

**List of Recommendations of the Lok Satta on
which decisions/actions have been taken by
the Central Board of Excise and Customs**

Recommendations of the Lok Satta	Decisions/Actions taken by the CBEC
Structure	
- The legal cell in the Commissionerates should be strengthened both in terms of quality of personnel as well as infrastructure and logistics support.	Acceptable-Ministry vide letter F.No.201/07/2006-CX6 dated 31.3.2006 has directed D.S.(Legal), CBEC to issue suitable instructions to the field formations in this regard.
Accountability	
- When a SCN is clearly unsustainable and dropped – full refund of the deposit made before issuance of SCN may be made with interest at bank rate.	Suo moto refunds are being sanctioned in such cases.
General recommendations	
<ul style="list-style-type: none"> - Protection of Whistle blowers with time limits for reward disbursal. - Ensuring confidentiality (amendment of preventive manual). Only requirement should be identification of informer by the officer recording the information, at the time of the reward disbursal. In order to take due care to protect the informer, only two identification marks to be recorded at the time of recording information. The sealed cover to be opened only by the disbursing authority. 	Already provided. Can be considered. Advance rewards are sanctioned at the beginning of case. Final rewards are disbursed once the case is decided. No time schedule can be given.
- Where assesses make specific complaints of harassment/extortion against officials, a credible and effective mechanism must be put in place to ensure confidentiality and rigorous follow-up action. CVC may please examine and give suitable guidelines.	Acceptable. Circulated to all the field formations vide DGV letter dated 12.04.2006.
Inspections	
<ul style="list-style-type: none"> - Right to enter premises shall be only with prior permission of the Asstt./Dy. Commissioner of CE except in the following cases:- - During audit or for carrying audit related function-with prior intimation. - When a documented information is received against manufacture or importer/exporter. - When any vehicle with good is caught on 	Vide letter F.No.201/07/2006-CX6 dated 31.03.2006, Board has decided that for visiting units other than SSI units also prior permission of Asstt. Commr/Dy. Commr should be obtained and reiterated that the officer visiting these units should follow all the procedures laid down for visit to SSI units including making entries of relevant particulars in visitors book being maintained by the assessee and that any violation would be viewed very seriously.

<p>the way without appropriate Central Excise invoice.</p> <ul style="list-style-type: none"> - To collect information for parliamentary queries-with prior intimation. <p>In any other case, the written permission of the Asst./Dy.Commr of CE will be required.</p>	
<p>Summons</p>	
<ul style="list-style-type: none"> - In case of requirement of documents initially, a letter requesting for copies of documents should be issued. - Summons should be issued only when all other modes of obtaining information have failed. - Summons should be issued only after approval is obtained from appropriate authority (Asstt./Dy.Commr). - The notice should state the reason for which an individual is being summoned and the time of appearance. - The summons should specify the nature and number of documents required. 	<p>Ministry vide letter F.No.201/07/2006-CX6 has directed DGCEI to issue instructions to the field formations, reiterating the significance and use of summons only as a last resort when it is absolutely required.</p>
<ul style="list-style-type: none"> - Travel facilities for the audit team should be made available by the department. 	<p>Ministry vide letter F.No.201/07/2006-CX6 dated 31.03.2006 has instructed DG (Audit) to suitably instruct the field formation for ensuring transport facilities for internal audit team.</p>
<ul style="list-style-type: none"> - The practice of issuing Show-Cause Notices as a result of CERA systems reviews, including policy decision/notification should not be followed. - There should be onsite consultation between CAG and assessees and assessee's views should be recorded. 	<p>Ministry vide letter DOC No.201/07/2006-CX6 dated 4 April, 2006 has brought to the notice of the CAG that, to promote voluntary tax compliance, the internal audit teams have been advised to inform the assessee of all the objections before preparing the draft Audit report and that each assessee is given the opportunity to know the objection and to offer clarifications with supporting documents and requested him for such action as deemed appropriate.</p>
<p>Adjudication</p>	
<ul style="list-style-type: none"> - The adjudication procedures should be expedited if the assessee file the replies within one month. The order should be issued by the adjudicating authority within 30 days of completing the personal hearing. There must be special efforts to ensure that adjudication is completed within 6 months. 	<p>Instructions regarding 'Call Book' cases and issue of Adjudication order/Appeallate order after personal hearing have been reiterated vide Board's letter F.No.201/07/2006-CX6 dated 31st March, 2006.</p>
<ul style="list-style-type: none"> - The representation from trade felt interest 	<p>Can be considered once ACES is in place.</p>

<p>should be paid after 30 days from filing of refund claims, as opposed to 90 days now. However, the representative from the department felt that any reduction in the present time limit is possible only with the change in the present system of internal verifications, along with infrastructural upgradations, including computerization. Once computerization is complete, from March 2006, interests should be paid for delays beyond 30 days from refund claim.</p>	
<p>- There appears little justification for difference in rates of interest for delayed payments (13% by assessee) and delayed refund (9% by department). The department is reluctant to concede this. However, CVC may discuss with CBEC and reconcile the issue fairly and equitably.</p>	<p>Policy matter. Even in banking sector different rates prescribed for different purposes.</p>
<p>- Pre-deposit provisions to be simplified by accepting cash and / or bank guarantee or other securities. The assessee should have the option to pay the deposit in cash or through bank guarantee. In case bank guarantees are not renewed in time, the same may be encashed.</p> <p>- Provisions for a pre-deposit should be made such that if the case is not decided within 6 months, the amount of pre-deposit shall be refunded. (The department is reluctant to agree that delays are inevitable. CVC may please discuss with CBEC and reconcile this. The assessee cannot be penalized for the delays in adjudication, provided he cooperates fully and does not contribute to delays).</p>	<p>Not acceptable as pre-deposit is towards government dues finalized and is distinctively different from security to be furnished against disputed amount.</p>
<p>- Section 35-C(2A) of the Central Excise Act, 1944, giving CESTAT a time-limit of 180 days to decide the appeal should be amended and the stay granted should be valid till the appeal is finally decided.</p>	<p>This is the domain of appellate forum. Suggestion is not feasible.</p> <p>Not feasible as the appellate tribunal providing stay is dependent on the circumstances of each case and it cannot be bound by general rules.</p>
<p>- Instead of 4 regions, CESTAT should be in other regions also. A study of the appeals arising in that particular region should be made for deciding the location.</p>	<p>Can be examined.</p>
<p>Customs</p>	
<p>- In order to facilitate retrieval of records for post-clearance processes such as refunds and bonds, it is desirable that the custody of the documents</p>	<p>The suggestion and Board's decision to consider storing of documents in modern method for quick retrieval have been referred to the DG (Inspection)</p>

<p>be outsourced on the basis of double lock system, wherein Customs retains the original and the maintenance is outsourced. Nava Sheva and Chennai Models could be emulated in this regard. There is proposal with Ministry in this regard and this should be implemented in six months. User charges can be collected from the Industry.</p>	<p>for implementation.</p>
<p>- Bank guarantees from Schedule I and II Banks should be accepted by all agencies in Customs department.</p>	<p>In principle those banks mentioned in Schedule II of the RBI Act, 1934 fulfilling specified requirement and conditions, other than gramin and co-operative banks could be considered. The matter is taken up for consideration with Pr.CCA and RBI.</p>
<p>- Export valuation in respect of information-knowledge based and propriety industries should be flexible, and the special problems of such Industries must be handled with sensitivity.</p>	<p>Instructions issued that exports would not suffer on account of problems in valuation of goods. However, the Board's circular No.33 of 2005 of 2.8.2005 has been reiterated. (F.No.401/49/2003 Cus.III dated 31.03.2006).</p>
<p>- For valuation of import goods for customs duty purposes, a national import database is now available only to the department. This can be moved into public domain and the industry can access them on payment of suitable charges.</p>	<p>It is not found feasible to accept the suggestion considering the sensitive nature of the data. However, general data on imports and exports in the form of Trade Statistics are already published by Custom Houses and Directorate General of Commercial Intelligence and Statistics.</p>
<p>- In case of valuation of second hand machines, normally a certificate from approved chartered engineer should be accepted, if it gives full details as prescribed. In case of discrepancies on intelligence information, machines should be allowed on second-check basis. Customs instructions on this should be reiterated.</p>	<p>Board's instruction F.No.493/124/86-Cus . VI dated 4.1.98 has been reiterated vide Ministry's letter F.No.401/49/2003-Cus.III dated 31st March, 2006.</p>
<p>- Regarding retention of samples on importer/exporters goods, the present system of sample retaining requires improvement. Sealed samples should be given to importer/exporters, which can be referred to in case of disputes. If there are instructions in this regard, they should be reiterated and circulated.</p>	<p>Instruction issued vide F.No.609/89/90-DBK dated 26.11.90 covers the general principles to be followed for drawal of sample for exports. These instructions have been reiterated vide Ministry's letter F.No.401/49/2003-Cus.III dated 31st March, 2006.</p>
<p>- The provisions of section 27 of Customs Act for refund are not available in case of assessment of Bill of Entry, and provisions of appeal under section 128 have to be followed. In case of demands, the department can raise demand under Section 28 within six months and without challenging assessment of Bill of entry. Considering the principles of equity and natural</p>	<p>This requires amendment in the Act. It is being examined whether a change in the law is feasible.</p>

<p>justice, the provisions needed to be aligned so that refunds can be sanctioned without challenging the assessment in the Bill of entry. When the assessment claimed by importer is accepted, this provision of filing appeal is valid. However, if an assessment order has been issued, then appeal has to be filed and consequent refund claimed.</p>	
<p>- To de-materialize the licenses on various export promotion schemes. Since Customs EDI captures all the data, it can also give credit automatically on DEPB etc., which can be debited for payment of duty from any port. Security systems should be built into EDI.</p>	<p>In respect of DEPB such facility is under testing process.</p>
<p>- Quality of the data will determine the success of EDI. The units of measurement should be clearly specified taking into account international standard in this regard. The industry should ensure quality of such data and standardize the units in import and export documents to ensure effective use of EDI, including effective risk management system.</p>	<p>EDI system already provides for standard units of measurements.</p>
<p>- In case of CAG objections, the demand is being raised by the department. Where objections raised by CAG pertain to policy decisions or guidelines, demands should not be raised. If CAG raises objections against the guidelines/ policies, the matter should be referred to the ministry for decision and it should have prospective effect. In other type of cases, demand may be raised as at present and the issue resolved with CAG as quickly as possible within six months.</p>	<p>The demand raised by the department is protective in nature. It is not feasible to place any restriction on raising of demand.</p>
<p>- In case of unjust enrichment, the government should come up with a list of situations detailing where unjust enrichment will not apply. In other cases, where unjust enrichment applies, it should clearly be specified what proof is required to establish that duty has not been passed on to customers.</p>	<p>Section 27(2) of the Customs Act provides the conditions under which refund is payable. Preparation of exhaustive list is not feasible.</p>
<p>- The interest on refund should be paid if it is sanctioned after three months from date of filing applications. Even if the refund becomes subject matter of appeal and the same is allowed by the appellate authority, the interest should be paid on expiry of three months of the original refund</p>	<p>Already provided under Section 27A.</p>

application.	
- A copy of the statement, which may or may not be relied upon, deposited by a witness during the course of investigation, should be given to the person making the statement. The statement given by a person is his own property, and a copy cannot be denied to him. This also ensures that statements cannot be altered or tampered with subsequently.	Any person deposing under the Customs Act is given a copy of his statement. Statement of documents which are relied upon in the investigation alone are provided to the aggrieved person, as these form the basis of adjudication.
Exports	
- Once Range Superintendent certifies the stuffing of the cargo into a container/vehicle, no de-stuffing/breaking of the seal should be allowed unless authorized by the Asstt. Commissioner concerned or his superiors. This is the current practice. Ref – Customs Circular 6/2002. These instructions have taken place in the factory under self-assessment, ARE 1 need not be signed by the Range Supdt., if goods are dispatched under self-certification.	Instruction vide circular No.6 of 2002. Cus dated 23.1.2002 provide that no examination needs to be done for factory stuffed export cargo if the seals are found intact expect where seals are found intact expect where seals are found tampered with or with prior intelligence. This has been reiterated vide Ministry's letter F.No.401/49/2003-Cus.III dated 31st March, 2006.
- At present, the facility of Advance Ruling is only available to Joint Ventures of Subsidiary of a Foreign Company. A similar facility should be extended to Indian Corporates. Effective mechanism to handle the potentially large number of applications for Rulings must be evolved.	This is a step in the right direction. Consideration that this would provide certainty in matters of doubt, binding effect on the parties, reduce litigations and WTO complaints, this may be acceptable in principle. It would require examination by both the Central Excise and Customs wing of the Board.
- Many of the items used in the manufacture of duty-free products are multi-use items. As a consequence, even the duty-free products are going through tortuous procedure. Self-certification should be deemed adequate in such cases. Hefty penalties should be levied in case of diversion.	The instructions pertain to Central Excise. Board's decision to reiterate the existing instruction has been referred to the Excise wing for implementation.
Customs	
- Exporter can maintain the credit and debit records for export duty.	This is feasible under automated on-line environment. May be considered for implementation of e-payment at the relevant time.
- The implementation of Indian Customs & Excise Gateway (ICEGATE) with digital signature and auto process may be undertaken at the earliest. The filing of shipping bill online is not yet popular. So the Deptt. and Trade should collaborate to popularize online filing. Where necessary trade representatives should be given orientation and training in online filing.	CBEC vide Circular No. 15/2005 dated 11.03.2005 in F.No.450/118/2004- Cus-IV has instructed that the Customs House Agents, Exporters and Importers who file more than 5 documents per day on an average at each place should be asked to file the documents through ICEGATE and not through service centers.

<p>- The system of executing Letter of Undertaking (LUT) after every financial year should be dispensed with. The validity of the LUT shall be as long as the validity of license. The LUT can be dispensed with if bond is already executed with the Customs.</p>	<p>The suggestion has been agreed to. The issue is being referred to Ministry of Commerce for consideration and necessary action.</p>
<ul style="list-style-type: none"> - The system of appraising the Bill of Entry before clearance of goods should be done away with for all export houses and manufacture-importers with over one-year track record. (The Circular 30/2003 provides for self-assessment/appraisal by status holders/ PSUs and those with a 2 year track record. Here, the system appraises and the goods can be cleared after payment of applicable duties). - The importer or the Customs House Agent (CHA) will pay the duty based on their own assessment shown in the Bill of Entry. - Based on the self-assessment and payment of duty by the established industries and enterprises, the physical examination of the goods can be carried out by the shed appraiser and the goods should be cleared. 	<p>This is comprehensively reviewed and risk based assessment and examination (RMS) has been introduced vide Board's Circular No. 43 of 2005 dated 24th November, 2005. With the introduction of RMS, the present practice of routine assessment, concurrent audit and examination of almost all Bills of Entry will be discontinued and the focus will be on quality assessment, examination and Post Clearance Audit of Bills of Entry selected by Risk Management System.</p>
<ul style="list-style-type: none"> - The order of special valuation branch must be passed within the stipulated period of 7 days from the date of submission of the questionnaire. In case the order is not passed within 7 days, the collection of revenue deposit should be dispensed with. With online documentation, scrutiny of books of accounts and documents should be faster, and should facilitate this. - Augmentation of staff, by way of redeployment and filing of vacant posts is required in the valuation branch to prevent delays. 	<p>This is not feasible in all cases. However the whole SVB scheme is under examination for comprehensive revamping.</p>
<ul style="list-style-type: none"> - The exporter with ISO 9001:2000 and Export Houses and 100% EOU and SEZ Units may be exempted from routine inspection of trade samples. This will minimize delays. (Bonafide trade samples do not need permission/inspection as RBI has waived GR formally up to US \$ 25,000). 	<p>Customs examination and inspection is to be based on risk analysis approach. The limit of GR is not relevant for this point. However, the suggestions made are being examined by Drawback wing comprehensively.</p>

<ul style="list-style-type: none"> - Trade requested that online export audit should be implemented to minimize the documentation problems faced by the exporter. However, there is currently no export audit requirement in place. This position may be widely publicized to prevent undue harassment of exporters. 	<p>This is being examined by Post Clearance Audit team.</p>
<ul style="list-style-type: none"> - Customs should do away with verification of Duty Exemption Pass Book Scheme (DEPB)/DGRC, etc., Licenses issued by DGFT should be available at the click of a button. This is the main purpose of starting the Electronic Data Interface System. 	<p>Online verification of DEPB has already started on pilot basis</p>
<ul style="list-style-type: none"> - Duty drawback to be paid within 48 hours of the export of the goods in case of electronic declarations and 15 days in case of proper declarations. 	<p>Instructions have been issued for immediate payment of drawback and interest beyond statutory period by the Drawback section vide Member (Customs) D.O.F.No.609/110/2005-DBK dated 26th August, 2005.</p>
<p>Customs-General Recommendations</p>	
<ul style="list-style-type: none"> - Training of officials should be mandatory. On taking up new promotion/assignment with which the officer in charge is not familiar, training should be mandatory. 	<p>Circular No.17/2005-Cus dt.11.03.2005, instructing that a mandatory one hour informal interactive training session in a week will be held at each Custom House/Custom Station and that the session would be attended by the staff engaged in assessment, examination, bonded warehouse, Container Freight Stations, Preventive etc. The session would be addressed by experienced Appraisers/ Supdts/Asstt. Commr and other senior officers.</p>