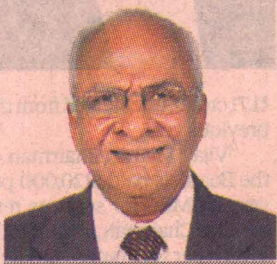




Excise brass displays a welcome change



EXIM MATTERS

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The Central Board of Excise & Customs (CBEC) has issued more circulars/instructions, with the aim of reducing unnecessary litigation.

Since 1983, its instructions required the field formations to issue a demand-cum-show-cause notice (SCN) upon receipt of any audit objection, even if the officers did not agree with the auditors' view. Such notices could be withdrawn only after acceptance of the department's stand by the auditors.

Last week, CBEC asked its field formations not to issue any SCN where they do not agree with the audit objections, on merit. Where a contested audit objection becomes a draft audit para and, on examination, CBEC finds merit in the objections, it may issue directions to issue an SCN and adjudicate the case on merit. CBEC has told its officers that the adjudicating authority is a quasi-judicial authority and legally bound to adjudicate a case independently and judiciously. Adjudication should take into consideration the audit objection, reply of the department, reply of the party, relevant legal provisions, case laws on the subject and relevant circulars of CBEC, if any. The brief facts of the case in the adjudication order must mention if the SCN is a

consequence of an audit objection. Where an issue was under such an objection, and subsequently either judicially settled, by a Supreme Court judgment or where a circular of CBEC has been issued on the subject, further correspondence with the Board on the audit objections is not necessary. While adjudicating, it should be ensured that the reply given by the department is available on record. The procedure of transferring the SCN arising out of an audit objection to the call book has been discontinued.

CBEC has also reiterated the settled principle in law that justice has not only to be done but seen to have been done in the performance of quasi-judicial functions. If the law prescribes a manner of performance of a function, then it has to be done that way; every other manner is mandatorily barred. If the quasi-judicial authority has to grant a personal hearing on a

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date and time to be decided by him, then that prerogative is the latter's. The record of such a hearing should be an essential part of the record of the case under the signature of the said authority in

person. And, such quasi-judicial orders have to record every fact and reason leading to the final decision; any other way would be legally invalid. CBEC has said every record leading to the passing of any order should be available on the case file and has warned against any casual approach towards fixing or re-fixing a personal hearing.

The latest instructions are well drafted, leave no room for ambiguity and convey a significant attitudinal change at the top levels.