

F.No.276/104/2016-CX.8A (Pt.)  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Legal Cell)

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'C' Wing, 5<sup>th</sup> Floor, HUDCO-VISHALA Building  
Bhikaji Cama Place, R.K. Puram,  
New Delhi-66: dated the 29<sup>th</sup> June, 2016

**Instruction**

To

1. All the Principal Chief Commissioners/ Chief Commissioners of Central Excise, Customs & Service Tax
2. The DG, DRI/CEI
3. Web-master, CBEC

Madam/Sir,

**Subject: Inclusion of Show Cause Notices issued in relation to sub-section (11) of Section 28 of the Customs Act, 1962 on the competency of officers of DGDRI, DGCEI and Customs (Prev.), in the "Call Book" -reg.**

The Hon'ble High Court of Delhi vide the order dated 03.05.2016 in the case of Mangali Impex Ltd. in WP No. 441/2013 and others held that sub-section (11) of Section 28 of the Customs Act, 1962 cannot validate SCNs or proceedings pursuant thereto in relation to non-levy, short-levy or erroneous refund for the period prior to 8<sup>th</sup> April 2011, if such SCNs have been issued or proceedings conducted by officers of the Customs, DGDRI or DGCEI or as in the present case by the SIIB, who are not 'proper officers' within the meaning of sub-section (34) of Section 2 of the Act.

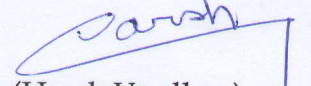
2. In this regard it may be mentioned that the amendment in Section 28 (11) of the Customs Act, 1962 was brought out by the Government, after the decision of Supreme Court in Commissioner of Customs vs Sayed Ali (2011)3SCC 537, wherein it was held that Customs Preventive Officers are not proper officers to issue Show Cause Notice u/s 28 of Customs Act, 1962. Vide Notification No.44/2011 dated 06.07.2011, Board assigned the functions of proper Officers to the officers of DGDRI, DGCEI and Preventive. Further, in the Statement of Facts and Reasons to the Customs (Amendment and Validation), Bill, 2011, while introducing sub-section 11 of Section 28 of the customs Act,1962, the then FM had expressly mentioned that it has purposed to amend the Customs Act, 1962 retrospectively. Thus, the intention of Legislature was clearly spelt out. Therefore, the officers of DGDRI, DGCEI and Preventive are Proper Officers even for the Show Cause Notices issued prior to issuance of Notification dated 06.07.2011. Since the order dated 03.05.2016 of High Court of Delhi challenges the constitutional validity of sub-section (11) of Section 28 of the Customs Act, 1962, the Board has decided to file an SLP in the case i.e. W.P.No.441/2013 before the Hon'ble Supreme Court.

(Contd....)



3. In view of the above, field formations are requested to **transfer all the SCNs issued by DRI, DGCEI, SIIB, Preventive prior to 06.07.2011 and which are pending adjudication to the Call Book**, till disposal of the matter in the Supreme Court.
4. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board. Hindi version follows.

Yours faithfully,



(Harsh Vardhan)  
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