



For Departmental use only

**HAND BOOK**  
**on Recovery of Arrears**  
**of**  
**Revenue**  
**of**  
**Customs, Central Excise & Service Tax**

Central Board of Excise & Customs  
Government of India



# PREFACE

Arrears of revenue have been piling up over the years due to which it has been felt necessary to compile a 'Hand Book' of all legal provisions, including instructions, on the subjects for guidance and use of the officers.

Officers of the Customs & Central excise have been empowered under Section 142 of Customs Act, 1962, Section 11 of Central Excise Act, 1944 and Service Tax officers are empowered under Section 87 of Finance Act, 1994 to recover the arrears of revenue of Customs, Central Excise & Service Tax.

It is hoped that this Hand Book of Recovery of Arrears of Customs, Central Excise & Service Tax will be found useful by the field formations.

I thank the field formations for their comments relating to incorporation of certain existing laws and procedures pertaining to recovery of arrears, which have been duly incorporated in this 'Hand Book'. However, suggestions relating to changes in laws, rules and procedures have not been incorporated in this 'Hand Book' for obvious reasons. These are being separately forwarded to Board's office for consideration.

I express my gratitude to Sh. Deepak Tandon, Sh. A.K. Pathania and Sh. A.K. Vasisht, Superintendents Central Excise (TAR Branch) New Delhi, who have put in their best efforts to compile this 'Handbook'.

M.I.J. MICHAEL  
Chief Commissioner TAR

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# INTRODUCTION

## CENTRAL EXCISE

On issue of an Order-in-Original demanding duty, penalty or fines, in case there is no payment, the law provides a system for recovery thereof. Initially, Section 11 of the Central Excise Act, 1944 is resorted to. The Section gives a stage wise action plan, first by deducting the amount payable from any money owing to the person, for example refunds or rebates. Next, the amount is to be recovered by attachment and sale of excisable goods belonging to such a person. In case the above is not possible, and the arrear is less than Rs. 1 Lakh a certificate specifying the amount is to be sent to the District Collector for recovery as 'land revenue'. If these methods are not successful, action under Section 142 ( c ) (ii) of the Customs Act, 1962 as made applicable to Central Excise is initiated. Details are in the Customs portion.

Section 11 E creates the first charge to Central Excise debts against the claims of a secured debtor. In case the business is transferred, the transferee is liable to pay duty and interest. Note that Section 11DDA allows provisional attachment of property after issue of SCN for initially six months. There is a power conferred under Section 37E to publish the names and addresses of defaulters. Rewards can be paid to informers giving information leading to recovery of arrears of revenue.

Wherever, revenue of high stakes is involved, department must file petitions with CESTAT for vacation of stay application, or early hearing petitions for important cases.

If all avenues are exhausted, any fines and penalties can be written off by a committee of Chief Commissioners. Duty upto Rs. 15 Lakhs can also be written off by the same body.



# CUSTOMS

The Customs Act, 1962, provides for recovery of any duty, fine, interest or penalty which have become payable after confirmation of a demand.

Section 142 of the Customs Act, 1962 empowers the proper officer to first deduct the amount so payable from any money owing to the defaulter which may be under his control, or under the control of any other officer of customs. Next, the goods belonging to the defaulter which are under the control of the proper officer can be sold. In case arrears still exist, a certificate specifying the amount payable should be sent to the District Collector, where such person owns any property or business, for recovery as an arrear of land revenue. If after 90 days, no recoveries are effected by the District Collector, the said certificate is to be recalled and then any movable or immovable property belonging to such person is distrained, and finally sold. In case the person against whom any payment becomes due to the Govt. after the proceedings of demand under Section 28(B) of the Customs Act, 1962, transfers or otherwise disposes off his business or trade, the attachment proceedings can also be effected from him. Any bond or instrument can be enforced.

The Customs (Attachment of property of defaulters for recovery of Government Dues) Rules, 1995, give the procedure for attachment of property and sale of both movable and immovable property.

Section 142 A of the Customs Act holds that the liability under the act is the first charge.

Write off provisions are to be invoked if no recovery could be made. The procedure laid down in CBEC Circular No. 946/07/2011 dated 01.06.2011 is to be followed.





## **SERVICE TAX**

Once an order has been passed demanding Service Tax duties, interest and fines, the law provides for recovery thereof. Section 87 of the Finance Act, 1944 is the concerned section. The officer shall proceed to recover the amount by different modes as envisaged under this section; by deducting any money owing to such person found under the control of Central Excise officer or officer of Customs; by sending notice to any other person from whom money is due or become due of such person; by distraining any movable or immovable property belonging to or under the control of such person after proper authorization by the proper officer; by issuing certificate specifying the amount payable to the Collector of District in which such person own any property / resides / carries his business. The extra provision in Service Tax is the power to recover duties in arrears from any funds owing to the defaulter which may be lying with a third party.



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# **LEGAL PROVISIONS OF RECOVERY OF ARREARS OF CUSTOMS:**

## **CUSTOMS ACT, 1962**

### **SECTION 28**

**NOTICE FOR PAYMENT OF DUTIES, INTEREST ETC.** - (1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, - (a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in another case, within six months, from the relevant date; serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made requiring him to show cause why he should not pay the amount specified in the notice.

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.

Explanation : Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or six months or five years, as the case may be.

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

(3) For the purposes of sub-section (1), the expression "relevant date" means - (a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of the goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

### **SECTION 28BA.**

Provisional attachment to protect revenue in certain cases.—(1) Where, during the pendency of any proceeding under section 28 or section 28B, the proper officer is of the opinion that for



the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (2) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under subsection (1):

Provided that the Chief Commissioner of Customs may, for reasons to be recorded in writing, extend aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement of case under section 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 127C is made shall be excluded from the period specified in the preceding proviso.

## **SECTION 142**

**RECOVERY OF SUMS DUE TO GOVERNMENT.** - (1) Where any sum payable by any person under this Act is not paid, - (a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs: or

(b) the Assistant Commissioner of Customs may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Commissioner of Customs or such other officer of customs; or

(c) if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b) –

(i) the Assistant Commissioner of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any Property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified there under as if it were an arrear of land revenue; or

(ii) the proper officer may, on an authorization by a Commissioner of Customs and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such' person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such

sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus, if any, to such person.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made there under provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

## **SECTION 142A**

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be. ( Inserted as per Finance Act, 2011)

# **CUSTOMS (ATTACHMENT OF PROPERTY OF DEFAULTERS FOR RECOVERY OF GOVERNMENT DUES) RULES, 1995**

Notification No. 31/95-Cus. (N.T.), dated 26-5-1995. amended by Notification No. 67/97-Cus. (N.T.), dated 11-12-1997

In exercise of the powers conferred by section 156 read with section 142 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely:-

## **CHAPTER I**

### **PRELIMINARY**

1. **Short Title and Commencement.** - (1) These rules may be called the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. **Definition.** - In these rules, unless the context otherwise requires -
  - i. 'Act' means the Customs Act, 1962 (52 of 1962);
  - ii. 'Government dues' means any duty or drawback to be recovered from any person or any interest or penalty payable by any person under the Act and has not been paid.
  - iii. 'Certificate' means the certificate required to be issued by an [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under clause (c) of sub-section (1) of section 142 of the Act.
  - iv. 'Commissioner (iv)' means any person appointed as Commissioner of Customs or Commissioner of Central Excise under the Act.
  - v. 'Proper Officer' means an officer subordinate to the Commissioner and not below the rank of Assistant Commissioner of Customs or Assistant Commissioner of Customs and Central Excise, who is authorised by the Commissioner for the purpose of attachment and sale of defaulter's property and for realising the amount mentioned in the certificate.]
  - vi. 'Defaulter' means any person from whom government dues are recoverable under the Act.
  - vii. Other words or terms used in these rules shall have the same meaning assigned to them under the Act.

## CHAPTER II

### PROCEDURE FOR ATTACHMENT OF PROPERTY

3. **Issue of Certificate.** - Where any Government dues are not paid by any defaulter, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may prepare a Certificate signed by him specifying the amount due from such person and send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any movable or immovable property or resides or carries on his business or has his bank accounts.
4. **Issue of Notice.** - On receipt of the Certificate mentioned in rule 3 above, the Commissioner may authorise any officer subordinate to him to cause notice to be served upon the defaulter requiring the defaulter to pay the amount specified in the Certificate within seven days from the date of the service of the notice and intimate that in default, such subordinate officer is authorised to take steps to realise the amount mentioned in the Certificate in terms of these rules.
5. **Attachment of property** - If the amount mentioned in the notice issued in terms of the preceding rule is not paid within seven days from the date of service of this notice, the Proper Officer may proceed to realise the amount by attachment and sale of defaulter's property. For this purpose, the proper officer may detain the defaulter's property until the amount mentioned in the Certificate together with the cost of detention is paid by the defaulter.]
6. **Attachment not to be excessive.** - Attachment by arrest or distraint of the property shall not be excessive, that is to say, the property attached shall be as nearer as possible proportionate to the amount specified in the Certificate.
7. **Attachment between Sunrise and Sunset.** - The attachment of the property of the defaulter by arrest or distraint shall be made after sunrise and before sunset and not otherwise.
8. **Inventory** - After attachment of the property of the defaulter, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.]
9. **Private alienation to be void in certain cases.**- (i) Where a notice has been served on a defaulter under rule 4, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Proper Officer.  
  
(ii) Where an attachment has been made under these rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

**10. Share in property** - Where the property to be attached consists of the share or interest of the defaulter in property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

**11. Attachment of property in custody of court or public officer.** - Where the property to be attached is in the custody of any court or Public Officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Proper Officer by whom the notice is issued.

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Proper Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

**12. Service of notice of attachment.** - A copy of the order of attachment shall be served on the defaulter in the same manner as prescribed for the service of order or decision in section 153 of the Act.

**13. Proclamation of attachment.** - The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Proper Officer.

**14. Property exempt from attachment.** – (i) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from attachment and sale under these rules.

(ii) The decision of the Proper Officer as to what property is so entitled to exemption shall be final.

### CHAPTER III

#### PART A

## PROCEDURE FOR SALE OF PROPERTY

**15. Sale of property.** - If the amount mentioned in the Certificate together with the cost of detention of the property is not paid within a period of thirty days from the date of attachment of the property, the Commissioner may authorise the Proper Officer to proceed to realise the amount by sale of the defaulter's property in public auction :

Provided that the Commissioner shall be competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and order that any bid shall be accepted only on the condition that it is not less than such reserve price.

- 16. Negotiable instruments and shares in a corporation.** - Notwithstanding anything contained in these rules, where the property to be sold is a negotiable instrument or a share in a corporation, the Proper Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

## PART B

### SPECIAL PROVISIONS IN RESPECT OF SALE OF IMMOVABLE PROPERTY

- 17. Proclamation of sale.** - Where any immovable property is ordered to be sold, the Proper Officer shall cause a proclamation of the intended sale to be made in the language of the district.
- 18. Contents of proclamation.** - A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible -
- (a) the property to be sold;
  - (b) the revenue, if any, assessed upon the property or any part thereof;
  - (c) the amount for the recovery of which sale is ordered;
  - (d) the reserve price, if any, below which the property may not be sold; and
  - (e) any other thing which the Proper Officer considers it material for a purchaser to know in order to judge the nature and value of the property.
- 19. Mode of making proclamation.** - (i) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Proper Officer.
- (ii) Where the Proper Officer so directs, such proclamation shall also be published in a local newspaper and the cost of such publication shall be deemed to be costs of the sale.
- (iii) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Proper Officer, otherwise be given.
- 20. Setting aside of sale where defaulter has not saleable interest.** - At any time within thirty days of the sale, the purchaser may apply to the Proper Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.
- 21. Confirmation of sale.**- (i) Where no application is made for setting aside the sale under the foregoing rule or where such an application is made and disallowed by the Proper

Officer, the Proper Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

- (ii) Where such application is made and allowed and where, in the case of any application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Proper Officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to the person affected thereby.

**22. Sale Certificate.** - (i) Where sale of any immovable property has become absolute under these rules, the Proper Officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

- (ii) Such certificate shall state the date on which the sale became absolute.

**23. Purchaser's title.** - (i) Where any property is sold in terms of these rules, there shall vest in purchaser's the right, title and interest of the defaulter at the time of the sale even though the property itself be specified.

- (ii) Where immovable property is sold in terms of these rules and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

**24. Irregularity not to vitiate sale, but any person injured may sue.** - No irregularity in the conduction of sale of any property shall vitiate the sale but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or if (such other person is the purchaser), for the recovery of specific property and for compensation in default of such recovery.

**25. Prohibition against bidding or purchase by officer.** - No officer or other person having any duty to perform in connection with any sale under these rules, either directly or indirectly, shall bid for, acquire or attempt to acquire any interest in the property sold.

**26. Prohibition against sale on holidays.** - No sale under these rules shall take place on a Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government a local holiday for the area in which the sale is to take place.

## CHAPTER IV MISCELLANEOUS

**27. Disposal of the sale proceeds.** - The sale proceeds of the property of the defaulter shall be utilised in the following manner, namely :-

- (a) the sale proceeds shall first be utilised for meeting the cost of sale;
- (b) the balance shall be utilised for satisfaction of the amount mentioned in the Certificate issued under rule 3 together with the cost of detention of the property;
- (c) the balance, if any, shall be utilised for recovery of any other Government dues payable by the defaulter; and
- (d) the balance, if any, shall be paid to the defaulter.

**28. Procedure on death of defaulter.** - If at any time after the Certificate has been issued by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs], the defaulter dies, the proceedings under these rules may be continued against the legal representatives of the defaulter, and the provisions of these rules shall apply as if the legal representatives were the defaulter.



# LEGAL PROVISIONS OF RECOVERY OF ARREARS OF CENTRAL EXCISE

## CENTRAL EXCISE ACT 1944

### SECTION 11

In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made there under including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the [Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.

### **SECTION 11DDA. Provisional attachment to protect revenue in certain cases. -**

- (1) Where, during the pendency of any proceedings under section 11A or section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interest of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962 (52 of 1962).
- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

**Provided** that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

**Provided** further that where an application for settlement of case under section 32E is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 32F is made shall be excluded from the period specified in the preceding proviso.

#### **SECTION 11E. Liability under Act to be first charge.**

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1956, (1 of 1956) the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, (54 of 2002) be the first charge on the property of the assessee or the person, as the case may be. (Inserted vide Finance Act, 2011)

#### **SECTION 12**

The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Customs Act, 1962 (52 of 1962), relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3.

**SECTION 142 (1) (b) & 142 (1) (c) (ii) OF CUSTOMS ACT, 1962 AS MADE APPLICABLE TO LIKE MATTERS IN CENTRAL EXCISE VIDE NOT .NO. 68/63-CE DATED 04.05.1963, AS AMENDED (REFER PAGE 2 & 3)**

**Notification No. 68/63-C.E., dated 4th May, 1963 as amended by Notifications No. 9/65-C.E., dated 6th February, 1965; No. 46/68-C.E., dated 23rd March, 1968; No. 13/88-C.E. (NT.), dated 29-4-1988; No. 26/95-C.E. (N.T.), dated 6-6-1995 and No. 48/97-C.E. (N.T.), dated 2-9-1997.**

### **Notification under Section 12**

(1) In supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) Central Excise No. 69/59 (G.S.R. No. 822 of 1959), dated the 18th July, 1959, the Central Government hereby declares that the provisions of sub-section (1) of Section 105, Section 110, Section 115 [excluding clauses (a) and (e) of sub-section (1)] clause (a) of Section 118, Sections 119, 120, 121 and 124, clause (b) and sub-clause (ii) of clause (c) of sub-section (1) of Section 142 and 150 of the Customs Act, 1962, (52 of 1962), relating to matters specified therein, shall be applicable in regard to like matters in respect of the duties imposed by Section 3 of the first mentioned Act, subject to the following modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the circumstances, namely :-

1. *In the said provisions -*

- (i) references to “this Act” shall be deemed to be references to “the Central Excise Act, 1944 (1 of 1944) and the Central Excise Rules, 1944”;
- (ii) references to “Assistant Commissioner of Customs” shall be deemed to be references to “Assistant Commissioner of Central Excise”;
- (iii) references to “officer of customs” shall be deemed to be references to “Central Excise Officer not inferior in rank to a Sub-inspector”;
- (iv) references to “proper officer” shall be deemed to be references to “proper officer as defined in clause (xi) of Rule 2 of the Central Excise Rules, 1944”; and
- (v) references to “smuggled goods” shall be deemed to be references to “excisable goods which have been removed in contravention of any of the provisions of the Central Excise Rules, 1944”.

2. *In the proviso to sub-section (2) of the said Section 110, -*

the reference to “Commissioner of Customs” shall be deemed to be a reference to “Commissioner” as defined in clause (ii) of Rule 2 of the Central Excise Rules, 1944.

3. *In the said Section 115 [excluding clauses (n) and (e) of sub-section (1)] -*

(a) in sub-section (1), -

- (i) in clause (c), the reference to “Section 106” shall be deemed to be a reference to “Rule 200 of the Central Excise Rules, 1944”;

(ii) in clause (d), the reference to “claim for drawback” shall be deemed to be a reference to “claim for rebate”;

(b) in sub-section (2), -

(i) the reference to “smuggling” shall be deemed to be a reference to “removal of excisable goods in contravention of any of the provisions of the Central Excise Rules, 1944”;

(ii) the reference to “the rules” shall be deemed to be a reference to the “Central Excise Rules, 1944”;

(iii) in the proviso, the reference to “goods which are sought to be smuggled” shall be deemed to be a reference to “goods which are sought to be removed in contravention of any of the provisions of the Central Excise Rules, 1944”.

4. *In the said clause (a) of Section 118, -*

the reference to “goods imported” shall be deemed to be a reference to excisable goods in respect of which any of the provisions of the Central Excise rules, 1944, has been contravened”.

5. *In the said Section 124, -*

the reference to “under this Chapter” shall be deemed to be a reference to under any of the provisions of the Central Excise Rules, 1944”.

6. In clause (e) of sub-section (2) of Section 150, the reference to “any other law relating to customs” shall be deemed to be a reference to “any other law relating central duties of excise.

**Notification No.17/2005-Central Excise (N.T.)**

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government, hereby makes the following rules further to amend the Central Excise Rules, 2002, namely: -

1. (1) These rules may be called the Central Excise (Second Amendment) Rules, 2005.

(2) They shall come into force on and from 1<sup>st</sup> April 2005.

2. In the Central Excise Rules, 2002 (hereinafter referred to as the said rules), in rule 8, -

(A) for sub-rule (3), and the proviso and the illustrations thereto, the following shall be substituted namely:-

“(3) If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.”.

(B) after sub-rule (3) so substituted, the following sub-rule shall be inserted, namely:-

“(3A) If the assessee defaults in payment of duty by the date prescribed in sub-rule (2) and the same is discharged beyond a period of thirty days from the said date, then the assessee shall forfeit the facility to pay the duty in monthly instalments under sub-rule (1) for a period of two months, starting from the date of communication of the order passed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in this regard or till such date on which all dues including interest thereof are paid, whichever is later, and during this period notwithstanding anything contained in sub-rule (4) of rule 3 of CENVAT Credit Rules, 2004, the assessee shall be required to pay excise duty for each consignment by debit to the account current and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.”.

3. In rule 12 of the said rules, after sub-rule (2), the following shall be inserted, namely: -

“(3) The proper officer may on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

(4) Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.” .

4. In rule 22 of the said rules, -

(A) for sub-rule (2), the following shall be substituted, namely:-

”(2) Every assessee, and first stage and second stage dealer shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of-

(i) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, as the case may be;

(ii) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and

(iii) all the financial records and statements including trial balance or its equivalent).”

(B) in sub-rule (3), for the words “Every assessee”, the words “Every assessee, and first stage and second stage dealer” shall be substituted.

(C) after sub-rule (3), the following Explanation shall be inserted, namely:-

“Explanation. - For the purposes of this rule, “first stage dealer” and “second stage dealer” shall have the meanings assigned to them in CENVAT Credit Rules, 2004.”.

F.No. 224/1/2005CX 6

Neerav Kumar Mallick  
Under Secretary to the Government of India

*Note:* The principal rules were published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (i), vide notification No.4/2002-CE (N.T.), dated the 1<sup>st</sup> March, 2002 [G.S.R. 143 (E), dated the 1<sup>st</sup> March, 2002] and was last amended vide notification No.12/2005-CE (N.T.), dated the 1<sup>st</sup> March, 2005 [G.S.R 135(E) dated the 1<sup>st</sup>March, 2005].

# LEGAL PROVISIONS OF RECOVERY OF ARREARS OF SERVICE TAX

## FINANCE ACT, 1994

### SECTION 73

Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded –

- (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

*Provided* that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) Contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words “one year”, the words “five years” had been substituted.

**Explanation.** — Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

- (1A) Where any service tax 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 Chapter or the rules made there under, with intent to evade payment of service tax, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, such person or agent may pay service tax in full or in part as may be accepted by him, and the interest payable thereon under section 75 and penalty equal to twenty-five per cent. of the service tax specified in the notice or the service tax so accepted by such person within thirty days of the receipt of the notice.



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

*“Provided that where such person has paid the service tax in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notices are served under sub-section (1) shall be deemed to be concluded:*

*Provided further that where such person has paid service tax in part along with interest and penalty under sub-section (1A), the Central Excise Officer shall determine the amount of service tax or interest not being in excess of the amount partly due from such person.”*

- (3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid :

*Provided that the Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of “one year” referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.*

**Explanation.** —1 For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section.

**Explanation.** —2 For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made there under shall be imposed in respect of payment of service tax under this sub-section and interest thereon. (inserted w.e.f from 01.07.2010 vide Finance Bill 2010)

- (4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—
- (a) fraud; or
  - (b) collusion; or



- (c) willful mis-statement; or
  - (d) suppression of facts; or
  - (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax.
- (5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.
- (6) For the purposes of this section, “relevant date” means, —
- (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —
    - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
    - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
    - (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made there under;
  - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made there under, the date of adjustment of the service tax after the final assessment thereof;
  - (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

### **SECTION 73A.**

Service Tax collected from any person to be deposited with Central Government:-

- (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made there under, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made there under from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.
- (2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.

- (3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
- (4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.
- (5) The amount paid to the credit of the Central Government under sub-section (1) or subsection (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).
- (6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

### **SECTION 73B.**

Interest on amount collected in excess-

Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made there under from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount:

*Provided* that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944, and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

**Explanation 1.**—Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

**Explanation 2.**—Where the amount determined under sub-section (4) of section 73A is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.

### **SECTION 73C.**

Provisional attachment to protect revenue in certain cases

- (1) Where, during the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in such manner as may be prescribed.
- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

*Provided* that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.

### **SECTION 73D.**

Publication of information in respect of persons in certain cases

- (1) If the Central Government is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings under this Chapter in respect of such person, it may cause to be published such names and particulars in such manner as may be prescribed.
- (2) No publication under this section shall be made in relation to any penalty imposed under this Chapter until the time for presenting an appeal to the Commissioner (Appeals) under section 85 or the Appellate Tribunal under section 86, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

**Explanation.**—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, shall also be published if, in the opinion of the Central Government, circumstances of the case justify it.

## SECTION 87

Recovery of any amount due to Central Government.

Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made there under is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:—

- (a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;
- (b)
  - (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
  - (ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
  - (iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;
- (c) the Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- (d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified there under as if it were an arrear of land revenue.

## **SECTION 88.**

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person as the case may be. (Inserted as per Finance Act,2011)

F. No. 354/45/2011-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)

\*\*\*\*\*

New Delhi dated the 12<sup>th</sup> May, 2011.

To

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax),  
Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: Prosecution provision in Finance Act, 1994 – regarding.**

With the enactment of Finance Act, 2011 (No.8 of 2011), Section 89 which provides for prosecution of specified offences involving service tax, becomes a part of Chapter V of Finance Act, 1994.

2. Prosecution provision was introduced this year, in Chapter V of Finance Act, 1994, as part of a compliance philosophy involving rationalization of penal provisions. Encouraging voluntary compliance and introduction of penalties based on the gravity of offences are some important principles which guide the changes made this year, in the penal provisions governing service tax. While minor technical omissions or commissions have been made punishable with simple penal measures, prosecution is meant to contain and tackle certain specified serious violations. Accordingly, it is imperative for the field formations, in particular the sanctioning authority, to implement the prosecution provision keeping in view the overall compliance philosophy. Since the objective of the prosecution provision is mainly to develop a holistic compliance culture among the tax payers, it is expected that the instructions will be followed in letter and spirit.
3. In the following paragraphs, some important aspects of the prosecution provision are explained, to guide the field formations:
4. Clause (a) of section 89(1) of Finance Act, 1994, is meant to apply, inter alia, where services have been provided without issuance of invoice in accordance with the prescribed provisions. In terms of rule 4A of the Service Tax Rules, 1994, invoice is required to be issued inter-alia within 14 days from the date of completion of the taxable service. Here,

it should be noted that the emphasis in the prosecution provision is on the non-issuance of invoice within the prescribed period rather than non-mention of the technical details in the invoice that have no bearing on the determination of tax liability.

5. In the case of services where the recipient is liable to pay tax on reverse charge basis, similar obligation has been cast on the service recipient, though the invoices are issued by the service provider. It is clarified that the date of provision of service shall be determined in terms of Point of Taxation Rules, 2011. In the case of persons liable to pay tax on reverse charge basis, the date of provision of service shall be the date of payment except in the case of associated enterprises receiving services from abroad where the date shall be earlier of the date of credit in the books of accounts or the date of payment. It is at this stage that the transaction must be accounted for. Thus the service receiver, liable to pay tax on reverse charge basis is required to ensure that the invoice is available at the time the payment is made or at least received within 14 days thereafter and in the case of associated enterprises, invoice should be available with the service receiver at the time of credit in the books of accounts or the date of payment towards the service received.
6. Further, invoice mentioned in section 89(1) will include a bill or as the case may be a challan, in accordance with the Service Tax Rules, 1994. Invoice, bill, or as the case may be, challan, shall also include “any document” specified in respect of certain taxable services, in the provisos to Rule 4A and Rule 4B of Service Tax Rules, 1994.
7. Clause (b) of section 89(1) of Finance Act, 1994, refers to the availment and utilization of the credit of taxes paid without actual receipt of taxable service or excisable goods. It may be noted that in order to constitute an offence under this clause the taxpayer must both avail as well as utilize the credit without having actually received the goods or the service. The clause is not meant to apply to situations where an invoice has been issued for a service yet to be provided on which due tax has been paid. It is only meant for such invoices that are typically known as “fake” where the tax has not been paid at the so called service provider’s end or where the provider stated in the invoice is non-existent. It will also cover situations where the value of the service stated in the invoice and/or tax thereon have been altered with a view to avail Cenvat credit in excess of the amount originally stated. While calculating the monetary limit for the purpose of launching prosecution, the value shall be the amount availed as credit in excess of the amount originally stated in the invoice.
8. Clause (c) of section 89(1) of Finance Act, 1994, is based on similar provision in the central excise law. It should be noted that the offence in relation to maintenance of false books of accounts or failure to supply the required information or supplying of false information, should be in material particulars have a bearing on the tax liability. Mere expression of opinions shall not be covered by the said clause. Supplying false information, in response to summons, will also be covered under this provision.
9. Clause (d) of section 89(1) of Finance Act, 1994, will apply only when the amount has been collected as service tax. It is not meant to apply to mere non-payment of service



tax when due. This provision would be attracted when the amount was reflected in the invoices as service tax, service receiver has already made the payment and the period of six months has elapsed from the date on which the service provider was required to pay the tax to the Central Government. Where the service receiver has made part payment, the service provider will be punishable to the extent he has failed to deposit the tax due to the Government.

10. Certain sections of the Central Excise Act, 1944, have been made applicable to service tax by section 83 of Finance Act, 1994. Section 9AA of the Central Excise Act provides that where an offence has been committed by a company, in addition to the company, every person who was in charge of the company and responsible for conduct of the business, at the time when offence was committed, can be deemed guilty of an offence and can be proceeded against. A person so charged, however has an option to establish that offence was committed without his knowledge or he had exercised all due diligence to prevent the commission of offence.
11. Section 9C of Central Excise Act, 1944, which is made applicable to Finance Act, 1994, provides that in any prosecution for an offence, existence of culpable mental state shall be presumed by the court. Therefore each offence described in section 89(1) of the Finance Act, 1994, has an inherent *mens rea*. Delinquency by the defaulter of service tax itself establishes his 'guilt'. If the accused claims that he did not have guilty mind, it is for him to prove the same beyond reasonable doubt. Thus "burden of proof regarding non existence of 'mens rea' is on the accused".
12. It may be noted that in terms of section 89(3) of Finance Act, 1994, the following grounds are not considered special and adequate reasons for awarding reduced imprisonment:
  - (i) the fact that the accused has been convicted for the first time for an offence under Finance Act, 1994;
  - (ii) the fact that in any proceeding under the said Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;
  - (iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;
  - (iv) the age of the accused.

On the above grounds, sanctioning authority cannot refrain from launching prosecution against an offender.

13. Sanction for prosecution has to be accorded by the Chief Commissioner of Central Excise, in terms of the section 89(4) of the Finance Act, 1994. In accordance with Notification 3/2004-ST dated 11<sup>th</sup> March 2004, Director General of Central Excise Intelligence (DGCEI), can exercise the power of Chief Commissioner of Central Excise, throughout India.



14. Board has decided that monetary limit for prosecution will be Rupees Ten Lakh in the case of offences specified in section 89(1) of Finance Act, 1994, to ensure better utilization of manpower, time and resources of the field formations. Therefore, where an offence specified in section 89(1), involves an amount of less than Rupees Ten Lakh, such case need not be considered for launching prosecution. However the monetary limit will not apply in the case of repeat offence.
15. Provisions relating to prosecution are to be exercised with due diligence, caution and responsibility after carefully weighing all the facts on record. Prosecution should not be launched merely on matters of technicalities. Evidence regarding the specified offence should be beyond reasonable doubt, to obtain conviction. The sanctioning authority should record detailed reasons for its decision to sanction or not to sanction prosecution, on file.
16. Prosecution proceedings in a court of law are to be generally initiated after departmental adjudication of an offence has been completed, although there is no legal bar against launch of prosecution before adjudication. Generally, the adjudicator should indicate whether a case is fit for prosecution, though this is not a necessary pre-condition. To launch prosecution against top management of the company, sufficient and clear evidence to show their direct involvement in the offence is required. Once prosecution is sanctioned, complaint should be filed in the appropriate court immediately. If the complaint could not be filed for any reason, the matter should be immediately reported to the authority that sanctioned the prosecution.
17. Instructions and guidelines issued by the Central Board of Excise and Customs (CBEC) from time to time, regarding prosecution under Central Excise law, will also be applicable to service tax, to the extent they are harmonious with the provisions of Finance Act, 1994 and instructions contained in this Circular for carrying out prosecution under service tax law.
18. Field formations may be instructed accordingly.
19. Please acknowledge the receipt of the Circular. Hindi Version to follow.

(J. M. Kennedy)  
Director, TRU

Tel: 011-23092634

F.No.390/R/262/09-JC  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs

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New Delhi dated 24<sup>th</sup> March, 2011

**INSTRUCTION**

**Subject: Settlement of Disputes between one Govt. Dept. and another and one Govt. Dept. and a Public Enterprise and one Public Enterprise and another – Regarding.**

Please refer to D.O.F. No. 275/68/91-CX.8A (Pt.), dated 17.-1.1992 addressed by the Member (Central Excise) to all Principal Collectors, and to all Collectors of Customs and Central Excise vide which a copy of Cabinet Secretariat's O.M. No. 53/3/6/91-Cab. dated 31.12.1991 was circulated pertaining to constitution of a committee to give clearance to the disputes between the Government Department and another and one Government Department and a Public Sector Enterprises and Public Enterprises themselves before these are agitated in a Court/ Tribunal. Reference is also invited to subsequent O.Ms issued by the Cabinet Secretariat and the Circulars/ Instructions issued by the Board from time to time on this issue.

2. In a recent judgment dated 17.02.2011, the Constitution Bench of the Hon'ble Supreme Court, while deciding the S.L.P. No. 2538 of 2009 in the case of Electronics Corporation of India Ltd. Vs. Union of India and other matters reported in 2011 (265) ELT 11 (S.C.) has recalled the directions given by the Court in its various orders reported as below:-
  - I. 1995 Suppl. (4) SCC 541 (ONGC v. CCE) dated 11.10.1991
  - II. 2004 (6) SCC 437 (ONGC v. CCE) dated 07.01.1994
  - III. 2007 (7) SCC 39 (ONGC v. City & Industrial Development Corpn.) dated 20.07.2007
3. In view of the above there is no requirement of obtaining approval of the Committee on Disputes for pursuing litigations as was being done. Field formations may now pursue their appeals in the respective Tribunals/ Courts without obtaining clearance from the Committee on Disputes. Proposals which have already been sent to the Committee and no decisions have been taken till 17.02.2011 shall be deemed to be covered by the decision of the Hon'ble Court dated 17.02.2011, i.e. COD permission is not required in those cases.
4. The foregoing instructions may be brought to the notice of all concerned for guidance and compliance.

(S.K. Sinha)  
Director (Judicial Cell)

**PROCEDURE OF DEMAND/ RECOVERY OF DUES OF CUSTOMS  
(AUTHORITY – CBEC’S CUSTOMS MANUAL OF INSTRUCTIONS)**

**( Para 2 of Chapter 13)**

Section 28 of the Customs Act, 1962 provides for recovery of any duty which has not been levied or has been short levied or erroneously refunded or if any interest payable has not been paid, part paid or erroneously refunded provided a notice demanding such duties/interests is issued within the time limit specified in that Section. Where the short levy is by reason of collusion or any willful misstatements or suppression of facts by the Importer the period for issuing the demand notice is five years from the relevant date specified in Section 28

2. When the short levy is discovered or pointed out by Audit, a notice is served on the importer or the persons chargeable with duty to show cause as to why the amount due should not be recovered from him. Normally a period of 15 days is given to show cause why he should not pay the amount. The basis and the working of the short levy is required to be clearly stated in the Show Cause Notice. Copies of relied upon documents are also to be furnished to the noticee, to enable him to represent his case. All such notices are required to be sent by Registered Post or given to the Agent under receipt/acknowledgement after being entered in the less charge demand register maintained in the respective sections of the Custom House
3. It is important that the demand should be served on the importer within the time limit under section 28 of the Customs Act as otherwise the demand shall become time barred and legally not recoverable. In the case of IAD or CRA objections demands are issued immediately on receipt of the objection wherever it appears that there may be a short levy of duty as indicated in the objection.
4. Demands issued for short levy of duty as a result of audit objection, arising out of assessment etc. are to be finalised within 6 months from the date of issue of the demands and cases which could not be finalised should be reviewed for examining the reasons for delay and adopting suitable remedial measures.
5. Upon receipt of the reply from the Noticee the matter is examined in detail and the Noticee is offered an opportunity of Personal Hearing to explain his case before the adjudicating authority. After the Personal Hearing the adjudicating authority shall examine the material placed before him and shall come to the conclusion after taking into consideration the provisions of Law concerning the issue. Generally, the issues involved are misdeclaration of the description of the goods resulting in wrong classification and levy of lesser duty, misdeclaration of value, quantity and weight having a bearing on duty, calculation error resulting in short levy of duty, non inclusion of certain components of value in the assessable value etc.

6. The adjudicating authority is required to take an independent decision as an quasi-judicial authority and pass appropriate orders either determining the amount of short levy in terms of section 28(8) of Customs Act or dropping the proceedings where it is found that there is no short levy. In either case an appealable order is to be issued by the adjudicating authority. The duties, fines and penalties imposed, if any, are required to be paid immediately, unless the party files an appeal and obtains a stay from the competent authority.
7. As regards breach of condition of the notification after availing of the exemption thereunder, it has been held by the Apex Court that the obligation under a notification is a continuing one and the Customs authorities are well within their power to recover the duty whenever it comes to their notice that the importer has failed to fulfil the conditions. In such cases the demand can be issued irrespective of the time factor and the amount can be recovered in terms of the provisions of the Customs Act.
8. The confirmed demands are enforced and recoveries effected in accordance with the provisions under Section 142 of Customs Act, 1962. Where it is not possible to recover the amount by adjusting against any money which the department owes to such persons, or by detaining and selling any goods belonging to such persons which are under the control of the Department, action is initiated to recover the Government dues through the District Collector as if it were an arrears of land revenue. Powers are also vested with Customs for attaching/detaining and selling any movable or immovable property belonging to/or under control of such person, and these can also be resorted to.

**F.No. 495/15/94 - CUS VI**  
Government of India  
Ministry of Finance  
Department of Revenue, New Delhi

**Subject : Finance Act, 1995 - Delegation of powers to customs officers under Section 142 of the Customs Act, 1962 - Instructions reg.**

The undersigned is directed to say that in terms of the amended section 142 of the customs Act, 1962, in addition to the existing modes of recovery of govt. dues mentioned therein, a provision has been made to empower custom officers to attach and sell the moveable and / or immovable property of a defaulter as per the rules to be framed in this behalf by the Central Government. These rules have since been notified vide Notification No. 31/95-Cus (NT) dated 26.05.95.

2. In this connection, it may be noted the provision of recovery through district authorities has been retained under section 142 (1)(c)(i), while empowering the proper officer to take recourse to recovery through custom officers. However, simultaneous action through district authorities and through custom officers for recovery of govt. dues should not be taken. The proper officer should take recourse to action under clause (c) of section 142(1) only when the amount in question cannot be recovered under clauses (a) or (b) of section 142 (1).
3. For action under clause (c) or section 142(1) or the Custom Act, 1962, the following guidelines may be followed:-
  - a) Where the amount recoverable does not exceed rupees one lakh, certificate action should first be taken through the district authorities under sub - clause (i).
  - b) In case the amount is not recovered by the district authority within three months, the district authority should be informed by registered A/ D letter to discontinue recovery and action should be taken to initiate recovery under sub-clause (ii) through the Commissioner of customs/ C.Excise having jurisdiction over the place where the defaulter is having jurisdiction over the place where the defaulter is having property, or is residing, or is carrying out his business, or has his bank accounts.
  - c) In case the amount recoverable exceeds rupees one lakh, the proper officer should initiate recovery action directly through the concerned commissioner of Customs/ C.Excise under sub-clause (ii).
4. A proper record should be maintained of cases in which recovery action is initiated under sub-clause (ii) of clause (c) of section 142(1) of the Customs Act, 1962.
5. In case you need any clarification or if you have any suggestions on the subject, please intimate at the earliest.

Sd/-  
(T.R. Kapur)  
Under Secretary (Cus. VI)

**Dues – Recovery of arrears of revenue under amended Section 142 (1) of the Customs Act, 1962 read with Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.**

**CBEC - Circular No. 56/96-Cus., dated 14/11/96**

**F.No. 450/72/96- CUS- VI**

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs, New Delhi

**Subject: Recovery of arrears of Revenue under amended Section 142(1) of the Customs Act 1962 read with Customs (Attachment of Property of Defaulters for Recovery of Government of Dues) Rules, 1995.**

I am directed to refer to amended section 142(1) of the Customs Act, 1962 read with Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules 1995, which enable the Department to create a legal framework to realise dues of the Government by attaching, distraining movable and immovable property of the person and then disposing the said property to recover the dues. These provisions are in addition to the existing other modes of recovery. The scope of these instructions is to prescribe a procedure for implementing the amended provisions. Board's existing instructions regarding implementation of certificate action etc. remain unchanged.

2. It would be noted that recovery through District Collector has been retained under sub-clause (i) of Section 142(1) of the Act while empowering the Proper Officer to recover dues through Customs officers. However, the Board has already issued appropriate directions vide its letter F.No. 495/15/94-CUS.VI dated 30/5/95 to the effect that simultaneous action for recovery of Government dues should not be taken through district authorities and through Customs Officers. It has further been laid down in the aforesaid communication that even action under clause (c) of Section 142(1) of the Act should be taken only when Government dues have not been recovered under Clause (a) or (b) of the aforesaid Section 142(1) of the Act.
3. You are further aware that the Board has already laid down guidelines to initiate recovery action directly through the concerned Commissioners of Customs/ Central Excise under Sub-clause (ii) of Clause (C) of Section 142(1) of the Act only in cases where the recoverable amount exceeds Rs. one lakh or where the District Collector to whom a Certificate stipulated under sub-clause (i) of Clause (C) of Section 142(1) of the act had been sent, has not been able to effect the recovery within 3 months. In such cases the District Collector should be informed by a letter through Regd. Post to discontinue recovery and action should be initiated for recovery under sub-clause (ii) clause (C) of Section 142(1) of the Act.

4. Where the Government dues have not been paid by the defaulters, the Asstt. Commissioner of Customs should under Rule 3 of the Rules prepare a certificate in the endorsed form i.e. as Appendix-I specifying therein the amount due from such person and should send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any movable or immovable property or resides or carries on his own business or has his bank accounts.
5. To have ready access to the information about the defaulter's movable or immovable property, his residence and details about his business or bank accounts, it would be necessary to build a data base from the information available in appropriate quarter such as the DGFT's office, (where applications for grant of an importer exporter code number are filed.) The Customs House should also develop such data base from other sources such as Income Tax, Sales Tax etc.
6. The Commissioners of Customs or Commissioner of Central Excise would direct the concerned Authorised Officer not below Asstt. Commissioner to cause a Notice (Appendix - II)<sup>1</sup> to be served upon the defaulter requiring to pay the amount specified in the Certificate within 7 days of the Notice. The Authorised Officer should thereafter take steps to realise the amount mentioned in the Certificate in terms of the rules after expiry of stipulated period of seven days.
7. If the amount mentioned in the certificate (Appendix-I) / notice (Appendix-II) is not paid within seven days from the date of the service of the notice, the Authorised Officer should proceed to realise the amount by attachment and sale of the defaulters property in accordance with the procedure of attachment and proclamation and sale explained in the Annexures A, B respectively.
8. One of the Assistant Commissioner of Customs may be authorised as proper officer under the rules and special cell may be created in the Customs House/ Central Excise Headquarters for implementing the provisions of these rules.
9. The Commissioner may issue suitable Standing Order on the subject endorsing a copy to the Board and the Directorate General of Inspection, Customs & Central Excise, New Delhi. With the issuance of these instructions it is expected that speedy action would be initiated for the recovery of pending Government dues under the provisions of the Customs Act, 1962. This procedure should be reviewed after one year. The Commissioners are requested to bring the difficulties faced to the Board's notice within 6 months.



**ATTACHMENT**

1. There is in Law a distinction between movable & immovable property. The mode and procedure of attachment of the two categories of properties differ in significant respects. Hence, the standard format for the two types of property which are being prescribed as distinct from each other. The standard format which should be used for ordering the attachment for the movable and immovable property is given respectively in Appendix IIIA & IIIB. A copy of the order of attachment is to be served on the defaulter in the same manner as is prescribed for the service of an order or decision in Section 153 of the Act.
2. It is also necessary that the order of attachment should be proclaimed at some place on or adjacent to the property attached by customary mode. A copy of the attachment order is to be affixed on a conspicuous part of the property as well as on the notice board of the office of the authorized officer.
3. While issuing the order of attachment the provisions of Rules 9 and 10 of the Rules should be kept in view. It is necessary to bring the provisions of the aforesaid Rules to the defaulter's notice by a written communication served in the same manner as has been stipulated for the service of the principal notice of attachment in the foregoing paras. The standard format which could be used for doing so is given as Appendix IV.
4. In some odd cases it may happen that the property to be attached is in the custody of a Court or Public Officer. In such cases the authorized officer is required to give a notice (in Appendix VI) to such court or officer requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the authorized officer issuing the notice. In case there is any dispute relating to the question of title or priority between the authorized officer and any other person not being the defaulter who claims to be interested in such property by virtue of any assignment, attachment or otherwise, the same would have to be determined by the court and not by the authorized officer.
5. If the defaulter does not pay the Government dues as mentioned in the Certificate (Appendix-I) within a period of 30 days together with the cost of detention of the property, the authorized officer should obtain the Commissioner's order for realizing the amount by sale of the defaulter's property in public auction.
6. Commissioners are competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and further order that any bid shall be accepted only on the condition that it is not less than such reserve price. They may utilize the services of the valuation Cell of the Income Tax Deptt. or authorized Govt. approved valuers. Similarly in regard to valuation of shares, authorized agencies like SEBI, Stock Exchanges could be consulted.
7. The order of attachment of negotiable instrument shall be in the form Appendix VIIA.



8. In the case of shares held by the defaulter in a company, the order in Appendix VIIB shall be issued both to the defaulter and the principal officer of the company prohibiting them from making any transfer of the shares. A copy of the prohibitory order should also be affixed on the notice board of the authorized officer.

**PROCLAMATION AND SALE**

1. When the authorized officer acting under Rule 15 has obtained the Commissioner's order to the effect that the immovable property belonging to the defaulter should be sold he has to give proclamation of such intended sale.
2. The proclamation should be in the language of the district in which the particular property is situated and one proclamation should be issued for each defaulter. It is not necessary to give notice to the defaulter before the sale proclamation is settled. Once a notice is issued, there is not necessity of issuing a fresh notice if subsequently a sale is to be adjourned.
3. The proclamation which is the prelude to sale should contain the following particulars i.e.:
  - (i) The revenue assessed upon the property or part thereof;
  - (ii) The reserve price below which the property may not be sold; and
  - (iii) Any other thing which the authorized officer considers it material for the purchaser to know in order to judge the nature and value of the property.
4. Every proclamation of sale should be made in the following manner:
  - (A) By a customary mode (announcement by loud speaker may also be resorted to) at some place on or near the property to be sold. Omission to beat drum as required by Rule 19 is "material irregularity".
  - (B) A copy of the proclamation shall be affixed:
    - (i) Where several properties are put up for sale, copy of the proclamation should be affixed on each property separately.
    - (ii) Upon a conspicuous part of the office of the authorized officer. This condition must be scrupulously followed in ever case.
5. The sale of immovable property made in execution of a Certificate becomes absolute when the authorized officer makes an order confirming the sale. It is mandatory upon the authorized officer to make the order confirming the sale when the following conditions are fulfilled.
  - (i) When no application is made for setting aside a sale under Rule 20;
  - (ii) (a) When such an application has been made and the same is disallowed by the authorized officer; and
    - (b) the full sum of the purchase money has been paid.

6. The authorized officer can also make an order not confirming the sale but setting the same aside, if,
  - (a) an application under Rule 20 has been made and is allowed by him,
  - (b) an application under Rule 20 has been made and all the conditions mentioned in that Rule are satisfied.

Before setting aside the sale the authorized officer is required to give notice to the person(s) affected thereby which expression includes the defaulter, the auction purchaser, a transferee from the auction purchaser, a transferee from the auction purchaser after the sale but before the same is confirmed.

7. The order of confirmation of sale of immovable property under Rule 21 should be in the form of Appendix X. The notice to interested parties under Rule 21(ii) of the Rules, to show cause why sale should not be set aside shall be in the form of Appendix IX.
8. When the sale of immovable property becomes absolute, the authorized officer should grant a certificate in which are certified the details of the property sold, the name of the person declared as purchaser and the date on which the sale had become absolute. The certificate as given in Annexure XI is to be granted to the purchaser. Where a purchaser is dead, the certificate may be granted to his legal representative.
9. It is to be noted that departmental officers having any duty to perform in connection with any sale under the Rules either directly or indirectly are prohibited from bidding for, acquiring or attempting to acquire any interest in the property sold through public auction. Needless to say that similar instructions also exist in respect of the sale of confiscated goods or goods sold through public auction in terms of Section 48 of the Act.
10. The rules specifically prohibit conducting any sale through public auction on a Sunday or other general holidays recognized by the State Government or on any day which has been identified by the State Government as local holiday for the area in which the sale is to take place. The provisions of this rule are at variance with the instructions as contained in the Disposal Manual for holding public auction in respect of confiscated goods or goods proposed for sale under Section 48 of the Act. Since there is a statutory bar on conducting public auction in respect of the property arrested and distrained under Section 142 (1) (c) (ii), particular care should be taken to scrupulously abide by the provisions of Rule 26 as non-compliance may vitiate the sale altogether.
11. Once the movable or immovable property of the defaulter is sold in terms of sub-clause(ii) of clause (c) of Section 142(1) of the Act and/or the provisions of the Rules the sale proceeds are to be utilized in the manner laid down under Rule 27 of the Rules, The expression “sale proceeds” connotes the conversion of the property into its equivalent value of money.
12. When the property belonging to the defaulter is sold and the sale proceeds realized, the sale proceeds will have to be distributed in the following order of priority:

- (a) In the first place, the authorized officer shall be paid the cost incurred by him. An instance of the cost so incurred by the authorized officer is where under Rules 13,17 and 19 (ii) of the Rules the authorized officer is to insert advertisement(s) in the local newspaper. Sums payable by the authorized officer for incurring such expenditure should be deemed to be the cost of sale and would have to be deducted from the total sale proceeds of the defaulter's property.
- (b) The amount due under the Certificate issued under Rule 3 together with the cost of detention of the property shall then be utilized for specification of the amount mentioned in the Certificate. It may, however, be noted that in the case of sale of immovable property no disbursement should be made until the sale has been confirmed by the authorized officer under Rule 21 of the Rules.
- (c) If any balance remains over after defraying the amount(s) mentioned at (a) and (b) above, then out of such balance any amount recoverable from the defaulter under the Act which may be due upon the date of realization of the sale proceeds shall be paid to the Asstt. Commissioner of Customs to whom such payment is due.
- (d) The balance, if any, left over after making the payment(s) referred to at (a),(b) and (c) above shall be paid to be defaulter.

**APPENDIX I**

**FORM OF CERTIFICATE UNDER SECTION 142 (1) (c) (ii) OF THE CUSTOMS ACT 1962**

From

The Assistant Commissioner of Customs,  
.....Custom House,  
.....

To

The Commissioner of Customs & Central Excise,  
.....  
.....

**Sub: Realization of Government Dues recoverable from ..... Under the provisions of Sec 142 (1) (c) (ii) of the Customs Act,1962 (Act L II of 1962).**

Pursuant to Sec 142(1)(c)(ii) of the Customs Act, 1962 (Act LII of 1962) I,....., Assistant Commissioner of Customs do hereby certify that a sum of Rs..... has been demanded from and is payable by ..... by way of duty/penalty/drawback/ interest under the said Act and has not been paid and cannot be recovered from the said ..... in the manner provided in Sec.142(1) (a) or (b) or (c) (i).

The said ..... Owns property/resides/carries on business, in your jurisdiction particulars of which are given hereunder:-

I am, therefore, to request you to kindly take early steps to realize the amount in accordance with the provisions of Section 142 (1) (c)(ii) of the Customs Act, 1962 and the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules,1995.

On realization, the aforesaid sum together with the interest and cost of distress may please be credited to the following Head of Account.

Yours faithfully

Assistant Commissioner of Customs  
Customs House.....

Dated the.....

**APPENDIX – II**  
**(NOTICE OF DEMAND TO DEFAULTER)**

Office of the Asstt. Commissioner  
of Customs and Central Excise

.....

Dated.....

To

.....  
.....  
.....

Please take notice that certificate No..... dated ..... had been forwarded by the Assistant Commissioner of Customs ..... to the Commissioner of Customs and Central Excise ..... for the recovery of an amount of Rs..... details of which are given herein below:-

The said Commissioner has sent the said certificate to the undersigned who has been authorized by the said Commissioner under Section 142(1) (c) (ii) of the Customs Act, 1962, read with Rule 4 of the Customs Attachment of Property of Defaulters for Recovery of Customs Dues) Rules 1995 specifying that an amount of Rs..... is to be recovered from you.

2. You are hereby required to pay the amount aforesaid within seven days from the date of service to this notice.
3. A copy of the challan in Form TR 6 is enclosed for the purpose.
4. You are hereby informed that in case of default, steps would be taken to realize the amount in accordance with the provisions of the Customs (Attachment of Property of Defaulters for the recovery Government Dues) Rules, 1995.
5. In addition to the amount aforesaid, you will also be liable for –
  - (a) such interest as is payable in accordance with Section 28AA of the said Act for the period commencing immediately after the said date.
  - (b) all cost, charges and expenses incurred in respect of the service of this notice and of warrants and other processes and of all other proceedings taken for realizing the arrears.

(Seal)

Dated:

Authorised Officer  
(NAME IN BLOCK /LETTERS)  
DESIGNATION

(Score out whichever paragraph is not applicable).

N.B. Attention is invited to Rule 9 of the Customs (Attachment of Property of Defaulters for Recovery of Customs Dues) Rules 1995 which is reproduced below:-

- 9 (i) where a notice has been served on a defaulter under rule 2, the defaulter or his representative interest shall not be competent to mortgage, charge, lease, or otherwise deal with any property belonging to him except with the permission of the proper officer, nor shall any civil court issue a process against such property in execution of a decree for the payment of money.
- (ii) where an attachment has been made under these Rules, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other monies contrary to such attachment, shall be void, as against all claims enforceable under the attachment”.

**APPENDIX II A**

**NOTICE OF ATTACHMENT WHERE THE PROPERTY CONSISTS OF A SHARE  
OR INTEREST IN MOVABLE PROPERTY**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

To

.....  
.....

Whereas you have not paid the amounting to Rs ..... payable by you in respect of Certificate No..... dated ..... forwarded by the Assistant Commissioner of Customs ..... and the interest payable under Section 28AA of the Customs Act, 1962, for the period commencing immediately after the said date:

2. It is hereby ordered that [you \* .....] be and are hereby prohibited and restrained, until the further order of the undersigned, from transferring or charging in any way your share or interest in the under mentioned items of movable property, belonging to you and ..... and ..... As co-owners.

Given under my hand and seal at .....this ..... day ..... of ..... 19...

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION



**APPENDIX IIIA**  
**PANCHANAMA**  
**ATTACHEMENT OF MOVABLE PROPERTY**

Panchnama drawn by the panchs, in the presence of Shri ....., Authorised Officer, of the office of the Assistant Commissioner of Customs during the course of the execution proceeds of the Warrant or Notice Form no. .... in the case of ..... Of ....., who is a defaulter for non-payment of arrears of Government Dues in the File No. .... on the spot at House no. .... Street no. .... of ..... at the time ..... on ..... 19.....

S.No.	Name of Panch & father's Name	Address	age	Profession
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

We, the above mentioned Panchs, on being called by the above said Shri ....., Assistant Commissioner of Customs & Central Excise ....., duly authorised by the Commissioner of Customs and Central Excise under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995. gathered here at the place of ..... (address in full) belonging to Shri ....., and learnt that Shri / M/s .....

Is a defaulter for non-payment of Government Dues and consequently the Authorised Officer, ..... has issued a warrant of attachment of the movable property of the defaulter in the Form Appendix ....., to be executed on or before ..... date, and in execution thereof Shri ....., the holder of the warrant, today entered the premises of Shri ..... at ..... (time), and after service of the warrant on Shri ....., demanded the payment of the Government Dues, and on its non-payment, attached movable properties as detailed in the inventory attached to this panchnama between the hours ..... (time) and ..... (time) in our presence.

We also hereby state that during the execution proceedings .....

(to be filled in case of occurrence of any incident).

Therefore, we solemnly declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observation and knowledge.

Dated Time

- 1.
- 2.
- 3.
- 4.

Drawn before me

OFFICE SEAL

Authorised Officer  
 NAME IN BLOCK LETTERS  
 DESIGNATION

**INVENTORY**

Inventory of movable properties attached at the premises of Sri ..... H. No. .... Street No. .... of ..... under Rule 5 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 while executing Warrant of attachment of movable issued by the Authorised Officer, Date ..... towards realization of arrears of Government dues of Rs. .... due from ..... and executed by Shri ..... Authorised Officer ..... on ..... 19 between the hours .....

SI No. Description of the Article Estimated value in Rupees Place where kept for safe custody (Name of the person, if Necessary)

Witness:-

Sl. No.	Name and address of Panch	Signature
---------	---------------------------	-----------

Drawn by me today the ..... 19 ..... At P.M.

Signature of Defaulter :

Signature of Authorised Officer

**APPENDIX III B**  
**PANCHANAMA**  
**ATTACHMENT OF IMMOVABLE PROPERTY**

I/We .....

S/O .....

(2), ..... residence of  
..... on being called by Shri .....

Assistant Commissioner of Customs and Central Excise .....

Duly authorized by the Commissioner of Customs and Central Excise..... under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 to witness the attachments/ proclamation for the sale of the under mentioned property, for realization of Government Dues from ..... In File No. .... solemnly state as under :

(a) .....

(b) .....

(mention the properties here)

- (1) that we identified the property referred to above.
- (2) That a copy of the order of Attachment/ proclamation for sale was affixed to the outer door/to a pole fixed in respect of each property separately in our presence.
- (3) That the order of attachment/proclamation for sale has been proclaimed, near each property cited above and in the locality by beat of drum.
- (4) That the contents of this Panchnama have been explained to us in vernacular and having understood we certify that what is stated above is correct and true.

BEFORE ME, US

(1) (1)

(2) (2)

**APPENDIX IIIC**

**ORDER OF ATTACHMENT OF IMMOVABLE PROPERTY**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

To

.....  
.....  
.....

Whereas you, ..... (defaulter) have/has failed to pay the sum of Rs ..... payable by \*you/him in respect of Certificate No. ....  
Dated ..... Forwarded by the Assistant Commissioner of Customs ..... and the interest payable under section 28AA 47(2), 61(2), 75A and Sec. 124 of the Customs Act, 1962, for the period commencing immediately after the said date;

It is ordered that you, the said ..... be, and are hereby prohibited and restrained, until the further order of the undersigned, from transferring or charging the under mentioned property in any way and that all persons be, and that they are hereby prohibited from taking any benefit under such transfer or charge.

**SPECIFICATION OF PROPERTY**

Given under my hand and seal at ..... this ..... Day of ..... 19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**APPENDIX IV**

**NOTICE OF ATTACHMENT**

(Under Rules 9 and 10 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

Office of the Assistant Commissioner,  
Customs & Central Excise,

.....

To

.....

.....

.....

Whereas a notice has been served upon you requiring you to pay the sum of Rs....., being the amount of Government Dues payable by you as per the terms of an order issued under Sec 28, 28AA, 47, 47(2), 61, 61(2), 75A and Sec 124 of the Customs Act, 1962, under sub-clause (ii) of clause (c) of Section 142(1) of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

2. Please take note that

(a) in terms of Rule 9 of the aforesaid Rules.

(i) you, or your representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to you except with the written permission of the undersigned.

(ii) where an order of attachment has been served on you as per the terms of Rule 5 of the above mentioned Rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment.

(b) Further in terms of Rule 10 of aforesaid Rules, where belonging to you and/or another as co-owners, you are hereby prohibiting him from transferring the share or interest or charging it in any way.

Given under my hand this ..... Day of ..... 19

OFFICE SEAL

Authorised Officer  
NAME IN BLOCK LETTERS  
DESIGNATION

**APPENDIX V**

**NOTICE OF ATTACHMENT A DECREE OF A CIVIL COURT**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....  
Dated .....

To

The Judge of the Court of .....

Sir,

Whereas ..... has failed to pay the arrears due from him in respect of  
(defaulter)

Certificate No ..... Dated ..... forwarded by the Assistant  
Commissioner of Customs to the Authorised Officer (so authorized by the Commissioner of  
Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for recovery of  
Government Dues) Rules, 1995 amounting to Rs. .... and the interest payable  
under section 28AA, 41(2), 61(2), 75A and Sec 124 of the Customs act, 1962, for the period  
commencing immediately after the said date.

And whereas the undersigned in exercise of his [powers under the Customs (Attachment  
of Property for Recovery of Government Dues) Rules, 1995 desires to proceed with attachment  
of a decree of ..... Court, dated the ..... Day of ..... made in suit  
No. .... of ..... wherein ..... was the plaintiff  
(and # ..... ) was the defendant and which decree is pending execution in  
your Court.

You are, therefore, requested to stay the execution of the said decree unless and until

- (i) the undersigned cancels this notice; or
- (ii) the Assistant Commissioner of Customs ..... or the above mentioned  
defaulter applies to you to execute the decree.

Yours faithfully,

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**APPENDIX –VI**

**NOTICE OF ATTACHMENT OF MOVABLE PROPERTY IN THE CUSTODY OF  
A COURT OF A PUBLIC OFFICERS**

Office of the Assistant Commissioner,  
Customs & Central Excise,

.....  
.....

To

.....  
.....

Sir,

Whereas ..... has not paid the arrears amounting to Rs.....  
(defaulter)  
in respect of Certificate No. .... dated ..... forwarded by the Assistant  
Commissioner of Customs ..... And the interest payable under section  
28AA, 47(2), 61(2), 75A and Sec 124 of the Customs Act, 1962, for the period commencing  
immediately after the said date and the said Authorized Officer (so authorized by the  
Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters  
for Recovery of Government Dues) Rules, 1995 specifying that an amount of Rs.  
..... is to be recovered by the undersigned from the defaulter; and the  
undersigned desires to attach sums of money or other property, which is included in the  
defaulter's property now in your custody;\*

I request that you will hold the said money or property and any interest or dividend becoming  
payable thereon subject to the further and other available details.

Yours faithfully,

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

Note: - \*Here state how the money or property is understood to be in the hands of the Court of  
the Public Officer addressed, on what account and other available details.

**APPENDIX – VII A**

**ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

To

.....  
(Attaching Officer)

.....

Whereas the undersigned the passed on the .....day of.....19  
.....an order for the attachment of the under mentioned property in the  
course of proceedings for the recovery of arrears due from.....(defaulter). In respect  
of Certificate No..... dated .....forwarded by the  
Assistant Commissioner of Customs..... to the Authorized Officer (so  
authorized by the Commissioner of Customs under Rule 4 of the Customs (Attachment of  
Property for Recovery of Government Dues) Rules, 1995, you are hereby directed to seize  
the said property and bring the same before me and hold the same subject to my orders.

**DETAILS OF PROPERTY**

Given under my hand and seal at..... this ..... day of  
.....19.....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION



**APPENDIX – VII B**

**PROHIBITORY ORDER , WHERE THE PROPERTY CONSISTS OF SHARES IN A CORPORATION**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

To

(1) .....

(2) .....

.....  
(Principal Officer)

.....  
(Name of Corporation)

Whereas.....(defaulter) has failed to pay the arrears due from him in respect of Certificate No.....dt.....forwarded by the Assistant Commissioner of Customs..... amounting to Rs. .... and the interest payable under section 28AA, 47(2), 61(2), 75A and Sec. 124 of the Customs Act, 1962, for the period commencing immediately after the said date;

It is ordered that you, No. (1) (above-mentioned, be, and you are hereby prohibited and restrained, until the further order of the undersigned, from making any transfer of the shares in the aforesaid Corporation standing in your name or from receiving payment of any dividends thereon. 1 (\*It may be noted, that the property consisting of shares is included in the defaulter's property.

And that you, No. (2) above-mentioned, are hereby prohibited and restrained, until the further order of the undersigned from permitting any such transfer or making any such payment.

Given under my hand and seal at ..... this ..... day of .  
.....19.....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION

APPENDIX – VII C

ORDER OF ATTACHMENT OF PROPERTY CONSISTING OF AN INTEREST IN PARTNERSHIP PROPERTY

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

To

.....  
.....

Whereas.....(defaulter) has not paid the arrears amounting to Rs..... in respect of Certificate No. .... dated ..... forwarded by the Assistant Commissioner of Customs..... and the interest payable under Section 26A of the Customs Act, 1962 for the period commencing immediately after the said date and the said Tax Recovery Officer has sent to the undersigned a certified copy of the said Certificate, specifying that an amount of Rs..... is to be recovered by the undersigned from the defaulter; and whereas the said..... is a partner in the firm known as Messrs.....;

It is hereby ordered:

- (i) that the share of the said..... in the partnership property and profits of the said firm be and is hereby charged with the payment of the amount aforesaid due under the said Certificate; and
- (ii) \*that.....

Given under my hand and seal at..... this  
..... day of ..... 19.....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION

---

Note: - \*Here incorporate any other order that may be considered necessary in the circumstance.  
# Score out portion in italics, if not applicable.

**APPENDIX – VIII**

**PROCLAMATION OF SALE**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

To

.....  
.....

Whereas the Assistant Commissioner of Customs, ..... has forwarded the Certificate No..... dated ..... for the recovery of the sum of Rs.....from.....  
(defaulter)

Which sum is recoverable together with interest in accordance with section 28AA, 47(2), 61(2), 75A and Sec. 124 of the Customs Act, 1962, for the period commencing immediately after the said date and the costs, charges and expenses of the proceedings for the recovery thereof;

And whereas the undersigned has ordered the sale of the attached property mentioned in the annexed schedule in satisfaction of the said Certificate;

And whereas on the.....day of.....19.....(the date filed for the sale) there will be \_\_\_\_\_ thereunder a sum of Rs..... including costs a interest;

Notice is hereby given that, in the absence of any order of postponement, the said property shall be sold public auction at ..... A.M./P.M. .... on said..... day of .....19..... at .....  
(place)

The sale will be of the property of the defaulter above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property , so far as they have been ascertained, are those specified in the schedule against each lot;

The property will be put up for sale in the lots specified in the schedule. If the amount to be realized by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder. The sale will also be stopped if, before any lot is knocked down, the arrears mentioned in the said Certificate, interest payable under sections 28AA, 47(2), 61(2), 75A and Sec. 124 of the Customs Act, 1962, and costs, (including costs of the sale) are tendered to the officer conducting the sale or proof is given to his

satisfaction that the amount of such arrears, interests and costs has been paid to the undersigned.

At the sale, the public generally are invited to bid either personally or by duly authorized agent. No. officer or other person, having any duty to perform in connection with this sale shall, however, either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold.

The sale shall be subject to the conditions prescribed in the Customs (Attachment of Property of Defaulters for the Recovery of Customs Dues) Rules 1995, and to the following further conditions:-

i) The particulars specified in the annexed schedule have been stated to the best of the information of the undersigned, but the undersigned shall not be answerable for any error, mis-statement or omission in this proclamation.

2[\*\*(ii) The reserve price below which the property shall not be sold is Rs.....]

3 (iii) The amounts by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

4 (iv) The highest bidder shall be declared to be the purchaser of any lot provided always that he is legally qualified to bid and provided further that the amount bid by him is not less than the reserve price. It shall be in the discretion of the undersigned to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it inadvisable to do so.

1.[(v)] For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of Customs (Attachment of Property of Defaulters for the Recovery of Customs dues) Rules 1995.

[(vi)] In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment, the property shall forthwith be again put up and resold.

2[(vii)] In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five per cent of the amount of his purchase money to the officer conducting the sale and, in default of such deposit, the property shall forthwith be put up again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15<sup>th</sup> day from the date of the sale of the property, exclusive of such day, or if the 15<sup>th</sup> day be a Sunday or other holiday, then on the first office day after 15<sup>th</sup> day . In default of payment within the period mentioned above, the property shall be resold, after the issue of a fresh proclamation of sale. The deposit, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

## SCHEDULE

No.	Description of property to be sold with the names of the other co-owners where the property belongs to the defaulter and any other persons as co-owners	Revenue assessed upon the property or any part thereof	Details of any encumbrances to which the property is liable	Claims, if any, which have been put forwarded to the property and any other known particulars bearing on its nature and value
1	2	3	4	5

Given under my hand and seal at .....this ..... day of .....19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION

Note: - \*Applies only in the case of auction of immovable property where a reserve price is fixed.]

**APPENDIX – IX**

**ORDER OF CONFIRMATION OF SALE OF IMMOVABLE PROPERTY**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

..... purchased for Rs..... the immovable property specified below at a sale held by public auction on the..... day of..... 19..... in execution of Certificate No..... dated..... forwarded by the Assistant Commissioner of the Customs..... to the Authorised Officer (so authorized by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for the Recovery of Government Dues) Rules, 1995 for recovery of arrears from..... The full amount of the purchase money has been paid on.....

Accordingly the said sale is hereby confirmed.

Given under my hand and seal at .....this ..... day of .....19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION

**APPENDIX – X**

**NOTICE TO INTERESTED PARTIES TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

To

.....  
.....  
.....

Whereas the under mentioned property was sold on the ..... day of .....in execution of Certificate No..... dated..... forwarded by the Assistant Commissioner of Customs..... for recovery of arrears from.....  
(defaulter)

And whereas..... has applied to the undersigned to set aside the sale under rule 20 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs before the undersigned on..... when the said application will be heard and determined.

**DESCRIPTION OF PROPERTY**

Given under my hand and seal at .....this ..... day of .....19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION

**APPENDIX – XI**

**CERTIFICATE OF SALE OF IMMOBABLE PROPERTY**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

This is to certify that Shri.....has been declared the purchaser at a sale by public auction on the..... day of ..... of the under mentioned immovable property, in execution of Certificate No..... forwarded by the Assistant Commissioner of Customs ..... to the Authorised Officer (so authorized by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995, ..... ) for recovery of arrears from..... and that the said sale has been duly confirmed by the undersigned and became absolute on the ..... day of .....

**SPECIFICATION OF PROPERTY**

Given under my hand and seal at .....this ..... day of .....19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION



**APPENDIX – XII A**

**CERTIFICATE OF SALE OF MOVABLE PROPERTY**

Office of the Assistant Commissioner  
Customs & Central Excise

.....  
.....

This is to certify that Shri.....purchased for Rs.....  
the under mentioned movable property at sale by public auction on  
the..... day of ..... in execution of Certificate  
No. .... dated..... forwarded by the Assistant  
Commissioner of Customs ..... for recovery of arrears from .....to the  
Authorised Officer (so authorized by the Commissioner of Customs under Rule 4 of the  
Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules,  
1995..... specifying that an amount of Rs..... remains to be  
recovered from.....

**SPECIFICATION OF PROPERTY**

Given under my hand and seal at .....this ..... day of  
.....19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTER)  
DESIGNATION

**Recovery of Customs arrears on confirmation of demand – Application of Excise Circular No. 788/21/2004-CX.**

**Circular No.5/2007 - Cus. Dt. 10.01.2007**

**F.No.401/243/2006-Cus.III**

Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Excise & Customs)

\*\*\*

January 10, 2007

**Subject:- Customs- Coercive action for recovery of arrears**

1. The Comptroller and Auditor General of India (C&AG) has undertaken a draft review on “Adjudication and Appeal Cases (Customs)” for inclusion in the report of the C&AG for the year 2005-06 (Performance Audit). C&AG has recommended that the Board should consider fixing time limit for paying duty on confirmation of demand beyond which coercive action can be taken.
2. The Board has accepted this recommendation of the C&AG. The Board has already issued a detailed circular regarding initiation of coercive action for the recovery of Central Excise duties under its Circular 788/21/2004-CX dated 25 May 2004 issued from F. No. 208/41/2003-CX.6. The instructions contained in this Circular would apply *mutatis mutandis* for the recovery of customs arrears as well.
3. The field formations may be suitably informed.
4. The receipt of the circular may be acknowledged.
5. Hindi version will follow.

**PROCEDURE FOR DEMAND/ RECOVERY OF DUES OF CENTRAL EXCISE,  
(AUTHORITY – CBEC’S EXCISE MANUAL OF SUPPLIMENTARY INSTRUCTIONS)**

**(Part-III, Chapter 18 – Miscellaneous provisions)**

**1. Recovery of dues**

- 1.1 In the event the Government dues are not paid, the law provides for recovery thereof. For the recovery of dues action is to be taken under Section 11 of the Central Excise Act. After exhausting the option of taking action as above, if dues remain un-recovered, action is to be taken under the provisions of Section 142 of the Customs Act, 1962 which have been made applicable to like matters in Central Excise by Notification No. 68/63-Central Excise dated 4.5.1963 issued under Section 12 of the Central Excise Act, 1944.
- 1.2 A amendment to section 11 has been made vide Finance (No. 2) Bill, 2004 to provide that the duty or any other sums of any kind are recoverable from the successor and all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody of the person so succeeding can also be attached or sold for the purpose of recovering such duty or other sums due.
- 1.3 If the stay application is filed by the assessee against the Order-in-Original confirming the duty demand, no coercive action should be taken to realise the dues till the disposal of the stay application by the Commissioner of Central Excise (Appeal) or the Appellate Tribunal as the case maybe. However, this instruction is only for first stage appeals, in the cases where the appeal lies before the Appellate tribunal. The Commissioner (Appeal) shall dispose of the stay application where it is possible to do so, within one month of its filing.
- 1.4 A period of 3 months from the date of communication of the order-in -original/ order-in appeal should be normally provided (one month for filing appeal and stay application and two more months for obtaining orders on the stay application), before taking coercive measures to recover the dues. However, if a stay application of an assessee is rejected by an appellate authority even before the lapse of the time limit of three months, recovery proceedings should be initiated immediately thereafter.
- 1.5 In respect of cases decided by Commissioner of Central Excise (Appeals), Tribunal, Government of India or High Court, the assessee should be given a maximum period of one month from the date of communication of the Order to pay up the dues before resorting to any coercive action. In case of decision of Supreme Court of India, the assessee should pay the Government dues, if any, forthwith or else the recovery proceedings, shall be initiated within 15 days of the communication of the order.
- 1.6 By virtue of Central Excise (Second amendment) rules, 2003 vide Central Excise Notification No. 12/2003-CE(NT) dated 1.3.2003, new sub rule (4) has been substituted under rule 8 of Central Excise Rule 2002. According to the new sub rule (4), provisions of Section 11 of the Act shall be applicable for recovery of the duty as assessed

under rule 6 and the interest under sub rule (3) in the same manner as they are applicable for recovery of any duty or other sum payable to the Central Government. To implement these provisions following guidelines are prescribed.

- The range superintendent, immediately on receipt of the ER-1 returns, shall identify the cases of default and record them in the register maintained by them.
- Thereafter, the defaulters should be informed -to pay-the- amount of duty defaulted along with interest forthwith by a notice to be issued immediately for compliance (copy as per Annexure-A).
- Simultaneously they should keep the notice, to be issued to the defaulter for his default in payment of the of the duty, ready, initiating the proposed action. (copy as per Annexure-B). In order to save time, they must use cyclostyled standard form of notice.
- In the event of the assessee's failure to pay the amount of duty defaulted, within the prescribed period, the proper officer should issue a notice in the above format to the defaulter in terms of sub-rule (3) of Rule 8 of the Central Excise Rules, 2002, for recovery of the dues.
- If the amount is not paid within 30 days from the date when the default is detected, action prescribed under second proviso to Rule 8(3) may be initiated.
- The action as detailed above, should invariably be completed within the period of one month from the due date of payment of the duty. In case the dues are not realized in terms of Section 11 of the Central Excise Act, 1944, within one month from the due date of payment of duty, an immediate action should be initiated by treating the clearances of goods as 'without payment of duty'. Simultaneously, action should also be initiated for recovery of the dues, in terms of section 142 of the Customs Act, 1962.

Note- In terms of the amendments in Central Excise Rules 2002 vide Not.no.17/2005 CE (NT) dated 31.03.2005 sub Rule 3 of rule 8 has been further amended. See full text of notification at page 46-47

**ANNEXURE A**

**OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE,  
RANGE\_\_\_\_\_**

To

M/s\_\_\_\_\_

Gentlemen,

**Sub : - Default in payment of C.Ex. duty - reg.**

On scrutiny of ER-1 for the month of \_\_\_\_\_ filed by you, it is noticed that in the month of \_\_\_\_\_ you have failed to pay Central Excise, duty amounting to Rs. \_\_\_\_\_ by 5<sup>th</sup> of \_\_\_\_\_ on the goods cleared during the Month.

2. From the above facts it is clear that you have defaulted in payment of Central Excise duty and thereby contravened the provisions of Rule 8(3) of the Central Excise Rules 2002.

3. Your attention is further invited to second proviso to sub rule 3 of Rule 8 of the Central Excise Rule 2002 vide which-

- i) failure to pay duty outstanding and interest would mean that the goods have been cleared without payment of duty, and,
- ii) where such duty and interest are not paid within the period of one month from the due date, the consequences and the penalties ON YOU as well as ON YOUR CUSTOMERS to whom such goods have been supplied, including the confiscation of goods at the customers' end as well as denying CENVAT credit to your customers, shall follow.

4.\* You are therefore directed to,

- i) pay the defaulted of Rs. \_\_\_\_\_ along with interest @ 2% per month or penalty of Rs. 1000/- per day whichever is higher as provided under the said Rule within 10 days from the receipt of this letter. If you failed to pay the same, the action for recovery of the Government dues will be intimated under the provisions of Sec. 11 of the Central Excise Act, .1944 read with Sec. 142 of the Customs Act, 1962.
- ii) Submit all sale invoices pertaining to clearances made and covered by aforementioned ER-1

Yours faithfully,

SUPERINTENDENT CENTRAL EXCISE RANGE-----\_

Copy to: Deputy Commissioner, Central Excise, Division \_\_\_\_\_

\*Note- For effective rate of interest in para 4(i) above, please refer Not. No. 66/2003CE(NT) dt.12.9.2003 issued under Section 11AB of Central Excise Act,1944

**ANNEXURE B**

**OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE,  
RANGE\_\_\_\_\_**

F.No. \_\_\_\_\_

Dt. \_\_\_\_\_

To

M/s. \_\_\_\_\_

Please take notice that the letter of even no. dated \_\_\_\_\_ has been forwarded to you by this office for the recovery of an amount of Rs. \_\_\_\_\_. And interest leviable thereon. Since no payment has been received against the said outstanding dues, the undersigned is authorized under sec. 11 of Central Excise Act, 1944 to recover the defaulted amount of Rs. \_\_\_\_\_ along with interest, pertaining to the payment of C.Ex. Duty for the month of \_\_\_\_\_.

2. You are hereby required to pay the amount aforesaid within seven days from the date of service of this notice. A copy of the Challan in form TR 6 is enclosed for the purpose.
3. You are hereby informed that in case of failure, steps will be taken to realize the amount by resorting to attachment and sale of excisable goods as provided in Section 11 of Central Excise Act.
- 4.\* In addition to the amount aforesaid you will also be liable for -
  - a) Interest as is payable at the rate of 2% per month or Rs. 1000/- per day whichever is higher, as per Rule 8(3) of the Central Excise Rules, 2002 for the period from the first day after the due date of payment of Central Excise Duty to the date of actual payment of duty.
  - b) All cost, charges and expenses incurred in respect of this notice and of warrants and other processes and of all other proceedings taken for realizing the arrears

*Yours faithfully*

SUPERINTENDENT  
CENTRAL EXCISE  
RANGE\_\_\_\_\_

*Copy to : - Deputy Commissioner, Central Excise, Division\_\_\_\_\_*

\*Note- For effective rate of interest in para 4(a) above, please refer Not. No. 66/2003 CE (NT) dt.12.9.2003 issued under Section 11AB of Central Excise Act,1944

F.No.201/51/2004-CX-6  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

\*\*\*

New Delhi dated the April 19, 2007

**Subject: Guidelines in respect of publication of names under section 37E of the Central Excise Act, 1944.**

Attention is invited to the Taxation Laws (Amendment) Act, 2006 wherein section 37E has been inserted in the Central Excise Act, 1944. This provision empowers the Central Government to publish information relating to the names of the assesseees or any other particulars relating to any proceedings or prosecution under the Central Excise Act, 1944 in respect of such persons, if it is considered necessary and expedient in the public interest to do so. However, adequate restriction has been provided so that the particulars in relation to any penalty are not published until the time for presenting an appeal has expired without an appeal having been presented or the appeal, if presented, has been disposed of. The names of the partners of a firm, directors, managing agents, secretaries and treasurers or managers of the company or the members of the association can be published if the circumstances of the case justify it. This provision is in line with the similar provisions existing in Section 287 of the Income Tax Act, 1961.

2. Since the power to publish names or particulars of proceedings, etc., is with the Central Government, following guidelines are laid down regarding the type of cases to be covered in Section 37E of the Central Excise Act, 1944 and the manner/procedure for publication of names;
  - (i) Publication of information would be resorted to only in respect of offence cases wherein the excise duty liability is Rs.1 Crore or more. However, in cases of repeat offences, and in cases involving collection of an amount representing duty/tax but not deposited to the Central Government under sections 11D of Central Excise Act, 1944, the duty liability limit would be Rs.25 lakhs.
  - (ii) The cases should have material evidence to show that fraud, collusion, wilful mis-statement or suppression of facts has been committed with an intent to evade payment of duty/tax.
  - (iii) Such publication of information should be necessary or expedient in public interest.
  - (iv) In case, of publication of information pertaining to penalty, the same should be done only after the period for filing appeal before the Commissioner (Appeals) or CESTAT is either over or such appeal has been disposed of.

- (v) In case publication relates to association of persons (i.e. firm, company etc.,) the names of their officials (like partners, directors) can also be published if there are justifying circumstances for doing so.
  - (vi) The jurisdictional Commissioner or the ADGs of DGCEI zonal units should send the proposal giving full details of the nature of offence, amount of duty, credit, refund or rebate involved and role played by each person whose name or other particulars are proposed to be published, to the Chief Commissioner or the Director General of Central Excise Intelligence as the case may be.
  - (vii) The Chief Commissioner or the Director General (Central Excise Intelligence), as the case may be, should examine the proposal and forward the same with his or her comments giving justification for its publication to the Committee that has been set up by the Board in this regard. The Chief Commissioner (TAR) will be the convenor of the committee comprising Director General (DGRI) and the Director General (DGCEI). This committee will scrutinize all the proposals and send its recommendations to Member (Central Excise) within 30 days of receipt of the proposal. Thereafter, the Central Board of Excise and Customs may recommend the publication of such names to the Central Government.
  - (ix) The Board, on receipt of approval of the Central Government, will communicate the same to the concerned Chief Commissioner or Director General, as the case may be, for taking necessary action. The publication of names may be made in the print media, electronic or any other media of mass communication.
3. It is, however, clarified that these provisions are stringent in nature and may affect the reputation of a person. Therefore, these should be used sparingly, with due care and caution. At the same time, it has also to be ensured that in deserving cases, they are, infact used, and that there is no arbitrary selection in their implementation.
  4. Receipt of the Circular may be acknowledged.
  5. Hindi version will follow.

**(Rahul Nangare)**

Under Secretary to the Government of India



## PROCEDURE OF DEMAND/ RECOVERY OF DUES OF SERVICE TAX

Section 73, 73A to 73D and Section 87 provide for recovery of service tax under various circumstances. Let us discuss the provisions made under each section separately.

**Section 73:** 10.2 This section empowers the Central Excise Officer to serve notice to the person, chargeable with service tax, which has been not levied or paid or short-levied or short-paid or erroneously refunded. Time limit for serving a notice under this situation is 'one year' from the relevant date, Definition of 'relevant date' is given at the end of this chapter.

10.2.1 In cases where service tax has been not levied or paid or short-levied or short-paid or erroneously refunded by the reason of fraud; or collusion; or willful mis-statement; or suppression of facts; or contravention of any of the provisions of this act or rules made there under with an intent to evade payment of service tax, then the time limit for serving the notice is extended up to five years.

10.2.2 Section 73(1A) provides for conclusion of adjudication proceedings in respect of a person to whom a notice is served under the proviso to sub-section(1) of section 73 (i.e. deliberate evasion of service tax), if such person voluntarily deposits the service tax demanded in full and the interest payable thereon under section 75 and penalty equal to 25%, of the service tax demanded, the adjudication proceedings can be treated as conclusive.

**Section 73A:** Provides for voluntary payment by an assessee of any amount collected in excess of the service tax leviable or recovery of any amount as representing service tax, that has been collected by a person but not deposited with the Central Government.

**Section 73B:** Enables the Central Government to collect interest or, the amount as determined under sub-section (4) of section 73A at a rate notified by the Central Government. ( not less than 10% but not exceeding 24% p.a.)

**Section 73C:** Provides for provisional attachment by Central Excise Officer of any property belonging to a person on whom notice is served under sub-section(1) of section 73 or sub-section (3) of section 73A during the pendency of such proceedings.

**Section 73D:** Provides for publishing the name of any person and any other particulars relating to any proceedings under the provisions of Chapter V of the Finance Act, 1994, in relation to such person, in public interest, in such manner as may be prescribed.

**Section 87:** Provides for recovery of any amount due to the Central Government by any one of the following modes:

- a. by deducting such amount from any money owed to such person, under the control of any Central Excise Officer or any officer of Customs .

- b. by recovery from any other person from whom money is due to such defaulting person.
- c. by restraining any movable or immovable property belonging to such person and detain the same until the amount payable is paid.
- d. by preparing a certificate signed by such person specifying the amount due and send it to the Collector of district in which such person owns any property or carries on his business. The said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified there under as if it were an arrear of land revenue.

## PENALTY

Penalties have been prescribed under different sections for different types of offences.

Sr.No.	Section	Offence	Details
1	76	Failure to pay service tax	Not less than Rs.200 for every day during which failure continues, or @2% of such tax per month, whichever is higher but shall not exceed the amount of service tax due.
2	77	General penalty for contravention of any provisions of chapter V of Finance Act,1994 or rules made there under for which no penalty is provided	May extend to an amount not exceeding Rs.1000
3	78	Service tax not been levied or paid or been short-levied or short-paid by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of chapter V of Finance Act, 1994 or of the rules made there under with intent to evade payment of service tax or erroneously refunded.	Shall not be less than but which shall not exceed twice the amount of service tax not levied or paid or short-levied or short paid or erroneously refunded.

F.No. 224/ 37/2005-CX-6  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

(EXTRACT)

\*\*\*

New Delhi dated the December 24, 2008

To

The Chief Commissioner of Central Excise (All)  
The Commissioner of Central Excise (All)  
The Director Generals of Customs and Central Excise (All)

**Subject: Duties, functions and responsibilities of Range Officers and Sector Officers-reg.**

Sir,

The functions, responsibilities and duties to be performed by Range Officers and Sector Officers under the Central Excise Act, 1944 and the rules made thereunder are given in various instructions/ manuals issued by the Board from time to time. However, with a view of consolidating these duties at one place, a detailed list of duties is prepared and enclosed with this letter. This duty list contains work relating to registration, scrutiny of returns, export of goods, audit, etc. A duty list regarding work relating to EOUs and Private Customs Bonded Warehouses shall be issued separately.

2. This duty list is only indicative and not exhaustive. The Inspector/Sector Officer is required to assist Superintendent/ Range Officer in all range work and both are jointly responsible for all functions. Range Officer will be responsible for the discipline and general supervision over the officers placed under him. It is the responsibility of the Range Officer to ensure that all the Sector Officers carry out the prescribed functions properly. It would be the duty of the Divisional Officer to supervise and to ensure that the duties are performed by SO and RO as per the instructions. Further, both Sector Officers as well as Range Officers can be assigned any other work by their supervisory officers in addition to the work mentioned in the duty list.
3. It may be noted that the provisions of statutes, rules, notifications, circulars and instructions shall prevail over the entries made in the duty list. Further, the detailed instructions as contained in the CBEC's Central Excise Manual, Cigarette Manual, Audit Manual, Return Scrutiny Manual (which is likely to be published shortly), etc. should also be followed.
4. The duty list may be circulated to all the field formations. A feedback may also be given to the Board regarding the duty list, in case there are any suggestions regarding the entries made in the duty list.

Yours faithfully,

(Rahul Nangare)  
Under Secretary to the Government of India

## LIST OF DUTIES, FUNCTIONS AND RESPONSIBILITIES OF RANGE OFFICER AND SECTOR OFFICER

### 7. Confirmed demands and recovery of arrears of revenue :-

7.1	Receipt of Adjudication Orders.	To enter the details in confirmed demand register and 335-J and take action as per guidelines and initiate Action for recovery of arrears of revenue as per guidelines specified in chapter 18, Part-III of the CBEC' s Central Excise Manual.	Ensure correctness of entry in the register. The registers should be reviewed every month and a certificate to this effect be endorsed while preparing monthly abstract in the registers.
7.2	Issue of letters for recovery of arrears after expiry of appeal period.	To prepare demand letter for recovery of arrears of revenue within 5 days of expiry of appeal period and submit to RO.	To issue letter for recovery of arrears of revenue within 7 days of expiry of appeal period.
7.3	Record of appeals preferred by assesses.	To make entry in the appeal register and confirmed demand register as soon as a copy of such appeal is received in Range Office. To prepare draft para-wise comments on the appeal filed by the assessee.	To ensure regular upkeep of registers through monthly review of records. To finalize draft comments and forward them to AC/DC.
7.4	Action for recovery of arrears where appeal is not decided within six months from the date of stay granted by the Tribunal.	To keep record of all such cases and submit details to Range Officer for further action.	To initiate action for recovery.
7.5	Record of appeals preferred by the department.	To maintain record of all such appeals.	To monitor the progress of appeals and ensure timely submission of information required by the appellate authority.
7.6	Vacation of stay obtained by assesses.	To maintain details of all cases of stay given in favour of assesses.	To examine all stay orders and recommend further action to higher authorities for vacation of stay.
7.7	Recovery of arrears under Section 11 of the Central Excise Act.	To initiate process of recovery of arrears as per procedure laid down in Chapter 18, Para III of the Central Excise Manual.	To ensure initiation of process within one month from the due date of payment of duty.
7.8	Recovery of arrears of revenue by invoking provisions of Section 142 of the Customs Act, 1962 as made applicable to Central Excise under Sec.12 of the Central Excise	To assist the Range officer for initiating action under Section 142 of the Customs Act and collect all possible details of properties / Assets of the assessee from the relevant authorities, banks or any other appropriate body/ institution.	To initiate action for recovery under Sec. 142 of the Customs Act, 1962 and provide all details to tax recovery unit or other appropriate Unit in Division / Commissionerate.
7.9	Information about assesses owing arrears of revenue.	To keep abreast of any development regarding closure or transfer of operations by assesses against whom arrears of revenue are outstanding and inform all such relevant development to the Range Officer.	All such information received directly or through Sector Officer be immediately conveyed to the Divisional Asstt. / Deputy Commissioner
7.10.	Write off of irrecoverable arrears.	To identify such cases after making inquiries about the properties of defaulters and prepare recommendations for write off of irrecoverable arrears.	To process the cases fit for write off and submit report to AC/DC.
7.11	Provisional attachment of property	To identify cases (after issue of SCN), which are fit for invoking the provisions of section 11DDA of the Act as per instructions contained in Circular No. 874/12/2008-CX. dt. 30-6-2008 and initiate necessary action in this regard.	To recommend such cases to the AC/DC.

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE  
CENTRAL BOARD OF EXCISE & CUSTOMS  
NORTH BLOCK, NEW DELHI-110001

J.N. NIGAM  
Member

Tel : 91-11-23092568  
Fax : 91-11-23092308

D.O.F. 296/34/2004-CX.9

Dtd. 2<sup>nd</sup> July, 2004

*My dear Shri Tayal*

On a review of arrears of revenue, the Govt. has fixed a total target of Rs. 2250 crores for recovery of Central Excise arrears for the current Financial Year. Taking into account the total amount of outstanding arrears including the amounts connected with proceedings at various levels, the following target for collection of arrears of revenue has been allotted to your zone for 2004-05.

<b>Name of the Zone</b>	<b>Recovery Target (Rs. In crores)</b>
Vadodara Zone	251.78

2. Accordingly, you may please ensure earnest and concerted action in each of the Commissionerate under your charge to attain the target. In this context, the following may be taken into consideration for necessary action.
- (i) All arrears free from any restraints (i.e. which are right now within the control of the department) should be recovered forthwith within 2 months.
  - (ii) In cases where conditional stay is allowed against recovery and the conditions are not fulfilled within the stipulated time, the recovery should be effected.
  - (iii) In some cases adequate attention is not paid to recovery of dues merely on the ground that a petition or appeal has been filed. In all cases where, after a reasonable time of filing appeal or petition, the court has not stayed the recovery, suitable action may be taken.
  - (iv) Substantial amounts are locked up in proceedings before Commissioners (Appeals). Hence, these have to be expeditiously disposed of. If due to any unavoidable reasons immediate decision on appeal itself is not possible, Commissioners (Appeals) can promptly decide stay applications by directing in suitable cases appropriate prior deposits as per Section 35F.

- (v) Stay against recovery allowed by the Tribunal should be monitored. Under the provisos to Section 35C(2A), such stay orders stand vacated if the appeal is not disposed off within 180 days from the date of stay order. Therefore, immediately when stay is rendered inoperative, the dues can be recovered in accordance with the law.
- (vi) Any default in the monthly payment of duty as per Rule 8 of the Central Excise Rules, 1944 should evoke immediate action and steps to recover the dues.
- (vii) In relevant cases as adjudicated by the Deptt., the assessee should be made aware of the first two provisos to Section 11AC so that he can deposit the dues within 30 days for availing the benefit of substantially reduced penalty.
- (viii) Frequently the cases involving issues definitively decided by the competent authority are not retrieved from call book for finalizing the proceedings and taking action as per the law for recovery of dues. An error-free system should be put in place so that all due cases are recalled and action completed expeditiously.
- (ix) Recovery cells in the Commissionerates have so far shown nil or lackluster performance. They should be reinvigorated to take quick and effective action for recovery, inter-alia, under Clauses (b) and (c)(ii) of Section 142(1) of Customs Act, 1962, as made applicable to Central Excise matters. Recovery cells should not let the cases drift in protracted correspondence with divisions and ranges and should be held accountable for actual achievements. Commissioners must have a monthly monitoring meeting to examine the action and results in each case pending with recovery cells.
- (x) Amounts locked up in certificate action under Section 11 of Central Excise Act, 1944 should be transferred to recovery cells and immediate action for recovery taken under the aforementioned Clauses of Section 142 (1) of Customs Act, 1962.
- (xi) Cases with substantial revenue implications pending with Tribunal and Courts should be pursued vigorously and the Tribunal and the Courts should be requested to decide them on priority basis or vacate the stay orders. Wherever needed, they may be requested to modify the stay orders by stipulating a minimum pre-deposit of dues. Such cases should be taken up seriously and pursued at the appropriate level by deputing officers to contact the counsels and departmental representatives for immediate action and getting the needful done. The results in such individual cases should be regularly reviewed with a spirit of accountability.
- (xii) The instructions contained in Part-VI of Chapter 3 of Departmental Central Excise Manual regarding scrutiny of assessment by the range officer as also by the Addl. / Jt. Commissioner and Dy. / Asstt. Commissioner should be strictly enforced so that cases of leakage of revenue are found out without delay and action taken for recovery of arrears.

(xiii) The performance of different grades of officers with regard to recovery of arrears should be critically reviewed every month and responsibility fixed in all cases of default, negligence or delay.

(xiv) The following categories of the amounts of arrear-realization should also be properly tracked and accounted for in a distinct and separate manner.

- (a) On finalization of provisional assessments.
- (b) Voluntary payments made under Section 11A(2B).
- (c) Pre-deposits made during the course of investigations by anti-evasion parties of Headquarters / Division. Such recoveries effected by DGCEI should be swiftly intimated to the concerned commissionerates for accountal.
- (d) Pre-deposits made in terms of Section 35F.
- (e) Spot payments during internal audit.
- (f) Payments of dues because of default in exports.
- (g) Recovery of dues on account of violation of conditions of various bonds.

3. Apart from the aforementioned observations, you may take any other action as per the law as required in the individual facts and circumstances of a particular case or any other local factor. While overall regular review will have to be done by you for your zone, specific responsibility for monitoring and recovery may also be assigned as under :

- (a) Arrears upto Rs. 5 Lakhs - Dy. / Asstt. Commissioner.
- (b) Arrears between 5 & 15 Lakhs - Addl. / Jt. Commissioner in-charge of division.
- (c) Arrears between 15 & 25 Lakhs - Commissioner
- (d) Arrears above 25 Lakhs - Chief Commissioner.

The aforesaid distribution will not apply to the recovery cell of the commissionerate which is accountable for all cases dealt by it.

4. I hope that due importance will be given to this vital area of work and your relevant reports in coming months will reflect constant achievements.

*With best wishes,*

*Yours sincerely,*

Sd/-  
(J.N. NIGAM)

To  
Shri K.D. Tayal,  
Chief Commissioner of Central Excise,  
Vadodara.





**OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL EXCISE  
HYDERABAD-III COMMISSIONERATE**

**Kendriya Shulk Bhavan:: Basheer Bagh::Hyderabad-500 004.**

Tel: 040-23230215 (Tech) Fax: 040-23240585 (Tech) Grams: CENEXCISE

**GENERAL INSTRUCTIONS**

**Standing Order No. 09/2010-Central Excise**

Dated: 30.09.2010

**Sub : Recovery of arrears – Certain instructions – Reg.**

\* \* \*

During meetings with the Divisional Officers and Deputy Commissioner (S.Tax) on review of arrears of revenue cases, it has been noticed that there is no standard procedure to deal with the cases where the defaulter is not traceable or the unit is defunct or the defaulter is traceable but is not responding. The matter has been examined and following instructions are issued.

**CENTRAL EXCISE ARREARS**

- (i) In Central Excise cases recourse to Section 11 is taken for recovery of the Government dues. The action under Section 11 is to be exhausted first before resorting to clause (b) and sub-clause(ii) of clause(c) of Section 142 of the Customs Act as made applicable to Central Excise. If the defaulter is not traceable or not responding or if the unit is defunct, generally no excisable goods would be available for attachment and sale as provided in Section 11. However, a physical verification can again be done to ascertain if any plant, machinery or excisable goods are available. If yes, action for attachment and sale will be resorted to for which services of the auctioneer appointed by the Commissionerate can be available, action under Section 142 of Customs Act is to be taken.
- (ii) For initiating action under Section 142, all the Divisional Officers are appointed as Authorized Officer as required in Board's Circular No. 365/81/91-CX dt. 15.12.97. The authorized officer will prepare a certificate in Appendix-I and send it to all other Divisions/ D.C.(S.Tax) in Hyderabad-III Commissionerate, all the other Commissioners in Hyderabad Zone and Vizag Zone and other Chief Commissioners outside A.P.
- (iii) It is necessary to identify the properties/assets of the defaulters. For this purpose, different authorities are to be approached. A standard checklist and proforma letters to different authorities are enclosed as Annexure-I and Annexures-II to VII. Divisional Officers will take actions as per the standard checklist and write letters to all the authorities simultaneously. He will pursue the matter periodically with the authorities for at least three to four months.
- (iv) If the above efforts result in identification of assets/properties, further action in terms of the Circular dt. 15.12.1997 ibid is to be taken. Services of the Auctioneer can be utilized for auction/sale of the properties after following the prescribed procedure.



- (v) In cases, where no property/assets could be identified, a list of such cases will be prepared and sent to the ARC Section of the Headquarters so as to approach the DGRI and DGCEI with a copy to Nodal Officer in terms of clause xxiii under Para 3 of Board's O.M. dt. 12.8.2004 issued vide F.No.296/34/2004 CX-9 (PF). ARC Section will put up the files to the Commissioner each month so that the matter can be periodically taken up with DGRI, DGCEI and the Nodal Officer.
- (vi) If the above actions do not yield desired results, write off proposals can be examined.

### **SERVICE TAX**

- (i) Divisional Officers including Dy. Commissioner (S.Tax) will take action as detailed at (iii) above.
- (ii) If the above efforts result in identification of assets/properties, actions as per sub-section (c) of Section 87 of Finance Act can be initiated.
- (iii) If a person who owes money to the defaulter is identified, action as per sub-section (b) ((i), (ii) & (iii) ) of Section 87 can be initiated.
- (iv) In case above efforts do not yield result, action as detailed at (v) and (vi) above can be taken.

Encls: Annexures I to VIII

( B.B.PRASAD )  
COMMISSIONER

To  
**As per distribution list-I.**  
**Issued in file C.No.IV/16/08/2010-Tech.**

## **ANNEXURE-1**

### **CHECK LIST**

#### **DEFAULTERS NOT TRACEABLE / UNIT IS DEFUNCT**

If unit is defunct,

- (a) Write to Sub- Registrar to ascertain the title / ownership of the land / building where the unit is located.
  - (b) Write to Municipal authorities to ascertain the title / ownership of the land / building where the unit is located.
  - (c) Physically ascertain if any plant and machinery, excisable goods are available.
2. Ascertain PAN from available records and write to Income Tax Department.
- For copies of Income tax returns
- Banker's Details.
3. Ascertain from available records Banker's details and write to the Bank.
4. Write to R.T.A to Provide-
- i) Details of vehicle / Car owned.
  - ii) Transaction in Cars / Vehicles etc and the person with whom transaction is effected.
5. Write to the Sub-Registrar for
- i) Details of immovable properties held.
  - ii) Transactions in immovable property and person with whom transaction effected -
6. Write to the Registrar of companies to intimate
- i) Status of the defaulter company, whether existing or wound up.
  - ii) Assets and liabilities of the defaulter.
  - iii) Details of Directors and their assets.
7. Write to Post Office for the changed address and whereabouts.
8. Write to police for the changed address and whereabouts.

9. Write to respective Trade Association for whereabouts, present address and the activities.
10. Make discreet enquiries with trade rivals, market.

Additional check list for Service tax defaulter not traceable:-

- I) Find out details of third party from
  - a) Service Bills / Invoice raised by service provider (i.e defaulter)
  - b) Sundry debtors account.
- II) Ascertain from the third party if he owes money to defaulter. If so under section 87 he will be asked to pay to the government.

Note: The above check list may also be used where the defaulter is traceable but not responding.

**ANNEXURE-II**

C.NO.

DATE

To

The Joint Commissioner  
Income Tax Range-10  
Hyderabad

Sir,

Sub-Central Excise/Service tax- Arrears of Revenue pending in respect of M/S  
\_\_\_\_\_ Request for certain details-Regarding

M/S\_\_\_\_\_ having Pan based registration bearing No.\_\_\_\_\_ were engaged in manufacturing/providing\_\_\_\_\_ service in the jurisdiction of this Commissionerate. The names of the Proprietor/Partner/ Managing Director of the said unit are furnished hereunder.

Sl.No. Name/designation Last known Address

1.

2.

An amount of Rs.....along with interest at applicable rates and a penalty amount of Rs.....is pending recovery from the above unit in relation to a confirmed order-In – Original/ Appeal No.\_\_\_\_\_dated\_\_\_\_\_ issued by the department.

In this regard, you are requested to inform as to whether the unit or the individual mentioned above have filed any tax return under Income Tax. If so copies of the Income Tax returns for the period from\_\_\_\_to\_\_\_\_\_may please provided at the earliest for further course of action against the defaulter.

Early reply will be appreciated

Yours Faithfully

(Name.....)

DEPUTY/ASSISTANT COMMISSIONER

TELNO:

FAX:

**ANNEXURE-III**

C.NO.

DATE

To

The Sub-registrar,  
Office Of the Sub-registrar,  
Uppal,H.No. 1-73/1,Laxmareddy nagar Colony  
Ranga Reddy Dist.

Sir,

Sub-Central Excise/Service tax- Arrears of Revenue pending in respect of M/S \_\_\_\_\_ Request for certain details-Regarding

M/S\_\_\_\_\_ having Pan based registration bearing No.\_\_\_\_\_ were engaged in manufacturing/providing\_\_\_\_\_ service in the jurisdiction of this Commissionerate. The names of the Proprietor/Partner/ Managing Director of the said unit are furnished hereunder.

Sl.No. Name/designation Last known Address

1.

2.

An amount of Rs.....along with interest at applicable rates and a penalty amount of Rs.....is pending recovery from the above unit in relation to a confirmed order-In –Original/ Appeal No.\_\_\_\_\_ dated\_\_\_\_\_ issued by the department.

In this regard, you are requested to inform (i) Properties held in the name of the above unit/ individual (ii) whether the unit or the individual mentioned above have made any transactions with your office. Details of properties/transactions may please be provided to the undersigned at the earliest for necessary action at this end.

Early reply will be appreciated

Yours Faithfully

DEPUTY/ASSISTANT COMMISSIONER

TELNO:

FAX

**ANNEXURE-IV**

C.NO.

DATE

To

The RTA\_\_\_\_\_

Sir,

**Sub-Central Excise/Service tax- Arrears of Revenue pending in respect of M/S**

**\_\_\_\_\_ Request for certain details-Regarding**

M/S\_\_\_\_\_ having Pan based registration bearing No.\_\_\_\_\_ were engaged in manufacturing/providing\_\_\_\_\_ service in the jurisdiction of this Commissionerate. The names of the Proprietor/Partner/ Managing Director of the said unit are furnished hereunder.

Sl.No. Name/designation Last known Address

1.

2.

An amount of Rs.....along with interest at applicable rates and a penalty amount of Rs.....is pending recovery from the above unit in relation to a confirmed order-In –Original/ Appeal No.\_\_\_\_\_dated\_\_\_\_\_ issued by the department.

In this regard, you are requested to furnish the details of the Vehicles, if any, registered with you in the name of the above unit or in the name of the individuals mentioned above to the undersigned at the earliest.

Early reply will be appreciated

Yours Faithfully

(Name.....)

DEPUTY/ASSISTANT COMMISSIONER

TELNO:

FAX

**ANNEXURE-V**

C.NO.

DATE

To

THE REGISTRAR OF COMPANIES,  
2nd floor, CPWD BLDG, KENDRIYA SADAN  
SULTAN BAZAR, KOTI, HYDERABAD

Sir,

**Sub-Central Excise/Service tax- Arrears of Revenue pending in respect of M/S**

\_\_\_\_\_ **Request for certain details-Regarding**

M/S\_\_\_\_\_ having Pan based registration bearing No.\_\_\_\_\_ were engaged in manufacturing/providing\_\_\_\_\_ service in the jurisdiction of this Commissionerate. The names of the Proprietor/Partner/ Managing Director of the said unit are furnished hereunder.

Sl.No. Name/designation Last known Address

1.

2.

An amount of Rs.....along with interest at applicable rates and a penalty amount of Rs.....is pending recovery from the above unit in relation to a confirmed order-In –Original/ Appeal No.\_\_\_\_\_dated\_\_\_\_\_ issued by the department.

In this regard, you are requested to furnish the following information/documents (i) whether the unit has been registered with you. (ii) Copies of the Certificate of Incorporation, change of address, if any, and the Statutory Returns filed by them from time to time.(iii) Any information that the directors have floated any other company or they have joined as directors in any other company.

Early reply will be appreciated

Yours Faithfully

(Name.....)

DEPUTY/ASSISTANT COMMISSIONER

TELNO:

FAX

**ANNEXURE-VI**

C.NO.

DATE

To

The Branch Manager  
Bank\_\_\_\_\_

Sir,

**Sub-Central Excise/Service tax- Arrears of Revenue pending in respect of M/S**

\_\_\_\_\_ **Request for certain details-Regarding**

M/S\_\_\_\_\_ having Pan based registration bearing No.\_\_\_\_\_ were engaged in manufacturing/providing\_\_\_\_\_ service in the jurisdiction of this Commissionerate. The names of the Proprietor/Partner/ Managing Director of the said unit are furnished hereunder.

Sl.No. Name/designation Last known Address

1.

2.

An amount of Rs.....along with interest at applicable rates and a penalty amount of Rs.....is pending recovery from the above unit in relation to a confirmed order-In –Original/ Appeal No.\_\_\_\_\_ dated\_\_\_\_\_ issued by the department.

In this regard, you are requested to inform (i) whether the unit has any account with you. If so, please provide the account statement for the past three years along with address. (ii) Details of the securities of the individuals/unit deposited with you.

Early reply will be appreciated

Yours Faithfully

(Name.....)

DEPUTY/ASSISTANT COMMISSIONER

TELNO:

FAX:



**ANNEXURE-VII**

C.NO.

DATE

To

The Station House Officer

\_\_\_\_\_,Police Station

Hyderabad

Sir,

**Sub-Central Excise/Service tax- Arrears of Revenue pending in respect of M/S  
\_\_\_\_\_ Request for certain details-Regarding**

M/S\_\_\_\_\_ having Pan based registration bearing No.\_\_\_\_\_ were engaged in manufacturing/providing\_\_\_\_\_ service in the jurisdiction of this Commissionerate. The names of the Proprietor/Partner/ Managing Director of the said unit are furnished hereunder.

Sl.No. Name/designation Last known Address

1.

2.

An amount of Rs.....along with interest at applicable rates and a penalty amount of Rs.....is pending recovery from the above unit in relation to a confirmed order-In –Original/ Appeal No.\_\_\_\_\_dated\_\_\_\_\_ issued by the department. The said amounts could not be recovered as the unit is closed and no person is available at the last known address of the unit. The whereabouts of the related persons also could not be traced out by the department.

In this regard, it is requested to inform the whereabouts of the persons mentioned above at the earliest for taking necessary action.

Early reply will be appreciated

Yours Faithfully

(Name.....)

DEPUTY/ASSISTANT COMMISSIONER

TELNO:

FAX

**ANNEXURE-VIII**

C.NO.

DATE

To

The Post Master  
\_\_\_\_\_

Sir,

**Sub-Central Excise/Service tax- Arrears of Revenue pending in respect of M/S  
\_\_\_\_\_ Request for certain details-Regarding**

M/S\_\_\_\_\_ having Pan based registration bearing No.\_\_\_\_\_ were engaged in manufacturing/providing\_\_\_\_\_ service in the jurisdiction of this Commissionerate. The names of the Proprietor/Partner/ Managing Director of the said unit are furnished hereunder.

Sl.No. Name/designation Last known Address

1.

2.

An amount of Rs.....along with interest at applicable rates and a penalty amount of Rs.....is pending recovery from the above unit in relation to a confirmed order-In –Original/ Appeal No.\_\_\_\_\_ dated\_\_\_\_\_ issued by the department. The said amounts could not be recovered as the unit is closed and no person is available at the last known address of the unit. The whereabouts of the related persons also could not be traced out by the department.

In this regard, you are requested to inform as to whether the unit or the individual mentioned above have filed any communication regarding change of postal address or any other information about the whereabouts. If so, the same may please be provided at the earliest for further course of action against the defaulter.

Early reply will be appreciated

Yours Faithfully

(Name.....)

DEPUTY/ASSISTANT COMMISSIONER

TELNO:

FAX

**dated 15/12/97**

**[F.No. 296/1/95-CX.9]**

Government of India  
Ministry of Finance  
Department of Revenue, New Delhi

**Subject: Sale of movable / immovable properties by Central Excise Officers for recovery of Central Excise dues - reg.**

I am directed to refer to notification No. 48/97-CE(NT) dated 2nd September, 1997 issued under Section - 12 of the Central Excises Act, 1944 amending notification No. 68/63-CE dated 4th May, 1963, making Section - 142 (1) (c) (ii) of the Customs Act, 1962 applicable to like matters in Central Excise, thereby empowering Central Excise Officers to attach and sell movable and / or immovable properties of any person who has failed to pay any sum due to government. The rules framed under this provision has consequentially become applicable to the Central Excise matters.

2. The procedure contained in Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995, as amended by notification No. 67/97-Cus.(NT) dated 11.12.97 which has been issued under the provisions of Section- 142 of the Customs Excise purposes. a proper record should be maintained separately of cases in which recovery action is initiated as mentioned above in the format specified under Annexure XIII.
  - 2.1 A special cell, named as "Recovery Cell" should be created in each "Custom House/ Central Excise Commissionerates" which will be headed by an Assistant Commissioner designated as "authorised officer", for the purpose of making recovery of Government dues in terms of Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995. The "authorised officer" will submit a monthly progress report to the Commissioner.
3. Where the Government dues have not been paid by any persons, the Assistant Commissioner of Central Excise should prepare a certificate under Rule-3 in the format specified under Appendix-I, clearly mentioning the amount due from such persons, and should send the same to the Commissioner of Central Excise / Customs having jurisdiction over the place in which such persons owns any movable or immovable property or resides or carries on his own business or has his bank accounts.
4. The Commissioner of Central Excise or the Commissioner of Customs as the case may be, would direct the concerned authorised officer to cause a notice, in the format given in Appendix-II, to be served upon such person requiring to pay the amount specified in the certificate within 7 days of the notice. The authorised officer should thereafter take steps

to realise the amount mentioned in the certificate in terms of the said rules after expiry of the stipulated period of 7 days.

5. If the amount mentioned in the certificate (Appendix-I/ notice Appendix-II) is not paid within 7 days from the date of service of notice, the Authorised Officer should proceed to realise the amount by attachment and sale of the defaulter's property in accordance with the procedure of attachment and proclamation and sale explained in para-6 and 7, respectively hereinafter.

## **6 Attachment**

- 6.1 There is in Law a distinction between movable & immovable property. The mode and procedure of attachment of the two categories of properties differ in significant respects. Hence, the standard format for the two types of property which are being prescribed are distinct from each other. The standard formats which should be used for ordering the attachment for the movable and immovable property is given respectively in Appendices IIIA and IIIC and for preparing Panchnama in Appendices IIIA and IIIB respectively. A copy of the order of attachment is to be served on the defaulter in the same manner as is prescribed for the service of an order or decision in Section-37C of the Central Excise Act, 1944.
- 6.2 It is also necessary that the order of attachment should be proclaimed at some place on or adjacent to the property attached by customary mode. A copy of the attachment order is to be affixed on a conspicuous part of the part of the property as well as on the notice board of the office of the authorised officer.
- 6.3 While issuing the order of attachment the provisions of Rules 9 and 10 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 should be kept in view. It is necessary to bring the provisions of the aforesaid Rules to the defaulter's notice by written communication served in the same manner as has been stipulated for the service communication served in the same manner as has been stipulated for the service of the principal notice of attachment in the foregoing paras. The standard format which could be used for doing so is given as **Appendix - IV**.
- 6.4 In some odd cases it may happen that the property to be attached is in the custody of a Court or Public Officer. In such cases the authorised officer is required to give a notice (**in appendix V or Appendix VI**) to such court or the officer requesting that such property, and any interest or dividend becoming payable thereon may be held subject to the further orders of the authorised officer issuing the notice. In case there is any dispute relating to the question of title or priority between the authorised officer and any other person not being the defaulter who claims to be interested in such property by virtue of any assignment, attachment or otherwise, the same would have to be determined by the Court and not be the authorised officer.
- 6.5 If the defaulter does not pay the Government dues (together with the cost of detention of the property, and interest, if any) as mentioned in the Certificate. (**Appendix-I**), within a

period of 30 days the authorised officer should obtain the Commissioner's order for realising the amount by sale of the defaulter's property in public auction.

- 6.6 Commissioners are competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and further order that any bid shall be accepted only on the condition that it is not less than such reserve price. They may utilise the services of the valuation Cell of the Income Tax Department or authorised Government approved valuers. Similarly, in regard to valuation of shares, authorised agencies like SEBI. Stock Exchanges may be consulted.
- 6.7 The order of attachment of negotiable instrument shall be in the form of **Appendix VII A**.
- 6.8 In the case of shares held by the defaulter in a company, the order in **Appendix-VIIB** shall be issued both to the defaulter and the principal officer of the company prohibiting them from making any transfer of the shares. A copy of prohibitory order should also be affixed on the notice board of the authorised officer.

## **7. Proclamation and Sale**

- 7.1 When the authorised officer acting under Rule-15 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 has obtained the Commissioner's order to the effect that the immovable property belonging to the defaulter should be sold, he has to give proclamation of such intended sale.
- 7.2 The proclamation should be in the language of the district in which the particular property is situated and one proclamation should be issued for each defaulter. It is not necessary to give notice to the defaulter before the sale proclamation is settled. Once a notice is issued, there is no necessity of issuing a fresh notice if subsequently a sale is to be adjourned.
- 7.3 The proclamation which is the prelude to sale should contain the following particulars, namely:-
- i) The revenue assessed upon the property or part thereof;
  - ii) The reserve price below which the property may not be sold; and
  - iii) Any other thing which the authorised officer considers it material for the purchaser to know in order to judge the nature and value of the property.
- 7.4 Every proclamation of sale should be made in the following manner:-
- i) By a customary mode (announcement by loud speaker may also be resorted to in lieu of beating drum) at same place on or near the property to be sold.
  - ii) A copy of proclamation shall be affixed:-
    - (a) Where several properties are put up for sale, copy of the proclamation should be affixed on each property separately.

- (b) Upon a conspicuous part of the office of the authorised officer. This condition must be scrupulously followed in every case.

7.5 The sale of immovable property made in execution of a Certificate becomes absolute when the authorised officer makes an order confirming the sale. It is mandatory upon the authorised officer to make the order confirming the sale when the following conditions are fulfilled.

- i) When no application is made for setting aside a sale under Rule 20;
- ii) (a) When such an application has been made and the same is disallowed by the authorised officer, and
  - (b) the full sum of the purchase money has been paid.

7.6 The authorised officer can also make an order not confirming the sale but setting the same aside, if-

- i) an application under Rule 20 has been made and is allowed by him;
- ii) an application under Rule 20 has been made and all the conditions mentioned in the Rule are satisfied.

Before setting aside the sale the authorised officer is required to give notice to the person(s) affected thereby which expression includes the defaulter, the auction purchaser, a transferee from the auction purchaser after the sale but before the same is confirmed.

7.7 The order of confirmation of sale of immovable property under Rule 21 should be in the form of Appendix-X. The notice to interested parties under Rule-21(ii) of the Rules, to show cause why sale should not be set aside shall be in the form of **Appendix-IX**.

7.8 When the sale of immovable property becomes absolute, the authorised officer should grant a certificate containing the details of the property sold, the name of the person declared as purchaser and the date on which the sale had become absolute. The certificate as given in **Annexure-XI** is to be granted to the purchaser. Where a purchaser is dead, the certificate may be granted to his legal representative.

7.9 It is to be noted that departmental officers having any duty to perform in connection with any sale under the said Rules, either directly or indirectly, are prohibited from bidding for, acquiring or attempting to acquire any interest in the property sold through public auction.

7.10 The rule 26 specifically prohibit conducting any sale through public auction on a Sunday or other general holidays recognised by the State Government or on any day which has been identified by the State Government as local holiday for the area in which the sale is to take place.

8. Once the movable or immovable property of the defaulter is sold in terms of Notification 68/63-CE -(NT) as amended by Notification No. 48/97- dt. 2.9.97, sale proceeds are to

be utilised in the manner laid down under Rule -27 of the Rules. The expression “sale proceeds” connotes the conversion of the property into its equivalent value of money.

8.1 When the property belonging to the defaulter is sold and the sale proceeds realised, the sale proceeds will have to be distributed in the following order of priority:-

- i) In the first place, the authorised officer shall be paid the cost incurred by him. An instance of the cost so incurred by the authorised officer is where under Rules-13, 17 and 19(ii) of the Rules the authorised officer is to insert advertisement(s) in the local newspaper. Sums payable by the authorised officer for incurring such expenditure should be deemed to be the cost of sale and would have to be deducted from the sale proceeds of the defaulter’s property.
- ii) the amount due under the Certificate issued under Rule-3 together with the cost of detention of the property shall then be utilised for specification of the amount mentioned in the Certificate together with interest payable, if any. It may, however, be noted that in the case of sale of immovable property no disbursement should be made until the sale has been confirmed by the authorised officer under Rule-21 of the Rules.
- iii) if any balance remains after defraying the amount(s) mentioned at (i) and (ii) above, then out of such balance any amount recoverable from the defaulter under the Act which may be due upon the date of realisation of the sale proceeds shall be paid to the Assistant Commissioner of Central Excise to whom such payment is due.
- iv) The balance, if any, left over after making the payments(s) referred to at (i), (ii) and (iii) above shall be paid to the defaulter.

8.2 It is clarified that the date of distribution of sale proceeds consequent to which recovery is made, shall be construed as the date of payment of Government dues, for the purpose of calculating interest liabilities under Sec. 11AA or Sec. 11AB of the Central Excise Act, 1944/ Rule-57I and Rule-57U of Central Excise Rules, 1944.

9. It is also clarified that any subsequent amendment effected in section 142(1)(c)(ii) of the Customs Act, 1962 and or Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 shall apply to the like matters in Central Excise, mutatis mutandis, unless these are specifically repugnant to the provisions of Central Excise Act, 1944 and/or the Central Excise Rules, 1944.

10 Receipt of this Circular may please be acknowledged.

11. The trade and the field formations may be suitably informed.

Sd/-  
(P.K. Sinha)  
Under Secretary to the Govt. of India

**APPENDIX - I**

**FORM OF CERTIFICATE UNDER SECTION 142(1) (c) (ii)  
OF THE CUSTOMS ACT 1962**

Certificate No.-----

Date\_\_\_\_\_

From

The Assistant Commissioner of Central Excise,

To

The Commissioner of Customs/ Commissioner of Central Excise

**Subject: Realisation of Government Dues recoverable from ..... under the provision of Sec. 142 (1) (c) (ii) of the Customs Act, 1962 (Act L II of 1962), made applicable to Central Excise by Notification No. 68/63-CE (NT) dt. 4.5.63, as amended by Notification No. 48/97-CE (NT) dt. 2.9.97.**

Pursuant to Sec. 142 (i) (c) (ii) of the Customs Act, 1962 (Act LII of 1962) I..... Assistant Commissioner of Central Excise do hereby certify that a sum of Rs..... has been demanded from and is payable by ..... by way of duty/ penalty/ drawback/ interest under the said Act and has not been paid and cannot be recovered from the said ..... in the manner provided in sec. 11 (other than Certification) of Central Excise Act, 1944 or Rule 230 of Central Excise Rules, 1944 or Sec. 142(1) (b) of Customs Act, as made applicable to Central Excise matters.

The said ..... owns property/ resides / carries on business, in your jurisdiction particulars of which are given hereunder:-

I am, therefore, to request you to kindly take early steps to realise the amount in accordance with the provision of Sec. 142(1) (c) (ii) of the Customs Act, 1962 and the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules 1995, as made applicable to like matters in Central Excise by Notification No. 68/63-CE(NT) dt. 4.5.93, as amended.

On realisation, the aforesaid sum together with the interest and cost of distress may please by credited to the following Head of Account:

Yours faithfully

Assistant Commissioner of Central Excise

Commissioner  
Dated the



## APPENDIX - II

### (NOTICE OF DEMAND TO DEFAULTER)

Officer of the Asstt. Commissioner of Customs & Central Excise

Dated

To

Please take notice that certificate No. .... dated ..... had been forwarded by the Assistant Commissioner of Central Excise ..... to the Commissioner of Customs and Central Excise, ..... for the recovery of an amount of Rs....., details of which are given herein below:-

The said Commissioner has sent the said certificate to the undersigned who has been authorised by the said Commissioner under Section 142(1) (c) (ii) of the Customs Act, 1962, read with Rule 4 of the Customs Attachment of Property of Defaulters for Recovery of Customs Dues) Rules 1995, as made specifying that an amount of Rs..... is to be recovered from you.

2. You are hereby required to pay the amount aforesaid within seven days from the date of service of this notice.
3. A copy of the challan in Form TR 6 is enclosed for the purpose.
4. You are hereby informed that in case of default, steps would be taken to realise the amount in accordance with the provisions of the Customs (Attachment of Property of Defaulters for the recovery Government Dues) Rules 1995.
5. In addition to the amount aforesaid, you will also be liable for-
  - (a) Such interest as is payable in accordance with Section 11AA of Central Excise Act, 1944 or rule 57I/Rule 57U of Central Excise Rules, 1944, for the period commencing immediately after the said date.
  - (b) all cost, charges and expense incurred in respect of the service of this notice and of warrants and other processes and of all other proceeding taken for realising the arrears.

Authorised Officer

(NAME IN BLOCK LETTERS)  
DESIGNATION

Seal

Dated:

**(Score out whichever paragraph is not applicable.)'**

**Note:-**

Attention is invited to Rule 9 of the Customs (Attachment of Property of Defaulters for Recovery of Customs Dues) Rules 1995 which is reproduced below:-

9(i) Where a notice has been served on a defaulter under rule -2, the defaulter or his representative interest shall not be competent to mortgage, charge, lease, or otherwise deal with any property belonging to his except with the permission of the Proper Officer, nor shall any civil court issue an process against such property in execution of a decree for the payment of money.

(ii) Where an attachment has been made under these Rules, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other monies contrary to such attachment, shall be void, as against all claims enforceable under the attachment.

**APPENDIX - II A**

**NOTICE OF ATTACHMENT WHERE THE PROPERTY CONSISTS  
OF A SHARE OR INTEREST IN MOVABLE PROPERTY**

Office of the Assistant Commissioner

Customs & Central Excise

To

Whereas you have not paid the amounting to Rs..... payable by you in respect of Certificate No..... dated ..... forwarded by the Assistant Commissioner of Central Excise ..... and the interest payable under Section 11AA or Sec. 11AB of Central Excise Act, 1944 or rule 57I/ rule 57U of Central Excise Rules, 1944, for the period commencing immediately after the said date.

2. It is hereby ordered that (you\*.....) be, and are hereby prohibited and restrained, until the further order of the undersigned, from transferring or charging in any way your share or interest in the under mentioned items of movable property, belonging to you and ..... and ..... as co-owners.

Given under my hand and seal at ..... this ..... day ..... of ..... 19.....

Authorised Officer

(NAME IN BLOCK LETTERS)  
DESIGNATION

(OFFICE SEAL)

## Appendix - IIIA

### PANCHNAMA ATTACHMENT OF MOVABLE PROPERTY

Panchnama drawn by the Panchas, in the presence of Shri ..... Authorised Officer, of the Office of the Assistant Commissioner of Central Excise during the course of the execution proceeds of the Warrant of Notice Form no ..... in the case of ..... of ..... who is a defaulter for non-payment of arrears of Government Dues in the File No..... on the spot at House No..... Street No..... of ..... at the time ..... on 19 .....

S.No.	Name of Panch & father's Name	Address	Age	Profession

We, the above mentioned Panchs, on being called by the above said Shri ..... Assistant Commissioner of Customs & Central Excise, ....., duly authorised by the Commissioner of Customs and Central Excise under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 as made applicable to like matters in Central Excise by Notification No. 68/63-CE(NT) dt. 4.5.63, as amended, gathered here at the place of ..... (address in full) belonging to Shri ....., and learnt that Shri ..... is a defaulter for non-payment of Government Dues and consequently the Authorised Officer ..... has issued a warrant of attachment of the movable property of the defaulter in the Form of Appendix ..... to be executed on or before ..... date, and in execution thereof Shri ....., the holder of the warrant, today entered the premises of Shri ..... at ..... (time), and after service of the warrant on Shri ..... demanded the payment of the Government dues, and on its non-payment, attached movable properties as detailed in the inventory attached to this Panchnama between the hours ..... (time) and ..... (time) in our presence.

We also hereby state that during the execution proceedings .....  
(to be filled in case of occurrence of any incident)

Therefore, we solemnly declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observation and knowledge.

	Date	Time
1.		
2.		
3.		
4.		
5.		

Drawn before me

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**NOTICE OF ATTACHMENT  
(Under Rules 9 and 10 of the Customs (Attachment of Property of Defaulters of Recovery of Government Dues) Rules, 1995**

Officer of the Assistant Commissioner

Customs & Central Excise

TO

Whereas a notice has been served upon you requiring you to pay the sum of Rs..... being the amount of Government Dues payable by you, Section 11A under sub-clause (ii) of clause (c) of Section 142 (1) of the Customs Act, 1962 read with Customs Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995, as made applicable to like matters in Central Excise by Notification No. 68/63-CE (NT) dt. 4.5.63, as amended.

2. Please take note that-

(a) in terms of Rule 9 of the aforesaid Rules.

(i) you, or your representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to you except with the written permission of the undersigned.

(ii) Where an order of attachment has been served on you as per the terms of Rules 5 of the above mentioned Rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment.

(b) Further in terms of Rule 10 of aforesaid Rules, where belonging to you and/ or another as co-owners, you are hereby prohibiting him from transferring the share or interest or charging in any way.

Given under my hand this ..... day of ..... 19.

OFFICE SEAL

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**NOTICE OF ATTACHMENT A DECREE OF A CIVIL COURT**

Office of the Assistant Commissioner  
Customs & Central Excise  
Dated

To

The Judge of the Court of .....

Sir,

Whereas ..... has failed to pay the arrears due from him in respect of Certificate  
(defaulter)

No.....dated ..... forwarded by the Assistant Commissioner of Central Excise to the  
Authorised Officer (so authorised by the Commissioner of Central Excise to the Authorised  
Officer (so authorised by the Commissioner of Central Excise under Rule 4 of the Customs  
(Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995  
amounting to Rs. .... and the interest payable under Sec. 11AA or Sec 11AB of Central  
Excise Act, 1944 and / or Rule 57I/ Rule 57U of Central Excise Rules, 1944 for the period  
commencing immediately after the said date.

And whereas the undersigned in exercise of his (powers under the Customs (Attachment  
of Property for Recovery of Government Dues) Rules, 1995, as made applicable to like matters  
in Central Excise by Notification No. 68/63-CE (NT) dt. 4.5.63, as amended, desires to proceed  
with attachment of a decree of ..... Court, dated the ..... day of ..... made in  
suit No. .... of ..... wherein ..... was the plaintiff (and # ..... ) was the defendant  
and which decree is pending execution in your Court.

You are, therefore, requested to stay the execution of the said decree unless and until-

- (i) the undersigned cancels this notice; or
- (ii) the Assistant Commissioner of Central Excise ..... or the above mentioned  
defaulter applies to you to execute the decree.

Yours faithfully,

OFFICE SEAL

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**NOTICE OF ATTACHMENT OF MOVABLE PROPERTY IN THE CUSTODY  
OF A COURT OR A PUBLIC OFFICER**

Office of the Assistant Commissioner,

Customs & Central Excise

To

Sir,

Whereas ..... has not paid the arrears amounting to Rs. .... in respect of Certificate No..... dated ..... forwarded by the Assistant Commissioner of Customs ..... and the interest payable under section 11AA or Section 11AB of Central Excise Act, 1944 or Rule 57I / Rule 57U of Central Excise Rules, 1944, for the period commencing immediately after the said date and the said authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 specifying that an amount of Rs. .... is to be recovered by the undersigned from the defaulter; and the undersigned desires to attach sums of money of other property, which is included in the defaulter's property now in your custody\*,

I request that you will hold the said money or property and any interest or dividend becoming payable thereon subject to the further and other available details.

OFFICE SEAL

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**Note:-\*** Here state how the money or property is understood to be in the hands of the Court of the Public Officer addressed, on what account and other available details.

**APPENDIX - VII A**

Office of the Assistant Commissioner,  
Customs & Central Excise,

To

(Attaching Officer)

Whereas the undersigned has passed on the ..... day of ..... 19 ..... an order for the attachment of the under mentioned property in the course of proceedings for the recovery of arrears due from ..... (defaulter) in respect of Certificate No. .... dated ..... forwarded by the Assistant Commissioner of Central Excise ..... to the Authorised Officer (so authorised by the Commissioner of Central Excise under Rule 4 of the Customs (Attachment of Property for Recovery of Government Dues) Rule, 1995 as made applicable to like matters in Central Excise by Notification No. 68/63-CE(NT) dt. 4.5.63, as amended, you are hereby directed to seize the said property and bring the same before me and hold the same subject to my orders.

**DETAILS OF PROPERTY**

Given under my hand and seal at ..... this ..... day of ..... 19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION



**APPENDIX - VII B**

Office of the Assistant Commissioner  
Customs & Central Excise.

**PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF  
SHARES IN A CORPORATION**

To

(1)

(2)

(Principal Officer)

(Name of the Corporation)

Whereas ..... has failed to pay the arrears due from  
(defaulter)  
him in respect of Certificate No. .... dated ..... forwarded by the Assistant  
Commissioner of Central Excise ..... amounting to Rs. .... and the interest payable  
under Section for the period commencing immediately after the said date.

It is ordered that you, No.(1) (above-mentioned, be, and you are hereby prohibited and  
restrained, until the further order of the undersigned, from making any transfer of the shares in  
the aforesaid Corporation standing in your name or from receiving payment of any dividends  
thereon, 1(\*It may be noted, that the property consisting of shares is included in the defaulter's  
property.

And that you, No. (2) above-mentioned, are hereby prohibited and restrained, until the  
further order of the undersigned from permitting any such transfer or making any such payment.

Given under my hand and seal at ..... this ..... day of ..... 19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**ORDER OF ATTACHMENT OF PROPERTY CONSISTING OF AN  
INTEREST IN PARTNERSHIP PROPERTY**

Office of the Assistant Commissioner  
Customs & Central Excise

To

Whereas ..... has not paid the arrears amounting to  
(defaulter)

Rs. .... in respect of Certificate No. .... dated ..... forwarded by  
the Assistant Commissioner of Central Excise ..... and the interest payable under  
Section 11AA of the Central Excise, 1944, for the period commencing immediately after the  
said date and the said Tax Recovery Officer has sent to the undersigned a certified copy of  
the said Certificate, specifying that an amount of Rs. .... is to be recovered by the  
undersigned from the defaulter; and whereas the said ..... is a partner in the  
firm known as Messers .....,

It is hereby ordered :-

- (i) that the share of the said ..... in the partnership property and profits of the said  
firm be and is hereby charged with the payment of the amount aforesaid due under the  
said Certificate; and
- (ii) \*that .....

Given under my hand and seal at ..... this ..... day of .....  
19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**Note:-** \*Here incorporate any other order that may be considered necessary in the circumstances.

# Score out portion in italics, if not applicable.

**PROCLAMATION OF SALE**

Office of the Assistant Commissioner Customs & Central Excise

To,

Whereas the Assistant Commissioner of Central Excise ..... has forwarded the Certificate No..... dated ..... for the recovery of the sum of Rs. .... from ..... (defaulter) which sum is recoverable together with interest in accordance with Section for the period commencing immediately after the said date and the costs, charges and expense of the proceedings for the recovery thereof;

And whereas the undersigned has ordered the sale of the attached property mentioned in the annexed schedule in satisfaction of the said Certificate;

And whereas on the ..... day of ..... 19 ..... (the date fixed for the sale) there will be due there under a sum of Rs. .... including costs and interest;

Notice is hereby given that, in the absence of any order of postponement the said property shall be sold by public auction at ..... AM/ PM ..... on the said.....day of ..... 19 ..... at .....(place)

The sale will be of the property of the defaulter above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot;

The property will be put up for sale in the lot specified in the schedule. If the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder. The sale will also be stopped if, before any lot is knocked down, the arrears mentioned in the said Certificate, interest payable under Section and costs (including the costs of the sale) are tendered to the officer conducting the sale or proof is given to his satisfaction that the amount of such arrears, interests and costs has been paid to the undersigned.

At the sale, the public generally are invited to bid either personally or by duly authorised agent. No officer or other person, having any duty to perform in connection with this sale shall, however, either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold.

The sale shall be subject to the conditions prescribed in the Customs (Attachment of Property of Defaulters for the Recovery of Customs Dues) Rules, 1995, and to the following further conditions:

1. The particulars specified in the annexed schedule have been stated to the best of the information of the undersigned, but the undersigned shall not be answerable for any error, mis-statement or omission in this proclamation.

- 2 (\*\*(ii) The reserve price below which the property shall not be sold is Rs. ....)
- 3.(iii) The amounts by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.
- 4(iv) The highest bidder shall be declared to be the purchaser of any lot provided always that he is legally qualified to bid and provided further that the amount bid by him is not less than the reserve price. It shall be in the discretion of the under signed to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it inadvisable to do so.
- 1(v) For reasons recorded, it shall in the discretion of the officer conducting the sale to adjourn it subject always to the provision of Customs (Attachment of Property of Defaulters for the Recovery of Customs dues) Rules, 1995, as made applicable to like matters in Central Excise by Notification No. 68/63-CE(NT) dt. 4.5.63, as amended.
- (vi) In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment, the property shall forthwith be again put up and resold.
- 2(vii) In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five per cent of the amount of his purchase money to the officer conducting the sale and, if default of such deposit, the property shall forth with be put up again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15th day from the date of the sale of the property, exclusive of such day, or if the 15th day be a Sunday or other holiday, then on the first office day after 15th day. In default of payment within the period mentioned above, the property shall be resold, after the issue of a fresh proclamation of sale. The deposit, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or the any part of the sum for which it may subsequently be sold.

## SCHEDULE

No.	Description of property to be sold with the names of the other co-owners where the property belongs to the defaulter and any other persons as co-owners	Revenue assessed upon the property or any part thereof	Details of any encumbrances to which the property is liable	Claims, if any, which have been put forwarded to the property and any other known particulars bearing on its nature and value
1	2	3	4	5

Given under my hand and seal at ..... this ..... day of ..... 19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

\*\* Applies only in the case of inaction of immovable property where a reserve price is fixed.

**ORDER OF CONFIRMATION OF SALE OF IMMOVABLE PROPERTY**

Office of the Assistant Commissioner Customs & Central Excise .....  
purchased for Rs. .... the immovable property specified below at a sale held by public  
auction on the ..... day of ..... 19 ..... in execution of Certificate No. ....  
dated ..... forwarded by the Assistant Commissioner of Central Excise, ..... to  
the Authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the  
Customs (Attachment of Property Defaulters for the Recovery of Government Dues) Rules,  
1995, as made applicable to like matters in Central Excise by Notification No. 68/63-CE  
(NT) dt. 4.5.63, as amended, for recovery of arrears from ..... The full amount of the  
purchase money has been paid on .....

Accordingly the said sale is hereby confirmed.

Given under my hand and seal at ..... this ..... day of ..... 19.....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**NOTICE TO INTERESTED PARTIES TO SHOW CAUSE WHY SALE  
SHOULD NOT BE SET ASIDE**

Office of the Assistant Commissioner Customs & Central Excise

To

Whereas the under mentioned property was sold on the ..... day of .....  
in execution of Certification No. .... dated ..... forwarded by the Assistant  
Commissioner of Central Excise ..... for recovery of arrears from .....  
(defaulter)

And whereas ..... has applied to the undersigned to set aside the sale under rule 20  
of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues)  
Rules, 1995, as made applicable to like matters in Central Excise by Notification No. 68/63-  
CE(NT) dt. 4.5.63, as amended.

Take notice that if you have any cause to show why the said application should not be  
granted, you should appear with your proofs before the under-signed on ..... when the  
said application will be heard and determined.

**DESCRIPTION OF PROPERTY**

Given under my hand and seal at ..... this ..... day of ..... 19.....

OFFICE SEAL

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**CERTIFICATE OF SALE OF IMMOVABLE PROPERTY**

Officer of the Assistant Commissioner Customs & Central Excise

This is to certify that Shri ..... has been declared the purchaser at a sale by public auction on the ..... day of ..... of the under mentioned immovable property, in execution of Certificate No. ...., forwarded by the Assistant Commissioner of Central Excise ..... to the authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulter's for Recovery of Government Dues) Rules, 1995, as made applicable to like matters in Central Excise by Notification No. 68/63-CE(NT) dt. 4.5.63, as amended, for recovery of arrears from ..... and that the said sale has been duly confirmed by the undersigned and became absolute on the ..... day of .....

**SPECIFICATION OF PROPERTY**

Given under my hand and seal at ..... this .....day .....  
19 .....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION



**CERTIFICATE OF SALE OF MOVABLE PROPERTY**

Office of the Assistant Commissioner Customs & Central Excise

This is to certify that Shri ..... purchased for Rs. .... the under mentioned movable property, at a sale by public auction on the ..... day of ..... in execution of Certificate No. .... dated ..... forwarded by the Assistant Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995, as made applicable to like matters in Central Excise by Notification No. 68/63-CE(NT) dt. 4.5.63, as amended, specifying that an amount of Rs . .... remains to be recovered from .....)

**SPECIFICATION OF PROPERTY**

Given under hand and seal at ..... this ..... day of .....19.....

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

## APPENDIX - XIII

Record of Recovery of Arrears by Attachment and Sale of Movable / Immovable Property under Section 142(1)(b) or Section 142(1)(c)(ii) of Customs Act, 1962, as made applicable to Central Excise by Notification No. 68/63-CE (NT) - Any sum written off as irrecoverable

(Amount in Rupees)

Certificate Number (Serial Number / Financial Year)	Provision Invoked	Date of Issue	Office (s) to whom certificate Issued
(1)	(2)	(3)	(4)

Particulars of Defaulters			Amount of Demand	Amount of Penalty
Name	Address	Registration Number if any		
5(a)	5(b)	5(c)	(6)	(7)

Amount of Interest leviable till the date of issue of certificate	Total sum due to Government (6+7+8)	Amount paid after issue of certificate or attachment of property
(8)	(9)	(10)

Amount recovered by sale of movable/ immovable property	Amount of interest recovered covering the period till recovery was made	Particulars of cases written off after the issue of certificate		Remarks
		No. & Amount	Date of Order	
(11)	(12)	13(a)	13(b)	14

**F.No. 224/38/2004-CX-6**

**Government of India,  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs**

\*\*\*\*

New Delhi, the August, 2004.

To

All Chief Commissioners of Central Excise  
All Chief Commissioners of Customs and Central Excise  
All Commissioners of Central Excise

**Subject: Sale of moveable /immovable properties by Central Excise officers for recovery of Central Excise dues- reg.**

Sir/Madam,

I am directed to say that during the All India Chief Commissioners' Conference held on 27<sup>th</sup> July 2004, it was brought to the notice of the Board that the Departmental action for sale of assets like land, plant and machinery of the defaulters under section 142(1)(c)(ii) of Customs Act, 1962 made applicable to Central Excise matters, does not yield satisfactory results due to lack of requisite expertise both in valuation of properties and then, sale /auction. It was also suggested to consider seeking the help of professional agencies for both valuation and auction proceedings.

2. Board has examined the difficulty in recovery of Central Excise dues by sale of movable and immovable properties due to lack of requisite expertise available with departmental officers and the specified nature of valuation and sale/auction proceedings of certain properties. Board has also observed that for disposal of seized/confiscated cut and polished diamonds, instructions dated 16<sup>th</sup> July, 1997 {F.No.711/56/90-CUS (AS)} have been issued to seek the services of a reputed auctioneering firm to conduct the auction.
3. In this connection, attention is invited to para 6.6 of Board's Circular No. 365/81/97-CX dated 15<sup>th</sup> December, 1997 vide which Commissioners are empowered to fix the reserve price in respect of any property of the defaulter to be sold in Public auction. It has also been prescribed that for this purpose, they may utilize the services of the valuation cell of the income-tax department or authorized Government approved valuers. The aforesaid instructions are reiterated. Whenever required, such expert services may be utilized for valuation purposes.
4. Further, to expedite recovery of Central Excise dues by sale/auction of assets, Board has decided to allow the Commissioners in deserving cases to seek the help of

Government approved auctioneers or Companies/Firms possessing experience in the field with the approval of jurisdictional Chief Commissioner. Accordingly, the procedure prescribed vide para 15 of Instructions on Disposal of Confiscated Goods, compiled by Directorate of Preventive Operations (updated as on 1.5.1990) and instructions dated 16<sup>th</sup> July, 1997 for disposal of cut and polished diamonds may be adopted as outlined below:

- (i) For conducting auctions, Auctioneers should be appointed for a period of one year at a time, which may be reviewed or renewed. The auctioneers may operate through out the Zone for the purpose of convenience and uniformity.
- (ii) The auctioneer/companies/firms should be selected after ascertaining their capability and past performance in conducting auctions. For the purpose, tenders should be invited from auctioneers/companies of repute and standing to enter into a contract with the Commissioner for disposal of assets from time to time. In order to ensure maximum participation, suitable advertisement may be made in National/ Local newspapers to shortlist such agencies.
- (iii) The tender Committee may comprise of jurisdictional Chief Commissioner of Central Excise, an officer of the rank of Commissioner of Central Excise authorized by Director-General of Inspection for Customs and Central Excise and an officer of Income Tax (preferably posted at the same station) not below than the rank of Commissioner of Income Tax.
- (iv) Terms and conditions of the contract may be decided by Chief Commissioner of Central Excise. The contract with the auctioneer should be vetted by Government Solicitor before acceptance.
- (v) Such agencies shall be responsible to assist the Department in arranging for sale of the assets as per the prescribed mode of recovery and receipt of sale proceeds and all other necessary formalities. List of the duties of the auctioneer is as per Annexure 'I' attached. The duty list is not exhaustive, but indicative which may be modified by the Chief Commissioner as per requirement.
- (vi) The contract between the auctioneer and the Commissioner should contain the clause on the responsibility of the auctioneer to advertise in at least two national newspapers in English/Hindi and two local newspapers in vernacular language in the manner approved by Commissioner of Central Excise. The department shall however, be free to use other form of media if it so desires. The cost of advertisement in print media may be reimbursed to the auctioneer on actual basis subject to production of the relevant bills. The details of auction should also be put up by the Commissioner on website of CBEC and Zone/ Commissionerate if any. The time and date of auction should be decided by the Commissioner in consultation with the auctioneer.
- (vii) It may not be obligatory for the Department to offer all assets for sale through the auctioneer.

- (viii) The auction should be supervised by senior officers. At least one officer not below the rank of Additional/Joint Commissioner should be present to supervise the auction.
  - (ix) Suitable record of all the bids at every auction and final sale should be maintained. The auction register should contain the details of the assets put to auction, reserve price, date of auction, final sale price, remittance particulars and the disbursement of sale proceeds.
  - (x) Wherever required, the procedure prescribed for disposal of the goods seized/ confiscated under Customs Act, 1962 may be adopted with suitable modifications so long as it is not inconsistent with above guidelines.
5. Guidelines issued by the Central Vigilance Commission as contained in their letter No. 98/ORD/1 dated 18<sup>th</sup> December, 2003, relating to sale through tenders should be strictly adhered to. {Letter available at CVC website: <http://www.cvc.nic.in>.}
  6. To harness the benefits of Information technology, the facility of Internet auction, wherever practical and possible, should be adopted for disposal of the assets.
  7. Kindly acknowledge receipt.
  8. Hindi version will follow.

**Yours faithfully,**

**(Vijay Mohan Jain )  
Under Secretary to the Govt. of India**

**Duties of the Auctioneer**

- a) To prepare auction notice in consultation with the jurisdictional Commissioner.
- b) To give wide publicity in respect of the assets to be auctioned in at least two leading “English newspapers and /or Hindi newspapers & two vernacular newspapers.
- c) To arrange for examination of the assets by the prospective bidders before the date fixed for auction, on compliance of such terms and conditions, as may be specified.
- d) To conduct auction in the manner and as per conditions laid down by the Commissioner and to announce and publish all such conditions.
- e) To collect and immediately deposit the amount of earnest money and any other amounts realised or collected on the day of auction, with the Department.
- f) To cancel a bid forthwith if the bidder fails to pay the earnest money and re-auction the assets.
- g) To collect the balance amount of the bid from the bidder within three working days from the date of auction or as per the conditions of the auction or within such extended time by cash/draft as may be specified by the Commissioner and deposit the same with the Department.
- h) To prepare in triplicate the Sale Sheet in the form given at Annexure II which shall be signed immediately after the sale both by the supervising officer and the auctioneer.
- i) To prepare in triplicate a Final Sale Account on completion of auction in form as shown in Annexure ‘III’ within three working days, showing the proceeds realised and to submit a copy there of to the officer supervising/conducting the auction sale and to the Chief Accounts Officer concerned.

**Other conditions**

- a) The auctioneer shall submit a separate bill in duplicate for his commission. He shall not deduct his charges from the collections on account of Auction.
- b) The Auctioneer or their staff shall not, directly or indirectly bid for or purchase any lot at the auction, except with the prior permission of the Department in writing.
- c) In case, he accepts the bid without collecting earnest money, he shall deposit the full amount within 24 hours of the auction with the Department. This would be without prejudice to any other remedy the Department has, on account of such breach, against him.

**Sale Sheet**

Commissioner of Central Excise.....

Name of the auctioneer.....

Officer supervising the auction.....

Place of auction.....

Auction conducted by.....

Date and time of auction.....

Approximate number of bidders.....

Highest bid.....

---

S.No.	Asset(s) auctioned	Name of the highest bidder	Rs.
-------	--------------------	----------------------------	-----

---

Total (in words) Rupees.....

Total Rupees.....

The auction was held under my supervision

(Signature with name of  
Additional/Joint Commissioner of Central Excise/Deputy/Assistant  
Commissioner of Central Excise supervising auction)

.....

(Auctioneer)

Date.....

## Final Sale Account

Commissioner of Central Excise.....

Sale Account held at .....

on.....at.....

---

S.No.	Asset(s) auctioned	Accepted bid	Remarks
			Total Rs.....
	Total of accepted bids	Rs.....	
	Total earnest money for abandoned bids	Rs.....	
	Total realized for sale	Rs.....	

To

The Additional/Joint Commissioner of Central Excise/Deputy/Assistant Commissioner of Central Excise,

Sir,

I/ We, hereby, report that on account of the sale held at ..... on..... by me/us, the sum of Rs..... was due to the Government. The same has been deposited in the Government account vide TR. No..... dated ..... (copy enclosed)

Yours faithfully,

AUCTIONEER



F.No.201/51/2004-CX-6  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

\*\*\*

New Delhi, dated 30<sup>th</sup> June, 2008.

To

All Chief Commissioners of Central Excise & Customs.  
All Commissioners of Central Excise & Customs.  
All Commissioners of Central Excise (Appeals).  
The Director General of Inspection for Customs and Central Excise.  
The Comptroller & Auditor General of India.

Sir/ Madam,

**Subject: - Instructions regarding Section 11 DDA of the Central Excise Act, 1944.**

\*\*\*

I am directed to refer to the Section 11DDA of the Central Excise Act, 1944 (hereinafter referred to as "the Act") inserted by the Taxation Laws (Amendment) Act, 2006, with effect from 13.7.2006. This section provides for provisional attachment of property for the purpose of protecting the interests of revenue during the pendency of any proceedings under Section 11A or Section 11D of the Act.

2. In this connection, the Law Ministry has advised that suitable guidelines should be issued to implement Section 11DDA of the Act. The following guidelines are, therefore, issued to maintain uniformity in its implementation by field formations:
  - (i) The proceedings for provisional attachment can be initiated only after issue of Show Cause Notice (SCN) under Section 11A or 11D of the Act.
  - (ii) During the pendency of the proceedings under Section 11A or 11D of the Act, if the Central Excise Officer is of the opinion that, in order to protect the interests of revenue, it is necessary to attach the property of the noticee, he shall prepare a proposal in the format prescribed in the Annexure hereto, and forward the same to the jurisdictional Commissioner of Central Excise for his approval, except in cases where the proceedings under Section 11A or 11D of the Act are pending before such Commissioner of Central Excise, in which case he shall himself make the order of attachment, in accordance with the procedure set out in sub-para (iv) below.

- (iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue. The remedy of attachment being, by its very nature, extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution. The grounds on which the Central Excise Officer entertains the reasonable belief that the noticee would dispose of, or remove, the property and the source of his information, if any, should be clearly stated while seeking the previous approval of the Commissioner of Central Excise. Normally, the proposal to be made to the Commissioner of Central Excise should be forwarded within one month's period of the issue of SCN. It may also be noted that appropriate disciplinary action shall be initiated against the officers who may be found to exercise the powers of provisional attachment of property frivolously and without sound reasons. [Recommendation of the Standing Committee on Finance (Fourteenth Lok Sabha) in its 27th Report.]
- (iv) The Commissioner of Central Excise, on receipt of proposal, or on his own, if he is satisfied that circumstances of the case justify provisional attachment, may serve a notice for provisional attachment on the person on whom notice is served under Section 11A or 11D of the Act, requiring such person to make submissions, in writing or in person or both, within fifteen days of serving of the notice as to why should the property belonging to such person, and as may be specified in the notice, be not provisionally attached. The said notice should also specify the condition that the noticee should not sell, transfer, mortgage, charge, lease or otherwise alienate or encumber the property specified in the notice, till the decision of the said notice is communicated to him by serving of an order. In case of proposal for provisional attachment of immovable property, the notice should also be sent to the concerned registration authorities with a direction not to allow any sale, transfer, mortgage etc., of the property.
- (v) After due consideration of the materials before him, and after hearing the person, if such person so desires, the Commissioner of Central Excise may grant approval to the provisional attachment of the property and the Central Excise Officer before whom the proceedings under Section 11A or 11D are pending, may, by order in writing, attach the said property. The Commissioner shall grant such approval, or where proceedings under Sections 11A or 11D of the Act are pending before him, order the attachment of the property within 15 days of holding the personal hearing. A copy of the order of provisional attachment should be served by the Central Excise Officer in the same manner as prescribed under Section 37 C of the Central Excise Act, 1944.
- (vi) The following types of offences committed by a manufacturer or an exporter may be considered for provisional attachment of property:-
  - (a) Removal of goods without the cover of an invoice and without payment of duty;
  - (b) 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;

- (c) Taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;
  - (d) Taking of CENVAT Credit on invoices or other documents which a person has reason to believe as not genuine;
  - (e) Issue of excise duty invoice without delivery of goods specified in the said invoice;
  - (f) 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.
- (vii) 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).

(viii) **Period of Attachment :**

- (a) The order of provisional attachment of property shall be operational for a period of six months from the date on which the order is served on the noticee. However, the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.
- (b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

(ix) **Types of property which can be attached :**

- (a) Personal property of a sole proprietor or of partners of a firm shall not be attached. Personal property means any movable or immovable property which is in the personal use of the sole proprietor or partner. However, immovable property/ properties which is / are used for any commercial purpose may be provisionally attached.
- (b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal manufacturing activities of the assesseees. This would mean that raw materials and inputs required for production or finished goods should not be attached by the Department.

- (x) **Attachment not to be excessive:** Provisional attachment by arrest or distraint of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under Section 11A or Section 11D of the Act.

- (xi) **Attachment between Sunrise and Sunset:** The provisional attachment of the property of the concerned person by arrest or distraint shall be made after sunrise and before sunset and not otherwise.
- (xii) **Inventory:** After provisional attachment of the property, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.
- (xiii) **Private alienation to be void in certain cases:** (i) where a notice has been served on a person for provisional attachment, the said person or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner of Central Excise.
- (ii) Where a provisional attachment has been made, any private transfer or delivery of the property attached or of any debt, dividend or other moneys, contrary to such provisional attachment, shall be void as against all claims enforceable under the provisional attachment.
- (xiv) **Share in property:** Where the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.
- (xv) **Property exempt from attachment:** (i) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment.
- (ii) The decision of the Commissioner of Central Excise as to what property is so entitled to exemption shall be final.
3. Trade & field formations may please be informed suitably.
4. Hindi version will follow.

Yours faithfully,

(Rahul Nangare)  
Under Secretary to the Government of India

**Proforma for forwarding the proposal for provisional attachment of property to the Commissioner of Central Excise:**

1. Name and address of the assessee/person:
2. Division and Commissionerate:
3. Central Excise Registration No.(if any):
4. Constitution of assessee:  
[Proprietorship/partnership/Private Ltd /Public Ltd/ Other (specify)]
5. Details of Show Cause Notice:
  - (i) SCN No. & date, Issuing authority
  - (ii) Brief facts of the case
  - (iii) Duty demanded in the SCN
6. Details of the offence cases in last five years for Central Excise, Customs and Service Tax:
7. Details of arrears of duties/ taxes pending realisation for Central Excise, Customs and Service Tax:
8. Reasons for provisional attachment of property:
9. Full details of property proposed to be provisionally attached:
10. Value of property proposed to be provisionally attached:
11. Comments, if any:

( )

Signature & Name of AC/DC

Date:

**Circular No. 10/2008-Customs**

F.No.401/7/2004-Cus.III(Pt.)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

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New Delhi, dated 30<sup>th</sup> June, 2008.

To

All Chief Commissioners of Customs.  
All Chief Commissioners of Customs & Central Excise.  
All Commissioners of Customs  
All Commissioners of Customs & Central Excise.  
All Directorates-General/Directorates under CBEC.  
The Comptroller & Auditor General of India.

Sir / Madam,

**Subject: - Instructions regarding Section 28 BA of the Customs Act, 1962.**

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I am directed to refer to the Section 28 BA of the Customs Act, 1962 (hereinafter referred to as "the Act") inserted by the Taxation Laws (Amendment) Act, 2006, with effect from 13.7.2006. This section provides for provisional attachment of property for the purpose of protecting the interests of revenue during the pendency of any proceedings under Section 28 or Section 28B of the Act.

2. In this connection the Law Ministry has advised that suitable guidelines should be issued to implement Section 28BA of the Act. The following guidelines are, therefore, issued to maintain uniformity in its implementation by field formations.
  - (i) The proceedings for provisional attachment can be initiated only after issue of Show Cause Notice (SCN) under Section 28 or 28B of the Act.
  - (ii) During the pendency of the proceedings under Section 28 or 28B of the Act, if the proper officer is of the opinion that, in order to protect the interests of revenue, it is necessary to attach the property of the noticee, he shall prepare a proposal in the format prescribed in the Annexure hereto, and forward the same to the jurisdictional Commissioner of Customs for his approval, except in cases where the proceedings under Section 28 or 28B of the Act are pending before such Commissioner of Customs, in which case he shall himself make the order of attachment, in accordance with the procedure set out in sub-para (iv) below.

- (iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue. The remedy of attachment being, by its very nature, extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution. The grounds on which the proper officer entertains the reasonable belief that the noticee would dispose of, or remove, the property and the source of his information, if any, should be clearly stated while seeking the previous approval of the Commissioner of Customs. Normally, the proposal to be made to the Commissioner of Customs should be forwarded within one month's period of the issue of SCN. It may also be noted that appropriate disciplinary action shall be initiated against the officers who may be found to exercise the powers of provisional attachment of property frivolously and without sound reasons. [Recommendation of the Standing Committee on Finance (Fourteenth Lok Sabha) in its 27<sup>th</sup> Report.]
- (iv) The Commissioner of Customs, on receipt of proposal, or on his own, if he is satisfied that circumstances of the case justify provisional attachment, may serve a notice for provisional attachment on the person on whom notice is served under Section 28 or 28B of the Act, requiring such person to make submissions, in writing or in person or both, within thirty days of the receipt of the notice as to why should the property belonging to such person, and as may be specified in the notice, be not provisionally attached. The said notice should also specify the condition that the noticee should not sell, transfer, mortgage, charge, lease or otherwise alienate or encumber the property specified in the notice, till the decision of the said notice is communicated to him by serving of an order. In case of proposal for provisional attachment of immovable property, the notice should also be sent to the concerned registration authorities with a direction not to allow any sale, transfer, mortgage etc., of the said property.
- (v) After due consideration of the materials before him, and after hearing the person, if such person so desires, the Commissioner of Customs may grant approval to the provisional attachment of the property and the proper officer before whom the proceedings under Section 28 or 28B of the Act are pending, may, by order in writing, attach the said property. The Commissioner shall grant such approval, or where proceedings under Section 28 or 28B of the Act are pending before him, order the attachment of the property within 15 days of holding the personal hearing. A copy of the order of provisional attachment should be served by the proper officer in the same manner as prescribed under Section 153 of the Customs Act, 1962.
- (vi) The following types of cases may be considered for provisional attachment of property:-
  - (a) Import or export of goods, including an attempt thereof, involving evasion of duty or grant of ineligible export incentives including drawback;
  - (b) Claim for or grant of refund of Customs duty in a fraudulent manner, fraudulent availment of or attempt to fraudulently avail of drawback or other export incentives or any exemption from duty.



(vii) The provisional attachment of property shall be resorted to only in a case where the duty or export incentives including drawback, alleged to be involved in the above specified offences is more than Rs.25 lakhs (Rs. Twenty five lakhs).

(viii) Period of Attachment :

(a) The order of provisional attachment of property shall be operational for a period of six months from the date on which the order is served on the noticee. However, the Chief Commissioner of Customs may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.

(b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

(ix) Types of property which can be attached :

(a) Personal property of a sole proprietor or of partners of a firm, importer or exporter shall not be attached. Personal property means any movable or immovable property which is in the personal use of the sole proprietor or partner or importer or exporter. However, immovable property/ properties which is/ are used for any commercial purpose may be provisionally attached.

(b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal business of manufacturer importer/ exporter or assessee. This would mean that raw materials and inputs required for production or finished goods, in case of manufacturer importer/ exporter should not be attached by the department.

(x) Attachment not to be excessive: Provisional attachment by arrest or distraint of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under Section 28 or Section 28B of the Act.

(xi) Attachment between Sunrise and Sunset: The provisional attachment of the property of the concerned person by arrest or distraint shall be made after sunrise and before sunset and not otherwise.

(xii) Inventory: After provisional attachment of the property, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.

(xiii) Private alienation to be void in certain cases: (i) where a notice has been served on a person for provisional attachment, the person on whom such notice has been



served or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner of Central Excise.

(ii) Where a provisional attachment has been made, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such provisional attachment, shall be void as against all claims enforceable under the provisional attachment.

(xiv) Share in property: Where the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

(xv) Property exempt from attachment: (i) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment.

(ii) The decision of the Commissioner of Customs as to what property is so entitled to exemption shall be final.

4. Trade & field formations may please be informed suitably.

5. Hindi version will follow.

Yours faithfully,

(Aseem Kumar)  
Under Secretary to the Government of India

Copy to:

1. PPS to Chairman (CBEC)

2. All Members (CBEC)

3. All sections under CBEC.

**Proforma for forwarding the proposal for provisional attachment of property to the Commissioner of Customs:**

1. Name and address of the importer/exporter/assessee/person:
2. Division and Commissionerate:
3. IEC No. and Central Excise Registration No.(if any):
4. Constitution of assessee:  
[Proprietorship/partnership/Private Ltd /Public Ltd/ Other (specify)]
5. Details of show cause notice:
  - (i) SCN No. & date, Issuing authority
  - (ii) Brief facts of the case
  - (iii) Duty demanded in the SCN
6. Details of the offence cases in last five years for Customs, Central Excise and Service Tax:
7. Details of arrears of duties/ taxes pending realisation for Customs, Central Excise and Service Tax:
8. Reasons for provisional attachment of property:
9. Full details of property proposed to be provisionally attached:
10. Value of property proposed to be provisionally attached:
11. Comments, if any:

( )

Signature & Name of AC/DC

Date:

**F.No. 137/120/2006-CX4  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs**

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New Delhi, dated the 1<sup>st</sup> July, 2008

To

Chief Commissioners of Central Excise & Customs (All)  
Chief Commissioners of Central Excise (All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Commissioners of Service Tax (All)  
Commissioner (DPPR)  
webmaster@cbec.gov.in

Sir/Madam,

**Subject: - Instructions regarding provisional attachment of property under section 73 C of the Finance Act, 1994-reg.**

Section 73C of the Finance Act, 1994 (hereinafter referred to as the Act) provides for provisional attachment of property for the purposes of protecting the interests of revenue during the pendency of any proceedings under section 73 or section 73A of the Act.

2. In this connection the following guidelines are issued to maintain uniformity in its implementation by field formations.
  - (i) The proceedings for provisional attachment can be initiated only after issue of Show Cause Notice under section 73 or section 73A of the Act.
  - (ii) During the pendency of the proceedings under section 73 or 73A of the Act, if the Central Excise Officer is of the opinion that, in order to protect the interests of revenue, it is necessary to attach the property of the noticee, he shall prepare a proposal in the format prescribed under the sub-rule(1) of rule 3 of the Service Tax (Provisional Attachment of Property) Rules, 2008, issued vide notification No. 30/2008-ST, dated the 1st July, 2008, and forward the same to the jurisdictional Commissioner of Central Excise for his approval, except in cases where the proceedings under section 73 or section 73A of the Act are pending before such Commissioner of Central Excise, in which case he shall himself make the order of attachment, in accordance with the procedure set out in para (iv) below.

- (iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue. The remedy of attachment being, by its very nature, extraordinary, has to be resorted to in the utmost circumspection and with maximum care and caution. The grounds on which the Central Excise Officer entertains the reasonable belief that the notice would dispose of, or remove, the property and the sources of his information, if any, should be clearly stated while seeking the approval of the Commissioner of Central Excise. Normally, the proposal should be forwarded within one month's period of the issue of show cause notice. It may also be noted that appropriate disciplinary action shall be initiated against the officers who may be found to exercise the powers of provisional attachment of property frivolously and without sound reasons. [Recommendation of the Standing Committee on Finance (Fourteenth Lok Sabha) in its 27th Report.]
- (iv) The Commissioner of Central Excise, on receipt of proposal, or on his own, if he is satisfied that circumstances of the case justify provisional attachment, may serve a notice on the person on whom a notice is served under Section 73 or 73A of the Act, requiring such person to make submissions, in writing or in person or both, within fifteen days of serving of the notice as to why the property belonging to such person, and as may be specified in the notice, be not provisionally attached. The said notice should also specify the condition that the noticee should not sell, transfer, mortgage, charge, lease or otherwise alienate or encumber the property specified in the notice, till the decision of the said notice. In case of proposal for provisional attachment of immovable property, the notice should also be sent to the concerned registration authorities with a direction not to allow any sale, transfer, mortgage etc., of the property.
- (v) After due consideration of the materials before him, and after hearing the person, if such person so desires, the Commissioner of Central Excise may grant approval to the provisional attachment of the property and the Central Excise Officer before whom the proceedings under Section 73 or 73A of the Act are pending, may, by order in writing, attach the said property. The Commissioner shall grant such approval, or, where proceedings under section 73 or 73 A of the Act are pending before him, order the attachment of the property, within fifteen days of holding of personal hearing. A copy of the order of provisional attachment should be served by the Central Excise Officer in the same manner as prescribed under section 37 C of the Central Excise Act, 1944, as made applicable to service tax vide section 83 of the Act.
- (vi) The following types of offences committed by a service provider on an exporter may be considered for provisional attachment of property:-
- (a) Provision of a taxable service without the cover of an invoice or any other document, as prescribed, and without payment of tax;
  - (b) Provision of a taxable service without declaring the correct value for payment of service tax, where a portion of value of taxable service, in excess of invoice

price, is received by him or on his behalf but not accounted for in the books of account.

- (c) Taking of CENVAT credit without the receipt of goods or services specified in the document based on which the said credit has been taken;
  - (d) Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;
  - (e) Issue of service tax invoice or any other document, without providing or to be providing a taxable service, as specified in the said invoice or other document;
  - (f) 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.
- (vii) The provisional attachment of property shall be resorted only in a case where the service tax or CENVAT credit alleged to be involved is more than Rs. 25 lakh (twenty five lakh).

(viii) Period of Attachment :

- (a) The order of provisional attachment of property shall be operational only for a period of six months from the date on which the order is served on the noticee. However, the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.
- (b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

(ix) Types of property which can be attached :

- (a) Personal property of a sole proprietor or partners shall not be attached. Personal property means any movable or immovable property which is in personal use of the sole proprietor or partner. However, immovable property/ properties which *is/*are used for commercial purpose may be provisionally attached.
- (b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal business of the assessee. This would mean that inputs required for provision of a service should not be attached by the department.

- (x) Attachment not to be excessive: Provisional attachment by arrest or distraint of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 73 or section 73A of the Act.

- (xi) Attachment between Sunrise and Sunset: The provisional attachment of the property of the concerned person by arrest or distraint shall be made after sunrise and before sunset and not otherwise.
- (xii) Inventory: After provisional attachment of the property, the Central Excise Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.
- (xiii) Private alienation to be void in certain cases:
- (a) where a notice has been served on a person for provisional attachment, the person on whom such notice has been served or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner of Central Excise.
- (b) Where a provisional attachment has been made, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such provisional attachment, shall be void as against all claims enforceable under the provisional attachment.
- (xiv) Share in property : Where the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.
- (xv) Property exempt from attachment:
- (a) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment.
- (b) The decision of the Commissioner of Central Excise as to what property is so entitled to exemption shall be final.

3. Trade & field formations may be informed suitably.
4. Hindi version will follow.

Yours faithfully,

(Ashima Bansal)

Under Secretary to Government of India

Copy to:

1. PPS to Chairman (CBEC)
2. PPS to Member (CBEC) (All)
3. Directorates-General/ Directorates under CBEC (All)
4. Sections under CBEC(All)

**OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT)  
JAWAHAR CUSTOMS HOUSE NHAVA SHEVA RAIGAD MUMBAI**

F.No. S/26-MISC -06/2008 RRC (Import)

DATE . 09.2008

STANDING ORDER NO. 49/2008

1. In view of amendment of Section 142(1) of the Customs Act, 1962, empowering the Asst. Commissioner of Customs to attach and sell the movable and /or immovable property of defaulter as per the Customs (Attachment of property of Defaulter for Recovery of Government dues) Rule, 1995 a Revenue Recovery Cell in the Office of the Commissioner of Customs (Import) has been formed in the Jawahar Custom House to effectively monitor the progress & finally recover the arrears of Custom House duty, fine and penalty from the defaulters who have failed to pay it so far for cases pertaining to Commissionerate of Import . The following procedure is prescribed for the recovery of arrears of Customs Revenue comprising of Customs duty, fine and penalty etc. by the Jawahar Customs House, Commissionerate of Import.
2. After the issue of order confirming less charge demands under Section 28(1) of the Customs Act, 1962, and/or issue of Order-in-Original the concerned Group shall wait for the appeal period to be over. After the expiry of appeal period, AC/DC Group shall take steps including issue of Detention Orders to recover the amount payable by the Importer and others in terms of Section 142(1) (a) or (b) of Customs Act, 1962, In case the Group AC/D.C. fails to recover the arrears in this manner , certificate u/s 142 (1) (c)(i) of the Customs Act, 1962, should be sent to the District Collector in cases , where the amount due is Rs. 1,00,000/- and less in all other cases, where the the amount due, whether by way of duty or penalty or interest exceeds Rs.1,00,000/- a certificate shall be prepared in the Proforma as given in enclosed Appendix I and sent to the Asstt. / Dy. Commissioner of Customs I/C Revenue Recovery Cell. While sending Appendix I to AC/RRC, the following documents should invariably be enclosed.
  - (a) Copy of Order-In-Original / Order confirming Less Charge Demands.
  - (b) Copy of the Order of Commissioner (Appeal) CESTAT/High Court/Supreme Court.
  - (c) Copy of the stay application if any, pending before Commissioner (Appeal) /CESTAT /High Court /Supreme Court
  - (d) A Certificate to the effect that no stay application is pending before any Appellate Authority/Court as far as amount sought to be recovered through Revenue Recovery Cell is concerned.
3. In case, the Certificate is sent without enclosing the above mentioned documents, the case shall not be taken up for initiating recovery proceeding by the Revenue Recovery Cell but shall be returned for making good the deficiencies. Further, in case the defaulter owns property out side the city limits of Mumbai , Thane or Raigad Dist., the Certificate in Appendix I shall be sent directly by concerned AC/ DC to the jurisdictional Commissioner



of Customs and Central Excise, for recovery of arrears . Such cases need not be referred to Revenue Recovery Cell.

4. If after sending the certificate to Revenue Recovery Cell, the amounts due are paid by the concerned parties/persons either in full or in part, then intimation about receipt of such payments shall be immediately sent by the Groups/Units to the Revenue Recovery Cell and in any case not later than 3 days of the receipt of such payments .In addition, copies of all further correspondence pertaining to the recovery of the sums due as mentioned in the Certificate sent to Revenue Recovery Cell should also be made available to the Revenue Recovery Cell on regular basis.
5. In cases where the certificate is issued to District Collectors for recovery of arrears and the amount due is not recovered by the District Authorities within three months of the issuance of Certificate in Appendix I, the District Authorities should be informed by the AC/DC Group through a registered AD letter to discontinue recovery and a Certificate in Appendix I should be sent to Revenue Recovery Cell for initiating recovery action under sub clause (ii) of Section 142(1) ( c ) in case the defaulter's property is located within Mumbai, Thane and Raigad Dist. In all other cases, the certificate in Appendix I, should be forwarded to the respective Jurisdictional Commissioner of Customs and C. Excise.
6. After the receipt of certificate in Appendix I from the concerned Groups along with copies of Order-In-Original and other documents mentioned in preceding paragraphs a file no. shall be allocated by the Revenue Recovery Cell to each such case.
7. The Revenue Recovery Cell shall be headed by an Asstt./ Dy. Commissioner of Customs, who will be the proper officer for the purpose of attachment of the defaulter's property and for realizing the amount mentioned in the Certificate. Upon receipt of the certificate from the Appraising Group/Section the Revenue Recovery Cell shall issue a letter to the defaulter bringing to his/her notice the provision of the Section 142 of the Customs Act, 1962 and the amount of arrears due, with direction to pay the said amount within 10 days of the receipt of the notice. In the meantime, the officers of Revenue Recovery Cell shall make discreet inquiries about the moveable & immovable property of the defaulters and to report to AD/DC Revenue Recovery Cell within a period of seven days the particulars of the property. While making the inquiries about the movable property by the Revenue Recovery Cell Officers shall also seek information about the business, bank accounts and information regarding assets from D.G.F.T's office (where application for grant of Import Export Code No. is filed). Inquiries should also be made from Income Tax Deptt. and Sales Tax Deptt., regarding assets of the defaulters. In cases investigated by SIIB the property detail of the concerned persons should be recorded while examining them Under Section 108 of the Customs Act, 1962 which should be communicated to the Revenue Recovery Cell while sending the Certificate in Appendix I.
8. After expiry of 10days' notice period if Govt. dues are not paid by the defaulter, the Asstt./ Dy. Commissioner, I/C Revenue Recovery Cell shall issue a Notice of Demand to the defaulter as per enclosed Appendix II. If said dues are not paid within 7 days of the Demand Notice the Asstt./ Dy. Commissioner /Revenue Recovery Cell will proceed with



the recovery of dues as stipulated in Customs (Attachment of Property of Defaulters for Recovery of Govt. dues) Rules 1995.

9. In cases the Certificate under Section 142(1) ( c ) (ii) of the Customs Act ,1962 is received from the other Commissioner for the recovery of Govt. Revenue the Revenue Recovery Cell shall enter the said Certificate in a separate Register maintained for that purpose and thereafter AC / DC Revenue Recovery Cell shall issue a Demand Notice to the defaulter in Appendix II and further action to recover the Govt. Revenue shall be initiated by the said Asstt./ Dy. Commissioner as prescribed under Customs (Attachment of property of Defaulters for Recovery of Govt. dues) Rules 1995.
10. In cases, the arrears of revenue consisting of Customs duty, fine and penalty and or interest are not paid by the defaulters, the property of the defaulter, both moveable and immovable, shall be attached by following procedure prescribed in Chapter II and III of the Customs (Attachment of Property of Defaulters for Recovery of Govt. dues) Rules 1995. For this purpose notice of demand, or of attachment of immovable property and notice of attachment of other assets etc. shall be issued in the relevant formats prescribed in the Hand Book of Recovery of Arrears of Customs Revenue published by the Directorate of Publicity and Public Relation Customs & C. Excise , New Delhi.
11. If the amount mentioned in the certificate together with the cost of detention of the property is not paid within the period of 30 days from the date of attachment of the property, the Commissioner may authorize the proper officer to proceed to realize the amount by the sale of defaulters' property by public auction. For the purpose of sale of attached property, AD/DC shall be the proper officer for selling the property and the procedure prescribed in Chapter III of the Customs (Attachment of Property of Defaulters' for Recovery of Govt. dues ) Rule, 1995 as well as instructions contained in the Hand Book of Recovery of Arrears of Customs Revenue shall be followed.
12. It is emphasized that the instructions contained in Board's Letter F. No. 495/15/94-Cus.IV dated 30.5.1995 and F. No. 450/72/96-Cus. IV dated 14.11.1996 should be followed strictly and any difficulty experienced should be brought to the notice of the Commissioner of Customs (Import).
13. This Standing Order shall come into force with immediate effect.

(SANJEEV BEHARI)  
COMMISSIONER OF CUSTOMS (IMPORT),  
JAWAHARLAL NEHRU CUSTOM HOUSE, SHEVA.

Encl:

1. Board's Letter F. No. 495/15/94-Cus. IV dated 30.5.95.
2. Board's Letter F. No. 450/72/96-Cus. IV dated 14.11.96.
3. Forms in Annexure I to XII A.

Copy to :-

1. P.A. to Chief Commissioner of Customs, JNCH, Sheva.
2. P.A. Commissioner of Customs (Import), NCH, Mumbai.
3. All Additional Commissioner of Customs (Import), JNCH, Sheva.
4. All Deputy Commissioner of Customs, (Import), JNCH, Sheva.
5. All Asstt. Commissioner of Customs (Import), JNCH, Sheva.
6. AC/ Disposal (General), JNCH, Sheva.

## WRITE OF ARREARS

F. No. 290/4/85-CX.9

Dated : 22.03.85

I am directed to invite a reference to the instructions F.No.290/7/76/CX.9 dated 22.6.76 issued by the Board regarding remission and write off/abandonment of irrecoverable amounts of arrears of revenue.

During the meeting of the Collectors of South Zone, held on 16th and 17th July, 1984, it was pointed out that many a time, the reports furnished by the Collectors, are not adequate and that Board should prescribe a proforma which the Collectors may be asked to fill in addition to descriptive report while sending the proposals for the write off of the arrears of revenue.

With a view to streamline the procedure and to avoid delays, the Board desire that your proposals for the write off of irrecoverable amounts of revenue may be sent in the proforma enclosed, under the signature of the Head of the Department.

While care has been taken to make the proforma as exhaustive as possible any other information which Collector of Central Excise may think, is useful and relevant to be furnished in a descriptive form as a covering letter. Also while filling up the various columns -in the proforma if any of them does not imply, please indicate the same.

### **Enclosure:**

Proforma for sending proposals for write off of irrecoverable arrears of Central Excise Revenue

1. Name and address of defaulter.
2. Licence number.
3. Amount to be written-off
4. Brief facts of the case.
5. Date of issue of show cause notice and Date of adjudication of the case, with copy(ies) of adjudication order.
6. Date of issue of DD2.
7. Details of efforts made to realise the arrears from licensee prior to initiation of certificate action.
8. Amount realised from the defaulter:
9. Whether solvency position and financial status of the licensee, ascertained at the time of issue / renewal of licence.

10. Whether any security obtained at the time of issue/renewal of licence. Efforts made to recover the arrears from out of security.
11. Whether surety obtained and solvency verified at the time of issue/renewal of licence. Amount recovered from surety. If no amount recovered reason therefore.
12. Date of issue of certificate under Section 11 of the Central Excise and Salt Act 1944.
13. Details of action to pursue the matter with revenue authorities; efforts made between the date of Certificate action and the date of irrecoverability certificate.
14. Date of issue of irrecoverability certificate and the details of financial position of defaulter.
15. Whether any property alienated since the raising of the demand for duty. Steps taken to check alienation of property and recovery possibilities out of the same.
16. (a) Whether defaulter prosecuted, if not reasons therefor;  
(b) Result of prosecution launched,
17. (a) Whether civil suit filed, if not reasons therefor;  
(b) Result of civil suit.
18. Whether non-recoverability of amount was on account of any defects in rules or procedure the amendment of which require the orders of higher authorities.
19. Whether there has been any serious negligence on the part of any Government servant which may call for disciplinary action by higher authority.
20. Names and designations of Government Servants, if any, responsible for causing loss of revenue and action taken against them,
21. Any other relevant facts/remarks of the Collectors.

**F. No. 290/20/90-CX. 9**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue.**

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New Delhi, the 21 st September, 1990

To:

All Principal Collectors of Customs and Central Excise,  
All Collectors of Customs and Central Excise,  
All Collectors of Customs,  
All Collectors of Central Excise.

**Subject : Write off of irrecoverable amounts of Customs/ Central Excise duties and abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, Central Excise and Salt Act, 1944 and Gold Control Act, 1968 – delegation of enhanced powers :-**

I am directed to say that under the Delegation of Financial Powers (Second Amendment) Rules, 1990 published vide S. O. NO. 1469 dated 26.05.1990 in the Gazette of India, Part II, Section (3) and sub-section (ii), the powers of the Principal Collectors of Customs and Central Excise, & Collectors of Customs and Collectors of Central Excise have been enhanced as under :-

Name of the authority	Power delegated
(iv)(a) Principal Collectors of Customs and Central Excise	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, Central Excises Act & Salt Act, 1944 and Gold Control Act, 1968 and  (b) To write off irrecoverable amounts of Customs/Central Excise duties upto Rs.15 lakhs subject to a report to the next higher authority.
(b) Collectors of Customs and Central Excise.	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, Central Excises & Salt Act 1944 & Gold Control Act, 1968 and  (b) To write of irrecoverable amounts of Customs /Central Excise duties upto Rs.10 lakhs subject to a report to the next higher authority.
(c) Collectors of Customs,	(a) Full powers of abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962 Central Excises Act & Salt Act, 1944 and Gold Control Act, 1968 and

- (b) To write of irrecoverable amounts of Customs/Central Excise duties upto Rs.10 lakhs subject to a report to the next higher authority.
- (d) Collectors of Central Excise.
  - (a) Full powers of abandonment of irrecoverable amounts of fines and penalties imposed under the Customs Act,1962 Central Excises Act & Salt Act 1944 & Gold Control Act,1968 and
  - (b) To write of irrecoverable amounts of Customs/Central Excise duties upto Rs.10 lakhs subject to a report to the next higher authority.

A copy of the relevant notification is enclosed for ready reference. All pending cases of irrecoverable amount of revenue and abandonment of irrecoverable amounts of fines and penalties may be considered and disposed off accordingly. Cases referred to the Board and which are still pending are being returned separately to the respective Collectorates for necessary action.

sd/-

(I.U. KAPUR)

UNDER SECRETARY TO THE GOVT. OF INDIA.

Copy forwarded for information to all Directorates under CBEC and all Officers in CBEC.

**MOST IMMEDIATE**

**F.NO. 296/34/2008-CX.9  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs**

R.N. 276A, North Block

New Delhi, dated the 20<sup>th</sup> March, 2008

To

Shri B.R. Tripathi,  
Commissioner (TAR)  
Customs, Central Excise and Service Tax,  
C.R. Building, I.P.Estate,  
New Delhi-110002

**Subject: Review of major arrears of revenue identification of arrears of revenue involving Rs. 5 crores and above where principal amount needs to be written off-M/s. Kanpur Cigarette Ltd. & Others- regarding**

Sir,

Kindly refer to your letter C.No. Nodal /TAR/Delhi/10/2007/973 dated 19.02.2008 on the captioned subject. The Board has already prescribed vide OM F.No. 296/34/2004-CX.9 (Pt.) dated 12.08.2004 (copy enclosed), that the following procedure is to be followed w.r.t. the recovery of arrears, which have become difficult to recover:

- i) Deducting such amounts from any money owing to the defaulter;
- ii) Attachment and sale of excisable goods belonging to the defaulter;
- iii) If the goods belonging to a Central Excise defaulter are under the control of Customs officers anywhere in the country (including ports, ICDs, CFSs, Bonded Warehouses), such officers would be required to recover the said amount by detaining and selling such goods belonging to the defaulter;
- iv) If the amount cannot be recovered by the aforesaid means, any movable or immovable property belonging to or under the control of the defaulter will be detained under Section 142 (1) (c) read with Customs (Attachment of Property of Defaulter for Recovery of Government Dues) Rules, 1995.
- v) If any dues are not paid within 30 days of the detention as above, the said property would be sold in the prescribed manner.
- vi) Section 11 of the Central Excise Act also provides for recovery of dues by attachment and sale of all excisable goods, materials, plants and machineries, etc. in the custody or

possession of a successor/transferee to whom the business or trade has been disposed of. These provisions have to be made use of for recovery.

- vii) The jurisdictional Commissioners/ Chief Commissioners shall also identify the cases where reportedly defaulters are not traceable or assets are not available. The Commissioners will complete enquiries at all known addresses of the defaulters (e.g., offices, works depots, warehouses, residence, etc.) to ascertain whether any moveable or immovable assets can be located. Discreet investigations will be made from the neighboring persons, trade rivals, market and other concerned Government departments whether any other place of business of the defaulter anywhere in India exists. If yes, action will be extended to such place. Discreet investigations should also be made about his Bank accounts or any possible clues with the Banks.
- viii) If even after the above action the defaulters remain untraceable and assets not available, zonal Chief Commissioners will send case-wise particulars to the DGRI/DGCEI, as the case may be, under intimation to the concerned Nodal officer. The help of such intelligence agencies will be taken for further pursuing such cases. The Nodal Officer will review action for locating the defaulters or assets in accordance with the law and co-ordinate so that the investigations by the said intelligence agencies are quickly completed and results intimated to Chief Commissioners. The officers of these Directorates General will use their resources in locating such persons and their property anywhere in the country and for this purpose, they may, inter-alia , take the help of income-tax authorities whose database may also be useful. The Nodal Officer will do monthly monitoring of such references and results of the investigations. DGRI and DGCEI may have a special cell in their headquarters for attending to such references and ensuring immediate action and reporting of results by the field units.
2. Needless to mention that the detailed procedure prescribed above requires that all possible action may be taken to recover dues of the Government. It is accordingly advised that any case for write-off (including the one in reference here) may be sent to the Board only after completely following the directions/guidelines enclosed. You may accordingly advise the field formations.

**Encl: As above**

Yours faithfully,

Sd/-  
(Vinay Chhabra)  
Commissioner(Coord.)

Copy to:

1. The Chief Commissioner of Customs, Central Excise and Service Tax, Lucknow, Lucknow Zone for information and necessary action.
2. Shri S.C. Jana, Commissioner, Central Excise & Customs, Kanpur for information and necessary action.



F. No. 296/10/2009-CX-9  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Customs & Excise

\*\*\*\*\*

New Delhi, the 1<sup>st</sup> June, 2011

To

All Chief Commissioners of Central Excise & Service Tax,  
All Chief Commissioners of Central Excise & Customs,  
All Chief Commissioners of Customs,  
All Chief Commissioners of LTU,  
Chief Commissioner (TAR).

**Sub: Writing off of arrears of Central Excise duty and Customs duty - Constitution of Committees to advise the authority for writing off of arrears-reg.**

Sir,

I am directed to invite reference to the instructions contained in Board's Circulars F.No. 290/4/85-CX.9 dated 22.3.85 and F.No. 290/20/90-CX.9 dated 21.9.1990, on the subject of write off of arrears of irrecoverable dues.

2. In the context of revision of the delegated powers to write off irrecoverable tax arrears, most of the Chief Commissioners did not recommend any enhancement of the existing monetary limits prescribed vide Board's Circular dated 21.9.1990. On the other hand, the Chief Commissioners suggested adoption of a Committee system for deciding cases of write off of arrears as followed by the CBDT. It is seen that CBDT, while revising the delegated powers to write off arrears, has prescribed constitution of Committees at different levels for taking a decision to write off arrears in deserving cases.
3. It has, therefore, been decided by the Board to constitute three - member Committees of Chief Commissioners and Commissioners, which will examine the proposals for write – off of irrecoverable arrears and recommend deserving cases to the authority competent to order such write – off in terms of the Board's Circular dated 21.9.1990. While the Committee of Chief Commissioners shall be constituted by the Board, as and when necessary, on the basis of the request of the Zonal Chief Commissioner, the Committee of the Commissioners shall be constituted by the Zonal Chief Commissioner, as and when necessary, on the basis of request of the jurisdictional Commissioner. The Chief Commissioner (TAR) shall be an ex-officio Member of each Committee of Chief Commissioners to ensure uniformity in approach and decision making by such

Committees. Similarly, one of the Commissioners (TAR) to be nominated by the Chief Commissioner (TAR), shall be a Member of each Committee of Commissioners. Whenever a proposal for write - off of irrecoverable arrears is submitted by the Deputy/ Assistant Commissioner in the prescribed format (Annexure A), the Zonal Chief Commissioner or the jurisdictional Commissioner, depending on the amount of duty/tax proposed to be written off, shall examine the proposal and if prima - facie satisfied, request the Board or the Zonal Chief Commissioner, as the case may be, for constitution of an appropriate Committee. The Committee so constituted shall examine the proposals and on the basis of the recommendation of the Committee, the competent authority shall write – off arrears in deserving cases, in accordance with the powers delegated for the purpose.

4. The constitution of the Committees and the powers to write off, delegated to the competent authorities are as under:-

Sl. No.	Competent Authority	Constitution of the Committee	Powers delegated
1.	Chief Commissioner of Customs & Central Excise/ Central Excise/ Customs	Committee of two Chief Commissioners of Customs & Central Excise/ Central Excise/ Customs and the Chief Commissioner (TAR)	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944. (b) To write off irrecoverable amounts of Customs/Central Excise duties upto Rs. 15 lakh subject to a report to the Board.
2.	Commissioner of Customs & Central Excise / Commissioner of Customs / Commissioner of Central Excise	Committee of two Commissioners of Customs & Central Excise/ Central Excise/ Customs and one Commissioner (TAR) nominated by CC(TAR))	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944. (b) To write off irrecoverable amounts of Customs/Central Excise duties upto Rs. 10 lakh subject to a report to the Chief Commissioner.

5. As regards write off of interest amount, it is clarified that once duty involved is written off, the interest due thereon would get automatically written off. It is also clarified that the duty/ tax involved in the case would determine the level of authority/Committee competent to write off the amount involved.
6. As for writing off of arrears of service Tax, action is being initiated for suitable amendment of DFPR before proceeding with the writing off.
7. The field formations are, therefore, directed to take action on the above lines. If any difficulty is faced, the same should be brought to the notice of the Board.

Yours faithfully,

Surendra Singh)  
Under Secretary to the Govt. of India

**PROFORMA FOR SENDING PROPOSALS FOR WRITE-OFF OF IRRECOVERABLE  
ARREARS OF REVENUE**

RANGE:

DIVISION:

COMMISSIONERATE

1. Name of the Defaulter:	
2 Address:	
3 Registration No.:	
4 Name of the commodity and CETH/ Service:	
5 Brief facts of the case (if necessary, separate sheet may be attached):	
6 Date of issue of Show Cause Notice and of Adjudication of the case with copy of Adjudication Order:	
7 Details of efforts made :	
(A) for realizing amounts from any money owed to the defaulter	
(B) for attachment and sale of excisable goods belonging to the defaulter	
(C) for attachment and sale of goods belonging to the defaulter, under the control of Customs	
(D) to detain the goods under the provision of Section 142 (1) (C) made applicable to Central Excise	
(E) to sell the detained goods	
(F) to attach the goods in the possession of custody of the transferee/successor under Section 11 of Central Excise Act, 1944.	
(G) to ascertain the location of any movable/ immovable assets belonging to the defaulter through (i) enquiry with other Government Deptts. (ii) enquiry with Bankers of the defaulter	

8.	Amount to be written off:	
	Total amount due:	Rs.
	Duty	Rs.
	Penalty	Rs.
	Fine Rs.	
	Less:	
	Amount realized from the defaulter	Rs.
	Amount recovered out of Sale of goods	Rs.
	Sale of excisable goods	Rs.
	Sale of movable property	Rs.
	Sale of immovable property	Rs.
	Appropriation of Bank Guarantee, if any	Rs.
	Adjustment of Refunds	Rs.
	Other (specify)	Rs.
	Net amount to be written off	Rs.
9.	Details of financial position of the defaulter	
10.	Whether any property alienated since the raising of the demand for duty. Step taken to check alienation of property and recovery possibilities out of the same	
11	(a) Whether defaulter has been prosecuted? if not, reasons thereof.	
	(b) Results of prosecution launched	
12	Whether non-recoverability of amount was on account of any defects in Rules and/or procedures, the amendment of which requires the order of higher authorities?	
13	Whether there has been any serious negligence on the part of the Government Servants which may call for disciplinary action taken against them.	
14	Name and designation of the Government Servants, if any, responsible for causing loss of revenue and action taken against them.	
15	Any other relevant facts/ remarks	

Deputy Commissioner/ Assistant Commissioner Incharge  
(Name and Signature with date)

**OFFICE OF THE CHIEF COMMISSIONER (TAR)  
C.R. BUILDINGS: I P ESTATE: NEW DELHI**

**No.CC/TAR/50/2007**

**Dated: April 23, 2008**

**Subject:** Write off of abandonment of irrecoverable amount of arrears of revenue – reg.

The CBEC had instructed that any proposal for write off of the arrears of revenue may be sent to Board only after completely following the directions/guidelines contained in the Board's OM dated 12.8.2004 circulated under F.No.296/34/2004-CX.9 (Pt.) dated 12.8.2004, that too in the Proforma already prescribed vide Board letter F.No. 290/4/85/CX-9 dated 23.3.1985.

2. The Board vide letter F.No. 296/34/2008-CX-9 dated 20.03.2008 has further advised that the procedure step by step as are enclosed herewith (Annexure 'A') have to be followed with respect to recovery of arrears which have become difficult to recover.

3. It is accordingly advised that any case for write off of revenue/penalty may be sent to the Board after following the directions/guidelines enclosed herewith in proper proforma. It is needless to repeat that only those matters wherein revenue involved is more than Rs.15 lakhs would be referred to the Board for write off.

**B.R. Tripathi  
Commissioner (TAR)**

**GUIDELINES / PROCEDURE FOR WRITE OFF/ ABANDONMENT OF  
IRRECOVERABLE AMOUNT OF ARREARS OF REVENUE**

- Deducting such amounts from any money owing to the defaulter;
- Attachment and sale of excisable goods belonging to the defaulter
- If the goods belonging to a Central Excise defaulter are under the control of Customs officers anywhere in the country (including Ports, ICSSs, CFSSs, Bonded Warehouses), such officers would be required to recover the said amount by detaining and selling such goods belonging to the defaulter.
- If the amount cannot be recovered by the aforesaid means, any movable or immovable property belonging to or under the control of the defaulter will be detained under Section 142(1)(c) read with Customs(Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.
- If any dues are not paid within 30 days of the detention as above, the said property would be sold in the prescribed manner.
- Section 11 of the Central Excise Act also provides for recovery of dues by attachment and sale of all excisable goods, materials, plants and machineries etc. in the custody or

possession of a successor/transferee to whom the business or trade has been disposed off. These provisions have to be made use of recovery.

- The jurisdictional Commissioners/Chief Commissioners shall also identify the cases where reportedly defaulters are not traceable or assets are not available. The Commissioners will complete enquiries at all known addresses of the defaulters (e.g. offices, works, depots, warehouses, residence etc.) to ascertain whether any moveable or immovable assets can be located. Discrete investigations will be made from the neighboring persons, trade rivals, market and other concerned Government departments whether any other place of business of the defaulter anywhere in India exists. If yes, action will be extended to such places, discreet investigations should also be made about his Bank accounts or any possible clues with the banks.
- If even after the above action the defaulters remain untraceable and assets not available, zonal Chief Commissioners will sent case-wise particulars to the DGRI/DGCEI as the case may be, under intimation to the concerned Nodal officers. The help of such intelligence agencies will be taken for further pursuing such cases. The Nodal officer will review action for locating the defaulters or assets in accordance with the law and co-ordinate so that the investigations by the said intelligence agencies are quickly completed and results intimated to Chief Commissioners. The officers of these Directorates General will use their resources in locating such persons and their property anywhere in the country and for this purpose, they may, inter-alia, take the help of income tax authorities whose database may also be useful. The Nodal officer will do monthly monitoring of such references and results of the investigations. DGRI and DGCEI may have a special cell in their headquarters for attending to such references and ensuring immediate action and reporting of results by field units.

**Dated: 11/04/94**

**F.No. 289/03/94-CX.9**

**Subject: Payment of Government dues in installments - Payment of interest - Instructions - Regarding.**

I am directed to refer to Board's instructions contained in F.No. 289/10/91-CX.9 dated 18.3.91 under which powers have been delegated to the Principal Collectors of Central Excise to grant, in individual cases, the facility of payment of Central Excise dues in upto 12 installments on merits. It has inter-alia, stated that simple interest at 17.5% compounded at the end of each month would be chargeable from the date of confirmation of the demands.

2. Instances have come to the notice of the Board where collection of interest on payment of dues in installments has become a matter of dispute between the assesseees and the Department. In certain cases the assesseees have even gone to the Courts. The Board has also received requests from some assesseees for waiver of interest in such cases.

3. The matter has been examined by the Board. It is clarified that the interest on the principal amount should continue to be recovered from the assesseees in the manner outlined in Board's instructions contained in F.No. 289.10/91-CX.9 dated 18.3.91 unless there is a clear stay order from the Court.

**F.No. 289/3/96-CX-9**

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

**Subject : Payment of Central Excise dues in instalments - Interest on delayed payment of dues - Regarding.**

I am directed to say that with the introduction of the Section 11AA in the year 1995-96 in the Central Excise and Salt Act, 1944, and with the issuance of Notification No. 21/95- Central Excise (Non - Tariff) (F.No. 268/29/95-CX.8) dated 29.5.1995, a doubt has arisen about the rate of interest to be charged on delayed payments of Central Excise dues. After consideration of the matter, the Board has decided that the rate of interest on delayed payments of central excise dues would be 20% per annum as notified in Notification No. 21/95-CE(NT) dated 29.5.95, even in cases where instalmental facility is allowed. In the old cases also where instalmental facility was granted in accordance with instructions. F.No. 289/10/91-CX.9 dated 18.3.1991, the rate of interest would be the statutory rate i.e. 20% per annum from the date the new Section 11AA came into existence.

2. It is clarified that such interest would be payable only on the actual amount in balance from time and not on the original amount payable.

Sd/-

(O.P. Srohe)  
Under Secretary to the Govt. of India



**F.No.201/45/2003-CX.6**  
Government of India  
Ministry of Finance  
Department of Revenue

**Central Board of Excise & Customs**

**Subject: Default in monthly payment of duty- Action to recover the dues -regarding**

I am directed to state that instances have come to the notice of the Board that even after the completion of one month period from the due date where the amount of duty outstanding and the interest payable thereon are not paid within the due date, immediate necessary action as per law to recover such arrears is not taken by the field officers. It has also been represented to Board by Trade and Industry that in the event, the duty is not being paid by the manufacturer of the goods, the availment of credit by the user-manufacturer is being denied.

2. The matter has been examined. It may be seen that as per Rule 8 of Central Excise Rules, 2002, the excise duty on the goods removed during a month shall be paid by the 5<sup>th</sup> day of the following month (by 15<sup>th</sup> in case of units in small scale sector). If the assessee fails to pay the amount of duty on goods removed within the due date, he is liable to pay the outstanding amount along with interest. Under second proviso to rule 8(3), till such time the amount of duty outstanding and the interest payable thereon are not paid, it shall be deemed that the goods in question have been cleared without payment of duty and where such duty and interest are not paid within a period of one month within due date, the consequences and the penalties as provided in the said rules shall follow.
3. Therefore, after the completion of one month paid from the due date, the amount of duty outstanding and the interest payable thereon should be treated as “recoverable arrears of revenue” and all permissible action under the law including the action under section 11 of the Central Excise Act, 1944 and under section 142 of the Customs Act, 1962 should be taken. Specific provision under rule 8 (4) is provided for application of Section 11 of the Central Excise Act, 1944 for recovery of the duty assessed under rule 6 and interest payable thereon.
4. Such amounts are required to be accounted for and reported as “realizable arrears of revenue” in the relevant statement. As action under section 11 can be taken without issuance of Show Cause Notice, prompt action should be taken to recover the arrears.
5. On the issue of availment of credit by the user-manufacturer, it is clarified that action against the consignee to reverse/ recover the CENVAT Credit availed of in such cases need not be resorted to as long as the bonafide nature of the consignee’s transaction is not in dispute.

6. In case the manufacturer-supplier has received payment from the buyer (including the amount shown as duty of excise) i.e., the person taking CENVAT Credit has made payment of the invoice amount, action should also be taken against the manufacturer-supplier under section 11D and 11DD of the Central Excise Act, 1944.
7. In order to ensure proper monitoring of such recoveries and taking up time bound action against the defaulters, range Superintendents should be asked to maintain a separate register and identify and record the cases of default, immediately on receipt of ER-1/ER-3 returns. The divisional Deputy/ Assistant Commissioner should check the register regularly minimum once in two months period.
8. Field formations may suitably be informed.
9. Receipt of this Circular may be acknowledged.
10. Hindi version will follow.

**Vijay Mohan Jain**  
**Under Secretary to the Government of India**

**Circular No.776/9/2004-CX**  
19<sup>th</sup> February, 2004

**F.No. 201/45/2003-CX.6**  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

**Subject: - Corrigendum to Circular No.766/82/2003-CX dated 15<sup>th</sup> December, 2003 regarding default in monthly payment of duty – regarding.**

I am directed to refer to Board's Circular No.766/82/2003-CX dated 15<sup>th</sup> December, 2003. Attention is drawn to para 6 of the said Circular and the said para 6 may be treated as omitted from the said Circular.

2. The field formations may suitably be informed.
3. Receipt of this Circular may please be acknowledged.
4. Hindi version will follow.

Neerav Kumar Mallick  
Under Secretary to the Government of India

26<sup>th</sup> December, 2002

**F.No.201/76/2002-CX.6**  
Government of India  
Ministry of Finance & Company Affairs  
Department of Revenue  
Central Board of Excise & Customs

**Subject: - Issuance of Notification under Section 11C of Central Excise Act, 1944  
– Enforcement of recovery of arrears/duties - regarding.**

It has come to the notice of the Board that whenever a survey is floated for examining/ issuing Notification under Section 11C of Central Excise Act, 1944, divergent practices are being followed in the field formations so far as enforcement of recovery of duty involved in the past cases is concerned.

2. The matter has been examined by the Board. In order to bring about a uniform approach in such cases, it has been decided that whenever a survey is floated for issuing/examining Notification under Section 11C of Central Excise Act, 1944, coercive action should not be taken for recovery of arrears/duties.
3. The field formations may suitably be informed.
4. Receipt of this Circular may please be acknowledged.
5. Hindi version will follow.

## **Recovery of arrears during pendency of appeal/ stay application -Clarifications**

**Circular No.788/21/2004-CX**

**25<sup>th</sup> May, 2004**

**F.No. 208/41/2003-CX-6  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs**

**Subject:- Central Excise-Coercive action for the recovery of arrears when the appeal/ stay application is pending in Tribunal -reg.**

I am directed to refer to Board's Circular No. 396/29/1998-CX dated 2<sup>nd</sup> June, 1998 on the subject of taking recourse to coercive measures to recover duty demanded as a result of adjudication till such time as the stay applications have been disposed of by Commissioner (Appeals). Consequently, references have been received regarding the course of action to be taken when the stay application against the Order-in-Original passed by Commissioner is pending with the Tribunal.

2. The matter has been examined. The Board has taken the following decisions:
  - a) For cases where the appeals lie with the Commissioner (Appeals) and no stay application is filed along with the appeal, recovery proceedings may be initiated after 60 days from the date of communication of the order. In respect of Orders-In – Original of Commissioners where the first appeal lies with the Tribunal and no stay application is filed along with the appeal, the aforesaid time period would be 90 days.
  - b) Where conditional stay orders are issued specifying the time limit for fulfillment of the conditions but conditions are not fulfilled as per the directions of the Tribunal or Commissioner (Appeals), as the case may be, recovery proceedings should be initiated immediately after the lapse of the time period prescribed in the appellate stay order for fulfillment of the conditions.
  - c) In respect of stay applications pending against the Orders-In Original of the Commissioners before the CESTAT a view similar to Board 's Circular No.396/29/ 98-CX dated 2.6.1998 should be taken. The two provisos to Section 35C(2A) of the Central Excise Act, 1944 read as follows:

“Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated”.

In view of the above stated legal position, the field officers should refrain from taking coercive action till the period of six months of filing a stay petition before the CESTAT, or till the disposal of the stay petition, whichever is earlier.

The instructions in this clause relate to only stay application filed with first stage appeals not to those with further appeals i.e. only in respect of stay applications filed with appeals filed against the Orders-In Original of the Commissioners.

3. Receipt of the Circular may be acknowledged.
4. Hindi version will follow.

**dated 2/6/1998**

**F.No. 201/04/98-CX.6**

Government of India  
Ministry of Finance, Department of Revenue  
Central Board of Excise & Customs, New Delhi

**Subject: Central Excise - Whether coercive measures to recover duty demanded as a result of adjudication till such time as the appeal/ stay applications filed by the appellant has been disposed of by Commissioner (Appeals) be taken-Regarding**

On the question of recovery of dues during pendency of stay application before the Commissioner (Appeal), the matter was examined by the Board and necessary instructions were issued vide Circular No. 23/90-CX.6 dated 12.12.1990 issued from F.No. 209/ 107/89-CX.6 and Circular No. 16/92-CX.6 dated 12.11.1992 issued from F.No. 208/ 59/92-CX.6. According to these instructions, Central Excise Officers were to allow a period of three months from the date of decision for payment of dues adjudicated before resorting to coercive measures to recover such dues. However, if the stay application is rejected by the Commissioner (Appeal) even before the lapse of time of three months, recovery proceedings should be initiated immediately. The Commissioner (Appeals) were also directed to dispose of stay application within the period of two months in case the Commissioner (Appeal) was not in a position to dispose of the main appeal within the same time-frame.

2. Recently, the Bombay High Court has ordered that Commissioner (Appeal) may be directed to dispose of stay application within the specified time limit and during the pendency of stay application no coercive action should be taken to realise the arrears of revenue.
3. Keeping the aforesaid in view, the Board has decided that no coercive action should be taken to realise the dues till the disposal of the stay application by the Commissioner (Appeal) and the Commissioner (Appeal) must dispose of the stay application within one month of its filing.

Sd/-

(P.K. Sinha)  
Under Secretary (CX.6)

***Copy of Board's letter F.No. 209 / 37 / 2004 – Cx.6 dated 15.09.2004***

I am directed to refer to Point No. 16 of the recommendations made in the Chief Commissioner's conference held on 27.07.2004 at New Delhi regarding encashment of bank guarantee for the recovery of arrears of sum due to Government.

The matter has been examined by the Board. Guarantee is a collateral agreement for performance of another's undertaking. Guarantee is a promise entirely collateral to the original contract, and not imposing any primary liability on the guarantor. It only binds the guarantors to be answerable for the failure or default of another. It is often a conditional one against some default or event in the future.

Bank guarantee is related to specific obligation of another person and can be involved only with reference to that obligation which is specified in the contract. It cannot be invoked against failure of an obligation which is not specified in the contract relating to the said bank guarantee, Section 11 of Central Excise Act and Section 142 of Customs Act 142 of Customs Act cannot be involved for this purpose.

This is for information and necessary action.

Yours faithfully,

Sd/-  
(R. Sekar)  
Director (Cx. 6 & 8)

**Point No. 16 of the recommendations made in the Chief Commissioners' conference held on 27.07.2004 at New Delhi regarding encashment of bank guarantee for the recovery of arrears of sum due to Government:**

"The conference felt that the matter should be examined by the Board for necessary clarification in consultation with the CDR. The CDR has been directed to study the case laws of CBEC, if any, in this regard within a week's time and to submit his comments to Board for necessary action."



**F. No. 206/02/2010-CX.6**  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Excise & Customs)

New Delhi, Dated the 3<sup>rd</sup> February, 2010

To,

All Director Generals,  
All Chief Commissioners of Central Excise (including LTU)  
All Commissioners of Central Excise (including LTU)

Sir/Madam,

**Subject: Modification of Circular No. 5/83-CX.6 dated 10.03.83- Issue of show cause notice on receipt of Audit objections from CERA.**

Attention is invited to Board's Circular No. 5/83-CX.6 dated 10.03.83, as amended, wherein instructions have been issued to issue show cause notice immediately on receipt of an Audit objection from CERA, even if the objection is not admitted. The field formations have also been directed to issue protective demand notices and transfer the same to Call Book, till the settlement of the objection.

2. It has been noticed that during audit by C&AG officers, Local Audit Paras (LAR) are initially raised, some of them are converted to Statement of Facts (SOF). A few SOF are made into Draft Audit Para (DAP). Generally, a LAR is converted into SOF within a period of 6 months. In some cases, it has been noticed that objections raised in LAR is not accepted by the department but the reply given by the department is also not accepted by AG's office. Further, if the said LAR is not converted to SOF/ DAP, the said objection remain unsettled and these show cause notices are transferred to Call Book. For these cases, jurisdictional Commissioners are required to hold meeting with local DAGs to settle the objection. However, in many cases, these issues are not settled for a long period.
3. The issue has been examined. It is clarified that in cases where a LAR has not been admitted by the department, and the same is **not converted into SOF/ DAP** by CERA, then the SCNs issued on account of said LAR may be adjudicated after a period of one year from the date of sending the reply to the LAR. However, before adjudication, it must be ensured that the LAR has not been converted into SOF/ DAP.
4. Instruction issued by Circular No. 5/83-CX.6 dated 10.03.83 is modified accordingly.
5. Receipt of this circular may kindly be acknowledged.

Yours faithfully,

(V.P. Singh)  
Under Secretary(CX-6)

**Copy to:** The Commissioner(PAC) for information.

New Delhi, the 26<sup>th</sup> May, 2010

F.No. 390/Misc./58/2010-JC  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF EXCISE & CUSTOMS  
(JUDICIAL CELL)

402, 4<sup>th</sup> FLOOR, HUDCO VISHALA BUILDING,  
BHIKAJI CAMA PLACE, NEW DELHI.

**Subject:- Action on expiry of stay orders given by the CESTAT -reg.**

It has come to the notice of the Board that there is lack of clarity in implementation of the provisions of Section 35C(2A) of the Central Excise Act, 1944. In this regard attention is invited to Section 35C(2A) of the Central Excise Act, 1944 which reads as under :-

**“(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:**

***Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order :***

***Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.”***

A plain reading of the provision (as amended w.e.f. 11.5.2002) indicates that the amendment was introduced with a view to speed up the disposal of cases by the Tribunal and also defeat the designs of unscrupulous parties, who indulge in delaying the decision in the case by seeking prolonged stay etc. The provision, indeed, stipulated that the Tribunal shall strive to dispose cases within three years, as far as possible. It also stated that in case a stay is granted by the Tribunal in an appeal, then the Tribunal should dispose of the appeal within six months from the date of the stay order failing which the stay order would stand vacated at the end of six months from the date of the stay order. This effectively meant that a stay order of the Tribunal would normally be operational for six months and would get vacated thereafter, if the appeal is not decided by then.

2. The above mentioned provision, brought in to effect from 11.5.2002, was examined by the Tribunal as well as the Supreme Court. In the case of ***IPCL Vs CCE Vadodara 2004 (169) E.L.T. 267 (Tri.-LB) = (2004-TIOL-556-CESTAT-MUM-LB)***, it was held by the Tribunal

that the Tribunal has the powers to grant extension of stay beyond 180 days. In the case of ***Kumar Cotton Mills (P) Ltd. Vs Commissioner CCE, Ahmedabad-I, 2002 (146) E.L.T. 438 = (2002-TIOL-17-CESTAT-MUM)*** the Tribunal held that, in case of stay orders passed prior to 11.5.2002, the same would be valid till the disposal of the appeal and such stay would not be hit by the second proviso to Section 35G(2A). Further, where the order is made after 11.5.2002, the Tribunal's powers to continue protection so given can not be circumscribed and the Tribunal, on an application made by the party, would be competent to extend the period of stay, (emphasis supplied)

3. The Apex Court has upheld both the above decisions of the Tribunal and observed that "The sub-section which was introduced in terrorem cannot be construed as punishing the assessee for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified. The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely, *IPCL v. Commissioner of Central Excise, Vadodara (supra)* cannot be faulted. However, we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee" ***[2005 (180) ELT 434 (S.C.) = (2005-TIOL-42-SC-CESTAT)***.

4. A harmonious reading of the statutory provision and judicial pronouncements in the matter would mean that while the Tribunals are expected to dispose of cases as stipulated in the above Section, nothing prevents them from granting stay beyond six months. However, the extension of stay has to be applied for by the party. Thus, the outcome of the above interpretation would be that, wherever stay period is over and the final decision has not been pronounced, the Department may by a simple letter ask the party to pay and the party would be at liberty to go back to the Tribunal for seeking extension of stay. Coercive measures, without giving an opportunity to the party to seek further extension of stay should be avoided. This is not to say that applications filed for extension should not be contested. Also, in a case where the Commissionerate feels aggrieved by an order of the Tribunal granting stay indefinitely till disposal of appeal, the said Tribunal order could be challenged before the jurisdictional High Court, citing the amended provisions.

5. Field formations may be advised accordingly.
6. Receipt of the Circular may be acknowledged.
7. Hindi version follows.

**(Sunil K Sinha) Director (Judicial)**

F. No. 390/Misc./100/2009-JC  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Excise & Customs)

.....

New Delhi, dated the 21<sup>st</sup> September 2010

To,

1. All Chief Commissioners and Director Generals under the Central Board of Excise and Customs.
2. CDR, Customs, Excise & Service Tax Appellate Tribunal.
3. All Commissioners of Customs / Central Excise/ Service Tax / All Joint Chief Departmental Representatives / Commissioner, Directorate of Legal Affairs
4. <webmaster.cbec@icegate.gov.in>

**Sub:- Measures to streamline the processing of departmental litigation before the Courts and Tribunal - reg.**

Sir / Madam,

It has been the constant endeavor of the Board to streamline the procedures relating to processing of departmental litigation before the Supreme Court, High Courts and CESTAT. Several circulars/ instructions have been issued by the Board, in the past, in this regard prescribing the procedure to be followed and precautions to be taken by the field formations. However, it has been observed that more than 50% of the proposals received by the Board suffer from infirmities including delays beyond limitation period. It has to be appreciated that the Courts take serious note of such procedural infirmities and considerable effort, resource and time go into rectifying them. Further, Courts do not condone delays unless there is adequate justification for the same. The Board has taken a serious note of the matter and it has been decided to fasten accountability wherever SLP/Civil Appeal Proposal is received by the Board without observance of due procedure or with infirmities or later than the prescribed time frame. The field formations are therefore directed to scrupulously follow the instructions contained in this circular. Needless to say that any deviation, without plausible explanation, would be viewed seriously.

## **2. Delay in receipt of proposals in the Board's office:**

- 2.1 One major cause of concern is delay in receipt of proposals in the Board's office. The reason often cited in most of such cases is either non-receipt or delay in receipt of the

CESTAT and High Court orders by the Commissionerates. Such delays are avoidable if proper initiatives are taken at local level. Accordingly, the Board desires that following steps be taken on priority,-

- (i) Zonal Chief Commissioners to issue necessary instruction and to ensure that an institutional mechanism is put in place for receipt of copy of order and other communications from the CDR or Jt. CDR, in respect of CESTAT cases.
- (ii) Zonal Chief Commissioner having nodal Commissionerate, assigned coordination work relating to High Court, will ensure putting in place a proper institutional mechanism for timely dissemination of certified copy of High Court's order to respective Commissionerates. The Legal Cell in the Commissionerates will also develop a system for timely receipt of High Court's orders.
- (iii) As certified copy of order is essential for filing Special Leave Petition under Article 136 of the Constitution, the Departmental Counsel may be advised to invariably file an application for obtaining a certified copy on the date of pronouncement of the High Court order or on the following day to avoid delay on this count. Where Government Counsel does not apply for certified copy in the prescribed time-period, his or her fees are required to be subjected to deduction. Repeated instances by a particular counsel may be taken note of while assessing the performance of the counsel in the periodical review exercise.

2.2 It has also been observed that some of the Commissionerates are getting draft SLP prepared at their end and sending the same to the Board along with their proposal. While such effort indicates sincerity for defending cases, it has to be realized that drafting such SLP/CA not only contributes to unnecessary delay but is also a futile exercise as the Central Agency Section of the Ministry of Law does not accept such drafted SLPs / CAs. Central Agency invariably gets the SLP drafted from Drafting Counsels. Therefore this practice of sending draft SLP/CA should be strictly discontinued with henceforth.

2.3. Similarly, the Commissionerates need not take the legal opinion from the Standing Counsels in respect of the High Court's orders for forwarding proposal to file appeal as the SLPs against the High Court's orders are filed by the Board only after obtaining the legal opinion from the Ministry of Law & Justice and Ld. Law officers of the Government of India.

2.4. The CA proposals should be sent so as to be received in the Boards office within fifteen days from the receipt of the Order of the Tribunal and SLP proposal are received within twenty days from the date of the order of the High Court. The proposal against the High court's order shall be initiated on the strength of the copy of the order circulated by the Court on its own motion or copy downloaded from the website of the Court i.e. [www.indiancourts.nic.in](http://www.indiancourts.nic.in) or [www.court.nic.in](http://www.court.nic.in) without waiting for the certified copy of the order. The certified copy of the order may be sent separately thereafter. It may be noted that in case of CA the period of limitation of 60 days begins from the date of receipt of order. However in case of SLP period of limitation of 90 days begins from the date of order of the High Court.

2.5. All proposals must be sent by the field formations within the prescribed time limits. In case of delay, detailed justification should be furnished and corrective action should be initiated immediately, so that such delays do not occur in future. Delays on flimsy grounds would be viewed seriously.

### **3. Quality of proposals:**

3.1 Quality of proposals sent by Commissionerates is extremely important for preparation of Civil Appeal/SLP. However, it has been observed that proposals lack quality in so far as content is concerned. Therefore, in order to improve the quality of proposals it has been decided to take the following measures,-

- (i) All CA and SLP proposals would henceforth be approved by the Jurisdictional Chief Commissioner. While forwarding the proposal a mention must be made in the covering letter to this effect.
- (ii) All such orders which are against revenue but found acceptable by the Commissioner will be put up to the jurisdictional Chief Commissioner for his concurrence.
- (iii) The office of the Chief / Joint Chief Departmental Representative will also examine carefully every judgment which is against revenue and forward their opinion to the concerned Commissionerate if it is felt that an appeal is merited in the matter. The Commissioners, however, need not wait for such comments and the same can be sent even after sending the proposal to the Board, in continuation of the earlier letter forwarding the proposal. The Board, vide its letter F. No. 390/Misc/411/07- JC dated 6<sup>th</sup> February 2008 had laid down the elaborate mechanism for examination of orders in the CDR/Jt CDR office.
- (iv) To ensure in-depth analysis and for preparation of comprehensive proposals the Commissioner shall ensure that legal journals such as ELT, RLT etc and software or online services such as Jurix, Manupatra, SCC Online, EXCUS, Lawcruz, Taxindiaonline etc. and reference books, law lexicons are available to the sections/officers dealing with SLP/CA. The Chief Commissioners should ensure availability of such books and online journals in the Commissionerates.

### **4. Documentation required with proposals:**

4.1 Another significant aspect that has been found lacking in the proposals is documentation. Often complete sets of documents are either not enclosed or not found legible. The List of documents that are required to be enclosed in SLP/CA proposals is enumerated in Annexure-I. The following measures shall be taken in this context,-

- (i) With every proposal a certificate signed by Commissioner would be enclosed certifying that all relevant documents have been enclosed and that all documents are legible. In case any document is not furnished in the original proposal, the reason thereof would be furnished and such documents shall be furnished as soon as possible.



- (ii) The technical literature, court orders, judgments, copies of written submissions as well as material including technical literature which had been furnished to the Tribunal by the assessee at the time of oral submissions may be required for preparation of appeal proposal by the Department. The Joint Chief Departmental Representatives shall ensure that the documents stated above are preserved and sent to the Commissioner concerned immediately after the pronouncement of the order so that the said documents can be made a part of the Paper Book in case it is decided to agitate the matter before the Supreme Court. In case the documents have not been received by the Commissioner at the time of sending the CA proposal to the Board, the same should be procured by the Commissioners from DR's office and send to the Board as soon as possible.

## **5. Other measures to improve the processing of litigations:**

- 5.1 Grading of cases pending before the Courts is very important for effective monitoring by supervisory officers and, therefore, the Chief Commissioners are advised to devise an appropriate mechanism to prioritize important cases and classify them in various categories such as cases involving challenge of constitutional validity of provisions of Act / Rules / Notifications / Circulars as Grade – I cases involving revenue of more than 1 crore as Grade – II cases and so on.
- 5.2 The Directorate of Legal Affairs has been providing assistance and liaising between the field officers and the Central Agency Section of the Law Ministry including the Law Officers and Counsels. It has been felt that field formations are not fully aware of functioning of the Directorate of Legal Affairs, even though it is discharging important functions. Therefore, details of its functioning and its role in dissemination of information, revenue's response in parties' appeals and curing of defects of Revenue appeals is placed (Annexure VI).
- 5.3 Directorate of Legal Affairs has taken several initiatives to make the details of ongoing cases in various courts available on the Internet. Considerable progress has been made towards the dissemination of information about various lists on the Court's as well as CBEC websites. A brief on the measures adopted for facilitating monitoring of the cases is enclosed as Annexure VII. Most of the information related to listing of cases is available on the CBEC web site as well as on [www.court.nic.in](http://www.court.nic.in). Officers in the field are expected to monitor cases pertaining to their Commissionerates with the help of the information available on these sites. The field officers can now find online the stage of the case, come forward to assist in proper representation of the case and provide timely response in the event of queries made.
- 5.4 The Directorate of Legal Affairs will also compile and circulate a list of cases where appeals/ review petitions are not pursued in Supreme Court where amounts are very low or where appeals are dismissed only on grounds of delay or amount being small. Similar database may be maintained at Commissionerate level in respect of orders of High Court / CESTAT /Commissioner (Appeals) accepted on account of limitation or low amount.

**6. Dissemination of information regarding cases which are in favour of revenue:**

In the event it is observed that pro-revenue decisions have not been published / uploaded in the publications or web-sites like ELT/ STR / RLT / www.taxindiaonline.com , copies may be sent for publication in these journals/ website.

**7. Committee on Disputes (COD) matters**

7.1 In matters of COD, the instructions issued by the Cabinet Secretariat have been circulated by the Board from time to time. However, it is seen that delayed proposals, incomplete or illegible documents and pages not having been numbered, are being received and commented upon by the Committee on Disputes. The enclosures should be legible and all the documents should be page numbered for ease of reference. Also, all the relevant orders should be enclosed. Further, it is once again reiterated that proposals having revenue implication of 5 lakhs and below need not be sent for approval by the High Powered Committee.

8. The above instructions in brief enumerate the steps/measures being taken or to be taken to improve the mechanism of litigation. The comprehensive instructions in details are contained in Annexures as per details mentioned in para 9 below. Further these instructions cast certain responsibilities on Chief Commissioners, Commissioners and CDR office. Therefore, to ensure compliance of these instructions, a one time report on the points mentioned in Annexure VIII will be furnished by all Zonal Chief Commissioners and CDR by 31<sup>st</sup>December 2010.

9. In order to reduce departmental litigation, Board has decided to fix monetary limits below which appeals shall not be filed before the Tribunal and Courts. Separate instruction in this regard is being issued.

**10. The details of Annexures:**

Annexure-I Instruction as regards litigation before the Supreme Court

Annexure-II Instruction as regards litigation before the High Court

Annexure III Instructions for improving the quality of Departmental Representation before CESTAT

Annexure-IV Instruction as regards action for dissemination of judgments in revenue's favour

Annexure-V Instructions as regards disputes between Government Department and Central PSUs / other Government Departments

Annexure-VI The functioning of the Directorate of Legal Affairs

Annexure-VII The mechanism of listing of appeals / SLPs as followed by Supreme Court Registry, alertness expected from Commissioners and marking of cases to the Counsels



Annexure -VIII Points on which Zonal Chief Commissioner and CDR will furnish a one time compliance report

11. The following circulars/instruction on becoming redundant upon issuance of these instructions stand superseded:

- (i) Circular No. 313/29/97-CX., dated 6<sup>th</sup> May 1997
- (ii) Circular No 33/97- Cus dated 4<sup>th</sup> Sep 1997
- (iii) Circular No 332/48/97 –CX dt 9<sup>th</sup> Sep 1997
- (iv) Circular No 349/65/97 –CX dt 31<sup>st</sup> Oct 1997
- (v) Circular No. 402/35/98-CX., dated 9<sup>th</sup> June 1998
- (vi) Circular No 488/54/99 JC dt 12<sup>th</sup> Oct 1999
- (vii) Circular No 517/13/2000 CX dt 2<sup>nd</sup> March 2000
- (viii) Circular No 519/15/2000 CX dt 3<sup>rd</sup> March 2000
- (ix) Circular No 544/40/2000 CX dt 6<sup>th</sup> Sep. 2000 ,
- (x) Circular No 550/46/2000 CX dt 18<sup>th</sup> Sep 2000
- (xi) Circular no. 891/16/2005 CX dated 13<sup>th</sup> October 2005.
- (xii) Circular No 835/12/2006 CX dt 6<sup>th</sup> Oct 2006
- (xiii) Circular No 863/1/2008 CX dt 2<sup>nd</sup> Jan 2008

12. The following Circulars / letters issued by the Board that find mention in this Circular and its annexures are not being withdrawn.

- (i) Letter F. No. 390/Misc/411/07- JC dated 6<sup>th</sup> February 2008
- (ii) D.O.F. No.390/Misc/411/07-JC dated 7<sup>th</sup> January 2008
- (iii) Letter F No 390/R/135/2008-JC dated.9.5.08.
- (iv) Circular No 27/27/94-CX dated 2.3.94 as modified from time to time.
- (v) Circular No 156/67/95-CX dated 17.11.95,
- (vi) Circular No.515/11/2000-CX dated 18.2.2000
- (vii) Circular No. 578/15/2001-CX dated 20-06-2000
- (viii) Letter F No 390/R/187/2009-JC dated 10.8.2009.

13. Receipt of this Circular may please be acknowledged.

14. Hindi version will follow.

(Sunil K Sinha)

## **Reward to informers for recovery from tax defaulters**

**M.F. (D.R.) Letter F.No.13011/3/2004-CUS(AS) dated 12-08-2005**

Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi

### **Subject: Grant of Reward to informers in cases of recovery from tax defaulters – Reg.**

I am directed to refer to Ministry's F.No. R-13011 / 6 / 2001-Cus (AS) dated the 20<sup>th</sup> June, 2001 communicating the guidelines in respect of grant of reward to informers and Government servants and to state that it has been decided to extend the reward scheme to cases of recovery from tax defaulters. The provisions in this regard are as follows:

- (i) The reward scheme shall be extended to grant of suitable reward to an informer who gives information regarding the whereabouts, assets, immovable properties etc. of persons from whom arrears of duty, tax, fine, penalty etc. (under the provisions of the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994 in so far as the said Act contains provisions relating to Service Tax) are recoverable and the information results in recovery of arrears.
- (ii) The grant of reward shall be considered only in those cases where the Chief Commissioner is satisfied that
  - a) all possible efforts have been made by the Departmental officers to trace the defaulter / details of defaulter's property, and
  - b) information provided by the informer has been instrumental in the recovery of arrears.
- (iii) The reward in such cases can be given up to a maximum of 5% of the amount recovered and the quantum of reward will be determined by such factors as the nature, accuracy, actionability and efficacy of the information, and other attendant factors.
- (iv) In those cases where the case was originally booked on the basis of information provided by an informer, reward to the informer(s) giving information leading to arrears recovery shall be given out of the total reward available in the informer category as per existing policy.
- (v) In order to expedite arrears recovery, the jurisdictional Commissioner may, if necessary, invite information from the general public through notices in the print / electronic media in a case where recovery of arrears is pending on account of the fact that the whereabouts / details of assets of the defaulter are not known, and the Chief Commissioner is satisfied that all possible efforts have been made by the Departmental officers in this regard.
- (vi) For removal of doubts, it is clarified that reward in cases of arrears recovery shall be admissible only to informers and not to officers.

Kindly acknowledge the receipt of this letter.

**CIR NO.718/34/2003-CX, DT. 23/05/2003**

**Observations contained in 39th Report of Public Accounts Committee presented to Lok Sabha on 17.12.2002 on "Non adjudication of demands and inordinate delay in recovery of confirmed demands"**

In the 39th report presented to Lok Sabha, the Public Accounts Committee has observed that the performance of recovery cells constituted in the Commissionerates is far from satisfactory and also noticed that a large number of cases are being referred to the District Collector for recovery of duty as land revenue despite the Amendment Act 1997 which empowers the Central Excise Officers to proceed with recovery of duty in accordance with Circular No. 365/81/97-CX dated 15.12.1997.

It has also been recommended by the Committee that one time review of the cases referred to Recovery Cell in Commissionerates/Divisions and review of all the cases referred to District Authorities may be done by CCEs/Divisional AC/DC. For this purpose, DGICCE may prescribe a proforma in the MTR to all the Commissioners to report these cases with immediate effect so that the same are reviewed and monitored at the Board level.

It was earlier desired by the Board that information as regards effort made by the Tax Recovery Cell (created in the Commissionerates) to realise the arrears of revenue should be furnished by the Commissioner as part of MTRs. However, these instructions are not being complied with and even the MTR compiled by the DGICCE does not indicate this vital information. Therefore, it is once again reiterated that all the Commissioners should furnish the requisite information in the MTR and compliance in this regard may please be monitored and ensured by DGICCE. Further, the Board also desires that the departmental officers should exercise the powers to ensure the expeditious recovery of confirmed demands of duty and make all out efforts to energise the recovery cells. Further where recovery cell has not yet been created, the same may be created urgently.

Sd/-  
(R.N. Kirtania)  
Under Secretary to the Govt. of India

**[F. No. 296/2/2003-CX-9]**

**Recovery of Demands**

**Subject :** PAC (39th Report) – Recommendations on paras 2.5 and 2.6 of C & AG Report for the year 1998-99 relating to inordinate delay for recovery of confirmed demands and non-adjudication of demands – regarding.

Sir,

In the 39th Report presented to the Lok Sabha, the Public Accounts Committee after certain instances of non-recovery of arrears of revenue because of Departmental inaction, notwithstanding favourable decisions from the courts and the cases being free from litigation, were brought to its notice, has observed that a situation of absence of property or insufficient bank balance of the assessee which arise owing to failure of the department to enforce the demands in right earnest, can be tackled by the Department if the field formations are properly sensitized and made really accountable for their failure to keep a close vigil on habitual or potential defaulters.

2. The Board has accepted the recommendation of the Public Accounts Committee and accordingly directs that during visits to the field formation for inspections or any other purpose as well as the periodic review meetings, the senior officers should take necessary steps to properly sensitise the field officers, especially those at the cutting edge level, as to the impressiveness and necessity of keeping a watch on the overall financial health of the entities from whom Govt. dues re recoverable but can't be immediately recovered for one reason or the other, and also take necessary steps to ensure that Govt. dues don't become unrecoverable for want of timely action by them. Cases of deliberate default need to be dealt with very strictly and in such cases, responsibility be fixed on the erring officials, Simultaneously, anti-evasion and intelligence machinery of the field may also be strengthened and they too may also keep such a watch. Even their performance may be measured taking into consideration the fool proof and timely leads provided by them.

3. The Board has also directed that though each jurisdictional Commissioners is expected to report outstanding arrears of revenue in his Commissionerates in the MTR to the Board, the Chief Commissioners in their respective Zones should monitor performance on this count of each Commissionerates under his charge on a periodic basis and take all necessary steps to ensure that realization of arrears of revenue gets utmost attention and no arrears become bad or unrealizable for want of timely action by the departmental officers.

4. Kindly acknowledge the receipt.

Sd/-

(G.N.Chandrasekaran)  
Deputy Secretary (PAC)

F. No. 234/3/2002-CX-7

**Checks on delays – Maintenance of ‘Call Book’ instructions**

Kindly refer to Board’s Circular No. 53/90-CX3 dated 6.9.1990 specifying the circumstances under which a pending case can be transferred to call book that if a current case has reached a stage where no action can or need be taken to expedite its disposal for at least 6 months (eg. cases held up in law courts) it may be transferred to the call book with the approval of competent authority and instructions issued vide Board’s D.O. letter F. No. 101/2/92-CX.3 dated 4.3.1992 directing that a case should be transferred to the Call Book with the approval of Commissioner/Commissioner (Judicial)/Director General etc. as the case may be. It was further clarified vide Circular No. 162/73/95-Cx dated 14.12.1995 that only following types of categories of cases can be transferred to Call Book: –

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

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

1. Call Book cases have been reviewed by the CCEs.
2. Any appreciable progress is noticed.
3. Any avoidable delays are there.

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

Yours faithfully

Sd/-  
(Suraksha Katiyar)  
Under Secretary to the Govt. of India

**F.No. 224/ 37/2005-CX-6**

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

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New Delhi dated the September 11, 2007

To

All Chief Commissioner of Central Excise & Customs  
All Commissioners of Central Excise & Customs  
All Director Generals

**Subject: Modification of the abstract of XT-I Diary regarding.**

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Sir,

Attention is invited to Circular No. 53/88-CX-6 dated 12.07.1998 wherein a revised abstract of XT-I diary was circulated. Over the years, the Central Excise laws and procedures have undergone several changes, and a need was felt to revise the format of the XT-I Diary. The revised XT-I contains important work carried out during a month and it does not require reporting of daily functioning as was being done in present XT-I format. Accordingly, the revised abstract of XT-I Diary is annexed to this Circular. Henceforth, the XT-I Diary shall be maintained as per the revised format. The new format shall come into effect from 01.10.2007.

2. While examining this issue, the Board has observed that the details reflected in XT-I Diary show the work done by field officer in discharge of duties and hence, it serves as an effective tool in the administration and inspection of respective offices. Therefore, it should be ensured that the XT-I Diary is written by all the concerned officers as per the existing guidelines.

3. The field formations may be instructed suitably.

4. Hindi version of the Circular follow.

Yours faithfully,

Encl. As above.

(Rahul Nangare)  
Under Secretary to the Govt. of India

## FORMAT OF XT-I DIARY

- i. Month and year
- ii. Name of Officer
- iii. Designation
- iv. Place of posting
- v. Details of visits out of place of work

Date	Time of visit	Place visited	Distance travelled (Kms.)	Mode of travel	Work completed during visit	Reason for visit*	Remarks**
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Note:

\* Reason for visit- supervisions/sealing for export, inspection, transit check, preventive work, audit work, inquiry, survey, training, verification of premises, any other reason (please specify)

\*\* Please specify whether permission of appropriate authority was obtained, if required, like in case of visit to SSI unit.

- vi. No. of Ranges inspected
- vii. No. of ER-1/ER-2/ER-3/ER-4/ER-5/ER-6 checked/scrutinized  
(Please specify no. of each return separately)
- viii. No. of refund/ rebate claims checked/verified
- ix. No. of cases where action for recovery of arrears taken
- x. No. of audit objection, for which show cause notices processed/issued
- xi. No. of vehicles checked.
- xii. No. of visits undertaken for preventive work-
  - (a) Searches of (i) premises.....(ii) vehicles.....
  - (b) Quantity and value of goods seized, if any:—
  - (c) Records resumed/seized, if any:—

Date:

(Name and signature of Officer)

To next higher authority

**OFFICE OF THE COMMISSIONER OF CUSTOMS (PREV.): JODHPUR  
HQRS AT N. C. R. BUILDING, SATATUE CIRCLE,  
JAIPUR-302 005.**

**Dated : 13.03.08**

**OFFICE ORDER**

In order to streamline the functioning of Recovery Cell for recovery of arrears of revenue, the following procedure shall come into force with immediate effect.

1. For the purpose of making recovery of government dues under section 142 (1)(c)(ii) read with Customs (Attachment. of Property of the Defaulters for Recovery of Government Dues) Rules, 1995, Assistant/Deputy Commissioner of Customs, Recovery Cell is authorized as "Proper Officer".
2. The "Proper Officer" shall take action for recovery of government dues in the manner prescribed in Handbook on Recovery of Arrears of Customs Revenue
3. Assistant/Deputy Commissioner of Customs making the request for recovery of dues in terms of section 142 (1)(c)(ii) by Proper Officer shall send certificate to Commissioner of Customs in Appendix I (Copy enclosed) along with following documents/information.
  - a) All the known addresses of the defaulter. If the defaulter is not available at the address given in the import or export document or panchnama prepared at the time of seizure of contraband or statement recorded under section 108 of Customs Act, 1962 or arrest memo, then the present address at which he is available.
  - b) Details of property and bank accounts,
  - c) Copy of Order-in-Original, appellate order if any with certificate that the said order has attained finality.
  - d) Steps that were taken to recover the government dues including copy of Detention Notice.
4. In case the property of the defaulter is located outside the jurisdiction of this Commissionerate, then Assistant/Deputy Commissioner of Customs will send the Certificate directly to Commissioner of Customs/ Commissioner of Customs & Central Excise in whose jurisdiction the property is located under intimation to the Recovery Cell of the Commissionerate.
5. On receipt of the certificate, it shall be entered in the register and further action to be taken by Assistant/Deputy Commissioner of Customs, Recovery Cell in terms of Handbook on Recovery of Arrears of Customs Revenue.
6. Certificate in Appendix II (Copy enclosed) signed by Assistant/Deputy Commissioner of Customs, Recovery Cell will be served upon the defaulter by a team of Preventive Branch of the Commissionerate.



7. In cases where certificate has been forwarded to other Commissioner of Customs/ Commissioner of Customs & Central Excise, the details shall be entered in a separate register so that matter can be pursued with that Commissionerate by the Recovery Cell.
8. During this period, if any amount is recovered, the particulars of the same shall be forwarded by Assistant/Deputy Commissioner of Customs of the formation which had issued the certificate in Appendix I to Recovery Cell so that a suitable note is made in the register.
9. 2 Registers so maintained shall be reviewed by Assistant/Deputy Commissioner of Customs, Recovery Cell every week and progress reported to the Commissioner of Customs.
- 10 It is expected that the jurisdictional officer will ensure utmost personal attention and caution so that recoveries of Govt. dues, if any, can be made without any loss of time and in a time bound manner..

(DR. ANOOP SWARUP)  
COMMISSIONER

**F.No. 296/34/2004-CX.9(Pt)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Excise and Customs**

\*\*\*\*

New Delhi, Dated the 12<sup>th</sup> August, 2004.

**OFFICE MEMORANDUM**

**Sub : Outstanding Arrears of Central Excise and Customs Duties- Constitution of a Task Force for Recovery-Reg.**

The Department has been assigned arrears recovery target of Rs. 2250 crores for Central Excise and Rs. 750 crores for Customs. With a view to co-ordinate, facilitate, monitor and oversee the efforts of the Customs & Central Excise field formations towards recovery of arrears, a Centralised Task Force is hereby constituted by the Board. The composition of the Task Force is as follows :

- (i) Chief Commissioner (Tax Arrears Recovery) stationed at New Delhi.
- (ii) Six Commissioners to be posted exclusively as Nodal Officers (Tax Arrears Recovery) at the six locations, namely, Delhi, Mumbai, Kolkata, Chennai, Vadodara and Nagpur. The said Nodal Officers will cover the Commissionerates assigned as under.

Sl. No	Location	Jurisdiction over Commissionerates in the zones of	
		Central Excise *	Customs Zones
1.	Nodal Officer at Delhi	Delhi, Chandigarh, Jaipur, Meerut, Lucknow	Delhi, Delhi (Prev)
2.	Nodal Officer at Vadodara	Vadodara, Ahmedabad, Bhopal	Ahmedabad
3.	Nodal Officer at Mumbai	Mumbai-I, Mumbai-II	Mumbai-I,II & III
4.	Nodal Officer at Nagpur	Pune, Nagpur	
5.	Nodal Officer at Chennai	Chennai, Bangalore, Mysore, Cochin, Coimbatore, Hyderabad, Visakhapatnam	Chennai, Chennai (P), Bangalore
6.	Nodal Officer at Kolkata	Kolkata, Ranchi, Shillong, Bhubaneswar	Kolkata, Patna (P)

\* This will also include the Customs arrears recovery pending in the Central Excise Zones.

- (iii) Seven Joint Commissioners / Senior Deputy Commissioner level officer to be posted exclusively to assist the Chief Commissioner (TAR) and the six Nodal Officers as above.

- 1.2 Adequate manpower and office / equipment support shall be provided to the Task Force & Nodal Officers by the Chief Commissioners of Central Excise at the six locations. In Mumbai, the same shall be done by Chief Commissioner (Central Excise), Mumbai-I.
2. The Task Force shall review the position of arrears of revenue of Central Excise and Customs and finalise and implement the strategy for realisation of arrears with the objective of meeting the targets.
3. The strategy for arrears realisation by the Task Force would include:

#### **Cases Before CESTAT**

- (i) Considering the large pendency before the CESTAT, the key area to focus in the current year would be cases pending with CESTAT (including those filed in the coming months).
- (ii) Zonal Chief Commissioners will identify all arrears of more than Rs. 1 crore where the department has a strong case and a reasonable chance of success. The particulars of all such cases will be sent to the concerned Nodal Officer. The Nodal Officer will regularly monitor all such cases to ensure that, wherever needed, requisite applications are submitted before the competent authorities for out-of-turn hearing and early decisions and for this purpose he will co-ordinate between the jurisdictional Chief Commissioners and the concerned Jt. CDR / CDR. The implementation of the action plan for each case will be reviewed every month by the Nodal Officer so that any deficiencies or delay is remedied promptly. The Nodal Officer will report any negligence or delay to the zonal Chief Commissioners for appropriate action.
- (iii) The responsibility for monitoring the action on all such identified cases (as intimated by the Chief Commissioners to the Nodal Officers) will be with the concerned Nodal Officer. Zonal Chief Commissioners will ensure all assistance and compliance as required by the Chief Commissioner (TAR) / the concerned Nodal Officer.
- (iv) Similar action with the same accountability would be taken with regard to all stay applications pending before CESTAT where dues involved are more than Rs. 1 crore and department has a reasonably strong case.
- (v) The responsibility to file applications for vacation of stay and early decisions will be with jurisdictional Commissioners.
- (vi) In fresh cases, the DRs should oppose stay applications on cogent ground and make out a good case for at least part deposit of dues in case the Tribunal is inclined to allow such applications.
- (vii) The aforementioned applications shall be sent by the jurisdictional Commissioner to the Registrar with copies through a DO letter to the CDR or concerned Jt. CDR to enable him to get such applications heard expeditiously and also arrange effective presentation of the department's case. In case the DR needs any briefing by the conversant officers of the field, the jurisdictional Commissioner would make the same available well in time.

- (viii) The CDR or the Jt. CDR will be responsible for pursuing the aforesaid applications for early decisions and for proper presentation of the department's cases.
- (ix) DRs would also be responsible for conveying the decisions on all such applications to the jurisdictional Commissioners under intimation to the zonal Chief Commissioner and the concerned Nodal Officer.
- (x) The particulars of orders (final orders as well as order for pre-deposit) passed by the Tribunal in favour of revenue will be circulated by the CDR / Jt. CDR immediately to the field formations under intimation to the Chief Commissioner (TAR) and the concerned Nodal Officer who shall follow up till the arrears are realised. Recovery position should be reviewed by the Nodal Officers every month.
- (xi) The jurisdictional Commissioners will immediately review all conditional stay orders passed by the competent authorities to check whether the conditions of stay orders are fulfilled. If not fulfilled, the jurisdictional Commissioners will ensure immediate realisation. The concerned Nodal Officer will test-check compliance in this behalf in each Commissionerate by initial inspections in all the Commissionerates in his charge and thereafter by periodical inspections / interaction with jurisdictional officers.
- (xii) CDR should also organize bunching of cases on same issues involving substantial revenue and request the Tribunal for disposal on priority.

#### **Cases Before Commissioners (Appeals)**

- (xiii) Commissioners (Appeals) will select all cases where the revenue implication is Rs. 10 lakhs or more for immediate disposal.
- (xiv) All stay applications before Commissioners (Appeals) should immediately be reviewed and in case for any unavoidable reasons early disposal of appeals themselves is not possible, the stay application would be suitably decided on priority so that the requirement, if any, of pre-deposit becomes certain. Normally, such cases should be exceptional.
- (xv) Commissioners (Appeals) shall ensure immediate communication of his orders to the assessee as well as to the department.
- (xvi) Performance of Commissioners (Appeals) as afore stated shall be monitored by zonal Chief Commissioners every month and also discussed and reviewed during meetings / interaction with Task Force / Nodal Officers.

#### **Cases Before Settlement Commission**

- (xvii) All cases pending before Customs & Central Excise Settlement Commission should be scrutinized by the jurisdictional Commissioners and it should be ensured that comments / reports thereon are sent promptly to the Settlement Commission. Amounts payable to the government in accordance with the Admission Orders and the Final Orders of the Commission should be recovered immediately. Progress in these cases should be

reviewed by the Nodal Officers for all Commissionerates initially and later in the periodic meetings with the Commissioners and the Chief Commissioners.

### **Collection Strategy for Undisputed Arrears**

- (xviii) The jurisdictional Commissioners and Chief Commissioners would regularly review and identify the arrears which are free from any restraints. In case the assessee does not pay up the dues, immediate action under Section 11 of the Central Excise Act or Section 142 of the Customs Act, 1962, as the case may be, should be taken and recovery effected. The zonal Chief Commissioners would send a list of all such cases to the concerned Nodal Officer immediately and update it every month. The Nodal Officers will monitor the progress. The responsibility for any default in the action for recovery at any stage under the aforesaid legal provisions will be with the jurisdictional Commissioner.
- (xix) For the facility of officers, the broad **stages for recovery** under the aforesaid provisions of law are as under.
- (a) Deducting such amounts from any money owing to the defaulter;
  - (b) Attachment and sale of excisable goods belonging to the defaulter;
  - (c) If the goods belonging to a Central Excise defaulter are under the control of Customs officers anywhere in the country (including Ports, ICDs, CFSs, Bonded Warehouses), such officers would be required to recover the said amount by detaining and selling such goods belonging to the defaulter;
  - (d) If the amount cannot be recovered by the aforesaid means, any movable or immovable property belonging to or under the control of the defaulter will be detained under Section 142(1) (c) read with Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules 1995.
  - (e) If any dues are not paid within 30 days of the detention as above, the said property would be sold in the prescribed manner.
  - (f) Under Clause 70 of the Finance (No.2) Bill 2004, a proviso is proposed to be inserted below Section 11 for recovery of dues by attachment and sale of all excisable goods, materials, plants and machineries, etc. in the custody or possession of a successor/ transferee to whom the business or trade has been disposed of. After the enactment, these provisions will also be made use of for recovery.

### **Other Strategies for Recovery**

- (xx) On the customs side, a lot of facilities, including facility of duty free imports of goods, are permitted on submission / furnishing of bank guarantees. The Commissioners shall ensure that all such cases are reviewed within a period of 30 days and bank guarantees encashed wherever such action has become due on failure of the person concerned to comply with the condition of the bank guarantee. The balance of the Govt. dues which

cannot be recovered by encashment of the bank guarantees should also be recovered immediately as per law. Such exercise should also be carried out on an on-going basis for the cases where such encashment of bank guarantees become due in future. Such action shall be monitored by the concerned Nodal Officers of the Task Force during the periodic review meetings with the concerned Chief Commissioner / Commissioners.

- (xxi) Commissioners will be responsible for reviewing pending show-cause-notice with a view to identifying those cases where the department has a strong case. Special attention will be paid to the cases emanating from DGRI and DGCEI. This exercise should be completed within a fortnight and adjudications completed within 2 months. Chief Commissioners and Commissioners shall monitor the adjudications in such cases. Action in this behalf especially with regard to action on the demands so confirmed and the attendant recovery at the earliest will be test-checked regularly by the concerned Nodal Officers and delays or negligence would be reported to the Chief Commissioners for appropriate action.
- (xxii) The jurisdictional Commissioners / Chief Commissioners shall also identify the cases where reportedly defaulters are not traceable or assets are not available. The Commissioners will complete enquiries at all known addresses of the defaulters (e.g., offices, works, depots, warehouses, residence, etc.) to ascertain whether any moveable or immovable assets can be located. Discreet investigations will be made from the neighboring persons, trade rivals, market and other concerned Government departments whether any other place of business of the defaulter anywhere in India exists. If yes, action will be extended to such place. Discreet investigations should also be made about his Bank accounts or any possible clues with the Banks.
- (xxiii) If even after the above action the defaulters remain untraceable and assets not available, zonal Chief Commissioners will send case-wise particulars to the DGRI / DGCEI, as the case may be, under intimation to the concerned Nodal Officer. The help of such intelligence agencies will be taken for further pursuing such cases. The Nodal Officer will review action for locating the defaulters or assets in accordance with the law and co-ordinate so that the investigations by the said intelligence agencies are quickly completed and results intimated to Chief Commissioners. The officers of these Directorates General will use their resources in locating such persons and their property anywhere in the country and for this purpose, they may, inter-alia, take the help of income-tax authorities whose database may also be useful. The Nodal Officer will do monthly monitoring of such references and results of the investigations. DGRI and DGCEI may have a special cell in their headquarters for attending to such references and ensuring immediate action and reporting of results by the field units.
- (xxiv) The responsibility to effect actual recovery will continue to vest with jurisdictional Commissioners and Chief Commissioners.
- (xxv) Any information to the Task Force or the Nodal Officer should be submitted by the Commissioners under their signatures after taking due care about completeness and accuracy.

(xxvi) The Task Force would submit a monthly report on the progress in recovery of arrears to Member (CX) in respect of Excise arrears and to Member (Customs) in respect of Customs arrears. The Full Board shall consider the progress made in arrears realisation on a monthly periodicity on a date to be decided by the Chairman (CBEC). CDR, DGRI and DGCEI will also attend such meetings of the Board.

**(R. SEKAR)**  
**Director, CBEC**

To

1. All Chief Commissioners of Customs
2. All Chief Commissioners of Customs (Preventive).
3. All Chief Commissioners of Customs & Central Excise.
4. All Chief Commissioners of Central Excise.
5. The Directors- General, NACEN/DGRI/DGCEI/DGI/Service Tax/Audit/Safeguard/Export Promotion/Valuation/Systems.
6. Chief Departmental Representative
7. All Commissioners of Customs
8. All Commissioners of Customs (Preventive).
9. All Commissioners of Customs & Central Excise.
10. All Commissioners of Central Excise.

**Copy for information to:**

PS to FM, PS to MOS(R), PS to Secretary(Rev), Chairman (CBEC), All Members(CBEC), All Joint Secretaries in CBEC, All Directors/Dy. Secys.(CBEC)

**Sd/-**  
**(R. SEKAR)**  
**Director/CBEC**



**OFFICE OF THE CHIEF COMMISSIONER (TAX ARREARS RECOVERY )  
CUSTOMS, CENTRAL EXCISE AND SERVICE TAX,  
C.R. BUILDING, I.P. ESTATE, NEW DELHI-110002.**

C.No. CC/TAR/54/2009/3

Dated : 15.01.2010

All Chief Commissioners of Customs & Central Excise  
All Chief Commissioners of Central Excise  
All Chief Commissioners of Customs  
All Chief Commissioners (LTU)

Sir,

**Subject : Realisation of arrears during 2009-10 – reg.**

Please refer to this Office letter C.No.CC (TAR)/54/2009 dated 28.10.2009 & 23.12.2009 on the above subject.

2. The TAR set up was constituted as a Task force vide Office Memorandum F.No.296/34/2004-CX.9 (Pt.) dated 12.08.2004 to coordinate, facilitate, monitor and oversee the efforts of the Customs & Central Excise field formations towards recovery of arrears.
3. The essential point to be noted is that as per the legal provisions, it is basically the responsibility of the jurisdictional Commissioner and his officers to recover arrears of revenue. The jurisdictional Commissioners may be requested :-
  - i. To get stay orders by CESTAT/Courts , vacated.
  - ii. To file early hearing applications in CESTAT/Courts in matters involving significant revenue.
  - iii. To take action under Section 11 of the Central Excise Act in appropriate cases.
  - iv. To take action under the Customs (Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995. This has been made applicable to Central Excise vide Notification No. 48/97-CE(NT) dated 02.09.97 (Refer Board's Circular No.365/81/97-CX dt.15.12.97)
  - v. To follow up cases pending before BIFR/Debt Recovery / Tribunal/ Official Liquidator/ Committee on Disputes.
  - vi. To dispose off all adjudication cases at the level of Commissioners, Addl. Commissioners & Joint Commissioners.
  - vii. To ensure quick implementation of favorable orders of CESTAT/Courts.
4. The Chief Commissioners are expected to monitor the above aspects.



5. In the Chief Commissioner's Conference held on 08<sup>th</sup> & 09<sup>th</sup> September, 2009, it was decided that "multi-pronged approach to manage different category of arrears was recommended. Suggestions were also made for monitoring of all cases involving revenue of more than Rs. 50 lakhs (irrespective of the age) by the Chief Commissioners; approaching CESTAT for early decision in respect of top 25 cases in each zone; one time review of all non-recoverable cases for write-off by the concerned authority etc."
6. You are requested to send your action taken report in the matter at the earliest.

Yours faithfully,

Sd/-  
(T.PREMKUMAR)  
CHIEF COMMISSIONER (TAR)

Encl : As above.

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