

MINUTES OF THE REGIONAL ADVISORY COMMITTEE MEETING HELD ON 28.06.2016

The Regional Advisory Committee (RAC) meeting of Central Excise Mumbai Zone-II was held on 28th June 2016 at 17.00 Hrs., in the Conference Hall of Mumbai-II Commissionerate, 9th Floor, Piramal Chambers, Jijibhoi Lane, Lalbaug, Mumbai-400 012, which was chaired by Shri S.C. Varshney, Chief Commissioner, Central Excise, Mumbai Zone-II.

The meeting was attended by the following officials and nominated members of the Trade/Industry:-

TRADE REPRESENTATIVES:-

Sr.No.	Name of the Member (Shri/S)	Trade/Association Represented
1.	R.V. Salian	Thane Belapur Industries Association
2.	Y. S. Lathia	Bombay Industries Association
3.	Sandeep Kundra	Small Scale Entrepreneur's Association, TTC, Navi Mumbai
4.	Sachin Ramesh Mhatre	Chamber of Small Industry Association
5.	Balasaheb Gaikwad	Taloja Manufacturers Association
6.	Sandeep Parikh,	Thane Small Scale Industries Association , Thane

DEPARTMENTAL OFFICERS :

Sr.No.	Name of the Member (S/Shri)	Department Officers
1	S. Faheem Ahmed	Commissioner, Central Excise, Belapur
2	S.H. Hasan	Principal Commissioner, Central Excise, Raigad
3	Gyan Sarvar	Addl. Commissioner, CCO MCX-II.
4	M.R. Mohanty	Addl. Commissioner, Central Excise, Raigad
5	Milind Lanjewar	Addl. Commissioner, Central Excise, Mumbai-III
6	Mrs. Vaishali Lanjewar	Addl. Commissioner, Central Excise, Audit Mumbai-II
7	B. S. Meena	Addl. Commissioner, Central Excise ,Mumbai -II
8	Lokesh Kumar Jain	Dy. Commissioner, CCO, Mumbai Zone-II
9	Manoj Kumar	Dy. Commissioner, Central Excise, Belapur

The Chairman welcomed the representative of the Trade/Industry Associations and the officers present. The minutes of the last RAC meeting held on 31.03.2016 were confirmed and approved unanimously.

The Committee thereafter took up the points sponsored by the following Representatives for discussion:-

(I) POINTS SPONSORED BY THANE SMALL SCALE INDUSTRIES ASSOCIATION

Point No. 1: Penalty for Non filing ER7 :-

At present this has been removed. However, for the previous year i.e. from 1.3.2015 whether Rule 27 or Rule 12(6) is applicable. Prior to 01.03.2015 there was no provision for penalty. Since there is no revenue implication, this point should not be raised by the auditors.

COMMENTS:- General penalty for breach of Central Excise Rules, 2002, where no other penalty is provided under the Act has been prescribed under Rule 27 of Central Excise Rules, 2002. Non-filing/late filing of prescribed ER-7 return is an offence where no penalty is specifically prescribed in the Act and therefore, the clause of general penalty under Rule 27 of Central Excise Rules, 2002 is invocable in such cases. Though there is no revenue implication in cases of non-filing/late filing of return, there certainly is a breach of Central Excise Act, 1944 and the Rules made thereunder, as prescribed under Rule 12(6) of Central Excise Rules, 2002.

Point No. 2:-

One audit only to be conducted of a company having multiple units in the same Commissionerate.

COMMENTS:- For Central Excise purposes every registered assessee is considered as separate entity and audit of the unit is carried out as per norms prescribed by the Board.

In terms of the Central Excise & Service Tax Audit manual (**CESTAM**) introduced from November 2015, this aspect has been taken care of, while selecting units to be audited during the period July 2016 to June 2017.

Point No 3:-

Letter of undertaking – Department should not insist on the signing of the LUT before an officer. Acknowledgement should be taken, and it should be considered as permission. The one year period should be extended to 5 year.

COMMENTS:- Letter of undertaking is a facility extended to the registered manufacturer exporter in lieu of bond which is required to be furnished by other exporters. The same being a legal document is required to be signed before the competent authority. The suggestion given by the association in this regard is not acceptable.

The extension of LUT from 1 year to 5 years is a policy decision which cannot be decided in the RAC.

Point No. 4:-

ARE 1 - ARE 1 should be online which will avoid personal interaction with officer.

COMMENTS:- Generally, clearances for export are physically supervised by central excise officers except in case of self-sealing exports and therefore, the copies of ARE-1's are required to be presented physically at the time of export. The issue raised involves policy decision, and hence cannot be decided in this forum.

Point No. 5:-

Weighment permission for scrap be abolished, as a trust and ease of doing business.

COMMENTS:- Scrap is commodity chargeable to excise duty on ad-valorem basis, and the weight of the scrap is an important factor in determining the duty liability of scrap cleared. Weighment permission is to be applied and obtained only in the case, a manufacturer does not have weigh bridge in their registered factory premises. Permission is generally granted for a period of 1 year at a time, to the manufacturer who has applied for such permission, and enough trust is shown by the department in this regard. There is no need to deviate from this practice being a policy matter.

Point No. 6:-

EP copy of shipping bill should be accepted as proof of Export under ease of doing business. No separate application should be required.

COMMENTS:- The functions of the Regional Advisory Committee are purely advisory in nature for taking up procedural and general difficulties being faced by the trade and industry. The issue raised involves policy decision and cannot be considered at this forum.

Point No. 7:-

Units to be audited for one year in last five years, under ease of doing business. Only in case of any issues, 5 years audit be taken up. CERA audit be discontinued for MSMEs.

COMMENTS:- Audit of an unit is conducted for the period starting from the period upto which audit was conducted last time and is restricted to a maximum period of 5 years. In the era of self-assessment where reliance is placed on the manufacturer, a tax audit is an important tool which aims at detecting non-compliance of tax laws and promoting voluntary compliance and regularizing the short payments of central excise duty if any, made by the manufacturers unintentionally or otherwise. Therefore audit scrutiny for the entire period is required to be conducted. The conducting of CERA audit, being a policy matter and cannot be decided at this forum.

Supplementary Instructions of Central Excise Manual. It is specifically mentioned therein that the invoice should be self-authenticated and pre-printed with Sr. No., which is to be intimated to the jurisdictional Range Superintendent before putting to use. If the assessee is compelled to cancel invoice, intimation should be given to the jurisdictional range superintendent within 24 hours. However, in case of the situation mentioned in the above point, no instruction has been given in the Central Excise Rules, 2002. The difficulty expressed by the members deserves consideration and needs to be referred to the Board for further necessary instructions.

Point No. 2:-

At S. No. 12 of Chapter 4 of CBEC's Central Excise Manual, mandates, that intimation of cancelled invoice should be sent to the range superintendent on the same date or on the next day.

Many times, the errors in invoice are found after few days or after the vehicle reaches to the customer point. In such cases, the invoices need to be cancelled as a fresh/correct invoice is required by the Customer. In such cases, the field officers interpret that only invoices related to current date can be cancelled and invoices having dates beyond 24 hrs earlier cannot be cancelled, which is not correct.

Clear instructions/clarifications for cancellations of invoices issued beyond 24 hrs are also needed.

Also, the submission of intimation of cancelled invoice is an unnecessary exercise under SRP system. The invoice is a document issued by the assessee who is solely responsible for keeping records of invoices issued and cancelled. Such unnecessary, paper generating prerequisite should be done away with immediately.

COMMENTS:- The procedure with regard to cancellation of invoices, is clearly spelt out under para 12 of Chapter 4 of the CBEC Central Excise Manual of Supplementary Instructions 2005 which is as follows:-

12.1 *When an assessee is compelled to cancel an invoice, the following actions should be taken :-*

(i) Intimation of a cancelled invoice should be sent to the range Superintendent on the same date, whenever possible. However, in case of exceptional circumstances beyond the control of assessee should this not be possible, the intimation should be sent on the next working day;

(ii) Along with the intimation of the cancelled invoice sent to the range Superintendent the original copy of the cancelled invoice should also be sent.

(iii) Triplicate copy of the cancelled invoice may be retained by the assessee in the invoice book so that the same can be produced whenever required by audit parties, preventive parties and other visiting officers.

The functions of the Regional Advisory Committee are purely advisory in nature for taking up procedural & general difficulties being faced by the Trade and industry. Since, the above issue raised by the association involves policy decisions, the matter may be directly taken up with the CBEC for consideration.

Point No. 3:-

Under Rule 4(5) of the Central Excise (Removal of Goods at concessional rate of duty for manufacture of excisable and other goods) Rules, 2016, it is provided that : "(5) The applicant manufacturer shall execute a general bond with surety or security:

Provided that it shall be sufficient to provide a letter of undertaking by an applicant manufacturer against whom no show cause notice has been issued under sub-section (4) or sub-section (5) of section 11A of the Act or where no action is proposed under any notification issued in pursuance of rule 12CCC of the Central Excise Rules, 2002 or rule 12AAA of the CENVAT Credit Rules, 2004."

The Officers do not accept a letter of undertaking as provided under the said provision and insist for Bond and Bank Guarantee as security since, invariably there are a few protective demands issued on the basis of Audit Objections invoking larger period under sub-section (5) of section 11A of the Act, pending with judicial authorities for decisions.

Such requirement of executing Bond and Bank Guarantee is time consuming, creating unnecessary hurdles in smooth supplies of raw materials, and sometimes leads to stoppage of manufacturing activities for want of raw materials. In such a case, providing a letter of Undertaking by an applicant manufacturer should be accepted and Bond and BG should not insisted upon, as such demands lies with judicial forums for scrutiny and are not final in nature.

COMMENTS:- The provision under the said Rule is only for, an applicant manufacturer against whom no show cause notice has been issued under sub-section (4) or sub-section (5) of section 11A of the Act or where no action is proposed under any notification issued in pursuance of rule 12CCC of the Central Excise Rules, 2002 or rule 12AAA of the CENVAT Credit Rules, 2004 to provide a letter of undertaking

These restrictions have been spelt out in the rule to avoid misuse of the facility provided to the manufacturer. If any SCN has been issued or any action is proposed under rule 12 CCC of Central Excise Rules, 2002 or Rule 12AAA of Cenvat Credit Rule, 2004, then the manufacturer is required to furnish Bond & Bank guarantee as per the rule, which is required to be followed by the assessee. Executing a bond and furnishing a Bank Guarantee are not time consuming procedures. Now the bond is being accepted by the concerned authorities within a day. Requirement of execution of bond and furnishing bank guarantee is for safeguarding government revenue considering the duty free movement of the inputs. Further, it is a onetime procedure and does not lead to unnecessary hurdles in smooth business operation.

Additional Question with the permission of the Chair ... (By Shri. R. V. Salian)

Question: When will be the list of proposed withdrawals / withdrawn cases of CESTAT & High Court below the threshold limit, put up on the website / public domain by the department?