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[Training Material for departmental use]

E-BOOK



CONCEPT OF CALL BOOK

IN

INDIRECT TAXES

Concept of Call Book in Indirect Taxes

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Sd/-

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Abbreviations Used

ATN:	Action Taken Note
C &AG:	Comptroller and Auditor General
CBEC:	Central Board of Excise and Customs
CERA:	Central Excise Revenue Audit
CESTAT:	Customs, Excise and Service Tax Appellate Tribunal
CRA:	Customs Revenue Audit.
DARPG:	Department of Administrative Reforms and Public Grievances
LAR:	Local Audit Report
DAP:	Draft Audit Para
PAC:	Public Account Committee
SCN:	Show Cause Notice
SoF:	Statement of Facts
OPM:	Office Procedure Manual

1. Introduction

- 1.1** According to the Manual of Office Procedure (also referred to in short as the OPM) brought out by the Department of Administrative Reforms and Public Grievances (DARPG), a call book is required to be maintained by a Department in which a case, which had reached a stage where no action could, or needed to be taken to expedite its disposal for at least 6 months (e.g. cases held up in the law courts), could be transferred with the approval of a competent authority. Cases transferred to the call book are not included in the monthly statement of pending cases.
- 1.2** In the context of our Department, the Call book cases are those Show Cause Notices (SCNs), which cannot be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance by transferring such cases to call book.

2. Category of Cases to be kept in Call Book

- 2.1** The Central Board of Excise and Customs (Board), *vide* Circular No. 162/73/95-CX.3, dated 14-12-1995 read with Circular Nos. 992/16/2014-CX, dated 26.12.2014 and 1023/11/2016–CX dated 08.04.2016, has specified the following categories of cases which can be transferred to call book:-

A. Cases in which the Department has gone in appeal to the appropriate authority.

This category refers to cases wherein on identical issue the Department has filed appeal before higher appellate authority against the order passed by the lower authority, which was against the Government.

For example, on certain issue, the CESTAT has passed order which is against the Department. The Department has filed appeal before High Court/Supreme Court against the order of CESTAT. If any SCN on the same issue is pending for adjudication in respect of same or different party, the same should be transferred to call book till matter is decided by the Hon'ble High Court /Supreme Court.

The CBEC *vide* Circular No.1028/16/2016-CX dated 26.04.16 has clarified that where issue involved has either been decided by Hon'ble Supreme Court or Hon'ble High Court and such order of the Hon'ble High Court has attained finality, such cases shall be taken out of Call Book and adjudicated.

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B. Cases where injunction has been issued by Supreme Court/High Court/CESTAT, etc.

Sometimes, Hon'ble Supreme Court/High Court issue injunction and restrain the department from proceeding further in the matter by way of adjudication. If in any case, such injunction is issued by the Hon'ble High Court/Supreme Court, then SCN cannot be adjudicated and has to be kept in call book. The term "injunction" means that one of the parties to a certain action must either do something or refrain from doing something. It is court order forbidding something from being done (prohibitory injunction), or commanding something to be done (mandatory injunction).

C. Cases Pending before Settlement Commission

Vide CBEC Circular No. 992/16/2014-CX, dated 26.12.2014, the Board clarified that Cases admitted by the Settlement Commission may be transferred to the Call-book, as it is already covered under Category "***(ii) cases where injunction has been issued by the Supreme Court/High Court/CEGAT etc.***" mentioned in Circular dated 14.12.1995. In respect of cases pending before Settlement Commission, it has been further clarified that where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission. Such cases should be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.

D. Cases where audit objections are contested -

[Now stands omitted vide Circular No.1023/11/2016-CX dt.08.04.2016]

This Category now stands omitted vide CBEC Circular No.1023/11/2016-CX dated 08.04.2016. It means that procedures of transferring the Show Cause Notices arising out of CAG objection, which were contested by the Department, to the Call Book has been discontinued and in future no such Show Cause Notice should be transferred to Call Book. However CBEC vide aforesaid instruction has prescribed a detailed procedure for issue and adjudication of Show Cause Notices pursuant to CERA objection / SOF.

E. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

Sometimes instructions are issued by the Board to keep SCN on certain issues in the call book till further instruction. On finalization of Departmental views /stand on the issue, the instructions are again issued by the Board to the field formations to take such SCNs out of call book and to adjudicate the same.

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As an example under this category, the issue of inclusion of “after sales service and pre-delivery charges in the assessable value” can be mentioned. First, [vide Circular No. 909/29/09-CX](#), CBEC directed all its field formations to transfer SCN issued on the subject matter to call book. Later, [vide Circular No. 936/36/2010-CX, dated 27/10/2010](#), it directed field formations to decide the cases pending in the call book on the issue of inclusion of after sales service and pre-delivery inspection charges in the Assessable value in the light of CESTAT Order dated 13.8.2010.

Vide Circular No. 1028/16/2016-CX dated 24.04.16, CBEC has directed that wherever Board has issued new Instruction or Circular clarifying the issue involved, subsequent to the issue of order to transfer the case to Call Book, such cases shall be taken out of Call Book and adjudicated.

3. Transfer of Case to/ out of Call book

- 3.1** A SCN can be transferred to call book if any of the situation mentioned above exist. SCN cannot be transferred on ground (s) other than those specifically mentioned in the above said Board Circular dated 14.12.1995 read with Circular No. 992/16/2014-CX, dated 26.12.2014 as amended *vide* circular No.1023/11-CX dated 08.04.2016 and 1028/16/2016-CX dated 26.04.2016. Further, a SCN can only be transferred to call book with the prior approval of the Commissioner in charge.
- 3.2** In one of its Audit Report, the C& AG pointed out that in spite of clear instructions of the Board on transfer of cases to call book, there are several other types of cases, which are transferred to call book in violation of the instructions of the CBEC. These cases are:-
- (i) Cases ordered for de-novo adjudication by the Courts;
 - (ii) Cases pending for want of Chemical Examiner’s report;
 - (iii) Provisional Assessment cases
- 3.3** Transfer to cases to call book on above mentioned grounds, not specified in CBEC Circular dated 14.12.1995 is not correct and should not be done.

4. Periodical Review of Call book

- 4.1** The Board had issued instructions to Commissioners to review the cases transferred to call books on a monthly basis. If grounds, on which a case has been transferred to call book, no longer exist, then the case should be taken out of the call book and adjudicated. [Ref: Board’s DO Letter F. No. 101/2/92-CX.3, dated 04.03.1992 and Board’s Circular No. 53/90-CX.3, dated 06.09.1990].

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- 4.2** Further where the issue involved has either been decided by Hon'ble Supreme Court or High Courts and where such order of Hon'ble High Court has attained finality or in cases where Board has issued new instructions, separate direction to take such cases out of Call Book **should not be awaited from Board. This clarification applies to cases involving Central Excise duty, Customs duty & Service Tax. [Ref: CBEC circular 1028/16/2016-CX dated 26.04.2016]**

5. Important Board's Circular /Instruction on Call Book at a Glance

Sr. No.	Board's Circular/Instruction No. and date	Remarks
1.	Circular No. 162/73/95-CX, dated 14.12.1995	Specified categories of cases to be included in Call book Note: This has been amended <i>vide</i> Circular No. 1023/11/2016 dated 08.04.2016 read with Circular No. 1028/11/2016-CX dated 26.04.2016
2.	Circular No. 385/18/98-CX, dated 30.03.1998	Direction to review of all the cases of provisional assessment transferred to call book and directions to comply with Board's Directions
3.	Circular No. 719/35 /2003-CX, dated 26.05.2003	Checks on delays-maintenance of call book
4.	Circular No. 909/29/09-CX, dated 11.12.2009	Direction to field formation to transfer SCN issued on the issue of inclusion of After Sales Service and Pre-delivery Charges in the assessable value
5.	Circular No. 936/26/2010-CX, dated 27.10.2010	Direction to field formation to decide the cases pending in the call book on the issue of inclusion of after sale service and pre-delivery inspection charges in the Assessable value in the light of CESTAT order 13.8.2010
6.	Circular No. 992/16/2014-CX, dated 26.12.2014	Inclusion of cases filed in the Settlement Commission in the "Call Book"
7.	Circular No.1023/11/2016 dated 08.04.2016	Adjudication of Show Cause Notices issued on the basis of CERA/CRA objection
8.	Circular No.1028/11/2016-CX dated 26.04.2016	Clarification with regard to disposal of Call Book cases which have been decided by Courts or Board has issued clarification

6. Text of Relevant Circulars and Instructions

6.1 *Circular No. 162/73/95-CX, dated 14.12.1995*

[Issued from F. No. F.No. 101/20/93-CX.3]

Subject : Checks on delays - Maintenance of 'Call Book' - Instructions regarding

Kindly refer to the instructions contained in the Board's D.O. letter F.No. 101/2/92-CX.2 dated 4th March, 1992 directing that a case should be transferred to the Call Book with the approval of Commissioner/ Commissioner (Judicial) / DG etc. as the case may be . It is further stated the Board's Circular No. 53/90-CX.3 dated 6.9.1990, specifies the circumstances under which a pending case can be transferred to Call Book. As per the extracts of the Manual of Office Procedure enclosed with the said circular "if a current case has reached a stage when no action can or need be taken to expedite its disposal for at least 6 months (e.g. cases held up in law courts) it may be transferred to the Call Book with the approval of the Competent Authority".

2. The Commissioner, Customs & Central Excise, Delhi has requested for inclusion of certain categories of cases for

- (i) Cases in which the Department has gone in appeal to the appropriate authority.
- (ii) Cases where injunction has been issued by Supreme Court/ High Court/ CEGAT, etc.
- (iii) ~~Cases where audit objections are contested.~~ *
- (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

Under Secretary (CX.3)

Note: This Circular has been amended *vide* Circular Nos.992/16/2014-CX, dated 26.12.2014 and;

***clause (iii) of para 2 has been omitted** *vide* circular No.1023/11/2016–CX dated 08.04.2016.

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6.2 Circular No. 385/18/98-CX, dated 30.03.1998

[Issued from F. No. 101/3/98-CX.3]

Subject: Check on delays - Maintenance of Call Book Instructions-regarding.

Please find enclosed copy of paras 42 to 45 of the 14th Report of the PAC (11th Lok Sabha) 1996-97. The PAC has observed that the present manner of transfer of cases to Call book is not satisfactory. Such transfers raise doubts regarding the manner of disposal of some of the provisional assessment cases themselves, from the list of outstanding cases. While the Board had issued instructions to Commissioners to review the case transferred to call books done (Board's DO Letter F. No. 101/2/92-CX.3. dated 4th March, 92 and Board's Circular No. 53/90-CX.3, dated 6.9.90).

2. The Board *vide* its Circular No. 162/73/95-CX.3, dated 14.12.95 specified the following categories of cases which can be transferred to call book viz:-

1. Cases in which the Department has gone in appeal to the appropriate authority.
2. Cases where injection has been issued by Supreme Court/ High Court/ CEGAT etc.
3. ~~Cases where audit objections are contested.*~~
4. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

3. The PAC has desired that a special review of all the cases of Provisional assessment, transferred to the call book should be immediately undertaken and follow-up action taken, in order to ensure that the prevalent instructions have been complied with and proper revenue is collected.

4. You are requested to ensure that Board Circulars on the subject are scrupulously adhered to. A special review of all the cases of provisional assessments transferred to the call book should be immediately undertaken and a report may be furnished to the Commissioner (PAC) directly within 15 days of the receipt of this letter.

Copy of Para 42 to 45

42. *When enquired about the mechanism to dispose of the call book cases, the Chairman, CBEC deposed :-*

“As far as the mechanism of it is concerned, the instructions provided that the Call Book must be reviewed by the officers every month. Firstly, the whole thing needs to be brought out in the form of a statement and every quarter it needs to be reviewed whether the issue is a dispute on the basis of which a case was transferred to the call book and if it has been resolved. In case the issue has been resolved through an issue of appellate order or a Board decision or by some other appellate forum which we can take those cases out of the call book and finalise them.”

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43. From the details of the cases of provisional assessments pending, furnished to the Committee subsequent to evidence, it was seen that the number of such cases transferred to call book and the differential duty involved thereon was as follows (Table IX)

Table -IX

Period	No. of cases	Amount (Rs. in crores)
31-3-1995	469	830.46
31-3-1996	476	916.05
31-12-1996	450	962.86

Recommendation: (Para No. 44)

The Committee find that 450 cases of provisional assessments involving a total differential duty of Rs. 962.86 crores were transferred to the Call Book as on 31st December, 1996. Significantly, these cases were neither included earlier in the details of the pending cases of provisional assessments nor were the date relating thereto separately available with the Board/Ministry. During evidence, the Chairman, Central Board of Excise and Customs admitted that there had been instances where cases of provisional assessments kept pending for want of reports from laboratories were even transferred incorrectly to the Call Book. Undoubtedly, the present manner of transfer of cases to Call Book is not satisfactory. In fact, such transfers raise doubts regarding the manner of disposal of some of the provisional assessment cases themselves from the list of outstanding cases. What is further surprising is that although the Board had issued instructions to the Commissioners to review the cases transferred to Call Books on a monthly basis, the Committee's examination revealed that no such review had actually been done nor had the Board bothered to monitor the fate of those instructions. The committees are unhappy with this situation, they desire that a special review of all the cases of provisional assessment transferred to the call book should be immediately undertaken and follow up action taken in order to ensure that the prevalent instructions have been complied with and proper revenue is collected. The Committee also desired that the Ministry should take stern action against officers responsible for irregular and incorrect transfer of cases of provisional assessments to the Call Book. The Ministry should further review the system of transfer of cases to the Call Book and ensure that all such cases are transferred strictly in terms of the instructions and are properly subjected to the prescribed periodical review both by the Commissioners as well as the Board.

Recommendation : (Para 45)

The Committee also desire that in future while exhibiting the details of the cases of provisional assessment pending such cases which have been transferred to Call Book should also invariably be shown alongwith the relevant data.

Note: *Clause 3 of para 2 has been omitted vide circular No.1023/11/2016–CX dated 08.04.2016.

6.3 Circular No. 719/35/2003-CX., dated 28.05.2003

[Issued from F.No. 101/2/2003-CX.3]

Subject: Checks on delays - Maintenance of 'Call Book' instructions -regarding

Kindly refer to Board's Circular No. 53/90-CX. 3, dated 6-9-1990 specifying the circumstances under which a pending case can be transferred to call book that if a current case has reached a stage where no action can or need be taken to expedite its disposal for at least 6 months (e.g. cases held up in law Courts) it may be transferred to the call book with the approval of competent authority and instructions issued *vide* Board's D.O. Letter F.No. 101/2/92-CX. 3, dated 4-3-1992 directing that a case should be transferred to the call book with the approval of Commissioner/Commissioner (Judicial/ Director General etc. as the case may be. It was further clarified *vide* Circular No. 162/73/95-CX., dated 14-12-1995 [1996 (81) E.L.T. T9] that only following type of categories of cases can be transferred to Call Book :-

- (i) Cases in which the Department has gone in appeal to the appropriate authority,
- (ii) Cases where injunction has been issued by Supreme Court/ High Court/CEGAT, etc.
- (iii) ~~Cases where audit objections are contested.*~~
- (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

2. The matter has again been examined with reference to PAC's recommendation on Paras 2.5 and 2.6 of the C & AG Report for the year 1998-99 relating to inordinate delay for recovery of confirmed demands and non-adjudication of demands respectively contained in 39th Report. In this regard it is found that the existing instructions of the Board on the issue are not being scrupulously followed by the field formations. The pendency of call book cases continues to be very high. Therefore, the Board while reiterating its earlier instructions, has decided that the respective Chief Commissioner should monitor progress of disposal of call book cases specifically to see whether -

- (i) Call Book cases have been reviewed by the CCEs.
- (ii) Any appreciable progress is noticed.
- (iii) Any avoidable delays are there.

3. It is further directed that a one-time comprehensive review of all the pending call book cases will be done by respective CCEs. The Chief Commissioner may monitor such review periodically in their respective zones. The progress report of the call book cases should continue to mention in the MTR as well as in the monthly statements of the progress achieved in "Key Result Areas".

Note: *Clause (iii) in para 1 has been omitted *vide* circular No.1023/11/2016–CX dated 08.04.2016.

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6.4 Circular No. 909/29/09-CX dated 11.12.2009

[Issued from .No. 6/4/2009-DS (CX.1 & 4)]

Subject: Inclusion of After Sale Service and Pre-delivery Inspection Charges in the assessable value.

Please refer to the Minutes of the Conference of Chief Commissioners at Shillong on 30th and 31st October 2009 with regard to the issue mentioned above at point No 2.9.

2. On this issue, the Board has *vide* point No 7 in circular No. 643/34/2002-CX dated 1-7-2002 clarified as follows:

What about the cost of after sales service charges and pre delivery inspection (PDI) charges, incurred by the dealer during the warranty period ?	Since these services are provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin (or reimbursed to him). This is one of the considerations for sale of the goods (motor vehicles, consumer items etc.) to the dealer and will therefore be governed by Rule 6 of the Valuation Rules on the same grounds as indicated in respect of Advertisement and Publicity charges. That is, in such cases the after sales service charges and PDI charges will be included in the assessable value.
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3. **The tribunal** in the case of Maruti Udyog Limited [2004 (170) E.L.T. 245 (Tri. - Del.)] held that these charges are not includible in the assessable value as these do not accrue to the manufacturer. But recently, the Tribunal has in the case of Maruti Udyog Ltd, [2009 (238) ELT 186 (T-Del)] doubted the correctness of its earlier decision referred to above, and referred the following question for consideration by a Larger Bench.

“Whether the charges towards pre-delivery inspection and after-sale-services received by dealers from buyers of the cars are to be included in the assessable value of cars in the light of the definition of ‘transaction value’ given in Section 4(3)(d) of the Central Excise Act.”

4. Further, the Supreme Court has in the case of Grasim Industries (C.A. No.3159/2004), referred the question as to whether the concept of transaction value under new Section 4 has made any material departure from deemed normal price concept of erstwhile Section 4(1)(a) of the Act for consideration of the Larger Bench.

5. In view of the above decisions referring the matter to larger bench, the conference was of the view that in this matter show cause notices should be issued demanding duty on the value of these activities, and transferred to Call Book pending the decision of Larger Bench on the issue.

6. The view expressed in the Chief Commissioners Conference has been accepted by the Board and accordingly you may direct the officers in your jurisdiction to continue issuing show cause notice and transfer them to call book, pending the decision of larger bench on the issue.

7. Receipt of this circular may be acknowledged

8. Hindi version would follow.

Under Secretary (CX.1)

6.5 Circular No. 936/26/2010 –CX dated 27.10.2010

[Issued from F.No. 6/4/2009-DS (CX.1 & 4)/Pt.]

Subject: Inclusion of After Sale Service and Pre-delivery Inspection Charges in the assessable value.

Attention is invited to point No. 7 of Board's circular No. 643/34/2002-CX dated 1-7-2002 and to circular No. 909/29/09-CX dated 11.12.2009 on the above subject.

2. Board *vide* its earlier circular No. 643/34/2002-CX dated 1-7-2002 had clarified that After-sale Service and Pre-delivery Inspection charges were liable to be included in the assessable value under Section 4 of the Central Excise Act 1944. Further *vide* circular No. 909/29/09-CX dated 11.12.2009, it was directed to transfer all the show cause notices issued on the above subject to call book pending the decision of the larger bench of CESTAT in the case of Maruti Udyog Ltd.

3. The larger bench of CESTAT *vide* its order dated 13.8.2010 in appeal No. 1958 of 2008 in the aforesaid case, has now held that Pre-delivery Inspection charges and After-sale Service charges collected by the dealers are to be included in the assessable value under Section 4 of the Central Excise Act, 1944.

4. In view of the aforesaid decision of the larger bench, the cases pending in the call book may be decided keeping in view the law laid down by the larger bench of CESTAT.

5. Receipt of this circular may be acknowledged

6. Hindi version would follow.

Under Secretary (CX.1)

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6.6 Circular No. 992/16/2014-CX dated 26.12.2014

Sub: Inclusion of cases filed in the Settlement Commission in the “Call-Book”-reg.

Reference has been received in the Board from field that cases which are admitted in the Settlement Commission should be allowed to be transferred to Call-book in addition to the three category of cases prescribed by Board, for inclusion in Call Book, *vide* Circular No. 162/73/95-CX dated 14.12.1995 issued *vide* F. No. 101/20/93-CX.3 read with Circular No. 53/90-CX dated 06.09.1990.

2. The issue has been examined and it is clarified that:-
 - I. Cases admitted by the Settlement Commission may be transferred to the Call-book, as it is already covered under Category “(ii) cases where injunction has been issued by the Supreme Court/High Court/CEGAT etc.” mentioned in Circular dated 14.12.1995,
 - II. Where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission,
 - III. Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.
3. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board. Hindi version follows.

OSD (CX-6)

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6.7 *Circular No. 1023/11/2016-CX, dated 08.04.2016*

[Issued F. No.206/02/2010-CX.6]

Subject: - Adjudication of Show Cause Notices issued on the basis of CERA/CRA objection -reg.

Central Board of Excise and Customs has issued instructions from time to time regarding adjudication of show cause notices issued on the basis of audit objections of Central Excise Revenue Audit (CERA) and Customs Revenue Audit (CRA), which is receipt audit wing. of the Comptroller and Auditor General of India. The pendency position of such notices in the Call-Book has been reviewed and found to be larger than the number of audit objections which have been converted into Audit Paragraphs. After due examination, it was felt that there was a need to review the past practices and issue revised consolidated guidelines to provide a clear procedure for the field officers to deal with the CERA / CRA objections. The Tax Administration Reform Commission (TARC) report, representations received from trade and inputs received from field officers also indicated that there was a need to review past instructions to improve the ease of doing business and bring certainty regarding tax liability of an assessee. Accordingly, all past circulars and instructions on the subject are hereby rescinded and following procedure is prescribed for dealing with audit objections raised by CERA / CRA.

2. An audit objection may mature into an Audit Paragraph and become part of Audit Report periodically submitted by the office of CAG to the Parliament Various stages involved in the life cycle of an audit objection and the timeliness prescribed for replying thereto may be noted and strictly adhered to by the departmental officers. **These stages and timeliness are as follows :**

- (i) Half Margin:** Half margin/audit memo is issued to the Superintendent of the Range during the course of audit on points noticed by CERA. The half margin is to be replied to immediately and in any case before the end of the audit of Range/Division/Commissionerate concerned.
- (ii) Local Audit Report (LAR):** LAR containing audit paragraphs is generally issued by the headquarters of the local CAG Office to the Assistant/Deputy Commissioner generally within one month of the completion of the audit by the headquarters of the Director General or Principal Director of Audit. The Assistant/Deputy Commissioner is expected to reply to the LAR within **thirty days**.
- (iii) Statement of Facts (SoF):** SoF is issued to the jurisdictional Commissioner/Addl. Commissioner on the major audit observations which may feature in Audit Reports. It has been decided that SoF shall be **replied within six weeks** where the audit objection is not contested. Where the audit objection is contested and the amount of duty involved in

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the audit objection is rupees fifty lakhs or less, SoF shall be replied with the approval of the Commissioner and for audit objections involving higher amounts of duty, SoF shall be replied with the approval of the Chief Commissioner. Detailed reasons for contesting the audit objection should be recorded in the file quoting relevant case-laws and circulars, if any.

(iv) **Draft Audit Para (DAP):** Potential audit paragraphs considered fit for inclusion in the Audit Report are issued by the CAG officer to the Ministry (CBEC) as DAPs. CBEC is expected to **reply to DAP within four weeks** of its receipt.

(v) **Audit Paragraphs:** CAG's office, after considering the reply of the CBEC may convert a DAP into Audit Paragraph. Audit Paragraphs are periodically compiled and are submitted by the office of CAG to the Parliament in the form of a report called Audit Report. CBEC is expected to furnish an Action Taken Note on each of the paragraphs in the Audit Report. The ATNs received are examined by the office of CAG and duly vetted ATNs are submitted to the PAC. The process of submission of ATN, due vetting and submission to PAC is expected to be completed **within four months** of submission of Audit Report. At both the DAP and Audit Para stages, it is essential that field formations concerned give a detailed reply including the present status of the objection to facilitate a meaningful reply by CBEC.

Coordination Meetings:

3. One of the reasons for pendency in adjudication of CERA/CRA objection is the lack of mechanism for periodic reconciliation of the status of audit objections. It has, therefore, been decided that a quarterly coordination meeting would be held in each of the Zones by the officers of the revenue department with the officers of CAG to ensure that the list of audit objections, replies given by revenue and final view taken by CERA/CRA can be discussed. Chief Commissioner shall identify a nodal officer, [preferably Additional Commissioner/ Joint Commissioner, CCU] to coordinate and attend such meetings. An audit objection is considered settled when the views of CERA/CRA and revenue converge due to either CERA/CRA dropping the audit objection or revenue admitting the audit objection.

Issue of Show Cause Notice:

4.1 **Audit objection at LAR and SoF Stage :** Once an LAR or SOF is received, it should be replied by the department forthwith. Based on the reply sent by the department, they can be divided in following categories:

4.1.1 **Where the department has agreed with the audit objection on merits:** Audit objections where department has agreed to the merits of the objections constitute a large proportion of the audit

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objections. In such cases, Show Cause Notices should be issued immediately. Such cases should not be transferred to the Call-Book and should be adjudicated forthwith and revenue realized in cases of confirmed demand at the earliest.

4.1.2 **Where the department has not agreed with the audit objection on merits :** No show cause notice should be issued in cases where department has not agreed with the audit objection on merits. In such cases audit objection should be replied following the procedure laid in clause (iii) of paragraph 2.

4.2 **Show Cause Notice at the direction of the Board:** Where a contested audit objection has become DAP and on examination it is found by the Commissioner (PAC) or joint Secretary (Customs) in CBEC that the objection should have been admitted, they may give necessary directions to the field to issue show cause notice and adjudicate the case on merits.

4.3 **No transfer to call-book:** It may be noted that the procedure of transferring the show cause notice arising out of CAG objection to call-book has been discontinued and in future no such show cause notice should be transferred to the call-book. Circular nos. 162/73/95-CX dated 14.12.1995 and 385/18/98-CX dated 30.03.98 on transfer of cases to the call book arising out of CAG objections stands amended accordingly.

Adjudication of Show Cause Notices:

5.1 **Adjudication of SoFs/LARs not converted into DAP:** SoFs/LARs are replied by the Commissionerate and therefore these cases may be adjudicated after ensuring that the reply given by the Commissionerate is available on record.

5.2 **Adjudication of admitted DAPs/APs :** DAPs are replied by the Ministry (CBEC) and therefore adjudication of DAPs should be undertaken after ensuring that the reply given by the Ministry (CBEC) is available on record.

5.3 Adjudicating authority is a quasi-judicial authority and is legally bound to adjudicate the case independently and judiciously taking into consideration the audit objection by CERA/CRA, reply of the department as referred above, reply of the party, relevant legal provisions, case laws on the subject and relevant circulars of the Board, if any. It is expected that the factum of SCN being a consequence of CERA/CRA objection, would be incorporated in the brief facts of the case in the adjudication order.

5.4 Where an issue was under audit objection and has been subsequently either judicially settled, by say judgment of Hon'ble Supreme Court or where a circular of the Board has been issued on the subject, further correspondence with the Board on the audit objections, even if they have become DAPs, is not necessary and such cases may be adjudicated on merits taking into consideration the latest judgments and circulars.

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Past Cases:

6.1 All audit objections relating to Central Excise and Service tax issued prior to 1.3.2014 shall be compared with the pending Action Taken Notes (ATNs), received from the office of CAG, enclosed as Annexure B with the Circular. For Customs, the list shall be separately issued. Show Cause Notices (SCNs) relating to audit objections figuring in the list should not be adjudicated and further action may be taken on them in consultation with the Commissioner (PAC). The rest of the objections stand finally vetted by CAG Audit with no further comments which means that the reply of the department has been accepted by the CAG office, SCNs relating to these objections may be taken up for adjudication on merit, including those in the call-book, following the procedure prescribed in paragraph 5.

6.2 For audit objections raised after 1.3.2014 and till the date of issue of this circular, where SCNs have been issued, list of pending ATNs would be issued in due course. These show cause notices pertaining to these objections may be adjudicated, *mutatis-mutandis* following the procedure prescribed in paragraph 6.1 read with paragraph 5.

Application:

7. All audit objections in Customs, Central Excise and Service tax received after the issue of this circular or past audit objection where no show cause notice has been issued shall be dealt as per the provisions of this circular.

8. Difficulty, if any, in implementing the circular may be brought to the notice of the Board. Hindi version would follow.

Under Secretary to the Government of India

ANNEXURE- A

DETAILS OF THE AUDIT OBJECTION

Sl. No.	Commissionerate	IAR /SoF No.	DAP No.	Audit Para No.	Amount Involved	Gist of the Objection	Gist of the Department's reply	Relevant Board's Circular/Instruction / Judgment, if any

NOTE: The copy of audit objection and the reply should be enclosed with this proforma.

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6.8 Circular No. 1028/11/2016 –CX dated 26.04.2016

Subject: Clarification with regard to disposal of Call Book cases which have been decided by Courts or Board has issued clarification-reg

Attention is invited to Circular No. 162/73/95-CX, dated 14.12.1995, Circular No. 719/35/2003-CX, dated 28.05.2003 and Circular no. 992/16/2014-CX, dated 26.12.2014, where the Board has specified the following categories of cases which can be transferred to the Call Book, namely,

- (i) Cases in which the department has gone in appeal to the appropriate authority.
- (ii) Cases where injunction has been issued by Supreme Court/High Court/CEGAT, etc.
- (iii) Cases where audit objection are contested (stands rescinded *vide* Circular No. 1023/11/2016-CX, dated 8.4.2016).
- (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered not the Call Book.
- (v) Cases referred to Settlement Commission.

2. References have been received from field formations requesting clarification on disposal of Call Book cases pertaining to (i), (ii) and (iv) above, when the same have been decided on merit by Hon'ble Supreme Court on High Courts and where such order of Hon'ble High Court has attained finality, or in cases where Board has, after the issue of instruction as in clause (iv) above, has issued a clarification on merit.

3. The matter has been examined. It is hereby clarified that such cases shall be taken out of Call Book and adjudicated where:-

- (i) The issue involved has either been decided by Hon'ble Supreme Court or Hon'ble High Court and such order of the Hon'ble High Court has attained finality, or
- (ii) Board has issued new instruction or circular clarifying the issue involved, subsequent to issue of the order to transfer the case to the Call Book.

4. A separate direction to take such cases out of the Call Book should not be awaited from the Board. This clarification applies to cases involving Central Excise duty, Customs duty and Service Tax.

5. Field formations may be informed accordingly. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow.
