

## Departmental Interaction

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### Introduction:

Though the law and procedures under both service tax and central excise are made user friendly, assessee are still finding difficulties in interaction with the department officials. This may be because of lack of awareness of related law or the psychological image about the department. Sometime because of the fear in the minds of assessee about the probable disputes, they tend to



hesitate to approach the department at right time, which will in turn create many more unexpected problems for assessee by leading to unnecessary litigation which may also include attracting penal provisions under both laws on charges of suppression / misrepresentation.

In this article we discuss the following:-

- How to interact with the department appropriately for better compliance and smooth functioning.
- What are the legal provisions applicable for non – compliance with the law?
- What are the obligations of tax payers or assessee?
- What are the obligations of department officials?
- What are the powers and duties of department officials?
- Conclusion.

**How to interact with department appropriately for better compliance and smooth functioning of the statutory proceedings**

Assessee under the service tax and central excise many times faces interaction with the revenue officers whether in writing or otherwise. At the same time, it is important to make some initial declarations and important specified communication with the department.

Here are few suggestive approaches which could be useful while interacting with the Department officials, the given approaches may not be new to the assessee, but using of the said techniques appropriately at the right time in a proper way, would certainly bring in confidence in the assessee while interacting with the department.

- a) **Email** :In increasing tendency of usage of email by the present generation, it is one of the most important modes of communication to have with the department, which has got the legal recognition as well. Email is very quick and fast means of communication. In fact at the time of registration as well as e – filing, department uses email as means of communication to interact with the assessee. But some more time may be required to work more effectively through E Mail and to cover more bases in Indian taxation system in an efficient manner.
- b) **Telephone** : Though with the large expansion of the telecommunication users with both cell phone and fixed line phone, it is not preferable mode of communication with the department. Especially in case of tax payers who expect some general queries, just because its inherent limitation of non evidence means of correspondence.
- c) **Letters and notices from the department:** All letters received are to be marked with date of receipt and especially for Show Cause Notice / Adjudication/Appeal Order; the envelope cover should be retained as evidence for date of receipt.

All letters from the department should invariably be replied within one month (unless otherwise specified), by way of registered post with acknowledgement due. If required, the assessee should seek extension of time in replying to the letter received from the department.

All communications should be perused to see which are in the direction of the enquiry. If the communication is with respect to possible Show Cause Notice, Assessee may take legal

advice wherever required and file a comprehensive reply providing the facts clearly along with the reasonable justifications and related legal grounds. This could avoid the issues of the Show Casual Notice (SCN), which consumes time, effort and money. In the case if irrelevant details of sensitive nature have been asked for, the query as to the purpose maybe addressed with a copy to Higher Officer.

Under no circumstances should back dated acknowledgements be given, as the communication may be with respect to a demand.

**d) Letters to department:** All correspondences to the departmental officers be duly acknowledged and if not done, a copy to be sent by RPAD (Registered Post with Acknowledgement Due). RPAD can be used as a better alternative to hand delivery, where the assessee may be forced to put up with delays and refusals not to mention the traffic and distances today.

All the information provided should be factually correct and therefore it is recommended to recheck again before communicating the same. In the case of reply to SCN – All evidences and grounds for justification of action shall be indicated along with copies of documents relied on. This could be crucial in higher levels of litigation.

The normal period for reply for departmental letter could be between 15 days to 30 days. The time limit specified in the departmental correspondences should generally be followed, unless it requires more time to provide sufficient details. In such cases a normal extension of time may be requested by the assessee.

Where the assessee are making initial disclosures and declarations with the departments, as per law it is advisable to seek a counsel advise in this regard for vetting the letters and declarations for better usage of words with legal provisions.

**e) Visits by department:** In normal course, the officers are not supposed to visit the assessee at his premises even for verification of the address. Therefore in case of any visit, the identity of the officer maybe verified preferably by the security personnel who need not let them enter unless the same is produced.

The visiting officers are required to record their visit in the Visit Register with the purpose. Insistence on recording will lead to purposeful visits or avoid future visits. This restriction is also applicable for vigilance and internal audit party. The officers sometimes take offence and refuse to do so. The same information may be recorded with the remark that the same was refused. In case of repetitive visits a note to higher officer of the facts of visit maybe advisable.

Any document provided should be on a written request and duly acknowledged. The type of document provided may also be considered prior to handing over. A report to higher officer / for record wherever there is any doubt as to the straight forwardness of the inquiry is also advisable.

Further it is advisable that, fully knowledgeable persons from the organization should answer to the queries raised by the departmental officers. Especially in case of inspection visits by the range officers for registration under central excise law. This formula evenly followed during the time of visits by the officers for conducting audits and enquiry. Giving vague and unnecessary information shall be strictly avoided and keep the relevant data and details ready for answering the likely probable questions.

It is also advisable to assessee not to follow the Oral instructions of departmental officers as that may not be in accordance with the law. Instead they can insist on written communication or write back to them stating that they have instructed them to do so, seeking their confirmation.

- f) **Visit to department:** After introduction of E – Governance projects in tax departments the assessee are no longer required to visit to department except in few exceptional cases where detailed explanations are required for understanding. All the statutory requirements can be fulfilled online itself like registrations, submissions of returns, forms and making payments. This would save the precious time of the officers as well as the assessee. Also avoid unnecessary travel as also discussion with the tax authorities which normally does not serve any purpose.

**Applicable Legal provisions for non compliance**

**A). Under Service tax law :**

- Section 75 deals with payment of interest for not depositing the tax due after utilization of credits for the prescribed period. Rate of Interest is 18% simple interest. Where as in case of assessee whose turnover does not exceed sixty lakhs during last financial year, the rate of interest will be 15% simple interest for the delayed period.
- Section 76 - Deals with penalty which will be Rs. 200 per day of failure or at 2% of such tax per month whichever is higher for nonpayment of Service Tax. Penalty will be imposed for the period starting from the first day after due date up to the date of actual payment. However Penalty cannot exceed total service tax liability. It is proposed to reduce the penalty by half of what is presently being imposed.
- Section 77 – Deals with penalty for contravention where no penalty is prescribed under law :

Particulars	Amount of penalty (INR)
On account of failure to make payment and take registration under service tax	Rs. 200 per day of default or a sum of Rs. 10000 whichever is higher
On account of failure to make electronic payment of tax	Rs. 10000
Failure to maintain proper records or books	Rs. 10000

Failure to furnish information called for under this chapter or Failure to furnish documents required under this chapter or Failure to appear before CEO when issued summons to appear or produce documents in an inquiry	Rs 200 per day of default or sum of Rs. 10000 whichever is higher
Failure to issue proper invoice or issuing invoice with incorrect or incomplete details or failure to account invoice in books	Rs.10000
Other cases	Rs.10000

- Section 78 – Deals with penalty for suppression of value of taxable service and the penalty shall not be less than the service tax and shall not exceed twice the amount of service tax payable. This can be reduced on payment of tax and interest within the stated period of 30 days, along with the penalty determined. (Where penalty is levied u/s 78, no penalty shall apply u/s 76).

**However the revised penal provisions which are effective from Finance Act 2011 as provided below:**

Situation	Position in records	Penalty and provision	Mitigation	Complete waiver
No fraud, suppression etc	Captured	1% of tax or Rs 100 per day upto 50% of tax amount (section 76)	Totally mitigated if tax and interest is paid before issue of notice	On showing of reasonable cause under section 80

Cases of fraud, suppression etc	Captured true and complete position in records	50% of the tax amount (proviso to section 78)	1) 1% P.M: Max of 25% if all dues paid before issue of notice 2 ) 25% of tax if all dues paid within 30 days (90 days for small assessee)	On showing of reasonable cause under section 80
	Not so captured	Equal amount under section 78	No mitigation	Not Possible

#### **B) Under Central excise law**

In the absence of any express definition of the term Offence in the Central Excise law, any violation of the provisions of the law would be construed as an offence. Whether or not any offence has been committed by an assessee is to be adjudged through a process of adjudication in accordance with the principles of natural justice. The law envisages action both in respect of offending goods and the offender.

**The Central Excise Act, 1944 and the Central Excise Rules, 1944 provide for following categories of fine or penalties.**

- Section - 11AA, interest is charged on the delayed payment of duty. Thus, it is in the interest of an assessee to discharge the duty liability the earliest and not to prolong the dispute only for the sake of delaying payments.
- Section - 11AC prescribes a mandatory penalty equal to the duty not levied or paid or short paid or erroneously refunded by reason of fraud, suppression etc. However, in the event the duty and interest thereon is paid within 30 days of the communication of the

order, the penalty shall be 25% of the duty subject to it being paid within the said period of 30 days

- Rule 25 of the said Rules provides for penalty on any producer, manufacturer, registered person of a warehouse or a registered dealer not exceeding the duty on the excisable goods in respect of which any of the specified contravention have been committed, or rupees ten thousand, whichever is greater. The penalty is subject to the provisions of Section 11 AC of the Central Excise Act, 1944. The offending goods are also liable to confiscation. The specified contravention are:

- a) Removal of any excisable goods in contravention of any of the provisions of the said rules or the notifications issued under the said rules.
- b) Non-accounted of any excisable goods produced or manufactured or stored.
- c) Manufacture, production or storage of any excisable goods without having applied for the registration certificate required under Section 6 of the Central Excise Act.
- d) Contravention of any of the provisions of the said rules or the notifications issued under the said rules with intent to evade payment of duty.

If penalty is imposed under Section 11AC, penalty under rule 25 will not be imposed. However, this does not prevent the Department from confiscating the goods, imposing any fine in lieu of confiscation and prosecuting a person.

- Under rule 26 of the said Rules, It is provided that any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or the said Rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater.



- Rule 27 of the said Rules provides for imposition of a general penalty which may extend to five thousand rupees and with confiscation of the goods in respect of which the offence is committed. This is attracted when no other specific penalty is provided for.
- As per Rule 28 of the said Rules, when any goods are confiscated under these rules, such thing shall thereupon vest in the Central Government. Accordingly, the Central Excise Officer adjudging confiscation shall take and hold possession of the things confiscated, and every Officer of Police, on the requisition of such Central Excise Officer, shall assist him in taking and holding such possession.
- Rule 30 provides that if the owner of the goods, the confiscation of which has been adjudged, exercises his option to pay fine in lieu of confiscation, he may be required to pay such storage charges as may be determined by the adjudicating officer.
- Provisions for disposal of goods confiscated are contained in rule 29 of the said Rules. Goods of which confiscation has been adjudged and in respect of which the option of paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct.
- Rule 15 of Cenvat Credit Rules, 2004 If any person, takes or utilizes CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater.
- Rule 15A of Cenvat Credit Rules, 2004 whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.

**Search, seizure, summons and arrest provisions under service tax and central excise law :**

**A) Under Service tax law**

- Section – 82 provides that, If the Commissioner of Central Excise has reason to believe that any documents or book or things which in his opinion will be any useful for or relevant to proceedings under this Chapter are secreted in any place, he may authorize any Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise to search for and seize or may himself search for and seize, such documents or books or things. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches, shall, so far as may be, apply or searches under this section as they apply to searches under that Code.
- Section 91 provides power to arrest which empowers the Commissioner of Central Excise to arrest a person for an offence committed under the Act, does not augur well in regime where trust and confidence is the foundation stone of the Act. The power of arrest shall be exercised by the Commissioner through an officer not below the rank of the Superintendent of Central Excise.

How and when a person will be arrested and when such person will be presented before a magistrate is also provided in the section 91 of the Act, which is given below:

If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorize any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.

Where a person is arrested for any cognizable offence, every officer authorized to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.

In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers of a police in the police station.

All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests." Chapter V of Code of Criminal Procedure, 1973 deals with arrest of persons.

**B) Under Central Excise law**

- The provisions relating to search are given in Section 18 of the Act,1944, which provides that all searches should be made in accordance with the provisions of the Code of Criminal Procedure
- Rules 22 & 23 of the Central Excise (No.2) Rules, 2001 (hereinafter referred to as the said Rules), empower the authorized officer to enter and search any premises, conveyance or other place. Further, rule 24 ibid specifically empowers such officer to affect a seizure or detention. Moreover, Section 12 of the Central Excise Act, 1944, empowers the Central Government to apply the provisions of the Customs Act to the Central Excise also. In exercise of such powers the Central Government has issued Notification No.68/63, dated 4.5.1963 modifying and extending the various sections of Customs Act, 1962 to Central Excise matters.

In terms of the said rules, an officer not below the rank of the Inspector of Central Excise, duly authorized by Commissioner by special or general order, can search at any time, any premises or conveyance where he has reason to believe that excisable goods are manufactured, stored or carried in contravention of the provisions of the Act or rules. For registered premises or for stopping and searching any conveyance in transit no search warrant is required. However, in other cases, normally search warrants are issued by the Deputy/Assistant Commissioner authorizing the search. The Central Excise Officer is also authorized to stop and search any conveyance as well. The search is to be carried out in the presence of two independent witnesses.

- Section 22 deals with vexatious searches, seizure etc. by Central Excise Officers. In such case the Central Excise office will be liable to punishment under the law. Similar

provision is made applicable to any person willfully and maliciously giving false information leading to vexatious search.

- Rule 24 of the said Rules provides for power to detain goods or seize the excisable goods. If a Central Excise Officer, has reason to believe that any goods, which are liable to excise duty but no duty has been paid thereon or the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods.

The power to release seized goods emanates from power to seize itself. The goods seized may be released provisionally under bond in the Format specified under erstwhile Central Excise Rules, 1944 [B-8 bond] along with 25% security or surety by the officer who is normally competent to adjudicate the case. The adjudicating officer will also consider the importance of such goods for evidence, and will release the goods provisionally if the bond is furnished. Wherever necessary, sample may also be drawn. The adjudicating officer, however, will ask the owner or in-charge of the goods to whom the goods were released provisionally to produce the goods any time before the issue of adjudication order, if he is of the view that the goods are liable for confiscation. In case the person to whom goods were released provisionally fails to produce the goods at appointed time, the bond may be enforced for recovering.

- Provisions for arrest are contained in Sections 13 and 18 of Central Excise Act, 1944. These provisions provide for power to arrest, searches and arrests how to be made, disposal of persons arrested, procedure to be followed.

Any Central Excise Officer not below the rank of Inspector can arrest any person under Section 13 whom he has reason to believe that he is liable to punishment under the Central Excise Act. In normal circumstances, prior approval of Commissioner will be taken before arresting a person.

The arrested person shall be produced before the Jurisdictional Magistrate or the Chief Judicial Magistrate, as the case may be, within twenty-four hours of the arrest.

- Prosecution may also be launched under Section 9 of the Central Excise Act, 1944 for the offences under Section 9(1) of the Act. As per provisions of Section 9AA prosecution may be launched against any person, Director, Manager, Secretary or other officers of a company or partner/ proprietor of the firm, who is responsible for the conduct of the business of the company/firm and is found guilty of the offences under the Central Excise Act/Rules.

Section 9 of the Central Excise Act, 1944, provides for prosecution of offenders in a court of law and prescribes a minimum imprisonment of six months. However, in cases where the duty involved is more than one lakh or the offender has been convicted previously under this section, the court can award maximum imprisonment for a term not exceeding seven years.

Prosecution proceedings in a Court of Law are generally initiated after departmental adjudication of an offence has been completed. However, prosecution may be launched even where adjudication is not complete.

Generally, the adjudicator should indicate whether a case is fit for prosecution, though this is not a necessary pre-condition.

Confiscation and penalty in departmental adjudication and prosecution in criminal proceedings are independent and do not amount to double jeopardy.

Prosecutions are launched in cases of serious nature and where sufficient evidence to prove fraudulent intention is available. Under executive instructions the Chief

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Commissioner of Central Excise or in specified cases the Director General of Central Excise Intelligence, has power to sanction prosecution.

**Obligations of Taxpayers or Assessee:**

**The obligation to be honest:**

If most taxpayers did not pay most of their taxes most of the time, a tax system would be placed under a severe compliance strain and governments would be unable to finance the expenditures voted for by their citizens. Taxpayer honesty is therefore fundamental to the operation of any tax system and all systems have Investigatory powers with penalties and sanctions in place to cater for an instance where a taxpayer is does not comply. Accordingly taxpayers should always exercise reasonable care and diligence in attempting honesty complies with their tax obligations.

**The obligation to be co-operative:**

Modern tax systems can only function effectively if there is a high degree of voluntary compliance, keeping the need for enforcement activity to a minimum. Co-operative behaviour on the part of most taxpayers allows the Government to run the taxation system at a relatively low cost and minimizes unnecessary intrusion into taxpayer affairs and those of third parties. Hence taxpayers are encouraged to co-operate with relevant revenue authorities in attempting to comply with their tax obligations.

**The obligation to provide accurate information and documents on time:**

All taxation systems use information provided by taxpayers to identify the taxpayer and their address and to account for taxes paid or payable. Most tax systems are premised around taxpayers filing particular documents on time to enable taxes to be properly recorded and debits or credits to be issued. Thus taxpayers should provide accurate information to revenue authorities in accordance with the laws of relevant taxing jurisdictions. Taxpayers having difficulty in complying with this obligation should be encouraged to discuss their circumstances with their revenue authority, as it may be possible to allow additional time in some cases.

**The obligation to keep adequate records:**

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To provide accurate information to the revenue authority taxpayers should keep reasonable contemporaneous records of their financial transactions. Such records also allow the revenue authority to verify that the information provided by a taxpayer is accurate. Most tax systems will broadly specify what records have to be kept and for what length of time so that transaction details can be traced and verified. Accordingly taxpayers should keep the records required by the laws of relevant taxing jurisdictions.

**The obligation to pay taxes on time:**

Finally all tax systems require taxpayers to pay their taxes on time. Taxpayers should always endeavor to pay their taxes in accordance with the law prescribed in this regard.

**Liability and obligations upon departmental officers:**

Officers would be liable for a fine of Rs 2000 for searching, causing to be searched without reasonable grounds, unnecessary detaining, searching and arresting any person, unnecessary seizing movable property and committing an injury without having any reasons to believe that such act is required for execution of his duty. Further officers also liable for 3 months imprisonment or fine of 3 months pay, if he refuses to perform or withdraws himself from the duties of his office.

Further to mention about departmental officers that,

- (i) Such officer shall not disclose information learned in his official capacity. However sharing of financial information to other taxing authorities is allowed.
- (ii) Officers to issue SCN before imposing demand, penalty or confiscation of property.
- (iii) Officers to search at reasonable times that is to say, conduct any enquiry in business hours of day time.

**Powers and duties of departmental officers:**

It is better to know the powers, duties and responsibilities of the departmental authorities by taxpayers for better understanding the system in which department works. In turn this also

helps assessee in approaching the different problems with right authorities. Some of them are enumerated below:-

- (i) The provisions has been incorporated to search, seizure, prosecute and arrest the assessee under the instructions of the commissioners or in sometimes even by the Director General of Central Excise Intelligence. This is to be done normally after the adjudication process as per law. Further, for arresting an assessee the code of criminal procedures have to be followed with proper evidence.
- (ii) The power of issuing summons to the authorized persons of the company.
- (iii) The power to detain and give evidence is to be used providing the safeguards/exemptions as provided by the code of civil procedures.
- (iv) The commissioner of Central excise officer has reason to believe that any person liable to pay duty or service tax and has failed to declare or determine the value or has short paid or has availed credit which is not as per law then he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as provided in law.

**Conclusion:**

A key success to carry effective interaction with department is appropriate communication, proper maintenance of books of accounts as per law, better compliance under the law, and awareness of self duties as well as duties of officials, well knowledge on powers of Department officials and the applying the knowledge at right time in proper way. Voluntary disclosure of facts and methodology followed for credits, valuation, point of taxation, claiming of exemption, timing of recording in books could safeguard the tax payer in case of demands.

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