



**OFFICE OF THE COMMISSIONER OF CUSTOMS
CENTRALISED ADJUDICATION CELL, NS-IV,
JAWAHARLAL NEHRU CUSTOM HOUSE
NHAVA-SHEVA, TAL-URAN
DIST. RAIGAD, MAHARASHTRA-400707.
E-Mail Id:- cac@jawaharcustoms.gov.in**

STANDING ORDER No. 58/2016.

Subject: Issue of Less charge notices and need to issue proper Demand cum Show Cause Notices consequent to detection of any case of short payment / non payment of duty;

Some cases of short payment of duty has been noticed where in spite of fact of short payment of duty was intimated by Audit / Directorate General of Valuation, no action was taken by Group for considerable period of time. It was noticed that if action would have been taken at the time of receipt of said letter from Audit / Directorate, revenue could have been protected within normal limitation period. However, after lapse of normal period of limitation "less charge cum demands notices" were issued proposing recovery of duty and interest by invoking Section 28 (duty) and Section 28A (interest) but without mentioning any ground for invoking extended period of limitation.

2. Normally less charge cum demand notices are issued in cases (where there is no evidence / ingredient of deliberate mis-declaration, suppression or collusion etc), so that duty along with interest is recovered & case can be closed under section 28(2). However, if even after issue of less charge cum demand notice, duty and interest can't be recovered, a proper SCN is required to be issued so that case can be adjudicated on merits.

3. Subsection (1) and sub-section (2) of Section 28 provides that:

1) *Where any duty has not been levied or has been enshort levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,—*

(a) the proper officer shall, within two year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,—

- (i) his own ascertainment of such duty; or*
- (ii) the duty ascertained by the proper officer,*

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest.

4. In view of the above, following instructions are issued:

- a. "Less charge / Less Charge cum Demand Notices" are persuasive demand notices, which can be issued to recover duty along with interest in cases of short payment or non payment of duty to seek voluntary compliance of person liable to pay such duty. However, such "Less charge / Less Charge cum Demand Notices" are not substitute for "show cause notices" required to be issued in terms of Section 28 read with Section 124 of Customs Act, 1962.
- b. Deputy / Assistant Commissioners may issue such "Less charge / Less Charge cum Demand Notices" if they are of the view / opinion that duty short paid / not paid may be recovered by issue of such Notices. However, it should be noted that in cases where limitation period of "Two Years" or "Five Years", as the case may be (as provided under Section 28 of the Act) nearing / approaching, then demand should not be allowed to be barred by limitation of time by issuing such "Less charge / Less Charge cum

Demand Notices". Instead, in such cases, proper Show Cause Notices should be issued at the earliest by incorporating all evidences and invoking all applicable provisions in terms of Monetary limit of adjudication as per Board Circular No. 24/2011-Customs, as amended.

- c. Wherever "less charge notice" is issued and duty alongwith interest is not recovered within the time limit of 30days (as normally prescribed in such less notices), then within 15 days of expiry of said 30days period, proper Show Cause Notice should be issued in terms of Section 28 read with Section 124 of Customs Act, 1962.
- d. Group should maintain the register containing details of all "less charge Notices" issued. Further details about recovery of duty & interest or issue of proper Demand Show Cause Notice should be mentioned against each entry.
- e. Details of pending action against such "Less Charge Notices" should be part of "handing over/taking over note" prepared at the time of relieving/change of officers.

5. Any difficulty / issue in complying with this Standing Order may be brought to the Notice of respective Principal Commissioner / Commissioner of Customs, NS-G, I to V.

6. This, issues with approval of the Chief Commissioner of Customs, Mumbai Zone-II and concurrence of all Principle Commissioner / Commissioner of Customs, NS-G, NS-1 to NS-V JNCH.

Sd/-13.10.2016

(SUBHASH AGRAWAL)
COMMISSIONER OF CUSTOMS-

NS-IV

F. No. S/10-Misc- 63/2016-17 CAC (Admin)
Dated: 13.10.2016.

To:

- 1.The Chief Commissioner, Zone-II, JNCH.
- 2.The Commissioner NS-1, NS-III & NS-V JNCH.
- 3.The Commissioner NS-G, NS-II & IV JNCH.
- 4.All Additional / Joint Commissioner, JNCH
- 5.All Dy. / Asstt. Commissioner, JNCH
- 6.DC/EDI for uploading on JNCH Website.
- 7.All Sections / Groups