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[For departmental use]

[Exercise-01]

E-exercise



Drafting of
Adjudication Order
(Central Excise)

Note:

In this **e-Exercise Book**, the reader can check his understanding and knowledge about *Drafting of Adjudication Order 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/-
(C. P. Goyal)
Additional Director General
NACEN, RTI, Kanpur
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Class Exercise No.1 – Excise

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

Note for the trainee officers:

- This exercise on drafting of adjudication order has been developed for the purpose of teaching newly recruited revenue officers and explains the basics of drafting of Adjudication Order.
- In this exercise, efforts have been made to draft adjudication order in terms of basics explained in e-book on drafting of Adjudication Order. Before attempting to draft an adjudication order, you must go through the E-books on “Drafting of Adjudication Order: Some Basics” and “Drafting of Show Cause Notice: Some basics”.
- It must be kept in mind that Adjudication Orders issued in the field are much more detailed one.
- After completion of the exercise, trainee officer may compare draft of adjudication order (AO) prepared by him/her with the model draft Adjudication Order given at the end of this exercise.

Show Cause Notice

F. No.

Date

DEMAND CUM SHOW CAUSE NOTICE

M/s ABC Pvt. Ltd. (hereinafter referred to as the manufacturer) is 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 Rs.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 Crores of the value of clearances from a factory by a manufacturer. However, the said exemption is not available to a manufacturer when specified goods are manufactured bearing a ‘brand name’ or trade name, whether registered or not of another person.

Drafting of Adjudication Order (Excise)

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 & HE 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. It appears that 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, extended period of limitation of five years, as provided under Section 11A (4) of the Central Excise Act, 1944 appears to be invocable. 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,-

- (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 evidences 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.

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

Party's Submission

The party vide their letter ____ dated ____ submitted the defence reply of the SCN wherein they submitted that:-

- (i) That they are manufacturing packaged drinking water with the brand 'KINLEY' which is owned by a multinational Co. viz M/s Coca cola.
 - (ii) That they were having a bona fide belief that being the value of clearances well below Rs. 4.00 crores, they were liable to avail the benefit of exemption provided under notification No. 8/2003-Central Excise and therefore, they did not take registration under Section 6 of Central Excise Act, 1944. Accordingly, they could not comply with the other provisions of Central Excise Act/Rules, which were required to be followed by them consequent to registration under Central Excise Act.
 - (iii) That they admitted their mistake but claimed that the same was not intentional and was due to ignorance of law as the unit is very small and having very poor infrastructure.
 - (iv) That in good spirit, they are ready to deposit the Central Excise duty as proposed in the show Cause notice.
- (2) That they request for taking lenient view in the matter with regard to imposition of penalty considering the nature of the case and the circumstances leading to inadvertent mistake by them .
- (3) That the proceeding initiated vide above SCN may be considered sympathetically. They further added that they may alter or amend any or all of the aforesaid submissions and they would like to be personally heard in the above matter.

Record of Personal Hearing (PH) and submissions made during PH:

A personal hearing was given to them on ____ . Shri XXX, CA and Shri YYY, MD of the unit appeared before me and reiterated the submissions made in their written reply submitted by them earlier. They requested for a lenient view with regard to imposition of penalty as it was un-intentional and due to ignorance of law. Further, they stated that they are willing to pay the due Central Excise duty along with interest.

In the light of SCN issued by the Department, noticee's reply to the SCN and submissions made during personal hearing (assume that PH has been taken by you), prepare draft Adjudication Order (AO).

Model Answer:-

1. Before drafting the Adjudication Order, one should remember the following steps involved in the process:-

Step No.1: Careful Consideration of the Material on Record

Step No.2: Listing of the Issues to be decided

Step No.3: Segregation of the Issues

Step No.4: Sequencing of Issues to be decided

Step No.5: Consideration of each Issue in Sequential Manner one by one [in the light of allegations made by the Department and evidences relied upon in support of allegations, defence argument and counter evidence submitted by noticee(s); and provisions of the law] **and giving Issue-wise findings.**

Step No. 6: Examination of Case Laws [relied upon by the noticee or by the Department]

Step No.7: Drafting of Adjudication Order [after drafting of Adjudication Order, check it again for elimination of errors, inconsistencies, spelling mistakes, language defects etc., if any]

Step No.8: Issuance of {well-reasoned} Order

2. Further, you must also remember the various parts of an Adjudication order and their sequence:-

- **Brief facts of the case** (along with issues raised by the Department in the SCN).
- **Written submission** by the Noticee (s)
- **Records of Personal hearing** and submission (additional submission) made by the noticee (s) during personal hearing.
- **Discussions and Findings**
- **Order**

3. While drafting the discussions and findings, sequencing of paragraphs and content thereof may be done in the following manner:

- (i) First paragraph is always on acknowledgement that adjudicating authority has carefully considered the material available on records such as show cause notices, evidences relied upon in the Show cause notice, written submission made by the noticee (s); case laws relied upon by the noticee; and provisions of law as existed at the material time.
- (ii) Second paragraph may be devoted to listing of all the issues which are before adjudicator for decision. These issues may come from show cause notice or may be additional issues raised by the noticee(s) on ground of time bar, lack of jurisdiction, violation of principles of natural justice, non-return of NON-RUDs, RUDs not given or being not legible/incomplete etc.

Note: Adjudicator should keep in mind that the sequencing of issues while listing all the issues is equally important. Sometimes, issues raised by the noticee(s) may have implication on sustainability of SCN, then such issue (s) need to be considered first e.g. issues like SCN being time barred or SCN issued without jurisdiction etc.

- (iii) Third paragraph may be devoted to issues which noticee(s) has not contested. Discussion and findings on such issue(s) may be done in short [in other words, detailed discussions, examination and reasoning is not necessary].
- (iv) Fourth Paragraph onwards, you can sequentially take up rest of the issues one by one for examination, discussion and give your reasoning in support of decision arrived at by you.
- (v) This process may continue till all the issues listed in paragraph (ii) above have been considered, discussed and findings given.
- (vi) In the final paragraph, adjudicating authority may give his/her order in the impugned case.

4. Now, in the light of explanation given above, you may attempt drafting of Discussions and findings in the situation given above.

Draft Adjudication Order

Brief facts of the Case:-

1. M/s ABC , PVT. LTD Co.. (here in after referred to as the Party) was engaged in manufacturing of packaged drinking water with the name and style of “ KINLEY’ brand owned by M/s Coca Cola. On a specific information the factory was searched by the officers of the department and it was found that the party was engaged in manufacturing of excisable goods without having any registration from the Central Excise department and on enquiry, it was disclosed by the party that they were of the view that they were eligible for small scale exemption provided under notification No. 8/2003-CE, dated 1.4.2003. On further verification, it was found that the following clearance of packaging drinking water with the brand name of ‘KINLEY’ was cleared by the party.

2012-13	50,0000/-
2013-14	1,40,00000/
2014-15	1,05,00000/-
2015-16	1,25,00,000/-

2. No duty was ever paid by the party for the above made clearances. Since the party is manufacturing a branded packaged drinking water which is owned by M/s Coca Cola, therefore, the party does not appear to be eligible for SSI exemption under notification No. 8/2003-CE, dated 1.4.2003. The party is accordingly, appears to be liable for payment of Central Excise duty at appropriate rate. The Party’s M.D in his written statement admitted that they were of their view that they were well below the exemption limit as provided under Notification No. 8/2003-CE, dated 1.4.2003 and therefore, they did not comply within the statutory provisions Contained in Central Excise Act 1944.

3. Not agreeing with contention of the party, a SCN was issued by the Department to the party asking them to show cause as to why the following action should not be taken against them:-

- (i) Central Excise duty amounting to Rs..... 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.

Case for the Party

4. The party vide their letter 14.5.2016 submitted the defence reply of the SCN wherein they submitted that:-

- (i) That they are manufacturing packaged drinking water with the brand 'KINLEY which is owned by a multinational Co. viz M/s Coca cola.
 - (ii) That they were having a bona fide belief that being the value of clearances well below Rs. 4.00 crores, they were liable to avail the benefit of exemption provided under notification No. 8/2003-Central Excise and therefore, they did not take registration under Section 6 of Central Excise Act 1944. Accordingly, they could not comply with the other provisions of Central Excise Act/Rules which were required by them consequent to registration under Central Excise Act.
 - (iii) That they admitted their mistake but further state that the same was not intentional and was due to ignorance of law as the unit is very small and having very poor infrastructure.
 - (iv) That in good spirit, they are ready to deposit the Central Excise duty as proposed in the show Cause notice along with interest.
- (2) That they requested for taking lenient view in the matter with regard to imposition of penalty considering the nature of the case and the circumstances leading to inadvertent anomaly by them .
- (3) That in view of above the proceeding initiated vide above SCN may be considered sympathetically. They further added that they may alter or amend any or all of the aforesaid submissions and they would like to be personally heard in the above matter.

Record of personal hearing:

5. A personal hearing was given to them on 02.06.2016. Shri XXX, CA and Shri YYY, MD of the unit appeared before me and reiterated on the defence reply submitted by them earlier. They requested for taking lenient view with regard to imposition of penalty as the mistake was un-intentional and due to ignorance of law. Further, they stated that they are willing to pay the due Central Excise duty along with interest.

Discussions and findings :-

6. I have carefully gone through the facts available on the records, reply of the party and defence put forth at the time of personal hearing.
7. The following issues are required to be decided in the instant case:-
 - (i) Whether the party is eligible for the benefit of concessional rate of duty under notification No. 8/2003-CE, dated 1.4.2003;
 - (ii) Whether Central Excise duty amounting to Rs.....is demandable and recoverable from the party in terms of section 11 A (4) of the Central Excise Act, 1944 along with interest in terms of Section 11AA of the Central Excise Act, 1944;
 - (iii) Whether Penalty is imposable on the party 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 mentioned in the SCN.
8. Now, I take up the above said issues for decision.
9. With regard to denying the benefit of notification No. 8/2003-CE, dated 1.4.2003, I find that the party is manufacturing the goods under the brand name owned by others. Such clearances are not eligible for benefits of concessional rate of duty under the above said notification. The party has also not disputed the department contention in this regard. Therefore, I find that the party is not eligible for benefit of concessional rate of duty under notification No. 8/2003-CE, dated 1.4.2003, on the goods manufactured and bearing the brand name of other party.
10. As regards to demand of duty along with interest, I find that the same is demandable and recoverable from the party as they are not eligible for benefit of concessional rate of duty under notification No. 8/2003-CE, dated 1.4.2003. Further, the party has not disputed the duty liability and liability to pay interest. Therefore, I find that the duty amounting to Rs. ___ as mentioned in the SCN is demandable and recoverable from the party under section 11A of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944.
11. With regard to imposition of penalty, I find that the party has contended that the mistake occurred as they thought that they are eligible for exemption from payment of Central Excise duty as the clearance of their product during the concerned Financial Years were below Rs. 1.5 Crores. Further, they have requested for taking lenient view in the matter. In this regard, I find that there is clear contravention of provisions of rule 4, rule 8 , rule 9 , rule 12, rule 10, and rule 11 of Central Excise Rules, 2002.

12. Further, I am of view that the ignorance of law cannot be an excuse. The compliance of tax laws is an important issue and cannot be taken lightly. Therefore, I find no merit in the contention of the party and find that they are liable for imposition of penalty under Section 11AC of the Central Excise Act, 1944 read with the provisions of rule 25 of the Central Excise Rules, 2002.

13. In view of the above discussions and findings, I pass the following order.

~ ORDER ~

- (i) I deny the benefit of exemption Notification No. 8/2003-CE, dated 1.3.2003;
- (ii) I confirm the demand of duty Rs ____ on the party under Section 11A of Central Excise Act, 1944 along with interest under section 11(AA) of the Act, ibid.
- (iii) I impose a penalty of Rs ____ on the party under Rule 25 Central Excise Rule, 2002 read with Section 11AC of Central Excise act 1944

(Name and Designation of
Adjudicating authority]

To,

M/s ABC

Copy to:

- (i) Adjudication Section
- (ii) Review Section
- (iii) Recovery Section
- (iv) Master Folder