

**F.No. 96/1/2017-CX.I  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs**

Dated the 10<sup>th</sup> March, 2017

To,

The Principal Chief Commissioner/Chief Commissioners of Central Excise (All)  
The Principal Chief Commissioner/Chief Commissioners of Central Excise and Service Tax (All)  
The Principal Chief Commissioner/Chief Commissioners of Service Tax (All)  
The Principal Commissioner / Chief Commissioners of Customs (All)

Madam/Sir,

**Subject: Master Circular on Show Cause Notice, Adjudication and Recovery –reg.**

Kind attention is invited to Ninety two Circulars and Instructions on Show Cause Notices and Adjudication issued by the Board from time to time, placed at the Annexures to this Master Circular. These circulars address references from trade and field formations and provide clarity and uniformity on the issues raised. Board undertakes exercise of consolidating these circulars from time to time so as to ensure clarity and ease of reference. This master circular on the subject of show cause notices, adjudication proceedings and recovery is an effort to compile relevant legal and statutory provisions, circulars of the past and to rescind circulars which have lost relevance. Annexure-I to the circular provides list of the eighty nine circulars which stand rescinded. Three circulars listed in Annexure-II have not been rescinded as they contain comprehensive instructions on the subject they address.

2. The master circular is divided into four parts. Part I deals with Show Cause Notice related issues, Part II deals with issues related to Adjudication proceedings, Part III deals with closure of proceedings and recovery of duty and Part IV deals with miscellaneous issues.
3. The provisions of the Master Circular shall have overriding effect on the CBEC's Excise Manual of Supplementary Instructions to the extent they are in conflict.
4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

Shankar Prasad Sarma

Under Secretary to the Government of India

## MASTER CIRCULAR

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### **Part I : Show Cause Notice**

**1.1 Demand:** Under the provisions of the Central Excise Act, 1944, demand can be issued when any duty of Central Excise has not been levied or paid or has been short-levied or short-paid or where any duty has been erroneously refunded, for any reason. The demand of duty may also arise on account of duty collected without the authority of levy or in excess of the levy but not deposited with the department in terms of Section 11D of the Central Excise Act, 1944.

**1.2** Demand of duty from the assessee is made by way of issue of a Show Cause Notice (SCN in short) indicating therein charges of violations of provision of law requiring the assessee to explain as to why the duty not levied/not paid or short levied/ short paid should not be recovered from the noticee with interest and penalty, if applicable. Similarly, a show cause notice can also be issued for recovery of refund erroneously paid by the Government to the taxpayer.

**2.1 Show Cause notice (SCN):** Show Cause Notice (SCN) is the starting point of any legal proceedings against the party. It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it should be drafted with utmost care. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of Central Excise Act and the rules made thereunder. A SCN offers the noticee an opportunity to submit his oral or written submission before the Adjudicating Authority on the charges alleged in the SCN. The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as *audi alteram partem* which means that no one should be condemned unheard.

**2.2 Structure of SCN:** A SCN should ideally comprise of the following parts, though it may vary from case to case:

- a) Introduction of the case

- b). Legal frame work
- c). Factual statement and appreciation of evidences
- d). Discussion, facts and legal frame work,
- e). Discussion on Limitation
- f). Calculation of duty and other amounts due
- g). Statement of charges
- h). Authority to adjudicate.

**2.3 Introduction of the case:** This part of the SCN must contain the details of the person to whom the notice is to be issued. It must contain the name, registration number/IEC and address of the person and the manner in which the said person, has been identified in the later text of the notice. In case of issuance of SCN to many noticees, details of all such noticees should be stated separately irrespective of the fact that, the persons are closely related to each other. A very brief background as to how the present proceeding started should be discussed in the SCN. For example, a SCN may be based on audit of accounts by the internal audit or detailed scrutiny of return by the Range office or intelligence by anti-evasion etc. In this part, the gist of audit objections/observations/ intelligence and a brief modus operandi of duty evasion adopted by the alleged offender may be discussed. Further, the details of verification/investigation conducted/ carried out and the summary of the verification may also be discussed in this part.

**2.4 Legal framework:** The authority issuing the SCN should clearly lay down the legal provisions in respect of which the person shall be put to notice. While specifying the provisions, care should be taken to be very accurate in listing all the provisions and the law in respect of which the contraventions are to be alleged in the SCN.

**2.5 Factual statement and appreciation of evidence:** In this part of SCN, the facts relating to act of omission and commission pertinent to the initiation of the proceedings against the noticee need to be stated in a most objective and precise manner. All evidences in form of documents, statements and material evidence resumed during the course of enquiry /investigation should be organised serially in a manner so as to establish the charges against the noticee. While discussing the facts and evidences, care should be taken to be precise and succinct in expression so that unnecessary details are avoided.

**2.6 Discussion, facts and legal frame work:** In this part the facts and evidence need to be discussed against the legal framework set out in the show cause notice so as to arrive at the charges of omission and commission against each of the noticees separately. On the basis of discussion, the charges need to be clearly and succinctly spelt out against each noticee.

**2.7 Discussion on Limitation:** As per the provisions of Central Excise Act, 1944, the duty which has not been levied or paid or has been short levied or short paid or erroneously refunded can be demanded only within normal period i.e. within two years from the relevant date. However, in specific case, where any duty of excise has been not paid or short paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or rules made thereunder with intent to evade payment of duty, then the duty can be demanded within a period of five years from the relevant date. The SCN should clearly spell out the ingredients for invoking the extended period of five years with evidence on record. A more detailed discussion on the subject is contained in paragraph 3.1 to 3.6.

**2.8 Quantification of duty demanded:** It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.

**2.9 Interest:** Interest is chargeable on the delayed payment of duty under the provisions of Section 11AA of CEA, 1944 or Rule 8 of the Central Excise Rules, 2002 or mutatis mutandis for CENVAT Credit taken or/and utilized wrongly or for recovery of refund or on amount collected in excess of the duty payable on any excisable goods from the buyer of the goods under Section 11DD. There may not be need for any explicit mention of the interest liability in the show cause notice since the legal provisions in this regard are explicit and contained in Section 11A(14). However, to make the SCN a self-contained notice of charges, it may still be desirable to mention the liability of interest in the SCN.

**2.10 Statement of charges:** In this part, the SCN list of all charges against the noticees need to be summarized and the notice should be charged as to why action as provided in law, should not be taken against them.

**2.11 Authority to adjudicate:** A SCN must state the authority to whom the reply to the show cause notice is required to be answered. In case of seizure of goods, the issue of show cause notice is mandatory before any order for confiscation of goods is passed. Where there is a change in the adjudicating authority, a corrigendum to the SCN may be issued and served on the noticees to ensure that the noticees have a fair opportunity to present their case to the appropriate adjudicating authority. Corrigendum to SCN is issued due to change in jurisdiction, monetary limit, re assignment, etc. The authority who issued the SCN has to issue the corrigendum and then transfer the file to the new adjudicating authority.

**3.1 Limitation to demand duty:** A show cause notice demanding duty not paid or short paid or erroneous refund can be issued by the Central Excise Officer normally within two year from the relevant date of non-payment or short payment of duty, whereafter the demand becomes time-barred. Where duty has not been paid or short paid by any person chargeable with the duty by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act, 1944 or of the Rules made thereunder with intent to evade payment of duty, a longer period of limitation applies and show cause notice demanding duty can be issued within five years from the relevant date.

**3.2 Ingredients for extended period:** Extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax. The onus of establishing that these ingredients are present in a given case is on revenue and these ingredients need to be clearly brought out in the Show Cause Notice alongwith evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period.

**3.3** The Apex Court's in the case of M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.), has laid the law on the subject very clearly. The same is reproduced below for ease of reference.

*Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set*

*of words “contravention of any of the provisions of this Act or Rules” are again qualified by the immediately following words “with intent to evade payment of duty”. It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful.*

**3.4 Extended period in disputed areas of interpretation:** There are cases where either no duty was being levied or there was a short levy on any excisable goods on the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be. Both trade and field formations of revenue may have operated under such understanding. Thus, the general practice of assessment can be said to be non-payment of duty or payment at lower rate, as the case may be. In such situations, Board may issue circular clarifying that the general practice of assessment was erroneous and instructing field formations to correct the practice of assessment. Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty.

**3.5** On the other hand, there can be Board circulars which only reiterate the correct practice of assessment which is being followed by the compliant segment of the assessees. In such situations, decision to invoke extended period would depend on examination of facts of a case and where the ingredient to invoke extended period is present, show cause notice for extended period can be issued. In such situations it would be unfair to the compliant segment of the assessees to not invoke the extended period of time, if active ingredients are present to invoke extended period.

**3.6 Power to invoke extended period is conditional:** Power to issue notice for extended period is restricted by presence of active ingredients which indicate an intent to evade duty as explained above. Indiscriminate use of such restricted powers leads to fruitless adjudications, appeals and reviews, inflates the figures of outstanding demands and above all causes unnecessary harassment of the assessees. Therefore, before invoking extended period, it must be ensured that the necessary and sufficient conditions to invoke extended period exists.

**3.7 Second SCN invoking extended period:** Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under

appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation.

**3.8 Applicability of limitation in demanding interest:** In cases where duty and interest is demanded, it is quite clear that limitation prescribed in Section 11A applies. However, it may be noted that in cases where the duty has been paid belatedly and interest has not been paid, interest needs to be demanded and recovered following the due process of demand and adjudication. In such cases, the period of limitation as prescribed in Section 11A applies for demand of interest. Section 11A(15) may be referred in this regard.

**4.1 Demand due to Departmental or CERA (CAG Audit):** Show Cause Notice may be required to be issued due to audit objection arising out of either internal audit or CERA conducted by the office of CAG. The decision to issue Show Cause Notice due to internal audit rests with the Audit Commissioner. As far as CERA audit is concerned, a detailed circular has been issued vide Circular No. 1023/11/2016-CX dated 8.4.16. Important directions in the circular in this regard are as follows:

**4.2** Where the department has agreed with the audit objection on merits constitute a large proportion of the audit objections. In such situations, Show Cause Notices should be issued immediately and where practicable view of the assessee should be obtained before issue of Show Cause Notice. 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.

**4.3** Where the department has not agreed with the audit objection on merits no show cause notice should be issued in cases and should be replied giving detailed reasoning and case-laws on the subject. For further details of the procedure to reply to CERA, the said circular may be referred.

**4.4** 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 formations to issue show cause notice and adjudicate the case on merits.

**4.5** It may be noted that the procedure of transferring the show cause notice arising out of CAG objection to call-book has been discontinued vide the said circular. It may be noted that Para 4.2 to para 4.4 above only give the gist of the instructions regarding issue of Show

Cause Notice and for further details, the said circular dated 8.4.2016 may be referred. The procedure for adjudication of Show Cause Notices issued due to CERA objections are contained in the circular dated 8.4.2016(ibid) and have been reproduced from para 18.1 to 18.4 of this circular for ease of reference.

**5.0 Consultation with the noticee before issue of Show Cause Notice:** Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/ offence related SCN's) mandatory vide instruction issued from F No. 1080/09/DLA/MISC/15 dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice.

**6.0 Authority to issue SCN:** A SCN should ideally be issued by the authority empowered to adjudicate the case as this ensures accountability as well as rigour of examination as demands of higher amounts are adjudicated by the officers of higher rank. Details of authority empowered to adjudicate the cases as per demand of duty are discussed in paragraph no. 11. Though, issue of SCN by an officer of the rank empowered to adjudicate the case is the accepted norm, a SCN issued by a Central Excise officer of rank other than the one prescribed in the circular would not ipso facto be an invalid SCN.

**7.0 Issue of unjust enrichment to be raised in SCN itself :** In case of consequential refund of excess duty paid, the applicant should be granted a refund of such claims as is found to be in conformity with the order of the appellate authority. The question of unjust enrichment may be examined independently, if not covered by the appellate order. Where a refund application is prima-facie found to be liable for rejection after such examination, a notice should be served on the applicant stating the ground on which the refund application is liable to be rejected. In cases where refund is admissible on merits but is liable to be paid to the Consumer Welfare Fund on grounds of unjust enrichment, the assessee will be adversely affected by the decision and therefore, a notice should be served on the applicant before any such decision is taken.

**8. Changing a long standing practice of assessment:** A long standing practice of assessment which is widely prevalent across the country should not be suddenly changed by issuing show cause notice demanding duty. Such issues should be referred to the Board in a comprehensive manner with inputs obtained from the other zones regarding the proposed change in the practice of assessment. Demand of duty if any should be limited to normal

period in such cases as the practice of assessment in such cases is known to both trade as well as the department.

**9.1 Waiver of SCN:** The issue of waiver of SCN has been dealt with in circular issued vide F.No. 137/46/2015-Service tax dated 18.08.2015. The crux of the clarification given is that on receipt of written request of the assessee the requirement of written SCN may be waived and the charges alongwith duty payable may be explained orally. This clarification was given in the context of closure of cases on payment of duty, interest and penalty. However, where the issue is likely to be litigated at a later date by the assessee, it would be appropriate that a written SCN be issued. This would hold true in particular for offences of serious nature or where the duty involved is high. Conclusion of proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases. The cases can be closed by the competent authority in DGCEI/Executive Commissionerate/Audit Commissionerate, as the case may be. If multiple issues involving different monetary values arise from the same proceedings, then the sum total involved in all the issues arising from the same proceedings should be considered for conclusion of proceedings.

**9.2** The conclusion of proceedings should invariably be intimated to the assessee in writing. There is no need to issue an adjudication order. Further, there is no need to undertake review of such conclusion of proceedings.

**9.3 Call-Book Cases:** A call book of cases is maintained of such cases which cannot be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance. The following 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 the Board has specifically ordered the same to be kept pending and to be entered into the call book.
- iv. Cases admitted by the Settlement Commission may be transferred to the Call-book, as it is already covered under Category (ii) above. Where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission, Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.

**9.4 Intimation of Call Book cases to noticee:** A formal communication should be issued to

the noticee, where the case has been transferred to the call book.

## **Part II : Adjudication of Show Cause Notice**

**10. Adjudication:** Officers of Central Excise have been vested with powers under Section 33A of Central Excise Act, 1944 to adjudicate the Show cause notice issued to the noticees and answerable to the officers. They, in their capacity as adjudicating officers act as quasi-judicial officers. Further as per Section 2(a) “Adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), Commissioner of Central Excise (Appeals) or Appellate Tribunal.

**11.1 Monetary limits:** Board has revised monetary limits for adjudication on 29.09.2016. The revised monetary limits and other instructions in relation to adjudication are as follows:

<b>Sl. No.</b>	<b>Central Excise Officer</b>	<b>Monetary Limits of duty/ tax/ credit demand for Central Excise and Service Tax</b>
1.	Superintendent	Not exceeding Rupees Ten lakhs
2.	Deputy/ Assistant Commissioner	Above Ten Lakhs but not exceeding Rupees Fifty Lakhs
3.	Additional/ Joint Commissioner	Above Fifty Lakhs but not exceeding Rupees Two Crore
4.	Commissioner	Without limit i.e. cases exceeding rupees two crores

The above monetary limits are hereby prescribed for all categories of cases, except the following:

(a) cases of refund (including rebate) under Section 11B of the Central Excise Act, 1944, as made applicable to Service Tax cases also under Section 83 of the Finance Act, 1994, shall be adjudicated by the Deputy Commissioner/Assistant Commissioner without any monetary limit.

(b) cases related to issues mentioned at Sl.No. (a) and (d) under the first proviso to Section 35B(1) of the Central Excise Act, 1944 shall be adjudicated in the following manner:

<b>S.No.</b>	<b>Central Excise Officer</b>	<b>Monetary Limits for Central Excise</b>
1	Additional/Joint Commissioner	Exceeding Rs. 50 lakh
2	Deputy/Assistant Commissioner	Above Rs 10 lakh but not exceeding Rs. 50 lakh
3	Superintendent	Not exceeding Rs 10 lakh

### **11.2 Other important points:**

Cases involving taxability, classification, valuation and extended period of limitation shall be kept out of the purview of adjudication by Superintendents. Such cases, upto rupees 10 Lakhs, shall also be adjudicated by the Deputy Commissioner/ Assistant Commissioner in addition to the cases exceeding rupees 10 Lakhs but not exceeding rupees 50 lakh.

- i. Refund matters (including rebate), shall be adjudicated by the Deputy Commissioner/ Assistant Commissioner without any monetary limit
- ii. In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

**11.3** Where differential duty/demand of duty is paid without interest, in such cases, Show Cause Notices demanding interest and levy of penalty should be issued. In the Show Cause Notice, the reference of duty already paid should also be mentioned.

**11.4** As regards adjudication of the notices issued for recovery of interest alone, it is clarified that these cases should be decided by the proper officer based on the monetary limit fixed for the duty amount involved and not on the basis of the amount of interest. Therefore, the amount of duty on which interest has not been paid, should be the monetary criterion for deciding the authority to decide such cases.

**11.5** In case different show cause notices have been issued on the same issue to same noticee(s) answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

**12.1 Jurisdiction of Executive Commissionerate:** Officers of Central Excise within the jurisdiction of a Commissionerate normally issue a SCN for demands of duty pertaining to assesseees or units falling within the jurisdiction of the Commissionerate and such cases are adjudicated by the Officers of the Executive Commissionerate. Officers of Executive Commissionerate also adjudicate SCNs issued by the Audit Commissionerates under normal circumstances.

**12.2 Adjudication by officers of Audit Commissionerate:** Central Excise Officers of all ranks in the Audit Commissionerate shall also have powers to adjudicate Show Cause Notice in Zones where the pendency position warrants adjudication by Audit Commissionerates Officers. Power has been accorded to the Chief Commissioners to distribute the cases for adjudication within the Zone, including to the officers of various ranks of the Audit Commissionerate. In case of Service Tax Zones, the cases would have to be transferred across the Zones. The Zonal Member in-charge shall take stock of pending cases at the Commissioner level, and in exercise of powers conferred to the Board, earmark these cases to Commissioner (Audit) and Commissioners of Central Excise across Zones if there is a need to do so. The function of review, appeal etc even for cases adjudicated by the officers of the Audit Commissionerate shall continue with the Executive Commissionerate as adjudication by officers of Audit Commissionerate shall continue be an exception rather than as a rule.

**12.3 Cases investigated by DGCEI:** DGCEI after investigation issues show cause notice which may be answerable to either ADG (Adjudication) or to Executive Commissioner as the case may be. Board has issued detailed circulars regarding adjudication of cases booked by DGCEI vide Circular no 994/01/2015-CX dated 10.02.2015 and Circular No. 1000/7/2015-CX dated the 3<sup>rd</sup> March, 2015. The salient points of the instruction given are as follows.

**12.4** To assign cases for adjudication amongst the Additional Director General (Adjudication) and the field Commissioners, following general guidelines may be followed:-

(i) Cases including cases pertaining to the jurisdiction of multiple Commissionerates, where the duty involved is more than Rs. 5 crore shall be adjudicated by the ADG (Adjudication). However in case of large pendency of cases or there being a vacancy in the rank of ADG (Adjudication), Director General, CEI may assign cases involving duty of more than Rs. 5 crore to the field Commissioners following clauses (iv) and (v) of the guidelines.

(ii) Director General, CEI may issue general orders assigning the show cause notices involving duty of more than Rs. 5 crore issued by the specified Zonal Units and/or the DGCEI Headquarters to a particular ADG (Adjudication).

(iii) Where ADG (Adjudication) is the adjudicating authority in one of the cases involving identical issue or common evidences, the Director General, CEI may assign all such cases to that ADG (Adjudication).

(iv) Cases to be adjudicated by the executive Commissioner, when pertaining to jurisdiction of one executive Commissioner of Central Excise, shall be adjudicated by the said executive Commissioner of the Central Excise.

(v) Cases to be adjudicated by the executive Commissioners, when pertaining to jurisdiction of multiple Commissionerates, shall be adjudicated by the Commissioner in whose jurisdiction, the noticee from whom the highest demand of duty has been made, falls. In these cases, an order shall be issued by the Director General, CEI exercising the powers of the Board, assigning appropriate jurisdiction to the executive Commissioner for the purposes of adjudication of the identified case.

(vi) Show Cause Notices issued prior to 1st March, 2015 shall continue to be adjudicated by the Commissioner before whom the adjudication proceedings are continuing unless the Director General, CEI issues orders appointing a new adjudicating authority in terms of the guidelines above or where Board appoints a new adjudicating authority on the basis of proposal of DGCEI.

(vii) Where DGCEI proposes appointment of an adjudicating authority not in conformity with the above guidelines, DGCEI shall forward such proposal to the Board.

(viii) Cases to be adjudicated by the officers below the rank of Commissioner may be adjudicated only by the field officers in the executive Commissionerates and the above guidelines shall apply *mutatis mutandis*.”

**12.5** Above guidelines shall also apply *mutatis mutandis* to the Service Tax cases booked by DGCEI. Notification No. 2/15-Service Tax, dated 10-2-2015 has been issued to provide necessary jurisdiction to the DG, CEI over the Principal Commissioners and Commissioners of Service Tax in this regard.

**13.0 Service of Show Cause Notice and Relied upon Documents:** A show cause notice and the documents relied upon in the Show Cause Notice needs to be served on the assessee for initiation of the adjudication proceedings. The documents/records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized. Show Cause Notice itself may incorporate a clause that unrelayed records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relied upon records should also be mentioned in the Show Cause Notice. This would ensure that the adjudication proceedings are not delayed due to non-return of the non-relied upon documents.

**14.1 Settlement of Cases:** As per Board instruction every show cause notice should be forwarded, along with a letter stating that party can approach settlement of case through Settlement Commission. Where the noticee approaches the Settlement Commission, the matter needs to be transferred to call book till the matter is decided by Settlement Commission. In case matter is not finally accepted for settlement by the settlement commission, the show cause notice should be adjudicated in normal manner, in case the Settlement Commission, settles the matter, the show cause notice should be taken out of call book and shown as disposed off.

**14.2 Filing of Written submissions:** Show Cause Notice generally provides a time limit of thirty days for submission of written reply, however the time limit may be extended by the adjudicating authority on written request of the assessee. Where the assessee fails to submit a written reply, the adjudicating authority may issue a letter requesting the noticee to submit reply to the SCN.

**14.3 Personal hearing:** After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient interval. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee.

**14.4 Record of personal hearing:** The adjudicating authority must maintain a record of personal hearing and written submission made during the personal hearing. Evidence of personal hearing and written submission on record is very important while adjudicating the case.

**14.5 Adjudication order:** The adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

**14.6 Analysis of issues:** The Adjudicating authority is expected to examine all evidences, issues and material on record, analyse those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning. After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order.

**14.7 Body of the order:** The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the operating order. At any cost, the findings and discussions should not go beyond the scope and grounds of the show cause notice.

**14.8 Quantification of demand:** The duty demanded and confirmed should be clearly quantified and the order portion must contain the provisions of law under which duty is confirmed and penalty is imposed. The duty demanded in an adjudication order cannot exceed the amount proposed in the Show Cause notice.

**14.9 Corroborative evidence and Cross-examination:** Where a Statement is relied upon in the adjudication proceedings, it would be required to be established through the process of cross-examination, if the noticee makes a request for cross-examination of the person whose statement is relied upon in the SCN. During investigation, a statement can be fortified by collection of corroborative evidence so that the corroborative evidence support the case of the department, in cases where cross-examination is not feasible or the statement is retracted during adjudication proceedings. It may be noted retracted statement may also be relied upon under given circumstances. Frivolous request for cross-examination should not be entertained such as request to cross examine officers of CERA.

**14.10 Issue and Communication of order:** In all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible as but not

later than one month in any case, barring in exceptional circumstances to be recorded in the file. The order is required to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944.

**15. Corrigendum to an adjudication order:** A corrigendum to an adjudication order can only be issued by the adjudicating authority himself and not by any subordinate authority, after careful examination of details obviating the need to issue any corrigendum to correct minor clerical mistakes which do not alter the adjudication order per se. Therefore, adjudicating order should normally be issued. It may be noted that after issuing an adjudication order, the adjudicating authority becomes *functus officio*, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case. As a concept, *functus officio* is bound with the doctrine of *res judicata*, which prevents the re-opening of a matter before the same court or authority. It may also be noted that under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order.

**16. Transfer of adjudicating authority:** Adjudicating officers are expected to issue order-in-original before being relieved in cases where personal hearing has been completed. The successor in office can not issue any order on the basis of personal hearing conducted by the predecessor. The successor in office should offer a fresh hearing to the noticee before deciding the case and issuing adjudication order/formal order.

**16.1 Signing of the order:** The adjudicating order should be signed by the adjudicating authority only and it should not be further delegated to any other officer and the adjudicating order furnished to the noticee(s) has to be an originally signed copy and not an attested copy.

**17.1 Adjudication of SoFs/LARs raised by CERA which are 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.

**17.2 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.

**17.3** 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. In this regard the following extract from the judgment in the matter of Simplex Infrastructure Ltd vs Commissioner of Service Tax of the Hon'ble Kolkata High Court dated 07.04.2016 at para 74 may be followed in letter and spirit while discharging one's role as an Adjudicating authority

'It is well settled that a quasi-judicial authority must act judiciously and not at the dictates of some other authority. It is quite evident that the Commissioner issued the impugned show-cause notice at the instance of CERA without any independent application of mind, and thereby, abdicated his powers and duty, which is not permissible in law'.

Accordingly, it is directed that the audit objection by CERA should be independently examined and where necessary, Show cause Notice should be issued. It is expected that the SCN is a consequence of independent examination carried out on receipt of CERA/CRA objection. Such independent findings should be incorporated in the show cause notice as well as in the adjudication order.

**17.4** 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.

### **Part III: Confirmed demands/Recovery**

**18. Confirmed demands:** Section 11 of the Central Excise Act, 1944 provides powers which may be exercised for recovery of duty and any other sums of any kind payable to the Central Government. It may be noted that duty and other sums are considered payable to the Government in the following situations:

- (i) Where there is no appeal filed against the confirmed order in adjudication or appeal and statutory period of appeal is over;
- (ii) Where the CESTAT or High Court has confirmed the demand and no stay is in operation as explained in para 23.2.
- (iii) Where there is an admitted liability reflected in the periodic return as explained in para 24.

**19. Powers of recovery:** Recovery of confirmed demand can be made by exercising any of the powers under Section 11 of the CEA, 1944 such as adjustment from refunds payable, attachment and sale of excisable goods of such person or through certificate action treating the recoverable amounts as arrears of land revenue. After exhausting the option of taking action as above, if dues remain unrecovered, 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. Further, where the entire business is disposed off with assets and liabilities, duty or any other sums are recoverable from the successor in business also. It may be noted that under sub-Section (2) of Section 11 of the Central Excise Act, 1944, now Central Excise Officers are empowered to issue an order to any other person from whom money is due to such person from whom recovery of arrears is required to be made. Such notice for recovery to the other person is generally referred as Garnishee Notice.

**20. Recovery from the assets under liquidation:** Section 53 of the Insolvency and Bankruptcy Code, 2016 provides for order of priority for distribution of proceeds from the sale of the liquidation assets. Pari-materia changes have been made in Section 11E of the Central Excise Act, 1944. In effect, the Central Excise dues shall have first charge, after the dues, if any, under the provisions of Companies Act, Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016, have been recovered.

**20.1 Recovery during pendency before BIFR/IFCL/OL/DRT/Insolvency and Bankruptcy Code, 2016:** When the cases are pending before BIFR/IFCL/OL/ appropriate authority under Insolvency and Bankruptcy Code, 2016 then in such cases recovery measures should not be resorted. In such cases public counsel should be advised to file affidavits for first charge under Section 11E of Central Excise Act, 1944 informing the quantum of confirmed demand to BIFR/IFCL/OL/DRT/Insolvency and Bankruptcy Code Authorities.

**20.2 Recovery during pendency of litigation:** Board has issued two circulars on the subject vide Circular no 984/08/2014- CX dated 16.9.2014 and Circular no 1035/23/2016-CX dated 4.7.2016.

(i) Sub-Section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeals). In the event of appeal against the order of Commissioner (Appeals) before the Tribunal, 10% is to

be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). This need not be the same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

(ii) In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.

(iii) In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.

(iv) Section 35F of the Central Excise Act, 1944 has been amended with effect from 6.8.14 to provide for mandatory payment of 7.5% or 10% of the of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute for admission of appeal before Commissioner (Appeals) or CESTAT. Once the amount is paid, no coercive action shall be taken for recovery of the balance amount during the pendency of the appeal proceedings before these authorities.

**20.3** In cases where stay application is pending before Commissioner (Appeals) or CESTAT for periods prior to 6-8-2014, no recovery shall be made during the pendency of the stay application.

**20.4 Recovery of demand confirmed by CESTAT or High Court:** Where a demand has been confirmed by the CESTAT or High Court, recovery proceedings may be initiated after sixty days of issue of order provided no stay has been granted by the High Court or Supreme Court as the case may be.

**21. Recovery of admitted liability in periodic returns:** Rule 8(4) of the Central Excise Rules, 2002 provide that provisions of Section 11 of the Central Excise Act, 1944 would apply for recovery of sums declared payable in periodic returns but not paid. Section 11 provides wide ranging power for recovery of dues as explained in paragraph 21 above. Section 11A(16) on the other hand provides that provisions of Section 11A shall not apply for duty short paid or not paid which is self-assessed and declared in the periodic returns. The conjoined reading of these two provisions provide that where the liability of duty is admitted but not paid by the assessee, adjudication proceedings envisaged under Section 11A are not required to be undertaken. Such self-admitted liability would be covered under the expression

duty and any other sums of any kind payable to the Central Government used in Section 11A notice for recovery of admitted liability may be served on the assessee under Section 11 and when such dues are not paid within a reasonable time, recovery proceedings may be initiated.

**22.0 Recovery in instalments:** Board has issued Circular No. 996/3/2015-CX dated the 28th Feb., 2015 to provide the facility of payment of confirmed demand in installments.

**22.1** It has been decided by the Board to allow recovery of arrears of taxes, interest and penalty in installments. The power to allow such payment in monthly installments shall be discretionary and shall be exercised by the Commissioners for granting sanction to pay arrears in installments upto a maximum of 24 monthly installments and by the Chief Commissioners for granting sanction to pay arrears in monthly installments greater than 24 and upto a maximum of 36 monthly installments.

**22.2** The facility to pay arrears in installments shall generally be granted to companies which show a reasonable cause for payment of arrears in installments such as the company being under temporary financial distress. Approval to pay in installments and the number of installments should be fixed such that an appropriate balance between recovery of arrears and survival of business is maintained taking into consideration the overall financial situation of the company, its assets, liabilities, income and expenses. Frequent defaulters may not be allowed payment of arrears in instalments. The decision shall be taken on a case to case basis taking into consideration the facts of the case, interest of the revenue, track record of the company, its financial situation, etc.

**22.3** The application for allowing payment of arrears shall be made to the jurisdictional Commissioner giving full justification for the same. The approval of the application should be in writing with due acknowledgment taken on record. The permission should clearly identify the number of installments and the month from which the payments of installments should begin and should also clearly stipulate that in case of default in payment of installments, the permission shall be withdrawn and action shall be taken for recovery of arrears.

**22.4** For this purpose, Commissioner shall also exercise the power to cancel the permission to pay arrears in installments. Cancellation should be resorted to in cases of default in the payment of installments or when the company is becoming financial unviable and there is

likelihood of winding up of business. After cancelling the permission to pay in installments, action should be taken forthwith for recovery of arrears.

#### **Part IV: Miscellaneous**

**23: Service of decisions, orders, summons, etc:** The statutory provisions for Service of decisions, orders, summons, etc. have been provided under Section 37C of the CEA, 1944. The Section provides that the service of interalia of any order or notice, which would include a SCN or an adjudication order needs to be carried out in prescribed manner for the service to be considered complete. The Section provides for various methods of service such as by tendering or sending it by registered post with acknowledgment due or as a fallback, by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person or as a further fallback, by affixing on the notice board of the officer. For further details, the Section may be referred.

**24. De novo or Adjudication remanded by appellate authority:** In cases of de novo adjudication in pursuance of the order of Appellate Authority, such cases should be decided by the adjudicating authority of the same rank who had passed the order which was in appeal before the Appellate authority, notwithstanding the enhancement of the power of adjudication of the officers. On receipt of the order for de novo adjudication from the Appellate authority, such case should be shown as pending in the list of cases pending adjudication of such adjudicating authority till it is decided by him. Close monitoring of such pending de-novo cases should be done to ensure that these cases are adjudicated well within the time limit, if any, laid down by the Appellate authority.

**25. No SCN on voluntary payment:** In any case of short payment or non-payment of tax/duty in a case not involving extended period of time, a person who has paid the duty payable along with interest, if any, by ascertaining the duty himself, or as ascertained by the Central Excise Officer shall not be served any notice in respect of the duty so paid or for any penalty. The provisions of Section 11A(1)(b) read with Section 11A(2) may be referred to in this regard.

**26. Refund of pre-deposits:-(i)** Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944

**(ii)** Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.

**(iii)** If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable as per the time limits prescribed in the law or in the order, unless such order is stayed by a competent Appellate Authority. It is important to note that in such cases of consequential refund, besides filing of appeal against the order, it is also necessary that a protective demand of the refunded amount be issued under Section 11A by not lower than Assistant/Deputy Commissioner of Central Excise as per new monetary limits for adjudication of cases by the Central Excise officers and transferred to the call-book.

**(iv)** In the event of a remand, refund of the pre-deposit shall be payable along with interest.

## ANNEXURE-I

### List of Circulars/Instructions which stand rescinded

<b>S.No.</b>	<b>Circulars/Instructions</b>
1	32/80-CX.6 dated 26.7.80
2	5/83-CX.6 dated 10.3.1983
3	207/47/85-CX.6, dated 12.8.1986
4	17/87, dated 18.3.1987
5	267/104/87, dated 15.12.1987
6	27/88-CX.6, dated 7.4.1988
7	42/88-CX.6, dated 24.5.1988
8	48/88-CX.6, dated 10.6.1988
9	50/88-CX.6, dated 17.6.1988,
10	67/17/88-CX.2, dated 18.8.1988
11	76/88-CX.6, dated 2.11.1988
12	79/88-CX.6, dated 15.11.1988
13	66/88, dated 20.12.1988
14	2/89, dated 9.1.1989
15	29/89, dated 2.5.1989
16	50/89, dated 29.8.1989
17	53/90-CX.3, dated 6.9.90
18	1/90-AU dated 19.3.90
19	18/90-CX.8, dated 28.3.1990
20	53/90, dated 26.9.1990
21	21/90, dated 6.12.1990
22	289/10/91-CX.9 dated 18.03.1991
23	3/92-CX.6
24	167/39/92-CX.4, dated 13.10.1992
25	5/92, dated 13.10.1992
26	20/92-CX.6, dated 21.12.1992
27	13/93-CX.6 dated 15.10.93
28	9/93-CX.6, dated 8.7.1993
29	19/93-CX.6, dated 29.12.1993
30	20/20/94-CX, dated 10.2.1994
31	67/67/94-CX, dated 19.10.1994
32	32/32/94-CX dated 11.04.1994
33	162/73/95-CX.3, dated 14.12.95
34	163/74/95-CX, dated 14.12.1995
35	171/5/96-CX, dated 2.2.1996)
36	228/62/96-CX, dated 8.7.1996
37	268/102/96-CX, dated 14.11.1996
38	208/42/96-CX dated 02.05.1996
39	354/118/96-TRU, dated 6.1.1997
40	290/6/97-CX. dated 20.1.1997
41	295/11/97-CX., dated 10.2.1997
42	298/14/97-CX, dated 25.2.1997
43	299/15/97, dated 27.2.1997

44	312/28 /97-CX., dated 22.4.1997
45	317/33/97-CX, dated 18.6.1997
46	328/44/97-CX, dated 13.8.1997
47	350/66/97-CX. dated 4.11.1997
48	362/78/97-CX, dated 9.12.1997
49	385/18/98-CX dated 30/3/98
50	373/06/98-CX, dated 20.1.98
51	444/10/99-CX, dated 12.3.1999
52	502/68/99-CX, dated 16.12.1999
53	518/14/2000-CX, dated 3.3.2000
54	523/19/2000-CX. Dated 6.4.2000
55	534/30/2000-CX, dated 30.5.2000
56	540/36/2000-CX., dated 8.8.2000
57	552/48/2000-CX, dated 4.10.2000
58	555/51/2000-CX, dated 19.10.2000
59	588/25/2001-CX,dated 19.9.2001
60	592/29/2001-CX, dated 19.10.2001
61	606/43/2001-CX, dated 4.12.2001
62	674/65/2002-CX dated1.11.2002
62	275/37/2K-CX.8A dated2.1.2002
64	655/46/2002-CX dated26.6.2002
65	712/28/2003-CX., dated 5-5-2003
66	718/34/2003-CX, dated 23.5.2003
67	723/39/2003-CX, dated 10.6.2003
68	744/60/2003-CX, dated 11.9.2003
69	752/68/2003-CX, dated 1.10.2003
70	762/78/2003-CX. dated 11.11.2003
71	765/81/2003-CX, dated 10.12.2003
72	766/82/2003-CX dated15.12.2003
73	732/48/2003-CX dated 5.8.03
74	794/27/2004-CX, dated 23.6.2004
75	806/3/2005-CX, dated 12.1.2005
76	207/09/2006-CX.6, dated 8.9.2006
77	208/27/2003-CX.6, dated 18.12.2006
78	865/3/2008-CX. dated 19.2.2008
79	922/12/2010-CX., dated 18.5.2010
80	957/18/2011-CX.3, dated 25.10.011
81	962/05/2012-CX dated 28/03/2012
82	967/1/2013-CX, dated 1.1.2013
83	201/01/2014-CX.6, dated 26-6-2014
84	994/01/2015-CX, dated 10.2.2015
85	996/3/2015-CX, dated 28.2.2015
86	1000/7/2015-CX, dated 3.3.2015
87	390/CESTAT/69/2014-JC, dated 22.12.2015
88	1035/23/2016-CX, dated 4.7.2016
89	1049/37/2016-CX, dated 29.9.2016

**ANNEXURE-II**

**List of Circulars/Instructions which have not been rescinded**

<b>S.No.</b>	<b>Circulars/Instructions</b>
1	984/08/2014-CX, dated 16.9.2014
2	137/46/2015-S.T., dated 18.8.2015
3	1023/11/2016-CX, dated 8.04.2016