

E-exercise



Drafting of
Show Cause Notice
(**Central Excise**)

Drafting of Show Cause Notice (Excise)

Note:

In this **e-Exercise Book**, the reader can check his understanding and knowledge about *Drafting of Show Cause Notice in Central Excise*. 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. 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 – Central Excise

Before doing this class exercise, the trainee may carefully go through the contents 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, trainee officer may identify the legal provisions which have been contravened; consequences of such contravention of each of the legal provision; person to be charged in the SCN; and finally, draft Charging Paragraph of the SCN.
- After completion of the exercise, trainee officer may compare his/her answer with the model answer given at the end of this exercise.

Situation

M/s ABC, a private limited company, established a bottling plant within the municipal area of Kanpur for manufacturing of packaged drinking water of brand 'Kinley' and started manufacturing and clearance in the month of December, 2012. The owner of the brand 'Kinley' is M/s Coca Cola.

In the month of January, 2016, the Central Excise Officers searched the premises of M/s ABC under the authority of search warrant.

On enquiry the M.D. of the Company stated that they were exempt from payment of Central Excise duty being small scale manufacturer. His statement was recorded on the spot on 10.01.2016 under Section 14 of Central Excise Act, 1944 in which he admitted that Central Excise Registration has not been taken by them being a SSI unit and accordingly no Central Excise duty has been paid.

On being asked, he provided value of clearances of packaged drinking water as under:-

2012-13	=	Rs. 50,00,000/-
2013-14	=	Rs. 1,40,00,000/-
2014-15	=	Rs. 1,05,00,000/-
2015-16	=	Rs. 1,25,00,000/-

During stock verification, the stock of finished goods was found nil.

Please examining whether M/s ABC is liable for payment of Central Excise duty. Identify provisions of Central Excise Act/Rules/notification which have been contravened. If so, prepare draft Show Cause Notice giving relevant provisions of law.

Answer

A. Contraventions

What are the legal provisions of the Central Excise Act, 1944 and rules issued thereunder, contravened in this case?

- Wrong availment of benefit of Central Excise Duty exemption under notification No. 8/2003-CE, dated 1.3.2003.
- Non-payment of Central Excise Duty (Rule 4 and Rule 8 of the CER, 2002)
- Non Registration (Rule 9 of the CER, 2002)
- Non filing of monthly/Quarterly Return (Rule 12 of the CER, 2002)
- Non issuance of Proper Invoice (Rule 11 of the CER ,2002)
- Non maintenance of Stock Register (Rule 10 of the CER, 2002)

Note: The CER, 2002 means Central Excise Rules, 2002.

B. Consequences

What are consequences of the contravention of the above said legal provisions of Central Excise Act, 1944 and Rules framed thereunder?

For wrong availment of notification and Short payment of duty

- Demand of duty not paid under Section 11A of the Central Excise Act, 1944
- Demand of Interest on the duty not paid under Section 11AA of the Central Excise Act, 1944

Penal action for contravention of provisions of Section/Rules

- Under Section 11AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002

C. Charged Person(s)

Who are the persons to be charged for the above said contraventions and required to face consequences as per the legal provisions?

- M/s ABC Private Limited
- MD of M/s ABC Private Limited (if evidence exist indicating his deliberate evasion of central Excise duty)

D. Charging Paragraph

Now, therefore the said M/s ABC Pvt. Ltd are hereby required to Show Cause to the Additional Commissioner of Central Excise, Kanpur having his office located at __, Kanpur within a period of 30 days of receipt of this notice as to why,-

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- (i) Central Excise duty amounting to Rs.....(as explained in Paragraph _ above) should not be demanded from them, in terms of section 11 A (4) of the Central Excise Act 1944,
- (ii) appropriate interest on the duty so not paid should not be demanded and recovered in terms of Section 11AA of the Central Excise Act, 1944;
- (iii) Penalty should not be imposed upon them in terms of Section 11AC of the Act, read with Rule 25 of the Central Excise Rules 2002, for contravention of the various provisions of Central Excise Rules as aforesaid.

Model Draft Show Cause Notice

F. No.

Date

DEMAND CUM SHOW CAUSE NOTICE

M/s ABC Pvt. Ltd. (hereinafter referred to as the manufacturer) are having a bottling plant for manufacture of ‘packaged Drinking water’, at the address _____, Kanpur. They are engaged in the manufacture and clearance of packaged drinking water ‘Kinley’ brand in the aforesaid plant since December’2010.

2. The packaged drinking water is an excisable commodity falling under Tariff Heading of the Central Excise Tariff Act 1985, and attracts Central Excise duty @

3. The officers of the Commissionerate of Central Excise, Kanpur searched the aforesaid manufacturing premises of M/s ABC Pvt. Ltd onunder the authority of a search warrant issued by No stock of finished goods was found by the visiting officers. The officers asked for year-wise total value of clearances and Central Excise duty paid on such packaged drinking water. The total value of clearances, year-wise as provided by the unit is as follows.

FY	Value of Clearances (In Indian Rupees)
2012-13	50,00,000/-
2013-14	1,40,00,000/-
2014-15	1,05,00,000/-
2015-16	1,25,00,000/-

However, no duty was paid on such clearances

4. The MD of the unit in his statement recorded under section 14 of the Central Excise Act, inter alia, explained that since they were below the exemption limit of 1.5 Crores, as provided under Notification No.08/2003-CE dated 01.03.2003, they had not paid Central Excise duty against clearances of ‘packaged drinking water’ and also not taken Central Excise Registration. He admitted that the brand name ‘Kinley’ used by them was not owned by the unit, but belonging to M/s Coca Cola.

5. The Notification No.8/2003-CE, dated 01.03.2003 prescribes an exemption limit of Rs.1.5 Crore value of clearances from a factory by a manufacturer. However, the said exemption is not available to a manufacture when specified goods are manufactured bearing a ‘brand name’ or trade name, whether registered or not of another person.

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6. Since the Brand Name 'Kinley' belongs to another person i.e. M/s Coca Cola, the claim for exemption from payment of Central Excise duty under notification No. 8/2003-CE, dated 01.03.2003, is hit by this exclusion clause. Therefore, it appears that the said M/s ABC is not entitled for small scale duty exemption as provided under notification No. 8/2003-CE dated 01.03.2003, and consequently appears to be liable to pay Central Excise duty (as calculated below) along with appropriate interest under sections 11A and 11 AA of the Central Excise Act, 1944 respectively on the entire quantity of packaged drinking water manufactured & cleared by them.

FY	Value of Clearances (In Indian Rupees)	Central Excise duty payable	Edu. Cess and S & H.E. Cess payable
2012-13	50,00,000/-	5,00,000/-	15,000/-
2013-14	1,40,00,000/-	14,00,000/-	42,000/-
2014-15	1,05,00,000/-	10,50,000/-	31,500/-
2015-16	1,25,00,000/-	12,50,000/-	37,500/-
Total		42,00,000/-	1,26,000/-

[Note: Assuming rate of Central Excise Duty=10%, Education Cess=1% and S&HE Cess= 2%]

7. The said M/s ABC Private Limited, preferred not to pay duty in the garb of small scale exemption as provided under notification no. 8/2003-CE, dated 1.3.2003, although the goods manufactured by them carried brand name of another person, were not eligible for such exemption. Hence, it appears that extended period of limitation, as provided under Section 11A (4) of the Central Excise Act, 1944 is also invokable. They also appear to be liable for penal action in terms of Section 11AC of the Central Excise Act.

8. Further, it also appears that the said M/s ABC are also liable for penalty for contravention of the following provisions:-

- (i) Rule 4 of the Central Excise Rules 2002 in as much as they have not paid Central Excise duty in the manner, as provided under Rule '8' of the Central Excise Rules.
- (ii) Rule 8 of the Central Excise Rules 2002 in as much as they have not paid Central Excise duty in accordance with this rule.
- (iii) Rule 9 of ibid in as much as they have failed to seek registration under the Rules despite being liable to pay duty.
- (iv) Rule 12 ibid in as much as they have failed to file prescribed statutory returns.
- (v) Rule 10 ibid in as much as they have failed to maintain daily stock account;
- (vi) Rule 11 ibid in as much as they have failed to issue proper invoice.

9. Now, therefore the said M/s ABC Pvt. Ltd are hereby required to Show Cause to the Joint/Additional Commissioner of Central Excise, Kanpur having his office located at __, Kanpur within a period of 30 days of receipt of this notice as to why,-

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- (i) Central Excise duty amounting to Rs.....(as explained in Paragraph __ above) should not be demanded and recovered from them, in terms of section 11 A (4) of the Central Excise Act 1944,
- (ii) appropriate interest on the duty so not paid should not be demanded and recovered in terms of Section 11AA of the Central Excise Act, 1944;
- (iii) Penalty should not be imposed upon them in terms of Section 11AC of the Act, read with Rule 25 of the Central Excise Rules 2002, for contravention of the various provisions of Central Excise Rules as aforesaid.

10. The noticee is further directed to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defence. They should also indicate in their written reply whether they wish to be heard in person, or through their legal representative, before the case is adjudicated. If no mention of the same is made in their written reply, it shall be presumed that no personal hearing is desired by them and the case may be decided on the basis of the evidence available on record, without affording them any further opportunity in the matter.

11. If no cause is shown against the action proposed to be taken against them within the stipulated period as shown above, or if they fail to appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence available on the record.

12. This show cause Notice is issued without prejudice to any other action that may be taken against them or any other person concerned with the matter under the Central Excise Act, 1944, or any other Law for the time being in force.

13. List of RUDs and RUDs as per list are enclosed here.

Encls: List of RUDs and copies of documents as per List of RUDs

**[Joint/Additional Commissioner
of Central Excise, Kanpur]**

To,

1. The ABC, Kanpur
2.

Copy to:

- (i) Commissioner of Central Excise, Kanpur
- (ii) Adjudication Section
- (iii) Concerned Central Excise Division
- (iv) Master File
