

INDIRECT TAX OMBUDSMAN GUIDELINES, 2011

The Indirect Tax Ombudsman Guidelines, 2011

The Guidelines are introduced with the objective of enabling the resolution of complaints relating to public grievances against the Customs, Central Excise and Service Tax Department and to facilitate the satisfaction or settlement of such complaints.

CHAPTER I

PRELIMINARY

1. Short title, commencement, extent and application

- I. These Guidelines shall be known as the Indirect Tax Ombudsman Guidelines, 2011.
- II. They shall come into force from 11th May, 2011.

2. Definitions

- I. '**authorized representative**' means a person duly appointed and authorized by a complainant to act on his behalf and represent him in the proceedings under these guidelines for consideration of his complaint.
- II. 'award' means an award passed by the Ombudsman in accordance with these Guidelines.
- III. '**complaint**' means a representation in writing or through electronic means containing an administrative grievance alleging deficiency in the working of the Customs, Central Excise and Service Tax Department as mentioned in clause 9 of the Guidelines.
- IV. '**guidelines**' means the Indirect Tax Ombudsman Guidelines, 2011.
- V. '**Customs, Central Excise and Service Tax authority complained against**' means the junior-most Customs, Central Excise and Service Tax officer not below the rank of a Superintendent of Central Excise, or an Appraiser of Customs or a Superintendent of Customs who has given the cause of grievance to the complainant. If the grievance has been caused by an official lower in rank than a Superintendent of Central Excise or an Appraiser of Customs or a Superintendent of Customs, then this term shall mean the officer in the rank Superintendent of Central Excise or an Appraiser of Customs or a Superintendent of Customs who is in-charge of such official.
- VI. '**Ombudsman**' means any person appointed under Clause 3 of these Guidelines.

CHAPTER II

ESTABLISHMENT OF THE OFFICE OF INDIRECT TAX OMBUDSMAN

3. Appointment and Tenure

- I. On the recommendations of a Committee consisting of the Secretary, Department of Revenue in the Ministry of Finance, the Chairman, Central Board of Excise and Customs and the Member (Personnel & Vigilance), Central Board of Excise and Customs (CBEC), the Central Government may appoint one or more persons as Ombudsman.
- II. The Ombudsman selected shall be a person who has held a post in the Government of India in the HAG pay scale of Rs. 67,000 -79,000 on regular basis for at least one

year or in a higher grade and shall preferably be a resident of the city where he/she is proposed to be appointed. He/she shall be a serving officer (as on the last date for receipt of applications) preferably of the Indian Revenue Service (Customs and Central Excise). If a suitable officer from that service is not available, officers of equivalent grade of any other group 'A' service of the Central Government may be appointed as Ombudsman. When appointed as Ombudsman, the officer, if he/she is still in service under the Government of India, shall seek retirement from Government service before entering upon his office as an Indirect Tax Ombudsman.

III. The Ombudsman shall be independent of the jurisdiction of the Customs, Central Excise and Service Tax department.

IV. The Ombudsman shall be appointed for a tenure of 2 years extendable by one year based on performance appraisal or till the incumbent attains the age of 63 years, whichever is earlier. There shall be no reappointment. Performance appraisal shall be made by the Committee constituted in clause 3.1.

4. Remuneration

The Ombudsman shall be allowed pay and allowances as applicable to a Central Government Officer in the HAG+ pay scale of Rs. 75,500-80,000. Any pension to which he is entitled from the Central Government/State Government shall be deducted from his salary.

5. Territorial Jurisdiction

The Central Government shall specify the territorial jurisdiction of each Ombudsman.

6. Location of offices

The offices of Indirect Tax Ombudsman shall be located at Delhi, Mumbai, Chennai, Kolkata, Bangalore, Ahmedabad and Lucknow.

7. Secretariat

Each Ombudsman shall be provided with an office space of appropriate size and a secretariat staff consisting of a Private Secretary, Tax Assistant and a Peon by the Central Board of Excise and Customs.

CHAPTER III

8. Powers and Duties

I. The Ombudsman shall have the powers to –

- (a) receive complaints from taxpayers on any matters specified in clause 9;
- (b) consider such complaints and facilitate their satisfaction or settlement by agreement, through conciliation and mediation between the Customs, Central Excise and Service Tax Department and the aggrieved parties or by passing an 'award' in accordance with the Guidelines;
- (c) require the Customs, Central Excise and Service Tax Authority complained against or any other related Customs, Central Excise and Service Tax Authority to provide any information or furnish certified copies of any document relating to the subject-matter of the complaint which is or is alleged to be in its possession; provided that in the event of failure of such authority to comply with the requisition without any sufficient cause, the Ombudsman may, if he

deems fit, draw the inference that the information, if provided or copies if furnished, would be unfavorable to the concerned Customs, Central Excise and Service Tax Authority;

- (d) suggest remedial measures for redressal of grievances; and
- (e) report his findings to the Secretary, Department of Revenue, Government of India and the Chairman CBEC for appropriate action against erring officials;
- (f) Ombudsman shall not have any authority over the Central Board of Excise and Customs and Directorates under Central Board of Excise and Customs as these are attached offices of Central Board of Excise and Customs.

II. (a) In cases where action is to be taken by the CBEC and the Directorates under the CBEC which are attached offices of the CBEC, the Indirect Tax Ombudsman shall only have powers of recommendation.

(b) The Indirect Tax Ombudsman shall not have jurisdiction in cases where proceedings have been initiated under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

III. The Ombudsman shall have the following duties:

- (a) to exercise general powers of superintendence and control over his office and be responsible for the conduct of business in his office;
- (b) to maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his duties and not to disclose such information or document to any person except with the consent of the person furnishing such information or document; provided that nothing in this clause shall prevent the Ombudsman from disclosing information or documents furnished by a party in a complaint to the other party or parties, to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play in the proceedings;
- (c) to protect individual taxpayer's rights;
- (d) to identify issues that increase the compliance burden or create problems for taxpayers, and to bring those issues to the attention of the CBEC and the Ministry of Finance;
- (e) to send a monthly report to the Chairman, CBEC and Secretary, Department of Revenue in the Ministry of Finance recommending appropriate action. The report shall also highlight cases where action needs to be taken against erring Customs, Central Excise and Service Tax authorities for their failure to redress the grievance. The report will be accompanied with primary evidence needed to initiate action against the delinquent persons;
- (f) to furnish a report every year containing a general review of activities of the office of the Ombudsman during the preceding financial year to the Secretary, Department of Revenue, Ministry of Finance and the Chairman, CBEC along with such other information as may be considered necessary by him/her. In the annual report, the Ombudsman, on the basis of grievances handled by him, will review the quality of

the working of the Customs, Central Excise and Service Tax Department and make recommendations to improve the indirect tax administration; and

- (g) to compile a list of 'awards' passed by it between April and March of each financial year in respect of every Customs, Central Excise and Service Tax Authority complained against, by name, and report it to the controlling Chief Commissioners of the officers concerned and the Chairman, Central Board of Excise and Customs before the end of April so that this information can be reflected in the Annual Confidential Reports of the officers concerned.

CHAPTER IV

PROCEDURE FOR REDRESSAL OF GRIEVANCE

9. Grounds on which complaint shall be filed:-

I. A complaint on any one or more of the following grounds alleging deficiency in the working of the Customs, Central Excise and Service Tax Department may be filed with the Ombudsman:

- (a) delay in the issue of refunds or rebate beyond time limits prescribed by law or under the relevant instructions issued from time to time by the Central Board of Excise and Customs;
- (b) delay in adjudication;
- (c) delay in registration of taxpayers;
- (d) delay in giving effect to Appellate orders;
- (e) non-adherence to the principle of " First Come First Served" in sending refunds;
- (f) non-adherence to the rules prescribed for disbursement of drawback;
- (g) non-acknowledgement of letters or documents sent to the department;
- (h) delay in release of seized books of account and assets, after the proceedings under the Customs, Central Excise and Service Tax statutes in respect of the years for which the books of account or other documents are relevant are completed;
- (i) non-adherence to prescribed working hours by Customs, Central Excise and Service Tax officials;
- (j) unwarranted rude behavior of Customs, Central Excise and Service Tax officials with assesseees;
- (k) any other matter relating to violation of the administrative instructions and circulars issued by the Central Board of Excise and Customs in relation to Customs, Central Excise and Service Tax administration:

Provided that, if on any of the grounds above, the responsibility for taking action is with the Central Board of Excise and Customs or on a Centralized authority eg., {Director General (Systems)}, then the Ombudsman shall not have the power to pass an award as specified in para 13 below. In such cases, the decision of the Ombudsman shall be recommendatory in nature and shall be forwarded in writing to the Revenue Secretary or the Chairman, CBEC or the centralized authority, as the case may be.

II. Central Board of Excise and Customs may include any other ground on which a complaint may be filed with the Ombudsman.

10. Procedure for filing the complaint

I. Any person, who has a grievance against the Customs, Central Excise & Service Tax Department under the Government of India's Department of Revenue, may, himself or through his authorized representative, if any, make a complaint against the concerned Customs, Central Excise and Service Tax official in writing to the Ombudsman having jurisdiction over that office.

II.

- (a) The complaint shall be duly signed by the complainant or his authorized representative, if any, and shall clearly state the complainant's name and address, the name of the office and official of the Customs, Central Excise and Service Tax office against whom the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the complainant and the relief sought from the Ombudsman;
- (b) A complaint made through electronic means shall also be accepted by the Ombudsman and a print out of such complaint shall be taken on the record of the Ombudsman;
- (c) A printout of the complaint made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for conciliation or settlement.
- (d) The signed printout shall be deemed to be the complaint and it shall relate back to the date on which the complaint was made through electronic means.

III. No complaint to the Ombudsman shall lie unless:-

- (a) the complainant had, before making a complaint to the Ombudsman, made a written representation to the Grievance Cell of the concerned Customs, Central Excise and Service Tax office and did not receive any reply within one month from the date of its receipt by the Grievance Cell.
- (b) where the complainant had made a complaint in writing to the Grievance Cell of the concerned indirect tax office and he is not satisfied with the reply given to him.
- (c) where the complainant had before making a complaint to the Ombudsman, made a written representation to the Customs, Central Excise and Service Tax authority superior to the one complained against and either such authority had rejected the complaint or the complainant had not received any reply within a period of one month after such authority had received his representation or the complainant is not satisfied with the reply given to him by such authority;
- (d) the complaint is made not later than one year after the complainant has received the reply of the concerned Customs, Central Excise and Service Tax office to his representation or, in case, where no reply is received, not later than one year and one month after the representation to the Customs, Central Excise and Service Tax Authority;
- (e) the complaint is not in respect of the same subject-matter which was settled through the Office of the Ombudsman in any previous proceedings whether or not received

from the same complainant or any one or more of the parties concerned with the subject-matter; and

(f) the complaint is not frivolous or vexatious in nature.

IV. No Complainant shall be made to the Indirect tax Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Customs, Central Excise and Service Tax Authority or Appellate Authority or Court.

11. Proceedings to be summary in nature

The Ombudsman shall not be bound by any legal rules of evidence and may follow such procedure that appears to him to be fair and proper. The proceedings before the Ombudsman shall be summary in nature.

12. Settlement of complaints by agreement

I. As soon as it may be practicable so to do, the Ombudsman shall cause a notice of the receipt of any complaint along with a copy of the complaint to be sent to the Customs, Central Excise and Service Tax Authority Complained Against and endeavour to promote a settlement of the complaint by agreement between the complainant and such authority through conciliation or mediation;

II. For the purpose of promoting a settlement of the complaint, the Ombudsman may follow such procedure as he may consider appropriate.

13. Award by the Ombudsman

I. If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as the Ombudsman may consider necessary, he may, subject to the proviso in para 9.I *ante*, pass an award after allowing the parties a reasonable opportunity to present their case. He shall be guided by the evidence placed before him by the parties, the principles of Customs, Central Excise and Service Tax law and practice, directions, circulars, instructions and guidelines issued by the Central Board of Excise and Customs or the Central Government from time to time and such other factors which in his opinion are necessary in the interest of justice.

II. The 'award' passed under sub-clause (1) above shall be a speaking order comprising of the following:

(a) Directions to the concerned Customs, Central Excise and Service Tax Authority on performance of its obligations like expediting delayed matters, giving reasons for decisions/orders and issuing apology to complainants etc., except a direction affecting the quantum of tax assessment or imposition of penalties under the Customs, Central Excise and Service Tax statutes;

(b) A token compensation amount not exceeding Rs. 5000 (Rupees Five Thousand only) for the loss suffered by the complainant.

(c) Designation of the Customs, Central Excise and Service Tax officer to whom the letter of acceptance of the award is to be communicated as detailed in clause 13.4.

III A copy of the 'award' shall be sent to the complainant and the Customs, Central Excise and Service Tax Authority complained against.

- IV** The 'award' shall be binding on the concerned Customs, Central Excise and Service Tax office as well as on the complainant provided that an award shall not be binding on the Customs, Central Excise and Service Tax office unless the complainant furnishes to it, within a period of 15 days from the date or receipt of a copy of the award, a letter of acceptance of the award in full and final settlement of his complaint. If the complainant does not accept the Award passed by the Ombudsman or fails to furnish his letter of acceptance of within the said period of 15 days or within such time, not exceeding a period of 15 days or within such time, not exceeding a period of 15 days that may be granted by the Ombudsman, the award shall lapse and be of no effect.
- V.** Any token compensation given as a part of the award shall be paid by the concerned Customs, Central Excise and Service tax office out of the budget allocated under the head 'Office Expenses' of the office of the concerned Customs, Central Excise and Service Tax Authority complained against. Such payments shall take priority over any other expenditure from this allocation.
- VI.** The Customs, Central Excise and Service Tax Authority complained against shall, within one month from the date of the award, comply with the award and intimate compliance to the Ombudsman.

CHAPTER V

MISCELLANEOUS

14. Removal of difficulties

If any difficulty arises in giving effect to the provisions of these Guidelines, the Central Government may make such provisions not inconsistent with the Customs, Central Excise and Service Tax statutes or the Guidelines as it appears to it to be necessary or expedient for removing the difficulty.