

F.No. CBIC-90206/1/2021-CX-IV Section-CBEC
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

Room No. 244 C. North Block,
New Delhi, dated: 18th November, 2021

INSTRUCTIONS

To

1. All Principal Chief/ Chief Commissioners of CGST, Central Excise and Service Tax;
2. All Principal Commissioners/ Commissioners of CGST, Central Excise and Service Tax;
3. The Director General of DGCI;

Madam/ Sir,

Subject: Audit para no. 5.1 to 5.18 of chapter V of Audit report no. 01 of 2021 on SCNs and adjudication process in CBIC-regarding.

Audit para no. 5.1 to 5.18 of chapter V of Audit report no. 01 of 2021 on Show Cause Notices and adjudication process in CBIC has made certain observations regarding issuance of SCNs and disposal of adjudication matters including call book cases.

2. Briefly, the Audit has pointed that
 - (i) Draft SCNs have been found pending for issuance.
 - (ii) There is inordinate delay in adjudication.
 - (iii) Adjudication orders have not been issued within stipulated period after completion of personal hearings.
 - (iv) Periodical review of call book cases has not been done.
 - (v) In certain cases, the records/files pertaining to adjudication have not been produced before Audit Party.
3. With the introduction of GST law, Board has consistently expressed its desire and resolve that it is of utmost importance to dispose the legacy matters related to Central Excise and Service Tax regime as expeditiously as possible. In this regard, Board has issued instructions

from time to time regarding disposal of legacy issues such as issuance of Show cause notice, adjudication of SCNs, review of call book cases, etc.

4. However, in view of the observations of Audit, Board desires that the following directions must be strictly adhered to:

4.1 Once the investigation is over/analysis is done and draft show cause notice is prepared, SCN should be issued without any delay, without waiting for the last date of issuance of SCN.

4.2 Attention is invited to sub-section (11) of section 11A of Central Excise Act, 1944 read with sub-section (4B) of section 73 of the Finance Act, 1994 which stipulates that SCNs issued in normal cases should be adjudicated within six months in respect of Central Excise (CE) & Service Tax (ST), and SCNs issued involving extended period should be adjudicated within two years relating to CE and one year relating to ST where it is possible to do so. Board desires that the time limits mentioned in relevant Acts must be adhered to.

4.3 On the issue of delay in issuance of adjudication order within stipulated period of one month after final personal hearing has been conducted and non-recording of reason for the delay, reference is invited to para 14.10 of the Master circular No. 1053/02/2017-CX dated 10.03.2017 wherein, *interalia*, it has been stated that:

"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 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.*"

Audit has observed that in certain cases, adjudication orders have been issued beyond stipulated period and no justification has been recorded in the file explaining delay. It is, therefore, reiterated that timelines of completing adjudication process must be followed and in exceptional cases of delay beyond stipulated period, reasons for the delay must be recorded on file.

4.4 Audit in its report has also pointed incidences of periodical non-review of Call Book cases, non/delayed retrieval of SCNs from Call Book, incorrect transfer of SCNs to Call Book, resulting in irregular retention of cases in Call Book.

4.4.1 Kind attention is invited to Board's D.O letter F.No. 101/2/92-CX.3 dated 04.03.1992 wherein while indicating the categories of the cases to be transferred to call book, it was directed that a case should be transferred to call book only with the approval of Commissioner. Further, the Commissioners were instructed to review the Call book cases on monthly basis. These instructions have subsequently been reiterated vide Circular No. 385/18/98-CX, dated 30-3-1998 and Circular No. 719/35/2003-CX dated 28.05.2003. Audit has pointed out certain instances where Call book cases are not reviewed periodically, due to

which, there are instances of delay in retrieval of Call book cases. It is therefore, reiterated that instructions in above mentioned D.O letter and subsequent instructions/circulars must be adhered to and Pr. Commissioners/Commissioners must review Call book cases on monthly basis. Non-adherence to these instructions shall be viewed seriously.

4.4.2 Audit has also pointed certain instances where noticees are not intimated about transfer of SCNs to Call book. Attention is invited to para 9.4 of the instructions issued vide Master circular No. 1053/02/2017-CX dated 10.03.2017 which reads as under:

"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."

4.4.3 Therefore, it should be ensured that instructions issued vide Master circular no.1053/02/2017/CX dated 10.03.2017 in this regard are adhered to.

4.4.4 Further, it has been pointed that in contravention to the Board's D.O letter dated 04.03.1992, there are instances where prior approval is not taken from the Commissioner before transferring the case to Call book. In this regard, the instructions issued by Board vide above mentioned D.O letter dated 04.03.1992 are reiterated. The cases must be transferred to call book only with the approval of Commissioner as stipulated earlier. A comprehensive one-time review of all cases may also be carried out in this regard and necessary action taken.

4.4.5 For proper handling of Call book cases, instructions have been issued by Board from time to time such as those mentioned in Circular No 1023/11/2016-CX dated 08.04.2016 and Circular No.1053/02/2017-CX dated 10.03.2017. Such instructions issued from time to time may be gone through and followed without fail.

4.5 Audit has also pointed out cases/instances where the case files/records pertaining to adjudication have not been produced before audit.

4.5.1 In Audit para 5.16 of Chapter-V of Audit report no. 01 of 2021 it has been stated that *"Despite Board's Instructions vide DO letter F.No. 232/Misc DAPs/2018-CX-7 dated 26.04.2018 regarding cooperation with the C&AG during audit, by providing complete and comprehensive information, the department did not produce the complete records such as DSCN files, waiver of SCN files, SCNs pending for adjudication, adjudication cases, Call Book, transfer of records due to GST and List of total records."*

4.5.2 In this regard it may be noted that vide aforesaid Chairman's D.O letter dated 26.04.2018, it was directed that full cooperation with the C&AG team would be provided by providing complete and comprehensive information available with the concerned Commissionerate. Any feeble excuses in this regard would not be entertained.

4.5.3 In this regard reference is invited to Circular dated 29.04.1988 issued from F.No. 240/15/88-CX.7 wherein it has been communicated that the files leading to passing of adjudication/appellate orders need not be made available to the audit parties of the Accountant General. It may be seen that the above-mentioned Circular was issued keeping in view the basic premise that audit parties cannot question the decision taken by the judicial or quasi-judicial authority. The said circular thus needs to be read in proper context that sharing of records with audit parties does not interfere with the judicial/quasi-judicial proceedings. The audit parties may require the production of the records for ensuring that due procedure is followed or otherwise. Therefore, the request of the Audit for production of records must be acceded to.

4.6 Attention is invited to the instructions issued by the Board vide Circular No. 716/32/2003-CX., dated 23-5-2003 wherein the Commissioners and Chief Commissioners have been directed to analyze the reasons for pendency of adjudication cases and strengthen the monitoring system. These instructions have also been reiterated from time to time. In this regard MPR DPM-ST-1A and DPM-CE-1A of the Monthly Progress Report (MPR) incorporate information relating to adjudication of pending cases and their disposal. Accordingly, Pr. Chief Commissioner/Chief Commissioner & Pr. Commissioner/Commissioner must undertake periodic review of adjudication of pending cases.

5. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version will follow.


18/11/2021

(Varun Kumar Singh)

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