

E-exercise



Drafting of Show  
Cause Notice  
(Customs)

**Note:**

In this **e-Exercise Book**, the reader can check his understanding and knowledge about *Drafting of Show Cause Notice in Customs*. Though all efforts have been made to make this exercise book error free, but it is possible that some errors might have crept into it. If you notice any errors or if you have any suggestion to improve this exercise book, the same may be brought to our notice through email on the e-mail address [rtinacenkanpur@yahoo.co.in](mailto:rtinacenkanpur@yahoo.co.in). This may not be a perfect **e-Exercise Book** and all are requested to assist us to make it better.

Sd/-  
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### Class Exercise No.1 – Customs

Before doing this class exercise, the trainee may carefully go through the content of the note given below.

#### Note for the trainees:

- This exercise on drafting of Show Cause Notice has been developed for purpose of teaching newly recruited officers of the rank of Inspectors and explains the basics of drafting of Show Cause Notice.
- This exercise can be used by trainers for the purpose of conducting class exercise of trainee officers while imparting training to such officers.
- It must be kept in mind that Show Cause Notices issued in the field are much more detailed one.
- In this exercise, attempts have been made to explain four 'C's- **Contraventions, Consequences, Charged persons and Charging paragraph**. The proper understanding of four "C"s is must for the officers to draft good quality SCN.
- After reading the situation given, the trainee officer may identify the legal provisions which have been contravened; consequences of such contravention of each of the legal provisions; person to be charged in the SCN; and finally, draft Charging Paragraph of the SCN.
- After completion of the exercise, trainee may compare his/her answer with the model answer given at the end.

### Situation

Consider that you are Assistant Commissioner in charge of Special Intelligence and Investigation Branch of the Air Cargo Complex, New Custom House, Delhi. On 25/2/2016, you received an specific intelligence that Importer M/s XXX, Delhi, having IEC YYYY is evading Customs duty by resorting to mis-declaration of description, quantity and brand of the goods imported by it.

On receipt of intelligence, SIIB officers kept a watch on a consignment imported by M/s XXX and sought to be cleared vide B/E No. 111111, dated 29.02.2016. The consignment was intercepted on 1.3.2016 when it was being removed from Customs Area after Out of Charge. In the Bill of Entry filed under Section 46 of the Customs Act, 1962 by the importer, the goods were declared as 100 mobile phones (unbranded) - each having declared CIF value of 50 USD.

On re-examination of the consignment by SIIB in the presence of the importer, you found that the mobile phones were of Apple brand i-phone of model 5S. The same models of I-phone (Apple brand) are regularly being imported by other importers through Air Cargo Complex, Delhi at per piece CIF value of 1000 USD.

Statement of Importer Mr. AAA, proprietor of the firm M/s XXX, was recorded by Mr. ZZ, superintendent, SIIB. He stated that he was a regular importer of mobile phones for past 3 years and had a good compliance history. In the past, Customs authorities had never detected any mis-declaration in the goods imported by him. He further stated that the goods had been wrongly sent by the shipper by mistake. He further mentioned that he was ready to clear the consignment and pay the duty as worked out by the Customs authorities. He accepted the examination report given by the SIIB officers and also accepted that the goods were of apple brand 5 S i-phones.

In view of the mis-declaration of the brand of goods imported, you ordered the seizure of the goods and the same were seized under the provisions of the Customs Act, 1962

Now, you are asked by your Joint Commissioner, SIIB to put up the draft SCN for issuance to the importer. **Draft the SCN in the light of investigations supervised and monitored by you.**

**[Note: For the purpose of calculation, the following Rate of Duties, Exchange Rate and Landing Charge may be assumed:-**

- (i) Rate of duty on Mobiles: BCD= 10%; CVD=10% , SAD= Nil Education Cess= Nil, Secondary and Higher Education Cess= Nil;
- (ii) Rate of Exchange **1 USD= Rs.50;**
- (iii) Landing Charge= 1%

### **Analysis of the situation:**

- It is case of deliberate evasion of Customs duty by mis-declaration of transaction value, Brand and non-declaration of model number of imported mobile phones. Therefore, by filing incorrect declaration in the Bill of Entry, the importer has also contravened the provisions of Section 46 of the Customs Act, 1962.
- Since it is case of deliberate undervaluation of goods, the declared value is required to be first rejected under Rule 12 of the Customs Valuation (Import) Rules, 2007. Then, it needs to be determined in terms of Rule 4 of the Customs Valuation (Import) Rules, 2007.
- As it is case of mis-declaration of value, brand of the imported goods, the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- Since mis-declaration of value, brand of imported goods has resulted in short payment of duty, the duty so paid in short has to be demanded under Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.
- For attempted evasion of Customs duty by the importer, the importer is also liable for imposition of penalty under Section 112 (a) of the Customs Act, 1962.

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### A. Contraventions:

- Section 46 of the Customs Act, 1962
- Customs Valuation ( Determination of value of Imported Goods ) Rules, 2007
- Section 14 of the Customs Act, 1962

### B. Consequences:

- Imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962
- Declared value of imported goods to be rejected and needs to be re-determined in terms of Customs Valuation ( Determination of value of Imported Goods) Rules, 2007
- Imposition on penalty on the importer under Section 112 of the Customs Act, 1962

### C. Person Charged: M/s XXX

### D. Charging Paragraph of SCN

In view of above, now, the importer M/s XXX, Delhi is hereby required to show cause to the Joint /Additional Commissioner, having its office located at Air Cargo Complex, New Custom House, Delhi within thirty days of the receipt of this notice as to why:-

- (a) The imported 100 mobiles having total Assessable Value of Rs. 50,50,000/- should not be confiscated under Section 111(m) of Customs Act, 1962;
- (b) The value of the imported mobiles declared in the B/E No. 111111 dated 29.02.2016 filed by him should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
- (c) The value of imported goods should not be re-determined as Rs. 50,50,000/- in terms of rule 4 of the said Rules on the basis of the assessable value of identical goods imported during the relevant period;
- (d) The differential Customs Duty total amounting to Rs. **10,07,475/-** (BCD Rs. 4,79,750/- + CVD Rs. 5,27,725/-) chargeable on the seized imported mobiles should not be demanded and recovered from him under Section 28 of the Customs Act, 1962;
- (e) The interest on the duty so paid in short should not be demanded and recovered from him under Section 28AA of the Act *ibid*.
- (f) Penalty should not be imposed upon him under Section 112(a) of the Customs Act, 1962.

**Model Draft Show Cause Notice**

**Office of the Commissioner , \_\_\_\_  
New Custom House,  
Delhi**

C.No.....

Dt.....

**Show Cause Notice No. \_\_\_\_**

Whereas, M/S XXX having IEC No. YYYY (hereinafter referred to as 'importer') filed a B/E No. 111111 dated 29.02.2016 under section 46 of Customs Act, 1962 for import of 100 mobile phones (unbranded) each having declared CIF value of 50 USD.

**2.** Whereas, on the basis of an intelligence regarding mis-declaration of the imported goods by the importer, the SIIB officers intercepted the consignment imported vide B/E No. 111111 dated 29.02.2016 on 01.03.2016 when it was being removed from Customs Area after Out of Charge. On re-examination of the consignment by SIIB in the presence of the importer, it was found that the mobile phones were of Apple brand i-phone of model 5S.

**3.** Whereas, statement of Mr. AAA, proprietor of M/s XXX, was recorded on 01.03.2016 under section 108 of the Customs Act, 1962 wherein he, inter alia, stated as under:-

- (i) that he was a regular importer of mobile phones for the last three years and had a good compliance history;
- (ii) that in the past, Customs authorities had never detected any mis-declaration in the goods imported by him;
- (iii) that the shipper had wrongly sent the goods by mistake.

**4.** Whereas, Mr. AAA has accepted the examination report given by the SIIB officers and expressed his willingness to clear the consignment and pay the duty as worked out by the Customs authorities.

**5.** Whereas, on the reasonable belief that the Noticee had mis-declared the description of the imported goods as unbranded mobile phones instead of Apple brand i-phones model 5S with intent to evade Custom duty and , thus, contravened the provisions of section 46 (4) of Custom Act, 1962 rendering the goods liable for

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confiscation under section 111 (m) of the Act *ibid*, the Customs officers seized the entire imported goods having total Assessable Value of Rs. 50,50,000/- (worked out on the basis of contemporaneous imports) under section 110 of the Custom Act, 1962.

**6.** Whereas, it appears that Apple Brand I-phone of model 5 S are regularly being imported by other importers at Air cargo complex, Delhi at the CIF value of USD 1000 per piece as evidenced by the Following B/Es.

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**7.** Whereas, it appears that the goods found on examination of the consignment are materially different from the declaration made by the importer in the B/E, the transaction value declared by the importer is not the true transaction value, therefore, it is liable for rejection under the provisions of Rule 12 of the Customs Valuation (Import) Rules, 2007 issued under Section 14 of the Customs Act, 1962 and needs to be re-determined under Rules 4 of the Customs Valuation Rules, 2007 as USD 1000 per piece (CIF Basis).

**8.** Whereas, it appears that the importer has deliberately mis-declared the imported goods as explained above resulting in short payment of duty amounting to Rs. 10,07,475/- ( as worked out in the Annexure), the same is liable to be recovered from the importer under section 28 of the Customs Act, 1962 along with interest under section 28AA of the said Act.

**9.** Whereas, it appears that the importer has contravened the provisions of section 46(4) of the Customs Act, 1962 by mis-declaring the value, Brand and model number of imported goods. Thus it appears that the seized imported mobiles having total Assessable value of Rs.50,50,000/- are liable for confiscation under section 111(m) of the Customs Act, 1962.

**10.** Whereas, it appears that the importer by mis-declaring the description of the imported mobiles including its make and model no, has contravened the provisions of section 46(4) of the Customs Act, 1962 with intent to evade payment of Customs duty total amounting to Rs. 10,07,475/- and thus, have rendered themselves liable for penal action under section 112(a) of the said Act.

**11.** In view of above, now, the importer M/s XXX, Delhi is hereby required to show cause to the Joint /Additional Commissioner, having its office located at Air Cargo Complex, New Custom House, Delhi within thirty days of the receipt of this notice as to why:-

- (a) The imported 100 mobiles having total Assessable Value of Rs. 50,50,000/- should not be confiscated under Section 111(m) of Customs Act, 1962;
- (b) The value of the imported mobiles declared in the B/E No. 111111 dated 29.02.2016 filed by him should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

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- (c) The value of imported goods should not be re-determined as Rs. 50,50,000/- in terms of rule 4 of the said Rules on the basis of the assessable value of identical goods imported during the relevant period;
- (d) The differential Customs Duty total amounting to Rs. **10,07,475/-** (BCD Rs. 4,79,750/- + CVD Rs. 5,27,725/-) chargeable on the seized imported mobiles should not be demanded and recovered from him under Section 28 of the Customs Act, 1962;
- (e) The interest on the duty so paid in short should not be demanded and recovered from him under Section 28AA of the Act *ibid*.
- (f) penalty should not be imposed upon him under Section 112(a) of the Customs Act, 1962.

**12.** The importer is also required at the time of showing cause, to produce all the evidences upon which he intend to rely in support of his defence. He should also indicate whether he wishes to be heard in person before the case is adjudicated.

**13.** If no cause is shown against the action proposed to be taken or he does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided *ex-parte* on merits.

**14.** The present show cause notice is issued without prejudice to any other action that may be taken under any other provision of Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being in force.

**15.** List of RUDs and RUDs as per list are enclosed.

Encls: Annexure and List of RUDs

Sd/-

**Joint /Additional Commissioner  
New Customs House  
Delhi**

To

- (i) M/s

List of relied upon documents:

1. B/E No 111111 dated 29.02.2016 along with Invoice and Packing list.
2. B/E No. AAAAAA dated BBBB BBBB for import of identical goods
3. Statement dated 01.03.2016 of Mr. AAA
4. Seizure memo

## Drafting of Show Cause Notice (Customs)

### Annexure

#### I. Assessable value as per declaration of the Noticee:

Total CIF value	= 100 x 50 USD	= 5000 USD.
CIF value in Rupees	= 5000 x 50	= Rs. 2,50,000/- [1 USD = Rs.50/-]
Landing charges @ 1% of CIF value		= Rs 2,500/-
<b>Assessable Value</b>	<b>= CIF value + Landing charges</b>	
	= 2,50,000/,+2,500/-	
	= Rs.2,52,500/-	
BCD @ 10% of AV= 10% of Rs.2,52,500/-		
	= Rs.25,250/-	
<b>Value for calculation of CVD</b>	<b>= AV + BCD= 252500+ 25250</b>	<b>= Rs.2,77,750/-</b>
CVD @ 10%	= 10% of Rs.2,77,750/-	
	= Rs.27,775/-	
<b>Total duty (A)</b>	<b>= BCD+ CVD</b>	
	= Rs.25250/-+ Rs.27775/-	
	= Rs.53,025/-	

#### II. Assessable Value as re-determined on the basis of value of identical goods.

Total CIF value	= 100 x 1000 USD	= 1,00,000 USD
[CIF value as per B/E No. AAAA dated BBBB for identical goods]		
CIF value in Rupees	=1,00,000/- x 50	= Rs.50,00,000/- [1 USD = Rs.50/-]
Landing charges @ 1% of CIF Value		= Rs.50,000/-
<b>Assessable value</b>	<b>= CIF + Landing charges</b>	
	= 50,00,000/- + 50,000/-	
	= Rs. 50,50,000/-	
BCD@ 10% of A.V.	= 10% Rs.50,50,000/-	= Rs.5,05,000/-
CVD@10% of (AV+BCD)	= 10% (Rs.50,50,000/- + Rs.5,05,000/-)	= 10% of ( 5,55,500/-)
<b>Total Duty (B)</b>	<b>= BCD + CVD= Rs.5,05,000+ Rs.5,55,500/</b>	<b>= Rs.10,60,500/-</b>

**III. Calculation of Differential Customs Duty:**

$$\begin{aligned} \text{Differential duty (B - A)} &= \text{Rs.10,60,500/-} - \text{Rs.53,025/-} \\ &= \text{Rs.10,07,475/-} \end{aligned}$$

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