

Chapter II

Issue of Show Cause Notices and Adjudication process

2.1 Introduction

Adjudication is a quasi-judicial function of the officers of the Central Excise and Service Tax Department. Through imposition of an appropriate penalty after adjudication, it seeks to ensure that no revenue loss is caused by the contravention of applicable laws/rules/regulations etc. However, if an innocent person is punished or the punishment is more than warranted by the nature of offence, it may undermine the trust between the Government and the tax payer. If, on the other hand, a real offender escapes the punishment provided by law, it may encourage commission of offences to the detriment of both the Government and the honest taxpayers.

There may be situations relating to the demand of tax not paid, short paid or erroneously refunded, misclassification, CENVAT credit wrongly availed, imposition of penalty etc. It is mandatory that a Show Cause Notice (SCN) is issued if the department contemplates any action prejudicial to the assessee. The SCN would detail the provisions of law allegedly violated and ask the noticee to show cause why action should not be initiated against him under the relevant provisions of the Act/Rules. Thus, an SCN gives the noticee the opportunity to present his case.

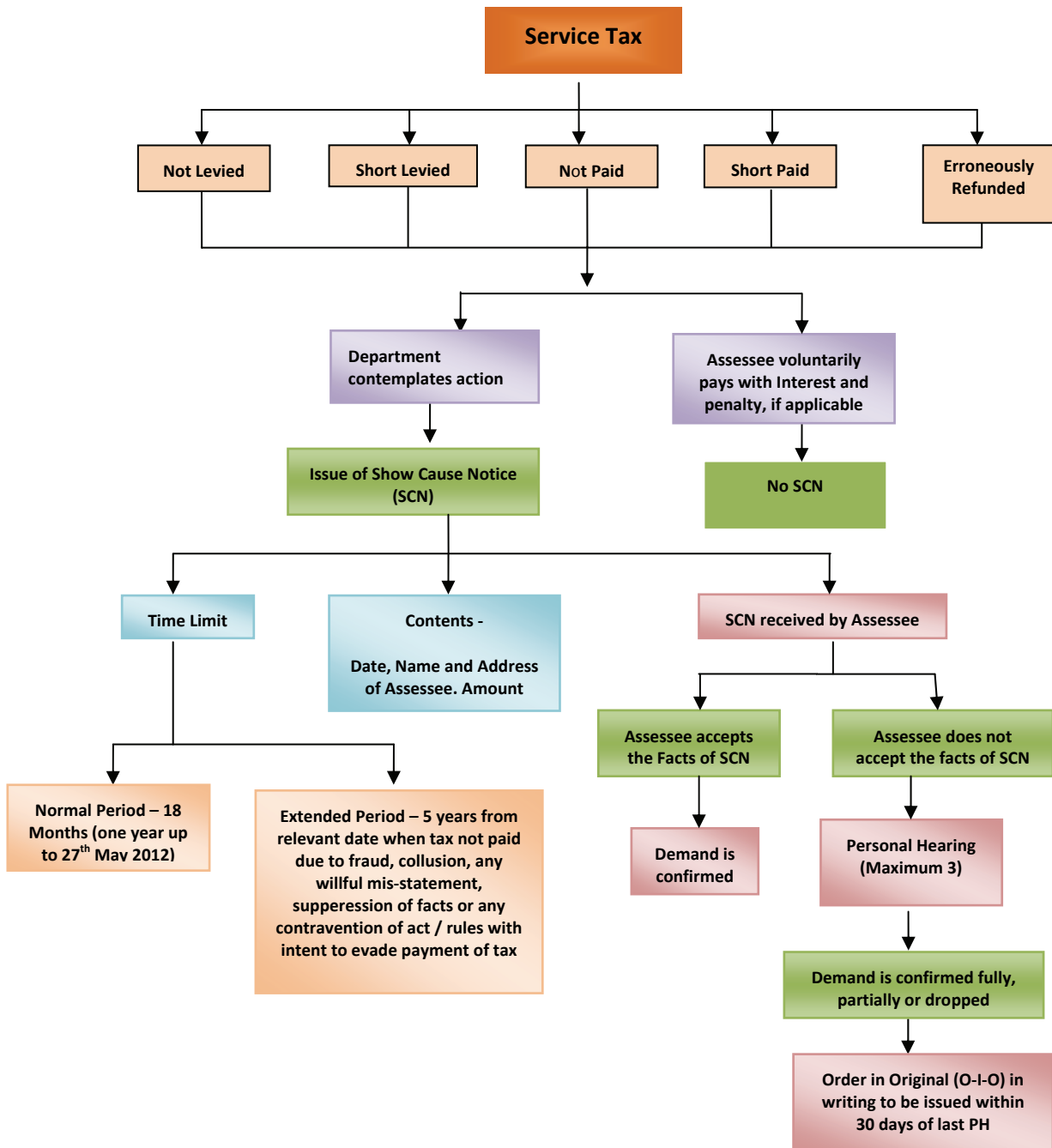
In the cases where Service Tax has not been paid or short paid or erroneously refunded, SCN is to be served within eighteen months from the relevant date in normal case (within one year up to 27th May 2012) and within five years from the relevant date in case of fraud, collusion, wilful suppression of facts, etc., with the intent to evade payment of duty or to get erroneous refund.

Further, it is provided in the Finance Act, 1994¹⁸ that where it is possible to do so, the SCNs should be adjudicated within six month in normal cases and within one year in extended period cases, from the date of service of the notice on the person.

Adjudication proceedings shall be conducted by observing principles of natural justice. The noticee shall be given a Personal Hearing (PH) before deciding the case. There shall be a written Order in original (OIO) after the completion of adjudication process detailing facts of the case and justification of the adjudication order. Thus the idea is to ensure prompt initiation and speedy disposal of the adjudication cases. The process of adjudication is shown in the chart below:

¹⁸ With effect from 6 August 2014

Chart 2.1
SCN and Adjudication Process under Section 73 of the Finance Act, 1994



2.2 Audit Objectives

The objectives of this audit were to examine:

- a) the adequacy of rules, regulations, notifications, circulars/instructions etc. issued from time to time in relation to adjudication process;
- b) whether the extant provisions of law are being complied with adequately;
- c) whether there was an effective monitoring and internal control mechanism.

2.3 Scope of Audit and Coverage

In this audit we covered 36 Commissionerates along with 92 Divisions and 80 Ranges falling under these Commissionerates.

Further, we checked 2,580 adjudication cases yet to be finalized, 5,767 adjudicated cases, 394 draft SCNs pending for issue, 1,837 call book cases and 849 cases decided against revenue in adjudication stage. The period covered was FY12 to FY14.

2.4 Audit Findings

We noticed irregularities in 964 cases involving revenue of ₹ 95.14 crore. The gist of major findings is summarised below:

- (i) Eight demands, involving revenue of ₹ 3.34 crore, were concluded in adjudication as time barred due to late issue of SCN.
- (ii) In 36 cases SCN was not issued within the stipulated time period, of which 23 cases involved a revenue implication of ₹ 22.17 crore and in balance 13 cases the value involved could not be worked out for want of details.
- (iii) 46 cases involving revenue of ₹ 21.08 crore were pending for adjudication for more than two years.
- (iv) 52 cases involving revenue of ₹ 22.35 crore were irregularly kept in call book.

The findings are discussed in subsequent paragraphs.

2.5 Issue of SCN

Section 73(l) of the Finance Act, 1994 envisages, inter alia, that where Service Tax has not been paid or short paid or erroneously refunded, SCN is to be served within eighteen months from the relevant date in normal case (within one year up to 27th May 2012) and within five years from the relevant date in case of fraud, collusion, wilful suppression of facts, etc., with the intent to evade payment of duty or to get erroneous refund.

In an era of automation, where the focus is on improving timelines, it could be seen that the time limit for issue of SCN in normal case was extended from one year to eighteen months from 28th May 2012 onwards. But still we noticed that extended period was invoked for issuing SCNs in normal cases also. The timelines prescribed in statute determine the outer limits for issuing SCN. But as could be seen from the observations discussed below, instead of finishing this task in minimum possible time, the extended period clause was invoked in certain cases in violation of the aforementioned provisions.

2.5.1 Invocation of extended period of time for issue of SCN

We observed in eight cases in four Commissionerates¹⁹ that the SCNs were issued invoking the extended period of time which, as held by Adjudicating Authority, was not in conformity with the provisions of statute. Failure on the part of the department to issue SCN in time, thus, resulted in loss of revenue to the tune of ₹ 3.34 crore. The Ministry has accepted the facts in all the cases (November 2015). One case is highlighted below:-

2.5.1.1 In Chandigarh-I Commissionerate, two SCNs involving money value of ₹ 2.86 crore were issued (October 2010 and April 2011) to M/s. Himachal Futuristic Communications on the basis of audit observation by invoking the provisions of extended period of 5 years. However, the demand was dropped by the adjudicating authority holding the same as time-barred. This resulted in loss of revenue of ₹ 2.86 crore. No appeal was filed by the department against the order.

When we pointed this out (May 2014), the Ministry accepted (November 2015) the facts and stated that the department filed an appeal against the order in CESTAT.

2.5.2 Issue of Show Cause Notice

Test check of records in nine Commissionerates²⁰ revealed that in 36 cases SCN was not issued within the stipulated time period. Out of these, 23 cases, for which details were available, involved a revenue implication of ₹ 22.17 crore. This might result in these SCNs being time barred. The Ministry accepted (November 2015) the facts in 18 cases and in 18 other cases stated that report would follow. In some cases the Ministry attributed the delay to non-availability of relied upon documents from internal audit parties or from the assesses, due to which demand could not be quantified. The reply could not be accepted as such delay in obtaining documents should

¹⁹ Guwahati, Kolkata ST, Chandigarh I and Udaipur

²⁰ Guwahati, Shillong, Durgapur, Kolkata ST, Kolkata ST-II, Jaipur-I, Indore, Coimbatore and Mumbai ST-V

be minimised and further, in exceptional case of some genuine grounds to avoid time limit, the department has the option to issue SCN without quantification of demand and to quantify and inform to the noticee before adjudication. Three cases are illustrated below:-

2.5.2.1 As per Special Secretary and Member's letter dated 13 October 2010, where audit objection is admitted by the Commissionerate, the SCN should be issued immediately and in no case later than 30 days.

In Kolkata Service Tax Commissionerate, a CERA objection involving an amount of ₹ 16.75 crore plus interest of ₹ 73.44 lakh on M/s. Vodafone Essar East Ltd., issued in May 2010, was admitted in July 2011. But the SCN was issued in August 2013 i.e. much later than the date of admitting the said objection, by invoking extended period. However, as the issue became known to the department on the basis of CERA observation, such extended periods may be hit by time bar clause. Therefore, department should have issued SCN within 30 days following the Ministry's instructions cited above.

When we pointed this out (July 2014), the Ministry stated (November 2015) that the SCN was delayed due to further examination and to quantify any further amount.

2.5.2.2 In the Service Tax-I Commissionerate, Mumbai on the basis of internal audit observation (raised in September 2008), the SCN showing demand of ₹ 2.05 crore pertaining to period January 2006 to March 2007 was issued to M/s. Indian Airlines Ltd., in January 2013. The said demand might be barred by limitation of time due to delay in issue of SCN.

When we pointed this out (September 2014), the Ministry stated (November 2015) that report would follow.

2.5.2.3 M/s Selvel Advertising Private Ltd., in Kolkata Service Tax Commissionerate was issued SCN in April 2006 covering the period 1998-99 to 2000-01 demanding Service Tax under Advertising services by invoking extended period. On the same issue, periodical SCN covering the period from October 2004 and March 2005 was also issued and transferred to Call Book for being contested by the department. However, the Department did not raise any demand for the period 2001-02 to September 2004 involving revenue of ₹ 2.02 crore. Thus, non issue of SCN in time by the department might result in the issue being time barred.

When we pointed this out (June 2014), the ministry stated (November 2015) that the case file was not readily available due to restructuring of the Commissionerate.

2.5.3 Levy of penalty before closure of Internal Audit paras

Section 73(4A) of the Finance Act, 1994 stipulates levy of interest and penalty where during the course of any audit, investigation or verification, it is found that any Service Tax has not been paid or short-paid, but the true and complete details of transactions are available in the specified records. This section provides that the person chargeable to Service Tax may pay the Service Tax in full or in part alongwith interest payable thereon under section 75 and penalty equal to one percent of such tax for each month, for the period during which the default continues, up to a maximum of twenty-five percent of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing and the proceedings in respect of the said amount of Service Tax shall be deemed to have been concluded.

We observed that 30 cases in five Commissionerates²¹ had been closed without levying penalty amounting to ₹ 3.14 crore in contravention of the provisions under Section 73(4A). The Ministry accepted the facts (November 2015) in 23 cases and in seven cases stated that report would follow. Cases noticed in respect of two Commissionerates are highlighted below:-

2.5.3.1 In Noida Commissionerate, the observations in respect of 20 assesseees were settled as they had made payment of arrears of Service Tax alongwith interest. The paras were settled without levying penalty amounting to ₹ 89.68 lakh in contravention of provision under Section 73(4A) of the Finance Act, 1994.

When we pointed this out (October 2014), the Ministry stated (November 2015) that suitable action was being taken in the matter.

2.5.3.2 In Service Tax-I Commissionerate, Mumbai the closure of cases/direction for recovery of interest without levying penalty were made against four assesseees²² amounting to ₹ 1.75 crore in contravention of the provisions under section 73(4A).

When we pointed this out (September 2014), the Ministry stated (November 2015) that suitable action was being taken in the matter.

²¹ Bolpur, Mumbai ST-I, Mumbai LTU, Aurangabad and Noida

²² M/s. Atos Origin India Pvt. Ltd., M/s. Hindustan Dorr-Oliver Ltd., M/s. Hyundai and M/s. MSC Agency India

2.5.4 Erroneous refunds

Section 73(l) of the Finance Act, 1994 inter alia, provides that where any Service Tax is erroneously refunded, SCN should be served within one year from the relevant date (within eighteen months with effect from 28 May 2012). Sub-section 2 of Section 84 provides that the Commissioner of Central Excise can pass review order within a period of three months from the date of communication of decision or order of the adjudicating authority.

In Kolkata Service Tax Commissionerate, it was noticed that in 50 cases, erroneous refund was sanctioned (November 2010 to May 2011). Further scrutiny revealed that the Commissioner of Central Excise (Appeal) held (November 2011 and January 2012) that appeals filed against these refund orders in all 50 cases were not maintainable for being time barred as in all cases, Review Orders were passed beyond the statutory limit of three months from the date of communication of the decision of the adjudicating authority. It was also noticed that Commissioner requested (February 2012) the jurisdictional Deputy Commissioner to issue SCN for recovery of erroneous refund without delay in 44 cases where Departmental appeal was rejected (November 2011) by Commissioner (Appeal). Audit noticed that order of the Commissioner was communicated in February 2012 and by this time, one year period from the passing of OIOs in 14 cases already expired. The Department did not produce SCNs issued, if any and orders of the adjudicating authority in 47 cases.

It was further noticed from the review orders as made available to audit in 14 cases out of 50 cases, that the amount sanctioned as erroneous was ₹ 41.36 lakh. Thus, delayed issuance/non-issuance of SCNs for recovery of erroneous refund within one year from the date of refund orders resulted in the SCNs becoming time barred.

We pointed this out (September 2014) and the reply of the Ministry had not been received (January 2016).

2.5.5 Completeness of SCN

As per the CBEC's Adjudication Manual, the amount demanded must be indicated in the SCN. If SCN is based on one ground, demand cannot be confirmed on other ground. The order should not travel beyond the SCN. Further, Section 73(l) of the Finance Act, 1994 stipulates, inter alia, that in case of non-payment/short payment of Service Tax, SCN is to be served within one year in normal case (within 18 months with effect from 28 May 2012) and within five years in case of fraud, collusion, wilful suppression of facts, etc., with the intent to evade payment of duty or to get erroneous refund.

Further, Board clarified²³ (October 2007) that on payment of Service Tax and interest before SCN, all proceedings shall be concluded. It has also been clarified that conclusion of proceedings in terms of Section 73 (3) implies conclusion of entire proceedings under the Finance Act, 1994.

As per Section 73(3) of the Finance Act, 1994 in case of non-payment/short payment of Service Tax, the person chargeable with the Service Tax may pay the same on the basis of his own ascertainment or on the basis of tax ascertained by a Central Excise Officer before service of notice on him and inform the Central Excise Officer of such payment in writing, who on receipt of such information shall not serve any notice in respect of the amount so paid.

We observed in 22 cases in eight Commissionerates²⁴ that the demands of ₹ 20.68 crore besides interest and penalty were dropped in adjudication orders either for the reason of error in SCN or as the SCN did not spell out the amount of Service Tax short paid/not paid. Further, in 12 cases SCNs were issued although Service Tax with interest was already paid by the assessee and in two cases excess amount of Service Tax was demanded due to arithmetical mistake in calculation. The Ministry accepted (November 2015) the audit objection in 15 cases and in six cases stated that report would follow. In one case, the Ministry did not accept audit objection, which was illustrated below alongwith one more case:-

2.5.5.1 In Guwahati Commissionerate, one SCN showing demand of ₹ 2.17 crore for the period September 2003 to April 2007 was issued (March 2009) to the assessee, the General Manager, BSNL (Land Line) for recovery of CENVAT credit irregularly availed by the assessee. We observed that the Adjudicating Authority in its OIO (March 2013) had dropped the demands alongwith interest and penalty as there was no proposal at all to invoke the extended period in the SCN.

When we pointed this out (August 2014), the Ministry did not accept (November 2015) the audit objection and stated that as there was “willful suppression” in this case, and automatic invocation of extended period would come into play.

However, the fact remained that SCN was dropped in adjudication due to non invocation of extended period in the SCN and this order was not challenged.

²³ Letter No. 137/167/2006 –CX-4 dated 03 July 2007

²⁴ Guwahati, Shillong, Bolpur, Kolkata ST, Vadodara I, Visakhapatnam I, Hyderabad II and Hyderabad III

2.5.5.2 In Visakhapatnam-I Commissionerate, an amount of ₹ 25.01 crore was confirmed (October 2011) in OIO under Port Services against M/s. Esskay Shipping Pvt. Limited. However, verification of calculation attached to SCN had revealed that the actual amount of Service Tax required to be demanded would be ₹ 9.24 crore. Thus, there was an excess demand in SCN amounting to ₹ 15.77 crore during the period 2009-10 and 2010-11. This happened due to arithmetical mistake in calculation.

When we pointed this out (September 2014), the Ministry accepting (November 2015) the audit objection, stated that the railway freight though stated to be non taxable in the SCN, was added to the taxable value and appeared to be a clerical error. They further stated that the demand was confirmed in the OIO to the tune of ₹ 25.01 crore.

Department's contention, that an error amounting to ₹ 15.77 crore in SCN was a clerical error, was not acceptable and also such a major error was not noticed while adjudicating the SCN. Further progress in the case was awaited (January 2016).

2.5.6 Serving of SCN

Section 37C of Central Excise Act, 1944 which is also applicable to Service Tax, provides that any SCN shall be served a) by sending it with registered post with acknowledgement due to the person for whom it is intended or his authorised agent, b) if it cannot be served as aforesaid, then by affixing a copy at a conspicuous space in factory or warehouse, c) if this is also not possible, then by affixing a copy on the notice board of the office or authority which issued the notice etc.

Further, as per CBEC's Draft Adjudication Manual, one of the most important principles of natural justice is that the noticee shall be given reasonable opportunity of being heard before any adverse order is passed against him.

We observed in Rajkot Commissionerate an SCN raised (April 2010) against M/s New Gajjar Engineering, Jamnagar for a Service Tax demand was not delivered to the assessee as the department could not trace the assessee. The case was adjudicated (November 2011) without communicating SCN and holding of personal hearing which was against the principles of natural justice. We also observed that OIO was not communicated to the assessee in contravention of the aforesaid provision.

When we pointed this out (September 2014), the Ministry replied (November 2015) that in future, procedure under section 37C would be followed in case of necessity and that instructions in this regard would be followed in true spirit.

2.6 Procedure of Adjudication

Sub-section (2A) of section 11A of Central Excise Act, 1944 provides that in order to effect expeditious disposal of the Central Excise offences and demands, in case any duty of Excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty, where it is possible to do so, the adjudicating authority shall determine the amount of such duty, within a period of one year. Further, in any other case, where it is possible to do so, he shall determine the amount of duty of Excise which has not been levied or paid or has been short-levied or short-paid or erroneously refunded, within a period of six months, from the date of service of the notice on the person under sub-section 11A(1). However, there is no such equivalent provision in respect of Service Tax.

However, Section 33A (1) of Central Excise Act is applicable to Service Tax also as per section 83 of the Finance Act, 1994 in matters of giving the noticee an opportunity to be heard. Further, no adjournment shall be granted more than three times to a party during the proceeding (Section 33A of Central Excise Act). Moreover, normally thirty days time is given to reply to the SCN.

2.6.1 Pending Adjudication Cases

We observed from test check of records of seven Commissionerates²⁵ that 46 SCNs in seven Commissionerates²⁶ were pending adjudication beyond two years as of 31 March 2014 involving revenue of ₹ 21.08 crore in 41 cases which audit could quantify. The pendency was between three to five years in 15 cases and more than six years in nine cases.

When we pointed this out (September 2015), the Ministry accepted (November 2015) the facts in 38 cases and stated that besides, frequent changes in adjudicating authorities, manpower and infrastructural constraints delay the adjudication process. Sometimes, as adjudication process involves verification of large number of documents, cross examination of witnesses etc., all these factors also contribute to delay in adjudication process. Further, in eight cases the Ministry stated that report would follow.

²⁵ Chandigarh-I, Panchkula, Delhi ST, Bhopal, Raipur, Coimbatore and Vadodara-I

²⁶ Bhopal, Chandigarh I, Panchkula, Delhi ST, Raipur, Vadodara I and Coimbatore

2.6.2 Fixing of Personal Hearing

As per Section 33A (I) of Central Excise Act, 1944 which is applicable to Service Tax also, the Adjudicating Authority shall give an opportunity of being heard to a party.

We observed in 11 cases of Hyderabad-II Commissionerate that personal hearing was not granted to the assessee even after more than two years of issuance of SCN.

When we pointed this out (August 2014), the Ministry accepted (November 2015) the facts and stated that in four cases adjudication process commenced. It was further stated that in seven cases, the files were pending for adjudication in view of pendency of department's appeal before honourable Supreme Court on EPC/Turnkey projects to which these SCNs related. Further scrutiny revealed that four out of these seven cases, for which details were made available by the Commissionerate, were transferred to call book in November 2015 only. This implied that in these four cases for which SCNs were issued in 2012, neither adjudication process was initiated nor cases transferred to call book for three years.

2.6.3 Grant of Personal Hearing

As per Section 33A of Central Excise Act, 1944 which is applicable to Service Tax also, the Adjudicating Authority shall give an opportunity of being heard to a party and adjourn the hearing and no such adjournment shall be granted more than three times to a party during the proceeding.

During test check, we observed that in 208 cases in 16 Commissionerates²⁷, adjournment was granted to the parties in excess of three times in contravention of the above mentioned statutory provisions.

The number of adjournment ranged from 4 to 12.

When we pointed this out (June 2014 to October 2014), the Ministry attributed (November 2015) the adjournments in 193 cases to transfer of adjudicating authority, request of assessee, non-traceability of assessee, non-appearance of parties for personal hearing and stated that extensions were given to follow principles of natural justice. Ministry's reply was awaited (January 2016) in 15 cases.

²⁷ Guwahati, Kolkata ST, Shillong, Ranchi, Delhi ST, Delhi ST I, Delhi ST-IV, Chandigarh I, Panchkula, Ahmedabad ST, Vadodara I, Rajkot, Jaipur I, Jaipur II, Alwar and Udaipur

2.6.4 Issuance of adjudication orders within stipulated period after completion of personal hearings.

As per Para No. 3 of Board's Circular dated 20 September 2010²⁸, in all cases, where the personal hearing has already been completed, orders should normally be issued within a month of the date of completion of the personal hearing.

We observed that Department passed OIOs in 472 cases in 21 Commissionerates²⁹ after a delay ranging from 01 day to beyond two years (in excess of 30 days from the date of completion of last personal hearing granted to the parties). Two-thirds of these delays were beyond one month. Such delay was more than one year in 14 cases.

When we pointed this out (June 2014 to October 2014), the Ministry accepted the facts in most of the cases (November 2015) and stated that it was due to acute shortage of staff, frequent change in adjudicating authorities, infrastructural constraints, high volume of records in the case, late submission of additional records by the assessee etc.

The reply was not acceptable as in any case, adjudication orders should have been issued within 30 days from the date of completion of PH.

2.7 Effectiveness of Monitoring and Internal Control

Monitoring and Internal Control is an integral process which addresses risk and provides reasonable assurance about effectiveness and adequacy of system and procedures. We noticed the following inadequacies in this regard.

2.7.1 Review of Call Book cases

As per Board's Circular dated 14 December 1995³⁰, the cases can be transferred to Call Book, where the department has gone in appeal to the appropriate authority, where injunction has been issued by the Supreme Court/High Court/Tribunal, cases where audit objections are contested or where Board has specifically ordered for keeping the case in Call Book.

Again Board had emphasized³¹ that Call Book cases should be reviewed every month. The Director General of Inspection (Customs and Central Excise) had reiterated (December 2005) the need for monthly review stating that review

²⁸ Circular No. 130/12/2010-ST dated 20 September 2010

²⁹ Guwahati, Bolpur, Shillong, Chandigarh I, Panchkula, Noida, Mumbai LTU, Aurangabad, Vishakapatnam I, Hyderabad ST, Calicut, Cochin, Coimbatore, Indore, Bhopal, Jabalpur, Raipur, Bilaspur, Delhi ST, Delhi ST-I and Delhi ST-III

³⁰ Board's Circular No.162/73/95-CX dated 14 December 1995

³¹ DO F No. 101/2/2003-CX-3 dated 3 January 2005

of Call Book cases may result in substantial reduction in the number of unconfirmed demands in call book.

During test check we noticed that in 64 cases in eight Commissionerates³² kept in call book, periodical review of the cases was not done by the department. Three examples were given below:

- i) In Kolkata Service Tax Commissionerate, 20 cases were kept in Call Book without conducting review since September 2008. The Directorate General of Service Tax, Mumbai, and the Directorate of Inspection, Customs and Central Excise (Eastern Regional Unit) in their inspection Report in 2012 and 2013 had also advised to review the Call Book Cases periodically. Still the same was not complied.
- ii) Seven cases kept in the Call Book in the Division –III under the Vadodara-I Commissionerate were not reviewed periodically.
- iii) In Delhi ST Commissionerates and LTU Commissionerate, Delhi, 37 cases kept in the Call Book were not reviewed monthly.

When we pointed this out (September 2015), the Ministry accepted (November 2015) the facts in most of the cases and stated that they initiated review of call book cases.

2.7.2 Retention of cases in the Call Book

As per Board's clarification vide their letter F. No. 206/02/2010-CX.6 New Delhi, Dated 3 February 2010³³, cases where audit objection has not been admitted by the department, and the same is not converted into SOF/ DAP by CERA, then the SCNs issued on account of said audit objection may be adjudicated after a period of one year from the date of sending the reply to the audit objection. However, before adjudication, it must be ensured that the audit objection has not been converted into SOF/DAP.

52 cases in seven Commissionerates³⁴ having monetary implication of ₹ 22.35 crore were found to be kept in Call Book irregularly. Some of the reasons for this error were non-approval of the competent authority to transfer the case to Call Book, paras kept pending in Call Book although decisions in similar cases was given by higher authorities and paras kept pending in Call Book on the ground of contesting the CERA para although either no SOF/DP was issued by CERA in these cases or paras closed by CERA etc.

³² Kolkata ST, Vadodara I, Delhi ST, Delhi ST-I, Delhi ST-II, Delhi ST-III, Delhi ST-IV and Delhi LTU

³³ F. No. 206/02/2010-CX.6 New Delhi, Dated 03 February 2010

³⁴ Bolpur, Kolkata ST, Bengaluru LTU, Benaluru ST, Delhi ST, Bhopal and Indore

When we pointed this out (July 2014 to October 2014), the Ministry accepted the facts (November 2015) in most of the cases and further reported that cases were being taken out from the Call Book wherever necessary.

2.7.3 Monitoring mechanism of reporting through MTR

The Board had instructed (May 2003)³⁵ the Commissioners and Chief Commissioners to do the analysis of the reasons for pendency of adjudication cases and strengthen the monitoring system. Further, the department has the periodical reporting system i.e. Monthly Technical Report (MTR) for monitoring the cases relating to adjudications and their disposals, reasons for pendency, unconfirmed demands, call book cases pending etc. Some of these are monitored by DGICCE and some others by DGST.

Further, the department has to maintain the “Audit Follow-up Register” in respect of the observations of the Internal Audit after getting its final approval in the Monthly Audit Monitoring Committee meeting. Each CERA objection is noted in the registers in the CERA observation Cell. Similarly in Anti-evasion Cell, RST-5 (earlier 335J) Register is required to be maintained for every detection.

The regional unit of the DGICCE, New Delhi conducts the inspections of the field formation periodically. To assist CBEC, DGICCE monitors and evaluates, inter alia, the progress with reference to adjudication cases.

We observed in test check in 13 Commissionerates³⁶ that different registers as prescribed were either not maintained at all or maintained incompletely. SCN Register did not contain any column for due date of issue of SCN. There was no reporting system regarding the cases where SCN was to be issued and there was no scope of reporting the same in MTR.

Thus, this indicated lack of monitoring and functioning relating to SCN and Adjudication Process.

When we pointed this out (September 2015), the Ministry accepted the facts in most of the cases (November 2015) and stated that necessary changes were being made and record maintained properly henceforth.

Further, we noticed discrepancy, as given below, in figures of pendency of adjudication in the MTR for the month of March 2014 in respect of Bhubaneswar-I Commissionerate which was submitted to the Director General of Service Tax, Mumbai by the Chief Commissioner, Bhubaneswar Zone and by Bhubaneswar-I Commissionerate:-

³⁵ Letter No. 296/2/2003-CX dated 23 May 2003

³⁶ Kolkata ST, Shillong, Vadodara I, Rajkot, Mumbai ST-I, Mumbai LTU, Aurangabad, Bhubaneswar I, Indore, Bhopal, Delhi LTU, Noida and Ranchi

(Pendency of adjudication as on 31st March 2014)

Source	Chief Commissioner's Report		Commissioner's report	
	No.	Amt. (₹ in lakh)	No.	Amt. (₹ in lakh)
OB	390	45,147.11	383	53,331.09
Receipts	05	3,935.00	20	339.57
Total	395	49,082.11	403	53,670.66
Disposal	14	1,946.02	13	151.61
CB	381	47,136.09	390	53,519.05

When we pointed this out (July 2014), a revised statement was furnished (July 2014) by Commissioner, Bhubaneswar I to audit, which also did not match with the figures of Chief Commissioner's report.

2.7.4 Internal control in respect of preparation and issuance of SCN

As per draft adjudication manual of the Department, the SCN should not be vague, confusing or self-contradictory. Issue of two SCNs on the same issue is not legally proper.

We observed that in six cases in four Commissionerates³⁷, demands were issued twice on the same issue and dropped by the Adjudicating Authority on the said ground. The Ministry accepted the audit objection (November 2015) in three cases. Further, in three cases the Ministry stated there was no irregularity in issuance of second SCN. The reply of the Ministry was not acceptable as the adjudicating authority had dropped the second SCN in all three cases stating that issuing two SCNs on the same issue was not legally proper. Two cases are highlighted below.

2.7.4.1 In Noida Commissionerate, SCN was issued (March 2013) to Dish T.V. India Ltd for a Service Tax demand under reverse charge mechanism pertaining to the period (FY07 to FY11) for an amount of ₹ 1.25 crore. The assessee intimated that another SCN was issued on the same issue for the same period (FY07 to FY11). It was also ordered by the adjudicating authority (March 2014) that demand was withdrawn as the same demand was confirmed in November 2012. Thus, issue of two SCNs on one and same issue was not proper.

When we pointed this out (May 2014), the Ministry accepted the facts (November 2015) and stated that directions were issued to the field formation to take all care while issuing demand.

³⁷ Guwahati, Shillong, Kolkata ST and Noida

2.7.4.2 In Shillong Commissionerate, an SCN was issued (August 2010) to BSNL, Manipur SSA, Imphal, for a Service Tax demand of ₹ 59.18 lakh, though the same demand had been adjudicated in June 2008. However, the Adjudicating authority had dropped the same issue (November 2011) to avoid double adjudication on the issue. Thus, there was a mistake in SCN issued.

Thus, issue of two SCNs on the same issue occurred due to absence of proper monitoring system in the department in this regard.

When we pointed this out (August 2014), the Ministry replied (November 2015) that point had been noted for further guidance.

2.8 Conclusion

It was noticed during audit that the journey of SCN right from the first step of issue of SCN till its adjudication was fraught with delays and shortcomings. Administrative efficiency requires that the work is done in minimum possible time. The maximum time limits define the outer boundaries for completion of tasks. The time limit prescribed for issue of SCN was one year with provision to invoke extended period of five year for specific circumstances. But instead, it was seen that the extended period was used as a routine provision rather than a rare exception. Thus there is a need to reduce delays in various stages of issue and processing of SCN by systematic monitoring so that interests of both the government revenue and the assessee are protected.