

MEMORANDUM SUBMITTED TO
TAX ADMINISTRATION REFORMS COMMISSION

Suggestions for Tax Administrative Reforms
Commission submitted by All India Central
Gazetted Officers' Association

The All India Central Gazetted Officers' Association, Chennai Unit submits following suggestions/points to the Hon'ble Commission for consideration.

On Organisational Structure

The present time-tested three-tier organisational structure of field formations has been working well and it may be retained. The lowest rung of field formation is the Range, while the Division and Commissionerate are the upper rungs of hierarchical ladder. However, over a period of two decades because of skewed cadre restructuring, the Department has become top heavy. There has been a two-fold increase in the posts of Group-A Officers from the level of Joint Commissioner and above with the depletion of cutting-edge level staff from Inspector to Superintendent to Assistant Commissioner. These are the three levels of officers who are involved in all aspects of collection of revenue. This depletion of cutting-edge level staff has led to diminished efficiency and piling up of pendency in the Department. With only one Superintendent and an Inspector posted in a Range, it has been reduced to an office compiling manual reports instead of an effective tax administration unit. The officers in both the Range and Division are most often involved in crisis-management rather than doing their executive functions.

In the backdrop of the above facts, it is submitted that the creation of the field formations must be done based not merely on revenue

criteria but also with a defined workload norms. An optimum level of number of assesseees to be administered by Division or Range must be fixed and accordingly staffing norms defined besides the average number of documents to be handled by them in a year.

With the introduction of OSPCA (On Site Post Clearance Audit) work relating to document based assessment of imported goods by manufacturer importers (Accredited Clients) in the Central Excise domain after clearance from the specified Customs Houses concerned (like Chennai, Calcutta, Mumbai etc), the work load in Central Excise has increased. Further, during the year 2010, as many as more than 700 EOUs working under the major Customs Houses (within the municipal limit of cities like Chennai, Mumbai, Calcutta etc) were transferred to Central Excise formations which has added to the work load of the respective Central Excise Range which is working with the depleted staff strength of One Superintendent and One Inspector.

With GST appearing to be a compelling necessity for next generation tax reforms there is going to be an integration of levy of tax on goods and services. With the integration of levy of tax on goods and services, the standalone Service Tax Commissionerates would lose their relevance. When GST comes into force it would be prudent to bring both manufacturers and service-providers under one administrative unit. It is also pertinent to see that manufacturers also deliver associated services along with the goods. A classic case is “Works Contract” for supply and erection of machinery. Therefore, it is suggested that henceforth exclusive Service Tax Commissionerates should not be created. However, the jurisdiction of existing service tax Commissionerates created in big cities may be redefined on functional basis. The organised services such as telecommunications, Insurance, Banking, Port services, Custom House Agents, Information & Technology, Hospitality, Repair & Maintenance services etc., may be retained in existing service tax Commissionerates.

It is also suggested that organisational restructuring should be a continual process, not a ritual done once in every five or ten years coupled with cadre restructuring. To accomplish this, it is suggested that O & M Cells may be created at every Chief Commissioner's office. This cell should collect, compile and collate information about increase or decrease in assessee base and associated increase/decrease in workload in an area and suggest creation or closure of field formation upto Division level. This exercise should be done periodically depending on the local requirements for such creation or abolition of field formations.

E-Governance and Use of Information Technology

Presently there are three online applications namely ACES, ICES 1.5, and Sezone used by assessees of Central Excise, Customs and Special Economic Zones. The movement of documentation between these three Departments takes place manually as these three applications are not integrated. Therefore, it is submitted that a seamless integration of these three electronic systems should be done for smooth and effective movement of documentation between these Departments and make it more assessee-friendly. This would also substantially decrease the paper work for the officers and ensures quicker services to assessees.

Access to Income Tax returns of all registered Central Excise and Service Tax assessees and the importers/exporters should be made available to the officers under CBEC through a link with the website of Income Tax Department/Registrar of Companies. Similarly the Income tax Department may be given a limited access to view and download Excise Returns [E.R.series] to facilitate exchange of information between the CBEC and CBDT.

Besides the above the following may also be considered.

- a. Designing and development of a process-flow based system for creation of electronic files and do away with use of manual paper files.

- b. Develop a secure and dynamic database/file management system using “**Cloud computing**” technology. This would facilitate officers to work from camp or from home when required.
- c. Automatic archiving of closed files and their weeding out periodically.
- d. Review Meetings through tele-conferencing and video-conferencing saves time and money.

Web-enabled Communications

While the CBEC website is quite dynamic and updated regularly, the website www.dghrdcbec.gov.in needs a complete overhaul. This website should also give all the Administration and Establishment circulars issued by the Board. The monthly disposition lists of all cadres should be published on the website. Presently the disposition list of Chief Commissioners alone is being published.

The CBEC website should also publish the updated Excise Manual, Adjudication Manual, Audit Manual, Preventive Manual, Appraising Manual and Scrutiny Manual for easy access of the officers as copies of these manuals are not provided to them. Specific Manuals relating to administration of EOUs and SEZs should also be prepared and published.

Dispute Resolution Mechanism

The primary cause of all legal disputes is the complex language used in drafting the laws. World over the “Plain Language Movement” has benefited both the governments and global citizens in avoiding legal disputes. As a first step the laws must be written in plain English to bring down disputes.

Online Service of Notices

Presently, under Section 37C of Central Excise Act 1944 and Section 153 of Customs Act 1944, all the notices and orders are required to be served either in person or through “Registered Post with Acknowledgement Due”, or Speed Post or through Courier approved by CBEC besides the substituted service – affixing the

notice or order at a conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person to whom the document is to be served or affixing it in the notice of the office of the authority concerned. Necessary amendments to these provisions may be made to include service of notices, orders, summons electronically to expedite the dispute resolution process. Presently in ACES although there is feature to electronically serve the notices or orders such a service is not recognised under law. The law should be suitably amended accordingly and the Aces module should be made functional.

At present the facility of “**Advance Ruling**” is available only to companies with an involvement of “non-resident” or a foreign company. This facility should be extended to all persons in order to reduce disputes. The related fee may be increase to Rs.5000/- per issue on which advance ruling is sought.

Certain types of cases should attain finality at the Appellate Tribunal stage. For instance cases relating to CENVAT credit, refunds and disputes confined to imposition of penalty and interest only.

A time frame for “**Settlement of Cases**” under Chapter V of Central Excise Act and Chapter XIV-A of Customs Act needs to be introduced for expeditious disposal of cases of settlement.

If the Department consecutively fails in two appellate forums it should refrain from further litigation where the Revenue involved is not much higher. A more objective review of adjudication and appellate orders needs to be done shorn of irrational revenue bias. This would bring down the needless and frivolous litigation and the attendant costs involved. The adjudicating officers need to be properly sensitised in this regard.

Establishment related Dispute Resolution Mechanism

Most often disputes relating to service related matters occur due to inaccurate seniority lists and pay fixation. If only the Establishment sections function more diligently in these matters

such disputes would not arise. A dispassionate and fair-minded approach is required in these matters. Hence, the officers who are well-trained in interpretation of laws should be given these responsibilities. A definite time frame should be fixed to decide vigilance matters.

Tax Law Reforms

It is an apparent fact that Tax-GDP ratio in India is one of the lowest in the world. India raises only 15.5 per cent of GDP as tax revenues – the lowest compared to all G-20 nations, while the average tax-GDP ratio in OECD countries is at 24.6 per cent. To raise the Tax-GDP ratio the tax base is required to be widened. There are presently several exemptions to non-merit goods and exemptions based on end-use. These exemptions need to be phased out in a calibrated fashion.

The present unit-rate of duty of excise needs to be replaced with a three-tier rate, with tax rates for raw materials/inputs @12%, intermediate products @14% and the final consumer products @ 16% ad valorem. With the present single revenue neutral rate of 12% ad valorem tax revenue through cash has been consistently dwindling, while the revenue adjusted through CENVAT credit earned has been increasing. This three-tier rate will ensure higher percentage payment of duty by cash.

The negative list of services under Section 66D of Finance Act 1994 needs to be reviewed and pruned by removing non-merit services. For instance, betting, gambling or lottery, selling of space or time slots for advertisements other than advertisements broadcast by radio or television, and admission to entertainment events or access to amusement facilities do not merit to find place in the “Negative List” of services. Barring services received by the Government and a few services related to agriculture other non-merit services are required to be removed from the negative list.

Instead of issuing a multitude of notifications with long-winded and convoluted language to grant exemptions the Central Excise and

Customs Tariffs may be amended to have Exemption Schedules with two columns namely the “Tariff Rate” and “Effective Rate”. A separate intelligible “**Procedure [For Availing Exemptions] Rules**” may be framed to cover various situations and conditions to grant exemptions. The Exemption Schedule in Tariff would only specify the rule relating to the procedure to be followed. The TN VAT Act has such schedules making it easy for the tax payers to know about their tax liability.

Changes to be made in SEZ law

Under Section 2(m) of SEZ Act 2006, export, inter alia, means “supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer”. But under Section 2 (o) *ibid*, which defines the term “import” the converse situation is not regarded as “import”. In short, moving of goods from SEZ to DTA is not considered as import. Section 30 *ibid* which governs movement of goods reads:

30. Domestic clearance by Units.- *Subject to the conditions specified in the rules made by the Central Government in this behalf:-*

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

Rule 48 of SEZ rules which prescribes the procedure reads:

48. Procedure for Sale in Domestic Tariff Area.-

(1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers:

Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.

Provided that where the goods are supplied in Domestic Tariff Area by a contract manufacturing Unit on the instructions of an Overseas entity, the Bill of Entry shall be filed by the Domestic Tariff Area buyer on the basis of transaction value recorded on the commercial invoice issued by the Overseas entity.]

- (2) *Where goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India:*

Provided that in the case where such goods are supplied back to the Domestic Tariff Area, as it is, and where the import duty on such goods is 'Nil' and while procurement of such goods no export benefits were allowed against such goods, the Unit may be allowed to supply back such goods to Domestic Tariff Area on the basis of invoice only and filing of Bill of Entry in such cases shall not be required.

As could be seen from the above provisions the movement of goods from SEZ to DTA is not regarded as "import". Therefore, the SEZ unit units may allowed to clear goods under invoices through self-assessment and file a monthly return to the Authorised Officer of the Zone for scrutiny. A collection and reconciliation mechanism for duty as in the case of EOU/DTA units should be devised. This would bring down the cost of compliance to SEZ units and would facilitate the officers to recover the liability from the SEZ unit itself instead of chasing multiple assessees.

Another glaring lacuna in the SEZ Act is that it has no machinery provision for recovery of customs duty, not paid, short paid or erroneously refunded, from the buyers of goods similar to Section 11A of Central Excise Act 1944, and Section 28 of Customs Act 1962. It is, therefore, necessary to correct this anomaly to prevent any loss of revenue for lack of recovery mechanism.

It is also pertinent to note that the SEZ Act and the rules do not have a provision for grant of refund of excess payment of duty by the buyer.

There is also no provision for adjudication of offences relating to revenue collection issues. A clear defined powers of adjudication must be spelt out in the law. To simplify, the relevant provisions of Customs Act may be made applicable to SEZ Act for better tax administration of the SEZs.

Performance Appraisal

The Annual Performance Report is, now, being written behind the back of the officer whose performance is evaluated, although the copy of the report is later communicated to him. A conflict of grading between the Reporting Officer and the Reviewing Officer, often, leads to an appeal by the aggrieved officer. Therefore, the APR should be made an open appraisal system with Reporting/Reviewing Officer calling the concerned officer and writing the APR after a discussion as is done in several PSUs and Banks.

Capacity Building & Skill Development

At present NACEN has become a place to park incompetent and under cloud officers. There is an urgent need to bring some respectability to NACEN and improve its functioning. Training and skill honing being a compelling necessity to improve the performance of the officers, it is needless to say that it is necessary to attract talent to this organization. To accomplish this, its performance should not be assessed based on the number of courses it conducts. The benchmark should be the quality of the courses it conducts. NACEN should confine itself to conducting more intense training courses for a targeted group of officers. Refresher and refurbisher courses should be allowed to be conducted in the respective Commissionerates. Each Commissionerate should create an in-house "Training Cell" to impart training. NACEN may function as a nodal agency to oversee the functioning of these cells. It may also design a universal training

curriculum, manuals and other study material. It may also train the “trainers”. This cell may also be used for Tax-payers’ Education Programme.

The website of NACEN merely functions as a news portal giving details of high-profile events along with a gallery of photographs. It must be made more purposeful and functional by providing online courses. It should also provide online updated course material. It needs to be redesigned to function as a repository of knowledge on indirect taxes. It can provide useful links of other sites on these matters so that the officers as well as taxpayers can use it with some benefit.

Preventive & Punitive Vigilance

The vigilance mechanism is most often used as a tool of intimidation to compel servility of the officers rather than weeding out the corrupt and incompetent elements. This mechanism should be used to ensure decency and decorum of the Department and not to witch-hunt officers. Preventive vigilance should focus on incompetence and integrity of officers. To accomplish this objective the Vigilance Section should be handled by competent officers having unimpeachable integrity. It should be made a tenure posting with Special Pay.

Furthermore, the vigilance mechanism should not be merely punitive and retributive, it should also be expiatory. The officer who is found guilty of misconduct or misdemeanour should be placed in non-sensitive posts at least for two years as a matter of expiation.

Any disciplinary proceedings should be completed within one year from the service of charge memo. This time limit should be adhered to strictly without prolonging the agony of the Charged Officer. This would bring some credibility to the vigilance mechanism.

SCRUTINY:

The Return Scrutiny to be based on monetary limits for the different level of officers to scrutinise the Returns upto the level of the Commissioners which will enable them to render trade facilitation more efficiently. The Returns with prescribed monetary limits should be handled by respective officers as in the case of Income Tax.

REFUNDS:

Sanction of Refunds/Rebates by different level of officers from Deputy/Assistant Commissioner to Commissioner based on monetary limits should be assigned, as presently the Refund/Rebate is sanctioned by the Deputy/Assistant Commissioner without any monetary limit. This will facilitate the assesseees in reducing the appeal levels and for quicker final decision.

(R. CHANDRAMOULI)

GENERAL SECRETARY

ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZETTED
EXECUTIVE OFFICERS, CHENNAI UNIT

MINUTES OF THE MEETING OF THE OFFICE BEARERS OF ALL INDIA CENTRAL EXCISE GAZETTED EXECUTIVE OFFICERS (SUPERINTENDENTS), CHENNAI UNIT WITH SHRI M.R. DIWAKAR, MEMBER, TAX ADMINISTRATION REFORM COMMISSION IN THE CONFERENCE HALL OF CHENNAI CENTRAL EXCISE AT NUMGAMBAKKAM HIGH ROAD ON 6TH DECEMBER 2013:

The meeting was attended by the following members:

S/Shri

S.Chandrasekar, President

R.Chandramopuli, General Secretary

N. Raman, Treasurer

M.V. Ramesh, Joint Secretary

V.R. Viswanathan, EC Member

Unny Vijayshankar, EC Member

P. Balakrishnan, EC Member

V. Duraikannu, Superintendent - Member

S. Kumaravadivel, Superintendent- Member

The meeting started with brief introduction by Shri Diwakar, Member, about the formation and scope of the TARC. The members who attended after introducing themselves, briefed him on various issues/points which are given as a Memorandum.

The following points were discussed in detail:

- Organisational Structure
- HRD
- Dispute Resolution

- Performance Appraisal
- Capacity Building and Skill Development
- Working of ACES

During the course of discussion, Shri Diwakar desired to have a detailed technical note in respect of ongoing IT process (ACES) in the department to be presented to the Commission. The General Secretary of the Association assured to make available the above note within 10 days' time. Further, the TARC Member requested that the soft copy of the Memorandum be sent to him.

The meeting concluded with a note of Thanks by the President of the Association.