



OFFICE OF THE CHIEF COMMISSIONER OF CENTRAL EXCISE: MUMBAI ZONE II
9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Mumbai – 400 012

**MINUTES OF THE MEETING OF
REGIONAL ADVISORY COMMITTEE HELD ON 22nd August 2014**

The meeting of the Regional Advisory Committee was held on 22nd August 2014 at 15.00 hrs in the Conference Hall of Mumbai - II Commissionerate, at 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Mumbai-400 012.

The meeting was held under the Chairpersonship of Smt. A. Vasudev, Chief Commissioner of Central Excise, Mumbai Zone – II. The following nominated members of the Trade/Industry and Departmental Officers attended the meeting.

TRADE REPRESENTATIVES

Sr. No.	Name of the Member	Trade/Association Represented
1.	Shri. Bankim D Mistry	Bombay Small Scale Industries Association (BSSIA)
2.	Shri Sanjeev S. Lathia	Indian Textile Accessories & Machinery Manufacturers Association
3.	Ms. Madhuri Varade	JNPT
4.	Shri. Balasaheb S. Gaikwad	Taloja Manufacturer's Association
5.	Shri. Rajendra Pansare	
6.	Shri J P Rathi	Patalganga & Rasayani Industries Association

DEPARTMENTAL OFFICERS :

Sr. No.	Name of the Member	Department Officers
1.	Dr. Ram Niwas	Commissioner, Central Excise, Mumbai –II, Mumbai - III & Raigad.
2.	Shri. S. Faheem Ahmed	Commissioner, Central Excise, Belapur
3.	Shri B S Nunwal	Addl. Commissioner, Central Excise, Mumbai - II
4.	Shri Gyan Sarvar	Addl. Commissioner, Central Excise, Mumbai - II
5.	Shri. Sunil Jain	Addl. Commissioner, Central Excise, Raigad
6.	Shri Pankaj Bodke	Addl. Commissioner, Central Excise, Raigad
7.	Shri Debojit Bose	Joint Commissioner, CCO, CX-MZ-II

The Chairperson welcomed the Members of the Trade and Industry Associations who attended the meeting. The Chairperson confirmed from the Members the receipt of minutes of the last RAC meeting held on 29th April, 2014 and proposed acceptance of the minutes which was agreed by the Members.

The Chairperson then initiated the proceedings by inviting points for discussion from the Members of the Trade Associations present for discussion and clarifications. The points raised and clarifications are as under:

Points Sponsored by Bombay Small Scale Industry Association (BSSIA):

Question 1. Does Contract labour Supplier to PSU require Service Tax Registration?

Reply: The Labour Supply is manpower supply and the same is taxable service. The same is exempted up to value of Rs. 10 lakhs in a financial year. However, once the service provider crosses the threshold limit of Rs. 10 lakhs, registration under the Finance Act, 1994 is mandatory.

However, if the service provider is individual /HUF and receiver is PSU /Company the Service Tax is to be discharged under the reverse charge mechanism. Section 68(2) of the Finance Act, 1994 Notification No. 30/2012 dated 20.06.2012.

Question 2: Security Agencies employs security personnel, but almost half of the employees are not on record to evade stipulated liabilities under the prevailing law. In this case how to ascertain their Service Tax Liability?

Reply: Specific instance of employees not being on record may be brought to the notice of the jurisdictional service tax authority with proper documentary evidences, so that suitable action may be initiated.

Question 3: Parking tickets should bear details like contractor's name, contract period, registered office address, contact number, contact person Service Tax registration no. etc.?

Reply: The said service is taxable service and service tax is payable by the service providers. An invoice or a bill or a challan of the service provider must contain the details as prescribed under Rule 4A of Service Tax Rules, 1994.

Question 4: What is the penalty Structure that CBEC follows for Service Tax? This is in reference to Notification No. 12/2014 ST dated 11.07.2014?

Reply : The said notification deals with penal interest on delayed payment of ST and the same will be effective from 01.10.2014. Further, penalty for such offences are imposable under Section 76 and 77 of the Finance Act, 1994.

Question 5: Does Indian Penal Code also refers to CBEC?

Reply : Certain offences pertaining to Central Excise, Service Tax & Customs do attract prosecution /action under IPC. For example : Under Section 9/9AA of the Central Excise Act,1944, prosecution is launched in court of law invoking various Sections of IPC Viz. Section 120B for punishment in case of criminal conspiracy to commit an offence, Section 109 for punishment for abatement, Section 190 for threat, Section 200 for intentional mis-declaration. Every inquiry under section 14 of the Central Excise Act, 1944, shall be deemed to be judicial proceedings within the meaning of Section 193 and Section 228 of IPC.

Question 6: For matters beyond jurisdiction of Mumbai Zone –II, can this RAC forward petition to CBEC or should be approached directly.

Reply: In such cases, CBEC may be approached through the concerned jurisdictional Chief Commissioner.

Question 7: Printed Metro Tickets should be issued with fare, tax and surcharge etc.?

Reply: This issue should be taken up with the Mumbai Metro One Pvt Ltd (MMOPL) being run under the provisions of the Metro Railways (Operations and Maintenance) Act 2002.

Additional Question with the permission of the Chair ... (By Shri. Bankim D Mistry)

Question: Repairing / CNG fittings etc., if done at authorized service center, Service Tax is payable. But what about such activities done at unauthorized service center and / or shops.

Reply: Such instances may be brought to the notice of the jurisdictional service tax authority and other statutory authorities like RTO, with proper documentary evidences, so that suitable action may be initiated.

Points raised by the Ms. Madhuri Varade, representative of JNPT.

Ms. Varade raised following points

Point 1: That they are recipient of show cause notice for non-filing of ST-3 returns even though the same were filed in time and in some cases multiple Show Cause Notices were issued by different authorities for non – filing of returns for same period;

Reply: The officials from the Raigad Commissionerate stated that this happened due to the fact that the data of non-filers / late filers was received from DG System and based on the same, show cause notices were issued. The Chair directed the officials of Raigad Commissionerate to look into the matter personally and verify the records / documents in the matter, so that such instances do not recur in future. They were also directed to initiate remedial action in case of multiple show cause notices for same offences and ensure that such instances are avoided in future.

Point 2: That submissions made by JNPT during special audit conducted by the department along with Chartered Accountant have been ignored and

Point 3: That service tax auditors initiate action on the basis of trial balance without seeking clarifications.

Reply: The allegation was denied by the officials from the Raigad Commissionerate. However, the Chair directed the officials to verify the facts again. JNPT was advised to hold periodical meetings with officials of Raigad Commissionerate in order to avoid such communication gaps.

This issues with the approval of the Chief Commissioner.

(Debojit Bose)
Joint Commissioner
Chief Commissioner's Office,
Mumbai Zone - II

F. No. IV/16-53/CCO-II/MCX/2011/Pt.
Mumbai, the 28th August, 2014

To,
All the RAC Members.

Copy to:

- (1) The Chief Commissioner, Central Excise, Mumbai Zone-I.
- (2) The Commissioners, Central Excise, Mumbai-II / III / Belapur & Raigad.
- (3) The Commissioner of Central Excise (Appeals), Mumbai-II & Mumbai-III.
- (4) The Commissioners, Central Excise, Mumbai-I / V / Thane-I & Thane-II of Mumbai Zone-I.

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9th FLOOR, PIRAMAL CHAMBERS, JIJIBHOY LANE, LALBAUG, MUMBAI 400 012

**MINUTES OF THE MEETING OF
REGIONAL ADVISORY COMMITTEE HELD ON 29th APRIL 2014

The meeting of the Regional Advisory Committee was held on 29th April 2014 at 15.00 hrs in the Conference Hall of Mumbai - II Commissionerate, at 9th Floor, Piramal Chambers, Jijibhoi Lane, Lalbaug, Mumbai-400 012.

The meeting was held under the Chairpersonship of Smt. A. Vasudev, Chief Commissioner of Central Excise, Mumbai Zone – II. The following nominated members of the Trade/Industry and Departmental Officers attended the meeting.

TRADE REPRESENTATIVES

Sr. No.	Name of the Member	Trade/Association Represented
1.	Shri. Bankim Mistry	Bombay Small Scale Industries Association (BSSIA)
2.	Shri. Sandeep Parikh	Thane Small Scale Industries Association (TSSIA)
3.	Shri. O.C. Fernandes	All India Association of Industries
4.	Shri. Balasaheb S. Gaikwad Shri. Rajendra Pansare	Taloja Manufacturer's Association
5.	Shri. Sanjay	JNPT

DEPARTMENTAL OFFICERS :

Sr. No.	Name of the Member	Department Officers
1.	Shri. M. Ajit Kumar	Commissioner, Central Excise, Raigad
2.	Shri. Ram Niwas	Commissioner, Central Excise, Mumbai – II and Mumbai - III
3.	Shri. Sunil Jain	Addl. Commissioner, Central Excise, Raigad
4.	Shri. Akhtar Rashid	Dy. Commissioner, Central Excise, Taloja Division, Belapur Commissionerate

The Chairperson welcomed the Members of the Trade and Industry Associations who attended the meeting. The Chairperson confirmed from the Members the receipt of minutes of the last RAC meeting held on 10th January 2014 and proposed acceptance of the minutes which was agreed by the Members.

The Chairperson then initiated the proceedings by inviting points for discussion from the Members of the Trade Associations present for discussion and clarifications. The points raised and clarifications are as under:

**Points sponsored by Thane Small Scale Industries Association,
Thane vide e-mail dated 18th April 2014.**

The questions raised are reproduced verbatim as follows :

Question No.1: Clarification on job work with different situations :-
(This is when the job worker is doing excisable jobs also).

a) Job work done under Notfn. No. 214/86, when **amounts to manufacture** and customer is clearing goods on payment of duty or / and follows rule 6, whether inputs tax credit of goods or service tax can be denied?.

b) In the similar case as above, this being **amounting to manufacture**, and no service tax applicability is there (hence no service tax exemption issue), can rule 6 be imposed on the job workers on the grounds that this is **“service tax exempted”** process?.

c) When the material is received under 4(5) (a) or 16abc for activity **which amounts to manufacture** and exemption of Notfn. No. 214/86 is availed and the declaration is given by the end user as required under Notfn. No. 214/86, for taking complete responsibility of following rule 6 or payment of excise, in that case job worker can be asked to reverse the input tax credit under rule 6?.

d) If the activity **does not amount to manufacture**, and a job work is done under 214/86, and the customer is clearing the goods on payment of duty, service tax is exempt under notification no. 08/2005 and notification no.25/2012. Can rule 6 be applied to the job worker, if the end user is following rule 6. And a declaration is given from the end user to the excise department.

e) If the activity **does not amount to manufacture**, and a job work is done under 214/86, and the customer is **not** clearing the goods on payment of duty, (exempted goods) whether service tax is applicable or exempt? If exempt, can rule 6 be applied to the job worker, if the end user is following rule 6. And a declaration is given from the end user to the excise department.

f) When the activity **does not amount to manufacture**, the end user is clearing the goods on payment of duty, hence service tax is exempt for the job worker. In such cases applicability of rule 6 with 5% of labour charges becomes vague and disproportionate if no cenvat credit is taken on the input goods and consumable and only common service tax input credit is taken. In some cases 5% will be even more than the total service tax credit taken (this is when no declaration is given by end user for following rule 6).

Reply a) to f) : It was explained that the ratio of decision of Larger bench of Tribunal in the case of Sterlite Industries Ltd. Vs CCE reported in 2005 (183) ELT 353 (Tri. LB) is applicable in all the cases where duty is payable on the final products by the sender of the goods for job-work. The Association was requested to approach the jurisdictional Commissioner with full facts of the case in case there were further doubts.

Question No. 2: Above clarification is required as the department is issuing show cause notices in spite of settled high Court Judgment.

Reply Q.No. 2 : As stated earlier, the ratio of decision of Larger bench of Tribunal in the case of Sterlite Industries Ltd. Vs CCE reported in 2005 (183) ELT 353 (Tri. LB) can be adopted.

Question No. 3: Is it mandatory for the audit department to issue the report on their own or specific instructions are required from Deputy Commissioner to release the Audit Report for a specific party. It is observed that assesses are not receiving audit reports within 60 days mandatorily.

Reply Q.No. 3 : All audit reports should be issued within 60 days of the completion of audit and a copy of the report is required to be endorsed to the assessee.

Question No. 4: ARE-1 is not acknowledged by the Excise office and assesses are made to wait for several hours for reasons not known.

Reply Q.No. 4 : No A.R.E.-1 is required to be acknowledged under the rules. However, any difficulty being faced by any assessee may be taken up with jurisdictional Commissioner.

Question No. 5: There is an exemption from filing of ER - 4, ER-5, and ER6 returns vide CBEC circular No. F No. 209/03/11-CX-6 dated 15th February, 2011 for assesses who paid duty of excise less than 1 Crore in the preceding financial year including the amount paid by utilization of CENVAT Credit. In spite of above circular excise department is asking to file returns ER -4, ER-5, and ER6. We therefore request you to clarify again whether these returns are to be filed or not whether online or offline (manual).

Reply no. 5 : This is being examined.

Question No. 6: During the financial year ending, tremendous pressure is given on the assesses, to give revenue figures to the department and also threatens to stop the despatches, if not given on telephone.

Reply no. 6: There is no question of putting any pressure or threat of stopping despatches. Any such incidence should be brought to the notice of the Commissioner.

Question No. 7: Summons was served to the M.D/Director of the company for routine details to be submitted, in-spite of those details submitted by them to the department. The Dy. Commissioner personally called the assesses through superintendent to meet him. For not meeting him personally, a summons was sent to the director. CBEC has issued circular no. 208 dated 13/10/1989 and clarified that no summons be given to M.D/Director. We request serious view to be taken in this matter.

Reply no. 7: Such issues may be taken up with jurisdictional Commissioner.

Question No. 8: CENVAT on Capital goods is taken 50% in year of purchase and 50% next year. If depreciation is availed on cost + 50% un-availed CENVAT in first year. Department is not accepting it. Please clarify.

Reply no. 8: CENVAT credit and depreciation cannot be availed simultaneously.

Points sponsored by Taloja Manufacturer's Association, Taloja vide e-mail dated 21st April 2014.

Question No.9: One member SSI unit having turnover of Rs. 34,00,000/- are engaged in cutting of Hot Rolled (Mild Steel) sheet and are registered under Service Tax ?

The unit wants to expand their activity by doing pickling of Hot Rolled Sheets which amounts to manufacturing. In this process, the Hot Rolled Sheets are given by traders/manufacturer. They use other consumables e.g. HCL Acid, Oil, Calcium carbonate, Water, Sodium Hydroxide etc. After pickling the HR Sheets are returned to traders/manufacturers. Bill is issued to the trader/manufacturers for pickling process, which includes consumable cost, labour cost, overhead cost and profit which will be per kilograms basis.

Consultant has suggested them to register under Central Excise and avail benefit of SSI unit for which turnover up to Rs. 1.5 crore is exempted and there is no need to charge excise and also not to avail any modvat.

Reply no. 9: As per Chapter Note 6 of Chapter 72, the activity of 'pickling' amounts to manufacture only for head 7208. If the goods are classifiable under Ch. 7208, duty is payable on such goods on an ad-valorem basis. Assesse are also eligible to avail value based exemption in terms of Notfn. No. 8/2003-CE dated 01.03.2003 as amended subject to the conditions notified therein. The manufacturer has the option not to avail the exemption contained in the above notification and pay normal duty. Such option has to be exercised before effecting first clearances in the financial year.

Sd/-30.04.2014
(Debojit Bose)
Joint Commissioner
Chief Commissioner's Office,
Mumbai Zone - II

F. No. IV/16-53/CCO-II/MCX/2011/Pt.
Mumbai, the .04.2014

To,
All the RAC Members.

Copy to :

- (1) The Chief Commissioner, Central Excise, Mumbai Zone-I.
- (2) The Commissioners, Central Excise, Mumbai-II/III/Belapur & Raigad.
- (3) The Commissioner of Central Excise (Appeals), Mumbai-II & Mumbai-III.
- (4) The Commissioners, Central Excise, Mumbai-I/V/Thane-I & Thane-II of Mumbai Zone-I.

