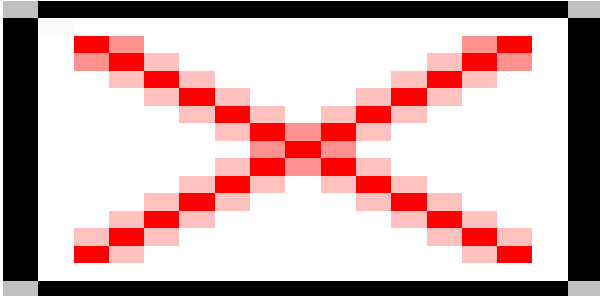


## Show Cause Notices Issued by DRI Invalid - Retro Amendment to Section 28 of Customs Act notwithstanding



TIOL-DDT 2838

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Wednesday

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 to 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 of **Sayed Ali** - [2011-TIOL-20-SC-CUS](#) 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."***

Covering this event in [DDT 1701 27.09.2011](#), I wrote,

***"No one should ever dream of challenging this in the High Courts or Supreme Court, for retrospective amendment of law to undo Court Orders, has judicial approval in India."***

I am proved wrong. 20 petitioners challenged this and got relief from the Delhi High Court yesterday, where the Show Cause Notices issued by DRI were quashed.

The High Court observed,

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.

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.

We bring you this landmark High Court today. Please see [Breaking News](#)

### ***Service Tax on Tatkal Tickets by Indian Railways - Naturally Bundled in ordinary course of business?***

#### **YESTERDAY**

, DDT had reported about the investigation by Delhi Service Tax against the Indian Railways for allegedly not paying Service Tax on Tatkal tickets, cancellation charges and Bedrolls.

Now the whole issue seems to be whether these activities are part of naturally bundled services in the ordinary course of business.

IRCTC as well as Indian Railways are collecting and paying Service Tax on Tatkal and Premium Tatkal Charges assuming it to be a part of bundled service. Service Tax on these Charges is computed and recovered from the passengers assuming it to be a part of bundled service.

Department's contention seems to be that:

***Bundled Services are those services which are naturally linked to each other and provided together without recovering the charges separately for any other service. However, once the Tatkal/ Premium charges for the berth have been recovered separately and they are in fact optional in the sense that the berths at the same time can be booked without paying these charges in the same train though waitlisted ticket will be issued, they can't be said to be naturally bundled service. Hence, Service Tax on it is required to be paid at full rate i.e. 14.5% (12.36% earlier).***

***Railways are collecting and paying Service Tax on Bed Roll Charges assuming it to be a bundled service for all trains. Once the charges for bed roll have been recovered separately and they have been optional, they can not be said to be naturally bundled service. Hence, Service Tax on it is required to be paid at full rate i.e. 14.5% now (12.36% earlier).***

Are these services bundled or independent? That is the question which will determine whether they are eligible for abatement. Who will win - Revenue or Railway? Whoever wins, the citizen is sure to lose.

### ***FTP - Amendment of ANF3C - Application for online filing of Grant of Status Certificate***

#### **DGFT**

has amended the ANF3C- Application for online filing of Grant of Status Certificate of Appendices and Aayat Niryat Form of FTP 2015-20.

[DGFT Public Notice 05/2015-20., Dated: May 03, 2016](#)

### ***FTP -Export Obligation - New Appendix***

#### **A**

new Appendix 5D is being notified containing list of services, payments for which are received in Rupee terms and which are to be counted for fulfilment of Export Obligation under EPCG scheme.

[DGFT Notification No. 06/2015-20., Dated: May 02, 2016](#)

### ***FTP - Export Obligation - Payment in Rupee Terms - Appendix 5D***

#### **A**

new Appendix 5D has been notified. Payments which have been received in foreign exchange or which would have been otherwise received in foreign exchange, but paid in Indian Rupees (INR), out of the amount remittable to the overseas principal, or out of remittances to be sent by the overseas buyer, for services rendered in Customs notified areas to a foreign liner including through its agents in India, would be considered as deemed to be received in foreign exchange and deemed to be earned in foreign exchange and shall be counted towards discharge of export obligation with effect from 1.4.2015 under EPCG scheme.

Services provided in respect of 'vessel related charges' for coastal and inland vessels and 'Cargo related charges' in respect of coastal cargo, coastal containers and coastal empty containers will not be counted for discharge of E.O. under EPCG Scheme

[DGFT Public Notice No. 04/2015-20., Dated: May 03, 2016](#)

### ***LTC - Full Fare for Children for Train Travel***

#### **MINISTRY**

of Railways have decided that in case of children above 5 years and under 12 years of age, for whom full berth/seat is sought at the time of reservation, full fare shall be charged. If berth/seat is not sought for the children of age 5 years and under 12 years of age at the time of reservation, then half of the adult fare shall continue to be charged subject to minimum distance for charge. This would be effective for the travel with effect from 10.04.2016.

Now, doubts are expressed as to whether the full fare charged by the Railways for reservation of berth for children between 5 years and 12 years shall be reimbursable while availing LTC facility.

Government has decided that for the family members of the Government servant, aged between 5 yrs and under 12 yrs, the actual rail fare shall be reimbursed for LTC, as per the choice of rail tickets purchased by the Government servant.

Until Tomorrow with more **DDT**

**Have a nice day.**

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