CHAPTER 7

IMPROVING INDIRECT TAX ADMINISTRATION

1. Ombudsman for Grievance Redressal

1.1 One of the major areas of concern in present day tax administration is the absence of accountability. Whereas the statutes provide that certain decisions are to be taken within a time frame (such as finalisation of provisional assessments) there is no mechanism to provide that service standards are maintained and there is timely redressal of grievance against non-performance. To illustrate, the tax payer has the right to appeal when a speaking order is passed but he has no option when there is either no action or there is no speaking order passed. It appears necessary that this issue should be addressed if we are to achieve the objective of tax payer facilitation, which has implications for compliance and higher revenue.

1.2 Having examined the mechanisms available internationally and in the country, it is the view that the solution lies in having an Ombudsman for redressal of grievances on account of deficiency of service including non-performance. This would not substitute the present elaborate system of adjudication and appeal but would concentrate on all other areas, administrative or others, in which a tax payer is personally interested. The Ombudsman would be a respectable person of high integrity well versed with customs, central excise and service tax administration. He would be appointed by the Finance Minister and would hold office at his pleasure. The advantage which would flow from the institution of Ombudsman is that it would be a simple, inexpensive and hassle free mechanism to obtain redressal of grievance with its attendant benefits.

1.3 It is recommended that to start with an Indirect Tax Ombudsman may be appointed at Delhi, Mumbai, Chennai and Kolkata by 1st April 2003. For working out the finer details of the scheme a reference may also be made to the Banking Ombudsman, which is functioning since June 1995.

2. Directorate of Anti-dumping and Safeguards duties

2.1 Section 9A of Customs Tariff Act, 1975 empowers the Central Govt. to impose Anti-dumping duty when any article is exported from any other country in India at less than normal value. Section 8B of the same Act empowers the Government to impose Safeguard duty when any goods are imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to domestic industry.

2.2 At present the power to register and investigate cases and recommend Anti-dumping duty is vested with the DG of Anti-Dumping under Ministry of Commerce and Industry. However, on receiving the findings and recommendations from the said authority, the Ministry of Finance, Department of Revenue issues necessary notifications imposing the Anti-dumping duty, which is also levied and collected by Customs officers. On the other hand, the power to register, conduct enquiry and recommend appropriate Safeguard duty lies with the Director General, Safeguard functioning under Ministry of Finance. On the basis of his recommendation, the Ministry of Finance, Department of Revenue issues notification imposing safeguard duty, which is enforced by Customs officers.

2.3 It is found that the international practice is that the work of conducting hearings and arriving at findings is done by a well respected independent and impartial body, which is strictly not subjected to any sort of influence both from within the Government and outside. Such institutional mechanism, generates confidence in the minds of the foreign investors. It is the view that similar body should be set up in the country.

2.4 It is recommended that an independent body, with separate Budget, consisting of respected professionals including revenue officials should be established to carry out investigations relating to Safeguard duties and Anti-dumping. In the alternative, this work may be assigned to the Tariff Commission.

3. Adjudication and Appeal

3.1 Adjudicating authorities

3.1.1 At present Powers of adjudication are bestowed upon officers of Custom and Central Excise from the rank of Asstt. Commissioner to Commissioner. Each level of officer is empowered to adjudicate cases in terms of certain categorization done by the CBEC on the basis of amount of duty involved (in Central Excise) and value of goods (in Customs). For instance, a Deputy/ Assistant Commissioner can adjudicate cases involving duty of Rs. 2 Lakhs (in cases not involving separation, fraud, etc.). The Joint Commissioner can adjudicate cases involving duty upto Rs. 10 Lakhs and the Addl. Commissioner involving duty of upto Rs. 20 Lakhs. Commissioner can adjudicate cases without any limit. It has been reported that there is a strong pro-revenue bias in the minds of the adjudicating officers. As a result the tax payers have no confidence in the quasi-judicial proceedings. Most consider filing appeal before Commissioner (Appeals) to be an exercise in futility resulting in loss of time and delay in judicial settlement of the disputes.

3.1.2 In the circumstance, there is a need to restore the confidence of the tax payer in the system of quasi-judicial proceedings. After exploring many alternatives it is recommended that instead of one adjudicating officer, a bench of two officers should sit on judgement to decide cases. It is expected that this would lead to passing of considered orders and the elimination of pro-revenue bias. This arrangement should be supplemented by issue of suitable instructions by CBEC that the adjudicating officers need not fear any enquiries or harassment while passing judicious orders which may not be pro-revenue.

3.1.3 To sum up, **it is recommended that without changing the present categorization of cases for purposes of adjudication by the different levels of officers, the adjudication should be done by a bench of two officers of the same level. In case of conflicting views the Chief Commissioner/ Commissioner as the case may be would be empowered to appoint a third officer so that a decision is passed by majority**.

3.2 Pre-deposit of duty at first appeal stage

3.2.1 At present appeals against adjudication orders passed by officers up to the level of Addl. Commissioners lies before the Commissioner of Customs or Central Excise (Appeals). Section 35F of the Central Excise Act, 1944, provides that one of the conditions of hearing an appeal is that the appellant shall make a pre-deposit of the amount of duty in question. In fact, the appeal may not be admitted unless this is done. Reportedly, the insistence on pre-deposit is causing hardship on trade and industry more so in view of the fact that the orders of the adjudicating authority are generally pro-revenue which in most cases are subsequently set aside. It is also reported that most cases do not get finally settled at the level of Commissioner (Appeals) and insistence on pre-deposit causes cash flow problems.

3.2.2 It is the finding that indeed the majority of cases are being decided at the level of tribunal. The success rate of the Department is also not very high. In this background the pre-deposit of the duty blocks the tax payers funds and in a large number of cases has to be returned. There is also no provision for payment of interest on this amount.

3.2.3 It is recommended that pre-deposit of duty should not be taken at the first stage of appeal, i.e. at the level of Commissioner (Appeals). This would require suitable amendment to the said Section 35 F.

3.3 Issue of Show Cause Notice

3.3.1 Show cause notices for demand of duty from the tax payers are issued under Section 11A of the Central Excise Act, 1944 and Section 28 of the Custom Act, 1962. It is provided thereunder that, in the case the duty to be demanded is over Rs. One crore the Show cause Notice will be issued with the prior approval of the Chief Commissioner and in all other cases i.e. when the duty to be demanded is less than Rs. One crore the Commissioner's approval is required. The Show Cause Notice is thereafter adjudicated by the competent officer, may be Assistant/Deputy/Additional/Commissioner, as the case may be. This is a fairly recent development and earlier the Show Cause Notices for demand of duty were issued by the same level officer, as the one entrusted with the adjudication thereof. For instance, if the case fell within the competence of the Additional Commissioner for adjudication an officer of the same level would issue the Show Cause Notice.

3.3.2 In this regard, it is observed that the present system has eroded the confidence of the tax payers in the system of quasi-judicial adjudication. After a Chief Commissioner or Commissioner level officer has approved the Show Cause Notice the adjudicating officer, who is a junior functionary, does not usually have the confidence to disagree with the findings of the senior officer. As a result, the duty demand gets confirmed. Even otherwise, the tax payers do not have much confidence in the neutrality of the adjudicating officer and the present position makes it worse. Thus, the present system has given rise to increased litigation as the pro-revenue orders of the junior functionaries are contested in appeal. This matter requires redressal.

3.3.3 It is recommended that in order to restore the confidence of the tax payers, Section 11A of the Central Excise Act, 1944 and Section 28 of the Customs Act, 1962 should be amended to restore the earlier position of issue of Show Cause Notice for demand of duty by an officer of the level competent to adjudicate the case.

3.4 Stay Orders passed by CEGAT

3.4.1 A recent amendment in Section 35C of the Central Excise Act, provides that in case a Stay Order is passed by the CEGAT and the case is not finally disposed within a period of 180 days, the stay stands vacated automatically. Similar position is there in respect of the customs cases. It appears that this change was introduced to expedite the disposal of cases since stay orders impact the recovery of revenue. However, looking at it from the point of view of the tax payer and the circumstances governing the grant of stay, it is evident that this provision would work against the interest of the justice and equity. A stay is normally granted when there is merit in the appeal and the operation of the adjudication order would be prejudicial to the tax payers interest. It is logical to assume that the circumstances granting this stay would not materially change in the sixth month period. Hence, if the stay is automatically vacated the tax payer would no doubt file another application for continuance of stay. This would unnecessarily raise the work load of CEGAT.

3.4.2 It is recommended that the relevant provisions should be modified to provide for the finalisation of the case (wherein stay is granted) within a period of six months so far as it is possible to do so. This would act as a signal to the CEGAT to decide the cases in a

time bound manner. The provision that the stay is automatically vacated when the case is not finalized in six months should be revoked.

3.5 Appointment of Departmental Counsels

3.5.1 At present the Government appoints Standing Counsels which take up the brief for the revenue when cases are heard by the Tribunal, High Court and Supreme Court. It has been reported that in certain cases involving high revenue stakes or complex law points it is desirable to appoint a counsel from outside the approved panel. This is particularly so, when the opposite side is a big corporate and has at its disposal the best legal brains. It is the view that considering the revenue stakes and the fact that some cases may have long term bearing on revenue, the Commissioners concerned should have the discretion to appoint the special free counsels. Today this is possible though a time consuming procedure requiring the approval of the Ministry. Often, the opposite party manages to get relief through stay, etc., while the process of appointing special fee counsel is not complete. It is the view that the present procedure must change. In this regard, it is learnt that on the Income Tax side the Commissioners are authorized to appoint special fee council upto certain monetary limits (of fees). This system could be followed in the Indirect tax side

3.5.2 It is recommended that suitable measures may be taken to authorize Commissioners of Customs and Central Excise to appoint Special Fee Counsels upto a certain monetary limit. The Chief Commissioners may also be suitably authorized for appointment of Counsels beyond the monetary limit prescribed for Commissioners).

3.6 Institution of SDR/JDR in Settlement Commission

3.6.1 Settlement Commission has been in place for some time. Now increasing number of cases involving high revenue stakes are coming up for settlement. In contrast to the arrangement at CEGAT where the Department has a presence in terms of its representatives, there is no departmental representation at the Settlement Commission. As per the present arrangement, it is the Settlement Commission which is entering into a correspondence with the concerned Customs or Central Excise Commissionerate to get a report whenever a case comes up before it. On their part the Commissionerates follow an ad-hoc approach and at times the departmental view point is not adequately presented. Considering the revenue stakes and the increasing popularity of the

Settlement Commission, it appears justified to have an institutional mechanism to represent the department in the cases before the Settlement Commission.

3.6.2 It is recommended that in like manner of CEGAT Departmental representatives should be appointed at the benches of the Settlement Commission. Subsequently, this practice can be replicated in case of Authority for Advance Rulings.

4. Audit related issues

4.1 Issue of demand notices on the basis of audit observations

4.1.1 In order to arrive at some mechanism to reduce disputes, the mechanism of raising of duty demand notices was examined. One of the findings is that the department issues duty demand against the tax payer on the basis of objections and observations of the CAG Accounts. This system appears in order in so far as the duty demands are being issued when the department agrees with the findings of the Audit. However, it is seen that duty demand notices referred to as 'protective' demands are also issued even when the department does not agree with the Audit. These are issued to protect the revenue, as otherwise by the time the audit objection is settled between the department and Audit, the duty demand, if merited, may be hit by the time bar under the law. These duty demands are kept pending in the Call Book for years until the issue is decided between C.B.E.C. and CAG, no decision can be taken.

4.1.2 In this regard it is observed that C.B.E.C. is empowered to issue orders under Section 37B of the Central Excise Act, 1944 and Section 151A of the Customs Act, 1962 laying down the correct classification and valuation of goods. This authority is exercised to ensure uniformity of practice across the Commissionerates. Accordingly, a decision has been taken that when the Audit objection runs contrary to a Section 37 B (or Section 151A) order, no protective duty demand need be issued. This has led to reduction in the issue of protective duty demands which is matter of some relief for the trade and industry. However, the impact has not been significant as the number of Section 37 B or Section 151A orders are not many. On the other hand, C.B.E.C is issuing a large number of clarifications and instructions around the year. Since these are not the specified orders (section 37B or Section 151A) in the event the Audit objection is in contrast to the C.B.E.C. circulars and instructions, the protective duty demands continue to be issued.

Year	Under 37B (Central Excise)	Under 151A (Customs)
1990	1	Nil
1991	1	Nil
1992	2	Nil
1993	6	Nil
1994	5	Nil
1995	3	Nil
1996	1	Nil
1997	4	Nil
1998	4	Nil
1999	4	Nil
2000	3	Nil
2001	1	Nil
2002	2	Nil

4.1.3 On the subject of enforceability, the Supreme Court has held that C.B.E.C. circulars and instructions are binding on the subordinate officers. Accordingly, there is really no difference between the Section 37B or Section 151A orders and any other Circular or instruction. The subordinate officers are bound to follow both. In the circumstance, having taken a particular stand on matter it is the view that the C.B.E.C., the highest technical authority on matters relating to custom and central excise, should take responsibility for its actions. For no fault of theirs, the tax payer should not get burdened with duty demands. Besides financial implications, the taxpayers lose confidence in a tax administration which does not honour its own instructions.

4.1.4 It is also the view that there is a necessity of increased interaction between the officers of CAG and the custom and central excise department. Such interaction would lead to appreciation of each others view points and the resolution of differences in a harmonious way. It would result in less paper work, reduction in issue of duty demand notices and a tax payer friendly administration.

4.1.4 In order to resolve the above mentioned issues it is recommended that :

(i) C.B.E.C. should issue instructions that whenever an Audit objection runs counter to its instructions/circulars, no protective duty demand need be issued. This should, however, be complemented by evolving a mechanism to settle the objection with CAG at the earliest.

(ii) **C.B.E.C. and CAG should identify posts within their organizations to be occupied by the officers of the other department on deputation.** Increased inter-change of officers would lead to better understanding and lessen the differences of opinion.

4.2 Scope of Audit

4.2.1 EA 2000 Audit programme has been a success story all over the country. This has been possible due to the structured method followed in evolving this programme, aided by focused training efforts. This should be further enhanced to include examination of customs issues as well – as part of the Post-Clearance Audit System. However, there is still the apprehension in the minds of the taxpayers that the Audit teams are driven by revenue targets and conduct their business with the objective of raising a demand for duty.

4.2.2 It is recommended that Audit should be participative and a fact finding mission with the objective of guiding the tax payer. The attempt should be to evolve a consensus on the issues. Audit should not be empowered to issue show cause notices for duty demand.

5. Trade Facilitation

5.1 Standing Committee on Procedures

5.1.1 Customs and Central Excise procedures are being changed rather frequently. Invariably, the procedures are framed in consultation with the field officers and there is no apparent involvement of the trade and industry. As a result, each new procedure is invariably accompanied by representations from the tax payers. These are then examined and at times the procedures are suitably modified and at other times no action is taken on the ground that the new procedure must be allowed to settle down. As a result the present system of evolving new procedures, even if these are presumed to be trade friendly, create uncertainty and generates additional work. It is the view that there should be an institutional mechanism to frame new procedures.

5.1.2 Further more, new procedures come into effect from the date they are brought to the notice of field formations. Each instruction contains a direction to the field formations to issue

suitable public notices/ trade notices to inform the trade. Not only does this catch the trade by surprise but it may also happen that a procedure has been in force but is not complied with for the reason that the trade may not have come to know about it. Invariably, such situation also leads to compliance issuance and disputes. Also, the Departmental Systems personnel are unable to modify their software, if required. It is the view that this matter requires remedy.

5.1.3 In the circumstance, keeping in mind that the objective of tax administration should be to provide certainty and transparency, **the following recommendations are made in so far as introduction of new procedures are concerned:**

(i) An institutional mechanism, namely Standing Committee on Procedures chaired by Chairman CBEC and including trade and industry representatives, should be established to identify and resolve the problem areas in present procedures and evolve new procedures on a need basis. This Committee should meet once a quarter.

(ii) A new procedure should come into force after minimum 30 days of its announcement.

5.2 Fixing of revenue targets

5.2.1 A major area of concern, both for trade and departmental officers is related to the annual ritual of fixing of Commissionerate-wise revenue targets by the C.B.E.C. There are two issues here. First is the fixing of the target itself. No doubt the targets are necessary for the revenue administration to closely monitor the revenue inflows and it also sensitizes the Commissionerates to their primary responsibility of revenue collection. However, the problem area is that invariably the targets are unrealistically fixed on the higher side. This is revealed on a perusal of the performance viz. a viz. the targets and it is seen that it is an exceptional year when the targets are achieved. It is also reported that the targets are fixed for the total revenue, ignoring that the major share is on account of revenue from POL, which is largely, even today, the subject matter of Government policies on pricing. As a result, there is tremendous pressure on the Commissionerates to achieve the unrealistic targets.

5.2.2 An outcome of the revenue target fixing exercise is that on the customs side the Commissionerates invariably clamp down on disbursal of drawback and refunds during the last quarter of the financial year. This happens since the disbursal is treated as an outflow of revenue and the net revenue realised comes down. Importers are also made to deposit customs duty in cash instead of using DEPB. Similarly on the central excise side the tax payers are 'persuaded' to pay duty through cash (PLA) and not use the accumulated Cenvat credit for the same. Refunds are also stopped. These are extra legal measures. As seen, the Commissionerates tend to raise all sorts of technical objections on the drawback and refund claims so that the disbursal does not take place during the financial year in question. This entire exercise is avoidable as it is basically revenue neutral. The withheld amount (of drawback and refunds) is promptly released the beginning of the new financial year. Also at times the tax payer is encouraged to make excess payment of duty with the promise that the same would be refunded at the beginning of the new financial year. In fact for these reasons, on the central excise side there is hardly any revenue realisation (in PLA) in the first quarter of the new financial year since the tax payers use the blocked Cenvat credit to pay the duty.

5.2.3 The present system of withholding drawback, refunds and not allowing the central excise tax payers to use Cenvat credit is disturbing. Drawback is an export facilitation measure and denial or withholding drawback causes a set back to the export efforts. Actually the Commissionerates must be encouraged to disburse drawback and facilitate increased exports. Similarly withholding of refunds and not allowing utilization of Cenvat credit to pay duty create cash flow problems for the trade and adversely affects business by either holding up clearances or puts tax payers to severe financial pressure. It is high time that it is realised that payment of duty through Cenvat credit is also duty realization.

5.2.4 On a careful examination of the matters **the following remedial action is recommended:**

(i) Revenue targets must be fixed realistically. The target must be broken into POL and Non-POL which would enable the Commissionerates to make realistic attempts to reach the target through legal measures and trade facilitation.

(ii) On the customs side, as an export facilitation measure, the revenue target should be fixed by including Drawback disbursed and refund sanctioned. This will ensure against blockage of Drawback and refunds. It would also encourage the Commissionerates to release Drawback in order to meet the target.

(iii) On the central excise side the revenue target should take into account duty paid through both Personal Ledger Account (PLA) and Cenvat credit. Refunds sanctioned should also be taken into account. This will ensure against stoppage of payment through Cenvat during revenue drive and withholding of refunds.

5.2.5 The above measures would boost tax payers confidence in the administration and also reduce the pressures on the departmental officials. All in all a healthy tax compliant environment would be created.

5.3 Execution of Bonds

5.3.1 A number of Committees in the past have noted that the execution of bonds for various purposes under the customs and central excise law has rarely served any purpose, as there was hardly any occasion when such bonds have been enforced. The reason is that the liability for payment of duty is statutory and not contractual. Irrespective of whether a bond is executed or not, any recovery from a tax payer or another person can only be made if the provisions of the law are satisfied; and if a liability does arise under the provisions of the law, it is enforceable on the authority of the law itself, and bonds will not serve any additional purpose.

5.3.2 It is the finding that insistence upon execution of bonds only increases the paper work and the cost of compliance. The Government does not gain any additional advantage in terms of securing the revenue. On the other hand securities in the form of bank guarantees do serve a purpose as it imposes discipline in view of the fact that the purpose for which it is furnished must be completed within the specified period. Also it ensures prompt realization of revenue without the process of civil proceedings in a court of law, as required for a bond. Hence, the system of execution of bonds is required to be dispensed with.

5.3.3 It is recommended that the execution of bonds should be dispensed with. Instead, where necessary, a security in the form of a bank guarantee may be taken.

5.4 Harmonization of commodity classification

5.4.1 At present, various Government departments and agencies use their own methods of classification of the goods for taxation or statistical purposes or for deciding the importability or exportability or for any other purpose. For instance, DGFT, Customs, Central Excise, Directorate General of Commercial Statistics and Intelligence, State Sales Tax departments, Central Statistical organization etc. all use different commodity classification codes. Except Customs the codes of the other agencies are not aligned with the internationally adopted HSN.

5.4.2 Multiplicity of classification codes causes hardship to the trade and industry besides coming in the way of establishing a common market. Internationally a common classification is adopted for all trade related transactions. Common classification helps in simplifying procedures and documentation and facilitates trade. It also encourages increased use of electronic data processing which is otherwise not possible. Common classification codes also help in obtaining specific data on need basis more easily and sharing its between various agencies.

5.4.3 It is understood that C.B.E.C. has taken the initiative to prepare an 8-digit Common Commodity Classification Code for both central excise and customs as a standard unit of measurement for all trade related activities, in consultation with other concerned Ministries and Departments. This is appreciated as a step in the right direction.

5.4.4 It is recommended that the 8-digit Common Commodity Classification Code should be implemented at the earliest and latest by 1st April 2003. This should be used by all other agencies (DGFT, DG, CIS, custodian, etc.) also.

5.5 Standardization of service standards

5.5.1 Besides the need for tax payer friendly procedures there is also the need for uniform application of such procedures. It is often reported that different Custom Houses and Central Excise Commissionerates have different practices which is not know o the trade and industry and, at times, gives rise to compliance issues. Hence, it is necessary that there should be

standardization of procedures. Also it is very important that there is in place an institutionalized mechanism to periodically review the procedures and the way work is done. It is noticed that very often the systems are personality based and upon the transfer of an officer the new incumbent starts his own procedures and the system changes over night. No doubt the tax payer is legally bound to collect the duty and the tax administrators to collect the same. However, the tax collectors must appreciate that the tax payer is a customer for them. In other words, it is important to set in place high standards of service for customer satisfaction and maintain them over the time. Standardization of the procedures across the Commissionerates in different parts of the country is equally important. This would improve compliance, certainty and tax payer confidence.

5.5.2 It is recommended that a time bound programme should be initiated for the ISO Certification of all Custom Houses and Central Excise Commissionerates – to be started in 2003 and completed by 1st January 2005. This presupposes standardization of procedures.

5.6 Banking

5.6.1 Banks play a critical role in the tax administration through facilitating payment of duty and its reconciliation. So far the payment of duty is being made in the nominated public sector banks. At present, the policy of one Commissionerate - one bank is followed. This has obviously given rise to complaints of monopolistic behaviour and poor service. The move to EDI based reconciliation of duty payment has also not picked up so far, though certain positive moves have been made in this direction. Accordingly, in order to exploit the facilities of modern automated banking for enhanced convenience of the tax payer and the revenue **the following recommendations are made :**

(i) Multi-banking should be encouraged by recognizing new banks including private sector banks to handle receipt of Government revenue.

(ii) A pre-condition to the appointment of the banks should be establishment of an EDI link with the Custom House/Central Excise Commissionerate to facilitate reconciliation of revenue.

(iii) Banks should have the responsibility of issue/transfer of refund checks/amount direct to the tax payers bank account on the basis of a release advise form the Commissionerate.

(iv) Option of payment of duty through debit card and the like should be explored for implementation.

(v) Appointed banks should give the tax payer the option of internet banking for deposit of duty and transfer of funds.

5.7 Uniformity of interest rates

5.7.1 At present, there is great disparity between the interest payable by the tax payer (to the department) on the duty short levied or short paid or not levied or not paid and the interest payable by the Department (to the tax payer) on the delayed refunds. Whereas the tax payer is required to pay interest at the rate of 15% per annum the Department pays interest at the rate of 8%. Not only is there no equity, the disparity causes concern that the Government is not treating the tax payer as an equal partner in the economy. In fact, there is also an absence of uniformity in the rate payable by the tax payer. For instance, in the case of warehoused goods the interest payable is 24%. Whereas the vires of charging higher interest and giving lower interest is not questioned it appears that in the interest of boosting tax payer confidence in the fairness of tax administration the disparity need to be removed. Also there is some confusion whether the interest payable is simple interest or compounded. Finally, it is contended that the rate of interest is too high and must move with the PLR.

5.7.2 It is recommended that :

(i) The interest payable by the tax payer and the department may be made uniform.

(ii) The interest so determined must be uniformly applied in each and every situation where it is decided to charge interest.

(iii) The law should itself clarify that the interest is simple and not compounded.

(iv) The rate of interest should be reviewed each year at the time of the Budget and brought in line with the prevailing market rate. Rate determined should not be changed during the year.

5.8 Unjust Enrichment

5.8.1 The Constitutional validity of Section 11B, as amended in 1991, has been upheld by the Supreme Court in the case of Mafatlal Industries. However, it is seen that in certain cases which have been judicially held to be outside the scope of the said provisions the tax payers are asked to produce all sorts of documents and establish the duty burden has not been passed on to their buyers. This causes harassment. Without going into the merit of the legislation it appears that the net result has been to reduce tax payer satisfaction, increase contact points and discretion on the part of the departmental officers.

5.8.2 In the circumstance, **it is recommended that in order to reduce the transaction cost and avoidable interface between the industry and the Department, the provision of unjust enrichment may be amended to the effect that it would not apply when the refund arises in respect of provisional assessment, pre-deposit of duty and goods captively consumed.**

5.9 Non-Receipt of Applications

5.9.1 Presently there are no Dak receipt counters at most of the Excise Offices. As a result a tax payer is not able to deposit any application/document and get an acknowledgement. The problem is more acute in Central Excise Range offices as the Excise Inspector/Range Superintendent may not always be available in their office.

5.9.2 It is recommended that the system of receipt and acknowledgement of dak and correspondence should be reviewed and it should be ensured that a receipt counter manned at all hours during office hours is positioned at an easily accessible place. In the case of small offices where there is a paucity of staff, a Mail box should be provided and

acknowledgements issued next day. Every correspondence should be acknowledged and timely replies sent.

5.10 Codification of circulars/ instructions

5.10.1 At present there is no practice of codifying the many instructions and circulars issued by the C.B.E.C. from time to time. As a result there is confusion in the trade and industry and also the departmental officers regarding the latest position on any aspect of law and procedure. This leads to absence of uniformity besides giving rise to disputes. It appears that the solution lies in organizing the issue subject-wise booklets including all relevant circulars and instructions. This would also help in weeding out those which are redundant. Importantly, this should not be a mere reproduction or compilation of Circulars and instructions. Effort should be made to state the legal position in simple and clearly understood language. Once this is issued future changes should simple be inserted at the relevant page. For instance, future instructions should mention 'replace paragraph AB on page XYZ'. This mechanism would ensure updated instructions/procedure are available at all times with the trade and industry and the departmental officers.

5.10.2 It is recommended that C.B.E.C should codify all circulars/ instructions in one cover, subject-wise by 1st April 2003.

5.11 PAN as the common identifier in taxation matters

5.11.1 It is essential that for identification of the tax payers and also for exchange of information on the tax payer between different government departments/agencies, there should be a common identifier. It is observed that C.B.E.C has already started using the PAN issued by the Income Tax department as the common identifier for central excise purposes. This should be extended to customs also.

5.11.2 It is recommended that C.B.E.C should ensure by 1st April 2003 that all its tax payers are entered into its computer record on the basis of PAN.

5.12 Search, Seizures and Summons

5.12.1 In order to bring the focus back on transparency and accountability it appears necessary to introduce certain changes in the present system of search, seizure and summons. These are expected to restore the confidence of the tax payer in the tax administration. **The recommendations are as follows:**

(i) **Central Excise officers should not be required to wear uniform. This would change the mind set on both side (Department and taxpayer) and contribute to freer communication.**

(ii) **Videography should be done whenever statements are recorded and searches made.**

(iii) **Presence of counsel should be encouraged while recording statements**

(iv) **Seizure of documents and records adversely affect the conduct of business. Accordingly, these should be mandatorily released upon the completion of adjudication.**

6. C.B.E.C. Administration

6.1 Tenure of Chairman, C.B.E.C.

6.1.1 The Chairman, C.B.E.C is in charge of collection of major share of the total tax revenues of the Government. He is in overall charge of administering the tax administration in respect of Customs, Central Excise and Service Tax and some element of Narcotics. Being the head of the Customs Administration Chairman, C.B.E.C. represents the country in all International forums such as WCO. In this regard the continuity in the post of Chairman. C.B.E.C. is of critical importance.

6.1.2 In this regard it is observed that invariably an officer is appointed as Chairman., C.B.E.C when he has scarcely a few months to go before superannuating. As a result he is hardly in a position to give long term direction to the department. The officer is not able to give shape to

policies of long term importance to the revenue and an element of ad-hocism creeps in, which is detrimental to the tax administration. Consistency and long term vision are essential for a administration, and much more important in tax administration.

6.1.3 As long term measures to give stability and direction to the indirect tax administration, which is so critical for the economic well being of the country it is recommended that Chairman, C.B.E.C. should be selected on criterion of merit cum seniority and once appointed (at whatever age before 60 years) should have a minimum tenure of 2 years.

6.2 Financial autonomy

C.B.E.C. has no financial autonomy and has to obtain financial sanctions for each expenditure from the Financial Adviser (Finance) who is entrusted with the Budget of the Department. All the field formations of the C.B.E.C. are necessarily required to first take the clearance of the C.B.E.C. in respect of their expenditure proposals, and then obtain the sanction of the Finance wing. Resultant delays often impact the projects which works against efficient tax administration and tax payers facilitation suffers. It is the view that as a major revenue earning Department, C.B.E.C. and its Commissioners should be given financial autonomy.

It is recommended that C.B.E.C. and the Chief Commissioner should be given financial autonomy and financial powers of the Commissioners may be enhanced.

6.3 Improving office infrastructure

6.3.1 Customs and central excise officers and the taxpayers are partners in the economic development of the country through the payment and collection of taxes. It is often the case that the taxpayers – importers, exporters, corporate heads, foreign nationals have to visit the customs and central excise offices for the conduct of the tax related businesses. Reportedly, the majority of offices are in bad shape in terms of basic infrastructures and amenities. Most are also in rented accommodation and there is little scope for carrying out improvements. Not only does this distance the tax payers from the tax administrators it also create an unhealthy mind set in the officers who work in unsatisfactory environment. Therefore, it is necessary to develop a corporate

culture which is customer friendly by improving the office accommodation of the customs and central excise officers.

6.3.2 It is recommended that the C.B.E.C. should evolve a time bound strategy to improve the office accommodation as follows.

(i) A Task Force should be set up to standardize the requirement of a modern customer friendly office (model office) which should furnish its report by 31st December 2002. The report should include financial estimates.

(ii) Based on the report of the Task Force, the C.B.E.C should ask the Chief Commissioners to identify the shortcomings in each of their offices in their jurisdiction by 1st April 2003 and send a consolidated proposal to C.B.E.C.

(iii) By 1st August 2003, a model Commissionerate (Customs and Central Excise), Central Excise Division and Central Excise Range office should be set up in each of the Chief Commissioner zones.

(iv) C.B.E.C. should seek financial sanctions and replicate the model offices by upgrading the existing offices and purchasing land, building, etc., where necessary. The entire exercise should be time bound, so that by 2005, modern offices are in place in each Commissionerate.

(v) Modernisation of C.B.E.C and its Directorates should be done by setting up a Task Force to identify the areas of improvement and thereafter taking time bound action.

(vi) Facility of video conferencing between the C.B.E.C. and the Chief Commissioners should be created.

(vii) Research capabilities in TRU should be enhanced, particularly in the context of emerging challenges once VAT is introduced and there is integration of Service Tax and Central Excise.

7. Human Resource Development and training

7.1 Human resource development is an important ingredient in administration. Training is essential for upgrading skills and change in mind-set for tax payer facilitation. This is all the more important when the environment in terms of policies and procedures and tax payer expectation is changing rapidly. C.B.E.C. is already having an institutionalized training programme run by NACEN and the Commissionerates also conduct in-house training programmes from time to time. However, the common perception is that much more need to be done in the training the officers, particularly at the cutting edge, in two key areas. The first is the use of computers and the second is the change in mind set. Particular attention needs to be paid to change in mind set at the cutting edge.

7.2 It is also important to appreciate that a long term institutional arrangement is necessary for sustained progress in human resource development. Once the resource centers are identified, C.B.E.C. should enter into a Memorandum of Understanding with them so that the continuity of the arrangement is maintained. Accordingly, **it is recommended that :**

(i) The infrastructure available for training at regional level should be upgraded. Training should be accorded priority and sufficient infrastructure needs to be created to impart training especially in areas of use of information technology, managerial skills and attitude changes at the cutting edge level. Each Chief Commissioner of a Zone should have an in-house training center equipped with latest training aids and adequate infrastructure to take care of the training requirements in addition to the proposed regional training centers in the Cadre Restructuring proposal.

(ii) The C.B.E.C. should make full use of the technical assistance of multilateral agencies such as World Bank, Asian Development Bank and World Customs Organization, especially their reform and modernization projects and programmes, that support customs reform through training in diagnostic study and in customs needs analysis. These help domestic customs authorities implement the required changes that have been identified and evaluate their impact on trade facilitation and customs compliance.

(iii) **A relevant UN body to be contacted for assistance is the Center for Facilitation of Procedures and Practices for Administration, Commerce, and Transportation (CEFACT-UN/ECE). Close link should also be maintained with UNCTAD which uses Automated System for Customs Data and Management (ASYCUDA) and Advance Cargo Information System (ACIS).**

(iv) **Group 'B' and 'C' officers who are at the cutting edge should be given training to change the mind-set for bringing about pro-client/customer orientation.**

(v) **Entry level training to officers who are promoted from Group 'B' to Group 'A' should be mandatorily provided at NACEN, for a minimum period of 3 months covering both Customs & Central Excise. This is essential as officers promoted from Customs are often posted to Excise Commissionerates and vice versa.**

(vi) **Cadre training should be compulsory in respect of all Group 'A' officers and periodical refresher courses should be organized to impart training of managerial skills.**

(vii) **Senior Group 'A' officers of the rank of Commissioners and above should be deputed to attend Executive Development Programmes in premier management institutes in the country such as, IIM, IIFT, ASCI etc.**

(viii) **Group 'A' officers should be exposed to the tax administrations abroad and international best practices in training followed to enhance their skills.**

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