

Circular No. 996/3/2015-CX
dated the 28th Feb., 2015

F. No. 207/02/2015-CX.6
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

To

Principal Chief Commissioners/Chief Commissioners of Central Excise (All),
Principal Chief Commissioners/Chief Commissioners of Service Tax (All),
Principal Chief Commissioners/Chief Commissioners of Customs (All),
Directorate of Revenue Intelligence,
Directorate General of Central Excise Intelligence,
Web-master, CBEC.

Madam/Sir,

Sub: Recovery of arrears in installments and amendment of Garnishee Notice – reg.

Your attention is invited to provisions of sub-section (2) of section 11 of the Central Excise Act, 1944. Central Excise Officers are empowered under this provision to issue an order to any other person from whom money is due to such person from whom recovery of arrears is required to be made. Such notice for recovery to the other person is generally referred as Garnishee Notice. Similar provisions are contained in section 142(1)(d) of the Customs Act, 1962 and section 87(b) of the Finance Act, 1994. It has been brought to the notice of the Board that clarification is required regarding powers of recovery officer to amend or withdraw the Garnishee Notice.

2. The issue has been examined. There are occasions when the assessee comes forward for payment of arrears, once Garnishee Notice are issued to the persons from whom money is due to the assessee. There would be a practical need to amend or withdraw the Garnishee Notice issued in such situations. Further, section 21 of the General Clauses Act, 1897 clearly provides that power to issue an order includes power to add, amend, vary or rescind the order. Furthermore, an interpretation that Garnishee Notice cannot be amended or rescinded would make the provisions unworkable. Such interpretations should be avoided in law.

3. In view of the above, it is hereby clarified that recovery officers do have powers to add, amend, vary or rescind any Garnishee Notice issued. However, the interest of revenue has to be suitably safeguarded.

4. Attention is also invited to the issue of recovery of arrears in installments. On Central Excise side, three circulars/instructions have been issued in the past viz. instructions from F. No. 289/10/91-CX.9 dt 18-3-1991, Circular no. 32/32/94/CX dt. 11-4-94 and Circular no. 208/42/96-CX dt. 2-5-1996. There is a need to provide uniform instructions regarding facility to pay arrears in installments in Central Excise, Service Tax and Customs. It has therefore been decided that in supersession of all earlier circulars and instructions, following instructions shall be followed hereafter to allow payment of arrears in installments under the Central Excise Act, 1944, Chapter V of the Finance Act, 1994 (for Service tax) and the Customs Act, 1962.

5. It has been decided by the Board to allow recovery of arrears of taxes, interest and penalty in installments. The power to allow such payment in monthly installments shall be discretionary and shall be exercised by the Commissioners for granting sanction to pay arrears in installments upto a maximum of 24 monthly installments and by the Chief Commissioners for granting sanction to pay arrears in monthly installments greater than 24 and upto a maximum of 36 monthly installments.

6. The facility to pay arrears in installments shall generally be granted to companies which show a reasonable cause for payment of arrears in installments such as the company being under temporary financial distress. Approval to pay in installments and the number of installments should be fixed such that an appropriate balance between recovery of arrears and survival of business is maintained taking into consideration the overall financial situation of the company, its assets, liabilities, income and expenses. Frequent defaulters may not be allowed payment of arrears in installments. The decision shall be taken on a case to case basis taking into consideration the facts of the case, interest of the revenue, track record of the company its financial situation.

7. The application for allowing payment of arrears shall be made to the jurisdictional Commissioner giving full justification for the same. The approval of the application should be in writing with due acknowledgment taken on record. The permission should clearly identify the number of installment and the month from which the payments of installments should begin and should also clearly stipulate that in case of default in payment of installments, the permission shall be withdrawn and action shall be taken for recovery of arrears.

8. For this purpose, Commissioner shall also exercise the power to cancel the permission to pay arrears in installments. Cancellation should be resorted to in cases of default in the payment of installments or when the company is becoming financial unviable and there is likelihood of winding up of business. After cancelling the permission to pay in installments, action should be taken forthwith for recovery of arrears.

9. Any difficulty in implementing the circular may be brought to the notice of the Board. Hindi version would follow.

(ROHAN)
Under Secretary to the Government of India