



CBEC Circular - Excise Audit has 'statutory backing', Officers can verify records; HC ratio inapplicable

Earlier, in **Travelite (India) case [TS-310-HC-2014(DEL)-ST]**, Delhi HC struck down Rule 5A(2) of Service Tax Rules requiring production of records to audit party on demand and CBEC Circular dated January 1, 2008 pertaining to general audit, as ultra vires the Finance Act. It held that Parliament had clear intention to provide for only special audit u/s 72A of Finance Act on fulfilment of special circumstances, and it did not contemplate a general audit that “every assessee” may be subjected to “on demand”.

However, now the CBEC has issued Circular clarifying on powers of Central Excise Officers to conduct audit. Clarifies that the above refereed Judgment does not deal with issue of audit in Central Excise and there is adequate statutory backing for conducting audit by Excise officers.

Therefore, Central Excise Officers to continue conduct of audit, as provided in statute.



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS**

CIRCULAR NO

986/10/2014-CX., Dated: October 9, 2014

To

The Chief Commissioners of Central Excise (All)

Sub: Audit by officers of Central Excise-reg.

Doubts have been raised in certain quarters regarding powers of a Central Excise officer to conduct audit, in the background of a recent judgment of Hon'ble High Court of Delhi dated 04.08.2014 in case of M/s Travelite (India) [\[2014-TIOL-1304-HC-DEL-ST\]](#) wherein the Hon'ble court has held that the powers to conduct audit as envisaged in rule 5A (2) of the Service Tax Rules, 1994, does not have appropriate statutory backing and therefore quashed the rule.

2. It may be noted that the judgment did not deal with the issue of audit in Central Excise. It is further clarified that in Central Excise there is adequate statutory backing for audit by the Central Excise Officers. The statutory provisions relevant for audit is clause (x) of Section 37(2) and rule 22 of the Central Excise Rules, 2002. For ease of reference, Section 37(2) (x) is reproduced below :-

Section 37: Power of the Central Government to make rules -

"37(2)(x) : *impose on persons engaged in the production or manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and*



making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified; "

3. Rule 22 of the Central Excise Rules, 2002 provides that the Commissioner may empower an Officer or depute an audit party for carrying out scrutiny or verification of records of the assessee . The rule also obliges an assessee to make available records for such scrutiny.

4. The statutory backing for rule 22 thus flows from clause (x) of section 37(2) and the general rule making powers under section 37(1) of the Central Excise Act, 1944. Clause (x) of section 37(2) empowers the Central Government to make rules for verification of records and returns to check the correctness of levy and collection of duty which in the present regime of self-assessment would mean verification of correctness of self-assessment and payment of duty by the assessee . It may be noted that the expression "verification" used in the section is of wide import and would include within its scope, audit by the Departmental officers, as the procedure prescribed for audit is essentially a procedure for verification mandated in the statute.

5. It is therefore clarified that officers of Central Excise shall continue to conduct audit, as provided in the statute. This clarification may be brought to the notice of the field formations. Hindi version will follow. Difficulty, if any, in the implementation of the instruction may be brought to the notice of the Board.

F. No. 206/10/2014-CX.6

**(ROHAN)
OSD (CX.6)**