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[Book NO.2]

[Training Material for Departmental Use]

E-BOOK



**IMPORTANT
NOTIFICATIONS/CIRCULARS/
INSTRUCTIONS**

ON

SEARCH, SEIZURE & ARREST

[CENTRAL EXCISE, CUSTOMS & SERVICE TAX]

Note:

1. In this E-book, attempts have been made to provide the *[Important Notifications/Circulars/Instructions in respect of search, seizure and arrest under Central Excise, Customs and Service Tax laws](#)* at one place. It is expected that it will help departmental officers in their day to day work.
2. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACEN, RTI, Kanpur on the Email addresses: rtinacenkanpur@yahoo.co.in or goyalcp@hotmail.com (Email address of ADG, RTI, NACEN, Kanpur). This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
3. If any officer is interested in preparing E-book on any topic relating to Customs, Central Excise or Service Tax, he may forward the E-book prepared by him to the Email addresses mentioned above. After necessary vetting, we will include the same in our E-book library for benefit of all Departmental officers.
4. This e-book has been prepared with active assistance and contribution of **Shri S. A. Khan, Assistant Director, NACEN, RTI, Kanpur**. We, at NACEN, appreciate his participation and willingness to prepare e-books and to help fellow departmental officers in capacity building and upgrading their knowledge.
5. If you feel that this e-book has really helped you in improving your knowledge or understanding of the subject matter, we request you to take few minutes out of your precious time and provide us your valuable feedback. Your feedback is important and will help us in improving our e-books.

Sd/-

(C. P. Goyal)

Additional Director General
[NACEN, RTI, Kanpur](#)

Important Notification/Circular/Instruction

Note: Different colours have been used to indicate **Customs/Central Excise/Service Tax** Notifications/Circulars/Instructions in the Table below. The colours used for text are as under:-

Customs	Central Excise	Service Tax
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Table

Heading	Sub-heading	Subject	Sub-Sub-heading	Notification Instruction / Circular No.	Dated
1.	Issuance of Summons after Search				
	1.1.	<i>Behaviour of Central Excise officers during search /seizure operations</i>		Circular No.65/88-CX.6	06.09.1988
	1.2	<i>Summons to Managing Directors, Directors and other top officers under Section 14 — When not issuable</i>		Instruction Letter F.No.208/122/89-CX.6	13.10.1989
	1.3	<i>Summons in Service tax matters</i>		Instruction Letter F.No.137/39/2007-CX-4	26.02.2007
	1.4	<i>Instructions regarding issue of summons in Central Excise and Service Tax matters</i>		Instruction Letter F.No.207/07/2014-CX-6	20.01.2015
2.	Search				
	2.1	<i>Nil</i>		Nil	Nil
3.	Seizure				
	3.1	<i>Seizure of perishable or hazardous goods — Section 110(1A) of Customs Act</i>		Notification No. 31/86-Customs, as amended	05.02.1986
	3.2	<i>Burden of proof in cases of seizures under Customs Act, 1962</i>		Notification No.204/84-Cus	20.07.1984
	3.3	<i>Seizure of imported goods accompanied by import/duty paying documents</i>		Circular No.95/2003-Cus.	06.11.2003
	3.4	<i>Seizure of goods entered for exportation on account of mis-declaration of quantity, value etc.-Provisional release instructions</i>	3.4.1.	Circular No. 33/2005-Cus.	02.08.2005
			3.4.2.	Circular No. 1/2011-Cus.	04.01.2011
3.5	<i>Requirement of issuing Show Cause Notice under Section</i>		Circular No. 7/2013-Cus.	19.02.2013	

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		<i>124 of the Customs Act, 1962 to the owner of goods within stipulated period of six months of the seizure of goods or during extended period - Release of seized goods in case of non-compliance of same under provisions of Section 110(2) of the Customs Act, 1962</i>		
	3.6	<i>Confiscation of seized goods</i>		Circular No. 5/89- Central Excise 19.01.1989
	3.7	<i>Central Excise - Whether seizure of goods is a pre-condition for ordering confiscation</i>		Circular No. 29/89- Central Excise 02.05.1989
	3.8	<i>Return of seized documents not required by the department in Customs cases</i>	3.8.1.	CBEC Instruction F.No.394/115/88- Cus.(AS), 13.06.1988
		<i>Seized Documents and Records-Return thereof</i> NOTE: The above said Circulars were issued when Central Excise Rules, 1944 did not have any provisions providing for returns of the records. Now, the Rules 24 A of the Central Excise Rules, 2002 (Inserted vide notification No. 17/2009-CE (NT) with effect from 7.7.2009) specifically provides for return of records.	3.8.2.	Circular No. 42/88- CX.6 24.05.1988
			3.8.3.	Circular No. 48/88- CX. 6 10.06.1988
			3.8.4.	Member D. O. Letter F. No. 207/09/2006- CX. 6 08.09.2006
			3.8.5.	Circular No. 171/5/96-CX 02.02.1998
	3.9		<i>Intimation of seizure, detention & confiscation of goods to custodians</i>	
	3.10	<i>Clearances not conforming to adjudication order while appeal there against pending — Seizure not to be effected</i>		Circular No. 906/26/2009-CX. 03.12.2009
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	4.1	<i>Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962</i>		Circular No.38/2013- Cus. 17.09.2013
		<i>Revised Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962 (*New)</i>		Circular No.28/2015- Customs 23.10.2015

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	4.2	<i>Arrest and Bail under Central Excise Act, 1944</i>		Circular No.974/08/2013-CX	17.09.2013
		<i>Revised Monetary limits for arrest in Central Excise (*New)</i>		Circular No.1010/17/2015-CX	23.10.2015
	4.3	<i>Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994</i>		Circular No.171/6/2013-S.T.	17.09.2013
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	5.2	<i>Delay in disposal of seized/confiscated vehicles - DAP No.59 proposed for inclusion in the C&AG's Report on Indirect Taxes (Customs) for 2004-05</i>		Instruction F. No. 715/7/2005-Cus.(AS)	02.09.2005
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	6.2	<i>Notification under Sections 13, 14, 19, 21, 28 and Excise Rules 201, 202.</i>		Notification No. 9/99-CE(NT) [as amended]	10.02.1999
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SEARCH, SEIZURE AND ARREST

[CENTRAL EXCISE, CUSTOMS & SERVICE TAX]

Important Notifications/Circulars/Instructions Issued by CBEC

1. **SUMMON**

1.1 **Search/Seizure operations- Summon on a working day and during normal working hours**

Circular No. 65/88-CX.6, dated 6-9-1988

[Issued from F. No. 208/28/88-CX.6]

Subject: Behaviour of Central Excise officers during search/seizure operations – Regarding.

Instances have come to the notice of the Board wherein Central Excise officers while carrying out investigations and searches have summoned persons for questioning at odd hours thereby inviting unnecessary criticism. This has also adversely affected image of the department.

2. As far as possible the recording of statements of persons where it is not possible to postpone the same should be completed immediately after search of the premises search. While recording statements etc., due courtesy should be extended. If any person is to be summoned he should ordinarily be summoned on a working day and during normal working hours.

3. This may be brought to the notice of the field formation for strict compliance.

1.2 **Summons to Managing Directors, Directors and other top officers under Section 14 — When not issuable**

Instruction Letter F. No. 208/122/89-CX.6, dated 13-10-1989

Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excises and Salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases where assesseees are not cooperating or investigations are to be completed expeditiously. This section

should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed.

If any instance of issue of summons to Managing Directors and other Directors without justification is noticed, a serious view will be taken by the Board. Collectors will be held personally responsible for enforcing these instructions in their charges.

1.3 Summons in Service tax matters — Instructions

Instruction Letter F. No. 137/39/2007-CX-4, dated 26-2-2007

Subject : Issuance of summons in service tax matters – Regarding

It has come to the notice of the Board that on many occasions, merely for obtaining information or documents pertaining to service tax cases/matters, officers of field formations or intelligence agencies resort to issuance of summons (u/s 14 of the Central Excise Act, 1944 as is made applicable in service tax cases u/s 83 of the Finance Act, 1994) to either service taxpayers or to persons who are not registered with the department. From the nature of information/documents called for, it is clear that many times such information/documents can easily be obtained by making a telephonic request or writing a simple letter to the person concerned. Instead summons are issued in a routine manner, under the signature of superintendent or the senior intelligence officers. (SIOs). The harsh and legal language of the summons not only causes unnecessary mental stress & embarrassment and instills fear in the minds of the receiver but may also become a source of harassment or even unethical practices. Board has taken a serious note of this practice.

2. The undersigned is, therefore, directed to communicate the following directions of the Board for compliance, -

(a) For calling for information/documents, normally the mode of communication should be either in the form of a telephone call or by way of sending a simple letter;

(b) Issuance of summons should be resorted to, only when the above mentioned modes of communications are found to be ineffective or are likely to jeopardize revenue interest or when it is essential to ensure personal presence of the person concerned to tender evidence or record statement in connection with a service tax evasion case;

(c) In cases mentioned under (b) above, the summons should be issued after obtaining prior written permission from an officer not below the rank of Deputy Commissioner with reasons for issuance of summons to be recorded in writing;

(d) In case, for unavoidable operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must

be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;

(e) In all cases, where summons are issued, the officer issuing summons must submit a report on proceeding that took place during the presence of the taxpayer/person summoned, and the officer authorizing issuance of summons must satisfy himself that no harassment has been caused during the visit of the person summoned to the office.

3. The above instructions may kindly be brought to the notice of all officers for compliance. Non-observance of these instructions would be viewed seriously.

1.4 Instructions regarding issue of summons in Central Excise and Service Tax matters

F. No. 207/07/2014-CX-6 dated 20.01.2015

Sub: Instructions regarding issue of summons in Central Excise and Service Tax matters - reg.

It has been brought to the notice of the Board that in some instances, the summons under Section 14 of the Central Excise Act, 1944 have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/ documents. Besides, summons have been issued to enforce recovery of dues, which are under dispute. As per Section 14 of Central Excise Act, 1944, summons can be used in an inquiry for recording statements or for collecting evidence/ documents. While the evidentiary value of securing documentary and oral evidence under the said legal provision can hardly be over emphasized, nevertheless, it is desirable that summons need not always be issued when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation. It is emphasized that the use of summons be made only as a last resort when it is absolutely required.

2. On this issue, Board has already issued a circular vide F. No 208/122/89-CX.6 dated 13.10.1989 in respect of Central Excise. Instruction has also been issued vide F. No. 137/39/2007-CX.4 dated 26.2.2007 in Service Tax matters.

3. The following guidelines are being issued to be followed in both Central Excise and Service Tax matters:-

(i) Power to issue summons are generally exercised by Superintendents, though higher officers also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

(ii) where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be

obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;

(iii) In all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorised the issue of summons.

4. Further, senior management officials such as CEO, CFO, General Managers of a large company or a PSU should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

5. These instructions may be brought to the notice of all the field officers for strict compliance. Non observance of the instructions will be viewed seriously. Hindi version would follow.

2. **SEARCH**

2.1 Nil

3. **SEIZURE**

3.1 **Seizure of perishable or hazardous goods**

[Notification No. 31/86-Customs , dated 5-2-1986]

In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to **the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature of the goods,** mentioned in the Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section.

THE SCHEDULE

1.	Liquors;
1A	Photographic Films;
1B	Patent or Proprietary medicine; i.e., any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in, human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia or Formulary;
2.	Primary cells and primary batteries including re-chargeable batteries;
3.	Wrist watches including electronic wrist watches; watch movements, parts or components thereof;

Search, Seizure & Arrest – Notifications/Circulars/Instructions

3A	Zip fasteners;
4.	All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, computers; components and spares thereof including diodes, transistors, integrated circuits, etc.;
4A	Gold in all forms including bullion, ingot, coin, ornament, crude jewellery.
4B	Silver in all forms including bullion, ingot, coin ornament, crude jewellery.
5.	Dangerous drugs and psychotropic substances;
6.	Conveyance;
7.	Man-made yarn and fabric;
8.	Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
9.	Currency, Indian and Foreign.
10.	Diamonds, precious and semi-precious stones
11.	Ball Bearings;
12.	Cellular Phones.
13.	Software ; [Inserted vide notification No. 20/2004-Customs (NT), dated 16.02.2004]
14.	Any good seized by the proper officer under section 110 of the customs Act, 1962 (52 of 1962) for which order for provisional release has been passed but provisional release has not been taken by the concerned person within a period of one month from the date of the communication of such order. [Inserted vide notification No. 20/2004-Customs (NT), dated 16.02.2004]
15.	Petroleum products falling under Chapter – 27 of the Customs Tariff Act, 1975 (51 of 1975); [inserted vide notification No. 32/2005-Customs (NT), dated 11.04.2005]
16.	Red Sander [inserted vide notification No. 32/2005-Customs (NT), dated 11.04.2005]
17.	Sandalwood [<i>Inserted vide notification No. 25/2008-Customs (NT), dated 07/03/2008</i>]
18.	Fireworks

Note: The Principal notification No. 31/86-Customs, dated 5.02.1986 was issued vide G.S.R. 871) dated the 5.02.1986 and was subsequently amended by notification No. 42/89-Customs (NT), dated 30.06.1989; notification No. 7/93-Customs (NT) dated 25.01. 1993; notification No. 10/95-Customs (NT), dated 1.03.1995; notification No. 12/96-Customs (NT), dated 11.03.1996; notification No. 72/97-Customs (NT), dated 22.12.1997; notification No. 90/98-Cus (NT), dated 12.11.1998; notification No. 20/2004-Customs (NT), dated 16.02.2004; notification No. 32/2005-Customs (NT), dated 11.04.2005; notification No. 25/2008-Customs (NT), dated 07.03.2008 & 143/2015-Customs(NT) dated 15.12.2015.

3.2 Burden of proof in cases of seizures under Customs Act, 1962

[Notification No. 204/84-Customs, dated 20.07.1984]

In exercise of the powers conferred by Sub-section (2) of Section 123 of the Customs Act, 1962 (52 of 1962) and in supersession of the notifications of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 88-Customs, dated the 26th August, 1967 and No. 52-Customs, dated the 27th March, 1968, the Central Government hereby specifies the following other classes of goods, for the purpose of the said section, namely :-

1. Omitted
2. Omitted
3. Omitted
4. Synthetic yarn and Metallised yarn
5. Fabrics made wholly or mainly of synthetic yarn
6. Omitted
7. Electronic Calculators
8. Omitted
9. Watches, watch movements (including partly assembled movements), dials and cases for watches;
10. Zip fasteners
11. Omitted
12. Omitted
13. Silver Bullion

Note: The principal notification No. 205/84-Custom, dated 26-7-1984 as amended by notification No. 262/84-Customs, dated 23.10.1984; No. 28/90-Customs (NT), dated 8.6.1990 and No. 4/93-Customs (NT), dated 15.01.1993.

3.3 Seizure of imported goods not to be effected if accompanied by genuine duty paying documents

Circular No. 95/2003-Cus., dated 6-11-2003
F. No. 393/46/2003-Cus. (AS)

Subject : Seizure of imported goods accompanied by import/duty paying documents – Regarding.

It has been brought to the notice of the Board that certain field formations have effected seizure of imported goods even when the goods were accompanied by import/duty paying documents thereby giving cause of grievance to trade.

2. The Board has taken a serious view of the matter. Unless goods have been notified under Section 123 of the Customs Act, 1962, the burden of proving that the goods are smuggled goods lies on the department. It has, therefore, been desired by the Board that utmost care should be taken by field formations in effecting the seizure of imported goods and where the goods are accompanied by genuine import/duty paying documents, seizures should not be effected.

3.4 Exports — Provisional release of export good against bond

3.4.1. Circular No. 33/2005-Cus., dated 2-8-2005

F.No. 605/3/2004-DBK

Subject : Seizure of goods entered for exportation on account of misdeclaration of quantity, value etc. – Provisional release instructions – Reg.

The undersigned is directed to invite your attention to the above mentioned subject and to state that an issue has been raised as to whether goods entered for exportation, which are seized for mis-declaration of quantity, value etc., can be released provisionally pending investigation, adjudication and appeal proceedings.

2. It has come to the notice of the Board that sometimes goods entered for exportation are detained or seized by the field formations for mis-declaration of quantity, value, etc. Such goods are not allowed to be exported even on a provisional basis pending completion of investigation, adjudication or appeal proceedings. However, these proceedings usually take a considerable time to conclude; in the meanwhile, the goods deteriorate and lose their intrinsic value. Consequently, issues like payment of demurrage charges to the custodians and export benefits to the exporters arise. Detention or seizure of goods also adds to congestion in ports, ICDs, etc. It has been observed that such a course of action benefits neither the department nor the exporter. On the contrary, if the consignments are allowed to be exported on a provisional basis, pending completion of investigation and adjudication proceedings, the country would earn valuable foreign exchange and the exporter would get the appropriate price for goods.

3. The matter has been examined by the Board having regard to the problems associated with the seizure of export goods, it has been decided that **except for prohibited/contraband goods**, the seized goods should be released provisionally and allowed to be exported on execution of a bond for an amount equivalent to the value of seized goods and probable fine and penalty which might be imposed. However, no export benefits shall be allowed in such cases until the matter is finally decided, and the bond to be executed for provisional release shall contain a clause to this effect.

4. A suitable Standing Order may be issued for the guidance of the staff. Difficulties faced, if any, in implementation of the Circular may be brought to the notice of the Board at an early date.

Receipt of the Circular may kindly be acknowledged.

3.4.2. Circular No. 01/2011-Customs, dated 4.01.2011

[Issued from F.No.401/179/2009-Cus.III]

Subject: Provisional release of export–goods detained for investigation – reg.

Attention is invited to the Board Circular No.33/2005-Customs dated 2.08.2005 which contains the instructions regarding provisional release of goods entered for exportation and is seized on the ground of mis-declaration in terms of quantity and value.

2. Instances have come to the notice of the Board that export consignments continue to be detained and not allowed clearance on provisional basis on account of pending test reports / investigations for alleged mis-declaration in terms of quantity, value and description of the goods. In one case it was reported that the detained goods were not allowed to be exported provisionally on the ground that Board's Circular referred above provides for provisional release of only the seized goods.

3. In this regard it is observed that inordinate detention of the seized goods entered for exportation results in delays in fulfillment of export order and at times cancellation of such orders. Detention of goods also adds to congestion in ports besides resulting in payment of demurrage charges to the Custodians. Accordingly, the matter has been re-examined by the Board with the view to ameliorate the aforementioned difficulties faced by exporters and to streamline the procedure of provisional release / exportation of seized goods / goods under investigation on account of mis-declaration in terms of quantity and value etc.

4. Seizure should be resorted to only when the Customs officers have a reason to believe that the goods in question are liable to confiscation under the Customs Act, 1962 and thereafter the provisions of Section 110A of the Customs Act, 1962 would come into play. However, there may be situations when the goods are to be detained for purpose of tests etc. to confirm the declaration. In such cases the endeavour should be to quickly undertake the necessary action (test / enquiry etc.) and take appropriate legal action thereafter so that the period of detention is kept to the minimum. Thus, the following course of action is prescribed in respect of goods entered for exportation:

(a) In case the export goods are found to be mis-declared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.

(b) In case the export goods are either suspected to be prohibited or found to be prohibited in terms of the Customs Act, 1962 or ITC (HS), the same should be seized and appropriate action for confiscation and penalty initiated.

(c) In case the export goods are suspected of mis-declaration or where declaration is to be confirmed and further enquiry / confirmatory test or expert opinion is required (as in case of chemicals or textiles materials), the goods should be allowed exportation provisionally. The exporters in these cases are required to execute a Bond of an amount equal to the value of goods and furnish appropriate security in order to cover the redemption fine and penalty in case goods are found to be liable to confiscation. In case exports are made under any Export Promotion / Reward Schemes, the finalization of export incentives should be done only after receipt of the test report / finalisation of enquiry and final decision in the matter. The Bond executed for provisional release shall contain a clause to this effect,

(d) Export goods detained for purpose of tests etc. must be dealt with on priority and the export allowed expeditiously unless the prohibited nature of goods is confirmed. Continued detention of any export goods in excess of 3 days must be brought to the notice of the Commissioner of Customs, who will safeguard the interest of the genuine exporters as well as the revenue.

5. A suitable public notice for information of trade and standing order for guidance of staff may be issued.

6. Difficulty faced, if any, in implementation of this Circular may be immediately brought to the notice of the Board.

Show cause notice for penalty and confiscation of such goods still issuable without time-limit

Circular No. 7/2013-Cus., dated 19-2-2013

F.No. 711/04/2013-Cus. (AS)

Subject : Requirement of issuing Show Cause Notice under Section 124 of the Customs Act, 1962 to the owner of goods within stipulated period of six months of the seizure of goods or during extended period - Release of seized goods in case of non-compliance of same under provisions of Section 110(2) of the Customs Act, 1962 - Regarding.

Attention is invited to Section 110(2) of the Customs Act, 1962 which envisages completion of the enquiry within a period of six months from the date of seizure and if such an enquiry is not completed within that period and a notice under Sec. 124(a) is, therefore not given, the person from whom the goods are seized becomes entitled to their restoration. However, in cases where investigation may not be completed owing to some difficulties, the Commissioner has power to extend the time limit on two conditions, namely, (i) total period of issue of Show Cause Notice (SCN) does not exceed one year, and (ii) sufficient cause is shown by Commissioner while extending the time-limit.

2. The Commissioner, obviously, is expected not to pass extension orders

mechanically or as a matter of routine, but only on being satisfied that there exists facts which indicate that the investigation could not be completed for *bona fide* reasons within the time laid down in Section 110(2) and that, therefore, extension of that period has become necessary. The burden of proof in such an inquiry is clearly on the Customs officer applying for extension and not on the person from whom the goods are seized. The words 'sufficient cause being shown' must mean that the Commissioner must determine based on materials placed before him that they warrant extension of time.

3. It has been the considered practice of field formation that in cases where seized goods have been provisionally released by the competent authority under Section 110(a) and investigations in the matter are still pending there is no need for notice under Section 124(a) of the Customs Act and that a Show Cause Notice can be issued in such cases of provisional release on completion of investigations. For this, reliance was placed on the Hon'ble Bombay High Court judgment in writ petition No. 316 of 2008 (reported in "*Jayant Hansraj Shah v. Union of India* - 2009 (1) Bom. CR 474" and 2008 (229) [E.L.T.](#) 339 (Bom.) to say that whenever the power to issue show cause notice is preserved, and a request is made, to release the goods taken into custody, there would be no question of unconditional release, by operation of Section 110(2) of the Act.

4. However, recently Hon'ble Delhi High Court in WP(C) No. 2952/2012 in the case of *Jatin Ahuja v. DRI*, vide decision dated 4-9-2012 [2013 (287) [E.L.T.](#) 3 (Del.)] had held that - "Section 110A does not absolve or override provisions of Section 110(2) - Though seized goods are released provisionally under Section 110A, if no Show Cause Notice is issued within stipulated time under Section 110(2), goods shall be returned".

5. While, the department is in the process of filing SLP against the said order, the matter has been examined in the Board. Accordingly, the following instructions are issued for strict compliance by the field formations:-

- (1) While, Section 110(2) provides for unconditional release of the goods on non-issue of notice within the stipulated period, there is no time limit provided for issue of Show Cause Notice under Section 124 and that the proceedings of confiscation of goods and or imposition of penalty on the offender do not attract any time limit. However, release of goods for non-compliance of provisions of Section 110(2) is bound to create complications like difficulties in realisation of duty leviable on goods under reference and of fine and penalty amounts.
- (2) The investigating officers should, therefore, exert to complete the investigations at the earliest and submit draft Show Cause Notice to the adjudicating Authority who should ensure that the Show Cause Notice is issued to the owner of the goods or such person under Section 124 of the Customs Act, 1962 within six months of the date of seizure of goods or within the period extended by the Commissioner of Customs in terms of Proviso to Section 110(2). This is necessary in order to avoid the play of unconditional release of seized goods to the person from whom the goods were seized.
- (3) The field formations should invariably report all cases (including seizure cases) pending investigation in Annexure-IV of Customs MTR on Anti-smuggling Performance giving reasons for pendency of investigation wherever, the pendency is more than 3 months. All Chief Commissioners / Commissioners should monitor the position of cases under investigation (including cases involving seizure of goods through the MTR and otherwise) and take steps for Issue of Show Cause Notices within the time limit prescribed under Section 110(2) of the Customs Act, 1962.

6. Any deviation from the above stated procedure would be viewed seriously in view of possible loss of Revenue to the Government Exchequer.

3.6 Confiscation of seized goods

CBEC Circular No. 5/89-Central Excise, dated 19-1-1989

[From F. No. 208/2/89-CX.6]

Subject: Confiscation of seized goods

A case has come to the notice of the Board where a Collector while adjudicating a case though held that the seized goods were liable to confiscation, but did not pass any order in regard to confiscation of seized goods because such seized goods were destroyed in fire. At the time of destruction in fire, the seized goods were lying deposited in a Government Warehouse. Since the seized goods had not been ordered to be confiscated by the Collector, the title/ownership of the seized goods continued to vest with the assessee from whom the seizure was affected. Now the assessee has come up with a request for compensation in respect of the seized goods destroyed in the fire. The claim for compensation is being examined in consultation with Ministry of Law. It has been observed by the Board that had a clear order for confiscation been made by Collector while adjudicating the case, the claim for compensation would not have arisen at all.

2. It has been directed by the Board that if the offence relating to any seized goods is proved, the Adjudicating Authority should necessarily pass an order for confiscation. The physical presence of the seized goods is not necessary for ordering confiscation. By the order of confiscation, the ownership of the seized goods is transferred to the Central Government by virtue of rule 211 of Central Excise Rules, 1944. In the instant case, since the seized goods were destroyed in fire, the proper course of action on the part of the Collector should have been to order confiscation but refrain from giving the assessee any option to redeem the confiscated goods on payment of fine because the goods had been destroyed in fire.

3. The above principles should be kept in mind while deciding similar cases in future.

3.7 Seizure of goods whether a pre-condition for ordering confiscation

CBEC Circular No. 29/89-Central Excise, dated 2-5-1989

[From F. No. 208/6/89-CX.6]

Subject: Central Excise - Whether seizure of goods is a pre-condition for ordering confiscation - Regarding.

A case has come to the notice of the Board where a Collector of Central Excise has taken the view in his adjudication order, that the plant and machinery of a party could not be confiscated as they had not been seized.

2. The matter has been examined by the Board. Under rule 173Q plant, machinery etc. is liable to confiscation provided the duty evasion for the first time exceeds Rs. 1 lakh or

for the second time exceeds Rs. 10,000/-. There is no requirement of seizure of plant and machinery etc. before confiscation under rule 173Q. What is required to be done is to observe the principles of natural justice by issuing a show cause notice as per rule 233-A and affording reasonable opportunity to the party to make representation in writing as well as in person before any order for confiscation relating to the plant and machinery etc., is made. However, as a matter of abundant caution a direction should invariably be issued to assessee not to alter or dispose of plant or machinery which is contemplated to be confiscated.

3. Field formations may be suitably advised.

3.8 Seized documents — Return of seized documents not required by the Department

3.8.1. CBEC Instruction F. No. 394/115/88-Cus. (AS), dated 13-6-1988

Subject: Return of seized documents not required by the department in Customs cases - Instructions regarding.

In cases in which documents are seized by the departmental officers, complaints are often received that the seized documents are retained by the department for long periods and even the documents which are not useful for the department on account of not having been relied upon in connection with any departmental or court proceedings initiated against the party are not released. The matter has been considered and it is felt that after the search of any premises the documents that are seized should be promptly scrutinised on completion of the investigations. The documents which are not incriminating in nature and which are not proposed to be relied upon in any departmental or court proceedings contemplated against the party should be identified for being returned so that valuable space is not unnecessarily occupied and responsibility for custody of such documents by the department is not taken beyond the date of issue of Show Cause notice/filing of complaint. Ministry is of the opinion that in order to avoid complaints ordinarily the department itself should take the initiative to return the documents which are not considered useful from the angle of any proceedings to be initiated against the concerned parties.

2. I am, therefore, directed to request you to examine the matter and lay down a procedure for ensuring that the seized documents, not required in connection with any departmental or court proceedings, are expeditiously returned to the parties. For this purpose the officers responsible for investigation of any case should be required to promptly scrutinize the records seized in that case for segregating the documents that are not required in connection with the departmental adjudication or of the concerned persons in connection with the prosecution for being returned to the party. For completion of this exercise, it is felt that a time limit of six months from the date of search/seizure would be adequate. You may, accordingly issue necessary instructions to the concerned staff. It is also requested that the progress made in this direction may be periodically reviewed by you. A quarterly report (in the enclosed proforma) may also be sent to the Board indicating the number and details of cases wherein the documents not relied upon have not been returned to the parties even after issue of Show Cause Notice/filing of prosecution complaints. This report may please be sent so as to reach by 10th of month following each quarter of the year.

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Receipt of this letter may please be acknowledged.

For the quarter ending

QUARTERLY STATEMENT (Return of seized documents not relied upon)

Serial No.	File No. of Collectorate/Customs House	Date and year of seizure	Date of issue of show cause notice	Date of filing of complaint under section 135 of Customs Act.	Date of return of documents not relied upon in the Show Cause Notice or complaint filed in the court	Reasons for delay/ non-return of documents
(1)	(2)	(3)	(4)	(5)	(6)	(7)

3.8.2 Circular No. 42/88-CX.6, dated 24-5-1988 [Issued from F. No. 207/79/88-CX.6]

Subject: Handling of seized documents/records - Instruction - Regarding.

Whenever any documents/records are seized, immediate efforts should be made to segregate the documents which are proposed to be relied upon in framing/establishing the charges, from the remaining documents/records.

2. Once the show cause notice is issued to the party the documents / records, which have not been relied upon, may be returned to the party under proper receipt.

3. The above measures would help substantially reduce the time taken by parties for inspection of documents.

3.8.3. Circular No. 48/88-CX.6, dated 10-6-1988[From F. No.207/103/88-CX.6]

Subject : Disposal of seized documents/records – Regarding.

Attention is invited to Board's instructions F. No. 207/79/88-CX.6 (Circular No. 42/88-CX.6, dated 24-5-1988) under which directions have been issued for segregation and early return of seized documents/records, which are not proposed to be relied upon in framing/establishing charges against a party. It has been decided to monitor the disposal of

such records/documents.

2. The Collectors are therefore required to dispose of pending cases relating to return of documents/records etc. not relied upon, latest by 30-8-1988. With effect from 30-6-1988 a weekly progress report furnishing particulars of cases where records/documents were seized and which are yet to be returned to the party, may be furnished to the Board. The reasons for delay in returning documents/records not relied upon should also be indicated in these weekly reports. After 30-8-1988, the report should be converted into a monthly one and incorporated with the Anti-evasion report furnished along with the monthly Administrative reports.

3.8.4. Copy of D.O. Letter No. 207/09/2006-CX.6 dated 08.09.2006 from Member (CX & ST), CBEC, New Delhi

It has been brought to the notice of the Board that the records seized in connection with offence cases are not being returned to the assesses in spite of repeated requests made by them. This not only causes undue hardship to the assesses, as they require such records for various statutory obligations, but it also unnecessarily occupies space in our offices.

2. In this regard, your attention is invited to the Board's Circular No. 42/88-CX, dated 24.05.1988 and No. 48/88-CX.6 dated 10.06.1988. As per these circulars, the documents / records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized. I wish to reiterate compliance of these instructions. In fact, the Show Cause Notice itself may incorporate a clause that unrelayed upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relied upon records should also be mentioned in the Show Cause Notice.

3.8.5. Circular No. 171/5/96-CX, dated 2-2-1996 [From F. No. 207/3/96-CX.6]

Subject : Problems brought up in the 35th Meeting of Customs & Central Excise Advisory Council - Release of seized books and records - Regarding.

I am directed to say that Trade has represented in the 35th Meeting of Customs & Central Excise Advisory Council that seized books and documents should be released to the assesseees in cases where Show-cause notice is not issued within six months from the date of seizure.

2. In this regard, I am directed to invite your attention to Circular No. 42/88-CX.6, dated 24th May, 1988 (copy enclosed) wherein the procedure for handling of seized documents and records has been prescribed. It is reiterated that whenever any documents/records are seized, immediate efforts should be made to segregate the documents which are proposed to be relied upon in framing/establishing the charges, from the remaining documents/records.

3. Once the show-cause notice is issued to the party, the documents/records which have not been relied upon may be returned to the party under proper receipt. The assessee may also be allowed to obtain photocopies of the documents relied upon. The above measures would help substantially reduce the time taken by the parties for inspection of seized documents.
4. Field formations may be suitably informed.

Note:

1. The above said Circulars were issued when Central Excise Rules, 1944 did not have any provisions providing for returns of the records. Now, the Rule 24 A of the Central Excise Rules, 2002 (Inserted vide notification No. 17/2009-CE (NT) with effect from 7.7.2009) specifically provides for return of records.
2. The rule 24 A of the Central Excise Rules, 2002 provides for return of books of accounts or other documents, seized by the Central Excise officer or produced by the assessee or any other person and not relied on for the issue of SCN,
 - (i) within period of 30 days of the issue of show cause notice, or
 - (ii) within 30 days from the date of expiry of the period for issue of such notice.
3. However, the Commissioner/Principal Commissioner may order retention of such books of account or documents. In such situation, he is required to specify reasons to be recorded in writing and the assessee is intimated about such retention.

3.9 Intimation of Seizure, detention & confiscation of goods to custodians

Circular No. 38/2004-Cus., dated 31-5-2004

[Issued from F.No. 711/53/2003-CUS(AS)]

**Subject: Intimation of seizure, detention & confiscation of goods to custodians
- Regarding.**

I am directed to refer to the above mentioned subject and to convey that the Board has decided to reiterate that whenever goods are seized, detained or confiscated, the custodian of the goods shall be informed immediately by the Customs/concerned authority.

All concerned are requested to take necessary action in time.
Please acknowledge the receipt of this letter.

3.10 Clearances not conforming to adjudication order while appeal there against pending — Seizure not to be effected

3.10.1 Circular No. 906/26/2009-CX, dated 3-12-2009

[Issued from F.No. 208/1/2005-CX6]

Subject : Circular No. 824/1/2006-CX-Clarification regarding prospective implementation of orders - Regarding.

Attention is invited to Board's Circular No. 824/1/2006-CX., dated 16th January, 2006 [2006 (193) E.L.T. T35] on the aforesaid subject. It has been reported that some of the Commissionerates have taken a view that once an order has been passed on issues like classification/valuation etc., in that case, all subsequent removals must follow the said order even though appeal of the assessee against the said order is pending. It has further been reported that in case of removal without conforming to the said order, the goods have been seized on the ground that these have been cleared in violation of the order passed by the Adjudicating Authority.

2. The issue has been examined. It is clarified that the said circular nowhere provided for seizure of goods, which are cleared not in conformity with the adjudication order when the appeal against the said order is pending. Therefore, in such cases protective show cause notices should be issued to safeguard the revenue, and seizure of goods only for the aforesaid reason should not be effected.

3. Trade & Industry as well as field formations may be suitably informed.

4. Receipt of this circular may kindly be acknowledged.

5. Hindi version will follow.

3.10.2 Circular No. 824 /1 /2006-CX, dated 16.01.2006

[Issued from F.No.208 /1/2005-CX 6]

Subject:-Central Excise-Prospective implementation of orders relating to valuation and classification matters or matters having recurring revenue effect - regarding.

I am directed to say that certain references have been received from field formations raising doubts over prospective implementation of the orders relating to classification, valuation or other matters having recurring revenue implications when a stay has been granted against recovery by Commissioner (Appeals) or Tribunal.

2. In this connection, your attention is invited to first proviso to section 35F of Central Excise Act, 1944. As per this provision, the Commissioner (Appeals) or the Appellate Tribunal depending on the circumstances of the case may dispense with the deposit of duty demanded or penalty levied subject to such conditions as he or it may impose to safeguard the interests of revenue. Thus, it may be seen that any stay against the order confirming the demand and/or levying penalty is only with respect to duty demanded/ penalty levied under the impugned order.

3. In view of legal position as explained above, it is hereby clarified that any stay order passed by the Commissioner (Appeals) or the Tribunal has to be examined with respect to the words used and the intention expressed by the relevant Appellate Authority. Action on the prospective implementation of the order should be taken in accordance with the provisions of the Central Excise Act, 1944 and Rules made thereunder.

4. Field formations may be informed suitably.

4. **ARREST & BAIL**

4.1 **Arrest and bail in relation to offences punishable under Customs Act, 1962 — Guidelines**

Circular No. 38/2013-Cus., dated 17-9-2013

[F.No. 394/68/2013-Cus(AS)]

Subject – Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962 - Regarding.

Attention of the field formations is invited to the amendments to section 104 of the Customs Act, 1962 vide Finance Act, 2013 (with **effect from 10-5-2013**) whereby all offences are bailable other than the categories of offences punishable under section 135 of the Act *ibid*, which are classified as non-bailable. These are offences relating to:

- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
- (b) prohibited goods notified under section 11 of the Customs Act, 1962 (as amended) which are also notified under sub-clause (C) of clause (i) of sub-section (1) of Section 135 of the Customs Act, 1962 (as amended); or
- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees.

2.1 The existing guidelines on the subject have been re-examined in the light of the above legislative amendments. As afore-stated, offences under the Customs Act, 1962 are placed in two categories i.e. (i) bailable; or (ii) non-bailable. Since arrest takes away the liberty of an individual, the power must be exercised with utmost care and caution in cases where a Commissioner of Customs or Additional Director General has reason to believe on basis of information or suspicion that such person has committed an offence under the Act

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punishable under the Sections 132 or 133 or 135 or 135A or 136 of the Customs Act, 1962.

It is emphasised that arrest of persons in terms of section 104(1) of Customs Act, 1962 should be resorted to only where the facts and situations of a particular case demand such action. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest. These situations may include circumstances:

- (i) to ensure proper investigation of the offence;
- (ii) to prevent such person from absconding;
- (iii) cases involving organised smuggling of goods or evasion of customs duty by way of concealment;
- (iv) masterminds or key operators effecting proxy/benami imports/ exports in the name of dummy or non-existent persons/IECs, etc.

2.2 The decision to arrest should be taken in cases which fulfil the requirement of the provisions of Section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.

2.3 While the Act does not specify any value limits for exercising the powers of arrest, *it is clarified that arrest in respect of an offence, categorized as bailable offence, should be effected only in exceptional situations which may include:*

- (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds Rs.20 lakh.
- (b) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/ concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds Rs.50 lakh.

2.4 There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in “*D.K. Basu v. State of W.B.*” reported as 1997 (1) SCC 416 (see para 35). The arrest memo should include:

- (a) brief facts of the case;
- (b) details of the person arrested;
- (c) list of evidence against the person;
- (d) relevant Section(s) of the Customs Act, 1962 or other laws attracted to the case and to the arrestee;
- (e) the grounds of arrest must be explained to arrestee and this fact noted in the arrest memo;
- (f) a nominated person (as per details provided by arrestee) of the arrestee should be informed immediately and this fact also may be mentioned in the arrest memo;
- (g) the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to person arrested under proper acknowledgement;
- (h) a separate arrest memo has to be made and provided to each individual/arrestee.

2.5 Further, there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following:

- (i) Female offender should be arrested by or in the presence of woman Customs officers.
- (ii) Medical examination of an arrestee should be conducted by a medical officer in the service of Central or State Government and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case such female medical officer is not available, by a female registered medical practitioner.
- (iii) It shall be the duty of the person having the custody of an arrestee to take reasonable care of the health and safety of the arrestee.

2.6 Further, in every case of arrest effected in accordance with the provisions of Section 104(1) of the Customs Act, 1962, there should be immediate intimation to the jurisdictional Chief Commissioner or DGRI, as the case may be.

3.1 In regard to the grant of bail and terms of bail, a person arrested for a *non-bailable offence* should be produced before concerned Magistrate without unnecessary delay in terms of provisions of Section 104(2) of the Act.

3.2 Under sub-section (3) of section 104 an officer of Customs (arresting officer) has the same powers as an officer in charge of a Police Station under the Cr.PC. Thus, a Customs officer (arresting officer) is bound to release a person on bail for offences categorized as bailable under the Customs Act, 1962. Thus, release on bail must be offered to a person arrested in respect of bailable offence and bail bond accepted for bailable offence. The amount of bail bond/surety for bailable offences should not be excessive and the bail conditions should be informed by the arresting officer in writing to the arrestee and also informed on telephone to the nominated person (as per details provided by the arrestee) and the arrestee should be also allowed to talk to nominated person. If the conditions of the bail are fulfilled by the arrestee, he shall be released by the officer concerned on bail forthwith. The arresting officer may, and shall if such a person is indigent and unable to furnish surety, instead of taking bail from such person, discharge him or her executing a bond without sureties for his appearance as provided under Section 436 of Cr.PC. However, only in cases where the conditions for granting bail are not fulfilled, the arrestee shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four (24) hours of arrest.

3.3 Only in the event of circumstances preventing the production of the arrestee before a Magistrate without unnecessary delay, the arrestee may be handed over to nearest Police Station for his safe custody during night, under proper Challan, and produced before the Magistrate on the next day, and the nominated person of the arrestee may be also informed accordingly.

4. The guidelines issued vide F. No. 394/71/97-Cus (AS) dated 22-6-1999 (including the threshold limit specified at para 2.3) stand modified to the above extent.

5. Chief Commissioners/DGRI shall send a report on every arrest to the concerned Member within twenty-four (24) hours of the arrest. To maintain an all India record of

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arrests made under the Customs Act, 1962, a monthly report of all persons arrested in the Zone shall be sent by the Chief Commissioner to DRI (Hqrs) in the *format* prescribed and enclosed, by the 5th of the succeeding month and the same would be compiled and sent to Anti-Smuggling Unit, CBEC by 10th of every month zone wise.

6. The Chief Commissioners/Director Generals are hereby directed to circulate the present guidelines to all the formations under their charge. Difficulties, if any, in implementation of the aforesaid guidelines may be brought to the notice of the Board.

Enclosure

FORMAT

Monthly Report on Persons Arrested under the Customs Act, 1962 (excluding NDPS Act) in a Zone

Sl. No.	Name, Designation and Age of the person arrested	Date of arrest	Commissionerate/ DRI Concerned	Description and Value of the seized/detained goods (Rs. in crores)	Amount of Duty evaded (Rs. in crores)	Role in evasion/ smuggling of goods and nature of evidence collected	Appraising case/ outright smuggling case
Total							

Arrest and bail in relation to offences punishable under Customs Act, 1962 — Revised Guidelines

Circular No. 28/2015-Customs., dated 23.10.2015

Available on next page:-

F.No.394/68/2013-Cus (AS)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Anti-Smuggling Unit)

New Delhi, dated 23rd October 2015

To

All Chief Commissioners of Customs,
All Chief Commissioners of Customs (Preventive),
All Chief Commissioners of Customs, Central Excise and Service Tax,
All Chief Commissioners of Central Excise and Service Tax,
All Chief Commissioners of Service Tax,
Chief Commissioner (AR), CESTAT,
All Directors General,
Web Master, CBEC.

Sir/Madam,

Subject - Revised Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962- reg.

Attention of the field formations is invited to the guidelines for arrest and bail in relation to offences punishable under Customs Act, 1962 issued vide F. No. 394/71/97-Cus (AS) dated 22.06.1999 and F. No. 394/68/2013-Cus (AS) dated 17.09.2013. The threshold limit (s) specified in the guidelines issued on 17.09.2013 has been further streamlined in accordance with guidelines issued for launching of prosecution in relation to offences punishable under Customs Act, 1962 vide Circular No.2015 [F.No.394/68/2013-Cus (AS)] dated 23.10.2015.

2. Accordingly, the para 2.3 of the existing guideline issued vide F. No. 394/68/2013-Cus (AS) dated 17.09.2013 shall read as under:-

" 2.3 While the Act does not specify any value limits for exercising the powers of arrest, it is clarified that arrest in respect of an offence, should be effected only in exceptional situations which may include:

- (a) Cases involving unauthorised importation in baggage/ cases under Transfer of Residence Rules, where the CIF value of the goods involved is Rs. 20,00,000/- (Rupees Twenty Lakh) or more;
- (b) Cases of outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or offence involving foreign currency where the value of offending goods is Rs. 20,00,000/- (Rupees Twenty Lakh) or more;



- (c) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods is Rs. 1,00,00,000/- (Rupees one crore) or more;
- (d) Fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act, 1962, if the amount of drawback or exemption from duty is Rs. 1,00,00,000/- (Rupees One Crore) or more. In cases related to exportation of trade goods (i.e. appraising cases) involving (i) wilful mis-declaration in value / description ; (ii) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962, where FOB value of the offending goods is Rs. 1,00,00,000/- (Rupees One Crore) or more.
- (e) The above criteria of value mentioned in sub para 2.3 (a) to 2.3 (d) would not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required, on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved."

3. The Chief Commissioners/Director Generals are hereby directed to circulate the present guidelines to all the formations under their charge. Difficulties, if any, in implementation of the aforesaid guidelines may be brought to the notice of the Board.

Facts: As above

Yours faithfully,


(A.C. Mallick)

Under Secretary to the Government of India

4.2 Arrest and bail under Central Excise Act, 1944 — Clarification

Circular No. 974/08/2013-CX, dated 17-9-2013

[Issued from F.No. 4/2/2011-CX-1]

Subject: Arrest and Bail under Central Excise Act, 1944 — Regarding.

1.1 I am directed to invite your attention to the amendments to Sections 9A, 20 and 21 of the Central Excise Act, 1944 vide the Finance Act, 2013. A new sub-section (1A) has been inserted in Section 9A to specify that the offences relating to excisable goods, where the duty involvement exceeds Rs. fifty lakh and which are punishable under clause (b) or clause (bbbb) of sub-section (1) of Section 9, are cognizable and non-bailable. For ease of reference, clause (b) and clause (bbbb) of sub-section 9(1) as well as new sub-section 9A(1A) are summarized below :

- (i) Clause (b) of sub-section 9(1) - Whoever evades the payment of any duty payable under this Act;
- (ii) Clause (bbbb) of sub-section 9(1) - Whoever contravenes any of the provisions of this Act or the rules made there under in relation to credit of any duty allowed to be utilised towards payment of excise duty on final product.
- (iii) Sub-section 9A(1A) - The offences relating to excisable goods where the duty leviable thereon under this Act exceeds fifty lakh rupees and punishable under clause (b) or clause (bbbb) of sub-section (1) of Section 9, shall be cognizable and non-bailable.

1.2 All other offences under Section 9 are non-cognizable and bailable.

2.1 Thus the offences under Central Excise Act fall in two categories - bailable and non-bailable. Depending on the type of offence committed, a person is liable to be arrested in either of the two category of offence. Since arrest takes away the liberty of an individual, the power must be exercised with utmost care and caution and only when the exigencies of the situation demand arrest.

Non-bailable offences

3.1 A person is liable to be arrested for non-bailable offence only when the offence committed by him is covered under clause (b) or clause (bbbb) of sub-section 9(1) and the duty involvement exceeds Rs. fifty lakh. Thus, it is essential to examine offences in each and every case with reference to each of the clauses of sub-section 9(1) and also the quantum of duty involved prior to invoking the arrest provisions. Only where clause (b) or clause (bbbb) are the most appropriate clauses to describe the offence and duty involved exceeds rupees fifty lakhs, these provisions should be invoked. Any person arrested for offences under these clauses should be informed of the grounds of arrest and produced before a magistrate without unnecessary delay and within 24 hours of arrest.

3.2 A list of non-bailable offences where decision to arrest may be taken by the Commissioner is given below :-

- (a) clandestine removal of manufactured goods;
- (b) removal of goods without declaring the correct assessable value and receiving a portion of sale price in cash which is in excess of invoice price and not accounted for in the books of account;
- (c) taking Cenvat Credit without the receiving the goods specified in the invoice;
- (d) taking Cenvat Credit on fake invoices;
- (e) issuing Cenvatable invoices without delivering the goods specified in the said invoice.

3.3 In all other cases of cognizable and non-bailable offences, covered by clause (b) or clause (b) of sub-section 9(1) where the duty involved exceeds rupees fifty lakhs, which are not listed at paragraph 3.2 above, e.g. (i) removal of inputs as such, without reflecting such removal in records, on which Cenvat credit has been taken, without payment of amount equal to the credit availed on such inputs (ii) irregular and wrongful availment of benefit of central excise duty exemption by reason of fraud, collusion, willful misstatement, suppression of facts, or contravention of the provisions of the Act or the rules with intent to evade payment of duty, etc, decision to arrest shall be taken by the Commissioner only with the approval of the jurisdictional Chief Commissioner.

Bailable offence

4.1 A person is also liable to be arrested in case of non-cognizable and bailable offences, when such an offence is committed. Amendments have been made in Section 20 and Section 21 to provide, *inter alia*, that powers to grant bail or release an arrested person on execution of bond can be exercised only for offences which are non-cognizable. Any person arrested for non-cognizable offence shall have to be released on bail, if he offers bail, and in case of default of bail, he is to be forwarded to the custody of magistrate. In terms of Notification No. 9/99-C.E. (N.T.) dated 10-2-1999, an officer not below the rank of Superintendent of Central Excise can exercise powers under Section 21 including powers to grant bail.

4.2 Bail should be subject to the condition(s), as deemed fit, depending upon the facts and circumstances of each individual case. It has to be ensured that the amount of bail bond/surety should not be excessive and should be commensurate with the financial status of the arrested person. Further the bail conditions should be informed by the arresting officer in writing to the person arrested and also informed on telephone to the nominated person of the person(s) arrested. Arrested person should be allowed to talk to the nominated person. If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail. The arresting officer may, and shall if such a person is indigent and unable to furnish surety, instead of taking bail, discharge him on executing a bond without sureties to his appearance as provided under Section 436 of CrPC. However, in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate magistrate within 24 hours of arrest.

4.3 Only in the event of circumstances preventing the production of the person arrested

before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station for his safe custody during night, under proper Challan and produced before the magistrate the next day. These provision shall apply for non-bailable offence also. The nominated person of the arrested person may also be informed accordingly.

Precautions to be taken by the departmental officers

5.1 Powers to arrest a person needs to be exercised with utmost caution. Chief Commissioners/Commissioners of Central Excise are required to ensure that approval for arrest for non-bailable offence is granted only where the intent to evade duty is evident and element of *mens rea*/guilty mind is palpable. Attention is also invited to the decision of the Hon'ble Supreme Court in case of *D.K. Basu v. State of West Bengal*, wherein specific guidelines in respect of arrest have been provided. These are required to be followed.

5.2 Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature & gravity of offence, quantum of duty evaded or credit wrongfully availed, nature & quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. To summarize, power to arrest has to be exercised after careful consideration of the facts of the case and the above factors.

5.3 There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions of Hon'ble Supreme Court in case of *D.K. Basu v. State of W.B.* reported as 1997 (1) SCC 416. The arrest memo should include –

- (a) brief facts of the case;
- (b) details of the person arrested;
- (c) gist of evidence against the person;
- (d) relevant Section(s) of the Central Excise Act, 1944 attracted in the case;
- (e) the grounds of arrest must be explained to the person arrested and this fact noted in the arrest memo;
- (f) a nominated person (as per details provided by the person arrested) of the person arrested should be informed immediately and this fact also may be mentioned in the arrest memo;
- (g) the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to person arrested under proper acknowledgement;
- (h) a separate arrest memo has to be made and provided to each person arrested.

5.4 Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following :-

- (i) Arrest of a female should be carried out by or in the presence of a lady officer;
- (ii) Arrest memo should be attested by nominated person (such as member of family) of the person arrested or a respectable member of the locality from where the arrest is made;
- (iii) Medical examination of the arrested person should be conducted by a medical officer in the service of Central or State Governments and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case such female medical officer is not available, by a female registered medical practitioner;
- (iv) It shall be the duty of the officer having the custody of the arrested person to take reasonable care of the health and safety of the person arrested.

Reports to be sent

6. Chief Commissioners shall send a report on every arrest to the Zonal Member within 24 hours of the arrest giving such details as have been prescribed in the monthly report. To maintain an all India record of arrests made in Central Excise, a monthly report of all persons arrested in the Zone shall be sent by the Chief Commissioner to the DGCEI, Headquarters, New Delhi in the format, hereby prescribed and enclosed, by the 5th of the succeeding month.

7. All previous circulars on arrest and instructions in the Supplementary manual of instructions stand modified to the above extent.

Enclosure

Monthly Report on Persons Arrested in a Zone

Sl. No.	Name, Designation and Age of the person arrested	Date of arrest	Commissionerate Concerned	Name and registration no. of the company	Amount of Duty Evaded	Role in evasion and nature of evidence collected
	-	-	-	-	-	-
Total	-	-	-	-	-	-

Circular No. 1010/17/2015-CX dated 23.10.2015

F. No. 96/54/2014-CX.1

Government of India

Department of Revenue

Central Board of Excise & Customs

New Delhi

New Delhi, the 23rd October, 2015

All Principal Chief/Chief Commissioners of Central Excise & Customs,

All Principal Chief/Chief Commissioners of Central Excise,

All Principal Chief/Chief Commissioners of Service Tax,

All Principal Director/Directors General.

Sir/Madam,

Sub: Revised monetary limits for arrest in Central Excise and Service Tax - reg.

Kind attention is invited to circular number **1009/16/2015-CX dated 23.10.2015** on the subject of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994 (Service Tax cases). Revised monetary limits have been prescribed in the circular for launching prosecution. Prosecution can now be launched where evasion of Central Excise duty or Service Tax or misuse of Cenvat Credit in relation to offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994 is rupees one crore or more.

2. Consequently, it has been decided to revise the limits for arrests in Central Excise and Service tax. Henceforth, arrest of a person in relation to offences specified under clause (a) to (d) of sub-section (1) of Section 9 of the Central Excise Act, 1944 or under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the misuse of Cenvat Credit is equal to or more than rupees one crore. Central Excise circular no. 974/08/2013-CX and Service Tax circular no. 171/6/2013-ST both dated 17-7-2015 stand amended accordingly.

3. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

4.3 Arrest and bail in relation to offences punishable under Service Tax — Guidelines

Circular No. 171/6/2013-S.T., dated 17-9-2013

[Issued from F.No. 137/47/2013-Service Tax]

Subject: Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994.

Section 103(K) of the Finance Act, 2013 has introduced Sections 90 & 91 in the Finance Act, 1994, with effect from 10th May, 2013. In terms of Section 90 of the Finance Act, 1994, as amended, offences under Section 89(1)(ii) shall be cognizable and all other offences shall be non-cognizable and bailable. In terms of Section 91(1) read with Section 89(1)(i) and (ii) of the Finance Act, 1994, as amended, the power to arrest has been introduced in cases involving evasion of service tax covered under Section 89(1)(i) and (ii) of the Finance Act, 1994, as amended and the amount of service tax evaded exceeds rupees fifty lakh. In this context, the following points may be noted for strict compliance :-

1.2 The following cases are covered under Section 89(1)(i) :

1.2.1 where a person knowingly evades the payment of service tax, or

1.2.2 avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules, or

1.2.3 maintains false books of accounts or fails to supply any information which he is required to supply or supplies false information, and the amount of service tax involved is more than fifty lakh rupees.

In such cases, the Assistant Commissioner or the Deputy Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in-charge of a police station has, and is subject to, under Section 436 of the Code of Criminal Procedure, 1973 (2 of 1974). This is in terms of Section 91(3) of the Finance Act, 1994, as amended.

1.3 The following cases are covered under Section 89(1)(ii) :

- 1.3.1 where a person has collected any amount exceeding fifty lakh rupees as service tax but fails to pay the amount as collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

In such cases, after following the due procedure of arrest, the arrested person must be produced before the magistrate without unnecessary delay, and definitely within 24 hours. This is in terms of Section 91(2) of the Finance Act, 1994, as amended. The magistrate will decide on whether or not to grant bail.

2. Conditions precedent

2.1 Since arrest impinges on the personal liberty of an individual, this power must be exercised carefully. The Finance Act, 1994, as amended, has specified categories of offences in respect of which only powers of arrest may be exercised and these offences are covered under clause (i) or clause (ii) of sub-section (1) of Section 89 of the Finance Act, 1994. Further, the Finance Act, 1994 has also prescribed value limits of evasion of service tax exceeding Rs. 50 lakh, for exercising the powers of arrest.

2.2 The legal stipulations in the Finance Act, 1994, as amended, contained in Section 91 read with Section 89 must be strictly adhered to. An officer of Central Excise not below the rank of Superintendent of Central Excise can carry out an arrest on being authorized by the Commissioner of Central Excise. To authorize the arrest the Commissioner should have reason to believe that the person proposed to be arrested has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of Section 89. The reason to believe must be based on credible material which will stand judicial scrutiny.

2.3 Apart from fulfilling the legal requirements, the need to ensure proper investigation, prevention of the possibility of tampering with evidence or intimidating or influencing witnesses and large amounts of service tax evaded are relevant factors before deciding to arrest a person.

3. Procedure for arrest

3.1 The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to. It is therefore advised that the Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure 1973 (2 of 1974).

3.2 There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in *D.K. Basu v. State of West Bengal* reported in 1997 (1) SCC 416 (see paragraph 35). The arrest memo should include:

- 3.2.1 brief facts of the case;
- 3.2.2 details of the person arrested;
- 3.2.3 gist of evidence against the person;
- 3.2.4 relevant section(s) of the Finance Act, 1994 or other laws attracted to the case and to the arrested person;

- 3.2.5 the grounds of arrest must be explained to the arrested person and this fact noted in the arrest memo;
- 3.2.6 a nominated person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact also may be mentioned in the arrest memo;
- 3.2.7 the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment;
- 3.2.8 a separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event that there are several arrests in a single case.

3.3 Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following:

- 3.3.1 A female should be arrested by or in the presence of a woman officer;
- 3.3.2 Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Governments and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.
- 3.3.3 It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

4. Post arrest formalities

4.1 The procedure is separately outlined for the different categories as listed in Section 89(1)(i) and (ii) of the Finance Act, 1994, as amended :

- 4.1.1 In cases covered under Section 89(1)(i), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also informed on telephone to the nominated person of the person(s) arrested. The arrested person should be also allowed to talk to a nominated person. The conditions will relate to, *inter alia*, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and security will depend, *inter alia*, on the amount of tax involved.
- 4.1.2 If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four (24) hours of arrest. The arrested person may

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be handed over to the nearest police station for his safe custody, within 24 hours, during the night under a challan, before he is produced before the Court.

4.2 In cases covered under Section 89(1)(ii) and only in the event of circumstances preventing the production of the arrested person before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station for his safe custody, within 24 hours, under a proper challan, and produced before the Magistrate on the next day, and the nominated person of the arrested person may be also informed accordingly.

4.3 Formats of the relevant documentation i.e. the Bail Offer Letter, the Bail Bond and the Challan for handing over to the police, in the Code of Criminal Procedure, 1973 (2 of 1974) may be followed.

4.4 Every Commissionerate should maintain a Bail Register which will have the details of the case, arrested person, bail amount, surety amount. The money/instruments/documents received as surety should be kept in safe custody. The money should be deposited in the treasury. The other instruments/documents should be kept in the custody of a single nominated officer. It should be ensured that the instruments/documents received as surety are kept valid till the bail is discharged.

5. Reporting System

5.1 A report on every person arrested should be sent to the jurisdictional Chief Commissioner with a copy to DGCEI (Headquarters) the same day or on the next day.

5.2 Chief Commissioners shall send a report on every arrest to the Zonal Member within 24 hours of the arrest giving such details as prescribed in the monthly report. To maintain an all India record of arrests made in service tax, a monthly report of all persons arrested in the Zone shall be sent by the Chief Commissioner to DGCEI (Headquarters), New Delhi, by the 5th of the succeeding month, in the following format:

Monthly Report on Persons Arrested in a Zone

S. No.	Name, designation and age of arrested person	Date of arrest	Commissionerate	Name and Registration Number of Company	Amount of duty evaded	Role in evasion and nature of evidence collected
Total						

Circular No. 1010/17/2015-CX dated 23.10.2015

**F. No. 96/54/2014-CX.1
Government of India
Department of Revenue
Central Board of Excise & Customs
New Delhi**

New Delhi, the 23rd October, 2015

All Principal Chief/Chief Commissioners of Central Excise & Customs,
All Principal Chief/Chief Commissioners of Central Excise,
All Principal Chief/Chief Commissioners of Service Tax,
All Principal Director/Directors General.

Sir/Madam,

Sub: Revised monetary limits for arrest in Central Excise and Service Tax - reg.

Kind attention is invited to circular number **1009/16/2015-CX dated 23.10.2015** on the subject of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994 (Service Tax cases). Revised monetary limits have been prescribed in the circular for launching prosecution. Prosecution can now be launched where evasion of Central Excise duty or Service Tax or misuse of Cenvat Credit in relation to offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994 is rupees one crore or more.

2. Consequently, it has been decided to revise the limits for arrests in Central Excise and Service tax. **Henceforth, arrest of a person in relation to offences specified under clause (a) to (d) of sub-section (1) of Section 9 of the Central Excise Act, 1944 or under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the misuse of Cenvat Credit is equal to or more than rupees one crore. Central Excise circular no. 974/08/2013-CX and Service Tax circular no. 171/6/2013-ST both dated 17-7-2015 stand amended accordingly.**

3. **Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.**

5. DISPOSAL OF SEIZED GOODS

5.1 Guidelines for the sale of seized/ confiscated gold

CBEC Instruction F.No.711/164/93-CUS(AS), dated 08.08.2005

Subject :- Guidelines for the sale of seized/ confiscated gold – Reg.

In view of the difficulties being encountered in the disposal of seized/confiscated gold, the procedure prescribed vide Ministry's letter of even number dated 9.03.2001 has been reviewed by the Government. The procedure for disposal by sale of

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seized/confiscated gold (other than gold ornaments/jewellery which is to be disposed of as before) shall be as follows:

- i) The sale of seized/confiscated gold found ripe for disposal shall be routed through State Bank of India (Bank) who will act essentially as consignee agents. Gold considered ripe for disposal shall be delivered by the concerned Customs House to the Bank at the major centre(s), viz. Mumbai, New Delhi, Calcutta, Chennai, Ahmedabad, Jaipur, Cochin, Bangalore and Shillong for sale in the open market.
 - ii) Such gold shall, as far as possible, be in an easily marketable form such as TT bars, 1kg bars, 500/100gms bars etc. Crude gold/ jewellery will be converted by the Customs Department to .999/.995 purity before delivery to the Bank for sale.
 - iii) The sale price of gold irrespective of the form of gold (whether TT bars 0.999 or Kg. bars 0.995 purity) will be based on the closing market price of the previous day, as reported in the local editions of the three national Economic daily newspapers. Sales tax/Octroi etc. will be extra and chargeable to the buyer.
 - iv) The pricing of gold will be worked out by the Bank taking due note of the methodology as per enclosed Annexure-I. The Customs Department will accept the price worked out by the Bank on this basis.
 - v) No commission will be levied by the Bank on the Customs Department. However, all out of pocket expenses incurred by the Bank would be deductible (@ 1% of the market price).
 - vi) The Bank will arrange for payment of taxes such as Sales Tax, Octroi etc. out of the sale proceeds of the gold and would submit copies thereof to the concerned Commissioner of Customs along with the advice/ challan for remittance of sale proceeds. The sale proceeds will be deposited immediately after sale of gold into the designated account to be advised by the Commissioner of Customs.
 - vii) The concerned Commissioner of Customs will provide copies of the Assaying Certificate along with the physical delivery of gold and assume responsibility for the fineness of gold as certified in the Assaying Certificate. In the event of any gold being found counterfeit, the same will be returned to the Commissioner of Customs concerned. The Department will also ensure that the gold is suitably packaged as per practice in the market. The Bank would render necessary assistance to Customs Department.
 - viii) The Bank will take physical delivery of the gold from the Customs warehouse/ office against a suitable acknowledgment. The control system /mechanism for this purpose will be worked out by the Bank and advised to the Department
 - ix) The Bank will decide at which centre the gold is to be sold based on various cost / other factors and will also exercise its discretion/ judgment as to (a) when to sell (b) at what price to sell. Although it has to be borne in mind that gold prices can fluctuate significantly even during the course of a single day, the Bank will use its discretion/ market knowledge to get the benefit of the “best” possible price. The concerned Commissioner will, post – sale, make an evaluation as to whether, in view of the range of prices prevailing at the time of sale, the “best” possible sale has been made. The above arrangement will be reviewed as and when necessary through mutual discussion.
 - x) The Bank will also explore the scope for marketability of coins. The price of such coins will be based on the actual gold content only.
2. Board desires that all Custom Houses should take urgent steps to dispose of seized/confiscated gold as per the guidelines above.

Encl : As above.

ANNEXURE-I

- | | | |
|----|--|----------|
| 1. | Quantity of gold sold | _____gms |
| 2. | Average market price per 10 grams
(based on the closing market price reported in the three national Economic dailies) | Rs _____ |
| 3. | Price of gold at the average market price
(i.e. 1 x 2) | Rs _____ |
| 4. | Sales tax | Rs _____ |
| 5. | Octroi, if applicable | Rs _____ |
| 6. | Total price of gold | Rs _____ |
| 7. | Out of pocket expenses
(@ 1% of (3) above) | Rs _____ |
| 8. | Net price payable to Customs
(i.e. (3) – (7)) | Rs _____ |

5.2 Delay in disposal of seized/confiscated vehicles

CBEC Instruction F.NO.715/7/2005 -CUS(AS), dated 02.09.2005

Sub: Delay in disposal of seized/confiscated vehicles - DAP No.59 proposed for inclusion in the C&AG's Report on Indirect Taxes (Customs) for 2004-05 – reg

An instance has recently been brought to the notice of the Board where due to inordinate delay in the disposal of a Mercedes Benz car seized in November 1986 and absolutely confiscated in November 1987, the car could be disposed of only in December 2003, resulting in significant loss of revenue. The existing instructions on the subject have not been complied with, hence the loss of revenue. In order to prevent the recurrence of such an incident, you are directed to take immediate stock of seized/confiscated vehicles in your jurisdiction and to ensure that action is taken to dispose of vehicles in terms of existing instructions.

For ease of reference, the provisions contained in various instructions on the disposal of seized/confiscated vehicles issued by the Board from time to time, beginning 1958, are reproduced below:

1. **In order to ensure that motor vehicles, watercrafts and other types of machinery receive proper attention during the period they are in Departmental custody, the vehicles are to be properly garaged and particular care taken of spare parts and tools.** The engines of the vehicles (and not the vehicles themselves) should be run, if possible, twice a week to keep the parts under lubrication. Wherever necessary, due to possible delay in the disposal of the vehicle, it should be jacked up. Where suitable garage facilities are not available, temporary sheds may be erected or the vehicles handed over to an Automobile Association, if such an organization exists, at a place mutually agreed upon and found to be reasonable.

2. **On the maintenance of seized vehicles, the power to incur expenditure to the extent of Rs 600 per annum per vehicle has been delegated to the Heads of**

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Department. The expenditure is to be incurred having regard to the following considerations:

- i) the seized vehicles are not to be put to Departmental use during the period from the date of seizure to the date of decision;
- ii) dismantling of vehicles to find out hidden articles should be carried out in accordance with the instructions issued by the Board;
- iii) the seized vehicle should be properly looked after by running the engine periodically, inflating the tyres, checking the engine etc., and
- iv) the services of a mechanic may be requisitioned to keep the vehicle in good order, but this is to be resorted to only in cases of absolute necessity and with the permission of an officer not below the rank of Assistant Commissioner.

3. In view of the fact that there is considerable deterioration of the vehicle as well as expenditure on garaging and maintenance if the vehicle is not quickly disposed of, it is directed by the Board that

- i) Every attempt should be made to finalize the adjudication proceedings for motor vehicles and vessels within one month;
- ii) Where the Adjudication order mentions fine in lieu of confiscation or reshipment, the period allowed should be only up to thirty days. If the party does not clear the motor vehicle or vessel by paying up the fine in lieu of confiscation, a final notice of a week or ten days should be given to him, after which the goods should be disposed of.

4. In respect of vehicles initially imported under a carnet/triptyque and subsequently confiscated for contravention of Customs and allied laws, it is directed that

- i) where the vehicle has been confiscated absolutely, steps should be taken to dispose of the confiscated vehicle straightaway;
- ii) where the order of confiscation gives the option to redeem the vehicle on payment of fine in lieu of confiscation, the period allowed should be only up to thirty days. Where the option to re-export the vehicle is given, the period allowed for re-export should normally be two months. If the party does not clear the motor vehicle by paying up the fine or re-exporting the vehicle within the prescribed period, a final notice of a week or ten days should be given to him, after which the vehicle should be disposed of.

5. Confiscated vehicles which have become the property of the Government may be used for Government purposes in an exigency, particularly for working out information or conducting anti-smuggling operations. However, such use should be kept to the minimum necessary and the concerned Commissioner should personally ensure that confiscated vehicles are not run unnecessarily.

As regards seized vehicles, it is clarified that there is no authority in the Customs law for putting these vehicles to use for official purposes. Moreover, the question of the liability of the Government to pay compensation to the owners for depreciation, damage etc may also arise.

6. Confiscated vehicles should not be sold in auction unless the possibility of using them for Departmental use has been fully explored. These vehicles should,

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however, be used only after taking prior approval of the Board. At the time of making such a proposal, the following particulars of the vehicles should be provided:

1. Date of seizure
2. Date of the order under which it was confiscated and duty/fine/penalty imposed and realized
3. Name of the owner of the vehicle
4. Make/model of the car, its engine horsepower and seating capacity
5. General condition of the car and its mechanical condition, approximate market value and the probable period for which it can render satisfactory service with or without repairs
6. Total mileage run by the car
7. Clearance of the car
8. The area where the vehicle is proposed to be utilized and the specific purpose thereof
9. Financial implications of the proposal e.g. approximate amount of expenditure likely to be incurred on making the vehicle roadworthy, running cost and other recurring and non-recurring expenditure.

7. **Regarding vehicles that are not taken up for Departmental use, such vehicles may be disposed of departmentally by auction to the best advantage of the Government.** It is to be ensured that all prescribed formalities are observed and widest publicity is given to the intended sale. It is also to be ensured that the vehicles to be disposed of have no in-built secret chambers useful for smuggling and if there are such chambers, these should be completely removed. If such secret chambers cannot be removed, the orders of the Board should be taken before disposing of such vehicles. The vehicle should be sold at the best possible price so as to avoid any dispute with the owner regarding the adequacy of the price at which it was sold in case the party succeeds in appeal.

8. Conveyances have been notified vide notification No. 31/86 dated 5.2.86 under Section 110 (1A) of the Customs Act but in many cases seized conveyance are not being disposed of for a long time pending completion of adjudication proceedings/court cases etc. leading to deterioration. Continued storage of such conveyances may also result in considerable expenditure on garaging facilities and maintenance charges. Accordingly, it must be ensured that prompt action is taken in terms of Sec. 110(1B) of the Customs Act 1962 to dispose of all seized vehicles.

Any difficulties faced by the field formations in effecting expeditious disposal of seized/confiscated vehicles may be immediately brought to the notice of the Board.

5.3 Requirement of issuing Notice to the owner of goods before disposal of Seized goods

CBEC Instruction F.NO.711/4/2006- Cus(AS), dated 14.02.2006

Sub: Requirement of issuing Notice to the owner of goods- provisions of Section 150 of the Customs Act, 1962 - reg

An instance has recently been brought to the notice of the Board where seized goods were disposed of without issuing notice to the owner of the goods. The seizure having been set aside by the adjudicating authority, the owner of the goods sought their return but was advised to obtain the sale proceeds, which were significantly lower than the seizure value. In subsequent proceedings, the High Court has directed the refund of an amount higher than the sale proceeds, as well as payment of interest. The loss to the exchequer has resulted from a failure to comply with the requirements of Section 150 of the Customs Act, 1962.

2. It is impressed upon field formations that where any goods, not being confiscated goods, are to be sold under any provision of the Customs Act, they shall be sold by public auction or by tender or in any other manner **after notice to the owner of the goods.**

3. It is further clarified that the requirement to issue notice to the owner of the goods shall also obtain in case of goods that have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods.

6. *Miscellaneous*

6.1 **Seizures/prosecutions/recovery cases — Submission of summary of progress report**

Circular No. 22/22/94-CX.6, dated 15.02.1994
[From F.No. 208/8/94-CX.6]

Subject: Submitting summary of progress report on important cases of seizures/prosecutions/ recovery - Regarding.

I am directed to enclose minutes of Secretary (Revenue), dated 2-2-1994 regarding above mentioned subject.

2. You are requested to furnish the details of recoveries exceeding Rs. 50 lakhs made in Central Excise case and progress of prosecutions launched to the Director General (Anti-Evasion), New Delhi by 15th of every month.

[Enclosure]

Submitting:summary of progress report on important cases of seizures prosecutions

Chairman (CBEC) has been intimating important seizures of the customs and also cases of evasion of excise duty detected by the DG (Anti-Evasion). While regular reports comes from the DG (AE) on the cases detected by him with the comments of the Chairman

(EC), no such report comes from DG (RI) relating to seizures of the customs.

2. Another important missing link in this reporting system is the progress of the cases where prosecutions have been launched and action taken. I understand that there are a number of very important cases lying unattended. One such case that has been brought to my notice by one of the senior officers of the Department is a case relating to misuse of facilities under the DEC Scheme by some Rustagi and Company involving about Rs. 106 crores. When I tried to get the progress of the prosecution in this case, I did not get any definite information. Similarly sometime back ball-bearings worth a few crores of rupees have been seized in Kandla. Whether prosecution have been launched against these people, is not known. FM has been frequently asking me as to why people who are violating the law in this blatant manner and also being booked by the Customs and Central Excise authorities are not being prosecuted. Unless some of these major offenders are punished by the Court of Law and sent to jail, the massive evasion that is taking place will not stop. Similarly large scale evasions of excise duties have also been brought to notice by the DG (AE). Very good work has been done by the Directorate. But we are unable to know the progress of the cases either of the prosecution or the recovery of Government dues. It is necessary that we submit this information to the Ministers in appropriate form.

3. I have discussed this matter with the New Joint Secretary, Shri Ramanan, and I have asked him to devise the management information system which can be made available to all the Collectors both on the Customs and Central Excise side to report monthly the progress of prosecution/recovery in cases exceeding an amount of Rs. 50 lakhs. Chairman may kindly issue suitable instructions to all the officers to ensure that from February onwards we submit progress report to the MOS (R&E) and FM on all important cases.

6.2 Proper Officer to make an arrest under Central Excise Act, 1944

Notification No. 9/99-CE (NT), dated 10-2-1999

[Read with corrigendum dated 19.02.1999]

In exercise of the powers conferred under the provisions of the Central Excise Act, 1944 (1 of 1944) and the Central Excise Rules, 1944 specified under column (2) of the Table below and in supersession of notification of the Government of India in the Ministry of Finance, Department of Revenue No. 102/57-C.E., dated the 7th December, 1957, except in so far as it relates with Section 26 of the said Act, the Central Government hereby empowers the Central Excise Officers specified in column (4) of the Table below to exercise the powers of arrest, search and seizure, to hold enquiries and to confiscate vessels and cargo, under the provisions of the said Act and the said Central Excise Rules specified in column (2) of the said Table, and subject to the conditions and limitations, if any, as specified in column (4) of the said Table.

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TABLE

Serial No.	Sections of the Central Excise Act, 1944 (1 of 1944)/ Rules of the Central Excise Rules, 1944	Nature Of Power	Central Excise Officer
(1)	(2)	(3)	(4)
1	Section 13*	Power to arrest under said section	All Central Excise Officers not below the rank of an Assistant Commissioner of Central Excise and Central Excise Officer below the rank of Assistant Commissioner, if authorised in writing by the Assistant Commissioner of Central Excise or any other Central Excise Officer superior in rank to the Assistant Commissioner of Central Excise to exercise such power.
2	Section 14	Power to summon persons to give evidence and produce documents in inquiries under the said section	All Central Excise Officers not below the rank of a Superintendent of Central Excise.
3	Section 19 and Section 21	Power to send persons arrested to the Magistrate under the said section 19 and consequential powers under the said section 21	All Central Excise Officers not below the rank of a Superintendent of Central Excise.
4	Rule 201 and Rule 202 **	Power to enter and search under the said rule 201 and consequential powers under the said rule 202	Not below the rank of an Inspector of Central Excise, provided that such entry, search and access shall be made (except in case of a factory, conveyance or vessel), with the written permission of an officer not below the rank of an Assistant Commissioner of Central Excise.
5	Section 28***	Power to order for confiscation of vessel and cargo under the said section	Not below the rank of an Assistant Commissioner of Customs.

Note:

* Section 13 of the Central Excise Act, 1944 has been substituted vide Finance Act, 2002 with effect from 14.05.2003. The revised section empowers any Central Excise officer not below the rank of Inspector of Central Excise, with prior approval of the Principal Commissioner /Commissioner of Central Excise, to arrest any person.

** The Central Excise Rules, 1944 has since been rescinded and now, replaced with Central Excise Rules, 2002.

*** Section 28 has been omitted *vide* Finance Act, 2002 with effect from 11.5.2002.

6.3 Cigarettes and other tobacco products — Central Excise/Customs officers empowered to visit, search, seize only in premises registered with Department of Revenue

Circular No. 918/8/2010-CX., dated 4-3-2010

F.No. 267/50/2007-CX8

Subject : Implementation of the provisions of COTP Act, 2003 and The Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008"- Empowering the Customs & Central Excise Officers - Regarding.

Please refer to the Board's Circular No. 896/16/2009-CX. dated 1-9-2009 [2009 (241) E.L.T. T3] issued on the above referred subject matter. Ministry of Health & Family Welfare has amended the Notification dated 30-7-2009 [S.O. 1866 (E)] vide Notification dated 6-1-2010 [S.O. 23 (E)] (copy enclosed). The effect of the Notification is that the officers at the level of Superintendents and above of the Customs & Central Excise department are empowered for entry, search and seizure only at the premises registered under the Central Excise & Customs. Therefore, officers are not empowered to enter, search etc. for premises which are not registered with the department for carrying out any act under the COTP Act, 2003.

2. Trade & Industry as well as field formations may be suitably informed.
3. Receipt of this circular may kindly be acknowledged.
4. Hindi version will follow.

Enclosure:

**MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Health and Family Welfare)
NOTIFICATION**

New Delhi, the 6th January, 2010

S.O.23(E). — In exercise of the powers conferred by sub-section (1) of Section 25 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Health and Family Welfare number S.O. 1866(E), dated the 30th July, 2009, namely :—

In the notification of the Government of India in the Ministry of Health and Family Welfare number S.O. 1866(E), dated the 30th July, 2009, in the Table, for the existing entries under column (3), relating to serial number 1, the following entries shall be substituted, namely :—

All premises registered under Department of Revenue.

Note : The principal notification was published in the Gazette of India, Extraordinary vide notification number S.O. 1866 (E), dated the 30th July. 2009.
