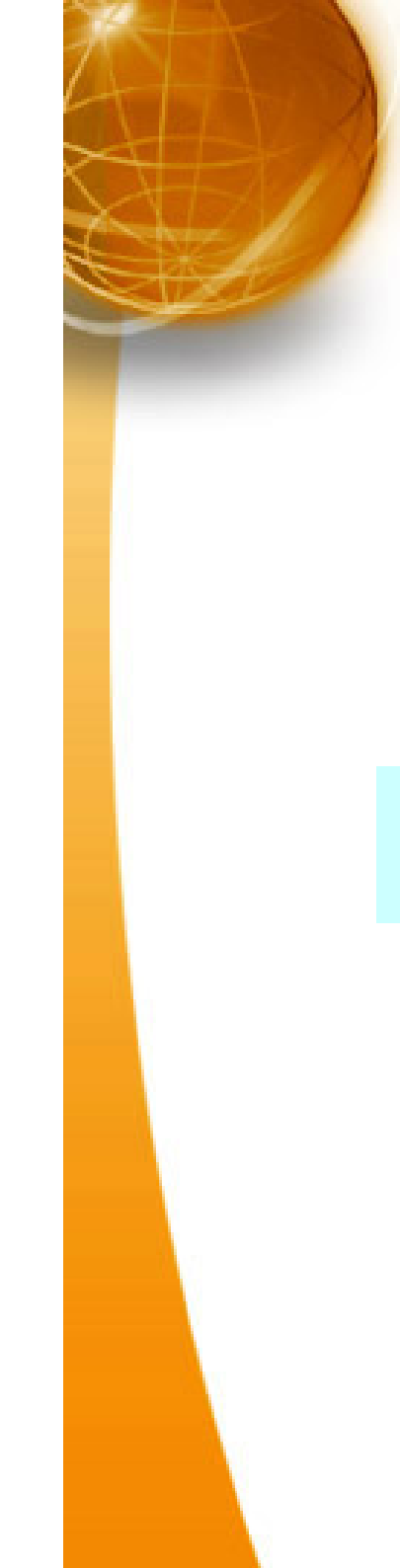
Compounding of Offence Sec 9A(2)

- Any offence committed from sec 3 to Sec 12 of CE Act may, either before or after institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

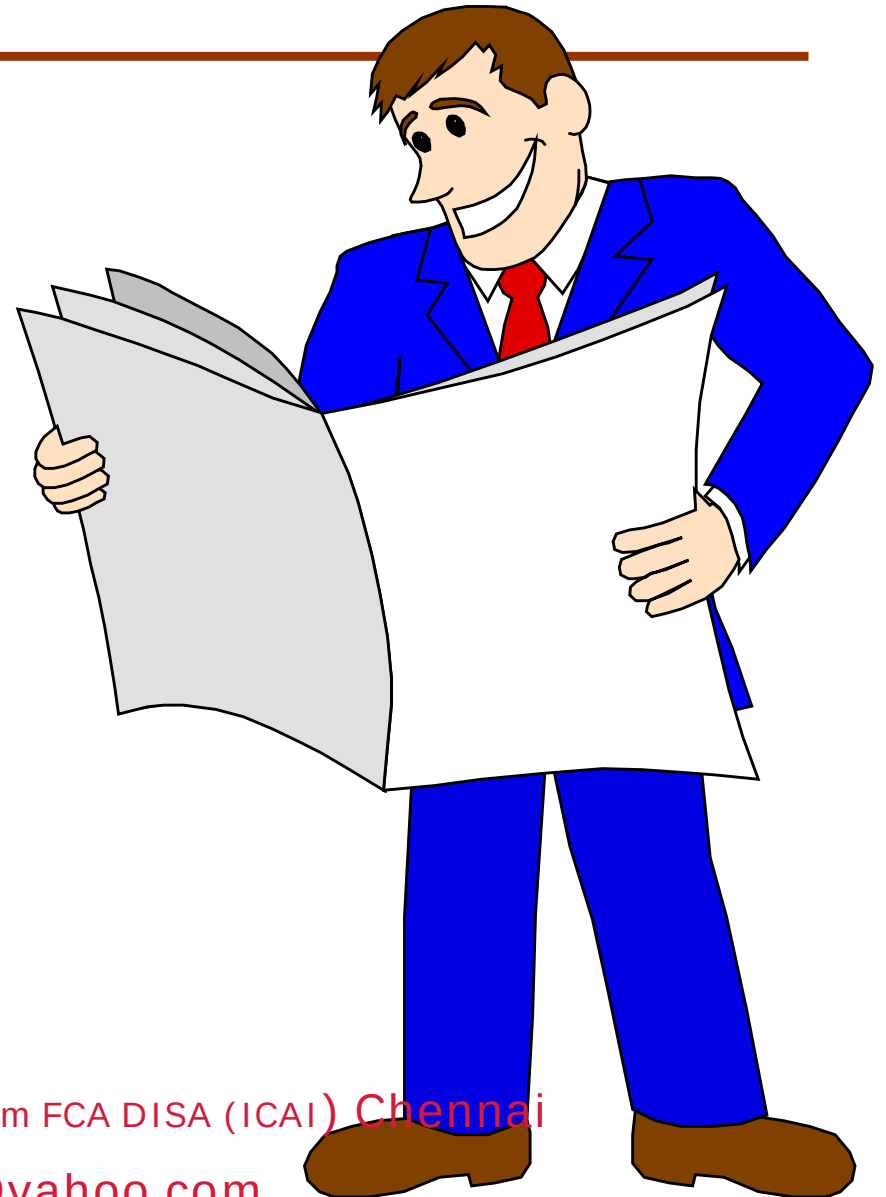


Power of Central Government to Publish Names of persons (new section 37 E)

- This section provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest.
- The Central Government may publish name of any person and any other particulars relating to any proceedings in the public interest. The Government can do the publication in such manner as it thinks fit.
- The publication in respect to penalty shall be only after appeal time limit is expired or appeal is disposed of.
- In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.



End of Chapter



CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com

Appeals and Revision

- Excise Law as well as Customs Act makes elaborate provisions for departmental adjudication, appeals and revision.
- The provisions are almost identical in both the Acts,

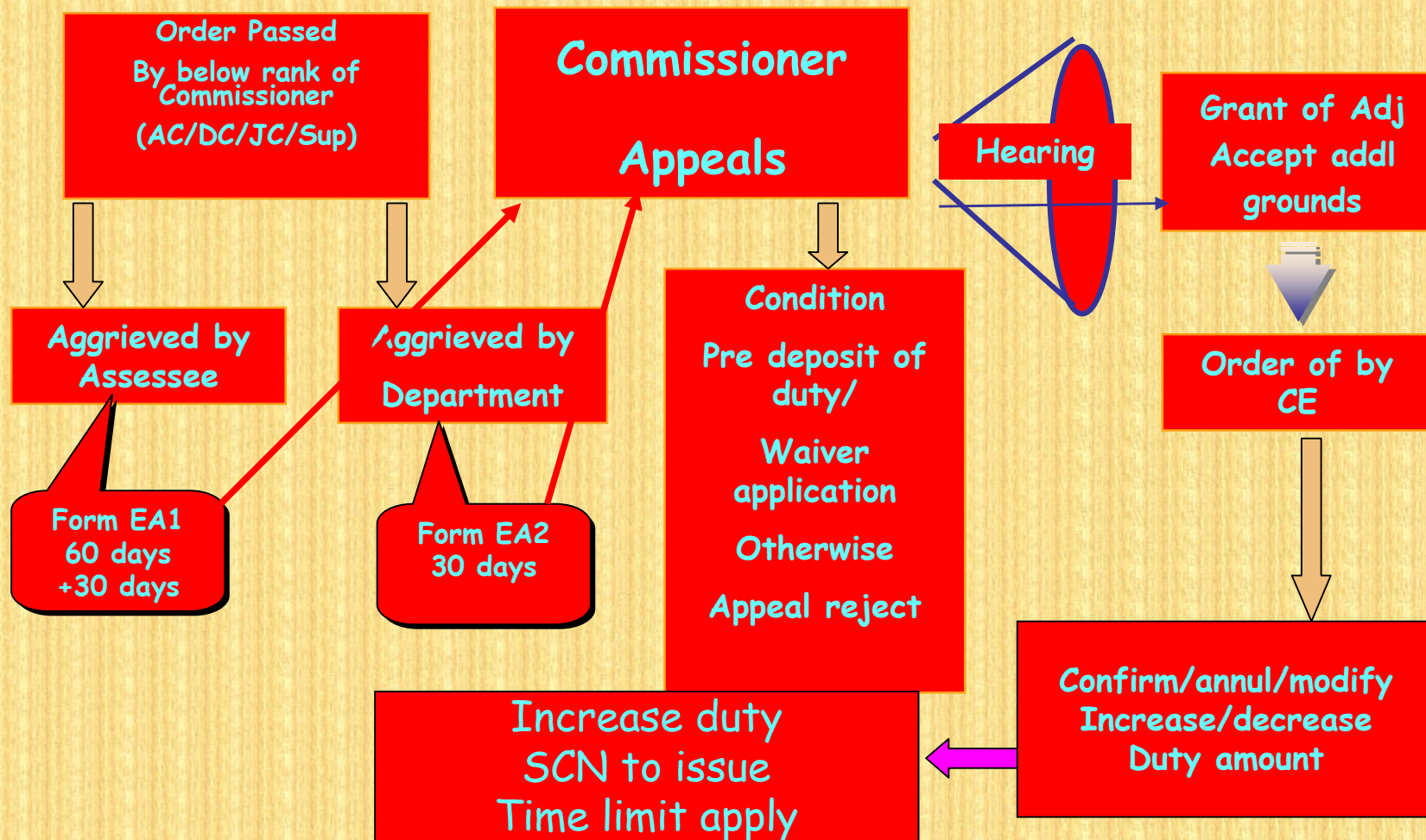
Appellate hierarchy

-

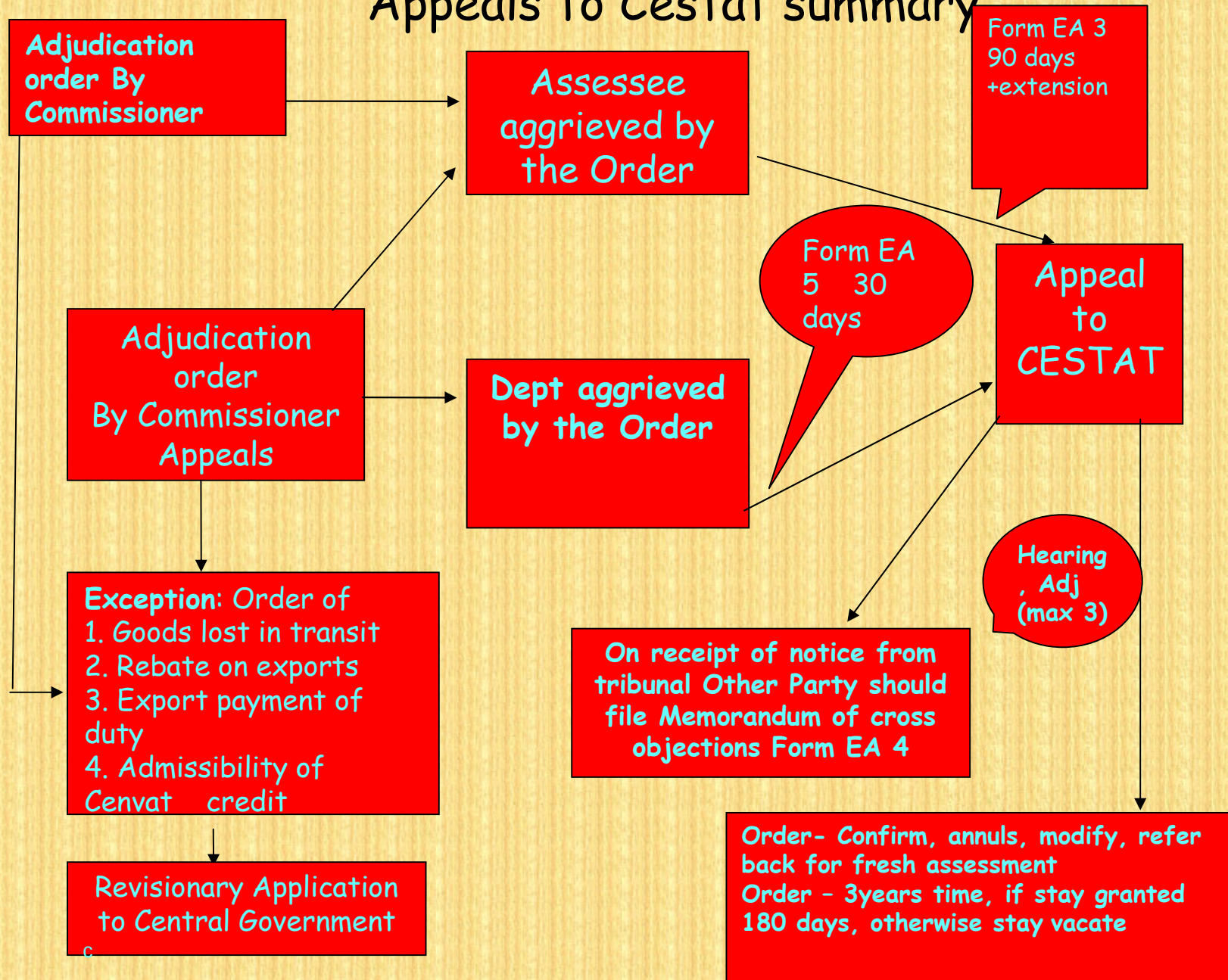
Orders of the Authority	Appeal can be made with
Superintendent, AC/DC, Jt. Commissioner, and additional Commissioner)	Commissioner
Commissioner/Commissioner appeals	Tribunal
Tribunal.	High court
High court	Supreme court

CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com

Appeal to Commissioner Appeals Summary



Appeals to Cestat summary



Appeal to Commissioner (Appeals)

- **Time limit for filing appeal**
 - within 60 days from date of communication of order.
 - Commissioner (Appeals) has powers to extend this period by further 30 days if *sufficient cause* is shown.
- **Form of Appeal to Commissioner (Appeals) -**
 - form No. EA-1 (CA-1 in case of Customs) in duplicates and should be accompanied by a certified copy of the decision or order against which appeal is filed.
- **Affixing Court fee stamps**
 - In case of appeal to Commissioner (Appeals), the memorandum of appeal should bear court fee stamp of 50 Ps, while appeal to CESTAT should bear court fee stamp of Rs 2/-.

Order of Commissioner (Appeals)

Order that can be passed

- The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. [Section 35A(3) of Central Excise Act - parallel section 128(3) of Customs Act]
- The order should be in writing, shall state all points for determination, give decision and reasons for the same [section 35A (4)].
- Copy of the order should be communicated to (i) Appellant (ii) the adjudicating authority against whose order the appeal was filed and (iii) to Commissioner.

Departmental appeal

- Departmental appeal should be in form EA-2 in duplicate (form CA-2 in case of Customs),
- with two copies of decision or order passed by adjudicating authority and a copy of order passed by Commissioner of CE directing the authority to apply to Commissioner (Appeals).
- The time limit for this appeal is one month.

Appeal to Tribunal (CESTAT)

- Tribunal is a *quasi-judicial* body.
- Tribunal hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals).
- Tribunal orders are binding on lower authorities.
- Tribunal is final fact finding authority.
- Finding of facts arrived at by Tribunal cannot be upset by higher authority unless found to be based on no evidence or irrelevant evidence or incorrect principles.
- Tribunal is creature of Statute and cannot traverse beyond provisions of Statute.

Constitution of CESTAT

- Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has been formed under section 129 of Customs Act.
- The Tribunal is empowered to hear appeals in cases of Customs, Excise and Service Tax.
- CESTAT was known as CEGAT upto 14-5-2003].
- The Tribunal consists of Judicial Members and Technical members, which give the Tribunal a balanced overall view of legal background and practical implementation of law.
- **Benches of Tribunal**
- Tribunal sits in benches.
- The benches may be single member bench and larger benches etc.
- Work among various benches will be allotted by President or in his absence senior most Vice President by special or general order

Procedure for Appeal to CESTAT

- Some procedures are prescribed in Central Excise Rules.
- Besides, Tribunal is empowered to regulate its own procedure vide section 129 C(6) of Customs Act, which has been made applicable to Excise Act.
- These procedures must be within the provisions of Act and Rules of Central Excise.
- Under these powers, Tribunal has framed CESTAT (Procedure) Rules, 1982

- **Filing of appeal**

- Appeal / application / cross objection should be filed within prescribed period.
- In case of appeals, the period is three months from date of receipt of order to be appealed against. In case of departmental appeal time limit is one month. Appeal / application / cross objection can be personally presented to Registrar of Tribunal or sent by registered post.

- **Fees payable for appeal**

- a fee must accompany the appeal. No fee is payable if appeal is filed by department.

- **Affixing Court fee stamps**

- Court fee stamp of Rs 2/- is required to be affixed on memorandum of appeal and 50 Ps on copy of order appealed against. However, non-affixing court fee stamp is a curable defect.

Appeal in prescribed form -

- Form No. EA 3 (CA-3 in case of Customs) in quadruplicate with copy of order appealed against also in quadruplicate.
- Departmental appeal should be in form EA-5 (CA-5 in case of Customs) in quadruplicate with equal number of copies of order appealed against and copy of order of CBE&C (Board) directing Commissioner to file appeal to CESTAT.
- One of the copies of order should be a certified copy.
- The appeal can be in triplicate if it is to be heard by a single member bench.
- Further, if appeal is to be heard by larger bench, additional copies have to be supplied

Documents to be attached with Appeal

- Copies of order appealed against - one of the copies must be a certified copy
- Copies of original order appealed against, if appeal to CESTAT is a second appeal - one copy must be a certified copy.

Grounds of Appeal

- Applicant is expected to mention all grounds of appeal in the appeal memorandum. A ground not mentioned in grounds of appeal can be accepted only with permission of Tribunal.

Paper Book

- A Paper Book containing copies of documents, statement of witnesses and other papers on which appellant wants to rely at the hearing of appeal should be filed.

Allocation of work - Appellant and respondent

- In appeal filed by person other than Commissioner, Commissioner shall be respondent, while in case of appeal by Commissioner, other party shall be respondent.

Inherent Powers of Tribunal

Granting stay for recovery of duty

- Tribunal can grant stay for recovery of duty and penalty pending appeal -

Recall of order passed *ex parte*

- Tribunal can recall an order passed *ex parte*, if sufficient cause is shown for absence of the party -

Recall if deposit of duty as ordered paid late

- Tribunal can dismiss appeal if duty is not deposited. If assessee deposits duty though late, Tribunal can recall and restore order of dismissal of appeal.

Recall if glaring mistake

- order was recalled when it was found that a different issue was decided and issue in appeal was not decided in final order at all.

Inherent Powers of Tribunal

Tribunal can quash its own order

- Tribunal can recall and quash its own order in exceptional cases where it is shown that it was obtained by fraud or palpable mistake or was made in utter disregard of statutory provision.

Correct an error so that justice is done

- Tribunal can review on merits where the error is apparent on the face of record. It was held that inadvertent error committed by Tribunal can be corrected.

Tribunal can recall an order

- to correct any error committed by itself so that justice is done to assessee and the revenue. Tribunal can also recall its order if there has been a mistake of the court prejudicing the party.

Limitations of Inherent Powers of Tribunal

Tribunal cannot use its inherent powers when

- Alternate remedy is available
- If the order can be appealed against
- If the power would conflict with any specific provision of law which prohibits such a remedy.

However, it can exercise power if

- Non-exercise of power may result in abuse of the process of court
- Non-exercise of power may result in failure of justice.

Tribunal is Final fact finding authority

- Tribunal is the final fact finding authority. High Court cannot go behind the facts found by Tribunal

Rectification of mistakes

- Tribunal has no powers to review its orders. -. However, Tribunal can pass order for rectifying a mistake apparent from the records, within six months of passing of order. - Section 35C(2) of CEA - similar section 129B(2) of Customs Act. The mistake can be corrected only if it is apparent from records. The error could be of fact or an error in law

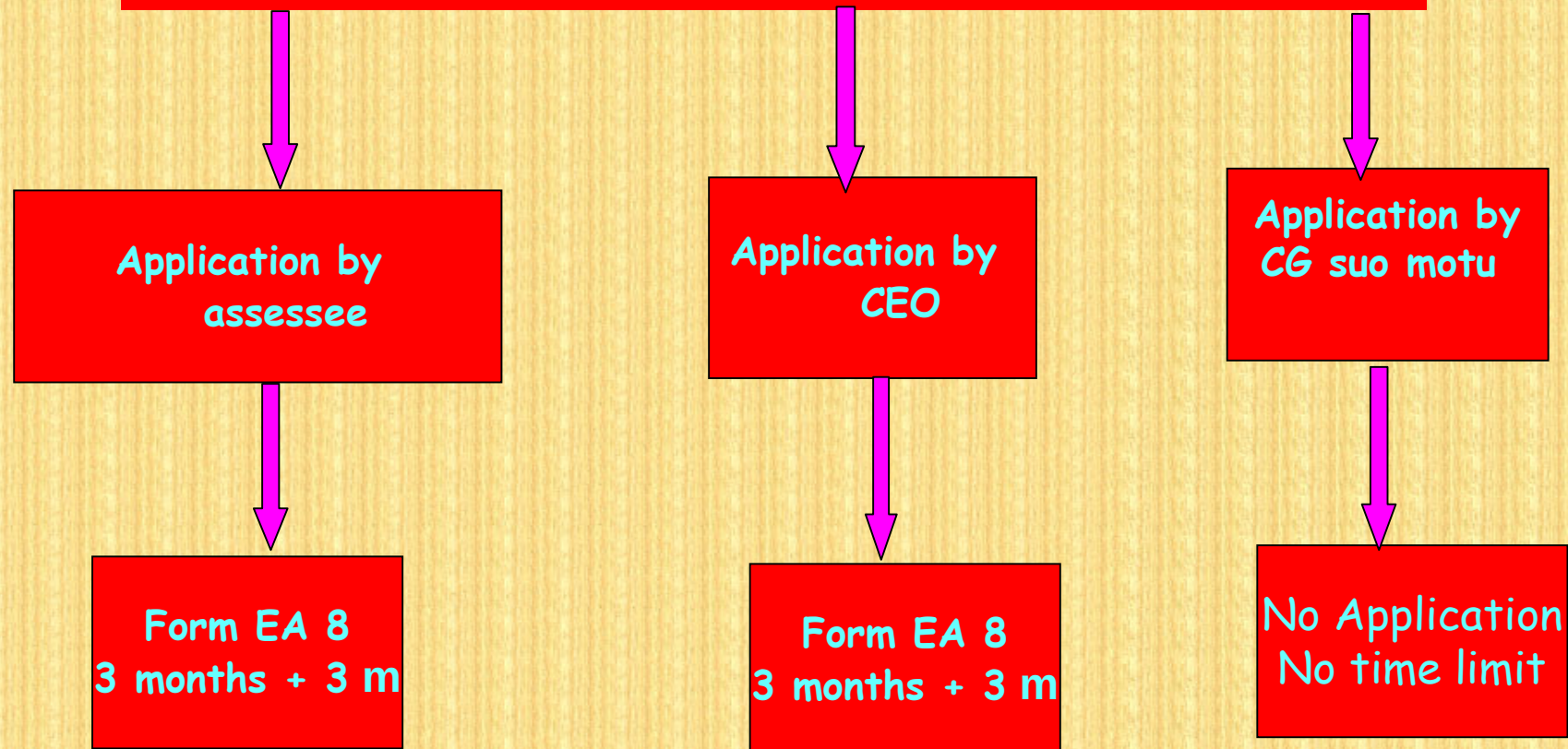
Limitations of Tribunal

- Tribunal has no inherent powers to review its order -
- Tribunal has to presume and accept legal validity of provisions of Central Excise Act and Rules. The Tribunal is created by Statute and cannot challenge validity of any provision of the statute itself. Tribunal cannot declare a provision of Statute as *ultra vires*
- Tribunal is not empowered to issue writs.
- Tribunal is not a Court, though it has been granted various powers. A Tribunal is a Tribunal and though exercises judicial powers; it cannot be equated to a court -
- Tribunal is bound by judgments of High Court (and of course Supreme Court).
- In case of conflicting decisions of High Courts, decision of High Court in which the appellant is situated should be followed.

Revision by Central Government

- In some cases appeal does not lie with CESTAT.
- In such cases, a revision application has to be made with Central Government.
- An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government]

Revision by CG - Sec 35EE
Orders of C/ C (Appeal) ---- relating to 4 Matters
(which are non-appealable before CESTAT) -



Revision by Central Government

Appeal against order of Commissioner or Commissioner (Appeals)

lies with Tribunal against all orders, *except*

- (a) Loss of goods occurring in transit from factory to warehouse or to another factory
- (b) Rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported and
- (c) Goods exported without payment of duty.
- (d) Admissibility of Cenvat Credit

In case of Customs, CESTAT has no jurisdiction in the matters of

- (a) baggage
- (b) payment of duty drawback and Goods short landed in India.
- In these matters, revision application lies with Central Government [section 129DD of Customs Act]

Revision by Central Government

Time limit for filing application -

- Revision application must be filed in 3 months from communication of the order. This period can be further extended by three months on sufficient cause being shown. - .

Revision application by Commissioner -

- Application for revision can also be made by Commissioner of Central Excise, if he is of the opinion that order of Commissioner (Appeals) is not proper. No fees are payable along with such an application. No time limit has been prescribed for filing the application.

No provision of appeal against revision order

- There is no provision of appeal against decision of Central Government in such revision applications (The only remedy is writ petition to High Court or SLP in Supreme Court).

Appeal to High Court

- Tribunal is final fact finding authority.
- However, if there is a substantial question of law arising out of order of Tribunal in cases other than relating to rate of duty and valuation); an appeal can be made to High Court within 180 days.
- In case of question relating to rate of duty and valuation, appeal lies with Supreme Court.
- The appeal can be made either by the Commissioner of CE/Customs or the other party.
- If other party makes the appeal, the application should be accompanied by prescribed fee.
- The memorandum of appeal shall clearly state the substantial question of law involved.
- Appeal to High Court can also be made against interim orders of Tribunal.

Appeal to High Court

Hearing of appeal

- High Court bench of at least two judges will hear the appeal.
- Decision will be by majority.
- If the judges are equally divided on the issue, matter will be referred to third judge.
- He will hear only on the point on which the judges were differing. Majority, including those who had first heard the appeal, will then decide the point.
- Provisions of Code of Civil Procedure relating to High Court will apply in case of such appeals

Appeal to Supreme Court

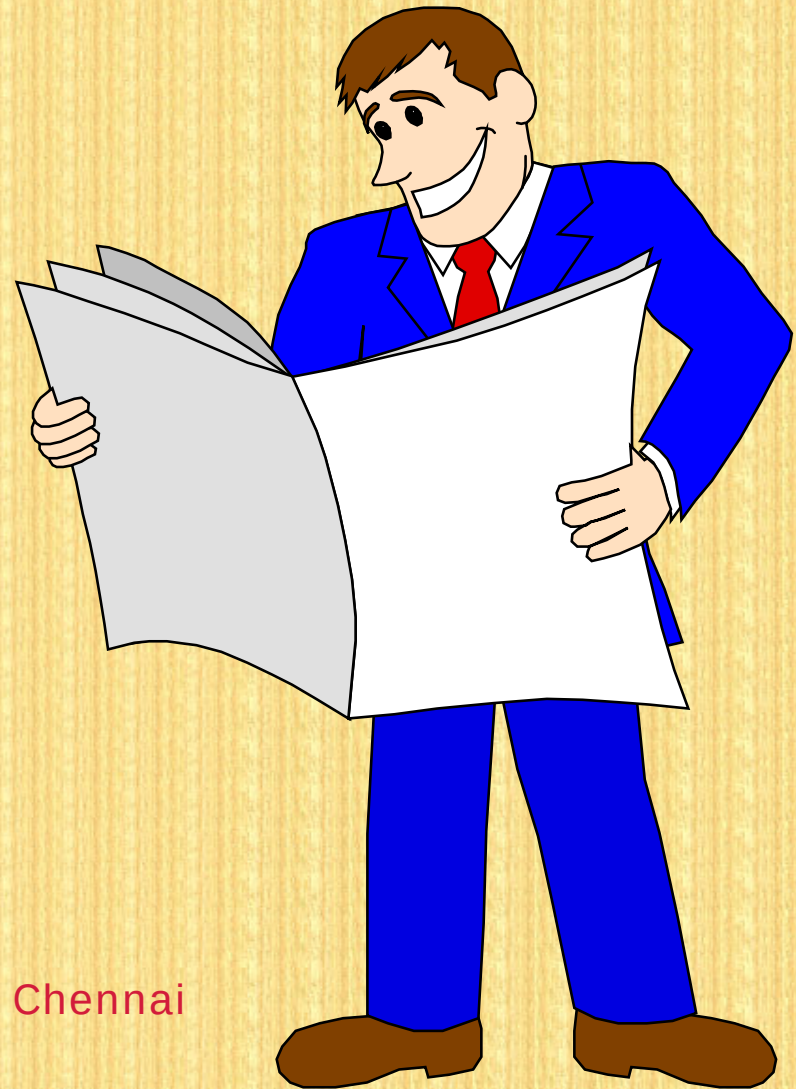
- Appeal to Supreme Court can be made in following cases:
- Judgment of High Court in appeal, if High Court certifies it to be a fit case for appeal to Supreme Court
- Order of Appellate Tribunal where it relates to question relating to rate of duty excise or value for purpose of duty.
- By Special Leave Petition (SLP) under Article 136 of Constitution i.e. permission of Supreme Court, even in cases where High Court does not certify it to be a fit case for appeal to Supreme Court.

Appeal to Supreme Court

- Such appeal should be presented within 60 days from the date the order is communicated.
- Appeal should be with seven extra sets and should recite all relevant facts and set forth objections to the order and ground of appeal.
- An authenticated copy of order appealed against should be attached.
- These are 'civil appeals'. Supreme Court passes orders after hearing appeals.

End of Chapter

CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com



Settlement Commission

Constitution of Settlement Commission

- Settlement Commission has been constituted in June, 1999;
- The Commission consists of Chairman, Vice Chairmen and members,
- functioning under Department of Revenue, Ministry of Finance.
- The Chairman, Vice-Chairmen and other members of the Settlement Commission shall be appointed from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of Customs and Central Excise laws.

The powers and authority of the Settlement Commission will be exercised by a principal Bench sitting at Delhi and such additional Benches established by the Central Government at the places as it considers necessary.

Settlement Commission deals with Customs and Central Excise matters.

The purpose of constitution of settlement commission is for speedy completion of assessments and settlement of pending cases at the earliest.

Conditions to be fulfilled for making an application

- Assessee can make an application to settlement commission only when the case is pending before the adjudicating authority as on the date of application. It can only be approached when original adjudication is pending.
- The assessee shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation, and inapplicability of exemption notification or CENVAT credit
- the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;
- a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- The additional amount of duty accepted by the applicant in his application exceeds Rs. 3 lakhs (before 01.06.2007 Rs.2 lakhs).

- The applicant shall deposit the additional amount of excise duty accepted by him along with interest due under section 11AB at the time of **filing** of applications
- Where any excisable goods, books of account, other documents have been seized the assessee entitled to make an application only after the expiry of 180 days from the date of the seizure.
- In respect of an application filed before 1st June, 2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted duty by 30th June, 2007, failing which the application shall be rejected.
- Once application is made to SC it cannot be withdrawn.

Application to Settlement Commission cannot be made

- Settlement Commission cannot be approached when an appeal is pending before a central excise officer or Central Government.
- It can also not be approached when the matter is remanded for further adjudication.
- In respect of duty arise because of proper records are not maintained in daily stock register or where there is clandestine removal of goods

Procedure of Settlement Commission [New section 32F]

- Assessee should make application giving full disclosures along with all relevant documents should be submitted in quintuplicate in prescribed application along with prescribed fees.
- After receipt of application Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application, asking the reason why application should be allowed
- Settlement commission will take into consideration the explanation provided by the applicant.
- Settlement Commission shall, within a period of 14 days from the date of the notice to assessee shall pass an order for allowing or rejecting the application.

Procedure of Settlement Commission [New section 32F] contd..

- Where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed.
- In case of rejection of application, the proceedings before the Settlement Commission shall abate on the date of rejection.
- A copy of accepting /rejecting order shall be sent by settlement Commission to the applicant and to the Commissioner of Central Excise having jurisdiction.
- Settlement Commission shall, within 7 days from the date of acceptance order shall, call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction.
- The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.

Procedure of Settlement Commission [New section 32F] contd.,

- Where the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.
- Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary and it may direct, the Commissioner (Investigation) within 15 days of the receipt of the report, to make such further enquiry or investigation
- The Commissioner (Investigation) should furnish the report of such enquiry within a period of 90 days from the date of the receipt of the communication from the Settlement Commission.
- Where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order without such report.

Procedure of Settlement Commission [New section 32F] contd.,

- The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and on the matters not covered by application as per report of commissioner.
- An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Central Excise having jurisdiction before passing of such order

Time Limit for passing order for Settlement commission

- In respect of application received before 01.06.2007 order should be passed by 29.02.2008
- In respect of application received on or after 01.06.2007, within 9 months from the last day of the month in which application was made.

Consequences if SC not passed order within Time limit

- The proceedings of SC shall abate.
- The adjudicating authority under which the case is pending shall proceed, as if no application is made to SC.

Order of Settlement Commissions

- The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant
- In case of rejection of application, the order shall contain the reasons there for.
- The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- Where the order of Settlement is void, The Central Excise Officer complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void

Assessee should pay the amount

The duty, interest, fine and penalty payable as per SC order shall be paid by the assessee within 30 days of receipt of a copy of the order by him.

- If the assessee fails to pay the amount which remains unpaid shall be recovered along with interest due thereon, as per sec 11 of CE Act.

Powers of Settlement Commission

- Settlement Commission has all powers of a Central Excise/Customs Officer.
- It can attach property of applicant during pendency of proceedings, in the interest of revenue.
- It can regulate its own procedure and decide places where the bench will sit.
- The proceedings before the Commission are judicial proceedings.
- Every order of settlement is conclusive as to the matters covered by the order.
- Sc has powers to grant immunity from prosecution penalty for an offence under Central excise and Customs Act
- SC has power to withdraw the immunity granted, if the payment is not made as per order,
- SC has power to send back case to CEO if assessee not cooperated during proceedings,

Settlement Commission has no power

- To grant immunity from prosecution or offence under Indian Penal Code any other Central Act
- To grant immunity from payment of interest under Central excise and Customs Act.
- To reopen completed Proceeding of Assessment in respect of cases where application made on or after 01.06.2007.
- To grant extension of time to pay the final sum specified in the settlement order.

Application for settlement permissible only once during the lifetime of the assessee

In respect of application made before 01.06.2007, Assessee cannot make subsequent application when

- Where the settlement commission imposed penalty in the order for concealment of duty liability
- After the Order Assessee convicted an offence under the Excise and customs Act
- When case referred back to CEO due to non co-operation of assessee

- In respect of application made **on or after 01.06.2007** and if application was allowed. assessee cannot make subsequent application to settlement commission.
- He can make subsequent application only in respect of cases involving identical recurring issue, provided his earlier application is pending before the Settlement Commission.

Appeal against order of Settlement Commission

- There is no specific provision for appeal against order of Settlement Commission; however writ can be filed in High Court.

Authority for Advance Ruling

- Advance Ruling' means determination of a question of law or fact specified in the application submitted by applicant regarding the liability to pay duty in relation to activity (of manufacture/production/import/export) proposed to be undertaken by the applicant.
- Advance ruling brings certainty in determining duty/Service tax liability and it helps in avoiding long drawn and expensive litigation at a later date.

Constitution of the Authority

- The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as "the Authority for Advance Rulings for Central Excise, Customs and Service Tax".

The Authority shall consist of the following Members appointed by the Central Government, namely:

- A Chairperson, who is a retired Judge of the Supreme Court/High Court
- An officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;
- An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

Who can apply to the authority

- Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident
- A resident setting up a joint venture in India in collaboration with a non-resident or
- A wholly owned subsidiary Indian company, of which the holding company is a foreign company.

- Joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders are a non-resident having substantial interest in such arrangement.
- Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.
- Application can be made in respect of activity of production or manufacture (in case of Central Excise) or import and export (in case of customs) or liability to pay service tax in relation to service provided or proposed to be provided (in case of service tax). Such person is called 'applicant'

Application for Advance ruling

The application in the question can be in respect of -

- classification of goods (or services in case of service tax)
- applicability of an exemption notification
- principles to determine value of goods for purpose of assessment
- notifications issued in respect of excise duty payable under CEA, CETA or any other law where duty is chargeable in same manner as duty of excise or customs duty payable under Customs Tariff Act or
- Admissibility of Cenvat Credit (service tax credit in respect of service tax).
- Whether a good is excisable goods or not" or "whether the process amounts to manufacture or not?"

Procedure on Receipt of Application

- The application shall be made in quadruplicate and be accompanied by prescribed fees.
- An applicant may withdraw his application within thirty days from the date of the application.
- Authority send a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:
- Authority may admit or reject the application.
- Authority may reject the application if the case is already pending before appellate authority or court. Or court / Tribunal already decided the case.
- If application is admitted, authority will examine the material submitted by applicant or obtained by authority.
- On a request received from the applicant, personal hearing will be entertained.
- Authority will then pronounce its advance ruling within 90 days of receipt of application.
- Copy of the order, signed by members of Authority, will be sent to the party and Commissioner.

Applicability of Advance Ruling

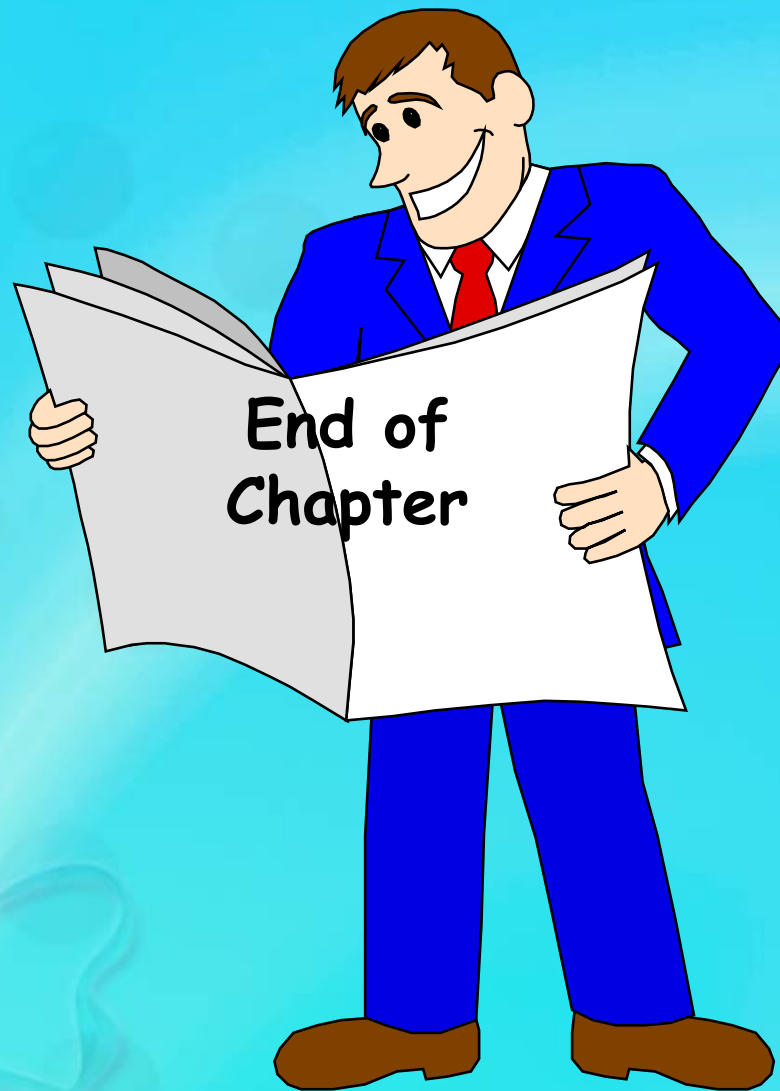
- The advance ruling will be applicable and binding only
- On the applicant who had sought it;
- In respect of any matter referred to it
- On the Commissioner and authorities subordinate to him, in respect of the applicant.
- Advance ruling not applicable if law changes.

Advance ruling to be void in certain circumstances.

- If authority finds that the advance ruling was obtained by fraud or misrepresentation of facts, the authority can declare the ruling as void *ab initio*.

Powers of Authority

- The authority will have powers of discovery and inspection, enforcing attendance of any person and examining him on oath, issuing commissions and compelling production of books.
- The Authority shall be deemed to be 'civil court' and
- every proceeding before authority will be a 'judicial proceeding'.
- Procedures for authority will be determined by Authority itself.



CA N Raja Sekhar M.Com FCA DISA (ICAI) Chennai
rajdhost@yahoo.com