

I/925806/2022



प्रधान मुख्यआयुक्त सीमाशुल्क का कार्यालय,  
OFFICE OF THE PR. CHIEF COMMISSIONER OF CUSTOMS,  
मुंबईजोन -I, दूसरी मंज़िल, नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट,  
MUMBAI ZONE-I, 2<sup>nd</sup> FLOOR, NEW CUSTOM HOUSE,  
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29-12-2022

To,  
The Commissioner of Customs (Audit),  
New Customs House,  
Mumbai.

Sir,

**Sub: Advisory No. 01/2022 dated 29.12.2022 -Customs Brokers not to be implicated in case of interpretative disputes etc. – reg.**

I have been directed to forward an Advisory No. 01/2022 dated 29.12.2022 on above mentioned subject.

This issues with the approval of Pr Chief Commissioner Zone-I.

Yours faithfully,

RAVINDRA KUMAR SINGH  
ADDITIONAL COMMISSIONER

Copy to:  
All Pr. Commissioner/Commissioner of Customs, Zone-I

Signed by Ravindra Kumar  
Singh  
Date: 29-12-2022 15:27:28  
Reason: Approved



F. No. CCCO/TECH/15/2022

Date: 29.12.2022

**ADVISORY No. 01/2022****Sub: Customs Brokers not to be implicated in case of interpretative disputes etc. – reg.**

The BCBA has raised the issue before Pr. Chief Commissioner of Customs, Mumbai Zone-I in CCFC meeting of November'2022 that Customs Brokers are being made co-noticee in the SCN or being made part of adjudication proceedings, even in interpretative disputes regarding classification, levy of exemptions notifications, sometimes even valuation of the Importers/Exporters, and often being levied with a charge of mis-declaring the item for penal action. The issue has been raised in the context of Audit Commissionerates making the CBs party to the Draft SCNs (DSCN) on the basis of a documentary audit of importers/exporters. The BCBA made out a case in the above CCFC meeting. In order to create a trust-based environment in seamless, faceless, and contactless Customs clearance work, the Pr. Chief Commissioner of Customs, Mumbai Zone-1 constituted a Committee of the Pr. Commissioner of Customs (General) and the Commissioner of Customs (Audit) to study the issues and devise a permanent mechanism to address the same. Based on the recommendation of the Committee, following Advisory is being issued for officers of Audit Commissionerate:-

1. The Officers need to be sensitized about the objective of the Government towards Ease of Doing Business, whereby it is the stated policy of the Government to create an atmosphere of Trust & Ease and also to reduce litigation as per the National Litigation Policy.
2. The Officers involved in the Audit and subsequent preparation of Draft SCNs should be given suitable direction/advice not to invoke the violation of provisions of CBLR 2018 and make the CBs co-noticees in cases involving Interpretative disputes regarding classification, availment of the benefit of exemption notifications and valuation. Moreover, the involvement of retrospective interpretative issues in a case should not be made the basis to invoke the violation of provisions of CBLR, 2018.

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3. Further, the Officers need to be sensitized about the provisions of Customs Broker Licensing Regulations, 2018 (CBLR,2018) and the implications of invoking the said provisions. As the scope of the audit is limited to scrutinising the averment based on documents submitted to the revenue, the possibility to prove such complicity, involving the violations of the provisions of CBLR, 2018, is unattainable without detailed inquiry.
4. There are numerous judicial pronouncements wherein it has been, inter-alia, held that in cases where there is no evidence of complicity in the illegal importation of goods or wrong intent or prior knowledge about the violation, the penalty cannot be imposed on the Customs Broker.
5. In cases where the Audit Team feels that the role of the CBs needs to be examined in detail to ascertain whether they had any part in the wilful mis-declaration or wrongful claim of Notification benefit, etc., based on documents available for Audit, the preliminary findings need to be recorded by the Audit, and the matter needs to be discussed in MCM.
6. The MCM should examine the issue in detail, and if the documents available on records indicate a possible role of CBs-For example, when forged documents are recovered during PBA -the matter can be referred to the respective Commissionerate where the B/Es or S/Bs were filed. Para 4.4.1 iii of the Audit Manual provides for recommending the audit objection for further investigation by SIIB/CIU/DRI/other investigating agency. A Note explaining the need for further inquiry/investigation into the role of CBs needs to be sent along with all other documents.
7. The report of the Commissionerate/Investigating Agency referred in Para 7 above into the role of CBs in such matters will then be discussed in MCM, and appropriate decision will be taken in regards to making CBs co-noticee in the DSCN or otherwise.

RAVINDRA KUMAR SINGH  
ADDITIONAL COMMISSIONER

Signed by Ravindra Kumar  
Singh  
Date: 29-12-2022 15:30:51  
Reason: Approved