

INTERNAL AUDIT DEPARTMENT

4.01 Introduction:

The audit department comprises of two sections

1. Post audit
2. Concurrent audit

1. Post auditing is carried out with a view to verify the correctness of the classification, valuation, rate of exchange, rate of duty and arithmetical calculation of duty for home consumption & bond B/E after clearance of the goods.

2. Concurrent auditing is carried out for home consumption & into bond B/E immediately after the same has been assessed under section 17 or section 18(1) of the C.A.1962., but before payment of the duty with a view to check the correctness of classification, valuation, rate of duty, rate of exchange & I.T.C. Angle of the importation.

4.02 CONCURRENT AUDITING OF BILLS OF ENTRY:

After assessment of bill of entry by the group Appraiser, the same are submitted to the Appraisers of concurrent audit. The Appraisers posted in concurrent audit have to re-check whether the assessment done by the group Appraisers is in order. He should check the following: -

1. Whether the value shown in the invoice is correctly taken in the bill of entry and whether the value is FOB, C&F, CIF etc.
2. In case the value is FOB, whether freight and insurance amount is correctly taken as per freight and insurance memo.
3. Whether the exchange rate applied is correct.
4. Whether the goods are classified correctly under the Custom Tariff heading & Central Excise Tariff heading.
5. Whether the benefit of notifications if any, is given correctly.
6. Whether correct rate of duty has been applied.
7. Whether the goods are in the Negative list or are covered under licence or are permitted to be imported freely.

8. Whether the procedures prescribed by various standing orders have been complied with.

9. Whether any loading of value as decided by SVB is done for value.

10. Whether the quantity declared in the B/E is as per invoice and correct.

11. Whether assessable value and rate of duty has been certified in words.

12. In case of consignment of chemicals especially brand name chemicals whether the goods have been tested and are covered by valid T.R.

Note: - In case of suspected under valuation retrieval of data of valuation may be taken from the computer for cross verification.

In the case of home consumption B/Es where final entry has been granted and there is no objection from audit point of view, the same will be concurrently audited, by AO (CA) & he will endorse the B/E by putting the stamp "concurrently audited" and sign below it.

4.02(a) CONCURRENT AUDIT OF PRIOR ENTRY BILLS OF ENTRY:

1. "Prior entry" & provisionally assessed B/Es shall also be concurrently audited by the AO (Concurrent Audit) exactly as per procedure prescribed above except that the B/E will be stamped as "to be finally audited".

2. The cash department shall not accept the payment of duty in the case of "prior entry" B/Es until the same are finally audited after re-checking the rates of duty with reference to date of final entry certified by Import dept.

3. The CHAs/importers, after getting the date of entry inward from the Import department shall indicate the same in relevant column of B/E and present the same to the concerned group clerk. The said group clerk shall forward the B/E to the C.A. attached to the Group. The C.A. shall audit such B/E after verifying changes in rate of duty, if any have come into effect on the date of final entry. In case there are

changes in the rate of duty on the date of final entry the same shall be brought to the notice of the concerned group Appraiser, who shall re-assess the B/E accordingly. If the re-assessment so done is correct the concurrent audit AO will endorse with stamp "finally audited" & sign. The B/E will then go to Assistant Collector for signature. The CHA/importer will then pay the duty as reflected in the bill of entry.

Where the assessable value of individual bill of entry exceeds Rs.10 lakhs it should be sent to the Assistant Collector incharge of concurrent audit for his scrutiny and signature. High value B/Es where doubts or disputes may arise should be put to Addl. Collector /Deputy Collector (Audit).

4.02(b) CONCURRENT AUDIT APPRAISER NOT IN AGREEMENT WITH THE ASSESSMENT MADE BY THE GROUP - PROCEDURE REGARDING:

In respect of any particular B/Es, if the Appraiser (Concurrent Audit) finds that classification, valuation, rate of exchange or rate of duty are not correct and that the importation is in contravention of the Import Trade Control Regulations, he should record the same on separate note sheet and submit it to the Assistant Collectors (Concurrent Audit). If the Assistant Collector (Audit) agrees with the objections raised by the Appraiser (CA) he may add his own observations/comments and forward the same to the Assistant Collector of the concerned group. If the Assistant Collector (Audit) does not agree with the objections raised by the Appraiser, he may overrule the same and order the B/Es to be passed in audit or else submit the same to the Additional Collector/Deputy Collector (Audit), should it be necessary. All such bill of entry where the objections are finally resolved and the bills of entry are passed in the audit shall be stamped "finally audited" & signed. The bills of entry where there is no objection shall also be stamped & signed as above by the C.A. after audit and shall be returned to the clerk in the terminal room who shall keep a record of such bills of entry.

The clerk in the computer center shall forward these bills of entry to the respective groups through a transit book after affixing a stamp on the right hand top corner of the bills of entry indicating "data entered".

4.03 POST AUDITING OF BILLS OF ENTRY:

The following types of bills of entry are audited in the Audit department.

(a) NON-BONDED GOODS:

- (1) Home consumption bill of entry.
- (2) Government stores bills of entry.

(b) BONDED GOODS:

- (1) Into bond bills of entry.
- (2) Ex-bond (out of bond) bills of entry. (Provisionally assessed bills of entry become ripe for post audit only from the date on which they are finally assessed)

NOTE: All bills of entry which are post audited should reach the C.R.A.D. Within two months from the date of payment of duty.

4.04 DETAILS OF AUDIT CHECKS ON BILLS OF ENTRY:

The Internal audit department should check the following in connection with post audit of the aforesaid bills of entry.

4.04(a) IN THE CASE OF BILLS OF ENTRY OF DUTIABLE GOODS:

(a) That the original copy of the bill of entry noted in the Import department under section 46 of the Customs Act, 1962 bears the serial number and date stamp, and that it is duly noted by the noter with his initials.

(b) That the bill of entry has been passed by the Appraiser and is countersigned by the Assistant Collector, when so required.

(c) That the first two columns of the bill of entry have been properly filled in and the total number of packages, cases, crates etc duly certified in words by the Import department.

(d) That all the declarations and copy of the invoice required to be attached to the original bill of entry are properly pasted with the same.

(e) That the description of the goods given in the bill of entry tallies with that of the invoice pasted to it.

(f) That the correct classification under the CTH and CET are mentioned along with the respective R.I.T.C. code number.

(g) That correction and overwriting if any have been duly attested by the proper officer.

(h) That duty has been levied at the correct rate as applicable under the respective Customs and Central Excise Tariff Act. That the duty paid has been correctly calculated and entered in the bill of entry in words and figures.

(i) That the correct rate of exchange has been applied.

(j) That when the goods are passed on tariff value or where the goods are subjected to a specific rate of duty, the unit of quantity or weight, as the case may be, is recorded in words as well as in figures.

(k) That in the case of goods assessed to duty on the basis of invoice under section 14(1) (a) of the Customs Act, 1962 the invoice value include freight and insurance also and that the same are indicated in the bill of entry.

(l) That the value has been calculated with reference to the rate of exchange as is in force on the date on which the B/E is presented under Section 46 of Customs Act, 1962.

(m) That the benefit of exemption notification, if any, has been correctly claimed by the importer and the group Appraiser has given the benefit of notification only after having properly ascertained that the conditions prescribed in the notification have been fully complied with.

(n) In respect of chemical consignment especially under brand name, whether the goods have been tested and they are covered by valid T.R.

4.04(b) IN CASE OF PROVISIONAL DUTY BILLS OF ENTRY:

Provisionally assessed bills of entry become ripe for post-audit after the same have been finally assessed as per the orders of the competent adjudicating authority and from the date on which the duty finally assessed has been adjusted with the duty provisionally levied.

4.04(c) IN THE CASE OF FREE BILLS OF ENTRY:

(a) That the goods are assessable to `nil' rate of duty, under either the tariff or the provisions of section 20 of the Customs Act, 1962 or any notification issued under the section 25 of the Customs Act, 1962.

(b) That the goods are subjected to proper examination and all documents required are produced and found correct.

(c) That all relevant documents have been checked.

4.04(d) IN CASE OF BILLS OF ENTRY FOR GOVERNMENT STORES:

(a) That a pink bill of entry has been filed and all relevant certificates, invoices and other related documents have been produced to substantiate that the imported goods are Government stores.

(b) That all documents required as in case of dutiable bill of entry have been checked.

4.04(e) IN THE CASE OF EX-BOND BILLS OF ENTRY:

(a) That in the case of part clearance of the goods the assessable value, the quantity or number of the goods to be cleared on ex-bond B/E have been correctly calculated with reference to original customs attested invoice.

(b) That the same description of the goods as shown in the into-bond B/E is also reflected in the ex-bond B/E.

(c) That classification and valuation are the same as those approved in the into-bond bill of entry which has been assessed under section 17 and that duty has been levied at the rate as applicable on the date of actual removal of the goods from the bonded warehouse.

(d) Ex-bond B/E should be accompanied by a copy of attested into bond B/E.

4.05 POST AUDIT OBJECTIONS AND HOW TO DEAL WITH THEM:

At the time of post auditing bills of entry, if it is found that duty has been short levied due to the following reasons:

(a) Wrong classification of goods and hence applying wrong rate of duty, resulting in short levy.

(b) Mistakes in arithmetical calculation of assessable value and amount of duty and/ or misdeclaration or under valuation.

(c) Benefit of exemption notification wrongly extended, even when the benefit of the notification was not due.

(d) Application of wrong exchange rate.

(e) Change in classification and the consequent changes in rate of duty on the basis of chemical testing done. In such cases specific objection should be raised and audit point of view regarding correct classification, valuation, rate of duty and the resultant short levy etc. should be expressly indicated. The file should then be sent to the concerned group or department for further action to issue demand notice and to decide the case after considering the importers written and oral submissions.

4.06 THE TIME PERIOD FOR ISSUING THE LESS CHARGE DEMAND NOTICE UNDER THE PROVISIONS OF SECTION 28 OF CUSTOMS ACT, 1962 FROM THE RELEVANT DATE - REG.:

"Relevant date" means:

(a) In a case where duty is not levied the date on which the proper officer makes an order for the clearance of the goods.

(b) In case where duty is provisionally assessed under Sec. 18 the date of adjustment of the duty, after the final assessment thereof.

(c) In case where the duty has been erroneously refunded, the date of refund.

(d) In any other case, the date of payment of duty.

However, in the case of import made by any individual for his personal use or by Government, or by any Educational, Research or Charitable institution or Hospitals, the time period will be within one

year from the relevant date. Further if the duty was not levied, short-levied, or erroneously refunded, by reason of collusion, or any willful misstatement or suppression of facts by the importer/exporter or his agent then the time limit would be five years from the relevant date. In such case the notice under section 28 should be issued by Collector of Customs. Hence it is imperative that all audit objections should be dealt with, within six months from the relevant date not only by the audit department but also by the C.R.A. so that there is no loss of revenue.

NOTE: In case of proved negligence on the part of either the Group Appraiser or the Audit Appraiser the concerned officer's explanation should be called for and the objection categorised.

4.07 PROCEDURE TO REALISE SHORT-LEVY OR NON-LEVY:

When it is discovered that any duty has not been levied, or has been short-levied, or erroneously refunded, sub-section (i) of sec. 28 of the Customs Act, 1962 prescribes that a notice should be served on the importers or the persons chargeable with the duty asking them to show cause why the amount due should not be paid. Ordinarily a period of 15 days should be allowed in the notice as at present. Such notice should be issued within six (6) months or one year as the case may be from the "relevant date" as defined under sub-section (3) of section 28 of the Customs Act, 1962. A proforma of the notice is enclosed (Annexure 'a').

(2) It should be borne in mind that under the proviso to sub-section (i) of section 28 of the Customs Act, 1962 that where any duty has not been levied, short-levied or erroneously refunded by reason of collusion or any willful misstatement or suppression of facts by the importer or the agent or employee of the importer, the notice of demand may be made within five (5) years from the relevant date.

(3) After considering the representation, if any, made and after hearing the party, a formal order (Annexure 'b') should be communicated to them by the Assistant Collector "determining" the amount of duty and asking them to pay it within a further period of 15 days. The order should indicate the appellate course open to the party if they are aggrieved by the Assistant Collector's decisions.

Annexure 'A'

No..... By regd. Post a/d.

From:

The Assistant Collector of Customs in charge of
Group/department

To:

..... Custom house
.....

Dated the

Sir/Gentlemen.

Subject: - -.....Cases/ Packages ex.

S.S.....B/E no.....

Dated.....IGM. No.....

Dated.....parcel/packet no.....

Dated.....contents.....

Senders.....

Whereas it appears that customs duty amounting to Rs.....(Rupees.....) which was not levied/short levied/erroneously refunded in respect of the above consignment is due from you as indicate below: -

As provided for under section 28(i) of the Customs Act, 1962 you are hereby directed to show cause to the undersigned/Assistant Collector of Customs, group/department as to why you should not pay the amount which was not levied/short levied/erroneously refunded as specified above within 15 days from the date of this notice.

Any representation against this notice with necessary documentary evidence in support of the correctness of your stand should be made within the above specified period. You are also requested to state if you would like to be heard in person in this regard. If no reply is received within the period as aforesaid or if you fail to

appear for personal hearing on respective date as intimated to you, the case will be decided on the basis of evidence on record without further reference to you in this regard.

Assistant Collector of Customs

Copy forwarded to: -

M/s

(Clearing agents) for information and necessary action.

The original notice has been served on the importer without prejudice to the liability of M/s..... who is deemed to be the owners of the goods as contemplated in section 147 of the Customs Act, 1962 by virtue of having acted as importer's agent in respect of aforementioned goods.

Assistant Collector of

Customs

Annexure 'b'

Order confirming demand
No.....

By Regd. Post A/D.
Appraising department/group
Custom house
Dated the.....

To:

Mr./Messrs.....

.....

.....

Sub.....cases/packages

ex.s.s.....

B.E. No.....Dt.....

contents.....

1. A notice under section 28, sub-section (i) of the Customs Act, 1962 for duty demand amounting to Rs..... was issued under this office memo of even number dated.....in respect of the above consignment. The importers have neither put forth any plea nor have they produced any documentary evidence in their written reply

no.....dated..... the importers have put forth the following plea: -

.....
.....

2. And have produced the following documents: -

.....
.....

3. They did not ask for a personal hearing/they were also heard in person and submitted that..... I have duly taken into account the above pleas and consider that the duty originally demanded is correct/ that the correct duty recoverable is as indicated below: -

.....

4. The demand is now confirmed to the above extent under sub-section (2) of section 28 of the Customs Act, 1962 and if the importers fail to fulfill the obligations in terms of this decision within 15 days hereof, it will be enforced in due course as provided for in section 142, sub-section i, clause (a) and clause (b) of the said Act.

An appeal against this order lies to the Appellate Collector of Customs, within three months from the date of receipt of this order, as prescribed under section 128 of the said Act and it should bear a court fee stamp of fifty paise. The amount of duty as stated above shall also be deposited with the custom house as required by section 129 of the said act before the appeal is entertained.

Assistant Collector of Customs.

Copy forwarded for information to the Customs House Agent) M/s.....their attention is invited to their liability under Section 147 of the said Act which provides for the recovery of the above mentioned amount if the above party fails to fulfill the obligations.

Assistant Collector of Customs

Note (i): **Mode of communication of demand notice:**

The Central Board of Revenue has decided that the demand for less charge should be sent to the consignees with a copy to the respective clearing agent so that it may facilitate the later to pursue matters with their consignee principals. It should be clearly stated in the

copy sent to the clearing agents that the original has been sent to the importers but this is without prejudice to the liability of the clearing agents in law to meet the demand.

(Board's letter no. 52/3/52-cus. I dated 22.10.1952)

Note (iii) Prompt issue of demand: When the Directorate of Inspection Customs & Central Excise in its correspondence with the custom house raises doubts about an assessment, demands for short collections under section 39 of the Sea Customs Act (now section 28, Customs Act, 1962) should be issued promptly in order to obviate any loss of revenue on account of time bar.

(C.B.R. Letter no.69 (169)-Cus. I/50 dated 29.8.1950)

4.07(a) ISSUE OF NOTICES FOR AD-HOC DEMANDS- PROCEDURE REGARDING:

Reference is invited to the earlier provisions relating to the procedure for issuing demand notices for realization of short-levy or non-levy under Section 28 of the Customs Act, 1962. Since it is not legally permissible to charge more duty, though justified on merits, than what has been initially asked for in the demand notice, it has been decided that, for the purpose of raising a demand for short-levy, ad-hoc demand notice should be issued under Section 28 of the Customs Act, 1962 and at the time of issuing the Ad-hoc demand notice the officer concerned should make the best estimate of the amount of duty short-levied/non-levied, correct amount of duty to be realised should be determined only after giving due consideration to the representation etc. if any, made by the person concerned.

(C.B.E & C. F. no 369/3/74-Cus i dated 23-10-1975.)

4.07(B) APPLICABILITY OF SECTION 28 OF THE CUSTOMS ACT, 1962 IN CASE OF SHORT PAYMENT OF DUTY:

The Board had occasion to examine a case where the appellant's solicitor had put forth a contention that Section 28 of the Customs Act, 1962 will be applicable only in cases where duty was short levied and not in cases of short payment of duty accepted by the customs house. The substance of the argument is that Section 28 can apply only

if the assessment falls short of the amount correctly leviable under the Act. Ministry of Law, who were consulted in the matter have advised that this distinction between 'short levy' and 'short payment' is neither relevant nor tenable. Hence cases where the custom house accepts through mistake payment of duty which falls short of the amount actually assessed, will also be cases of duty short levied within the meaning of Section 28 of the Customs Act, 1962.

(C.B.E & C., New Delhi, LR. No 2/1/65-CUS VI dated 9-7-1965)

4.07(C) EXTRA DUTY ON ACCOUNT OF EXTRA DEBITS RAISED BY OVERSEAS BUYER:

The Board desires that in all cases where extra duty becomes leviable on account of extra debits raised by overseas suppliers, it should be ensured that the recovery is affected expeditiously. The original bills of entry should be traced and put up expeditiously. On no account should the realization of extra duty be delayed when the extra duty can be recovered. On the note sheet on the basis of the importers copy of the bills of entry after verification with the particulars in the licence register, and after fresh debits are raised in the licence, the duty realisation being later on but without delay endorse on the original bill of entry. The appraising group will also examine the I.T.C aspect before extra duty is recovered.

(Ref: Board's letter F.no 55/7/65-CUS IV DT 1-4-1965)

4.07(D) CUSTOMS LOSS OF REVENUE DUE TO NON-ISSUE OF DEMANDS WITHIN THE PRESCRIBED TIME LIMIT - INSTRUCTIONS REGARDING:

The Public Account Committee (1981-82) in its 99th report has expressed great concern about the loss of revenue to the public exchequer due to non-issue of demands within the prescribed time limit. The committee has desired that reasons for these lapses should be analyzed and appropriate measures to avoid such loss of revenue by eliminating the avoidable delays and short comings in the functioning of the department should be taken. The committee has also emphasised the need for finalising the assessments promptly and conducting the

checks and audit of the assessment unit regularly. Although the committee's report relates to the central excise it would "mutatis mutandis" have application to customs as well because the element of time-bar is equally relevant to customs cases also.

4.07(e) THE MAIN REASONS FOR DEMANDS GETTING TIME-BARRED ARE REPORTED TO BE AS UNDER:

- (a) Objections;
- (b) Non-detection of irregularities in time;
- (c) Delay in raising the demands by the concerned department.
- (d) Failure of the concerned officers/audit to detect the short levy in time.

All concerned Assistant Collectors are, therefore, required to ensure that prompt action for raising demand is taken so that they do not become time-barred. In particular, the following remedial measures should be adopted for this purpose: -

(i) Immediately on receipt of objection from the C.R.A.D, demand-cum-show cause notice should be issued without any loss of time, even if, the concerned officer does not agree with the audit's point of view. If the department does not agree with the audit objection and the department's stand is ultimately accepted by the C.R.A.D., such demand-cum-show cause notice may be withdrawn on settlement of the audit objection. Till settlement of the audit objection, either the demand should be raised periodically or the assessments made provisional, so that duty demand does not become time-barred for any period.

(ii) In respect of audit objection raised by the internal audit department, the demand-cum-show cause notice should be issued immediately if the objection is, prima facie, acceptable. Where the Assistant Collector does not agree with the internal audit department's point of view, he should promptly refer the matter to the Collector who will take a final view within one month of the issue of the audit objection and indicate his views to the concerned Assistant Collector and Deputy Collector /Assistant Collector (Audit) for taking immediate necessary following action.

(iii) On transfer of the Assistant Collector of the group or unit, the report of taking over and handing over charge should clearly indicate details of pending provisional assessment on account of audit objection. The officer taking over the charge should thus assume the responsibility of finalising these matters early and raising the demands within the prescribed time limit.

(iv) In case of proved negligence on the part of an officer resulting in revenue loss due to time-bar, appropriate disciplinary action should be initiated against such officer.

(C.B.E. & C. Letter F.no. 210/28/81-CX-6 dated 10-3-1983 Circular No. 5/83-CX-6)

4.08 CLOSING OF ENTRIES IN DEMAND, PENALTY AND BOND REGISTERS- INSTRUCTIONS REGARDING:

It has been observed that registers relating to demand notices under section 28 of the Customs Act, I.T.C. bonds and guarantees for end-use certificates, provisional assessment, penalty and fine etc. are not being properly maintained in accordance with the instructions contained in the central manuals of the department. All concerned should ensure that the entries in the above registers are properly maintained. Where entries in the said register are made regarding recovery of duty, fine and penalty etc. from the parties the entries must be closed under the signature of a gazetted officer concerned only. The entries in respect of the items where the amount of demand or bond is Rs. 5000/- and above should be closed by the Assistant Collectors concerned. The registers should also be inspected by the Assistant Collector once in a month. These registers should also be got checked up by the auditors of the internal audit department. The above instructions should strictly be followed by all concerned.

(Ref: M (CUS)'s D.O. Letter Dy., No. 2875-M (CUS) 74 Dt.24-6-1974)

Sec.28 of the Customs Act, 1962- Demand notices under-issue of reg.: To avoid the possibility of the party pleading later on that the demands were not received in time, the Board desires that such notices

be issued by registered post, acknowledgment due or by hand delivery under proper receipt.

(Board's F.no. 39/31/59 CUS IV dated 5-11-1959)

4.09 NOTICE FOR PAYMENT OF SHORT LEVY ETC. - SERVICE OF -CLARIFICATION REGARDING:

Under Section 153 of the Customs Act, 1962 notice issued under this Act can be served by tendering it or sending it by registered post to the person for whom it is intended or to his agent and if it cannot be served in that manner, by affixing it on the notice board of the custom house. Section 153, in so far as it provides for service of notice by registered post has to be read with section 27 of the General Clauses Act, 1897. Under that section where any Act authorises or requires any document to be served by post, then unless a different intention appears, the service is deemed to be effected by appropriately addressing, pre-paying and posting by registered post a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The contrary proof has to be given by the addressee to show that the service was not affected on him at the time at which the letter could have been delivered in the ordinary course of post. But subject to this contrary proof, when the notice is sent by registered post in the manner prescribed in section 27 the presumption of service arises only on the expiration of the time at which a letter would be delivered in the ordinary course of post. The registered letter containing the notice must be put in the course of transmission so as to be delivered to the addressee in the ordinary course of postal transmission before the actual expiration of the period of six months.

It is considered that the period of six months provided in section 28 of the Customs Act, 1962 is a sufficiently long time. The custom house must gear up its machinery (IAD and Appraising departments) so that short-levy notices are issued in time, in the manner provided for by the law.

(Boards' F.No. 55/34/65-CUS, IV, Dated 31-5-1965).

FINALISATION OF DEMANDS

Demands issued for short levy of duty as a result of audit objections, errors in assessment etc., should be finalised within six months from the date of issue of the demands. Cases which could not be finalised within this period should be reviewed by the Assistant Collector who after examining the reasons for non-finalisation, adopt suitable remedial measures.

(G.I.M.F. No.25/5/59-CUS (CRC) dated 10th September 1959 with REF. to F. 16/3/59. CUS (RCC))

4.10 PROMPT FINALISATION OF TIME-BARRED DEMAND CASES - PROCEDURE REG.:

(1) The question of duration for time-barréd cases, where voluntary payment was not forthcoming despite persuasive action came up for Board's observation in 1970 and it was instructed under Board's D.O. Letter F. no. 8/32/70-CUS. VI dated 6-10-70 that "cases where parties have been asked to make voluntary payments should, as far as possible, be settled within the same financial year and should not be allowed to remain pending in the next financial years so as to figure as arrears. If payments are not made at the request of the custom house and the parties cannot be persuaded to pay, it would be better to review the cases and close them in time".

(2) The Ministry reiterated the above instructions in the year 1978, when it noticed that some of the customs house/Collectorates were apparently not following the Board's instructions of 1970 and continued to show in arrears, various voluntary payment demands for a number of years. Reference may be made to the Ministry's F. no. 512/25/77-CUS VI Dated 18-2-1978 from Para 2 it is evident that the instructions contained in Board's letter D.O. No. 8/32/70-CUS VI Dt. 6-10-1970 are not being followed carefully. It is therefore, requested that every efforts be made to close this V.P. notices in accordance with the Board's letter cited above.

(3) In view of Board's instructions reproduced at paras (1) & (2) the concerned sections in the custom house dealing with voluntary

payment notices are hereby directed that after issue of voluntary payment notices serious follow up action should be taken and regular reminders be issued to the parties concerned making voluntary payments (under signature of concerned Assistant Collector) so that, as far as possible the payments are received and the cases are closed within the same financial year.

(4) The voluntary payment registers maintained for the purpose should be put up to the respective Assistant Collector once in a month for issuing suitable instructions.

(5) If despite all sincere efforts on part of the department, the parties cannot be persuaded to make payments within the same financial year, then the cases should be put up to the competent authority for a review by the end of the financial year and action should be taken to close them in time, so that the cases should not, as far as possible remain pending in the next financial year to figure as arrears, for cases where request for voluntary payment is made only in the closing part of a financial year, the amount should normally be carried over to the next financial year for pursuing the case with the party, unless the payment is made earlier.

(6) The above instructions should be scrupulously followed so that there may not be any deviation from the Board's instructions reproduced at Para 1 and the figures of arrears of customs revenue are not unnecessarily inflated.

(S.O. (GI)-59/79/ (CAL) issued on the basis of F. no. 512/25/77- CUS. VI Dated 18.2.1978)

4.11 LESS CHARGE DEMANDS ENFORCEMENTS ETC. - PROCEDURE TO BE OBSERVED:

The notice issued for less charge under Section 28(1) of the Customs Act, 1962 stipulates that the demand should be paid within 15 days from the date of demand and that any representation oral or in writing against the demand with necessary documentary evidence should be produced within the said period. Therefore, in terms of the 'notice' if no reply is received within 15 days and if the case is clear, the

order of confirmation should be issued without any further delay. In other cases where the issue cannot be decided without perusal of documents, a reminder may be issued giving another 15 days time and the case should be finalised after the expiry of the extended period. The order of confirmation of demand under section 28(2) also stipulates that the amount should be paid within a fortnight from the date of receipt of the letter failing which action will be taken under provisions of section 142(1) of the Customs Act, 1962. In case where the importers or exporters fail to pay the amount within the stipulated period it should be brought to the notice of the Assistant Collector who should consider taking action under Section 142 (1) of the Customs Act, 1962 promptly if an appeal has not been made already and there are no other circumstances warranting deferment of action under Section 142(1) of the Customs Act, 1962.

The less charge files must be scrutinised every month and report should be given to the Assistant Collector concerned in respect of cases where the finalization was not done within the stipulated time giving reasons. All the officers concerned, including supervisory officers both in the Appraising (Main) and the groups, should ensure compliance with these instructions.

4.11(A) ISSUE OF LESS CHARGE DEMANDS IN THE CASE OF CONDITIONAL EXEMPTIONS- INSTRUCTIONS REGARDING:

The Customs Act, 1962 provides for the issue of a show cause notice in the first instance which may be followed by demand notice after considering the presentation, if any, made by the person to whom the show cause notice is issued. This section does not apply in the case of conditional exemptions, where exemptions, from customs duty are given subject to the condition that the importer will furnish proof regarding the end use of the imported article.

(C.B.R. Letter No. 17/15/60. CUS-I Dated 6.5.1963).

4.12 ASSESSMENT/REFUND OF CUSTOMS DUTY - MISTAKES IN CALCULATION- INSTRUCTIONS REGARDING:

In the Audit Report (Civil) on revenue receipts, X6 1963, instances have been reported where short levies/excess refund occurred due to mistakes in calculation, and the amounts involved had to be subsequently recovered. The amounts involved were large and the Board is concerned that such mistakes should have escaped undetected until they were noticed and reported to the custom house by the Central Revenue Audit in some cases. Duty calculations are required to be checked by accounts and/or the Internal Audit department; refund orders are in particular, subjected to pre-audit. If these departments are careful particularly where large amounts are involved, such mistakes could be largely avoided. The Board desires that all concerned should be impressed with the need for exercising utmost care so that such mistakes do not recur.

(C.B.R. Letter No. 55/48/63 CUS-IV Dated 8-8-1963 CVII/210/63)

4.13 AUDIT OBJECTIONS INVOLVING LARGE AMOUNTS AS LESS CHARGE:

When as a result of audit objection, a less charge demand has to be issued, the mistake must be brought to the personal notice of the Assistant Collector in charge of the department concerned, who would satisfy himself that the mistake is not malafide. As a matter of fact, all cases of suspected malafide, irrespective of the amount involved, should be invariably brought to the notice of the Assistant Collector concerned by the internal Audit department.

(C.B.R. Letter F.no. 55/1/63-CUS.IV of 12.2.1962)

4.14 RECOVERY OF SHORT-LEVY OR NON-LEVY- RECOVERY OF EXTRA DUTY NOT EXCEEDING RS.25/- WAIVING OF:

When an examining Appraiser finds goods in excess or mis-described but the amount of extra duty involved clearly does not exceed Rs. 25/- in any consignment, he should not detain the consignment or take any other action beyond noting the duplicate bill of entry for extra duty, which will not be demanded. He will forward it to the Internal Audit department under receipt, to record the amount formally noted for extra duty. Similarly, no demand will be made for extra duty when the same is discovered at the time of audit or an adjustment after

weighment etc. when the amount does not exceed Rs.25/-, but the case should be passed on to the Internal Audit department to record the amount as formally noted. The order does not apply to an omission (whether inadvertent or otherwise) to declare articles present in a shortage but different from those declared e.g. as omission to declare advertising matter in a package of general merchandise. In such cases, the duty can not be remitted but the consignment may be passed and the extra duty recovered under section 39 of the Sea Customs Act (now Section 28 of the Customs Act, 1962).

(G.I.M.F. (DR) Lr. no. 39/117/36/CUS.IV Dated 10.11.1956 & F.No. 22/3/57-CUS.IV Dated 21.2.1957)

4.15 RECOVERY OF DUTY AND/OR PENALTY - PROCEDURE REGARDING:

Where (i) any duty demanded from any person (including firm) or (ii) any penalty payable by any person (including firm) or (iii) where the terms of any bond or guarantee executed by the importers provide that any amount due under such instrument may be recovered in the manner laid down in Section 142(1) of the Act, and if the amount is not paid, the following procedure should be adopted for recovery of the amount. The group or section concerned will in the first instance verify that no appeal has been preferred against the relevant order and after expiry of the appeal period within 10 days thereof, issue a notice to the importer or person concerned in the Proforma "A" annexed and send intimation to all the departments of the custom house (including other Groups) A.R.S. and the Cash & Accounts department in the Proforma 'B' annexed. The groups, sections or departments receiving such notices should enter the details in a separate register, alphabetically maintained, for Proforma 'B' should be sent to other custom houses as well for necessary action.

When the amount specified in the notice is realized by any group, section or department, intimation should be immediately sent to the issuing group, who will take immediate steps to withdraw the notice and inform other groups, sections or departments to this effect. Steps should also be taken immediately to withdraw the notice issued to the other parties like Clearing Agents etc. if the amount is paid by the

importers. In such cases, if the amount is rendered direct to the treasury, the Cash/Accounts department should inform the issuing group about the collections.

The Assistant Collector of the group issuing the notice will see to it that such cases are entered in a separate register and closely watch the finalisation of each case. A report regarding the outstanding cases should be submitted by the ministerial staff to Assistant Collector Appraising of the group by the first week of every month with recommendations as to whether any of the cases should be referred to the District Collector in terms of clause (c) of the sub-section (1) of section 142 of the Customs Act, 1962. This procedure should however be followed as a last resort after properly verifying on the expiry of one month from the date of issue of the notice from all sections, groups or departments concerned and other custom houses that the amount has not been realised. If the amount is realised / paid by the party after the notice to the District Collector is sent, the District Collector should be informed about such payment. A.R.S. will maintain an alphabetical list of persons / firms on the basis of the intimation received from various Groups.

If refund is payable to any such person / firm, the A.R.S before issue of the refund order, will obtain orders of the Assistant Collector, Refund section/group Assistant Collector concerned to adjust the amount due to custom house against the amount of refund payable to the person/firm. The same procedure will apply "mutatis mutandis" in respect of adjustment of such dues against refunds payable by other departments to the same person/firm. The section concerned which issued the notice originally will be informed immediately after adjustment of the amount. Any goods belonging to the person/firm and passing through or under the control of any department of the custom house should be sold in terms of section 150 of the Customs Act, 1962 and the amount specified in the notice should be recovered from sale proceeds thereof. Copies of notices received from other custom houses should be arranged to be made out immediately by the S.A. (in the Appraising department) and distributed to all other groups, sections and departments. The subsequent action on such notices should be taken by

the groups, sections or departments concerned in the same way as if these notices have been issued by this custom house.

PROFORMAS 'A' AND 'B' ARE ANNEXED BELOW:

PROFORMA 'A'

NOTICE OF RECOVERY U/S 142(1) OF THE CUSTOMS ACT,
1962

To,

Sir/Gentlemen,

Subject:.....

.....

Whereas you have failed to pay the sum of Rs.....demanded from you as customs duty/imposed on you as penalty under this Office Memo. No.....dated...../ as per stipulation in the bond/guarantee executed by you on.....Please take notice, that the amount will be recovered from any money payable to you by the custom house or other custom houses or from the sale proceeds of any goods belonging to you which are under the control of this custom house or other custom houses as provided under section 142 of the Customs Act, 1962. This is without prejudice to any other action that may be taken for recovery of the amount under the Customs Act, 1962 or under any other law for the time being in force in the Republic of India.

Yours

faithfully,

Assistant Collector of Customs (Appraisement)

PROFORMA 'B'

Appraising Department.

Memo. No.....Dated.....
Re.....

Shri/M/s.....has/have failed to pay the sum of Rs.....demanded as customs duty/imposed as personal penalty under this office memo. No.....dated..... as per stipulation in the bond/ guarantee executed by him/ them on.....

A copy of the notice issued to the said..... under section 142 of the Customs Act, 1962 is enclosed. You are requested to deduct the amount specified in the notice from any money payable by the customs house to the said.....any goods belonging to the said person/firm passing through the custom house and under your control may be sold under the provision of section 150 of the Customs Act, 1962 and the amount stated in the enclosed notice may be deducted from the sale proceeds thereof. Intimation may kindly be sent to the undersigned as soon as the amount is realised. If the amount cannot be realised within a month a report may kindly be sent to the undersigned for taking further action in the matter.

ASSTT. COLLECTOR OF APPRAISING,

CUSTOM HOUSE,

.....DT.....

COPY FORWARDED TO

.....(ALL DEPARTMENTS)

.....(OTHER CUSTOM HOUSES).....

4.16 P.A.C. - ARREARS OF CUSTOMS REVENUE:

In point no. 125 arising out of Para 15 of the report of the Comptroller and Auditor General, the PAC enquired whether it had been examined in the cases of arrears that the parties were entitled to refunds or drawback or return of security etc. from which the amounts could be recovered. In reply certain custom houses have stated that in

some cases this aspect was examined while in other cases it could not be examined. It is, therefore, requested that this aspect should invariably be examined and necessary action should taken under section 142(1) (a) of the Customs Act, 1962.

(F.no.512/10/74-CUS.VI Central Board of Excise & Customs, New Delhi, the 10th October 1974)

4.17 CLARIFICATION ON SECTION 142 (1) (C) OF THE CUSTOMS ACT, 1962:

Where any duty demanded or any penalty payable under the Customs Act is not paid and cannot be recovered from the person (including firm) in the manner provided under Section 142(1) (a) or (b) of the Customs Act, 1962 a certificate signed by the Assistant Collector concerned in the form appended may be sent to the Collector of the District in which such person owns any property, or resides or carries on business.

While preparing the certificate particulars, relating to property, residence and business of the person or firm should be furnished, as far as available, for information of the District Collector.

APPENDIX

FORMS OF CERTIFICATE UNDER SECTION 142 (1) (C) OF THE CUSTOMS ACT, 1962.

FROM
THE ASSISTANT COLLECTOR OF CUSTOMS,
APPRAISEMENT, CUSTOM HOUSE,
BOMBAY.

TO

.....

.....

.....

Subject: Realisation of customs duty/penalty imposed on.....under the provisions of section 142(1) (c) of the Customs Act, 1962 (Act I. ii of 1962).

Pursuant to section 142(1)(c) of the Customs Act 1962 I,.....Assistant Collector of Customs do hereby certify that a sum of Rs.....has been demanded from and is payable by(by way of duty, penalty) under the said Act and has not been paid and cannot be recovered from the said..... in the manner provided in section 142(1)(a) or (b), the said.....owns property/resides/carries on business (specify particulars of the property owned by the individual or the place or residence or the business carried on by him/the firm in your district.

I am, therefore, to request you to kindly take early steps to realize the amount as an arrears of land revenue in accordance with the provisions of section 142(1)(c) of the Customs Act, 1962.

On realisation the sum may please be credited to the head of account "I-Customs-Sea Customs- Import duty/miscellaneous-penalties etc."

Yours

faithfully,

Assistant Collector of Customs for

Appraisalment.
customs house.....
Dated the.....

4.17(A) SECTION 142 (1) (B) OF THE CUSTOMS ACT, 1962- INTERPRETATION OF TRANSFER OF PROPERTY IN GOODS DETAINED UNDER THE SECTION:

The Government of India has ruled that the provisions of the last paragraph of Sec.39 of the Sea Custom Act, (now Section 142(1) (b) of the Customs Act) cannot be circumvented by the importer by disposal of the goods subsequent to their importation. As the importer is the owner of the goods at the time of import the goods become liable to the statutory liability of being detained under the last Para of Sec. 39 S.C.A. (now Section 142(1) (b) of the Customs Act). The subsequent transferee took the goods from the importer subject to all equities and

liabilities on the principle of "covets emptor" meaning that a purchaser cannot have better title than his vendor.

(Extract of Letter C.C.I.M.F. (D.R.) M.no.49/9/55-CUS.1, Dated 3-12-1954)

4.18 TIME BARRED CLAIMS:

(A) The request addressed to the importer should make it clear that it is not a 'demand' under section 39 of the Sea Customs Act (now Section 28 of the Customs Act, 1962) but that payment if made voluntarily would be accepted.

(B) Requests should be issued only in cases where the amount involved is Rs.50/- or over and such letters should be issued only after orders of the Assistant Collector in charge of a department, personally have been taken.

(C) The Board has decided that the same procedure as is followed in requesting voluntary payment of time barred claims for short-levied duty in the case of the importations made on private account, can be adopted in the case of Government stores even with greater justification as the Government departments approach the Government of India for ex-gratia refunds in many cases which are time-barred under section 40, of the Sea Customs Act (now Section 27 Customs Act, 1962). Accordingly when such a request is made the importing Government department should be acquainted with the position to enable it to make voluntary payment making it clear that the request is not a demand under section 39, Sea Customs Act, (now Section 28 of the Customs Act, 1962) but that payment if made voluntarily would be accepted.

(Ref. C.B.R. Ltr. No. 39(138) CUS. IV/53 Dt. 20-1-1954)

(D) The Assistant Collector will in any case where the circumstances suggest extreme carelessness and grave dereliction of duty bring it to the notice of the Collector for such action as the latter may consider necessary.

(C.B.R.LR.no. 22/6/57-CUS.IV Dated 21.2.1957)

4.18(A) TIME-BARRED SHORT-LEVIES- SET OFF AGAINST AMOUNT REFUNDABLE:

Setting off amounts due to the importer under entirely different transactions towards the duty omitted to be recovered under section 28 Customs Act, has no legal justification. According to Ministry of Law, the proper remedy is to file a suit and to get the amounts due to the Government from the importer, attached by a Court either before judgment in circumstances or in execution of the decree that may be passed in the case.

(C.B.E. & C. Ltr. F.no. 38/7/63-CUS.IV Dt. 4-3-1964 File C.7/982/62-AP)

4.19 RECOVERY OF SHORT-LEVIES HIT BY TIME-BAR CLASSIFICATION REG.:

The Judgment of the Bombay High Court in the case of Mr. Pai, Assistant Collector of Customs and other vs. Warna Sahakari Sakhar Karkhana Ltd. (Appeal No. 71 of 1963-MISC. Petition 407 of 1962) has been carefully considered in consultation with the Ministry of Law and the Solicitor General of India and the Board are advised that under section 39 of the Sea Customs Act, 1878, (now Section 28 of the Customs Act, 1962) a notice of demand issued within three months from the relevant date as defined in sub-section (2) thereof is a condition precedent to the recovery and payment of the duty short-levied under Section 39. If this condition is not satisfied then there is no remedy available under the said Act for the recovery of such short-levies. The Sea Customs Act, 1878 was a complete code regarding the levy, assessment and recovery of customs duties. It is a settled rule of law that where the statute creates a right not existing under common law, and provides a special remedy for the enforcement of such right, that remedy alone can be followed and any other remedy under the common law would not be available. If regard to section 40 (now section 27 Customs Act, 1962) which is part of the scheme in which section 39 occurs it would be difficult to maintain even a suit as section 40 prevents the person who has paid duty from claiming refund of charges erroneously levied or paid unless he claims it within three months. Thus there is a parity of treatment under section 39 and 40

which suggest that even a suit for the recovery of the difference would not lie. In view of what has been stated above and in view of the further change in the law providing for a period of five years for demanding short-levy under section 28 of the Customs Act, 1962 the Board have accepted the position set out in the above mentioned judgment.

(CBE & C.F. no./112/62-CUS. Dated 15-11-1967).

4.20 AUDIT OBJECTIONS- HOW TO DEAL WITH AUDIT-CENTRAL EXCISE RECEIPTS AND REFUNDS AUDIT OF BY COMPTROLLER AND AUDITOR GENERAL OF INDIA AND RECOMMENDATIONS OF P.A.C.- INSTRUCTIONS REGARDING:

The intention is that in the case of objections which do not relate to notification or orders issued by the Board or the Government of India, demand should be raised forthwith by the Collectors unless they have reasons to feel that the objections are prima facie untenable. Where they are convinced that the objection should be resisted, they should take up the matter suitably with the audit authorities and if the Accountant General concerned does not veer round to their view point, the matter should be reported to the Board for decision. But, all this process must be completed in time so that demands, if any, to be raised, do not get time-barred. However, if the audit objection relates to a notification or order issued by the Board or the Government of India a reference should invariably be made to the Board immediately.

4.20(A) PROMPT SETTLEMENT OF C.R.A OBJECTIONS:

In their hundred and tenth report (1969-70) the Public Accounts Committee expressed their displeasure on the delays in settling and uneasiness in regard to the casual manner of dealing with the C.R.A. objections. The Board, therefore, desires that all the C.R.A. objections having a financial bearing should be attended to very promptly. A reply on merit and not merely a provisional reply should be sent to all the C.R.A. objections positively within 2 months of the receipt of their objections and the objections should be settled positively within three months. If no settlement is possible because of any reference made by the C.R.A. or otherwise, the matter may be reported to the Collector immediately thereafter. The Board intends to keep a watch over the

implementation of the above instructions and a statement in the enclosed proforma should be forwarded to the Under Secretary concerned by name. The above instructions of the Board should be meticulously followed by all the departments concerned.

(Ref. F.no. 20/37/70-CUS 1 Dt.10-11-1970 from C.B.E. & C, New Delhi)

4.21 I.A.D/C.R.A. OBJECTION TO AVOID DEMANDS BECOMING TIME BARRED - INSTRUCTION REGARDING:

REGULAR OBJECTIONS:

Wherever it appears that there may be short levy of duty as indicated in an objection raised by the I.A.D or the C.R.A.D. demands should be issued immediately on receipt of the objections.

Reference Memos:

In the case of "R" memos received from the I.A.D. demands need not however, be issued until they are converted into regular objections. The "R" memos received from the C.R.A.D. should be treated differently and demands should invariably be issued for such memos. As is done for objections to meet the objection of C.R.A.D, that the custom house continues to assess as per its established practice, notwithstanding the assessment being objected to by them, it has been decided that future cases may be assessed provisionally even though there may have been an established practice. In regard to bill of entry under a C.R.A.D. objection and other bill of entry which have already been assessed but are still in audit with the I.A.D or C.R.A.D. less charge demands should be issued on receipt of objections even though there was an established practice, so that, if it is finally decided to recover duty it should be possible to do so within the prescribed time limit. In case where there is no established practice less charge demands must issue within the usual time limit of 6 months as the case may be.

(S.O. 4/71 (CAL) issued from file C VII-19/71).

4.22 CORPORATE BODIES – OWNERSHIP - INSTRUCTION REGARDING:

In the case of imports by post, banks or other corporate bodies to whom parcels or packets are addressed on account of their clients cannot be regarded as Clearing Agents within the meaning of section 202 of Sea Customs Act (now Section 146 of the Customs Act, 1962). They are deemed to be the owners of the goods and action should be taken against them under Section 142(1) of the Customs Act, 1962 irrespective of who the ultimate consignees of the goods are.

(Endt. of the Government of India, Finance Department (C.R) No. R. Dis 654-CUS. 1/34 dated 19-9-1934 R. Dis 710 Customs Act, 1962 1/35 dated 29-6-1965 and C.B.R.D. DIS 78 CUS 1/37 dated 3-2-1937

4.23 PROCEDURE OF INTIMATING THE FIGURES OF ARREARS-CLARIFICATION REGARDING:

Board's letter says that the question of defining the arrears of customs revenue has been reconsidered by the Board and the following clarifications are furnished. The Board desires that these instructions should be borne in mind while furnishing figures to the respective Accountant Generals for the purpose of the annual para in the audit report and for replying to parliament questions etc. The terms 'effective arrears' should be taken to mean demands of all types where the party's representation, if any, individual or general, has been considered by the customs authorities and orders passed and the amount of duty is still due. This would mean that only confirmed demand should be included in the figure of arrears unless information is specifically asked for unconfirmed demands. Doubts have been expressed regarding certain type of demands and the position is clarified as under: -

(A) DEMANDS MADE ON THE INDIAN AIRLINES REGARDING FUEL AND LUBRICANTS BROUGHT BY AIRCRAFTS:

Since the general question and IAC's representation is under consideration, these can not be treated as 'effective arrears'.

(B) SHIP'S STORES:

Wherever, cases have been decided by the Assistant Collectors or by Appellate Collectors after applying Board's latest orders issued vide Letter F. no. 1/8/69-Cus VI dated the 22nd May, 1970 and duty has not been paid, the demands may be included. Where on account of the cases going to High Courts, it has not been possible to apply Board's above orders, such cases should not be included.

(C) NOTE PASS CASES:

Where the party has not represented within 6 months of the finalisation of the bill of entry and duty has not been paid, these may be treated as arrears. But where a representation, in whatever form has been received and is still under consideration, outstanding amount of duty should not be included.

(D) Since the general issue of payment of duty on transit shortages on goods is under consideration/discussion with His Majesty's Govt. of Nepal or with Indian Railways, arrears cannot be treated as 'effective arrears'.

The Board desires that the above orders should be applied before statements of arrears of demands issued upto 31-3-1970 and pending on 31-10-1970 are sent to the respective Accountant Generals.

(F.no. 8/37/70-CUS VI Dated 9-12-1970)