



## CHAPTER VI - SHOW CAUSE NOTICES AND CALL BOOK CASES

### 6.1 Introduction

Section 11A of Central Excise Act, 1944 for Central Excise and Section 73 of the Finance Act, 1994 for Service Tax provide for issue of Show Cause Notice (SCN) when any duty of excise/ service tax has not been levied or has been short-levied or short-paid or erroneously refunded.

### 6.2 Maintenance and updating of SCN control register

We observed that there was no uniform practice of maintaining a centralised record to monitor issue of SCNs and their follow up.

On our test check of 46 commissionerates for central excise and service tax, we noticed that there was no centralised record of all the cases which required issue of SCN. Once issued, SCNs were monitored through different records such as 335J Register, Draft SCN Register, SCN movement register, SCN issue register etc. Consequently, there was a monitoring system once SCNs were issued but nothing to ensure that SCNs had been issued in every case of detection of non-levy, short-levy etc. wherever required. Since there was no centralised record, we had to restrict our examination to ascertaining whether SCNs were being issued in all cases, as required by the instructions of the Board, in respect of the observations raised by audit parties (CERA) of the CAG during 2008-09. We found instances where SCNs were not issued and reasons for not doing so were not found on record, as detailed below.

**6.2.1** In Patna Commissionerate, we observed that Bettiah central excise range did not initiate the process to issue SCN in one CERA observation (involving ₹ 1.07 lakh) relating to M/s Harinagar Sugar Mills Limited. Similarly, the service tax range I, Bankipur did not initiate the process of issuing SCNs in one para relating to M/s Neelkamal Steel Pvt. Ltd., Patna and three paras relating to M/s Bharti Airtel Ltd., Patna involving a total amount of ₹ 58.93 lakh, pointed out by CERA.

In reply the department intimated (August 2011) that SCN of ₹ 1.07 lakh and ₹ 1.50 lakh had now been issued in respect of M/s. Harinagar Sugar Mills Limited and M/s. Neelkamal Steel Pvt. Ltd., respectively. On the three paragraphs of ₹ 57.43 lakh related to M/s. Bharati Airtel Ltd., it was intimated (August 2011) that the amounts involved in the three cases were included in SCNs issued during January 2010 to March 2010.

**6.2.2** In four selected central excise ranges under Nagpur Commissionerate, out of 93 paras issued by CERA, action was taken only in 43 paras either by way of issue of SCN or otherwise and in remaining 50 paras, no action was taken. In respect of service tax, we observed that SCN

had not been issued from eight months to twenty months in nine cases detected by CERA/ IAP/ Preventive Branch.

**6.2.3** In two selected divisions under Bhubaneswar II Commissionerate, against 23 CERA objections involving ₹ 14.78 crore, SCNs were issued only in two cases.

### **6.3 Call Book cases**

The Board's circular dated 14 December 1995 provides that the following four types of cases that are pending adjudication are to be transferred to the Call Book.

- Cases in which the Department has gone in appeal to a quasi judicial or a judicial authority.
- Cases where injunction has been issued by Supreme Court/ High Court etc.
- Cases where audit objections are contested.
- Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

Once transferred to the Call Book, the cases are not to be included in the list of cases pending adjudication. The cases in the call book are to be reviewed every month to identify any cases that are to be taken out of the call book and adjudicated. We found instances where these provisions were not adhered to, as detailed below:

**6.3.1** Cochin Commissionerate issued four show cause notices to an export oriented unit, DC Mills, Alapuzha, during 2005 to 2009, based on an internal audit objection for non-payment of jute cess amounting to ₹ 49.56 lakh. The commissionerate sought clarification from the Board and transferred these cases to the call book. The Commissionerate did not received any reply from the board (November 2011). As these SCNs did not fall in any of the four categories of cases mentioned in Circular dated 14 December 1995, the transfer of the cases to call book was not in order. They were required to be taken out of the call book and added to the list of cases pending adjudication.

**6.3.2** During scrutiny of cases transferred to call book in central excise Division, Alwar, we observed that SCN No V (85)01/Dem./2009 and SCN No. V (76 &74)13/Dem/09 were issued on the basis of observations of CERA. The Department agreed to both the objections. However, both the cases were transferred to call book in the month of January 2010, without the approval of the competent authority i.e. the Commissioner. The reasons for the unauthorized transfers to the call book were not intimated to us (November 2011).

**6.3.3** In Belapur Commissionerate, we found four instances, where cases were not taken out of Call Book leading to long delays in adjudication. The cases are described below:

- a. A SCN issued to M/s IOC Ltd. in April 2000, on the basis of CERA objection, was kept pending in Call Book even after the observation was closed by us in November 2005. It was taken out of Call Book and adjudicated only in October 2009.
- b. A SCN issued to M/s Singh Scrap Processors was taken out from Call Book (April 2008), three years after decision of CESTAT (February 2005) and adjudicated after another year (June 2009). There was a total delay of more than four years after the CESTAT judgment.
- c. A SCN issued (February 1998) to M/s. Joglekar Refabrication and Ceramic Pvt. Ltd. was removed from the Call Book (February 2009), ten years after the acceptance of CEGAT order (September 1999).
- d. A SCN issued (February 2000) to M/s Balmer Laurie & Co. was kept pending in call book for more than four years even after the decision of Supreme Court in 2005.

#### **6.4 Cases remanded by Commissioner (Appeals)**

The Finance Act, 2001, amended Section 35A (3) of Central Excise Act, 1944, relating to the powers of Commissioner (Appeals). It provided that “The Commissioner (Appeals) shall after making such further enquiry as may be necessary pass such order as he thinks fit just and proper, confirming, modifying or annulling the decision or order appealed against”. The Supreme Court, in its decision in the case of MIL India Limited, held that the power of the Commissioner (Appeals) to remand had been taken away by the amendment in Finance Act, 2001. On the basis of the above judgment, the Board, in its Circular dated 25 July 2008, affirmed that the powers had been withdrawn to speed up adjudication process because on remand, cases were pushed back to the starting point.

We observed that even after the issue of the above circular by the Board, six cases had been remanded back by Commissioner (Appeals), Cochin. In all these cases, the decisions were accepted by the Cochin Commissionerate during review. As the remand orders were in contravention of the provisions and instructions of the Board, the department could have filed appeals against them instead of allowing the adjudication process to revert to the starting point. The reasons for non-compliance with the provisions had not been intimated to us (November 2011).

#### **Recommendation No. 13**

- *A centralised record of all cases where SCNs are likely to be issued, may be maintained and monitored by the commissionerates to ensure that SCNs are actually issued. In the automated environment of ACES, the same record could be used to monitor subsequent stages of action taken.*

The Board stated in the exit conference that all cases detected need not necessarily lead to issuance of show cause notice but it was important that

every detection either results in timely issue of SCN or other appropriate action, as deemed fit by the competent authority. In this regard, it was stated that the Board was consulting field formations on the extant monitoring mechanisms and based on feedback, would take the appropriate action.

**New Delhi**  
**Dated :**

**(SUBIR MALLICK)**  
**Principal Director**  
**(Central Excise and Service Tax)**

**Countersigned**

**New Delhi**  
**Dated :**

**(VINOD RAI)**  
**Comptroller and Auditor General of India**