

Circular No. 1023/11/2016-CX

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

New Delhi, the 8th April, 2016

To,

All Principal Chief Commissioners/Chief Commissioners of Customs, Central Excise & Service Tax;
All Director Generals/Directors of Customs, Central Excise & Service Tax;
All Principal Commissioners/Commissioners of Customs, Central Excise & Service Tax holding charge of Chief Commissioners;
Webmaster, CBEC

Subject: - Adjudication of Show Cause Notices issued on the basis of CERA/CRA objection -reg.

Madam/Sir,

Central Board of Excise and Customs has issued instructions from time to time regarding adjudication of show cause notices issued on the basis of audit objections of Central Excise Revenue Audit (CERA) and Customs Revenue Audit (CRA), which is receipt audit wing of the Comptroller and Auditor General of India. The pendency position of such notices in the Call-Book has been reviewed and found to be larger than the number of audit objections which have been converted into Audit Paragraphs. After due examination, it was felt that there was a need to review the past practices and issue revised consolidated guidelines to provide a clear procedure for the field officers to deal with the CERA / CRA objections. The Tax Administration Reform Commission (TARC) report, representations received from trade and inputs received from field officers also indicated that there was a need to review past instructions to improve the ease of doing business and bring certainty regarding tax liability of an assessee. Accordingly, all past circulars and instructions on the subject are hereby rescinded and following procedure is prescribed for dealing with audit objections raised by CERA / CRA.

2. An audit objection may mature into an Audit Paragraph and become part of Audit Report periodically submitted by the office of CAG to the Parliament. Various stages involved

in the life cycle of an audit objection and the timeliness prescribed for replying thereto may be noted and strictly adhered to by the departmental officers. These stages and timeliness are as follows :

- (i) **Half Margin:** Half margin/audit memo is issued to the Superintendent of the Range during the course of audit on points noticed by CERA. The half margin is to be replied to immediately and in any case before the end of the audit of Range/Division/Commissionerate concerned.
- (ii) **Local Audit Report (LAR):** LAR containing audit paragraphs is generally issued by the headquarters of the local CAG Office to the Assistant/Deputy Commissioner generally within one month of the completion of the audit by the headquarters of the Director General or Principal Director of Audit. The Assistant/Deputy Commissioner is expected to reply to the LAR within **thirty days**.
- (iii) **Statement of Facts (SoF):** SoF is issued to the jurisdictional Commissioner/Addl. Commissioner on the major audit observations which may feature in Audit Reports. It has been decided that SoF shall be **replied within six weeks** where the audit objection is not contested. Where the audit objection is contested and the amount of duty involved in the audit objection is rupees fifty lakhs or less, SoF shall be replied with the approval of the Commissioner and for audit objections involving higher amounts of duty, SoF shall be replied with the approval of the Chief Commissioner. Detailed reasons for contesting the audit objection should be recorded in the file quoting relevant case-laws and circulars, if any.
- (iv) **Draft Audit Para (DAP):** Potential audit paragraphs considered fit for inclusion in the Audit Report are issued by the CAG officer to the Ministry (CBEC) as DAPs. CBECE is expected to **reply to DAP within four weeks** of its receipt.
- (v) **Audit Paragraphs:** CAG's office, after considering the reply of the CBECE may convert a DAP into Audit Paragraph. Audit Paragraphs are periodically compiled and are submitted by the office of CAG to the Parliament in the form of a report called Audit Report. CBECE is expected to furnish an Action Taken Note on each of the paragraphs in the Audit Report. The ATNs received are examined by the office of CAG and duly vetted ATNs are submitted to the PAC. The process of submission of ATN, due vetting and submission to PAC is expected to be completed **within four months** of submission of Audit Report. At both the DAP and Audit Para stages, it is essential that field formations concerned give a detailed reply including the present status of the objection to facilitate a meaningful reply by CBECE.

Coordination Meetings:

3. One of the reasons for pendency in adjudication of CERA/CRA objection is the lack of mechanism for periodic reconciliation of the status of audit objections. It has, therefore, been decided that a quarterly coordination meeting would be held in each of the Zones by the officers of the revenue department with the officers of CAG to ensure that the list of audit objections, replies given by revenue and final view taken by CERA/CRA can be discussed. Chief Commissioner shall identify a nodal officer, [preferably Additional Commissioner/ Joint Commissioner, CCU] to coordinate and attend such meetings. An audit objection is considered settled when the views of CERA/CRA and revenue converge due to either CERA/CRA dropping the audit objection or revenue admitting the audit objection.

Issue of Show Cause Notice:

4.1 Audit objection at LAR and SoF Stage : Once an LAR or SOF is received, it should be replied by the department forthwith. Based on the reply sent by the department, they can be divided in following categories :

4.1.1 Where the department has agreed with the audit objection on merits: Audit objections where department has agreed to the merits of the objections constitute a large proportion of the audit objections. In such cases, Show Cause Notices should be issued immediately. Such cases should not be transferred to the Call-Book and should be adjudicated forthwith and revenue realized in cases of confirmed demand at the earliest.

4.1.2 Where the department has not agreed with the audit objection on merits : No show cause notice should be issued in cases where department has not agreed with the audit objection on merits. In such cases audit objection should be replied following the procedure laid in clause (iii) of paragraph 2.

4.2 Show Cause Notice at the direction of the Board: Where a contested audit objection has become DAP and on examination it is found by the Commissioner (PAC) or Joint Secretary (Customs) in CBEC that the objection should have been admitted, they may give necessary directions to the field to issue show cause notice and adjudicate the case on merits.

4.3 No transfer to call-book: It may be noted that the procedure of transferring the show cause notice arising out of CAG objection to call-book has been discontinued and in future no such show cause notice should be transferred to the call-book. Circular nos 162/73/95-CX dated 14.12.1995 and 385/18/98-CX dated 30.03.98 on transfer of cases to the call book arising out of CAG objections stands amended accordingly.

Adjudication of Show Cause Notices :

5.1 Adjudication of SoFs/LARs not converted into DAP: SoFs/LARs are replied by the Commissionerate and therefore these cases may be adjudicated after ensuring that the reply given by the Commissionerate is available on record.

5.2 Adjudication of admitted DAPs/APs : DAPs are replied by the Ministry (CBEC) and therefore adjudication of DAPs should be undertaken after ensuring that the reply given by the Ministry (CBEC) is available on record.

5.3 Adjudicating authority is a quasi-judicial authority and is legally bound to adjudicate the case independently and judiciously taking into consideration the audit objection by CERA/CRA, reply of the department as referred above, reply of the party, relevant legal provisions, case laws on the subject and relevant circulars of the Board, if any. It is expected that the factum of SCN being a consequence of CERA/CRA objection, would be incorporated in the brief facts of the case in the adjudication order.

5.4 Where an issue was under audit objection and has been subsequently either judicially settled, by say judgment of Hon'ble Supreme Court or where a circular of the Board has been issued on the subject, further correspondence with the Board on the audit objections, even if they have become DAPs, is not necessary and such cases may be adjudicated on merits taking into consideration the latest judgments and circulars.

Past Cases:

6.1 All audit objections relating to Central Excise and Service tax issued prior to 1.3.2014 shall be compared with the pending Action Taken Notes (ATNs), received from the office of CAG, enclosed as Annexure B with the Circular. For Customs, the list shall be separately issued. Show Cause Notices (SCNs) relating to audit objections figuring in the list should not be adjudicated and further action may be taken on them in consultation with the Commissioner (PAC). The rest of the objections stand finally vetted by CAG Audit with no further comments which means that the reply of the department has been accepted by the CAG office. SCNs relating to these objections may be taken up for adjudication on merit, including those in the call-book, following the procedure prescribed in paragraph 5.

6.2 For audit objections raised after 1.3.2014 and till the date of issue of this circular, where SCNs have been issued, list of pending ATNs would be issued in due course. These show cause notices pertaining to these objections may be adjudicated, *mutatis-mutandis* following the procedure prescribed in paragraph 6.1 read with paragraph 5.

Application:

7. All audit objections in Customs, Central Excise and Service tax received after the issue of this circular or past audit objections where no show cause notice has been issued shall be dealt as per the provisions of this circular.

8. Difficulty, if any, in implementing the circular may be brought to the notice of the Board. Hindi version would follow.

Shankar Prasad Sarma
8.4.2016.

(Shankar Prasad Sarma)

Under Secretary to the Government of India

ANNEXURE- A

DETAILS OF THE AUDIT OBJECTION

Sl. No.	Commissioner's rate	LAR /So F No.	DA P No.	Audit Para No.	Amount Involved	Gist of the Objection	Gist of the Department's reply	Relevant Board's Circular/Instruction/Judgment, if any

NOTE: The copy of audit objection and the reply should be enclosed with this proforma.

Annexure B.

Para wise details of Status of Action Taken Notes (As on 31.01.2016) (Compliance Audit)

Sl.No.	Name of the Ministry	No. of Year of Report	CX/ST	Para No	DAP No	Para Title
1	Finance	12 of 2009-10	CX	2.6	148	Incorrect availing of exemption
2	Finance	28 of 2011-12	CX	1.2	82B	Irregular availing of cenvat credit
3	Finance	7 of 2015	CX	6.3.1	4D	Non-detection of Incorrect availing of Cenvat Credit on common input services
4	Finance	4 of 2015	ST	6.3.1	21A	Service Tax under Import of service
5	Finance	4 of 2015	ST	7.3.1	62D	Service Tax collected but not deposited into Govt. account
6	Finance	4 of 2015	ST	7.4.1.6	87D	Other Cases

Pending With Audit

Sl. No.	Name of the Ministry	No. of Year of Report	CX/ST	Para No	DAP No	Para Title
1	Finance	12 of 2009-10	CX	2.2.1	98	Incorrect availing of exemption
2	Finance	7 of 2015	CX	Chapter II		Central Excise duty on Iron and Steel Products and articles thereof
3	Finance	7 of 2015	CX	Chapter III		Central Excise duty on Petroleum, Oil and Lubricant products
4	Finance	7 of 2015	CX	Chapter IV		Scrutiny of Central Excise returns
5	Finance	4 of 2015	ST	6.4.1	20A	Irregular availing of Cenvat Credit on ineligible invoices
6	Finance	4 of 2015	ST	6.2.2	26A	Works Contract Service
7	Finance	4 of 2015	ST	7.4.1.2	31D	Non-payment of Service Tax
8	Finance	4 of 2015	ST	7.4.1.4	3D	Non-payment of Service Tax
9	Finance	4 of 2015	ST	Chapter II		Service Tax liability in Insurance Sector
10	Finance	4 of 2015	ST	Chapter III		Service Tax liability in Port Sector
11	Finance	4 of 2015	ST	Chapter IV		Service Tax liability on Mandap Keeper's
12	Finance	4 of 2015	ST	Chapter V		Scrutiny of Service Tax returns

Para wise details of Status of Action Taken Notes (As on 31.01.2016) (Performance Audit)

ATN not received

Sl.No.	Name of the Ministry/Dept.	No. of Year of Report	CX/ST	Title
				NIL

Pending with Ministry

Sl.No.	Name of the Ministry/Dept.	No. of Year of Report	CX/ST	Para Title
1	Finance	11 of 2004	CX	Review on call book
2	Finance	7 of 2007	CX	Review on excise duty on plastic and articles thereof
3	Finance	PA 6 of 2008	CX	Review on refunds
4	Finance	PA 24 of 2009-10	CX	Review on Excise duty on Iron and Steel and articles of Iron and Steel
5	Finance	25 of 2011-12	CX	Review on commissionerate ranges and divisions (CDR)
6	Finance	29 of 2014	CX	Administration of Prosecution and Penalties in Central Excise and Service Tax
7	Finance	11 of 2005	ST	Review on service tax on consulting engineers services, architects services and interior decorators services
8	Finance	7 of 2007	ST	Review on service tax on management consultant's services, scientific or technical consultancy services, technical testing and analysis services & technical inspection and certification services

Pending with audit

Sl.No.	Name of the Ministry/Dept.	No. of Year of Report	CX/ST	Para Title
1	Finance	11 of 2004	CX	Review on Determination of assessable value under new section 4 (Transaction Value)
2	Finance	11 of 2005	CX	Review on excise duty on motor vehicle for transport of persons and goods
3	Finance	6 of 2006	CX	Review on excise duty on inorganic and organic chemicals
4	Finance	7 of 2007	CX	Review on provisional assessment
5	Finance	PA 6 of 2008	CX	Review on excise duty on aluminium, copper and articles thereof
6	Finance	11 of 2010-11	CX	Review on excise duty on pharmaceutical products
7	Finance	30 of 2010-11	CX	Review on Cenvat Credit Scheme
8	Finance	33 of 2014	CX	Central Excise Administration in Automotive Sector
9	Finance	11 of 2004	ST	Review on service tax on advertisement services and courier services
10	Finance	6 of 2006	ST	Review on service tax on manpower recruitment agency's services and security agency's services
11	Finance	PA 6 of 2008	ST	Review on service tax on rent-a-cab scheme operators' services, photography services and health club fitness centre services
12	Finance	PA 24 of 2009-10	ST	Review on Service Tax on Business Auxiliary Services
13	Finance	25 of 2010-11	ST	Review on Service Tax on Construction Services
14	Finance	9 of 2013	ST	Levy and collection of service tax on import of services