

Write Up on

SHOW CAUSE NOTICE
AND ADJUDICATION POWERS

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Introduction

The Central Excise officers discharge functions which are quasi-judicial in nature. These quasi-judicial functions require that the principles of natural justice be followed. The first principle of natural justice is that there should be no bias. The rule against bias is expressed in the maxim that "no one must be a judge in his own cause". The second broad rule is that "no party is condemned unheard". This right to be heard needs to be substantive and therefore, the party must know precisely the case he has to meet. He also must have a reasonable opportunity to present his case both in writing and orally. The third rule entitles the party to know the reasons for eventual decision taken. The requirement of Show Cause Notice flows directly from the second rule. This requirement of Show Cause Notice particularly with regard to recovery of duties has been enshrined in sub section (1) of section 11A of the Central Excise Act. This section empowers a Central Excise Officer to serve a notice, within the period of limitations prescribed, requiring a person chargeable with duty to show cause as to why he should not pay the duty specified in the Show Cause Notice.

2. The Show Cause Notice is more than a notice. It gives an opportunity to the Department of leading evidence in support of its allegations and equally it gives an opportunity to the person/firm/company charged with, to make representation and adduce evidence against the allegations or charges made out against them. Therefore,

- (i) The Show Cause Notice should be issued only after proper inquiry/investigation i.e. when the facts used are ascertained and

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- allegations are justified.
- (ii) The Show Cause Notice should be in writing (not oral). The date of issue of Show Cause Notice should be clearly written.
 - (iii) The Show Cause Notice should not be an exercise in deliberate ambiguity. It should be specific and unambiguous.
 - (iv) It should be clear on facts and legal provisions. Violation of the provisions of law should be clearly brought out in the Show Cause Notice.
 - (v) The charges should be specific. They should not be vague/or contradictory.
 - (vi) The provisions for imposing penalty and reasons and conclusion for the same be clearly mentioned.
 - (vii) Copies of the relied upon documents should be listed in seriatim as per the references made in the Show Cause Notice and given as Annexures to the Notice.
 - (viii) The duty amount needs to be quantified and explained in a chart as to how the same was arrived at. The duty demanded should be manifestly specified in the notice itself.
 - (ix) When mis-statement or suppression of facts is alleged in the Show Cause Notice, these expressions must be preceded by the word 'willful'. Likewise, when the allegation is that of contravention of the provisions of the Act or the rules, the same must be followed by the expression 'with intent to evade payment of duty'.
 - (x) If the time limit to reply is provided in Law, it should be adhered to, otherwise, adequate time should be given for filing a written reply.
 - (xi) The Show Cause Notice should clearly mention whether the noticee(s)

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wishes to be heard in person, apart from filing a written representation, in the matter.

- (xii) The authority to which the Show Cause Notice is answerable should be specifically stated along with the postal address.

Narration of Facts

3. The Show Cause Notice should be issued only after investigation of the matter in all its aspects. Once the necessary inquiries/investigations and critical examination of facts and evidence are completed, a draft Show Cause Notice (or a revised/supplementary Show Cause Notice, as the case may be) should be prepared incorporating all relevant facts and circumstances of the case in a logical, cogent and systematic manner. Each of the allegations proposed to be leveled against the assessee should be carefully framed/ formulated. The provisions of the Central Excise Act and the Rules that are alleged to have been contravened by the assessee must be clearly mentioned after critical examination of available facts and evidence.

4. Appropriate narration of relevant facts and circumstances linked with or leading to an allegation must precede or follow each of the formulated allegations so as to clearly bring out the specific facts and acts of omission or commission which are alleged to have been committed by the assessee and which form the basis of an allegation. It is absolutely essential that each specific allegation is duly and adequately supported with substantive evidence so as to impart factual and legal sustainability to the allegation. This must be done by clearly spelling out in the Show Cause Notice the specific evidence that is proposed to be relied upon, documentary or otherwise, in relation to each distinct allegation. Extracts from

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documents /statements recorded under Section 14 may be reproduced appropriately wherever relevant.

5. In matters involving complex question of law, especially where an assessee is likely to raise a dispute about correct interpretation of law, relevant citations from judicial pronouncements and settled case laws may be given in support of the case made out in the Show Cause Notice.

Clarity of Thought and Expression

6. The Show Cause Notice should be brief, comprehensive and to the point. There should be no repetition of facts. It is often seen that the statements of concerned persons are simply reproduced without judging their relevance to the issue at hand. Even otherwise, there is no need to reproduce the entire statement. The gist will suffice. Mere reproduction of statements without qualification makes the Show Cause Notice unduly lengthy, further making it difficult for the adjudicating authority to comprehend the issue. In fact, it is seen to be one of the causes of delay in passing an adjudication order. Lengthy Show Cause Notices should, therefore, be avoided. The facts and allegations should be in brief and clearly brought out so that the adjudicating officer can make out/ understand the underlined facts and allegations on a first reading of the Show Cause Notice. Clarity of thought and expression, brevity and lucidity in language used and coherence in presenting facts are the hallmark of a good Show Cause Notice. The Show Cause notice, in fact, should be luminous and not voluminous.

Summary after Narration of Facts

7. As mentioned above, many a time, the Show Cause Notices issued are very lengthy, running into hundreds of pages. In the absence of a summary after

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discussion of facts, the adjudicating authorities find it difficult to comprehend the facts and charges leveled in one go. Therefore, it is an absolute must that after discussion of facts and citation of material evidences in the Show Cause Notice, a summary of facts/gist of the case is described in 2-3 paragraphs.

Period of Demand, Quantification of Duty and Citation of Penal Provisions

8. The Show Cause Notice must clearly specify the period to which the Notice relates and the excisable goods in respect of which alleged evasion of duty has occurred and must contain sufficient details (preferably in the form of a chart) to make clear to the noticee as to how the duty liability has been quantified. The penal provisions proposed to be invoked against the assessee and the reasons i.e. existence of facts and circumstances resulting in contravention based on which such penal provisions are attracted, must also be clearly spelt out. In particular, liability to penalty under Section 11AC, Rule 25 and Rule 26 of the Central Excise Rules, 2002 and liability to interest under Section 11AA and Section 11AB must be clearly indicated. In recent times, the Central Excise Rules have undergone repeated changes. It is therefore important that in cases where the Show Cause Notice is issued for a long period, the relevant applicable rules, old and new, are mentioned in the Show Cause Notice.

Supply of Relied Upon Documents

9. The Show Cause Notice must also incorporate a list of all the documents proposed to be relied upon in support of the case and this list must be carefully prepared keeping in view the need to ensure that no relevant evidence is missed out, (but at the same time no irrelevant documents need be listed) since it is the responsibility of the department to supply to each of the noticees, copies of each

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and every document that is proposed to be relied upon in support of the case against the assessee, along with the Show Cause Notice. A dated acknowledgement of receipt of legible copy of relied upon document must be obtained from the noticee. This is an area which requires special attention because non-supply/part supply of relied upon documents is seen to be one of the causes of delay in passing the adjudication order.

10. The Hon'ble CEGAT, Northern Bench, New Delhi in their Order dated 09.05.2003 in the case of Secure Industries Ltd., 2003 (155) ELT 529 (T-Delhi) has followed the decision of the Hon'ble Rajasthan High Court in the case of PGO Processors P. Ltd. 2000 (122) ELT 26 (Raj) following the decision of the Hon'ble Supreme Court in the case of Sahi Ram vs. Avtar Singh 1999 (4) SCC 511 wherein the Apex Court has directed that the Show Cause Notice should be accompanied by the copies of all the documents relied upon. The Apex Court in their decision in the case of Sanghi Textiles Processors Vs. U.O.I. 1993 (65) ELT 357 (SC) has held that the noticee has a right to be given inspection of the seized record and be supplied copies of essential evidence relied upon by the Department at Government cost. In view of this, the documents relied upon in the Show Cause Notice have to be provided to the noticee (s) along with the Show Cause Notice.

Return of Non Relied Upon Documents

11. Rule 24A of the Central Excise Rules, 2002 [*Inserted with effect from 7/7/2009*] provides for return of records such as the book of Account or other documents, seized by the Central Excise Officers or produced by the assessee or any other reason, which has not been relied upon in the show Cause notice. These non-relied upon documents are required to be returned within a period of 30 days of issue of said notice or within thirty days of expiry of period of for issue of SCN.

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In case, these records are required to be retained on account of any reason, the Commissioner may order such retention for reasons to be recorded in writing and assessee or such other person should be intimated about such retention.

These documents are often the source of litigation and delay in adjudication proceedings. The documents which have not been relied upon in the Show Cause Notice and which are of no value to the Department should, therefore, be returned in original to the noticee under a dated acknowledgement. This will deprive the noticee of playing delaying tactics. If on account of any reason, these non-RUDs can not be returned to the noticee, then attested copy should be given to him.

Invoking the Extended Period of Limitation

12. It has been observed that Show Cause Notices are issued for the extended period even in those cases where there is no basis for doing so. It is agreed that there are instructions that to safeguard revenue a Show Cause Notice should be issued, especially when the audit objection has revenue implications. This, however, does not mean that a Show Cause Notice has to be issued/ is to be issued in the cases where the duty cannot be demanded for a period exceeding one year. Therefore when an audit objection is received, it should necessarily be examined whether there is adequate basis for invoking the extended period i.e. period of more than one year. To invoke the extended period, it is an absolute must that the investigation brings out positive act of suppression "with intent to evade payment of duty".

13. In this regard, Board's Circular No. 268/102/96-CX dated 14.11.96 may be referred to. In this Circular, a reference has been made to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs.H.M.M.

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Ltd –1995 (76) ELT 497 (SC) wherein the Hon’ble Court has observed that to invoke the extended period, the Show Cause Notice must put the assessee to notice which of the various commissions or omissions stated in the proviso to Section 11A(1) is committed. The judgment has also stressed on the need for investigations to establish willful withholding of information with an intention to evade Central Excise duty. Similarly in the case of Collector of Central Excise vs.Chemphar Drugs and Liniments – 1989 (40) E.L.T. 276 (S.C.), the Hon’ble Supreme Court has observed that to invoke the extended period of time, something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when manufacturer knew otherwise, is required to be established. Further, where the Department had full knowledge about the facts, and the manufacturer’s action or inaction is based on their belief that they were required or not required to carry out such action or inaction, the extended period cannot be invoked. Similar view has been held by the Hon’ble Supreme Court in the case of Easland Combines Vs Collector of Central Excise, Coimbatore – 2003 (152) ELT 39 (SC) and Padmini Products Vs Collector of Central Excise – 1989 (43) E.L.T. 195 (S.C.). Thus, the extended period of limitation can be invoked when there is (i) fraud, (ii) collusion, (iii) wilful misstatement or suppression of facts, or (iv) contravention of the Central Excise Act or the Rules made thereunder, with an intent to evade payment of duty. All these four factors contemplate a state of mind i.e. a condition where a person has knowingly and deliberately done something or omitted to do something which has resulted in evasion of duty. The Show Cause Notice would need to bring out the above factor(s) in clear terms for invoking the extended period of limitation for demand of duty under the proviso to sub-section (1) of section 11A of the Central Excise Act, 1944.

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14. The Show Cause Notice should, therefore, clearly bring out as to how an assessee has committed fraud or entered into collusion or made willful misstatement of facts with a view to evade payment of duty. The matter should be examined as to what facts have been suppressed especially when the officers are visiting the units, checking the records, drawing samples for export under AR4/AR4A/ARE1 procedure and for other miscellaneous work. Similarly, mere mention of the word 'suppression' is not enough. The same has to be proved and the burden of proof is on the Department. The practice of issuing a Show Cause Notice merely on the basis of statements of concerned persons, even of confession, may not be of much help because the same may be/can be denied. There is, therefore, no alternative to good investigation and collection of evidence for charges of suppression /misstatement etc. It also needs to be established that the suppression/misstatement was done consciously so as to evade duty. The *mensrea* factor has to be clearly brought out on record to invoke the extended period of limitation.

Citation of Board's Order/ Trade Notices/ Instructions/ Audit Objections

15. It is noticed that the Ranges/ Divisions while issuing the Show Cause Notice mention therein that the classification/valuation of the product under a particular heading was questioned by CERA party. It may be noted that while issuing the Show Cause Notice on the basis of an objection raised by Internal Audit/ CERA, the audit objection should not be mentioned therein and similarly no reference should be made to the audit objection in the Order-in-Original.

16. A point is often raised whether the Board's /Government's order, Instructions, Tariff Advices, Trade Notices etc. should be quoted in the Show

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Cause Notice. It is clarified that Board's instructions, clarification and Tariff Advices etc. can always be quoted and discussed in the Show Cause Notice, as the instructions, circulars often clarify the legal position or the basis of classification of a particular product. However, the duty demands must not be confirmed by quoting the Board's order. In the adjudication order, the legal position has to be clearly brought out and the demand confirmed on the basis of legal provisions.

16.1 In case of, *Ranadey Micronutrients v. Collector – 1996 (87) E.L.T. 19 (SC)*, the Hon'ble Supreme Court has held that the whole objective of Board's Circular is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty and therefore, it is not open for the Revenue to advance arguments against Board's Circular. Board's Circulars are binding on Revenue. This legal position has been consistently adhered by the Hon'ble Supreme Court in catena of decisions.

Other Miscellaneous Points

(i) Demand of Duty upto One Year

17. For the purposes of demand of central excise duty within the normal period of limitations upto 1 year, *mensrea* is not required to be established and a Show Cause Notice can be issued demanding duty if there is a short levy. However, even for a Show Cause issued within normal period of limitation, the case for imposition of penalty becomes stronger if investigations have brought out an element of fraud, collusion, willful statement, suppression of facts etc.

(ii) Recording of Statement

18. In case of a demand or offence case, the statement of the party/parties to be show caused should be recorded to have their view on the various issues involved

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and specifically on the facts of the case. Contravention of the provisions and the statement should be a part of the Show Cause Notice in an offence case where penalty is to be imposed or penalty and confiscation is to be imposed. Relevant part of the section or rule (not section/rule as a whole) should invariably be mentioned.

(iii) Issue of Show Cause Notice in Piecemeal

19. It is obvious that once a Show Cause Notice for the extended period (i.e., the period more than one year) is issued due to misstatement, suppression etc., the five year period for Show Cause Notice is to be counted from the date prior to the issue of Show Cause Notice. No plea of suppression of facts, mis-statement etc. as such can be alleged for issuing another Show Cause Notice for extended period on the same issue to the same party. This is so because the mistake or suppression was known and the necessary action in the matter, such as, the issue of Show Cause Notice has already been taken. In such a situation, after issue of detailed Show Cause Notice protective demands on regular basis need to be issued to guard the interest of revenue.

20. Further, the practice of sending Show Cause Notice to the issuing authority in piece meal once for two year period and then for another one and half years or so, for the same party on the plea that data/information was not available should be stopped forthwith. The executive officer should know how to get data/information. There are various provisions available under the Central Excise Act, 1944 and rules made thereunder to obtain the same.

(iv) Issue of Protective Demands

21. In spite of clear instructions on the subject, protective demand Show Cause Notices are not issued within one year. It should be noted that except in those

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cases where the issue of Show Cause Notice itself is stayed by the court, in all other cases, the Show Cause Notice should invariably be issued within one year. A mere stay does not mean that the Show Cause Notice is not to be issued, except when the issue of Show Cause Notice itself is stayed. In case the department has filed an appeal against any order before the Commissioner (Appeals) or Tribunal, protective demands should be issued. It may be noted that in case the decision from the appellate authority is ultimately found to be in favour of the department, in the absence of protective demands, the amount due will become time barred.

(v) **No Demand under a Letter**

22. No demand should be issued under a simple letter. A regular Show Cause Notice, duly signed by the proper officer, should be issued for demand of duty. The Hon'ble Supreme Court in their Order dated 22.11.2002 in the case of Metal Forgings Vs Union of India reported in 2002 (146) E.L.T. 241(SC) (2 Judge bench) has held that the Show Cause Notice is a mandatory requirement for raising demand and communications, order, suggestions or advices from department not to be deemed to be a Show Cause Notice and a specific Show Cause Notice indicating the amount demanded and calling upon the assessee to show cause is necessary.

23. The Hon'ble Supreme Court (Three Judge Bench) in their Order dated 04.04.2002 in the case of Commissioner of Customs, Mumbai Vs. Virgo Steels reported in 2002 (141) E.L.T. 598 (SC) has held that the Show Cause Notice has to be issued to the party before raising demand and that mandatory requirement of issuing a Show Cause Notice can be waived by the Noticee under Section 28 of the Customs Act. As the right of receiving the Show Cause Notice under Sec 28 is being personal to the person concerned, the same can be waived by that person.

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But in the instant case, the importer wrote a letter dispensing the right to Show Cause Notice and personal hearing, and raised a plea during adjudication proceedings after one and a half years that the letter was written under coercion and duress and hence not reliable. To avoid such problems, it is always advisable to issue a Show Cause Notice.

(vi) Show Cause Notice not to Prejudice the Issue

24. In the Show Cause Notices, it is often concluded like "*from the facts and circumstances of the case, it is abundantly clear that.....*" In one case, the Hon'ble High Court has observed that the Show Cause Notice has left nothing for the enquiry officer to enquire into. The opportunity of hearing and explanation to the Show Cause Notice has become an idle formality and farce. The Show Cause Notice was therefore set aside. The moral of the story is that the allegations and charges have to be made in a tentative manner (e.g. it appears that), so as not to give an opportunity to the noticee to state that the department has already made up its mind against him.

(vii) Provisionally Released Goods

25. The status of seized goods at the time of issuing Show Cause Notice should be checked. Duty should always be demanded in the Show Cause Notice on seized goods irrespective of the proposed action for confiscation thereof. If these goods have been provisionally released, the Show Cause Notice should ask the party to produce the goods provisionally released before the adjudicating authority and in case of failure by the noticee to do so, for enforcing the conditions of the bond executed.

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(viii) Second Show Cause Notice

26. If a Show Cause Notice has been struck down on technical grounds and the merits of the case have not been examined, a second Show Cause Notice may be issued in the case. The second Show Cause Notice can only be issued with the periods of limitation, normal or extended, provided in the Central Excise Act.

Finalisation of Provisional Assessments

27. In case of provisional assessments, the question of issuance of Show Cause Notices under section 11A would not arise. In such cases the provisional assessments should be finalised quickly. Finalisation of a provisional assessment should have two parts, namely,-

- (i) Decision on the issue.
- (ii) Quantifying the duty and confirming the demand so quantified.

28. The proper officer finalising the provisional assessment cases should issue Show Cause Notices for doing so and in the Show Cause Notices, it should be indicated that in view of the reasons given therein, the amount indicated in the Show Cause Notice is demanded. In a composite order the proper officer should (i) decide the issue and (ii) also confirm the demand if so confirmable under the Central Excise Rules. The rules give power to the proper officer to finalise the issue and confirm consequential demand. However, great care should be taken while finalising the provisional assessment cases. If the provisional assessments are on valuation issue, consequential demands cannot be confirmed on the classification issue.

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Issuance of SCN Answerable to multiple Adjudicating authorities and Appointment of Common Adjudicator

29. Investigation agencies like DRI and DGCEI, which has jurisdiction across several Commissionerates, often issue Show Cause notice, which are answerable to multiple adjudicating authorities. This commonly happens in case where single importer has imported goods through several ports/airports/ICDs/CFSs, which are falling under jurisdiction of different adjudicating authorities. In Central Excise, it happens in cases where dealer has issued false invoices and on the basis of these invoices, credit has been availed of by several manufacturers falling in different jurisdiction. Before adjudication of such SCN, which are answerable to multiple adjudicating authorities falling into different Chief Commissioner's Zone, Common adjudicator has to be appointed. This task of appointment of common adjudication is done by the Board by assigning powers of several adjudicating authorities mentioned in the SCN to single adjudicating authority by issuing non-tariff notification or office order. Therefore, such SCNs should only be taken for adjudication after appointment of common adjudicator by the Board.

Monetary limits for Issuance and Adjudication of SCNs.

30. The Show Cause Notice has been prescribed to be approved in writing and signed by the officer competent to adjudicate the Show Cause Notice. It has been further clarified by the Board vide letter of F.No. 208/27/2003-CX6 dated 31.10.2003, that in the cases booked by DGCEI, Show Cause Notice would be issued by the officers of DGCEI who are of the same rank as the officer competent to adjudicate the said Show Cause notice. The Board by issuing Circulars/instruction has prescribed monetary limits, normally in terms of amount

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of duty involved, for different adjudicating authorities.

Under Central Excise Act, 1944

31. Vide Circular No.752/68/2003-CX 1st October, 2003, as amended vide Circular No.865/3/2008-CX, dated 19/2/2008; Circular No. 922/12/2010-CX, dated 18/5/2010 and last amended vide Circular No. 957/18/2011-CX-3, dated 25/10/2011, the Government revised the power of Adjudication of Central Excise Officers and prescribed monetary limits under Section 33 and Section 11A of the Central Excise Act, 1944. The monetary limits prescribed are as under:-

- (i) uniform monetary limits for adjudication of Central Excise Cases under Section 11A and/or Section 33 of the Central Excise Act, 1944, whether or not the cases involve fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made there-under with intent to evade payment of duty and whether or not extended period has been involved.
- (ii) Prescribe monetary limits for adjudication of show cause notices relating to classification and valuation of excisable goods to different categories of officers. Prior to this circular, Deputy/Assistant Commissioners were competent to adjudicate show-cause notices relating to determination of classification and valuation without any monetary limit of the amount of duty involved.
- (iii) Prescribe monetary limits for adjudication of show cause notices relating to CENVAT Credit cases for different categories of officers. Prior to this Circular Deputy/Assistant Commissioners are competent to adjudicate show cause notices relating to CENVAT credit without any monetary limit of the amount of credit involved.

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32. The Board has prescribed that the powers of adjudication and determination of duty shall be exercised, based on monetary limit (duty involved in a case) as under:-

A. All cases involving fraud, collusion, any wilful mis-statement, suppression of facts or contravention of Central Excise Act/ Rules with an intent to evade duty and/ or where extended period has been invoked in show cause notices (including classification and valuation of excisable goods and CENVAT credit cases) will be adjudicated as follows:-

Central Excise Officers	Powers of Adjudication (Amount of duty involved)
Superintendents	UptoRs. 1 Lakh (excluding cases involving determination of rate of duty or valuation and cases involving extended period of limitation)
Deputy/Assistant Commissioners	uptoRs. 5 Lakh (except the cases where Superintendents are empowered to adjudicate).
Joint Commissioners/ Additional Commissioners	Above Rs.5 lakhs and up to Rs.50 lakhs
Commissioners	Without limit

B. Cases which do not fall under the Category (A) above including all cases relating to determination of classification and valuation of excisable goods and CENVAT credit will be adjudicated as follows:

Central Excise Officers	Powers of Adjudication (Amount of duty involved)
Superintendents	UptoRs. 1 Lakh (excluding cases involving determination of rate of duty or valuation and cases involving extended period of limitation)
Deputy/Assistant	UptoRs. 5 Lakh (except the cases where

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Commissioners	Superintendents are empowered to adjudicate).
Joint Commissioners / Additional Commissioner	Above Rs.5 lakhs and up to Rs.50 lakhs
Commissioners	Without limit

C. Cases related to issues mentioned under first proviso to Section 35B (1) of Central Excise Act, 1944 would be **adjudicated by the Additional/ Joint Commissioners without any monetary limit.**

33. Further, it was clarified that in view of the above modifications, all cases including cases relating to determination of classification and valuation and cases pertaining to CENVAT credit whether or not involving fraud, collusion, wilful misstatement, suppression of fact or contravention of Central Excise Act/ Rules with intent to evade duty and/ or where extended period has been invoked will be treated uniformly and the prescribed monetary limit is applicable to all cases for the purpose of adjudication.

34. Regarding the power of adjudication of cases given to Superintendents, it has been prescribed that :

- They would be eligible to decide cases involving duty and/or CENVAT credit upto Rs. 1 Lakh in individual SCNs.
- They would not be eligible to decide cases which involve excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud etc..
- They would be eligible to decide cases involving wrong availment of CENVAT credit upto a monetary limit of upto Rs. 1 Lakh.
- They would be eligible to decide Show Cause Notice proposing only imposition of penalty under Rule 26 and 27 of the Central Excise Rules, 2002 or Rule 15 and 15A of the CENVAT Credit Rules, 2004.”

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35. In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, attention is invited to CBEC's Circular No.362/78/97-CX dated 9.12.97, whereby it has been clarified that all the show cause notices involving the same issue will be adjudicated by the adjudicating authority competent to decide the cases involving the highest amount of duty.

36. The value of goods/conveyance liable to confiscation will not alter the above powers of adjudication, which shall solely depend upon the amount of duty/CENVAT credit involved in the offending goods.

37. Regarding issue of show cause notices, it has been clarified that in respect of all cases, whether or not fraud, collusion, willful mis-statement, suppression of fact or contravention of Central Excise Act/ Rules with intent to evade duty and/ or where extended period has been invoked i.e. cases falling under any category (A), (B) or (C) above, the show cause notice shall be approved in writing and signed by the officer competent to adjudicate the said show cause notice.

Under Customs Act, 1962

38. The Board, Vide Circular No. 23/2009-Customs, dated 1.9.2009 as amended vide Circular No. 24/2011-Customs, dated 31/5/2011 reviewed the monetary limits prescribed for adjudication of cases and decided as under:-

A. cases where SCNs are issued under section 28 of the Customs Act, 1962, these will be adjudicated as per following norms:

Level of adjudication officer	Nature of cases	Amount of duty involved

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Commissioner	All cases	Without limit
ADC/JC	All Cases	Upto Rs.50 lakhs
AC/DC	All cases	Upto Rs. 5 lakhs

B. The proper officer for the issuance of Show Cause Notice and adjudication of cases under the **provisions of Rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995** shall, henceforth, be as under:

(i) In case of simple demand of erroneously paid **drawback**, the present practice of issuing Show Cause Notice and adjudication of case without any limit by Assistant / Deputy Commissioner of Customs shall continue.

(ii) In cases involving collusion, wilful misstatement or suppression of facts etc., the adjudication powers will be as under:

Level of Adjudication Officer	Amount of Drawback
Additional / Joint Commissioner of Customs	Without any limit
Deputy / Assistant Commissioner of Customs	Upto Rs.5 lakhs

C. **In case of Export Promotion Schemes i.e. DEPB / Advance Authorization / DFIA / Reward Schemes etc.** the adjudication powers shall be as under:-

Level of Adjudication officer	Duty Incentive amount
Commissioner of Customs.	Without any limit.
Additional / Joint Commissioner of Customs.	Upto Rs.50 lakhs.
Deputy / Assistant Commissioner of Customs.	Upto Rs.5 lakhs.

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D. In the case of **Baggage**, the Additional Commissioner or Joint Commissioner shall continue to adjudicate the cases without limit, since such cases are covered by the offences under Chapter XIV and it is necessary to expeditiously dispose of the cases in respect of passengers at the airport.

E. In other cases, such as short landing, drawback etc., the adjudication powers shall be continue to the same as provided under the Customs Act, 1962 or the Rules/Regulations made thereunder.

39. As per definition under section 2 (8) of the Customs Act, 1962, Commissioner of Customs includes an Additional Commissioner of Customs except for the purpose of appeal and revision. Therefore, respective Commissioners may review the status of cases pending for adjudication, which fall within the powers of Commissioners only, and depending on the workload may consider allocating some of these cases to Additional Commissioners working under their charge to ensure speedier disposal. An appeal against the Order-In-Original passed by an Additional Commissioner shall lie before Commissioner of Customs (Appeal) and not before the CESTAT.

40. In so far as the issuance of Show Cause Notice for demand of duty under Section 28 is concerned, the same can be issued by the respective adjudicating officers depending upon the powers of adjudication.

Under Finance Act, 1994 For Service Tax): Adjudication of Service Tax cases

41. The Board *vide* Circular No. 80/1/2005–ST dated 10.05.2005 and Circular No. 97/8/2007-ST, dated 23/8/2007 as amended *vide* Circular No. 99/2/2008-ST, dated

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11/3/2008 and **Circular No. 130/12/2010 – ST, dated 20.09.2010** has prescribed adjudication powers of officers.

42. Section 73 of the Act deals with adjudication of cases of short-levy or non-levy of service tax or service tax short paid or not paid or erroneously refunded. For quick settlement of disputes, this section prescribes that (i) in other cases involving fraud, collusions, wilful misstatement and suppression of facts etc., the dispute could be settled by making payment of the service tax amount specified in the notice along with interest and penalty equal to 25% of service tax amount, within thirty days of issue of show cause notice; (ii) and in any other case, the person chargeable to service tax, or to whom service tax has been erroneously refunded, may make payment suomoto along with interest, as applicable, and, consequently no Show Cause Notice will be served in respect of the amount so paid.

43. The revised monetary limits for the purpose of adjudication under section 73 are as specified as below,-

Table

Sr. No.	Central Excise Officer	Amount of Service Tax or CENVAT credit specified in a notice for the purpose of adjudication.
(1)	(2)	(3)
(1)	Superintendent of Central Excise	Not exceeding Rs. one lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)
(2)	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. five lakhs (except cases where Superintendents are empowered to adjudicate.)

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(3)	Joint Commissioner of Central Excise	Above Rs. five lakhs but not exceeding Rs. fifty lakhs
(4)	Additional Commissioner of Central Excise	Above Rs. twenty lakhs but not exceeding Rs. fifty lakhs
(5)	Commissioner of Central Excise	Without limit.

44. Section 83A confers powers on the Central Excise Officer for adjudging a penalty under the provisions of the said Act or the rules made there under. Board has specified monetary limits for adjudication of cases under section 83A of the said Act *vide* notification No. 30/2005- Service Tax dated 10th August, 2005 as amended *vide* notification No. 16/2008-ST, dated 11/3/2008, and 48/2010-ST, dated 8/9/2010. The revised monetary limits are as follows:

Sr. No.	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A
(1)	(2)	(3)
(1)	Superintendent of Central Excise	Not exceeding Rs. one lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)
(2)	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. five lakhs (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner of Central Excise	Above Rs. five lakhs but not exceeding Rs. fifty lakhs
(4)	Additional Commissioner of Central Excise	Above Rs. twenty lakhs but not exceeding Rs. fifty lakhs
(5)	Commissioner of Central Excise	Without limit.

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45. In respect of the above powers of adjudication conferred on the Superintendents, it has been clarified as under,-

- (i) The Superintendents would be competent to decide cases that involve Service Tax and / or CENVAT credit upto Rs. one lakh in individual show cause notices.
- (ii) They would not be competent to decide cases that involve taxability of services, valuation of services, eligibility of exemption and cases involving suppression of facts, fraud, collusion, willful mis-statement etc.
- (iii) They would be competent to decide cases involving wrong availment of CENVAT credit upto a monetary limit of Rs. one lakh.
- (iv) The jurisdictional Commissioners of Central Excise may redistribute the pending cases in the Commissionerate based on above factors. It is further clarified that notwithstanding this revision, in all cases, where the personal hearing has already been completed, orders will be passed by the officer before whom the hearing has been held. Such orders should normally be issued within a month of the date of completion of the personal hearing.

46. The monetary limits specified in the above tables for adjudication of service tax cases are irrespective of whether or not such cases involve fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of the Act or the rules made thereunder with an intent to evade payment of service tax and whether or not extended period has been invoked. Cases not

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involving non-payment of service tax or mis-utilization of CENVAT credit are to be adjudicated by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise.

47. Where different cases involving the same issue are due to be adjudicated in a Commissionerate, all such cases may be adjudicated by the Central Excise Officer competent to decide the case where the service tax or CENVAT credit involved is of the highest amount.

48. For cases where the appellate authority remands the case for de-novo adjudication, specifically mentioning the authority that has to adjudicate the case, then such authority specified in the said appellate order should adjudicate such cases. Where the appellate authority does not specifically mention any adjudicating authority, it should be decided by the authority competent in terms of the monetary limits mentioned above.

49. Central Board of Excise & Customs (CBEC) has directed that in respect of demands for an amount upto one thousand rupees towards short payment/non-payment of service tax, if the service provider, on the default being pointed out, pays the service tax along with interest within a period of one month of the default in payment, the penalty should be waived, taking recourse to the provisions under section 80 of the Act. In other cases, i.e. where amount of service tax involved is over Rs one thousand, penal action prescribed under sections 76, 77 and 79 would be attracted.

Service of Show Cause Notice

50. Notices under the Central Excise Act are to be served in terms of section 37C of the Central Excise Act. The notice shall be served on the noticee:

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- (i) by tendering a copy to the person concerned.
- (ii) by sending it by registered post with self addressed acknowledgement to the person concerned.
- (iii) if service is not possible by above methods, then by affixing a copy there of in some conspicuous part of the factory, warehouse, place of business or residence of the noticee in the presence of independent witnesses. A panchnama, too, needs to be drawn on the spot.
- (iv) if service of Show Cause Notice is still not possible, service shall be deemed to have been made by affixing a copy of Show Cause Notice on the notice board of the authority issuing the notice.

DUTIES , FUNCTIONS AND RESPONSIBILITIES of Sector Officer (Inspector)

S.NO	Subject	Sector Officer's Duties
4.1	Issue of Demand-Cum-Show Cause Notice in accordance with Sec 11A of the Act for recovery of duty not paid / short paid.	To prepare draft demand-cum-show cause notice and submit to the Range Officer.
4.2	Unconfirmed Demands Register and 335 J Register.	To maintain Unconfirmed Demands Register and 335 J Register on regular basis. Registers must be updated without any delay.
4.3	Relied upon documents and SCN.	All relied upon documents should be referred to in the SCN while preparing the draftSCN. Copies of all relied upon documents should accompany the draft SCN.
4.4	Return of Non-relied	After issue of SCN, all Non-relied

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	upon documents.	upon documents must be returned to the person from whom it was received, within 15 days of issue of SCN.
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Note:

To see full next of Board's Circular and Notifications mentioned above, website of Central Board of Excise and Customs: www.cbec.gov.in may kindly be referred.

This write up has been prepared by NACEN, RTI, Kanpur and is an attempt to help the departmental officers in their day to day work. This may not be a perfect write up and there is scope to improve it further. If you have any suggestions in this regard, you are requested to send your suggestions/comments/feedback to email address: goyalcp@hotmail.com.
