

Monitoring of pendency of appeals - CBEC instructions

TIOL-DDT 1102

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Monday

THE CBEC is seriously monitoring the work of the Commissioners (Appeals). Board wants the Commissioners (Appeals)

1. To decide 70 cases per month.
2. To ensure that no case remains pending for more than six months.
3. While taking up the appeals, preference be given to disposal of older cases.

Board wants Chief Commissioners to send a quarterly report to the Board.

Board has issued certain other instructions:

In respect of such adjudicating officers whose orders are found by Commissioner(Appeals) to be of non-speaking nature or suffer generally from non-application of mind or patently wrong interpretation of law or tariff or where adjudication orders are contrary to Board's instructions squarely dealing with the issue or where there is non-observance of principle of natural justice, Commissioners(Appeals) **should send a separate note/report to the Chief Commissioner, with a copy to the concerned Commissioner pointing out the deficiencies citing the specific defective orders so that appropriate remedial measures can be taken in time.**

Now when does the Commissioner (Appeals) comes to know about these deficiencies? Normally at the time of personal hearing when the party's counsel brings it to his notice. At that stage, is he supposed to send the report to the Chief Commissioner and Commissioner? And what remedial measures can be taken in an order that is at the appellate stage?

CBEC Circular NO 885/05/ 2009- CX ., Dated: April 30, 2009

Proposal to modify the present abatement rates for products assessed under Section 4A (RSP based assessment) – Board invites comments

The CBEC has carried out a study to find out whether value determination under Section 4A is matching with the transaction value (Section 4 value) of the goods assessed under MRP Valuation, in most of the cases or not. This comparison has been made considering the fact that generally, the value determination under Section 4A should be more or less equal to the value determined under Section 4, because the abatement percentage prescribed by the Govt. generally consist of post-removal expenses. Board is aware of the fact that there could be some variation where the value determined under both the provisions may vary but as a matter of principle, there should not be large variation in majority of cases.

Analysis of the data shows that in respect of the six commodities, the value determined under Section 4A (RSP based value) is lower than the transaction value (value under Section 4) in more than 50% of the cases. These commodities are:

(i) Paints; (ii) Colour TV; (iii) Aerated Water; (iv) Ceramic Tiles; (v) Cosmetics; and (vi) Lubricants.

Board feels that the present abatement rate for these six commodities should be reduced in order to bring the assessable value determined under Section 4A nearer to the transaction value (Section 4) in majority of the cases.

Before taking any decision on this subject, CBEC would like to have the views and comments of the trade and industry Associations. In case the Associations feel that the study made by the department do not reflect the true position, in that case they may submit the data along with the documents for the products which are sold in maximum quantity to present their case. While submitting their representation they should provide the actual transaction value

(excluding taxes & duties) in order to have comparison with the Section 4A value. In case the goods are sold from depot etc in that case the actual commercial invoice from the depot should be used.

The Chief Commissioners of Central Excise are requested to bring the contents of this letter to the notice of the major industries manufacturing the above mentioned items in their jurisdiction.

The comments of the Department, Associations and Industries may be sent by post along with the documents to Shri Sanjiv Srivastava , Director(CX -1/4), Room No.47 -B , Department of Revenue, Central Board of Excise & Customs, Ministry of Finance, North Block, New Delhi-110001. Comments along with any additional data that needs to be considered in excel format, may also be sent by e-mail to ashima_irs@yahoo.co.in or to sandevpan@gmail.com .

The comments and views of the industries may be sent by 20th May, 2009 positively.

CBEC Draft Circular in F No.6 /15/2007- CX.I., Dated: April 30, 2009

What is GAR 7?

A Netizen asked us, “what is the full form of GAR – 7?

It stands for Government Account (Receipts and Payments)

As per Rule 26 of the Central Government Account (Receipts and Payments) Rules, 1983.

26. Grant of receipted challan by the bank.—

(1) Subject as otherwise provided in these rules or unless the Government direct otherwise in relation to any particular class of transactions, any person or party paying money into the bank on Government account under the provisions of **rule 19** shall present with it challan (in duplicate, triplicate or quadruplicate as specified by the concerned Ministry or Department) in Form **GAR 7** showing distinctly the nature of the payment, the department or office on whose account it is made, particulars of the concerned Pay and Accounts Office, proper account classification of the credit, and where necessary, information relating to its allocation between Government Department concerned. As far as possible separate challans should be used for moneys creditable to different heads of account.

(2) Save where any other arrangement has been authorised by the Government for the supply of challan forms, printed forms of challan, which may with advantage be bi-lingual, shall be supplied by the departmental officer or by the bank free of charge.

NOTE 1.—Receipts relating to direct taxes (such as income tax, corporation tax) and indirect taxes (such as customs and excise duties) administered respectively by the Central Board of Direct Taxes and the Central Board of Excise and Customs, shall be credited or remitted by the tax payers into the Reserve Bank of India and branches of specified public sector banks at a selected centre in accordance with rule 7, using challan forms specifically prescribed under the relevant provisions of the schemes of revenue collection of these Boards.

NOTE 2.—In making rupee deposits to the Government Account in respect of imports financed under Direct Payment Procedure applicable to various foreign loans or credits, Form GAR 8 shall be used invariably in quadruplicate.

What then is Rule 19? It reads as,:

19. Cheque, bank drafts tendered in payment of Government revenues, dues, etc.—

(1) (a) Cheques, bank drafts drawn on local branch of a scheduled bank may be accepted by departmental officers or by the specified branch of the accredited bank or by a bank specially notified for the purpose, in payment of Government dues or in settlement of other transactions with the Government, subject to the provisions of special instructions, if any, issued by a Ministry, Department and, or union territory, in consultation with the Controller General of Accounts, relating to any specific type of dues being followed. The cheques, bank drafts, should be crossed by the drawer before tendering. However, until they are cleared, the Government cannot admit that payment has been received; consequently, the receipt of the cheque alone may be acknowledged when it is tendered. A formal payment receipt shall be given to the tenderer (or sent to his address wherever such an arrangement is envisaged by the department, or bank) after the cheque or draft has been cleared. The preliminary acknowledgement of the receipt of the cheque or draft, will be given in the form indicated below by the departmental Officers:—

¶Received cheque/ draft number ----- for Rs ----- drawn on ----- on account of -----¶.

NOTE 1.

—The bank reserves to itself the right to refuse to accept cheques or drafts, collection of which in its opinion cannot reasonably be undertaken. If, however, a bank draft drawn on a branch of a bank is tendered at the same (i.e. the drawee) branch for being credited to Govt. account, the receipted challan may be delivered to the tenderer on the same day, if the draft is otherwise in order.

NOTE 2.

—Metal or paper token or a preliminary acknowledgement as above will be issued by the bank to the depositor to facilitate delivery of the receipted challan to him in due course.

(b) In the event of the cheque or draft being dishonoured, the fact shall be reported at once to the tenderer with a demand for payment in cash and the dishonoured cheque or draft should be returned to the tenderer on surrendering the preliminary acknowledgement of the receipt of the cheque or draft or any token previously granted. The Government cannot, however, accept any liability for loss or damage which may possibly occur as a result of delay in intimating that the cheque or draft has been dishonoured.

Rule 7 reads as:-

7.

Facility for public to credit Government dues direct into the accredited bank of a Ministry/Department and certain tax receipts in other Nationalised bank also.-

Money due to the Government may also be credited directly into the specified branch of the accredited bank in which a particular departmental officer holds his account, in accordance with the procedure notified by the Ministry, Department and, or Union Territory concerned for the purpose. Tax receipts pertaining to the Central Board of Direct Taxes and Central Board of Excise and Customs (and of any other particular Ministry or Department as may be decided by the Government from time to time) and also sales tax revenue of Delhi Administration are authorised under special procedures notified therefor, to be credited by the tax payers directly into any branch of the authorised bank within the municipal limits at the selected centre notified for the purpose. Form of challan to be used, and related matters are contained in rule 26.

These are the full GAR series:-

GAR 1	Pay-in-slip
GAR 2	Last Pay Certificate
GAR 3	Cash Book
GAR 4	Register of Cheques Issued
GAR 5	Register of Valuables
GAR 6	Receipt

GAR 7	Challan
GAR 8	Challan for remittance of Cash (including Demand Drafts) with the State Bank of India, Tis Hazari , Reserve Bank of India, New Delhi for depositing rupee equivalent of foreign currency payment made of loans/credit/grants received from foreign countries under the direct payment procedure
GAR 9	Bill Register
GAR 10	Bill Transit Register
GAR 11	Acquittance Roll (Payment of salary by open cheque)
GAR 12	Deed of Indemnity for issue of a cheque against a lost cheque
GAR 13	Pay Bill
GAR 13A	Alternative inner-sheets for pay bill preparation with data-writing machine
GAR 14	Consolidated Travelling Allowance Bill
GAR 14A	Travelling Allowance Bill for Tour
GAR 14B	Travelling Allowance Bill for Transfer
GAR 14C	Leave Travel Concession Bill
GAR 15	Pay Bill for President, Vice-President, Ministers, Officers appointed under the seal of President and Non officials

GAR 16	T.A. Bill for President, Vice-President, Ministers, Officers appointed under the seal of President and Non officials
GAR 17	Pay Bill Register
GAR 18	Abstract of Pay Bills
GAR 19	Bill check Register
GAR 20	Absentee Statement
GAR 21	Increment Certificate
GAR 22	Register of Court Attachment of Pay. etc
GAR 23	Medical Charges Re-imbursement Bill
GAR 24	Acquittance Roll (Payment of Salary by Cash)
GAR 25	Register of un-disbursed pay & allowances etc.
GAR 26	Bond of Indemnity for drawing arrears of Pay and Allowances of deceased Govt. servants
GAR 27	Register of Contingent Charges
GAR 28	Sub-Voucher for petty contingent expenditure
GAR 29	Fully Vouched Contingent Bill
GAR 30	Abstract Contingent Bill

GAR 31	Detailed Counter- signed contingent Bill
GAR 32	Detailed Bill of Contingent Charges requiring counter signature before payment
GAR 33	Bill for Refund of Revenue
GAR 34	Grant-in-aid bill
GAR 35	Bill for Scholarship
GAR 36	Bill for Long Term Advances e.g. Motor car, other motor conveyances and House Building Advances.
GAR 37	Bill for Short Term Advances like Festival & Cycle Advances
GAR 38	Schedule of recoveries of long term Advances (e.g. Motor Car, other Motor conveyances and House Building)
GAR 39	Monthly abstract of short term advance payments and recoveries to be furnished by the Drawing Officer
GAR 40	Schedule of Deductions on account of subscription to Post Office Insurance Fund
GAR 41	Schedule of General/Contributory Provident Fund Deductions
GAR 42	Bill for withdrawal of Final Payment/Advance/Other withdrawals from General/Contributory Provident Fund or Payment under Deposit Linked Insurance Scheme
GAR 43	Application-cum-bill for refund of deposit
GAR 44	Receipted bill under the Central Government Employees' Group Insurance Scheme, 1980
GAR 45	Receipted bill under the All-India Services Group Insurance Rules, 1981

GAR 46	Application-cum-bill for refund of lapsed deposits
GAR 47	Bond of Indemnity for drawing leave salary, vacation pay and allowances

Special measures for checking illegal export - Indo-Myanmar Border - Ephedrine and Pseudo-Ephedrine

As per Section 11-I of the Customs Act,

If, having regard to the magnitude of the illegal export of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal export or facilitating the detection of goods which are likely to be illegally exported, it may, by notification in the Official Gazette, specify goods of such class or description.

As per Notification Nos 318-B/1986-Customs, dated the 14th May, 1986 and 24/1988-Customs(N.T.), dated the 15th April, 1988, India's land border with Myanmar falling within the territories of Nagaland, Manipur, Mizoram and Arunachal Pradesh, was notified as a *specified area*.

There are restrictions on possession, transport, sale etc, of specified goods in the specified area.

Now the Government has notified *Ephedrine and Pseudo-Ephedrine* , as specified goods.

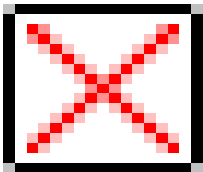
[NOTIFICATION NO dated: 43/2009- Cus \(NT\), Dated: April 22, 2009](#)

Anti Dumping Duty on Cable ties – extended Just in Time

The Anti Dumping Duty on Cable ties originating in, or exported from, the People's Republic of China and Taiwan was imposed provisionally by Notification No. 118/2008-Customs, dated 31st October, 2008. This was valid till 29 th April 2009. Fortunately this time around, the Government has imposed definitive anti dumping duty on 30 th April 2009 of course with effect from the original date of provisional imposition of duty that is 31st October 2008.

[NOTIFICATION NO dated: 44/2009- Cus ., Dated: April 30, 2009](#)

Jurisprudence Tomorrow's cases



Income Tax

Section 80 HHC – income from electricity generated by windmill is business income; AO cannot decide how business has to be done: ITAT

IN a complex manufacturing process it is the assessee who decides as to what to produce in the factory, what to buy and what to outsource. The AO cannot justifiably claim to put himself in the arm-chair of the businessman and assume the role to decide how to do the business having regard to the circumstances of the case. The AO has to put himself in the shoes of the assessee and see how a prudent businessman would act. He should not look at the matter from his own view point but from that of a prudent businessman.

Central Excise

‘Scrabble Junior’ and ‘Scrabble Dice’ are also classifiable under heading 9504.90 as they are similar to ‘Scrabble original’ – ROM application fetches ‘unpleasant’ results at hands of Tribunal

IN our researched story carried a year ago we had reported the Tribunal decision in *Pleasantime Products* [2008-TIOL-552-CESTAT-MUM] holding that ‘Scrabble’ is a parlour game falling for classification under CET 9504.90 and not an ‘Educational Toy or Puzzle’ (CTH 95.03). The Tribunal had accordingly upheld the duty demand of about Rs. 23 lakhs and the penalties imposed by the adjudicating authority. The appellant

thereafter filed a ROM application pointing out, according to them, certain errors that were apparent on record in the said order

Customs

Serpentine and marble are two distinct products as HSN classification differs – Goods sold by an EOU into DTA must be 'similar' to goods exported – Customs exemption for import of marble blocks not available as products cleared for export not similar to products cleared in DTA : CESTAT

THE

assessee, who are licensed as 100% EOU, imported marble blocks free of customs duty and also procured Serpentine stone block, (on which there is no central excise duty) indigenously. They exported serpentine tiles/slabs and a miniscule quantity of granite slabs/tiles and marble slabs/tiles made out of indigenous marble blocks. However, their DTA clearances comprised of marble tiles/slabs made out of imported marble blocks.

See our columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a Nice Day.

Mail your comments to vijaywrite@taxindiaonline.com