Study Course on Excise & Customs

at 5.30 pm to 7pm on Wednesday, 11th August 2010

J.S Lodha Auditorium, ICAI Bhavan, WIRC, Cuffe Parade, Colaba, Mumbai 400 005

Inquiry, Summons & Adjudications (Central & Customs)

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Broad Scope : Statutory Powers, Statements, reply to Show cause notice, Extended period invocation.

Scope	Under Excise
Inquiry Excise	**Visit and Inspection by Central Excise Officers** As per rule 22(1) of Central Excise Rules, an officer empowered by Commissioner shall have access to any premises registered under CE Rules for purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. All officers in the rank of Inspector and above are authorised for this purpose within their jurisdiction. They should be in uniform *or* carry their identity card. The officers should carry their identity cards and should produce them on demand. The officers can check the records and verify the stock under these rules. Under rule 22(2) of CE Rules; the assessee is required to produce account books and returns (whether maintained under Central Excise rules or otherwise) for scrutiny of excise officers or audit purposes. The inspection can be done of registered premises only.

Visit Book of Excise Officers - Each factory is required to maintain a visit book in prescribed form. Inspector and Superintendent visiting the factory are required to fill in the book. The visit book should contain name and address of the factory, excisable items manufactured, Central Excise Commissionerate, division and range at the top. - [*CBE&C Circular No 3/90-CX dated 24-1-1990*].

Restricted visits to SSI Units - Excise Officers and departmental audit parties can visit small scale industries (SSI units) for specific purposes only and on specific written permission of Assistant / Deputy Commissioner. Assessee can ask for the written permission. The visiting officer should make entry in visit book. However, these restrictions are not applicable to visits of audit parties of Comptroller and Auditor General of India (CAG). This audit, called CERA audit (Central Revenue Audit), is under Constitutional authority and hence obviously, their powers cannot be curtailed by any executive instructions.

<u>Power to Stop conveyance, search and seize</u>

Excise officers are empowered under Rule 23 of Central Excise Rules [earlier rules 199] to search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.

POWER TO DETAIN OR SEIZE THE GOODS – If Central **Excise Officer has reason to believe** that any goods, which are liable to excise duty but no duty is paid thereon or the said goods are removed with intention of evading the duty payable thereon, the Central Excise Officer may detain or seize the goods - Rule 24 of Central Excise Rules [earlier rule 2000].

Vehicle carrying the goods can also be seized under section 110 of Customs Act as made applicable to Excise.

	For a registered premises or for stopping and searching any conveyance in transit, no search warrant is required. - Chapter 17 Part I Para 2.3 of CBE&C's CE Manual, 2001. [*Visit to registered premises is permissible, but search without warrant* ?] **Search, Seizure, Arrest** In every statute, to ensure due compliance of law, preventive and investigative provisions are incorporated. Under the Central Excise Act, 1944 and the Rules made there under for collection of appropriate amount of excise duty the preventive and investigative provisions such as search, seizure, summons, arrest are provided for. Some of these measures are not expressly provided under the Central Excise Act, 1944 but have been adopted from the Customs Act, 1962 vide notification no. 68/63-CE dated 4.5.63 as amended issued under section 12 of the Central Excise Act, 1944. **Search :** An officer not below the rank of Inspector of Central Excise, duly authorized can search at any time, any premises where the officer authorizing search has reason to believe that excisable goods are manufactured or stored in contravention of the provisions of the Act or Rules or where he has reason to believe that the evidence pertaining to manufacturing and removal of such goods is available. The authorization for search is called **Search Authorization or Search Warrant**. For a registered premises or for stopping and searching any conveyance in transit no such warrant is required. The Search warrant is issued by an officer not below the rank of the Assistant Commissioner. The search is to be carried out in the presence of two independent witnesses. **Seizure :** Whenever after the search of the premises or a conveyance, a proper officer of Central Excise, i.e. an officer not below the rank of Inspector forms a reasonable belief that the goods liable to confiscation or the documentary evidence pertaining to evasion of Central Excise duty is available in the premises or conveyance searched, he can seize the goods as well as the documents **under section 110 of the Customs Act, 1962** as made

	applicable to the like matters of Central Excise. The instrumentality of the seizure is a panchanama drawn on the spot in the presence of two independent witnesses. After seizure the proper officer either takes charge of the goods or keeps the offending goods in the custody of any person for safe keeping under a *superdginama.* The law, however, provides for the provisional release of the goods seized, pending the order of adjudication, on execution of a bond and deposition of such security as the officer competent to adjudicate the case may require. If, during search, some goods are found, which are liable for confiscation, the same can be seized by excise officers. Seizure means to take possession of goods in pursuance of demand under legal right. **Seizure is** only taking goods in custody or detention. Ownership of goods remains with the owner even after seizure and he can get the goods released under bond. [**Confiscation** means the goods become property of Central Government – this happens only after adjudication of the case if required]. **List of seized goods must be prepared**. These should be signed by independent witnesses (called *panch* in Hindi. The document prepared after seizure is called *panchanama*). Copy of *panchanama* must be handed over on the spot to the person from whom goods were seized. Seized goods should be carried away and handed over to Police Station. If police station does not have enough space, these can be kept in the custody of officer of Central Excise department. If they are bulky, they can be kept in possession of the owner himself on obtaining guarantee from him regarding safe custody. In such cases, at least 4 samples should be taken. SEIZURE OF HEAVY GOODS - If it is not practicable to seize the goods, Excise Officer can order that the goods should not be removed or dealt with; without previous permission of the officer. DETENTION V/s AND SEIZURE - Detention and seizure are not same. Detained goods can be released without any formality after excise officer is satisfied that goods are not contraband. The release can be made by

	Superintendent also. However, after goods are seized, these can be released only after following proper procedure. Goods can be seized even if they are bulky. In such cases, the seized goods, instead of physically carrying to excise custody, are handed over and kept in the possession of the owner for safe custody, by way of a *'supurta-nama'*. After the goods are seized and handed over to the owner for safe custody, he cannot deal with them without permission of Excise officer. *Provisional Release of seized goods* - Seized goods and vehicles can be released by the Excise Officer on such conditions as he may deem fit. Normally **cash security of about 25%** of value of goods may be asked for release of goods under bond. However, this percentage can vary widely depending on gravity of offence. Bond in form B-4 (earlier B-11) should be executed. Bond amount is to be decided by adjudicating authority, while bond can be accepted by Superintendent. Vehicle can be released by Assistant / Deputy Commissioner while goods can be released on bond by the Adjudicating Authority (depending on value - it may be Assistant / Deputy Commissioner, Additional Commissioner or Commissioner). In case of conveyance, as per departmental instructions, bond amount should be equal to estimated value of vehicle and security deposit will depend on gravity of offence. Department has clarified that u/s 112 of Customs Act, penalty can be heavy. Hence, security deposit should depend upon gravity of the offence. - MF(DR) letter No. 591/40/98-Cus (AS) dated 1-9-1999. ***Return goods within 6 months if no SCN*** - If goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation, asking his representation and giving him opportunity of personal hearing as per section 124 of Customs Act, as made applicable to Central Excise. Vide section 110(2) of Customs Act, as made applicable to excise, if no show cause notice is issued within six months, the goods ***shall*** be returned to person from whose possession they were seized. This period can be further extended by six months on sufficient cause, by Commissioner of Central Excise. Since the words used are 'shall be returned', it has been held that it is a mandatory requirement. The owner of goods gets a civil right and goods must be returned even if no

application is made. In *Overseas Paints Linkers* v. *UOI* 2001(127) ELT 42 (All HC DB), it was held that notice must be given i.e. '**served**'. Mere 'issue' of notice is not enough. If not so served, goods must be returned, unless time is extended by Commissioner.

Search as per Cr P C - Section 18 of CEA provides that all searches and seizures must be as per provisions of Code of Criminal Procedure. Under section 165 of CrPC, the requirements are :

(*a*) The officer making investigation should have **reason to believe** that anything necessary for investigation may be found in a place within his jurisdiction

(*b*) such thing **cannot be otherwise obtained** without undue delay

(*c*) **grounds of such belief should be recorded in writing** and specifying the things for which search is to be made

(*d*) the **officer should search** himself, if practicable or require any officer subordinate to him to make the search

(*e*) authority to subordinate officer should be in writing, specifying the place to be searched and things for which search is to be made

(*f*) copy of record made should be sent to Magistrate and should be furnished to the owner or occupier of the place searched, if he applies for the copies. The copies should be supplied free of cost.

Search before magistrate or gazetted officer - In case of search of a person under Customs Act, Narcotics Act, COFEPOSA etc., if the person requires, the search should be before a gazetted officer or magistrate. However, this provision has not been made applicable to searches under Central Excise Act.

As per section 155 of Criminal Procedure Code, a police officer cannot investigate a non-cognizable case without the order of a Magistrate. A police officer cannot arrest a person who has committed a non cognizable offence, without a warrant, as per section 2(1) of Code of Criminal Procedure.

Power to arrest : An Excise Officer not below the rank of Inspector, to arrest a person whom they have '*reason to believe*' to be liable to be punished under provisions of the Act. Such arrest can be only with prior approval of Commissioner of Central Excise. [section 13]. - - There is no specific provision that the approval letter should be shown to the person being arrested.

In case of customs, as per section 104 of Customs Act, an officer of customs who has been empowered by Commissioner of Customs by general or special order, can arrest a person whom they have '*reason to believe*' to be liable to be punished under section 135 - i.e. for evasion of duty or importing prohibited goods or dealing in goods liable to confiscation.

Forward to magistrate or Police custody - The person arrested has to be forwarded to the Central Excise Officer who is empowered to send the arrested person to a Magistrate. If such empowered excise officer is not available within reasonable distance, the person may be sent to Officer-in-Charge of nearest Police Station [section 19 of CEA]. *Superintendent of CE has been empowered for this purpose*.

Arrested person must be produced before Judicial Magistrate within 24 hours of arrest. Power to grant bail is normally exercised by a Judicial Magistrate.

Granting a 'Bail' - 'Bail' means a 'security for prisoner's appearance, on giving which, he is released pending trial'. If offence is 'bailable', grant of bail is automatic and can be given by police officer in charge of police station or by Court, on bond or without bond. Court has no discretion in the matter. In case of non-bailable offence, accused can be released on bail, unless the offence is punishable with death or imprisonment for life. Court has discretion whether to release on bail or not, in respect of non-bailable offences.

The basic rule is in favour of granting a bail, except where the course of justice being affected, gravity or heinous

	of the crime, risk of nonappearance at the trial, influencing or intimidation of witnesses and similar other possibilities exist - *State of Rajasthan* v. *Balchand* AIR 1977 SC 2447. - similar views in *State of Delhi* v. *Jaspal Singh* AIR 1984 SC 1503. Offences under section 9 of CEA are non-cognizable (BAILABLE) . Viz any assesee [(a) contravenes any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37;] (b) evades the payment of any duty payable under this Act; [(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal; (bbb) acquires possession of, or in any way concerns himself in transporting, 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 this Act or any rule made thereunder;] [(bbbb) contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;] (c) fails to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; (d) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section;

Customs	**Power of Customs Officers** Customs authorities have been given various powers to ensure that there is no evasion of customs duty and duty is correctly recovered. These powers are similar to powers of Central Excise Officers, with suitable modifications to meet requirements of Customs. ***Power of Customs Officers to inspect -*** Under section 106A, Customs officers DULY AUTHORISED BY Commissioner of Customs have powers to **inspect the premises** intimated as storage places of 'notified goods' (goods prone to illegal imports) or 'specified goods'. (goods prone to illegal exports)The inspection can be at any reasonable time, with or without notice. The officers can check the records and inspect the goods. The person in charge of premises is required to produce accounts required to be maintained to furnish to concerned officer such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported. (***Power to stop and inspect conveyance -*** Customs Officer is empowered under section 106 to stop any aircraft, vessel, vehicle or animal and to examine and search the aircraft, vehicle or vessel. He can break open any lock of door or package, if key is withheld. If the vessel, aircraft etc. does not stop or land after giving signals, it may be chased. If it refuses to stop after firing a signal, the vehicle may be fired upon. ***Power of Customs Officers of search -*** Customs Officer can search a person if he has reason to believe that smuggled goods or documents relating thereto are secreted in his person (section 100). Such search may be of (*a*) any person who has landed from or is about to board or is on board of a vessel or foreign going aircraft or vehicle arrived from or going to any place out of India (*b*) any person who has entered or is about to leave India (*c*) any person in Customs area. Before the search, at least two persons should be called to attend and witness the search. Search should be made in presence of them and list of things seized should be signed by the witnesses. [section 102(4)]. A female can be searched only by a female. The person being searched **can request that the search**

	may be carried out before a Gazetted Officer or magistrate. If such requisition is made, search must be carried out before Gazetted Officer of customs or magistrate. [section 102(2)] *Power to search other persons -* The aforesaid powers of search under section 100 are in respect of people in customs area or people entering or leaving India only. However, as per section 101 of Customs Act, an Officer of Customs *empowered by special order of Commissioner of Customs* can search *any person* (anywhere in India), if he has reason to believe that such person is carrying gold, diamonds, manufacture of gold and diamonds or watches, *which are liable to confiscation*. Before the search, two or more persons should be called to attend and witness the search. Search should be made in presence of them and list of things seized should be signed by the witnesses [section 102(4)]. A female can be searched only by a female. *Search of premises -* Under section 105 of Customs Act, Assistant Commissioner of Customs, who has reasons to believe that any goods liable to confiscation or any document or thing relevant to any proceeding under Customs Act are secreted in any place, can authorise any Customs Officer or he may himself search for such goods, documents or things. Search should be as per provisions of Criminal Procedure Code, with the difference that report of search is to be submitted to Commissioner of Customs and not to Magistrate. *Vexatious search/arrest by Customs Officer -* Section 136(2) of Customs Act provides that in case of vexatious search and seizure, the officer is punishable with imprisonment upto six months or fine upto Rs. 1,000 or both. Vexatious search means (*a*) searching a person or place without any 'reason to believe' (*b*) arresting a person without reason to believe. This punishment can be imposed only by Court of Law. *Power of Customs Officers to X ray bodies -* Section 103 provide that if Customs Officer has reasons to believe that any person coming to India or leaving from India or any person in customs area has secreted inside his body any goods liable to confiscation, he can detain and take him to nearest magistrate. If the Magistrate is satisfied that reasonable grounds exist, he can order that body of such person may be X-rayed. The X-rays will be taken by a

	qualified radiologist and his report may be given to Magistrate. If the report indicates that goods are secreted inside, he may direct that suitable action may be taken to take out goods as per advise of qualified doctor. Magistrate can order that the person may be kept in custody. If the person himself admits that the goods are secreted inside his body and voluntarily submits for action to bringing out the goods, X-ray etc. may not be taken. *Seizure by Customs Officers -* If, during search, some goods are found, which are liable for confiscation, the same can be seized by Customs Officers under section 110. Customs Officer is empowered to seize the goods **if he has reasons to believe that such goods are liable to confiscation** under Customs Act. If the goods are bulky, they can be kept in possession of the owner himself and a notice be served on him that he should not remove or in any way deal with the goods. [section 110(1)]. IMMEDIATE SALE OF SEIZED GOODS - Penalty proceedings for confiscating goods etc. may take time and goods may get deteriorated. Hence, under section 110(1A), Central Government can notify some goods considering if the goods are perishable or hazardous or if storage space is not adequate or if the goods depreciate fast. Such goods can be disposed of immediately by Customs Officers as per prescribed procedure. However, before disposing them of, full inventory will be taken and application will be made by Customs Officer to Magistrate to (*a*) certify correctness of inventory (*b*) certify photographs of goods (*c*) take samples and certify its correctness. *The goods covered under this section are* : liquor, photographic films, medicines, battery cells, wrist watches, zip fasteners, electronic goods, Gold, Silver, dangerous drugs, vehicles, man-made yarn and fabrics, bulk drugs, red sanders, sandal wood and chemicals. However if finally, after adjudication, goods are not confiscated or if the confiscation is set side by appellate authority, sale proceeds must be refunded to owner of goods. SEIZURE OF DOCUMENTS - Documents relevant to proceedings under the Customs Act can also be seized. The person from whom the documents are seized is entitled to take extracts therefrom in presence of Customs Officer [section 110(4)].

	Return of seized goods within 6 months if no SCN - If seized goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation, asking his representation and giving him opportunity of personal hearing as per section 124 of Customs Act. If no show cause notice is **served** within six months of seizure, the goods shall be returned to person from whose possession they were seized [section 110(2)]. This aspect has been discussed under Central Excise. *Other Powers of Customs Officers -* Other powers of Customs Officers are summarised below. POWER TO CALL FOR DOCUMENTS AND EXAMINE A PERSON - Under section 107, an officer of Customs, empowered by Commissioner, during enquiry in connection with **smuggled goods**, may require any person to produce relevant document or examine any person acquainted with the facts of the case. POWER TO SUMMONS - Section 108 of Customs Act authorises all Gazetted Officers of customs to issue summons to any person for inquiry in connection with smuggling of goods. He can require a person to produce any document relevant to enquiry and examine a person. The provisions are similar to section 14 of CEA. These are discussed seperately. POWER TO ARREST - In case of customs, as per section 104 of Customs Act, an officer of customs who has been empowered by Commissioner of Customs by general or special order, can arrest a person whom they have '*reason to believe*' to be liable to be punished under section 135 - i.e. for evasion of duty or importing prohibited goods or dealing in goods liable to confiscation, smuggling, fraud in claiming drawback, other export benefits, etc . - - The officer can arrest him and inform him ground of arrest. The person arrested has to be forwarded to the Magistrate. He must be produced before a magistrate within 24 hours. The magistrate may grant the bail on bond or refuse the bail and remand him to custody. Bail is at the total discretion of Court. Offences under Customs Act are non-cognizable. The Customs Officer can himself release the person on bail. - - These are discussed under 'Central Excise' above.

Summons under Excise & customs provisions – powers of officers & rights of assessee	To investigate evasion of taxes, the officers are empowered to summon a person or documents and record statements. It is legally expected that the officer summoning a person will record voluntary statement of the person summoned. Nevertheless, over-zealous officers do violate this legal mandate and attempt to threat or coerce or induce the person summoned into stating the things they wish. Although legally such threat/coercion/inducement makes the statement involuntary and not admissible in any proceeding, including departmental proceeding, it is almost impossible to establish for an assesses to establish such threat/coercion/inducement. If immediately after giving the statement, the assesee before the Special Executive Magistrate executes as Affidavit giving facts under oath, then probably it might help. • Section 14 of CEA authorises Excise Officers to issue summons. The term 'summons' means asking a person to appear before the named authority and give evidence and produce documents or other things. Person summoned is bound to attend and s*tate the truth upon any subject respecting which they are examine*d. [section 14(2) of CEA - similar section 108(3) of Customs Act]. The enquiry are 'judicial proceedings'. **Right to remain silent is not available in this case.** • These power of 'summons' are different than powers of Courts to issue summons under CPC or CrPC. The power of 'summons' to investigating officer only means 'demand presence of' or 'call upon a person to appear'. The investigation officer cannot administer oath to person being interrogated. • As per section 174 of Indian Penal Code, non-attendance in obedience of an order from public servant is an offense punishable with imprisonment upto 6 months and fine upto Rs 1,000/- • Only the gazetted officers are empowered either to summon persons or to call for documents. Superintendent

	of Central Excise is the lowest level gazetted officer in the Central Excise department. No officer below the rank of Superintendent can exercise power conferred under Section 14 of the Central Excise Act [Notification No. 9/99- C.E., (N.T.), dated 10-2-1999]. In Customs, appraiser is the lowest level gazetted officer. Further **only the officer conducting the enquiry can** summon a person or to call for document. When no enquiry is being conducted no person can be summoned or no document can be called for. Only the material necessary for the enquiry can be summoned. Every summon issued under the Act shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it and shall also bear his official seal, if he has any [Rule 204 of the erstwhile Central Excise Rules, 1944]. ***An authorized officer can summon a person or documents outside his territorial jurisdiction if the cause of action has arisen within his jurisdiction. The Karnataka High Court held, in Raletronics Ltd. v/s UOI*** 1994 (71) ELT 26 (Kar.) *"The power of investigation and collecting materials which may lead to further enquiry or adjudication is part of the machinery created by the law to prevent tax evasion. The machinery provisions in a fiscal legislation are to be liberally construed so as to effectuate the purpose behind the said machinery. Therefore, I am of the view that when the cause of action arises within the territorial jurisdiction of a particular officer, he is competent to have the matter investigated even in an area outside his jurisdiction. It is not a case of stretching the jurisdiction beyond his territory at all."* • Normally persons should be summoned **in normal working hours on a working day**. The Board has instructed vide CBEC **Circular No. 65/88-CX.6, dated 6-9-1988**, wherein it has stated that, "Instances have come to the notice

	of the Board wherein Central Excise officers while carrying out investigations and searches have summoned persons for questioning **at odd hours thereby inviting unnecessary criticism.** This has also adversely affected image of the department. As far as possible the recording of statements of persons where it is not possible to postpone the same should be completed immediately after search of the premises search. While recording statements etc., due courtesy should be extended. If any person is to be summoned he should ordinarily be summoned on a working day and during normal working hours." • **Summons should be issued only for justified reasons. It must not be a harassing technique. It is a legal power to be exercised in a judicious manner in furtherance of the aim for which it is granted. In a circumstance, when the CBEC received some complaints about abuse of Section 14 of the Act, it instructed, in the Circular** Circular No. F. No. 208/122/89-CX.6, dated 13-10-1989 "Action under this section is to be taken only as a last resort in cases where assessees are not co-operating or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands, which are disputed by them. For recovery of demands normal procedure under the law should be followed. If any instance of issue of summon to Managing Directors and other Directors without justification is noticed, a serious view will be taken by the

Board. Collectors will be held personally responsible for enforcing these instructions in their charges."

- Documents can be summoned only when they are in possession or in control of the person from whom they are being summoned. For example, if some documents are in the possession of the Income Tax department, they cannot be summoned from an assessee even when those documents belong to the assessee. In that case a simple letter to the officer summoning the documents informing him about the whereabouts of documents can be sufficient.

In Hindustan Safety Glass Work Ltd. v/s Assistant Collector of Central Excise 1985(21) ELT 38 (All.) the Court held that wholesale demand for production of a large number of documents, which can possibly have no relevance to the enquiry made by the Assistant Collector. This obviously is not permissible in law. No fishing enquiry can be conducted under section 14 of the Act. There cannot be wholesale summon of documents not relevant to the enquiry under this provision. While approving the observations the Punjab & Haryana High Court held in K C Vanaspati v/s Asst. Collector 1994(72) ELT 821 (P&H) held **, "as the documents required to be produced <u>have no relevance to the inquiry involved</u>, but it is an attempt to collect material by wholesale production of documents during a fishing inquiry. No doubt, the Allahabad High Court had set aside the summons for production of wholesale documents by holding that the Collector cannot make fishing inquiry but should have summoned the relevant record only."**

Power to summon documents is a general power, which can be exercised in various situations like enquiry and investigation of offences, adjudication proceedings, enquiry so as to decide about any conditional exemption etc. The Calcutta High Court observed in Meera Chemical Inds. Ltd. v/s D P Anand 2000(123) ELT147(Cal.) Section 14, in my opinion, is a general power which can be exercised by a duly authorised officer, for any kind of investigation under the Act or the Rules. It is not restricted to any particular matter arising under the Act, nor is it excluded by reason of any circumstance.",

- The power under Section 14 may be exercised at the request of the assesses. In adjudication proceeding, if any document is required by the assessee as defense document and the same is not in control or in possession of the assessee, the assessee can request the adjudicating authority to summon those documents. Even at the time of investigation the accused or suspect may request the investigating officer to summon documents which may be helpful in establishing the innocence of the suspect or accused. However before requesting the authority to summon documents steps must be taken by the assessee to procure those documents if possible by reasonable diligence. In Shree Synthetics Ltd. v/s UOI 1996(83) ELT 20(SC) the Supreme Court observed, "*It is, therefore, open to the appellant to apply to the Assistant Collector, Baroda for a copy of the said order which may be supplied to him in accordance with the rules. If, however, the copy is refused to be furnished by the said Assistant Collector, it may then be open to the appellant to request the Assistant Collector, Ujjain to summon the same from the other Assistant Collector.*"
- The summons under Section 14 of the Central Excise Act or under Section 108 of the Customs Act has to be **served**. *The service of the summons must be to the proper person*. Thus when the authority want to summon

some documents from a company, service of summon to an employee is not proper. In Chajja Textile Limited v/s Commissioner of Central Excise 2000 (116) ELT 601, the Tribunal discarded statement recorded under section 14 of the Central Excise Act because summon was not served properly.

- *Summons for documents should specify the documents called -* Summons for producing documents should specify which documents are required. Authority issuing summons should apply his mind with regard to necessity to obtain and examine documents mentioned in the order. - *Barium Chemicals* v. *A J Rana* - AIR 1972 SC 591 - in this case, summons was set aside on ground of vagueness. All documents pertaining to appellant were called, which were in custody of Registrar of Court and also those which had no bearing on the matter.
- *Provisions regarding taking a statement -* Statement can be recorded during such enquiry. It should be recorded before a Gazetted Officer. (Superintendent is the lowest rank of Gazetted Officer in excise department. *Inspector is not a Gazetted Officer*). Such statement can be used against the person during any legal proceedings provided a copy of the same is given to the assessee & he has not retracted it. - *Amba Lal* v. *UOI* 1984(13) ELT 1321 (SC). The statement should be in writing and signed by the maker, as it safeguards interests of the maker as well as department and eliminates the possibility of making a complaint subsequently

	that the statement was not correctly recorded by the authorities - *C Sampath Kumar* v. *Enforcement Officer* 1997(6) SCALE 140 = 1997(96) ELT 511 = (1998) 92 Comp Cas 313 (SC). • • The Central Excise or Custom officer has no power to detain a person for long hours in the name of enquiry or under the guise of summons of persons. The Madras High Court in Roshan Biwee v/s Joint Secretary 1984(15) ELT 289 (Mad.) held, "since at the stage of enquiry or investigation or interrogation held under Section 107 or Section 108 of the Customs Act, the person required or summoned for such enquiry or examination is not arrested, nor has he become any accused, therefore, if in a given case, the Customs officials detain any person required or summoned under the provisions of the Customs Act for a prolonged period, even exceeding 24 hours, or keeps him in closed doors as a captive prisoner surrounded by officials or locks him in a room or confines him to an office premises, he does so at his peril, because Sections 107 and 108 of the Customs Act do not authorise the Customs Officer to detain a person for a prolonged custody and deprive him of the elementary facilities and privileges to which he is entitled. In such a situation, the Officer must have overstepped his limits and thus violated the provisions of Article 22(2) of the Constitution." Normally it is expected that any enquiry should be conducted during office hours and if the enquiry cannot be completed before the fall of the day it should be postponed to the next day. The Madras High Court held, in Anil G. Merchant v/s DRI 1985(20) ELT 292 , "Neither the provisions of Section 107 nor Section 108 nor any other provision in the Customs Act, 1962 or the Rules framed thereunder restrict the right of the Customs Officer to require the person to appear before him only at stated hours. Normally, such interrogation or examination will be done during the normal office hours or during day time." The Kerala high Court in Prakash Kumar Choudhary v/s UOI 1996 (83) ELT 45 directed, "we make it clear that every endeavour should be made to ***close the examination of the appellant***

before sunset and if for any reason it cannot be so closed, the same should be resumed only in the next day morning."

- *Statement should be voluntary -* The statements recorded under these Sections are admissible in evidence even against the maker of the statements. Such statements are admissible even if retracted later. However to be admissible, the statement must be voluntary. An Excise or Custom officer cannot compel a person to give statement. There should not be any threat to give the statement. Section 14(2) of the Central Excise Act and Section 108(3) of the customs Act specifically provides that all persons so **summoned shall be bound to state the truth upon any subject respecting which they are examined. Hence there is no right to silence**.

  Excise officer cannot compel a person to give incriminating statement without reasonable, fair and just procedure. Statement should be voluntary and not under threat. However, a warning that giving false evidence will attract penalty under section 193 of Indian Penal Code does not amount to threat and that provision is made in the statute itself.

- No violence can be used against a person giving the statement. Violence doesn't merely means physical violence. It includes abusive language, threat of violence or any other legal injury. It needn't be directed against the person summoned, it can be against anyone in whom the person summoned is generally interested. Use of any form of violence against the person summoned is a crime under the provisions of the Indian Penal Code and a person subjected to such violence can approach the police or the judicial forum to seek justice against any form such violence. In Mahendra Jain vs. Union of India 2003 (156) ELT 193 , the Calcutta High Court observed that,

  "it *is true to say that the interrogating officers should have appropriate right for the purpose of interrogation but such right should not exceed the limit of the human right. There is no law which say that as against the summons Customs authorities will proceed for interrogation as per their sweet will forcibly keeping in their* *custody for indefinite period. If it is done then it has to be construed as informal custody. Therefore, the law relating to accused in a custody has to be expressly or impliedly, applicable. If accused can get all benefits under Article 21 of the Constitution a person in such informal custody can say that he is also entitled to get relief under Article 21 of the Constitution of India. It cannot be said that the authority will behave in violation of Article 21 without declaring one as accused and Court will give premium to such illegality."*

The Court further added that now a days, custodial violence is not unknown to the people and Court cannot refrain from taking any Judicial notice. If such violation exceeds the personal right and liberty as given under Article 21 of the Constitution of India, the writ Court is justifiable entertain, the writ petition and pass an appropriate order. It is significant to note that custodial violence is not an ordinary violence even if one has been taken in the custody as against any criminal charges. The declaration has to be made whether the person concerned is formally accused or not. It is not be misused for extracting statements by force.

- *No right to advocate's presence -* In *Poolpandi* v. *Superintendent, C Ex,* 1992 (60) ELT 24 (SC) (SC 3 member bench) it has been held that person being interrogated is not an accused nor can he plead that there is a possibility of his being made an accused in future. Hence, he has no right to ask for his Advocate's presence during the enquiry. With due respect in our view t*he whole logic of this judgment fails when the first question is asked from a person summoned, an answer of which is likely to implicate the person summoned in any offence*.

  The presence of a lawyer can be allowed by the inquiry officer, if a request is made. Interrogating officer may permit presence of advocate, but even in such case, the advocate cannot interrupt the investigations. (This decision is applicable in all matters under Customs Act, FEMA, Income-tax etc.) - followed in *Prakash Kumar* v. *UOI* - (1996) 83 ELT 45 (Ker HC DB). However, **once a request for presence of a lawyer is made to the inquiry officer,** it cannot be rejected arbitrarily or without valid reasons. If any request of presence of a lawyer is arbitrarily rejected, the Courts may draw an adverse inference against the statement recorded in such

	proceeding. A right to consult an advocate doesn't emanate from the fact that a person is an accused or likely to be made one in future. Right to consult an advocate is not limited only to persons covered under Article 22 of the Constitution. Every person, whether an accused or not, whether an suspect or not has a right to consult a legal practitioner at any point to ***time when he feels that his right is being violated or likely to be violated.*** This right is as fundamental as Right to life itself. Thus, if, for example, a person is being abused by the interrogating officer, during an enquiry under Customs or Central Excise Act, he has every right to consult an advocate, then and there. It cannot be argued that the person being interrogated listen to the abuses till the time enquiry proceeds and only then he can consult an advocate. Off Course, owing to the Supreme Court judgment, a person cannot claim that **he should be interrogated only in presence of a lawyer.** Refer to detailed write up "Right to consult an advocate during investigation- 2006 (201) ELT A54"… As a professional, it is shameful to tell its client that even if your right has been violated, you have no remedy. You cannot prosecute the guilty officer, for it is impossible to get the sanction of Central Government to prosecute an officer under Section 197 of the Code of Criminal Procedure. Officers cannot be prosecuted under Customs or Central Excise Act, as it is impossible to get the sanction of the Commissioner. The only remedy, which exists against such abuse summoning power is "freedom of expression".

Adjudication - Demand Notice/Show Cause Notice

1. Introduction

1.1 In accordance with the principles of natural justice the central excise law provides that before any action is taken against an assessee he must be given reasonable opportunity of presenting his case. Some such situations necessitating the issue of Show Cause Notice would be those relating to the demand of duty not paid, short paid or erroneously refunded, change in classification, establishing that goods are manufactured and are marketable, CENVAT credit wrongly availed, confiscation of goods seized, imposition of penalty etc.

1.2 Communications, orders, suggestions or advice from the Department cannot be deemed to be in the nature of a Show Cause Notice. Hence, it is mandatory that a show cause notice is issued if the department contemplates any action prejudicial to the assessee. Thus, if on account of an infraction of the provisions of the Central Excise law it is considered appropriate to penalise the defaulter, it is necessary to first issue a show cause notice. The show cause notice would detail the provisions of law allegedly violated and ask the noticee to show cause why action should not be initiated against him under the relevant provisions of the Act/Rules. Thus, a show cause notice gives the noticee the opportunity to present his case. Further, compliance with all the formalities pursuant to the issue of the notice alone would entitle the Department to recover any dues. **[Circular F.No.67/17/88-CX.2 dated 18.08.1988].**

2. Issue of duty demand notice [Top]

a. Section 11A of the Central Excise Act, 1944 provides that if excise duty has not been levied or short levied or not paid or short paid, a notice has to be issued demanding the differential duty. Provided that where 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 there-under with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words one year, the words "five years" were substituted;

b. In respect of all cases, requiring the issue of Show Cause Notices, the said Show Cause Notices should be approved in writing and signed by the Officer competent adjudicate the said show cause Notice. [Circular No. **752/68/2003**-CX dated 01.10.2003].

c. In the event that the extended period is invoked in the Show Cause Notice issued, it is essential that the assessee is put to notice specifically regarding which of the various commissions or omissions stated in the Proviso to Section 11A has been committed 1995 (076) ELT 0497 (SC) and Circular No.312/28/97-CX dated 22.04.1997]. For example, if the extended period is invoked on account of fraud, **the notice should specifically allege fraud**.

d. Invoking of the extended period under the Proviso to Section 11A in the Show Cause Notice proposed to be issued should be resorted to only in the event of fraud collusion, wilful mis-statement, suppression of fact or contravention of any of provisions of the Excise Act/Rules with intent to evade payment of duty **and not as a matter of routine**. [circular No.**5/92** dated 13.10.1992]

e. When a Show Cause Notice is issued, citing documents seized from the party, it should be ensured that only those documents/pages proposed to be relied on in framing/establishing charges should be referred to in the Notice. [Circular No.2/8 dated.09.01.1989] Once the Show Cause Notice is issued to the party, all the documents/records which have not been relied upon may be returned to the party under proper receipt. The party should be allowed to obtain photocopies of the documents relied upon. [Circular No. **171/5/96**-CX. Dated 2.2.1996]

f. When there exists a Court Order for stay of collection of duty only and no stay for issue of Show Cause Notice, Show Cause Notice can be issued for imposition of such duty. [Circular No.**50/89** dated 29.08.1989]

g. When an Appeal for an earlier period on a similar issue is pending before an appellate Authority, Show Cause cum Demand Notices for subsequent , can be raised but not enforced till final decision of the Appellate Authority is known. [Circular No. 1/90-AU dated 19.03.1990]

3. Instances requiring issue of Show Cause Notices: [Top]

3.1 Recovery of erroneous refund is required to be made under Section 11A of the Central Excise Act, 1944 and not through review proceedings under Section 35E. Notwithstanding orders passed under Section 35E, in the absence of notice under Section 11A for recovery within time limit prescribed therein, such recovery is hit by limitation. [1998 (099)ELT 0502 (Tribunal)]

3.2 Show Cause Notice has to be issued if the Department intends rejecting refund claims found to be incomplete in particulars or not supported by required documents by pointing out the said deficiencies. [Circular No.**21/90**-CX.8 dated 04.04,1990] In addition, the issue of unjust enrichment too should be raised in the notice if required [Circular No. **19/93**-CX.6 dated 29.12.1993]

3.3 For the purpose of enforcing any recovery under Section 11D, notice has to be issued under Section 11A. Section 11D of the Central Excise Act, 1944 is not to be read in isolation, but instead, is to be read with Section 11A ibid. [1994 (72) ELT 848(Mad.)]

3.4 Burden is on the Department to prove that the process of manufacture has resulted in a commercially distinct commodity. The assessee is to be put to notice by the Department about the Technical Literature that the Department intends to rely on to prove the same. [1995(077) ELT 0248(SC)]. Similarly, burden rests on the Department that the goods are marketable and hence liable to duty. [1989(043) ELT 0214 (SC)]

3.5 It is mandatory to issue Show Cause Notice before CENVAT credit wrongly availed can be disallowed.

3.6 In respect of 100% EOU's, in the event the Board of Approval or the Development Commissioner concerned determines that the Unit has failed to export the fixed percentage of articles for the specified period, in such cases it can be held that the conditions of the notification have been violated and it will be open to the Department to issue a show Cause Notice to the Unit demanding the duty due on the imported goods. [Circular No.21/95-Cus dated 10.03.1995]

3.7 In respect of simplified export procedure for exempted units, where the clearance for home consumption and the clearances for export where proof of export have not been furnished within 6 months, when taken together, is likely to exceed the exemption limit, show cause Notice may be issued for safe guarding revenue. [Circular No.212/46/96-CX dated 20.05.1996]

3.8 If during the scrutiny of the RT-12 return { now ER-1} or the audit or Inspection, It is noticed that duty of excise leviable on any goods has escaped self-assessment and been not paid/short paid or has not been correctly or properly self-assessed and been paid by the assessee on that basis, necessary action shall be taken by the Proper Officer for preparation and issue of Demand-cum-Show Cause Notices in accordance with Section 11A of the Act, [Circular No.249/83/96-CX dated 11.10.1996] Refer Instruction DT. 03/02/2010

WHAT DOES A SHOW CAUSE NOTICE CONTAIN? A show cause notice first gives the details about the **brief facts of the case** which includes details about the assessee or the assessees (in a show cause notice they are called the noticee/noticees), their activities, the material facts that the department wishes to highlight (like an incidence of surreptitious removal of goods, that the goods were declared as 'X' whereas they were actually 'Y' or that the actual value of the goods was 'A' and not 'B' as declared by the assessee).

In this part the evidences such as documents recovered during search operations, statement of the employees of the assessee (recorded by the officers), details about product, technical literatures etc. that the Departments to rely upon to reach to the conclusion are also given. Also, the s**how cause notice gives the conclusions drawn by the Departments**.

These are based on the facts and normally starts with the phrases 'From the foregoing facts it appears that' This part also refer to the various allegations it makes against the assessee, its employees, goods etc. this is an important part of the show cause notice **because it shows the mind of the department insofar** as the violations of the provisions of the law is concerned.

Towards the end, the show cause notice tells about the a**ction that it recommends against the assessee and challenges him to show cause as to why these should not be done.** Finally, it informs the assessee the name and address of the authority who would finally decide the fate of these charges (called the adjudicating authority). It also informs about the time limit within which the assessee should put forth his arguments normally within 30 days of receipt. Show cause notices often enclose list of documents that the Department has relied upon to frame the allegation as also copies of such documents as well as calculation sheets showing the duty calculations.

HOW TO DEAL WITH SHOW CAUSE NOTICES? When you receive a show cause notice, you must check certain facts immediately:

a. Whether the notice is indeed addressed to you / your firm / your company etc. Show cause notices are either delivered in person or through registered AD letters. **Do not accept any show cause notice addressed to others.** Suppose you receive a notice that is addressed to an ex-employee or an ex-partner, **do not receive them on their behalf.**
b. Check the date of issue of show cause notice and the day you receive it. Please put the actual date of receipt while

acknowledging the receipt of a show cause notice. **Do not accept the request to receive a notice back dated.** The period within which a demand for duty is to be made or seized goods are proposed for confiscated are fixed.

Unless the department issues the notice within the one / five year period as the case may be, you are free from obligations. Therefore, if you backdate an acknowledgement, you run the risk of undertaking an obligation that was not on you. Read the show cause notice. If you agree with the charges (especially regarding the non-payment or short-payment of duty) you need not contest the notice. In that case you can inform the department about your admission and pay the duty demanded at the earliest. This would not only save you of the botheration and the legal expenses but also **save you from some of the interest amount**. There are also judicial rulings that in such cases you should be shown leniency as regards the penalties. In most of the cases you may feel that the charges made are incorrect and illegal. In these cases you should read the notice very carefully.

First, you should go through the facts that have been narrated in the show cause notice. **Note down the discrepancies and note down the real facts.** Secondly go through all the evidences put forth by the department in support of the charges. See whether there are any factual inaccuracies or whether the evidences have been obtained by force, coercion etc. In that case make a note of the same. Also think of the evidences that you can put forth to counter theses evidences.

For example if the show cause notice tries to prove excess production by showing **particular quantum of consumption of electricity during a month,** you may be able to show that there was a fault in the electric meter leading to an excessive billing. Also check as to how many of the evidences are gathered from external sources such as your transport or your buyer. These evidences are of lesser evidential value since they primarily reflect their activities and not your. These can be countered later by cross-examining the persons who have spoken against you. Also gather evidences that prove your innocence. In case you had discussed the issue with the central excise authorities earlier and had made your removals as per their directions or advice, try to obtain evidences which show such directions or clarification.

You should **go through the list of the relied upon documents carefully.** In many cases only a list of such documents is enclosed with the show cause notice. In that case you should make a formal request to the adjudicating authority for supply the copies of the same. The same holds good in case the copies of the documents given **are not legible**. Remember when you meet your legal counsel, he would definitely like to go through them. In case the issue involves more of a point of law, it is better to consult a legal expert in the field. Even otherwise, you may require his guidance for drafting of a proper reply. You must, however, remember that since you are the person who is in the know of the things, your participation in preparation of the reply alone can ensure a proper counter to the charges made.

You must also keep in mind that whether you win your case before the adjudicating authority or lose it, you are only **winning or loosing a battle and not the war**. Either you or the department may disagree with the decision given by the adjudicating authority and may go in for an appeal. However, **the first reply made by you would remain an important document through out the proceedings and the higher (appellate) authority may raise objections if you** introduce new facts / defence / arguments at that stage. Thus, preparation of a proper and self- contained first reply goes a long way in winning a case.

You must remember that what clinches the issue is the **clear presentation of facts, irrefutable evidences and recalling legal precedence.** Like most of the Indian laws, central excise adjudication and appeal proceedings rely greatly on what higher appellate bodies and the courts (i.e. High courts and the Supreme Court) have decided in similar cases. The decisions and the observations of the courts while hearing cases with similar facts have a binding effect on the adjudicating officers or the lower appellate bodies. There are law journals available which gives these rulings in a codified manner. Nowadays even computer softwares are available to find out the decision in similar cases. You must ensure that your consultant is well stocked with these weapons and that he uses them well while preparing the reply.

Similarly, the department itself, from time to time, **issues circulars clarifying issues.** Some of them may be in your favour. These can be of great help as they bind the adjudicating authority, being an officer of the department. You must make a sincere effort to send your reply within the stipulated time. If, however, it is not possible due to unavoidable reasons, you must seek time extension for doing the same. Normally **no adjudicator would refuse it** unless it is asked repeatedly and without much justification. Personal hearing usually follows written reply in the matter, unless the adjudicator is so convinced with your view that he passes order without any further reference.

A personal hearing gives you an opportunity to explain the details to the adjudicator in person. During the personal hearing you must accompany your counsel so as to ensure that all the points have been well covered. You can supplement his arguments if it is so required (especially cases involving complex technical facts- such process of production etc). Remember **a proper reply to a show cause notice lays down the foundation of a sound decision.** This would not only help you in the instant case but may go long way to solve your problems.

Departmental Adjudication

Excise authorities are empowered to determine classification, valuation, refund claims and the tax/duty payable. They are also empowered to grant various permissions under rules and impose fines, penalties, etc. This is called "departmental adjudication". **Adjudicate means to hear or try and decide judicially and adjudication means giving a decision.**

1.1 Central Excise law is a self-contained provision. Besides containing the provisions for levy of duty, the law also provides for the adjudication of matters relating to 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, process 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.

1.2 Principles of Adjudication: Adjudication proceedings shall be conducted by observing **principles of natural justice.** The principles of natural justice must be followed by the excise 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 will be a nullity and is liable to be set aside by Appellate Authority. 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. The noticee has a right to inspect or to get copies of all the documents/ records relied upon in the show cause notice (1993 (065) ELT 0357 (SC), 1989(39) ELT 329(SC) and 1997 (95) ELT 251 (Tri). The noticee(s) shall be given a Personal Hearing before the case is adjudicated. 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. 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) ELT 21 (SC),2002 (146) ELT 248(SC), 2000(122) ELT 641(SC)}. The Allahabad High Court in {1993(68) ELT 548 (All)} has held that 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. In adjudication proceedings, reliance cannot be placed on Section 9C of the Central Excise Act, 1944,(presumption of culpable mental state) 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.

2. Adjudication and determination of duty

2.1 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 be 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.

2.1.1 The monetary limit of the amount of duty involved from the present level for different categories of officers for adjudication cases has also been enhanced as below:

2.1.2 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:-

A. All cases including cases relating to determination of classification , valuation etc whether or not involving fraud, collusion, any wilful misstatement, suppression of facts, or contravention of Central Excise Act/ Rules made there under-with intent to evade payment of duty and / or where extended period has been invoked in show-cause-notices, (including CENVAT cases, will be adjudicated by:-

Central Excise Officers	Powers of Adjudication (Amount of duty involved)
Deputy/Assistant Commissioners	Upto Rs. 5 lakhs
Joint Commissioners	Above Rs. 5 lakhs and up to Rs.20 lakhs
Additional Commissioners	Above Rs. 20 lakhs and up to Rs.50 lakhs
Commissioners	Without Limit

B. Cases related to issues mentioned under first proviso to Section 35B(1) of Excise Act, 1944 would be adjudicated by the ***Additional / Joint Commissioners without any monetary limit*** viz

a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty ;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder

2.1.3. In case different show cause notices have been issued 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 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,

2.1.4. The value of goods/conveyance liable to confiscation will not alter the above powers of adjudication, which shall solely depend upon the amount of duty/ CENVAT credit involved in the offending goods.

2.1.5. Regarding issue of show cause notices, it is clarified that in respect of all cases, whether or not fraud, collusion, willful mis-statement, suppression of fact or contravention of Central Excise Act/ Rules with intent to evade duty and/ or where extended period has been invoked i.e. cases falling under any category (A), or (B) of para 2.1.2 above, the show cause notice shall be approved in writing and signed by the officer competent to adjudicate the said show cause notice. This instruction will come into effect prospectively i.e. from the date of issue of the Circular.

3. Time limit for issue of adjudication orders:

The demands on account of short levy, non-levy or erroneous refund, by reason of fraud collusion, willful mis-statement or suppression of facts shall be adjudicated within a period of one year from the date of issue of show cause notice, where it is possible {Clause (a) of Sub-section 2A of Section 11A of Central Excise Act, 19 case, as far as possible, the case shall be adjudicated within a period of six months {Clause (b) of Sub-section 2A of Section 11A ibid }.

All cases where personal hearings have been concluded, it is necessary communicate the decision immediately or within a reasonable time (above time limit cannot be adhered to under any circumstances, the order should be issued within 15 days or at the most one month from the date of conclusion of personal hearing (Board's Circular No.732/48/2003-CX dated 5.8.2003).

3.1 The adjudication order must be a speaking under giving clear finding of the adjudicating authority and he shall discuss each point raised by the defence a cogent reasoning in case of rebuttal of such points. The duty demanded and shall be quantified correctly and the order portion must contain the correct provision of law under which duty is confirmed and penalty is imposed. Adjudication order shall be issued under the signature of the adjudicating authority. If confiscation during adjudication proceedings, an option shall be given to the owner of redeem the goods on payment of a fine in lieu of confiscation.

3.2 Adjudicating authority is not empowered to Issue any subsequent making material changes in the order already passed and issued (Board' No.502/68/99-CX dated 16.12.1999).

4. De Novo adjudication:

For adjudication of cases remanded by the Appellate Authorities adjudication, it is clarified that the cases should be adjudicated in de-novo proceeding by the same authority which had earlier adjudicated the case. In other words adjudication powers shall have no bearing on cases remanded for de-novo adjudication. Supplementary Instruction: Refer Circular No.806/3/2005**-CX., dated 12-1-2005 -** Amendment to Circular No. 762/78/2003**-CX., dated 11-11-2003 - Regarding.**

DIFFERENT CASES OF SAME ASSESSEE INVOLVING SAME ISSUE - If there are simultaneously different cases of the same noticee involving the same issue, all such cases will be adjudicated by an officer competent to decide the cases where duty involved is of highest amount. - CBE&C circular No 362/78/97-CX dated 9.12.97 - similar TN 162/97 dated 31.12.97 of Pune Commissionerate. [i.e. only highest amount in all Show Cause Notices will be considered and *not* the total amount of all notices].

Area Jurisdiction of Officers - In case of seizure of goods, case will be adjudicated by officer in whose jurisdiction the offence is committed (i.e. where the goods were actually manufactured) and not where the goods were seized *(during* *raid or road checking)*. Officer in whose jurisdiction goods were seized will have jurisdiction only when the manufacturer is not traceable or cannot be identified. It may be noted that authority granted to an officer can be exercised by any officer above that grade.

Customs Assessment cum adjudication:

1. The basic function of the assessing officer in the appraising groups is to determine the duty liability taking due note of any exemptions or benefits claimed under different export promotion schemes. They have also to check whether there are any restrictions or prohibitions on the goods imported and if they require any permission/license/permit etc., and if so whether these are forthcoming. Assessment of duty essentially involves proper classification of the goods imported in the customs tariff having due regard to the rules of interpretations, chapter and sections notes etc., and determining the duty liability. It also involves correct determination of value where the goods are assessable on ad valorem basis. The assessing officer has to take note of the invoice and other declarations submitted along with the bill of entry to support the valuation claim, and adjudge whether the transaction value method and the invoice value claimed for the basis of assessment is acceptable, or value needs to be re-determined having due regard to the provisions of Section 14 and the valuation rules issued there under, the case law and various instructions on the subject. He also takes note of the contemporaneous values and other information on valuation available with the Custom House.

2. Where the appraising officer is not very clear about the description of the goods from the document or as some doubts about the proper classification which may be possible only to determine after detailed examination of the nature of the goods or testing of its samples, he may give an examination order in advance of finalisation of assessment including order for drawing of representative sample. This is done generally on the reverse of the original copy of the bill of entry which is presented by the authorized agent of the importer to the appraising staff posted in the Docks/Air Cargo Complexes where the goods are got examined in the presence of the importer's representative.

3. On receipt of the examination report the appraising officers in the group assesses the bill of entry. He indicates the final classification and valuation in the bill of entry indicating separately the various duties such as basic, countervailing, anti-dumping, safeguard duties etc., that may be leviable. Thereafter the bill of entry goes to Assistant Commissioner/Deputy Commissioner for confirmation depending upon certain value limits and sent to comptist who calculates the duty amount taking into account the rate of exchange at the relevant date as provided under Section 14 of the Customs Act.

4. After the assessment and calculation of the duty liability the importer's representative has to deposit the duty calculated with the treasury or the nominated banks, whereafter he can go and seek delivery of the goods from the custodians.

5. Where the goods have already been examined for finalization of classification or valuation no further examination/checking by the dock appraising staff is required at the time of giving delivery and the goods can be taken delivery after taking appropriate orders and payment of dues to the custodians, if any.

6. In most cases, the appraising officer assessees the goods on the basis of information and details furnished to the importer in the bill of entry, invoice and other related documents including catalogue, write-up etc. He also determines whether the goods are permissible for import or there are any restriction/prohibition. He may allow payment of duty and delivery of the goods on what is called second check/appraising basis in case there are no restriction/prohibition. In this method, the duties as determined and calculated are paid in the Custom House and appropriate order is given on the reverse of the duplicate copy of the bill of entry and the importer or his agent after paying the duty submits the goods for examination in the import sheds in the docks etc., to the examining staff. If the goods are found to be as declared and no other discrepancies/mis-declarations etc., are detected, the importer or his agent can clear the goods after the shed appraiser gives out of charge order.

7. Wherever the importer is not satisfied with the classification, rate of duty or valuation as may be determined by the appraising officer, he can seek an assessment order. An appeal against the assessment order can be made to appropriate appellate authority within the time limits and in the manner prescribed.

EDI Assessment:

8. In the EDI system of handling of the documents/declarations for taking import clearances as mentioned earlier the cargo declaration is transferred to the assessing officer in the groups electronically.

9. The assessing officer processes the cargo declaration on screen with regard to all the parameters as given above for manual process. However in EDI system, all the calculations are done by the system itself. In addition, the system also supplies useful information for calculation of duty, for example, when a particular exemption notification is accepted, the system itself gives the extent of exemption under that notification and calculates the duty accordingly. Similarly, it automatically applies relevant rate of exchange in force while calculating. Thus no comptist is required in EDI system. If assessing officer needs any clarification from the importer, he may raise a query. The query is printed at the service centre and the party replies to the query through the service centre.

10. After assessment, a copy of the assessed bill of entry is printed in the service centre. Under EDI, documents are normally examined at the time of examination of the goods. Final bill of entry is printed after 'out of charge' is given by the Custom Officer.

11. In EDI system, in certain cases, the facility of system appraisal is available. Under this process, the declaration of importer is taken as correct and the system itself calculates duty which is paid by the importer. In such case, no assessing officer is involved.

12. Also, a facility of tele-enquiry is provided in certain major Customs stations through which the status of documents filed through EDI systems could be ascertained through the telephone. If nay query is raised, the same may be got printed through fax in the office of importer/exporter/CHA.

Examination of Goods:

13. All imported goods are required to be examined for verification of correctness of description given in the bill of entry. However, a part of the consignment is selected on random selection basis and is examined. In case the importer does not have complete information with him at the time of import, he may request for examination of the goods before assessing the duty liability or, if the Customs Appraiser/Assistant Commissioner feels the goods are required to be examined before assessment, the goods are examined prior to assessment. **This is called First Appraisement**. The importer has to request for first check examination at the time of filing the bill of entry or at data entry stage. The reason for seeking First Appraisement is also required to be given. On original copy of the bill of entry, the Customs Appraiser records the examination order and returns the bill of entry to the importer/CHA with the direction for examination, who is to take it to the import shed for examination of the goods in the shed. Shed Appraiser/Dock examiner examines the goods as per examination order and records his findings. In case group has called for samples, he forwards sealed samples to the group. The importer is to bring back the said bill of entry to the assessing officer for assessing the duty. Appraiser assesses the bill of entry. It is countersigned by Assistant/Deputy Commissioner if the value is more than Rs. 1 lakh.

14. The goods can also be examined subsequent to assessment and payment of duty. **This is called Second Appraisement.** Most of the consignments are cleared on second appraisement basis. It is to be noted that whole of the consignment is not examined. Only those packages which are selected on random selection basis are examined in the shed.

15. Under the EDI system, the bill of entry, after assessment by the group or first appraisement, as the case may be, need to be presented at the counter for registration for examination in the import shed. A declaration for correctness of entries and genuineness of the original documents needs to be made at this stage. After registration, the B/E is passed on to the shed Appraiser for examination of the goods. Along-with the B/E, the CHA is to present all the necessary documents. After completing examination of the goods, the Shed Appraiser enters the report in System and transfers first appraisement B/E to the group and gives 'out of charge' in case of already assessed B/E. Thereupon, the system prints Bill of Entry and order of clearance (in triplicate). All these copies carry the examination report, order of clearance number and name of Shed Appraiser. The two copies each of B/E and the order are to be returned to the CHA/Importer, after the Appraiser signs them. One copy of the order is attached to the Customs copy of B/E and retained by the Shed Appraiser.

Payment of Duty:

16. The duty can be paid in the designated banks or through TR-6 challans. Different Custom Houses have authorised different banks for payment of duty. It is necessary to check the name of the bank and the branch before depositing the duty. Bank endorses the payment particulars in challan which is submitted to the Customs.

Bill of Entry for Bond/Warehousing:

17. A separate form of bill of entry is used for clearance of goods for warehousing. All documents as required to be attached with a Bill of Entry for home consumption are also required to be filed with bill of entry for warehousing. The bill of entry is assessed in the same manner and duty payable is determined. However, since duty is not required to be paid at the time of warehousing of the goods, the purpose of assessing the goods at this stage is to secure the duty in case the goods do not reach the warehouse. The duty is paid at the time of ex-bond clearance of goods for which an ex-bond bill of entry is filed. The rate of duty applicable to imported goods cleared from a warehouse is the rate in-force on the date on which the goods are actually removed from the warehouse. (References: Bill of Entry (Forms) Regulations, 1976, ATA carnet (Form Bill of Entry and Shipping Bill) Regulations, 1990, Uncleared goods (Bill of entry) regulation, 1972, , CBEC Circulars No. 22/97, dated 4/7/1997, 63/97, dated 21/11/1997).