

Instruction No. 27/2024-Customs**F.No. 394/39(14)/2018-Commr.(Inv.-Cus.)**

Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes and Customs
(Investigation-Customs)

New Delhi, 01 November, 2024

To

All Principal Chief Commissioner/Chief Commissioners of Customs/Customs
(Preventive)/CGST & Customs

All Principal Commissioner/ Commissioners of Customs / Customs (Preventive)
/ CGST & Customs

Webmaster, CBIC.

Madam/Sir,

Subject: Guidelines for Customs field formations in maintaining ease of doing business while engaging in investigation into tax evasion cases in import or export - reg.

The undersigned is directed to say that Customs field formations/Custom Houses often investigate types of cases of tax evasion in import or export of goods which are generally referred as commercial intelligence/fraud (CI) cases. These types of cases are distinct from the category generally referred as outright smuggling cases that, *inter alia*, involve contraband etc. Since import and export of goods through the filing of documentary declarations is also connected with doing business, the approach in investigation of CI cases must keep the balance with ease of doing business.

2. Keeping relevant aspects in view, the Board desires the following guidelines be followed by Customs field formations/Custom Houses while engaging in investigation in CI matters, subject to legal provisions or instructions otherwise issued in this behalf:

2.1 Within the jurisdiction of the Commissionerate, the Commissioner^[1] is responsible for developing and approving any intelligence, investigation and its completion. Each investigation must be initiated only after the approval of the Commissioner. A CI case investigation must reach the earliest conclusion which is normally not more than one year.

2.2 Before initiating investigation, the intelligence inputs and relevant aspects related to CI matters need to be appropriately analyzed. This includes cross check with reference to available data, technical literature, prevalent industry practice, judicial pronouncements, extant legal framework, precedence etc. It is desirable to undertake as complete an analysis as feasible, before the actual investigation is initiated. This would also enable seeking holistic information/record/documents

related to an issue in the first instance, which is an important factor in minimizing interface with the importer/exporter.

2.3 The analysis referred above should extend to checking open-source information and the entries in DIGIT and DIN in terms of the existing investigations related to the same entity and also if an investigation on the same issue exists.

2.4 The Commissioner may also decide whether the commercial intelligence, being actionable, is such that it is also to be brought to the notice of DRI. For example, it may have cross jurisdictional relevance. In such situations, the Commissioner shall have the jurisdictional Chief Commissioner bring it to the notice of Pr. DG of DRI.

2.5 Even after the initial decision for conduct of investigation has been made by the Commissioner, the general principles of ease of doing business, including those driven by common prudence, must be kept in view while undertaking investigation. These include:

- (a) As far as possible, documents may be sought preferably by writing letter.
- (b) In case summons have to be issued, the extant Instructions of CBIC (including F. No. 394/05/2015 - Cus (AS) dated 04.02.2015) including on the matter of issuing summons to senior management officials must be kept in view.
- (c) The time frame specified for appearance, or producing information, should be reasonable and keeping in view the mode of communication of the letter/summon.
- (d) Before seeking any information or documents, the relevancy and propriety of what is being sought shall be recorded (on e-file), ensuring that it is holistic and result of preparation, and also so as not to have repeated issuance of letter/summons or seeking of piecemeal information.
- (e) In issuing letter/summons for information or documents the norm shall be of prior reasoned approval (of officer not below Dy/Asst. Commissioner level) of each content of the summons to be printed by the summoning officer.
- (f) If the statement is recorded under summons, the scanned copy of such statement shall be uploaded in the same e-office file in which approval was obtained to issue summons. Outcome of search/inspection conducted, including panchnama or mahazar (where recorded), be also so uploaded. The e-file should be submitted for information to Addl./Jt. Commissioner at the earliest and in any case within 4 working days from date of statement, completion of search/inspection.
- (g) The practice of taking into account appropriate difficulties or circumstances presented by the entity should be developed by the Commissioner. For example, there could be a need to take into account aspects such as location of entity's personnel, etc.
- (h) In seeking information/documents in CI matters, the letter/summons should disclose the specific nature of the inquiry being initiated/undertaken.

The vague (or general) expressions must be avoided.

(i) Wherever permissible, the officer indicates to the person summoned, the option to attend by an authorized agent.

(j) The documents which are specified in the summons to be produced, should be only those required for investigation. The summons should not require any document or thing to be produced in connection with the inquiry which is outside the scope of summons related to that inquiry. The scope of summons in Customs is in the wording of Section 108 of the Customs Act, 1962. Issuing letter/summons with context or content akin to a fishing inquiry is not acceptable.

(k) Information otherwise available, for example, e-sanchit documents, information on various departments' online portals, etc. need not be routinely sought. Further, a letter/summons should not be used as a means to seek information filled in formats or proforma (specified by investigation).

(l) It is not necessary to keep investigation pending till limitation in law approaches. Moreover, the closure report consequent to the appropriate payment of government dues by the person concerned should also not be delayed and should have a brief self- explanatory narration of the issue and the period involved. Timely actions, i.e. without delay, at these stages are all part of preventive vigilance ensuring that no room remains for malpractices and this holds also for the aspect at (m) below.

(m) Conclusion of investigation also takes the form of recording that investigation is not being pursued further as nothing objectionable was found in terms of matter investigated.

2.6 During the course of search or investigation proceedings there may not be tax due to 'recover'. During such proceedings in CI cases the investigating officer should appropriately inform the entity regarding the legal provisions related to voluntary payment.

2.7 The Commissioner inclusively overseeing investigations/related work with respect to CI matters is beneficial to avoiding grievances in an ongoing inquiry. Wherever a reasonable grievance persists, the Commissioner may consider meeting, by appointment, the importer/exporter or his representative.

Yours faithfully,

Signed by Shweta Garg

Date: 01-11-2024 16:27:50

Shweta Garg

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Copy for information to -

All Principal Directors General/ Directors General under CBIC.

[1] The term "Commissioner" includes Principal Commissioner.