

Chapter 15: Comprehensive Issues under Customs

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Learning objectives

- Meaning of adjudicating authority
- Protective demand
- Demand and show cause notice importance
- Appeal up to the Supreme Court of India
- Settlement Commission
- Authority for Advance Ruling

15.0 Introduction

It is essential to know the Customs Department's hierarchy before dealing with their officers. Any aggrieved person against the order of adjudicating authority can knock the doors of the higher authority for want of justice. In this chapter it has been explained to the core by highlighting the important issues in a simplified manner. There are many provisions are commonly applicable for GST Law and Customs. The same has been explained in this lesson at appropriate places.

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15.1 Adjudicating Authority

Principal Chief Commissioner of Customs/Chief Commissioner of Customs

Principal Commissioner of Customs/Commissioner of Customs

Additional Commissioner of Customs

Joint Commissioner of Customs

Deputy Commissioner of Customs/Assistant Commissioner of Customs

Superintendent of Customs

Inspector of Customs

Hierarchy of the Department of Customs

15.1.1 Adjudicating Authority for Confiscating Goods u/s 122 of the Customs Act, 1962

Adjudicating Authority for Confiscating Goods u/s 122 of the customs Act, 1962	
AUTHORITY	Goods liable for confiscation (w.e.f. 28-5-2012)
The Superintendent	≤ ₹ 50,000
The Deputy/Assistant Commissioner	> ₹ 50,000 ≤ 5,00,000
The Joint/Additional Commissioner	without any upper limit
Commissioner	without any upper limit

15.1.2 Power to Arrest u/s 104 of the Customs

Powers to arrest and summon

Certain specified offences to be non-bailable [Section 104(6) of Customs Act, 1962] w.e.f. 10-5-2013:

NON-BAILABLE OFFENCES

An offence punishable under section 135 relating to:—

- evasion or attempted evasion of duty exceeding ₹50 lakhs; or
- prohibited goods [notified under section 11 also notified under section 135(1)(i)(C)]; or
- import/export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds ₹1 crore; or

- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds ₹50 lakhs, shall be a non-bailable offence.

BAILABLE OFFENCES

All other offences under the Customs Act, 1962 except those specified above shall be bailable.

15.1.3 Offences involving evasion of duty [Sub-clause I and (D) of section 135(1)(i)]

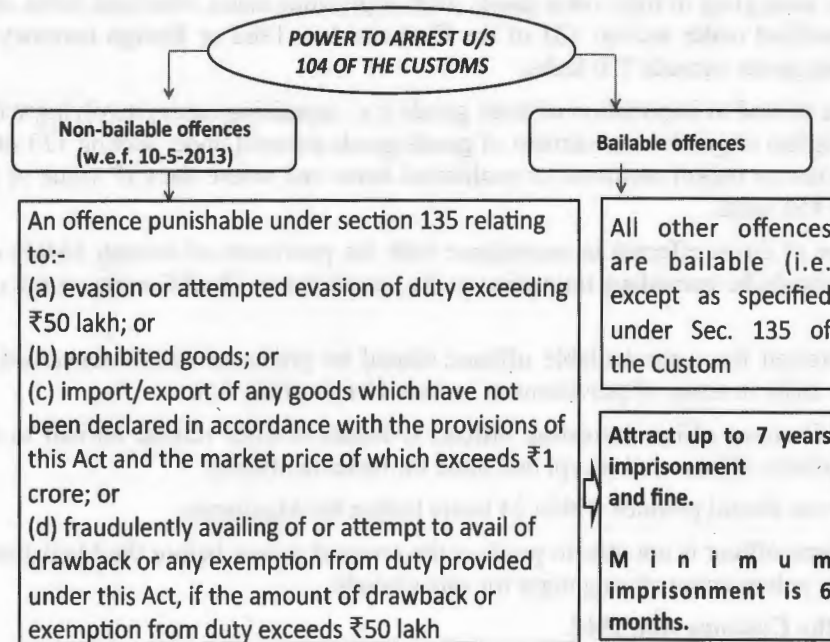
Section 135 stipulates the penal provisions applicable to a person who has committed any of the offences specified therein (hereafter referred to as offender who committed the offence u/s 135 of the Customs Act, 1962).

W.e.f. 10th May, 2013

such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to—

fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹50 lakhs.

15.2 Power to Arrest under section 104 of the Customs



w.e.f. 1-8-2019 non-bailable offence includes:

Fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees,”

‘Explanation.—For the purposes of this section, the expression “instrument” shall have the same meaning as assigned to it in Explanation 1 to section 28AAA.’

Immediate prosecution in case of gold Circular No. 46/2016-Cus, dated 04.10.2016

Where the offence relates to gold, prosecution may preferably be launched immediately after issuance of show cause notice.

Silver bullion and cigarettes notified under section 123 of the Customs Act, 1962 Notification 103/2016-Cus (NT), dated 25.07.2016

Where these goods are seized under the Customs Act, 1962 in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the accused and not on the Department.

15.3 Guidelines for arrest and bail under Customs Act, 1962

[Circular No. 974/08/2013-CX, dated 17.09.2013]

1. The power to arrest a person must be exercised with utmost care and caution by the Commissioner of Customs or Additional Director General of Customs.
2. The decision to arrest should be taken in cases which fulfil the requirement of the provisions of section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.
3. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest. These situations may include circumstances:
 - (a) to ensure proper investigation of the offence;
 - (b) to prevent such person from absconding;
 - (c) cases involving organised smuggling of goods or evasion of customs duty by way of concealment;
 - (d) masterminds or key operators effecting proxy/benami imports/exports in the name of dummy or non-existent persons/IECs, etc.
4. While the Act does not specify any value limits for exercising the powers of arrest, the same should be effected *in respect of bailable offence only in exceptional situations which may include:*
 - (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds ₹20 lakhs.
 - (b) In a case related to importation of trade goods (i.e. appraising cases) involving willful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds ₹50 lakhs.
5. In every case of arrest effected in accordance with the provisions of section 104(1) of the Customs Act, 1962, there should be immediate intimation to the jurisdictional Chief Commissioner or DGRI, as the case may be.
6. A person arrested for a non-bailable offence should be produced before concerned Magistrate without unnecessary delay in terms of provisions of section 104(2) of the Act.
7. However, a Customs officer (arresting officer) is bound to offer release on bail to a person arrested in respect of bailable offence and accept bail bond for bailable offence.
8. Arrested person should produce within 24 hours before the Magistrate.
9. In case customs officer is not able to produce the arrested person before the Magistrate, then handed over to the nearest police station during night for safe custody.

15.4 Section 153 of the Customs Act, 1962

SERVICE OF ORDER OR DECISION OR SUMMONS OR NOTICE BY THE COMMISSIONER OF CUSTOMS IS VALID EVEN IF IT SENT

BY REGISTERED POST

OR

By Speed post with proof of delivery or courier approved by CBIC

OR

Tendering (Physical delivery)

AS MAY BE APPROVED BY THE COMMISSIONER OF CUSTOMS.

w.e.f. 29.3.2018, Section 153 of the Customs Act, 1962:

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

- (a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

- (b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;
 - (c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;
 - (d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or
 - (e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.
- (2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).
- (3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”.

Jay Balaji Jyoti Steels Limited v CESTAT Kolkata 2015 (37) STR 673 (Ori):

Decision: The High Court, held that insertion of words “or by speed post with proof of delivery” in section 37C(1)(a) of the Central Excise Act, 1944 is clarificatory and a procedural amendment and hence, would have retrospective effect.

Case Law:

Jyoti Enterprises v CCE & ST 2016 (41) STR 0019 (AIR)

Facts of the Case: The order-in-original, in assessee’s case, was passed by the Department. However, the assessee was unaware of the order passed and came to know about it two years later when the Department started recovery proceedings.

Point of Dispute: The assessee argued that there was no proper service of order by the Department. However, Department submitted that the order was served 2 years ago at the residential premises of the assessee to a person named Virendra Yadav who represented himself to be assessee’s nephew.

The assessee contended that the order was required to be served to the person for whom it was intended, namely, the assessee or its authorised agent. Since Virendra Yadav was neither the authorised representative nor the order was served upon the assessee, there was no proper service of the order.

Decision: The High Court held that the order in original was duly served upon the assessee. The High Court observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that Virendra Yadav was not a family member or that he was not connected with the business. The assessee had nowhere stated that Virendra Yadav was not her nephew. Further, nothing has been stated that the address where the service of the original order was made was incorrect.

Therefore, decision is given in favour of the Department and against the assessee.

Case law:

Santosh Handlooms v CCus. 2016 (331) ELT 44 (Del)

The issue which arose for consideration was whether in case of seizure of goods under section 110 of the Customs Act, 1962, the show cause notice [required to be issued under section 124(a) within six months of seizure] can be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself.

Decision: The CHA [now Custom Broker], is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs. It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so. The High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

**"Circulars of CBIC v Judgments of the Supreme Court and the High Courts:
Which one is binding on the authorities under the respective statutes?"**

***Ratan Melting & Wire Industries v CCE* 2008 (231) ELT 22 (SC):**

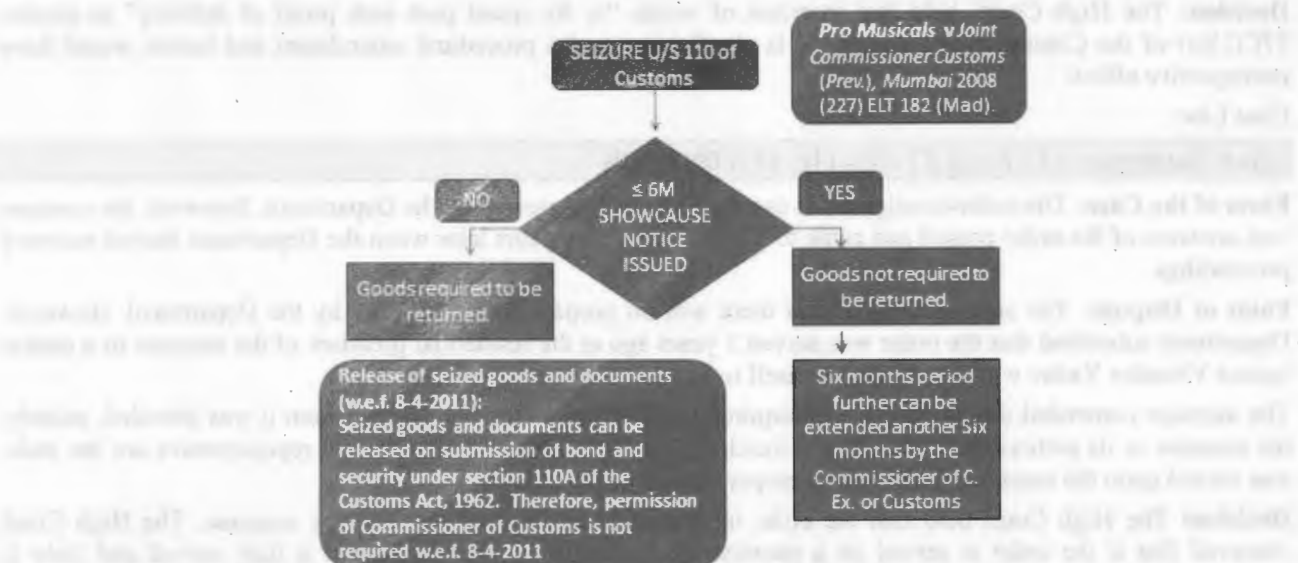
The Supreme Court has held that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says, and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law.

Therefore, "Circulars issued by the Central Board of Excise and Customs (CBIC), which are contrary to the judgements of the Supreme Court and the High Courts are not binding on the authorities under the respective statutes."

Circular No. 1006/13/2015-CX, dated 21.09.2015:

In the light of the aforesaid judgment, CBIC, has instructed its officers not to follow the Board Circulars contrary to the judgements of Hon'ble Supreme Court and High Court where Board has decided not to file an appeal on merit as such circulars become non-est in law.

15.5 Seizure u/s 110 of Customs



In case of Pro Musicals case it is clarified that 6 months time period reckoned from the date of seizure but not from the date of detention.

If any documents seized during the course of any action by an officer and relating to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

Answer: Yes. The Bombay High Court held the same view in the case of Manish Lalith Kumar Bavishi (2011).

Case law:

***Akanksha Syntex (P) Ltd. v Union of India* 2014 (300) ELT 49 (P&H)**

Facts of the case: An order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard. However, the petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case).

Decision: Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return.

The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

However, w.e.f. 29.3.2018:

“Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

“Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.”.

From the above it is evident that *Akanksha Syntex (P) Ltd. v Union of India 2014 (300) ELT 49 (P&H)*, case law became nullified.

15.6 Refund of Duty/Rebate of Duty/Remission of Duty

Refund of duty	Rebate of duty	Remission of duty
It means person paid tax or duty where subsequently noticed that not required to pay. Hence, such person is entitled to claim refund. Example: Duty paid on exempted goods is qualify for refund	It means duty or tax paid where required to pay, thereafter, on account of satisfying certain conditions qualify for rebate of duty paid earlier. Example: Rebate of duty can be understood as duty draw back. Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.	It means duty or tax is levied but not paid, subsequently got exempted from payment of duty or tax. Example: Warehoused goods after import got destroyed due to fire or natural calamities (i.e. loss occurred within the warehouse).

15.7 Pre-notice consultation: Effective from 02.04.2018

The pre-notice consultation needs to be done in the following manner:

- (1) Before the notice is issued, the proper officer shall inform, in writing, the person chargeable with duty or interest of the intention to issue the notice specifying the grounds known to the proper officer on which such notice is proposed to be issued and the process of pre-notice consultation shall be initiated as far as possible at least 2 months before the expiry of the time limit mentioned in section 28(3) of the Act.

Section 28 provides that the proper officer shall issue a notice of recovery of duties within 2 years from the relevant date. In case the assessee has already made the payment he must inform the same in writing to the proper officer. However, if proper officer is of the opinion that the amount paid falls short of the amount actually payable he may proceed to issue the notice and the period of 2 years shall be computed from the date of receipt of information. This means, that process of pre-notice consultation shall be initiated at least 2 months before the expiry of the 2 years timeline stated above.

The person chargeable with duty or interest may, within 15 days from the date of communication referred to in sub regulation (1), make his submissions in writing on the grounds so communicated: However, if no response is received, from the person to whom the grounds on which notice is proposed to be issued, is received within the specified time, the proper officer shall proceed to issue the notice to the said person without any further communication: Further, while making the submissions, the person chargeable with duty or interest shall clearly indicate whether he desires to be heard in person by the proper officer.

- (2) The proper officer, may if requested, hear the person within 10 days of receipt of the submissions and subject to the provisions of section 28, decide whether any notice is required to be issued or not.

However, no adjournment for any reason shall be granted in respect of the hearing allowed under this regulation.

- (3) Where the proper officer, after consultation, decides not to proceed with the notice with reference to the grounds communicated under sub-regulation (1), he shall, by a simple letter, intimate the same to the person concerned.
- (4) The consultation process provided in these regulations shall be concluded within 60 days from the date of communication of grounds.
- (5) Where the proposed show cause notice is in respect of a person to whom a notice on the same issue but for a different period or documents has been issued after pre-notice consultation, the proper officer may proceed to issue the show cause notice for subsequent periods without any further consultation.

15.7.1 Offences

Section 28 of the Customs Act, 1962 also deals with recovery of duties not levied or short levied or erroneously refunded.

Under section 28(1)(a) of Customs Act, 1962 for the words "one year", the words "two years" shall be substituted w.e.f. 14-5-2016.

Proviso to Section 28(1)(a) of the Customs Act, 1962 (w.e.f. 29.3.2018):

"Provided that before issuing notice, the proper officer shall hold prenotice consultation with the person chargeable with duty or interest in such manner as may be prescribed;"

It means period of limitation has been increased from one year to two years for issuing SCN & Demand Notices, in case not involving fraud, suppression of facts, wilful misstatement, etc

However, period of limitation (i.e. ONE Year) has not been extended in the matter of refund.

As per section 28(1)(b) of the Customs Act, 1962 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.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than ₹100.

In the case of *C.Cus. v Sayed Ali* 2011 (SC) the Apex Court held that

- Director General of Revenue Intelligence OR
- Director General of Central Excise Intelligence

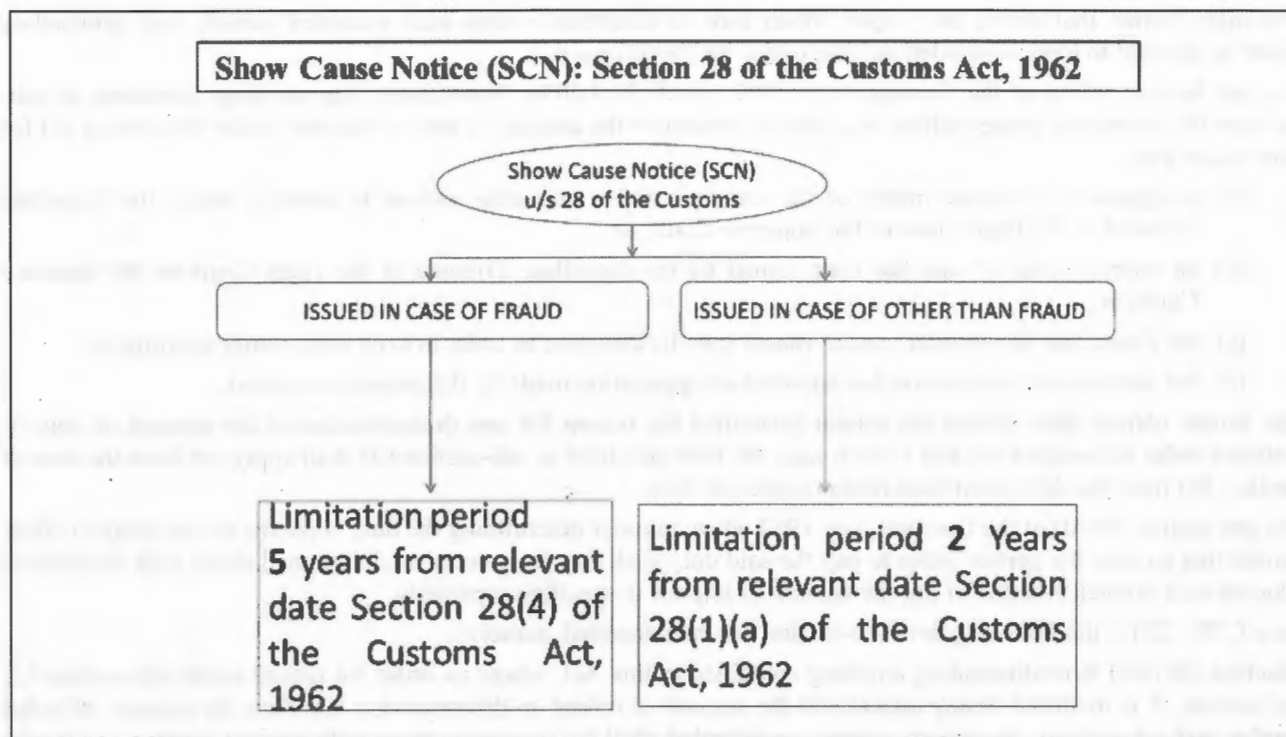
are not eligible for issuing show cause notices.

Case law:

Raghunath International Ltd. v UOI 2012 (280) ELT 321 (AIR)

However, w.e.f 16.9.2011 the law amended retrospectively by providing validity to those show cause notices issued by the Director General of Revenue Intelligence or, Director General of Central Excise Intelligence.

Decision: The Director General of Revenue Intelligence or, Director General of Central Excise Intelligence is competent to issue show cause notice u/s 11A.



w.e.f. 14-5-2015 relevant date:

- in the case of customs law on which customs duty has not been levied or paid or has been short-levied or short-paid and the return has been filed is the date on which such return has been filed.
- in any other case, the date on which duty is required to be paid under this Act or the rules made thereunder;
- in a case where duty of provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
- in the case on which duty of customs has been erroneously refunded, the date of such refund;
- w.e.f. 14-5-2015, in a case where only interest is to be recovered, then the relevant date will be the date of payment of duty to which such interest relates.

As per Section 28(7A) of the Customs Act, 1962 (w.e.f. 29.3.2018):

Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).”;

As per section 28(8) the proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

As per section 28(9) of the Customs Act, 1962, the proper officer shall determine the amount of duty or interest under sub-section (8) of Section 28

- within six months from the date of notice, in respect of cases falling under clause (a) of sub-section (1) of Section 28.
- Within one year from the date of notice, in respect of cases falling under sub-section (4) of Section 28.

Provisos to Section 28(9) of the Customs Act, 1962 (w.e.f. 29.3.2018):

“Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.”;

As per Section 9(9A) of the Customs Act, 1962, w.e.f. 29.3.2018, Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that—

- (a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or
- (b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or
- (c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or
- (d) the Settlement Commission has admitted an application made by the person concerned,

the proper officer shall inform the person concerned the reason for non determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.

As per section 28(10) of the Customs Act, 1962 when an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately,

w.e.f. 29.3.2018, the following new sub-section has been inserted, namely:—

Section 28(10A) Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under section 28AA, from the date of refund up to the date of recovery, as a sum due to the Government.

Section 28(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any willful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.”;

w.e.f. 29.3.2018, the following Explanations shall be inserted namely:—

“*Explanation 4.*—For the removal of doubts, it is hereby declared that in cases where notice has been issued for non-levy, not paid, short-levy or short-paid or erroneous refund after the 14th day of May, 2015, but before the date on which the Finance Bill, 2018 receives the assent of the President, they shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.”.

Jurisdiction of Customs Officer to issue Show Cause Notice (SCN) under Section 28 of the Customs:

Jurisdiction of Customs Officer	Monetary limits of duty
The Superintendent	Not exceeding ₹10 lakhs
The Deputy/Assistant Commissioner	Above ₹ 10 lakhs but not exceeding ₹ 50 lakhs
The Joint/Additional Commissioner	Above ₹ 50 lakhs but not exceeding ₹ 2 Crores
Commissioner/Principal Commissioner	Without limit i.e., cases exceeding ₹ 2 Crores

15.8 Protective demand

Means issue show-cause notice-cum-demand in time, so that it does not become time barred, especially in the case of receipt of audit objections, protective demands should be issued in time.

15.9 Recovery of duties in certain cases section 28AAA of the Customs Act

An instrument (i.e. any scrip or authorisation or licence or certificate as a reward or incentive scheme or duty exemption scheme or duty remission scheme) has been obtained by the person by means of

- (a) Collusion; or
- (b) Wilful misstatement; or
- (c) Suppression of facts

Duty and interest should be recovered within 30 days from the date of passing order to recover the same.

Provisional attachment of property applicable u/s 28BA.

Proper officer empowered to provisionally attach the property in case of non-payment of customs duty or interest thereon on account of fraud, collusion, suppression of facts etc. as well [Section 28BA(1)]

Section 28BA of Customs Act, 1962	Prior to 10th May, 2013	W.e.f. 10th May, 2013
Provisional attachment of property in case of nonpayment of customs duty and interest on account of fraud	Provisionally attach the property belonging to ONLY SUCH PERSON on whom notice has been served u/s 28(1) of the Customs Act, 1962	Provisionally attach the property belonging to ANY PERSON on whom notice has been served u/s 28(1) or (4) of the Customs Act, 1962

No recovery if the amount of customs duty involved is less than ₹100 [Section 28(1) - w.e.f. 10.05.2013]

Proviso inserted in section 28(1)

Hitherto, no minimum limit for recovery of customs duty had been specified under the Customs Act, 1962. Thus, recovery proceedings could be initiated even for the default of ₹1.

The Finance Act, 2013 has inserted third proviso in section 28(1) which provides that the proper officer will not serve the show cause notice, where the amount involved is less than ₹100. In other words, there would be no recovery of the customs duty if the amount of customs duty involved is less than ₹100.

Case law:

Uniworth Textiles Ltd. v CCEs. 2013 (288) ELT 161 (SC):

Statement of Facts: Assessee imported furnace oil and supplied the same to sister unit for generation of electricity, which is used by the assessee. The assessee claimed exemption on import of furnace oil.

The assessee is also obtained a clarification from Development Commissioner for claiming exemption.

However, irrespective of the clarification from Development Commissioner, a show cause notice demanding duty was issued on the assessee more than 1 year (i.e. longer limitation) after he had imported furnace oil on behalf of its sister unit.

Department Contention: The entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not the consumer of electricity generated from the power plant.

Decision: As per Section 28 of Customs Act, 1962, longer limitation period in the given case not applicable. The assessee had shown bona fide conduct by seeking clarification from Development Commissioner and in a sense, had offered its activities to assessment.

Therefore, mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts.

Judgment is given in favour of the assessee.

Case law:

Anita Bhatnagar v CCEs. 2013 (296) ELT 63 (Del):

Statement of Facts: A demand notice was raised against the petitioner in respect of the customs duty payable by the company (namely Shri Ram Casting P. Ltd) of which she was formerly a director. She had resigned from the Board of the company long time back. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues to the company.

Whether department action is justifiable?

As per section 142 of the Customs Act, 1962 and relevant rules, it was only the defaulter against whom steps might be taken under Rules. The defaulter was the person from whom dues were recoverable under the Act. In the present case, it was the company who was the defaulter.

Therefore, department claim is not justifiable.

The same view has been expressed by the Hon'ble Bombay High Court in the case of *Vandana Bidyut Chatterjee v UOI* 2013 (292) ELT 6 (Bom).

W.e.f. 10-5-2013:

15.10 Recovery of under section 142(1)(d) of the Customs Act, 1962 (Similar provision under section 79 of the CGST Act, 2017)

Issuance of the notice for recovery to any person other than from whom money is due

The Customs Officer may issue a written recovery notice to the following persons:

- any person from whom money is due to such person
- any person from whom money may become due to such person
- any person who holds money for or on account of such person
- any person who may subsequently hold money for or on account of such person.

The noticee would be required to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

The money would be paid either forthwith upon the same becoming due or being held, or at or within the time specified in the notice. However, in no case the money would be required to be paid before it becomes due or is held.

In a case where the person to whom a notice under this sub-section has been issued, fails to make the payment is called as “assessee in default”.

Case law:

Kemtech International Pvt. Ltd. v. CCus. 2013 (292) ELT 321 (SC)

Point of dispute: Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short levy of customs duty?

Decision: The Apex Court elucidated that for the purpose of re-quantification of short levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance.

Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.