Circular No. 44 /2011- Customs

F. No.437/143/2009-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

229 A, North Block
New Delhi, dated 23rd September, 2011.

To

All Chief Commissioners of Customs / Customs (Prev.).
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs / Customs (Prev.).
All Commissioners of Customs & Central Excise.
Director General of Revenue Intelligence.
Director General of Central Excise Intelligence.
All Directors General.

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Subject: Adjudication of appraising related Show Cause Notices- regarding

Sir / Madam,

Consequent to the judgement of Hon'ble Supreme Court dated 18.02.2011, in Civil Appeals Nos. 4294-4295 of 2002 and Nos. 4603-4604 of 2005 (commonly referred to as Sayed Ali case), Board issued an Instruction F.No.437/143/2009-Cus.IV(pt) dated 15.04.2011 directing the field formations to examine pending Show Cause Notices and wherever these are not hit by time limitation to get these issued afresh by the jurisdictional Commissionerates.

2. Further, as a prospective remedial measure, in terms of Section 2(34) of the Customs Act, 1962, the Board issued Notification No.44/2011-Customs (N.T.), dated 06.07.2011. By virtue of this Notification, officers of Directorate General of Revenue Intelligence (DRI), Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates were assigned the functions of the 'proper officer' for the purposes of Sections 17 and 28 of the said Act.

3. To address the issue of validity of Show Cause Notices issued prior to 06.07.2011, which was likely to be adversely impacted by the said judgment of the Hon'ble Supreme Court, a suitable legislative change was proposed. In this regard, the President has given assent to the Customs (Amendment and Validation) Bill, 2011 on 16.09.2011 and the corresponding Act has been published in the Gazette of India dated 20.09.2011 as Act No.14 of 2011. Thus, the amendment to Section 28 has come into force w.e.f. 16.09.2011. The said Act amends Section 28 of the Customs Act, 1962 by inserting clause (11), which reads as follows:

"(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."

4. Accordingly, as per the amended Section 28 of the Customs Act, 1962 Show Cause Notices issued prior to 06.07.2011 by officers of Customs, which would include officers of Commissionerates of Customs

(Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence and similarly placed officers stand validated since these officers are retrospectively recognized as 'proper officers' for the purpose of Sections 17 and 28 of the said Act.

5. In this regard it may also be noted that in terms of Notification No.44/2011-Customs (N.T.), dated 06.07.2011 the officers of DRI and DGCEI are 'proper officers' for the purposes of Section 28. However, it is hereby directed by the Board that these officers shall not exercise authority in terms of clause (8) of Section 28 of the said Act. In other words, there shall be no change in the present practice and officers of DRI and DGCEI shall NOT adjudicate the Show Cause Notices issued under Section 28 of the said Act.

6. Since the matter pertaining to validity of Show Cause Notice stands settled in terms of Notification No.44/2011-Customs (N.T.), dated 06.07.2011 and amended Section 28 of the Customs Act, 1962, the Instruction F.No.437/143/2009-Cus.IV(pt) dated 15.04.2011 is no longer necessary. Hence, the said Instruction dated 15.04.2011 stands withdrawn with immediate effect.

7. Pending Show Cause Notices and cases before adjudicating authorities and before appellate and judicial authorities may be dealt with on the basis of the legal position explained above. Difficulty faced, if any, may be immediately brought to notice of the Board.

Yours faithfully,

(Subodh Singh)
OSD (Customs), Tariff Unit
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