

CONCEPT  
OF  
CALL BOOK  
IN  
INDIRECT TAXES

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# Concept of Call Book in Indirect Taxes

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## Introduction

According to the Manual of Office Procedure (also referred to in short as the OPM) brought out by the Department of Administrative Reforms and Public Grievances (DARPG), a call book is required to be maintained by a Department in which a case, which had reached a stage where no action could, or needed to be taken to expedite its disposal for at least 6 months (e.g. cases held up in the law courts), could be transferred with the approval of a competent authority. Cases transferred to the call book are not included in the monthly statement of pending cases.

2. The Call book cases are those cases, which can not be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance by transferring such cases to call book.

## Cases to be kept in Call Book

3. The Central Board of Excise and Customs (Board), *vide* Circular No. 162/73/95-CX.3, dated 14-12-1995, specified the following categories of cases which can be transferred to call book:-

**A. Cases in which the Department has gone in appeal to the appropriate authority.**

*Explanation: This category refers to cases wherein on identical issue, the Department has filed before higher appellate authority against the order passed by the lower authority, which was against the Government.*

**B. Cases where injunction has been issued by Supreme Court/High Court /CESTAT, etc.**

**C. Cases where audit objections are contested.**

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*Explanation: The Audit objections received by the Department from Central Revenue Audit (CRA) can be put into two categories- one where the CRA objection is admitted by the Department and necessary proceedings are initiated by the Department to recover/realise the revenue. Other category is the one where the Department has not admitted the audit objection and has reasons to contest the correctness of CRA objection.*

*Wherever the audit objection is not accepted by the Department, then in its response, the Department is required to communicate the grounds / arguments to the C & AG Office. However, in such cases, protective SCN are issued so as to avoid the duty demand getting time barred and SCN is transferred to call book.*

*Sometimes the Audit objections, which directly question the Board's Circular /Instruction, are also raised. Such cases are required to be immediately brought to the notice of the Board.*

*On consideration of the Departmental stand, the C&AG office may accept the Department stands on the issue. Then the protective SCN can be adjudicated and order-in-original dropping the demand is issued.*

*In cases, where after discussion and correspondence in the matter, the Department agrees with the views of the C & AG office, then the SCN kept in the call book is taken out and adjudicated.*

### **D. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.**

*From time to time, Board's issue such instruction to keep SCN on certain issues in the call book. Later on finalization of Departmental views /stand on the issue, the instructions are issued to the field formations to take such SCNs out of call book and adjudicate.*

### **Transfer of Case to/ out of Call book**

4. Any SCN can be transferred to call book if any of the ground mentioned above exist. SCN cannot be transferred on ground (s) other than those specifically mentioned in the Board's Circular. The transfer to call book can be done with the approval of the Commissioner in charge.

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5. In one of its Audit Report, the C & AG pointed out that in spite of clear instructions of the Board on transfer of cases, which can be transferred to call book, there are several other types of cases, which are transferred to call book in violation of the instructions of the CBEC. These cases are:-

- (i) Cases ordered for de-novo adjudication by the Courts;
- (ii) Cases pending for want of Chemical Examiner's report;
- (iii) Cases pending with Settlement Commission;
- (iv) Provisional Assessment cases
- (v) Cases transferred to call book without approval of Commissioner in charge.

Transfer to cases to call book on above mentioned grounds is not commensurate with the Board's instruction in the matter.

### **Periodical Review of Call book**

6. The Board had issued instructions to Commissioners to review the cases transferred to call books on a monthly basis. If grounds, on which the case has been transferred to call book, no longer exist, then the case should be taken out of the call book and adjudicated. [**Ref: Board's DO Letter F. No. 101/2/92-CX.3, dated 4th March, 1992 and Board's Circular No. 53/90-CX.3, dated 6-9-1990**].

### **Procedure to be followed on Receipt of Audit Report and Audit Paras.**

7. The Chairman, CBEC *vide* **D.O. letters dated 24<sup>th</sup> May, 2010 and 13<sup>th</sup> October, 2010**, issued comprehensive instruction with regard to action to be taken on receipt of Audit Report and adjudication / appeal proceedings of SCNs arising out of the Audit Paras respectively.

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### **A. Action to be taken by the Chief Commissioner on Receipt of Audit Report from C &AG.**

On receipt of Audit Reports, the following course of action needs to be taken by the Chief Commissioners:-

- (i) Where **audit objections pertains to the Commissionerate** falling within Chief Commissioner's zone and **has been admitted** (either by the Commissionerate or by the Board), it should be ensured that remedial action is taken immediately in respect of all formations in the jurisdiction, having similar excisable products/ nature of transactions indicated in the Audit objections.
- (ii) Where the **audit objections has been admitted** by the Commissionerate or by the Board, immediate action should be taken to adjudicate the cases and effect recovery of revenue adjudged payable to the Government in accordance with law.
- (iii) Where the Audit Para pertains to a Commissionerate, **not falling within the Zone**, it may be verified whether such lapses have occurred in the zone. If similar lapses are noticed in the jurisdiction of zone, immediate remedial action should be taken after due examination of the issue involved. This should be done immediately by circulating relevant copies to the field formations for identifying similar problem areas/ units in the zone so that corrective steps are taken to safeguard revenue.
- (iv) Where the audit objection has been admitted, the present stage of adjudication/ appeal/court cases, (if any), in the case should be intimated, indicating also the efforts made by the Commissioners for getting the case finalized and for effecting recovery of dues. The Board has time and again stressed the necessity and imperativeness of timely conclusion of

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adjudication proceedings so that the Government revenue, which is due, is realized expeditiously. Audit has stressed this while pointing out cases of delay in adjudication and it has been asked for fixation of responsibility on the officers responsible for undue delay.

- (v) Where the Draft Audit Para has not been included in the C &AG report, the matter should be pursued by the Commissioners with the Jurisdictional AG.
- (vi) Details of recent Court/CESTAT decision/ Board's instructions, notifications, circulars/ classification/ Trade Notices etc. having a direct bearing on the stand taken by the Commissioner/Board in respect of pending Audit Paras should be sent, if these were not sent/available at the time of sending comments at the DAP Stage.
- (vii) In case, the jurisdiction of any of the units involved in the Audit Paras has shifted to some other Commissionerates, the Commissionerates presently having jurisdiction over such units should take immediate necessary action to send the Action Taken Notes to the Ministry.

### **B. Procedure to be followed on receipt of Audit Paras of the C&AG**

- (a) Upon the Commissionerate admitting an audit objection, the **SCN should be issued** immediately and **in no case later than 30 days**.
- (b) In cases where the Commissionerate contests the audit objection, protective SCN are still required to be issued pending decision by the office of the CAG, and they should be kept in call book till settlement of objection by the CAG.
- (c) In cases where a SCN is issued pursuant to admitting an audit objection, the same should be adjudicated at the earliest.

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- (d) During the course of adjudication proceeding and examination of facts and law, should the adjudicating authority come to the conclusion that the SCN (issued pursuant to an admitted objection) is not sustainable, instead of deciding the case immediately in favour of the assessee, the Commissioner should refer the matter to the Commissioner (PAC) seeking that the audit para be contested. The Commissioner (PAC) shall submit the revised recommendation of the Commissionerate to the concerned Member, for a decision in the matter. If the proposal of the Commissionerate is approved, revised comments/ATN should be sent to the C&AG. The Commissionerate should in the meantime, transfer the case into “call book” pending a decision by the CAG.
- (e) In cases, where an adjudicating authority has confirmed a SCN, issued pursuant to an admitted audit objection, but the appellate authority sets aside the order (excepting cases where orders for de-novo proceedings are issued), before the Commissioner or the “Constituted Committee” decide to accept such an order, a self-contained and well-reasoned proposal should be sent to the Commissioner (PAC) recommending that a revised ATN contesting the Audit Objection be sent to the CAG. Further, as these matters are under statutory time limits, simultaneous preparation for filing of appeal should be initiated.
- (f) Suitable co-ordination mechanisms between various branches, such as Audit, Adjudications, Legal & Review should be set up so that the above said procedure is followed without exception.

### **Other Instructions**

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8. *Vide* Board's Instruction issued from F. No. 232/160/2008-CX.7, dated 11.08.2011, the Chief Commissioner were directed to ensure that the protective SCNs issued in relation to contested audit objections are not inadvertently adjudicated.

9. It was stated that several instances have been noticed where objections of the Audit converted to SOF and higher levels, are contested by jurisdictional Commissioners and yet the Show cause cum demand notices issued in relation to such contested objections enter the adjudication stream and get adjudicated and dropped, as well as accepted in review, while they should have remained in the call book. Such inadvertence, which is contrary to Board's Instruction, placed the Ministry in a severely awkward position.

10. The Chief Commissioner were requested to ensure effective control mechanism in their respective zones so that the above types of situation does not occur.

### List of Important Board's Circular /Instruction on Call Book

Sr. No.	Board's Circular	Remarks
1.	Circular No. 162/73/95-CX, dated 14/12/1995	Specified categories of cases to be included in Call book
2.	Circular No. 385/18/98-CX, dated 30/3/1998	Direction to review of all the cases of provisional assessment transferred to call book and directions to comply with Board's Directions
3.	Circular No. 909/29/09-CX, dated	Direction to field formation to transfer SCN issued on the issue of inclusion of After Sales Service and Pre-delivery Charges in the



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	11.12.2009	assessable value
4.	Circular No. 936/26/2010-CX, dated 27/10/2010	Direction to field formation to decide the cases pending in the call book on the issue of inclusion of after sale service and pre-delivery inspection charges in the Assessable value in the light of CESTAT order 13.8.2010
5.	Chairman,CBEC,D.O. letter F. No. 233/2/2010-CX. 7, dated 24/5/2010	Action to be taken by Chief Commissioners on Receipt of Audit Report
6.	Chairman,CBEC D.O. letter F. No. 233/2/2010-CX. 7, dated 24/5/2010	Procedure to be followed on receipt of Audit Objections.
7.	Board's Instruction F. No. 232/160/2008-CX 7, dated 11.8.2011	Direction issued to field formation to ensure that protective SCN issued in relation to contested audit objections are not inadvertently adjudicated.

### Note:

To see full text of Board's Circular mentioned above, website of Central Board of Excise and Customs: [www.cbec.gov.in](http://www.cbec.gov.in) may kindly be referred.

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