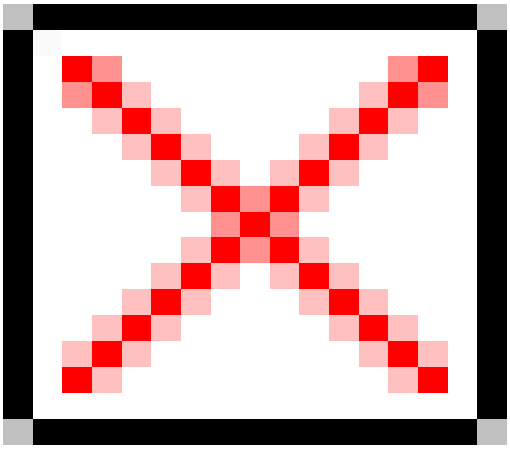
SCNs Issued by DRI - To Remain in Call Book



TIOL-DDT 3001

29 12 2016

Thursday

IT

is the practice for DRI and DGCEI to book cases left right and centre, prepare bulky Show Cause Notices running into hundreds of pages and then make the Jurisdictional Customs or Central Excise officers adjudicate them. It is an unwritten rule in the field that a Show Cause Notice issued by DRI/DGCEI has to be invariably confirmed.

However, all this changed five years ago when the Supreme Court in the case ofÂ ***Sayed AliÂ*** -Â **2011-TIOL-20-SC-CUS**Â held,

> ***"it is only the officers of customs, who are assigned the functions of assessment, which of course, would include re-assessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Act".***

Lo and behold! All the Show Cause Notices issued by DRI, suddenly became illegal.

Government does not tolerate such decisions of the Supreme Court and so it got Parliament to retrospectively confer the power on DRI to issue Show Cause Notices. The Parliament amended Section 28 of the Customs Act by inserting a new clause 11 with effect from 16.09.2011, which reads as:

> ***"(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."***

20 petitioners challenged this and got relief from the Delhi High Court on 3rd May 2016, where the Show Cause Notices issued by DRI were quashed. The High Court observed inÂ -**2016-TIOL-877-HC-DEL-CUS**;

1. The mere fact that Section 28(11) has been given retrospective effect does not solve the essential problem pointed out by the Supreme Court in the Sayed Ali case, which is the absence of the assigning of functions to 'proper officers under Section 2(34) of the Act.

2. Section 28(11) confers validity only on 'the proper officer'.

3. If jurisdiction is exercised by one officer of the Customs or of the DRI or DGCEI, it should impliedly oust the jurisdiction of other officers over the same subject matter. The doctrine of comity of jurisdiction requires that for the proper administration of justice there should not be an overlapping of the exercise of powers and functions.

4. The Department cannot seek to rely upon Section 28(11) of the Act as authorising the officers of the Customs, DRI, the DGCEI etc. to exercise powers in relation to non-levy, short-levy or erroneous refund for a period prior to 8th April 2011 if, in fact, there was no proper assigning of the functions of reassessment or assessment in favour of such officers who issued such SCNs since they were not 'proper officers' for the purposes of Section 2(34) of the Act

5. As regards the period subsequent to 8th April 2011, it is evident that if the administrative chaos as envisaged by the Supreme Court in Sayed Ali should not come about, there cannot be any duplicating and/or overlapping of jurisdiction of the officers. It would have to be ensured through proper coordination and administrative instructions issued by the CBEC that once a SCN is issued specifying the adjudicating officer to whom it is answerable, then that adjudication officer, subject to such officer being a 'proper officer' to whom the function of assessment has been assigned in terms of Section 2 (34) of the Act, will alone proceed to adjudicate the SCN to the exclusion of all other officers who may have the power in relation to that subject matter.

InÂ**DDT 2838 04 05 2016**, I wrote;

This is not positively the end of litigation in this matter. The Government is sure to take the matter to the Supreme Court and/or try another hand at retrospective litigation. Undoing a Supreme Court order requires deft drafting skills, which bureaucrats are not fortunately endowed with.

As expected, the Department took the matter in SLP to the Supreme Court. In one of the SLPs, the Supreme Court on 7.10.2016, stayed the Delhi High Court Order. The Supreme Court ordered,

Delay condoned. Leave granted. There shall be a stay of operation of the impugned judgment and order passed by the High Court of Delhi. - 2016-TIOL-173-SC-CUS

In the meantime, CBEC in **Instruction in F.No..276/104/2016-CX.8A(Pt), Dated: June 29, 2016** clarified:

In view of the above, field formations are requested toÂ
transfer all the SCNs issued by DRI,DGCEI, SIIB, Preventive prior to 06.07.2011 and which are pending adjudication to the Call Book,Â till disposal of the matter in the Supreme Court.

Now, the CBEC has received some references from field formations seeking clarifications on:

(i) effect of stay granted by Supreme Court, on the Call Book cases and

(ii) whether in view of the said judgment of Delhi High Court, all the show cause notices pending adjudication, where demand of duty is period prior to 08.04.2011, should be kept in the Call Book, irrespective of the fact whether the SCN was issued prior to or post 06.07.2011 by DRI, DGCEI, SIIB, Preventive and other similarly placed officers.

The CBEC clarifies:

As regards the effect of stay is concerned, it may be mentioned that the stay granted by the Apex Court on the operation of Delhi High Court judgment dated 03.05..2016, doesn't change the position.

Hence, all the SCNs covered by the Delhi High Court Judgment dated 03.05.2016 should continue to be kept in the Call Book, till the Department's SLP is finally disposed by the Supreme Court.

All the Show Cause Notices issued by DRI, DGCEI, SIIB, Preventive and other similarly placed officers and pending adjudication,Âwhere duty demand pertains to the period prior to 08.04.2011, should be transferred to the Call Book , irrespective of the fact whether the SCN is issued prior to or post 06.07.2011 by such officers, till the Department's SLP is finally disposed by the Supreme Court.

CBEC Instruction in F.No.276/104/2016-CX.8A (Pt.) , Dated: December 28, 2016

Rigid Procedural requirements of CBEC making digital transactions expensive - Watal Committee report

WHEN
you swipe a credit card at a Merchant establishment, the acquiring bank (the Bank of the Merchant establishment) charges some amount (called MDR) and pays Service Tax on it. The acquiring bank pays the issuing bank (the Bank which issued the credit card) part of such amount as ***"interchange"***
on which the issuing bank pays Service Tax. However, the acquiring bank is not able to avail any input credit on the Service Tax paid by the issuing bank, resulting in double taxation. This has been explained by the ***Watal Committee on Digital Payments*** in its report as:

Currently service tax is paid on MDR by the acquiring bank while the issuing bank pays service tax on interchange which is a part of same transactions. Acquirer banks find it difficult in raising input credit for service tax because of rigid procedural requirements.

19. Double taxation on service tax

Currently service tax is paid on MDR by the acquiring bank while the issuing bank pays service tax on interchange fee which is a part of the same transactions. It has been placed before the Committee that double taxation of service tax on interchange fees charged by card issuing bank for card transactions done at a merchant outlet increases burden of interchange costs for the acquirer.

Table 6.11.: Illustration for service tax payable on the card transaction

Particulars	***Amount***
Transaction Amount	***10,000***
MDR charged to merchant @2%	***200***
Service tax on MDR charged @15%	***30***

Issuer interchange charged to acquirer @1.5%	***150***
Service tax on Interchange @15%	***23***
Total charge to the acquirer (Interchange fees + Service tax)	***173***

In the above illustration, out of the total MDR income charged to the merchant of Rs. 200, service tax is paid to the Government twice on Rs. 150 - once by acquirer and the second time by card issuer. Hence, service tax of Rs. 23 is paid twice.

The Committee had a detailed discussion on the above mentioned issue. The Committee looked into proviso to Rule 4A of the Service Tax Rules, 1994.

The acquirer here is unable to take input credit for the service tax paid by the card issuer of Rs. 23 since it does not have a legible document with all details of service tax paid by issuer on the interchange fees. Rule 4A of the service tax rules provides that for taking input credit the acquirer should have the document as per below criteria

1. A document with name, address and registration number of card issuer
2. Description and value of taxable service provided and
3. the service tax paid/payable.

The only way that the double taxation can be avoided here is by enabling the acquirer to take input credit for the service tax paid by the issuer of Rs. 23 input credit for service tax on Interchange fees based on the statement received from card schemes i.e. VISA/Master/Rupay for the interchange fees charged by the respective issuers. Once the acquirer is able to take credit for the service tax paid by the issuer, the Interchange cost will reduce from Rs. 173 to Rs. 150.

The Rule as mentioned above for the requirement of the details in the document needs to be amended in lines with the proviso for rule 4 A for services provided by a banking and non banking financial institutions, which exempts certain requirements to be included in the document for availing the input credit of service tax.

In this backdrop, the Committee is of the view that in order to facilitate service tax input credit of digital transactions, Central Board of Excise and Customs (CBEC) to review the existing procedural framework and issue necessary instructions.

Income Tax - Role and Responsibility of CIT (Admn. & TPS)

THE role and responsibility of CIT (Admn. &TPS) were laid out in CBDT F.No. HRD/CM/102/28/2013-14/917 dated 05.05.2015:

a) Head Office: xxxx

b) Establishment matters: Service matters including appointment, seniority, leave, training, discipline, V.R.S, MACP, transfer and posting maybe assigned to CIT (Admin. & CO). Monitoring of HRMS may also be assigned to CIT(Admin& CO). Power of appointing authority with regard to appointment of Group C employees may also be delegated to the CIT (Admin& CO).

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However, it has come to the notice of CBDT that in some Regions, role of CIT (Admn. &TPS) is restricted by the Pr. CCIT (CCA) and they are not made part of various administrative functions in headquarter of Pr. CCIT (CCA), especially functions related to transfer and posting , vigilance etc. As a result, in such places, the Pr. CCIT is not able to get the benefit of one more level of advice from a senior and experienced officer.

Board reiterates that the instructions should be strictly followed and service/ establishment matter including transfer & posting and vigilance should be routed through CIT (Admn. &TPS).

CBDT F.No. HRD/CM/102/28/2013-14/8145., Dated: December 28, 2016

Fully Trained GST Officers

NACEN
has trained nearly 50,000 officers on GST. Even CAG officers have been trained by NACEN. Details of the number of officers trained are:

Sl No	Level	Status	Target (officers)	Achieved
1	L I Source Trainers	Completed	25	25
2	L II Master Trainers	Completed	300	310
3	L III Trainers	Completed	1,600	2060*
4	L IV Field Officers	Ongoing	60,000	46,312 (as on 23.12.2016)
* Includes 36 from CAG				

An officer participating in the last leg of the training of the 60,000 field officers yesterday told me.

> ***"it's a very noisy gathering, especially after lunch. The trainees and their deep sleep. It's tough to wake them up .. and they wake up â€¦ and they go back to sleepâ€¦."***

Until Tomorrow with the last **DDT**

Have a nice day.

Mail your comments to **vijaywrite@tiol.in**