

ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZETTED EXECUTIVE OFFICERS

Address for correspondence

13C LALIT MITRA LANE, KOLKATA 700 004.

e-mail : aiacegeo_siddhanta@hotmail.com

(Recognized by G.O.I., Min. of Fin., vide letter F.No.B.12017/10/2006-Ad.IV A dated 21.01.2008)

C.No. ASSCN./ AIACEGEO/06/2008/262-309

Dated 01.09.2009

PRESIDENT

Sri S.Rameshbabu
Guntur
9440878827

VICE PRESIDENTS

Sri Anindya Sundar Roy
Sri Rathindra Kumar Sarkar
Sri G.K.Gangwani
Sri Patil P.M.
Sri Rajendra Pratap
Sri Ravinder Chabra
Sri B.C.Barthwal
Sri Radheyshyam Sharma
Sri Suresh Kumar
Sri T.Samuel

SECRETARY GENERAL

Sri S.P.Siddhanta
Kolkata.
09831034352

JOINT SECRETARIES

Sri V.N.Jha
Sri Jeetendra Singh
Sri R. K. Nigam
Sri R. L. Sampath Kumar
Sri V.R. Kittur
Sri R.K.Solanki
Sri Anand Kishore
Sri L.N. Mishra
Sri J.P. Nautiyal
Sri P.C.Ajith Kumar

OFFICE SECRETARY

Sri Asoke Sarkar

CIRCULAR NO.05/AIACEGEO/2009

DT.01.09.2009

On the eve of festive months the undersigned on behalf of the association conveys best wishes to all members and their family and pray to almighty God to grace us to get rid of the social humiliation and pay erosion resulting from hostile discrimination and acute stagnation. In spite of relentless efforts to make the authority understand that the benefits under ACP and MACP Scheme have failed to protect severe pay erosion in comparison to our coevals in Income Tax Department, some officers of the highest echelon still pretend ignorance. All the office bearers and unit Secretaries are requested to keep the Table of pay erosion in their hands so that any top authority can be shown when they refer the above Schemes against promotion positively.

Recently a tendency is seen that in all India issues, the unit Secretaries are sending letters to the Board, which is contrary to the decision taken by the association. Moreover, the Board has instructed against such type of communication. These type of correspondences should be stopped since the association is convening all statutory meetings where the decisions are taken and correspondences are made accordingly.

The association has succeeded to meet Sri Pranab Mukherjee, Hon'ble Finance Minister on 25.08.09 in his residence and handed over a letter enclosing a memorandum (the same memorandum which has been assured to be published in this circular). In view of the meeting and as there is no parliament session in the month of September so the decision to go for dharna and march to parliament by the association in Associate Committee Meeting at New Delhi on 18th July, 2009 has been postponed.

Organisation

Having seen the poor response from the unit General Secretaries regarding sending of DDOs' certificates, the matter has been discussed in the ACM and office bearers have specifically requested to contact the respective regional units to send the said certificates and also pursue for clearing their arrears immediately. The office bearers are also requested to see that the election is held wherever due.

The units are requested to send their willingness to hold AEC Meeting. After hearing from them the date and venue would be notified.

Anomaly Committee

The association submitted memorandum to the anomaly committee and oral evidence was taken on 16th of July, 2009. The Additional Secretary (Revenue) expressed that the discrimination of date of increment is a general anomaly which may be taken up with National Anomaly Committee. Regarding anomalies of non-granting of scale corresponding to Rs.8000-13,500/, retrospective effect of the scale of Rs.7500-12,000/ w.e.f. 01.01.1996, he stated that the same may be accepted by the Pay Commission Implementation Committee as anomalies. **About the anomaly of non-granting of non functional scale in PB-3, given to others except Revenue and Postal department, he opined that if that be the case then the same is an anomaly and would be recommended for removal.** The association requested to issue minutes of the meeting but having not received, letter has been sent to him to send the minutes and record disagreement wherever the Committee not agreeing with the anomalies so that the same is decided in arbitration. Also in separate letter to the CBE&C, the observation of the Additional Secretary(Rev)

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has been informed with request to send its recommendation about the anomaly of date of increment to the National Anomaly Committee and other cadre specific anomalies to the Departmental Anomaly Committee with request to record disagreement in case difference of opinion so that the same is decided in arbitration.

Meeting with Hon'ble F.M and Board's officials

On 25th of August, 2009 the association met Hon'ble F.M. in his residence and requested to solve our perennial problem of stagnation so that members can devote themselves to augment the collection of revenue. This time the meeting has been possible for sincere help and untiring efforts of Sri Ravinder Chabra, V.P. of the all India body of the association and the association is proud of such efforts and expects similar efforts from members from all corners of the country to send request by highly placed political persons to the Hon'ble F.M.

On 15th of July, 2009, the association met the Member(P&V) and discussed the issues like NFS, MACP, stagnation, enhancement of uniform allowance/replenishment allowance, transfer of unit office bearers and victimization for initiating action for recovery of arrears. Having seen no action, the said issues have been taken up in the meeting held with Member(P&V) on 24th of August, 2009, who has assured to look into the matter.

In the earlier circular it was informed that the copy of the memorandum submitted to the Departmental Anomaly Committee against the delay of the CBE&C in organizing the department to make it citizen friendly, proactive and dedicated to public as recommended by the VI CPC in this circular. The said memorandum has also been handed over to the Hon'ble F.M. on 25th of August with forwarding letter.

The copy of the letter and memorandum so handed over is reproduced below:-

“Respected Sir,

Subject:- Refurbishing of organisation in the CBEC- Request to expedite

The Association representing 11481 numbers of Superintendent of Central Excise, the highest number of Group 'B' Gazetted Executive Officers in any of the department under the Central Government, is grateful to your kind honour for writing three D.O. letters No. 11447/EAM/07 dated 5.11.2007, No.1388 dated 06.02.2008 to the Hon'ble Finance Minister and no.13115/EAM/2008 dated 04.12.2008 to the Hon'ble Minister of State for Finance regarding refurbishing of organisation in the Central Board of Excise & Customs.

Sir, your recent observation that the Indian economy being resilient requires concerted efforts by the Law making authority and implementing agencies for smooth collection of tax to narrow the gap of fiscal deficit for the development of our country. The Inspectors and Superintendents of Central Excise are the cutting edge officers for collection of indirect taxes of Central Excise, Customs duty and Service tax and under the aegis of your able leadership they are ready to devote themselves in garnering maximum possible revenue provided your kind honour takes steps to ameliorate the problems of acute stagnation and resultant severe pay erosion in comparison to their coevals in Income Tax Department in the same ministry.

Sir, your kind honour know that the most of the Superintendents who have been recruited as Inspectors of Central Excise are retiring from the same post after only one promotion in their service career in comparison to ministerial cadre and IRS Officers in the same department, who are getting 4-5 promotions. Even the Preventive Officers and Examining Officers in Customs side are getting at least three promotions in the same department.

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The VI Pay Commission having understood that the ministry and department are in better position to restructure individual services to make them modern, professional and citizen friendly entities that are dedicated to the service of the people. The Board appears to be very slow to organize it in conformity with the requirement of changed provisions of Law.

While dealing a representation of the Association, the Member (P&A) and Joint Secretary (Administration) of the Board were unanimous for making of a separate Service Rules for all the Group B(Gazetted and Non-Gazetted) officers and wanted to convince the other Board Officials in the Board Meeting on 30.01.2008 but the said meeting was not convened. Thereafter, the process is delayed by appointment of Committee and Study Groups.

In view of the above, your blessings is sincerely prayed for solving the problem of the 11481 number of Superintendents of C. E. under the CBE&C, the highest number in any of the Departments under the G.O.I., who have become the victims of hostile discrimination due to availability of only one promotion resulting serious pay erosion. A memorandum is enclosed for your kind consideration.”

(the enclosed memorandum sent herewith in separate pages)

A meeting of the confederation of All India Group 'B' Gazetted officers' Associations is going to be held on 7th of September, 2009 at Aykar Bhavan, Mumbai to discuss issues related to anomalies arising out of the VI CPC. A modalities to be evolved as to how the general anomalies can be taken up with National Anomaly Committee since Group 'B' Gazetted officers are not allowed to represent in the National Council of JCM. Also cadre specific anomalies require to be taken up with the Departmental Anomaly Committee with the counterparts of Customs and Income Tax since unity and concerted efforts would be able to redress the same.

On 24th of August 30, 2009, one Assistant Commissioner of Central Excise, Varanasi Division, N. Singh has been shot dead by some miscreants on the open day light. The association has immediately requested the Chairman of the CBE&C to take the serious matter with the appropriate authority to arrest the culprits to the morale of the officers high so that they can discharge their duties without fear.

Long live our association.

(S.P.Siddhanta)
Secretary General

Memorandum for not taking action to organize our department into modern, professional and citizen-friendly entities that are dedicated to the service of the people, as suggested by the Pay Commission.

The VI CPC was entrusted to examine and recommend transforming the Central Government Organizations into modern, professional and citizen-friendly entities that are dedicated to the service of the people.

The VI CPC in its recommendation in para 6.1.2 observed that the organization should be of pyramidal type but did not give specific recommendation rather in para 6.3.15 concluded that it is not making specific recommendation regarding restructuring of individual services and cadres as this task will be better performed by the Ministries and departments.

The Association immediately approached the CBEC to complete the task in the interest of revenue and to sort out the problem of acute stagnation confronted by the cutting edge executive officers resulting not only one promotion in their service career of the most number of officers who entered as Inspector of Central Excise but severe pay erosion in comparison to their coevals who entered as Inspector of Income Tax in the same ministry. Even the benefit under ACP scheme has failed to protect pay erosion and also the modified ACP would be of no help. The Association has prepared a table, produced below, from which the nature of pay erosion would be clear to you.

Table showing the unthinkable substantial pay erosion suffered by the Superintendent of Central Excise in comparison with the coevals of the Income Tax Department in the same Ministry

Inspector of Central Excise			Inspector of Income Tax		
Year of Recruitment	Basic Pay as on 1.1.06 in the Pre revised scale.	Pay as on 1.1.06 in the New Pay Band	Year of Recruitment	Basic Pay as on 1.1.06 in the Pre Revised Scale.	Pay as on 1.1.06 in the New Pay Band
1974	10475 (Superintendent)	24890	1974	13875 (Jt Commr.)	33410
1975	10475 (Superintendent)	24890	1975	13875 (Jt Commr.)	33410
1976	10475 (Superintendent)	24890	1976	No Recruitment	
1977	10475 (Superintendent)	24890	1977	12275 (Dy. Commr.)	29440
1978	10200 (Superintendent)	24380	1978	11625 (Dy. Commr.)	28230
1979	10200 (Superintendent)	24380	1979	11625 (Dy. Commr.)	28230
1980	9925 (Superintendent)	23870	1980	No Recruitment	
1981	9925 (Superintendent)	23870	1981	11300 (Dy. Commr.)	27620
1982	9250 (Superintendent)	22010	1982	10475 (Asst. Commr.)	24890

In the above table, the pre-revised pay and proposed revised pay of the Inspectors of Central Excise up to 1981, who have been awarded second financial up gradation for failure to give second promotion and that of 1982, not eligible to get the benefit of ACP on 1.01.2006, have been listed vis-à-vis the Inspectors of Income Tax who due to good promotion prospects, have gone way ahead (from Rs.2880 to Rs.8520/) causing hostile discrimination in respect of pay. **Needless to mention that ACP failed to remove pay erosion and the modified ACPS suggested by the VI CPC would also fail to give equity and justice in this regard.**

The Association has seen that the department undertook restructuring in the year 2002, taking into consideration like revenue collection along with workload for creation of small Commissionerates. The creation of Commissionerates on the basis of revenue is not only unscientific but also not commensurate with modern management. In case only revenue collection is taken for creation of Commissionerate, there would be requirement

of number of Commissionerates for refinery and big unit. Whereas the Association is not against creation of Commissionerate on genuine and legitimate basis but at the same time no Commissionerate should be created to meet the sweet will. The prime importance is to provide rule based administration rather to create Commissionerate. From the experience and the post-revelations of the last restructuring, it has been seen that the inherent purpose was to make IRS officers of CBEC at par—the officers of 1983 batch were in the rank of Commissioners in CBDT- with their coevals in the CBDT. Even in some cases it was seen that an officer promoted to the Jt. Commissioner had to be given the scale of Addl. Commissioner the very next day. **The attempt to bring the IRS of the CBE&C with that of its coevals in the CBDT is definitely appreciable and overdue.** But at the same time the demand of this Association to make their members at par with their coevals in the CBDT was not conceded on the analogy that more than 33.3% of the Gr. - A posts could not be created.

The Association is very happy to see from the working paper circulated by Study Groups appointed by the Board that one of the **objects is to assure compensation in terms of promotions and job profiles in comparison to other cadres in Central/State Govts.** The Association has no idea as to how the compensation of pay erosion due to non-availability of promotion can be given. However, to avoid further humiliation and pay erosion, immediate creation of a separate Service Rules for all Gr. B (Gazetted and non-Gazetted) officers under the CBEC with common seniority list is the only solution. The said exercise would be expenditure-neutral as well as helpful to the CBEC to discharge its obligation for implementation of the liberalized statutes in garnering more revenue and helping the *bona fide* tax payers to discharge their obligation in a hassle free manner. **The Association from different observations of the judicial fora has seen that doctrine of public accountability requires the Board to act timely and in a responsible way discharging its statutory obligation in the matter of appointment under Customs and Central Excise law.** The Member (P&A) and Joint Secretary (Administration) of the Board were unanimous for making of a separate Service Rules for all the Group B(Gazetted and Non-Gazetted) officers and wanted to convince the other Board Officials in the Board Meeting on 30.01.2008 but the said meeting was not convened. Thereafter, the process is delayed by appointment of Committee and Study Groups.

Rationalization of taxation law vis a vis proper administration.

1. Government's Policy

In consonance with globalization, the Government of India is sincerely trying to rationalize Tax-laws drafted in a simple and easy language, understandable to even laymen, particularly the Central Excise and Service Tax statutes. Gone are the days when there were hundreds of rules and sub- rules of the Central Excise Rules, 1944 and thousands of notifications without stipulating the proper officer under the said provisions. In the year 2001, the said Rules were repealed to give handy Rules with mention of specific officer to exercise the function. Presently barring a few, all powers under the Central Excise and Service Tax Laws are exercisable by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be. Policy of the Government remains to help the bona-fide tax payers to discharge their obligation in a hassle - free way. The amendment of CENVAT Rules giving power to the AC/DC to permit removal of finished goods directly from the job workers' premises, so long exercised by the Commissioner, is an example of delegation of power under the rule to an Officer who is in close proximity of the assesses.

As far as the implementation of the policy is concerned it is, however, seen that general tax payers are unable to derive substantial benefit for the lack of administrative support. There can not be any difference of opinion that without administrative measures the benefit of legislative changes is not supposed to yield fruitful result. For such administrative measures the proper tax administration is an essential prerequisite. The experience reveals that because of inefficient handling of the liberalized Law, the tax payers and tax collection suffered in-spite of the simplification of procedure. The Association thinks that only Rule-based post in hierarchy of the administration can reduce the pendencies and translate the policy of the Government. The Hon'ble Supreme Court of India in the case of Salem Advocates Bar Association, Tamil Nadu v. U.O.I., as reported in the Telegraph, Calcutta, 3rd August, 2005 in its judgment dated 2nd August, 2005 asked the Centre to provide for financial and infrastructure to deal with the additional cases every time a new law is enacted since for the last 50 yrs, the judicial impact assessment has not been done. The judgment supports the contention of the Association that for healthy administration **rule based posts** is the prime importance.

In this regard, it is pointed out that the VI Pay Commission was entrusted to

submit its recommendation to make the Govt. organization into modern, professional and citizen friendly entities that are dedicated to the service of the people. The Commission in its recommendation in para 6.1.2 observed that the organization should be of **pyramidal type** but unfortunately did not give specific recommendation rather in para 6.3.15 concluded that it is not making specific recommendation regarding restructuring of individual services and cadres as this task will be better performed by the Ministries and departments. The prevailing ratio between the Gr.A and Gr.B in the CBE&C(1:5.69 ref. the model administrative set up in other Central Government organizations are shown herein below) is truncated inverted pyramid instead of pyramidal type. Till creation of LTU, the Board never thought of any administrative set up/supervisory ratio. **In the recently introduced LTUs, it may be seen from the 'Staffing Details of Chief Commissioner's Set Up' and 'Commissioner's Set Up' that for 14 no. of Superintendents 9 no. of AC/DC and for 27 no. of Superintendents 9 no. of AC/DC respectively have been allotted. The model itself speaks about the needed ratio between the Superintendent of Central Excise and AC/DC. _**

The Board in its reply to the questionnaire no.1.2 submitted, interalia, to the VI CPC to create an unorganized Group A Service to address the alarming situation of demoralization and discontentment presently prevailing amongst Executive Officers in the Department of Central Excise & Customs. Later on the Member(P&A) and Joint Secretary(Admn.) of the Board also unanimous to suggest to make a separate Service Rules for all Gr. B (Gazetted and Non-gazetted) executive officers in the Board.

The relentless persuasion of the Association to create posts of AC/DC on the basis of need of function failed to draw attention of the Board till recently. From para 2(vi) of "Rule based posts" herein below, it may be seen that the Association requested for posting of officers not below the rank of Assistant Commissioner from the respective Commissionerate to defend the cases before the Commissioner (Appeals). **The Board did not pay any heed to the said suggestion but now the same finds support from the observation of the Hon'ble Tribunal of Delhi Bench in the case of Commissioner of Customs, Lucknow Vs. Kapil Prasad reported in 2008(10) S.T.R.127, that representative of Revenue before Commissioner (Appeals) to be of the level who had exercised powers of making such orders to understand the importance of pointing out relevant material having bearing on appeal.**

2. Rule based posts.

Though the laws have been made very specific about their exercising power, but it is seen that Board did not try to create adequate no. of posts of Assistant Commissioner in conformity with the changed provisions, required for discharging the responsibilities as enshrined in the Rules. There is lack of co-ordination between the TRU and DoPM for which the Board failed to implement the policy of the Government.

The following are the areas in Central Excise and Service Tax law where immediate creation of posts of Assistant Commissioner is required:-

Central Excise

- I. After introduction of self- assessment, the department has stressed on the audit and scientific auditing like EA-2000 has been initiated. The Director General of Audit in his DO under F. No. 503/10/99, dated 14.06.2000 categorically stated that all Audit Parties under EA-2000 should be headed by at least one Group-'A' Officer but no such attempt is found to have been taken by CBE&C and it has recently been decided to take the service of Chartered Accountant and Cost Accountant for desk review ignoring the use of experiential knowledge of a large number of Superintendent of Central Excise borne in the group 'A' scale on promotion to Gr. 'A';
- II. Under the erstwhile rule 201 of the Central Excise Rules,1944, any Central Excise Officer empowered under the rule could visit any place of manufacture and / or storage of excisable goods. Under rule 22 of the Central Excise Rules, 2001 / 2002, the empowered Central Excise Officer can visit the premises registered under the Central Excise Rules and so un-registered premises can not be visited by the empowered officer, even if some illegal manufacture or storage of non-duty paid goods comes to the knowledge while on duty outside office. To enter such premises, a search warrant is to be taken from the AC. To thwart evasion of duty, the Anti-evasion wing should be always supervised directly by the Assistant

- Commissioners, who can enter any premises for his power to issue search authorisation;
- III. Recovery of arrears has become very important in view of rule 8 of the C.Ex. Rules, 2002 and the recent empowerment to every C.Ex. Officers not below the rank of Assistant Commissioner to exercise all powers under section 11 of the C.Ex. Act, 1944 vide Notification No - 4/2004-CE (N.T.), dated 17.02.2004 have strengthened the need of more no. of Assistant Commissioners. It is needless to mention that after introduction of monthly payment, the realization of arrears has become an additional regular duty;
 - IV. The CBE&C under its Circular No. 500/66/99-CX.dated 15.12.1999 have appointed an officer in the rank of AC/DC in each Commissionerate, except where AC/DC is posted, as Maritime Commissioner, for the purpose of facilitating export under bond but no such post has been created;
 - V. The Kelkar Committee recommended adjudication by bench for quality adjudication orders. Experience reveals that the Group "B" Officers of Customs on promotion are non-starter in CE and Service Tax because of no previous working knowledge in the said Tax. Therefore bench comprising experienced CE Officers is bound to deliver quality orders, particularly in the divisional level. The recommendation has not been implemented;
 - VI. To improve the success rate in appeals, the CBE&C appointed one Expert Group headed by Sri R. K. Tiwari, Chief Commissioner, Pune Zone and most of the recommendations have been implemented except the staff. The Group recommended posting of competent officer from the respective Commissionerates in the office of Commissioner (Appeals) to defend the case on behalf of the department. The said competent officer shall not be below the rank of Assistant Commissioner since he will be required to defend the orders passed up to the level of Additional Commissioner. Recently, without amending the Appeal Rules, direction has been issued to hand over a copy of the appeal to the adjudicating authority so that he can defend the case before the Commissioner(A). The action is contrary to the decision taken by the Board to create post of Jt. CDR in the rank of Commissioner in every bench of Tribunal for quality argument. It is difficult to understand as to why the similar action shall not be taken to create post of AC to be attached to the office of the Commissioner(A). The creation of such posts of Assistant Commissioner finds support from the decision of the **Hon'ble CESTAT, Delhi Bench in the case of Commissioner of Customs, Lucknow Vs. Kapil Prasad reported in 2008(10) S.T.R.127, that representative of Revenue before Commissioner (Appeals) to be of the level who had exercised powers of making such orders to understand the importance of pointing out relevant material having bearing on appeal;**
 - VII. In Settlement Commission, post of Commissioner (Investigation) has been created to assist the Commission. In view of the amendment of section 35A(3) of the C.Ex. Act,1944 w.e.f. 11.05.2001, the power of remand has been deleted and the Commissioner (Appeals) is to pass order after making further inquiry but for the purpose of inquiry , no competent officer has been provided. Needless to mention that such inquiry officer should not be the officer below the rank of Assistant Commissioner since he is required to investigate the cases adjudicated by the officers up to the level of Additional Commissioner; and
 - VIII. It is expected that the recently introduced "Help Centre" will also provide guidance to all tax prayers of Central Excise and Service Tax. The guiding team should invariably be comprised officers of the rank of Assistant Commissioner since he is statutorily empowered officer in the most junior level to give any clarification.

Service Tax

In the year 1989, the CBE&C calculated the posts of Assistant Commissioner in Central Excise and Customs on the basis of function and submitted to the Supreme Court that the ratio between the Central Excise and Customs to be 2:1. After introduction of Service Tax w.e.f. 01.07.1994, as on date there are 109 Nos. of services on which Service Tax is levied, the CBE&C has not re-calculated the post of Assistant Commissioner on the basis of function in Service Tax. A Committee has been appointed to restructure the present Central Excise Commissionerate and to create new Service Tax Commissionerates. **The Association submitted to the Committee that the Service Tax Commissionerates should be created with Service Tax Group like Assessment Group existing under the Customs Commissionerate. The Group will be in-charge of some specific services where the Commissionerate will be functional. In case of jurisdictional Commissionerates, the Group will be in-charge of particular area and will**

function like M.O.R. pattern existing at the time of Tobacco Excise. The Division pattern as existing in Central Excise is not appropriate in Service Tax. In 2000 the Chief Commissioners' conference recommended for placement of 1000 assesseees under one A C. After benefit of exemption up to taxable value of Rs.10 lakhs and extension of benefit of Cenvat credit, there is need to reduce the number to 500. There are 118027 assesses at present(working under CENVAT and excluding the manufacturer assesses) and if Service Tax Groups are created with 500 assesses under each group then there would be immediate requirement of 2360 Assistant Commissioners. In view of the fact that the Service Tax is bound to grow by leaps and bounds in the years to come, the Group as required can be created as needed without any expenditure from the government exchequer. On the basis of function, the Assistant Commissioner is required to discharge the following work:-

- i). The Assistant Commissioner being the principal officer under the Finance Act,1994, the Group as suggested above should be headed by one Assistant Commissioner. The Assistant Commissioner till the recent amendment of section 73 of the Finance Act, 1994 has to adjudicate all the cases irrespective of amount of Service Tax or period. Even after the amendment if the pending cases are considered, it can be seen that all the pending cases of adjudication are in the level of Assistant Commissioner;
- ii) In view of abolition of section 71 *ibid*, Superintendents/ Inspector are required to function under Assistant Commissioner;
- iii) In terms of section 82 *ibid.*, the Commissioner is required to issue search authorization to Assistant Commissioner and after abolition of scrutiny, the search and seizure remains the only alternative to detect evasion of Service Tax;
- iv) The classification of service has become very important in view of the different dates of imposition. Instances are many when there are similarities in different services and the tax payers want to classify their services in the category on which tax has been imposed on later dates. The Assistant Commissioner in charge of the Group has an important function in this matter;
- v) A new section 87 has been inserted in the Finance Act,1994, analogous to sec.11 of the C.E.Act,1944, for recovery of any amount due to Central Government and so there would be further requirement of AC;
- vi) Another new Section 73C has been inserted in the Finance Act, 1994, for provisional attachment of any property during the pendency of proceedings under Section 73 or 73A *ibid*;
- vii) Though the Superintendent of Central Excise is the competent officer to issue registration certificate but the SAPS developed by NIC generates registration certificate to be signed by AC/DC. The present PAN based registration is issued in place of registration given by the Superintendent and STC number given by AC/DC.

3. Inadequate No. of ACs and expenditure neutral suggestion

The Central Board of Excise and Customs has also realized the need of adequate no. of posts of AC/DC, which is evident from the letter written by it to all the Chief Commissioner of Central Excise and Customs and also all Director Generals under its letter vide F.No. A.11013/63/2004-Ad.IV dated 29/10/2004 to delegate some powers of A.C. to the Superintendents of Central Excise with ACP Grade for Service Tax Commissionerates under Section 37A (d) of the Central Excise Act, 1944 and the said letter was issued with the kind approval of the Hon'ble Finance Minister. Pursuant to restructuring, the CBE&C in its suggestion before the Hon'ble CAT, Mumbai Bench in O/A Nos. 454/2002 and 429/2002, showed willingness to create additional 3000 posts of AC. Further the CBE&C under letter dated 17/04/2003 addressed to the Revenue Secretary, *inter alia*, intimated that though it was required to create 3000 posts of AC on functional necessity, the same could not be done because of the restriction for not creating post more than 33.33% in Group-'A'. The CBE&C in its suggestion also the same could not be done apparently because of the Group-'A' Recruitment Rules which provides for recruitment of 50% of the posts of Assistant Commissioners directly from UPSC.

The present administrative set up starting from the level of Chief Commissioner to Group-'B' Executive Cadre under the CBE&C after recent creation of 4647 posts in all Grades, is shown below :-

Name of the post	Existing strength	Increase in strength	Strength after restructuring	Recent increase	Present Strength	Ratio between the post with the immediate lower post
Chief Commissioner	21	26	47		47	1 : 6.30
Commissioner	146	144	290	6	296	1 : 1.01
Additional Commissioner	194	106	300		300	1 : 0.98
Joint Commissioner	96	180	276	17	293	1 : 2.05
Deputy Commissioner	808	-207	601		601	1 : 1.54
Assistant Commissioner	453	337	790	135	925 (50% meant for promotion)	1 : 30
Group 'B' Officers	7901	4685	12766	1110	13876	

In the above table, it may appear that there has been a substantial increase of Assistant Commissioners from 453 to 925. But the fact remains that there has been no increase at all if compared with the position prevailing in the year 1983. Prior to 1983, there were 1392 posts of AC (JTS + STS). Out of these posts, 131 posts were converted to DC (now equivalent to JC) in the year 1983 to cater the career prospect of the directly recruited Group-'A' officers. So, the number of AC posts became 1261 (JTS + STS). Pursuant to the recommendation of 5th CPC and acceptance by the Government, the 1261 posts were bifurcated to 453 of A.C. and 808 of D.C. In the restructuring 2001, 808 D.C. posts reduced to 601 and 453 increased to 790 which has been further increased to 925. As per the Group-'A' Recruitment Rules, 50% of 925 posts are available for promotion to 13,876 no. of Group-'B' Gazetted Officers. In the year 1983, 50% of 1,392 were available to 3,500 Group-'B' Gazetted Officers and therefore, it can be easily understood that there is no corresponding increase of promotional posts in parity with the increase of the Group-'B' Gazetted Officers. As a result, the directly recruited Inspectors of Central Excise are retiring in most of the cases with one (1) promotion in their service career. Whereas in the same CBE&C, the directly recruited IRS Officers are getting five (5) promotions and even the Ministerial Officers are also getting five (5) promotions. Even in the same Board, the Superintendent of Customs (P) and Appraiser of 1996 and 1994 respectively are getting promotion in the post of A.C. whereas the Superintendent of Central Excise of 1991 are being promoted. This hostile discrimination within the Department has created a demoralizing effect in the minds of all directly recruited Inspectors. In the CBDT, the directly recruited Inspector of Income Tax are getting 4 – 5 promotions and the ACP scheme has failed to give benefit to the directly recruited Inspector of Central Excise because of the pay erosion suffered due to non-availability of promotion. As on 1.01.2006, the Inspector of Income Tax who was recruited in the year 1974, are getting Rs.8520/ more in basic pay than that of the Inspector of Central Excise.

It is well known that the biggest impediments for the career prospect of the Inspectors / Superintendents of Central Excise in CBE&C are (i) they do not belong to any organized service like CSS, DANICS etc. and (ii) the interfacing stage as feeder cadre to IRS in AC level. As a result, the model of administrative set up in CBE&C remained like truncated inverted pyramid. The ratio between the Group-'A' and Group-'B' Gazetted Officers in the CBE&C is 1 : 5.69.

The model administrative set up in other Central Government organizations are shown below:-

Sl. No.	Name of the Ministry	Group – 'A'	Group-'B'	Ratio
1.	Agriculture	857	1239	1 : 1.45 *
2.	Chemical and Fertilizer	114	213	1 : 1.86 *
3.	Commerce	817	1598	1 : 1.95 *
4.	HRD	718	1528	1 : 2.12 *
5.	Industry	962	1291	1 : 1.34 *
6.	Labour	1618	891	1 : 0.50 *
7.	Mines	2792	1181	1 : 0.42 *
8.	Textiles	199	351	1 : 0.56 *
9.	CBDT (Finance)	4159	4450	1 : 1.07 **
10.	CBE & C (Finance)	2439	13876	1 : 5.69 **

*Source - 5th CPC Report , Annexee 26.7(R)/

Prior to introduction of LTU, the CBE&C never thought of any span of control / ratio between the Gazetted Group-‘B’ and Group-‘A’ Officers, particularly between the Superintendents and AC/DC.

Now, the Association would like to submit certain proposals for the proper and efficient implementation of the Government’s liberalized policies. The proposals are expenditure neutral and have been prepared from the cognitive experience. The proposal is analogous to Linear Plan Programming (L.P.P.) and if approved, would definitely help to garner more revenue.

It is also a fact that the Government would not like to keep a large no. of officers at the base level of any organized Group ‘A’ service. On the question of merger of Group ‘B’ with Group ‘A’, 5th CPC in para 83.87 has observed that the merger of Group B with junior Group A would mean a large addition to the base of the posts. The large no. of officers in the Group ‘A’ would be impediment for the career progression of the directly recruited officers in the organized Group-‘A’ service.

Earlier there were recommendations (like para 97 of 3rd CPC) regarding weightage in seniority to the officers of Class II for services rendered by them in that grade on their promotion to Class I post. The recommendations were not accepted by the Government. Though, as mentioned earlier, in CSS, UT Services etc. Group B officers are directly promoted to STS. This has been possible because the officers belong to different services in those cases.

The UT and State officers are the feeder cadres to AIS and the interfacing stage is senior duty posts. The All India Services (Appointment by promotion) Rules provide for a promotion quota of 33.33% of senior duty posts for the above officers (para 49.15 of VCPC report).

Thus, the UT officers work in parallel upto certain stages with AIS like CSS Officers. This has been possible because CSS, DANICS, DANIPS etc. belong to different services and their interfacing stages for next higher service for which they are the feeder cadres are much higher than JTS.

Even in case of organized Audit & Accounts Subordinate Services’ officers, the Senior Audit Officers, Gr.B who have now been placed in PB-3 with grade pay of Rs.5400/, are absorbed in the organized Indian Audit & Accounts Service in the grade pay of Rs.6600/ on promotion.

In para 22.29, the Pay Commission regarding promotion has *interalia* observed :-

“We, therefore, strongly feel that Government should formulate a promotion scheme which should cater to the promotion aspirations of Central Government employees in general belonging to different categories across the Ministries and Department.”

Thus it is evident that unless i) a service is established for the officers entering in the grade of Inspector, P.O., Examiner, ii) posts are earmarked like CSS, UT Services for all levels including the Group A level up to certain stages considering the number of posts on the base level (i.e., Inspector) and iii) Interfacing stage for promotion to IRS is raised, all good intention for catering the promotion aspiration of the officers recruited as Inspectors through the restructuring process would be a futile exercise.

Separate service of CSS has succeeded to benefit the Assistants in the Central Secretariat, in their promotion and protection from pay erosion as follows:-

- i. The Assistants of Central Secretariat are getting promotion to the post of Section Officers with the pay scale of Rs.7500-10,500 which is stepped up to Rs.8000-13,500 after four (4) years in PB-3;
- ii. The said non-functional scale of Rs.8000-13,500 is not coming in the way to get grade pay of Rs.6600/ in the MACP Scheme ;
- iii. The Section Officer having pay scale of Rs.7500-10,500 are getting promotion directly to the post of Under Secretary having pay scale of Rs.10,000-15,200/ in the grade pay of Rs.6600/;
- iv. Certain percentage of posts in the cadre of Deputy Secretary, Director and Joint Secretary are reserved for promotee officers; and
- v. *In-situ* promotion scheme is applicable to the Cadre of Assistants in Central Secretariat and the promotion has been given who has complete one and half time of the qualifying service.

Also, in case of DANIPS/DANICS, the officers are benefited because of having the said separate service.

In view of the above, a separate service like CSS, DANICS be created de-linking it from IRS and raising the interfacing stage from existing AC to a higher level of

Additional Commissioner which are in vogue in DANICS, DANIPS, UTs etc. for being absorbed in the organized Group-‘A’ services.

ADVANTAGES of having a separate service for the officers entering as Inspectors that it:-

- i. would help to garner more revenue;
- ii. would not dilute organized Indian Revenue Service; would not act as impediment for the creation of posts as and when required to fulfill functional necessities;
- iii. would help to create posts of the AC/DC in consonance with the approval of SEZ;
- iv. would help to entail improvement of career prospects of the subordinate executive officers which in turn motivate them;
- v. would be expenditure neutral and protect the officers from further erosion of pay as already suffered if compared with others, and the officers who have already suffered pay erosion can be supplemented; and
- vi. would utilize the officers for the proper work for which they are already being paid under ACP Scheme.

Legal provisions for creation of new separate organized service to award promotion to the cadre of Inspector (Gr-B) :-

Ministry of Finance OM No. F.14(14)E(Coord)/70 dated 17/11/70 and 22/09/71 and OM No. F14(1)E(Coord)/71 dated 27/04/71, which *inter alia* provide that ban on creation of non-plan posts is exempted if new posts are required in connection with reorganization of any department with the setting up of any new organized service provided such re-organization etc. is approved by the Cabinet. The Ministry of Finance OM No. 7(7)-E(Coord)93 Dated 03/05/93 *inter alia* provides that non-plan Group-‘A’ posts below the level of Joint Secretary may be created with the approval of Finance Minister. Therefore, the CBE&C may be directed to examine on merit and report for setting up of a new organized service for Inspector and Superintendent of Central Excise and creation of Group-A posts for such new organized service of (below) and above the level of Deputy Secretary to below the level of Joint Secretary i.e., Superintendent to Additional Commissioner by up grading certain posts for removal of stagnation existed in the grade of Inspector and Superintendent, Central Excise.

The Central Government under Department of Personnel & Training OMs Nos.21/39/03-CSI; 21/37/03-CSI dated October, 28, 2003 *inter alia* had effected changes in Cadre Structure of Central Secretariat on the following manner :-

- I. A new senior selection grade (Rs. 14,300-18,300) to be designated as Director has been introduced in CSS with the cadre strength of 110.
- II. Direct Recruitment to the grade of Section Officer through Civil Service Commission has been discontinued.
- III. Further Cadre review of CSSs to be undertaken after three years to remove distortions.

After such restructuring the Section Officers have been allowed two pay scales i.e., Rs. 6500-to 10,500 and Rs. 8,000 to Rs. 13,500/=.

Further the Section Officers who have completed one and half time of the qualifying service for promotion to the post of Under Secretary, have been promoted at a time.

The above changes could be done for the reason that there is separate service rules in the name of CSS Rules. Thus the problem in the case of Inspectors and Superintendents of Central Excise can be solved if **a separate Service Rules** is made.

In fine, the Association most respectfully submit that it is always ready to assist your kind honour in any matter in the interest of revenue and to help the bonafide tax payers. Also, it would be of grate help if your kind honour can **recommend compensation for the officers who has suffered unthinkable pay erosion as shown in the Table (shown in first page) so that they do not repent for their service in the CBE&C.**

(S.P.Siddhanta)
Secretary General