

Adjudication-Appeal in Audit Related issues-CBEC Instructions

IT seems it has come to the notice of the Board that:-

++ Show Cause Notices issued pursuant to admitted audit objections have been dropped by adjudicating authorities, without having referred the matter to the Ministry for taking up with the office of the CAG.

++ Show cause notices had been issued pursuant to admitted audit objections, and confirmed by adjudicating authorities, were dropped by the Commissioner (Appeals) and such orders accepted by the Committee of Commissioners, without seeking the status of the audit objection from the Ministry.

This is really a revelation. Generally what we understand in the Department is

++ No Show Cause Notice is ever dropped. It is derisively referred to as Notice Cum Demand.

++ By mistake, if a SCN happens to be dropped, religiously the order is appealed against.

++ If the appellant authority is a departmental officer, as a rule, the appellate order is in favour of Revenue.

++ If the appellate order is against Revenue, then again it is religiously appealed against. A Commissioner (A), told me that if there is the slightest possibility, he would pass the order in favour of Revenue, but even in the rare cases, when he passes an order in favour of the assessee, a Committee of two Commissioners would find the order improper and illegal and it is appealed against.

In such a situation, it is rather surprising to know that orders are being passed against Revenue and that too in cases where there are Audit objections!

Now by way of reiterating existing instructions and in order to further streamline the quasi-judicial processes relating to matters emanating from Audit Paras of the CAG, Member, CBEC has prescribed a procedure to be noted for strict compliance.

++ Upon the Commissionerate admitting an audit objection, the SCN should be issued immediately and in no case later than 30 days.

++ In cases where the Commissionerate contests the audit objection, protective SCN are still required to be issued pending decision by the office of the CAG, and they should be kept in call book till settlement of the objection by the CAG.

++ In cases where a SCN is issued pursuant to admitting an audit objection, the same should be adjudicated at the earliest.

++ During the course of adjudication proceedings and examination of facts and law, should the adjudicating authority come to the conclusion that the SCN (issued pursuant to an admitted objection) is not sustainable, instead of deciding the case immediately in favour of the assessee, the Commissioner should refer the matter to the Commissioner (PAC) seeking that the para be contested. The Commissionerate shall in the meantime, transfer the case into 'call book' pending a decision by the CAG.

++ In cases, where an adjudicating authority has confirmed a SCN, issued pursuant to an admitted audit objection, but the appellate authority sets aside the order, before the Commissioner or the 'constituted committee' decides to accept such an order, a self contained and well reasoned proposal should be sent to the Commissioner (PAC) recommending that a revised ATN contesting the Audit Objection be sent to the CAG. Further, as these matters are under statutory time limits, simultaneous preparation for filing of appeal should be initiated.

CBEC Member's D.O.F No. 232/127/2009-CX.7 dated 13 Oct 2010

**D.O F.No.232/127/2009-CX.7
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
North Block, New Delhi-110001**

Dated: October 13, 2010

Sub: Adjudication / appeal proceedings in SCNs related to Audit Paras.

Instances have come to the notice of the Board, where show cause notices issued pursuant to admitted audit objections have been dropped by adjudicating authorities, without having referred the matter to the Ministry for taking up with the office of the CAG. Similarly, it has been observed that in some cases where show cause notices had been issued pursuant to admitted audit objections, and confirmed by adjudicating authorities, were dropped by the Commissioner (Appeals) and such orders accepted by the Committee of Commissioners, without seeking the status of the audit objection from the Ministry.

2. Your Commissioners surely aware of the instructions regarding appropriate handling of such matters issued by the Board from time to time. In view of such well settled procedures, aforesaid instances should not have occurred. By way of re-iterating existing instructions and in order to further streamline the quasi-judicial processes relating to matters emanating from Audit Paras of the CAG, the following procedure may be noted for strict compliance.

- a. Upon the commissioner admitting an audit objection, the SCN should be issued immediately and in no case later than 30 days.
- b. In cases where the Commissioner contests the audit objection, protective SCN are still required to be issued pending decision by the office of the CAG, and they should be kept in call book till settlement of the objection by the CAG.
- c. In cases where a SCN is issued pursuant to admitting an audit objection, the same should be adjudicated at the earliest.
- d. During the course of adjudication proceedings and examination of facts and law, should the adjudicating authority come to the conclusion that the SCN (issued pursuant to an admitted objection) is not sustainable, instead of deciding the case immediately in favour of the assessee, the Commissioner should refer the matter to the Commissioner (PAC) seeking that the para be contested. The Commissioner (PAC) shall submit the revised recommendation of the Commissionerate to the concerned Member, for a decision in the matter. If the proposal of the Commissionerate is approved, revised comments / ATN shall be sent to the C&AG. The Commissionerate shall in the meantime, transfer the case into 'call book' pending a decision by the CAG.
- e. In cases, where an adjudicating authority has confirmed a SCN, issued pursuant to an admitted audit objection, but the appellate authority sets aside the order (excepting cases where orders for de-novo proceedings are issued), before the Commissioner or the 'constituted committee' decide to accept such an order, a self contained and well reasoned proposal should be sent to the Commissioner (PAC) recommending that a revised ATN contesting the Audit Objection be sent to the CAG. Further, as these matters are under statutory time limits, simultaneous preparation for filing of appeal should be initiated.
3. You may also advise your Commissioners to set up suitable coordination mechanisms between various branches, such as Audit, Adjudication, Legal & Review, so that the above procedure is followed, without exception.
4. Immediately on receipt of this letter you will circulate it amongst your Commissioners with instruction for strict compliance of this procedure. Any deviation from this procedure will be viewed seriously.

With regards,

(S. Dutt. Majumder)
Special Secretary & Member