Circular NO. 1081/02/2022-CX

F. No.296/63/2020-CX9
Government of India
Ministry of Finance
Department of revenue
Central Board of Indirect Taxes and Customs

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Dated: 19.01.2022

All Principal Chief Commissioners/Chief Commissioners of ST & CX,
All Principal Chief Commissioners/Chief Commissioners of Customs
All Principal Director Generals/Director Generals, CBIC

SUBJECT: Master Circular on Recovery and Write-Off of Arrears of Revenue

1. Board has issued Instructions/Circulars relating to recovery of arrears under Central Excise, Service Tax and Customs from time to time. Considering the changes that have taken place, especially after the introduction of GST in July, 2017, it has become imperative to update and revamp the procedure for recovery of arrears of Indirect taxes and Customs. Accordingly, in supersession of instructions issued earlier on the subjects which are annexed herewith as Annexure – A, this consolidated Circular is being issued providing guidelines for recovery and write-off of arrears of Indirect taxes and Customs.

2. THE CONCEPT OF ARREAR:

(i) Arrears are the overdue payment of the amount of tax, **interest,** fine or penalty that is confirmed against a person who is liable to pay the same to the exchequer. It arises as a result of Order-in-Original, Order of Appellate forum, like the Commissioner Appeals / ADC/JC Appeals or the CESTAT and the Courts of law.

(ii) The amount in the case under investigation, unconfirmed demands (i.e. Show Cause Notice, including those in Call Book), the Order-in-Original that has been set aside or remanded for de-novo adjudication by Appellate authority do not fall under the category of 'arrears'.

3. THE STATUTORY PROVISIONS FOR RECOVERY:

Recovery of Arrears is the positive act of getting the money that is legally overdue from a person/entity. The act of recovery of arrears has to be persuasive and legal. The taxing statutes incorporate the legal provisions for such recovery. Various statutory provisions for recovery of arrears are indicated as below:-

(a) Customs Act, 1962: Section 28 BA, Section 142 read with Section 142 A

(b) Customs (Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995;

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(c) Central Excise Act, 1944: Section 11, 11 E, 11 DDA, 12 and Sec 142(1)(b) and 142(1)(c)(ii) of Customs Act, 1962 as made applicable to Central Excise.

(d) Service Tax (Finance Act, 1994): Section 87, 88 and 73 C.

(e) CGST Act, 2017: Chapter XV (Section 73 to 84), Chapter XVI (Section 85 to 94), Section 142 (Transitional provisions), Section 174 (Saving clauses).

4. CATEGORIES OF ARREARS:

The Monthly TAR Report classifies the arrears under following categories:

(i) Arrear in Litigation/Appeal: SC/HC/CESTAT/Commissioner (Appeal)*/ Additional Secretary (Revision Application).*

(ii) Restrained Arrear: OL//DRT/BIFR/NCLT-Units taken over by Financial Institutions.

(iii) Arrear where appeal period is not over.

(iv) Recoverable arrear under:
- a. Appeal period over but no appeal filed.
- b. Settlement Commission cases (decided after expiry of 30 days).
- c. Units closed/defaulters not traceable.
- d. Arrear under Section -11 of Central Excise Act 1944/ 87 of Finance Act 1994/142 of Customs Act.
- e. Arrear under Section 142 (1)c (i) & (ii) of Customs Act, 1962 i.e. Certificate Action, and

(v) Arrears fit for Write- off

5. PROCEDURE FOR RECOVERY OF ARREARS

The Circulars issued vide F. No. 296/34/2004-CX. (pt.) dated 12.08.2004 and instructions issued vide C. No. CC/TAR/50/2007 dated 23.04.2008 are superseded and following instructions are issued for necessary action by the field formations.

(i) There should be a dedicated "Tax Recovery Cell" headed by a Joint/Additional Commissioner level officer in each Commissionerate. The monitoring of arrear recovery shall be done by the *Jurisdictional **Pr. Commissioners/Commissioners*** on monthly basis and the progress shall be monitored by the Zonal Principal Chief Commissioner/Chief Commissioner.

(ii) Parallel set of files relating to arrears shall be maintained in the TRC.

(iii) The TRC shall review the position of arrears of revenue of indirect taxes, devise and implement the strategy for realization of arrears not only with the objective of achieving the target but also to liquidate all the cases of arrears, particularly old cases, either by recovery or by write- off in fit cases. The category-wise guidelines for recovery are given in the following paragraphs.

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(iv) W.r.t. recovery of arrears arising out of common adjudication orders, it is directed that copy of SCN and Adjudication Order should be endorsed to the concerned *Jurisdictional* ***Pr. Commissioners/Commissioners*** for recovery of arrears. Such arrears should be reported by the said *Jurisdictional* ***Pr. Commissioners / Commissioners*** and action of recovery of arrear should be taken by him.

5.1 <u>CASES UNDER LITIGATION/APPEAL</u>-

Though, arrears pending before the appellate fora may not be recoverable immediately yet the status of these cases need to be clarified and monitored regularly. For this category the following guidelines should be followed for effective monitoring:

(a) Cases of arrears pending before SC / HC/ CESTAT-

(i) The *Jurisdictional* ***Pr. Commissioners /Commissioners*** will identify all cases of appeal where the department has a strong case or a reasonable chance of success and the amount involved in the arrears is more than Rs. 1 Crore.

(ii) The particulars of all such cases will be kept with the Review Cell/Legal Cell and the TRC of the Commissionerate for regular monitoring.

(iii) Miscellaneous Application for early hearing, out-of-turn hearing, early decision, stay vacation, bunching of cases as per merits/ requirement should be requested.

For this purpose, the Review Cell/Legal Cell will co-ordinate with the office of the Chief Commissioner (Authorized Representative)/ Departmental Counsels. The implementation of this action for each case will be reviewed every month by the *Jurisdictional* ***Pr. Commissioners / Commissioners*** so that any deficiencies or delay is remedied promptly.

(iv) The 'Early Hearing' applications shall be sent by the Jurisdictional Commissionerate to the Registrar of the relevant court. Copies of such application made to CESTAT should also be sent through a DO letter to the CC(AR) so as to enable him to get such applications listed and also arrange for effective presentation of the department's case. In case the AR/Department Counsel needs any briefing by the conversant officer of the field, the *Jurisdictional* ***Pr. Commissioners/Commissioners*** would make the same available well in time.

(v) Decision of CESTAT / Courts on all such applications shall be conveyed by the CC(AR)/Departmental Counsels to the *Jurisdictional* ***Pr. Commissioners/Commissioners*** for further action.

(b) Cases before Commissioner (Appeals)

(i) Commissioners (Appeals) will take up cases where the revenue implication is Rs. 10 Lakhs or more/recurring nature for immediate disposal.
(ii) Commissioners (Appeals) shall ensure immediate communication of his orders to the assessee as well as to the department.

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(c) *The appeals pending with Additional / Joint Commissioner should be reviewed and cases of high revenue or of recurring nature should be taken upon priority.*

(d) Cases before *Additional Secretary (Revision Application)*-All cases pending before ***Additional Secretary (Revision Application)*** should be scrutinized by the *Jurisdictional* ***Pr. Commissioners / Commissioners*** and it should be ensured that comments/reports thereon are sent promptly. Amounts payable to the Government in accordance with the Admission Orders (interim orders) and the Final Orders of the Authority should be recovered immediately.

5.2 CASES OF RESTRAINED ARREAR -

Recovery in many cases is restrained due to pendency of the cases relating to the financial viability of the defaulter before the BIFR /OL / NCLT/ DRT.

Though the Customs, Central Excise, Service tax and GST enactments have provisions for the liability to be the first charge on property but this charge is subject to the provisions of Section 529 A of the Companies Act, 1956 (Section 326 of Companies Act, 2013), the Recovery of Debts due to Banks and the Financial Institutions Act, 1993 (RDB Act), the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Insolvency and Bankruptcy Code, 2016.

In cases pending with BIFR /OL/DRT/Units taken over by Banks, the department should file affidavits for first charge under Section 11 E of the Central Excise Act/Section 142 A of the Customs Act/Section 88 of the Finance Act, 1994 and Section 82 of the CGST Act, 2017. Besides taking aforesaid action, the cases pending in such authorities should be monitored and approached constantly for their early disposal.

(a) Cases with Board for Industrial and Financial Reconstruction (BIFR) /National Company Law Tribunal (NCLT)-

BIFR was set up in January 1987 under The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) to determine the sickness of industrial companies and to assist in reviving those that may be viable and shutting down others. It was dissolved on 30.11.2016 and its proceedings were referred to the NCLT and NCLAT as per the provisions of the Insolvency and Bankruptcy Code 2016. The cases which were in advance stages of hearing/ decisions, however, were decided to remain with BIFR. Therefore, the cases under this category should be reviewed to find out as to how many cases have migrated to NCLT and how many are still pending with BIFR. For the cases pending with BIFR, the department should raise its concern during the proceeding of granting schemes to the company by BIFR.

(b) The NCLT was formed under section 408 of the Companies Act, 2013 (18 of 2013) w.e.f. 01st June 2016 and the cases pending with the BIFR /DRT got transferred to NCLT under Section 434 of the Companies Act, 2013.

(c) Necessary action in cases earlier pending with BIFR / DRT, which have now gone to NCLT / NCLAT as per Section 434 of Companies Act, 2013 should be taken up promptly by keeping track of hearing dates etc. Well conversant Group 'A' officers

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should properly present the cases before NCLT / NCLAT. Following instructions may be referred for timely necessary action:

1. F. No. DGPM (TAR)/1034/Tech/14/IBBI/Instruction/2018/4538 to 4574, dated 19.03.18, Sub: Urgent need for alignment of recovery proceedings under Customs, Central Excise, Service Tax and GST with the Insolvency and Bankruptcy Code, 2016. These instructions illustrate the life cycle of the case undergoing insolvency Resolution process.

2. F. No. 56/I/21/2019/220-272 dated 12.10.2020, Sub: Restrained arrear blocked under National Company Law Tribunal (NCLT).

As no separate notice/alerts are received by the department for cases before NCLT / NCAT the website www.ibbi.gov.in of NCLT should be visited regularly to check if any case comes under the proceedings where department has to file a claim. During the Corporate Insolvency Resolution Process (CIRP), before the NCLT, the department has two opportunities to raise its concerns and file claim:

(i) Upon admission of an application, NCLT makes a public announcement and calls for the submission of claim by all creditors within a period of 14 days to *Interim Resolution Professionals*. The list of such cases and public announcements is available on the website of insolvency board www.ibbi.gov.in. If any of such a case is listed on the website then it is imperative for the Jurisdictional Commissionerate to file its claim (if any) with *Interim Resolution Professionals* (IRPs) in prescribed format accompanied with all requisite documents.

The IRP forms the 'Committee of creditors' and calls its meeting to decide whether the business of corporate defaulter can be revived. Since taxes have been declared as 'Operation debts' under IBC, the jurisdictional Central Tax or Customs officer should attend the meeting of committee of creditors although they do not possess the voting rights. By attending the meetings called by *Interim Resolution Professionals*/*Resolution Professionals*, jurisdictional officer may raise their points regarding protection of Government revenue.

(ii) When the insolvency professional acts as the liquidator, he collects the claims of the creditors within a period of 30 days from the date of commencement of the liquidation proceedings and creates a liquidation estate comprising of all the assets of the corporate debtor and holds these assets in a fiduciary capacity for the benefit of all the creditors. The jurisdictional Central Tax/ Customs officers shall have to submit a claim to the liquidator, within the time period (30 days) along with all such supporting documents required to prove the claim as may be specified.

(d) <u>Cases with Debt Recovery Tribunal (DRT)</u>

(i) The RDB Act, 1993 provided for establishment of DRTs with original jurisdiction and Debts Recovery Appellate Tribunals (DRATs) with appellate jurisdiction, for expeditious adjudication and recovery of debts due to banks and financial institutions, insolvency resolution and bankruptcy of individuals and partnership firms and connected matters therewith.

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Banks approach the Debts Recovery Tribunal (DRT) whereas, under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002 borrowers, guarantors, and any other person aggrieved by any action of the bank can approach the DRT.

After the introduction of the Insolvency and Bankruptcy Code 2016, the disputed matters relating to individuals will be dealt by the DRT and those for the companies shall be dealt by the NCLT.

For recovery of departmental arrears, a claim can be filed with DRT either through direct application or through SARFAESI route. A proforma regarding the application (which may be in the form of affidavit if required) is annexed as annexure B.

Application Route: An application needs to be filed to a specific DRT if the cause of action completely or in part emerges within the limits of its jurisdiction along with paying the required fee.

SARFAESI Route: An application can likewise be made to the DRT under the Securitization and Remaking for Enforcement of Security Interest Act (SARFAESI), 2002. SARFAESI perceives the need to strengthen the rights of secured creditors to help them in recouping their dues. It sets out the procedure for doing as such without the intercession of courts or councils.

(e) <u>Cases with Official Liquidator</u>(OL)

(i) The office of the **Official Liquidator**, is attached to and works under the close supervision and control of the Company Court, High Court, and is also an integral part of the Ministry of Corporate Affairs and handles the winding up process of companies registered in a particular area as mandated by the Companies Act.

(ii) The winding up process includes taking possession of the assets of a company ordered to be wound up, bringing the assets of the company to sale via public auction, recovery of debts due to the company, invitation of claims against the company, settlement of claims so received, distribution of funds to the creditors and contributories, prosecution of directors of the company in the event of misfeasance and eventual dissolution of the company.

(iii) A company is ordered to be compulsorily wound up by the High Court in response to a petition filed by one or more creditors seeking such relief when the company is unable to pay off its debts to its creditors. In the same order the **Official Liquidator** is appointed with a direction to take charge of the assets and affairs of the company.

(iv) During such processes, a claim can be filed by the defaulter as per proforma annexed herewith as annexure B. The claimant (department) is required to submit all documents necessary to prove the claim. The said proforma is an Affidavit sworn by the claimant and is to be filed through the departmental counsel.

(v) The Official Liquidator invites claims from the creditors of the company through an advertisement in leading dailies giving at least 14 days' time (normally 30 days) for the claimants to file their claims before him. Further, as part of e-governance initiative the advertisement is also displayed in the court's website covering the entire

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period of 30 days. The claimant is required to file his claim during the notification period, though it can also be filed later subject to the approval of the High Court condoning the delay.

(vi) All claims crystallize on the date of winding up order/appointment of provisional liquidator as the case may be. No fresh debt can be created against a company after the date of winding up order.

(vii) Upon receipt of the claim, Official Liquidator, after calling upon the claimant to produce additional information or proof, if necessary, will adjudicate upon the same. Once the claim is adjudicated, the same shall be intimated to claimant by an order known as adjudication order as per Form 69/Form 70 of Company (Court) Rules, 1959.

5.3 CASES WHERE APPEAL PERIOD IS NOT OVER

The cases under this category should be monitored closely as these are the new/fresh cases of arrears where there is a big possibility that defaulters are available. Where the period to file an appeal is over and no appeal is filed the case will switch over to category of 'recoverable arrear' and accordingly action as per para 5.4 should be taken.

5.4 RECOVERY OF UN-DISPUTED/RECOVERABLE ARREARS –

For the cases where demands have been confirmed and the party has not preferred an appeal or where the appeal period is already over or the arrears arise out of orders of Settlement Commission, the recoveries should be initiated immediately as such cases are free from any restrain/litigation. The *Jurisdictional* ***Pr. Commissioners/Commissioners*** should regularly review and monitor such arrear besides identifying the fresh cases arising under this category.

I. Immediate action in these cases should be taken and recovery effected under Section-11 of the Central Excise Act, Section 142 of the Customs Act, 1962 or Section 87 of Finance Act, 1994 as the case may be.

(i) Broad **stages for recovery** of arrear under this category are as under:-

(a) Deducting such amounts from any money owing to the defaulter.

(b) Attachment and sale of excisable goods belonging to the defaulter.

(c) If the goods belonging to a defaulter are under the control of Customs Officers anywhere in the country (including Ports, ICDs, CFSs, Bonded Warehouses), such Officers would be required to recover the said amount by detaining and selling such goods belonging to the defaulter.

If the amount cannot be recovered from such person in the manner provided in aforesaid clauses –

(d) Send a certificate specifying the amount to the collector of District for recovery of the amount where the defaulter owns any property or records or business and the said Collector shall proceed to recover the said arrear as land revenue.

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(e) Detention/attachment and sale of property of defaulter by the department as per provisions of Section 142 1(c)(ii) of Customs Act, 1962.

(f) Recovery by way of attachment and sale of goods/ material etc. from the successor of the defaulter (i.e. transferee, purchaser etc.) in business or trade in whole or part thereof.

(g) Invoking the Garnishee Provisions i.e. recovery from any other person from whom money is due to such defaulter or may become due to such defaulter or who holds or may subsequently hold money for on account of defaulter.

II. Apart from aforesaid legal provisions there may be occasions where there is a possibility to recover the arrears, few such aspects are illustrated below-

(a) On the Customs side, a lot of facilities, including facility of duty-free imports of goods, are permitted on submission/furnishing of bank guarantee. The authorities may review such cases and the bank guarantees been cashed wherever arrears become due on account of failure of the person concerned to comply with the condition of the bank guarantee.

(b) Attachment of Bank accounts of the defaulters may be done as per prescribed procedure for speedy recovery of arrears.

It is also to state that this is the most important category of arrears which requires personal attention and thorough monitoring. The responsibility for any default in the action for recovery at any stage under this category will be with the jurisdictional Assistant Commissioner. The *Jurisdictional Pr. Commissioners / Commissioners* should regularly review and monitor these arrears.

6. IDENTIFICATION OF PROPERTY OF DEFAULTERS

(i) Many cases under 'recoverable arrear' category are such where business is closed and the defaulter is not traceable. In some cases, even though the defaulters are traceable yet their properties are not known. In both categories properties are to be identified for recovery of arrears through attachment and sale.

(ii) The Pr. Commissioner/ Commissioner, to whose jurisdiction the arrears pertained/arisen shall identify the property belonging to the defaulter.

(iii) For tracing the defaulters and identification of their property and its location, the sources of information will include the official record/documents supplemented with human intelligence. Efforts should also be made to find out if other place of business of the defaulter exists anywhere in India.The *Jurisdictional **Pr. Commissioners / Commissioners*** will get the enquiries completed at all known addresses of the defaulters to ascertain whether he has any moveable or immovable assets that can be identified for recovery.

(iv) The following sources of information should be accessed. Simultaneous enquiries w.r.t. all sources should be made for faster and conclusive results.

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(a) Information, available with the department, that is contained in various documents submitted by the defaulter like those relating to registration, returns, replies to SCN, statements, RUDs etc should be culled out for the PAN, Mobile, e-mail, office address and Aadhar No. of the defaulter.

(b) Comprehensive enquiries should be conducted with banks and the known premises [residence, warehouse, depots etc.] of the defaulter.

(c) Discrete enquiries/investigation should be made with neighbors, trade rivals, local market and other departments where there is possibility of registration of defaulter viz. electricity, SGST, pollution control department, stamp authorities etc.

(d) On the basis of PAN Number, the Income Tax Department's data base should be accessed to ascertain the Aadhaar No., Mobile No., phone no., e-mail address, location address, any house property, life/ medical/ general insurance, Bank details, movable & immovable property etc. of the defaulters.

(e) DGFT website can provide the registered residential, business address/details of the defaulters on the basis of IEC and further access to MCA Company data to verify Director's details [DIN] and other companies where the person is a director, its address etc.

(f) Details of shares in capital market held by defaulters should be found out through the two depositaries viz. National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CSDL) by searching with PAN of the defaulters.

(g) Department should access the digital format of land/assets details maintained/held by District Authorities so that recovery proceedings can be initiated early.

(h) CBIC modules (viz. GST backend (Saksham) & ICES) should be used for Alerts on recoverable dues u/Sec. 142 (1)(c)(i) or Notice against any GST assessee or IEC holder.

(i) In cases of fraud, suppression, smuggling etc. during the investigation itself the officers should collect the details of bank accounts, property details of the Company/ Directors/ Individuals and their/ dependents either under bond or while recording Statement under Sec 108 of Customs Act 1962.

(j) **Financial Intelligence Unit -IND-** FIU-IND is an organisation, working on pan India basis to share the information related to financial frauds with government designated authorities. Commissioner (TAR) is designated as nodal officer on behalf of CBIC to handle all references from field formations seeking information from FIU-IND in connection with recovery of pending arrears. Information of defaulters is provided to FIU which are received from Nodal officers of the Zones and then FIU-IND provides relevant information to the Zones. The following references w.r.t. FIU-IND should be referred for necessary action:

(i) Instructions issued vide F. No. CC(TAR)/08/2013 dated 28.01.2014 Sub: Intimation of Nodal Officer for exchange of information with Financial Intelligence Unit (FIU-IND).

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(ii) Instructions issued vide F. No. CC(TAR)/08/2013/FIU 9976-6007 dated 05.04.2018 dated 12.02.2018 Sub: Intimation of Nodal Officer for exchange of information with Financial Intelligence Unit (FIU IND) and information about filing information on defaulters in finexe module – Reg.

(iii) Instructions issued vide F.No. DGPM/TAR/1037/FIU/Misc/2/2018 dated 13.06.2018 Sub: Exchange of information with FIU where defaulters are traceable – Information about filing information on defaulters in finex module.

(k) DGARM being entrusted with responsibility of data analytics using various tools available with it shall be the Nodal agency for recovery references made to it by the field formations, as being done w.r.t. the IFU.

7. RECOVERY THROUGH ATTACHMENT AND SALE OF PROPERTY

Upon identification of the location of the property of the defaulter by the jurisdiction Pr. Commissioner/Commissioner (where the arrear pertained/arisen), the certificate under Section 142 (1) (c) of the Customs Act, 1962 should be sent only to those *Jurisdictional* Pr. Commissioners/Commissioners under whose jurisdiction the identified property of the defaulters is located for the following action.

(a) Any moveable or immovable property belonging to or under the control of the defaulter will be detained under Section 142(1)(c) read with Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

(b) For recovery of the dues under these provisions, simultaneous action through district authorities and through *Jurisdictional Pr. Commissioners /*Commissioners should be taken. Accordingly, the Circular No. 54/95-Cus. Dt. 30.05.95 stands superseded.

(c) If any dues are not paid within 30 days of the detention as above, the said property would be sold in the prescribed manner.

(d) For recovery through attachment and sale, the procedure prescribed vide following Circulars may be followed:

(i) Circular No. 56/96-Cus., Dated 14/11/96 F. No. 450/72/96-Cus-VI Sub: Recovery of arrears of Revenue under amended Section 142(1) of the Customs Act 1962 read with Customs (Attachment of Property of Defaulters for Recovery of Government of Dues) Rules, 1995.

(ii) Circular No. 365/81/97-CX Dated 15/12/1997 F. No. 296/1/95-Cx.9 Sub: Sale of movable/immovable properties by Central Excise Officers for recovery of Central Excise dues.

(iii) F. No. 224/38/2004-CX-6 Dated August 2004. Sub: Sale of movable/immovable properties by Central Excise officers for recovery of Central Excise Dues.

(iv) Circular No. 874/12/2008-CX Dated 30/06/2008, issued vide F. No. 201/51/2004-CX-6, Sub: Instructions regarding Section 11 DDA of the Central Excise Act, 1944.

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(v) Circular No. 103/06/2008-ST Dated 01/07/2008 Sub: Instructions regarding provisional attachment of property under section 73 C of the Finance Act, 1994.

8. RECOVERY OF ARREARS UNDER CGST ACT, 2017:

For recovery, the comprehensive provisions as provided in Chapter XV and XVI under CGST Act read with Chapter 18 of the CGST Rules, 2017 along with relevant circulars shall be referred to and followed.

9. WRITE –OFF PROVISIONS FOR CUSTOMS, CENTRAL EXCISE & SERVICE TAX ARREARS.

In cases where recovery is not possible due to non-availability of any property relatable to the defaulter, the action for write-off of such irrecoverable arrears should be taken. It is noticed that many cases of arrears are already identified/consistently reported by the Pr. Commissioners / Commissioners for writing-off yet no action is taken. It is hereby directed to dispose of these cases as per following guidelines.

Further, it is also directed that for recoverable arrears the procedure of recovery/identification/attachment/sale of property etc should be completed within six months since the arrears is considered as undisputed and categorized under **'recoverable arrears category'.** Thereafter the process to write off the same should be commenced and the process of write off should be completed within 15 days by the Committee/ Competent Authority.

(a) A proposal for write-off of irrecoverable arrears shall be submitted by the Deputy/ Assistant Commissioner in the prescribed format (attached as Annexure C), to the Pr. Commissioner/Commissioner, Zonal Pr. Chief /Chief Commissioner depending on the amount of duty/tax proposed to be written off. These authorities shall examine the proposal and if prima-facie satisfied, shall put up the case before appropriate Committee for decision.

(b) Circular No. 1080/01/2022-CX dated 19.01.2022 is issued providing constitution of two-member Committees to examine the proposals for write-off of irrecoverable arrears of duty/taxes and fine & penalties.

(c) The Committee so constituted shall examine the proposals and on the basis of the recommendation/decision of the Committee, the competent authority shall write-off arrears in deserving cases in accordance with the powers delegated for the purpose.

(d) The Committee of Jurisdictional Pr. Commissioners/Commissioners so constituted shall also examine the proposals/cases to write-off the arrears where only penalty is levied on the defaulters (viz. penalty imposed in cases of non-filing of returns, penalty on crew in smuggling cases/penalty on transporters etc.). On the basis of recommendations of the Committee the Competent Authority shall write-off arrears in deserving cases.

(e) As regards write-off of interest amount, it is clarified that once duty/tax involved is written off, the interest due thereon would automatically get written-off.

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(f) **It is also directed that the act of writing off of arrear does not absolve the defaulter from the liability to pay for any new facts coming to notice in future. Therefore, consequent action if any, should be ensured by the jurisdictional Pr. Commissioners / Commissioners and the** Pr. Chief /Chief Commissioner as the case may be.

10. The following instructions regarding publication of names of defaulters and grant of reward to the informers and government servants are in place, which should be followed wherever required.

(i) **Circular No.** 849/07/2007-CX **Dated** 19/04/2007, issued vide **F. No.** 201/51/2004-CX-6 about the guidelines in respect of publication of names under section 37 E of the Central Excise Act, 1944.

(ii) **F. No.** 13011/3/2004-CUS(AS) **Dated** 31st July 2015 about the revised guidelines for grant of reward to informers and Govt. Servants.

11. The responsibility to affect actual recovery will continue to vest with *Jurisdictional* Pr. Commissioners/Commissioners where the cause of arrears took place.

12. Instructions contained in CBEC (CBIC) Hand-Book issued in year 2012 on recovery of arrears or any other circular/ instruction/letter contrary to this circular stand amended accordingly.

Yours faithfully,

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(Manas Mondal)
Under Secretary to the Govt. of India

ANNEXURE – A

The following circulars regarding recovery/writing off of arrears are superseded-

(i) F. No. 290/4/85-CX 9 dated 22.03.85 Sub: Write of Arrears.

(ii) F. No. 290/20/90/-CX 9 dated 21.09.1990 **Sub:** Write off of irrecoverable amounts of Customs/ Central Excise duties and abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, Central Excise and Salt Act, 1944 and Gold Control Act, 1968- delegation of enhanced powers.

(iii) Circular No 54/95-Customs. Dated 30.05.1995 issued from F. No. 495/15/94-CUS VI. Sub: Delegation of powers to customs officers under Section 142 of the Customs Act, 1962.

(iv) Circular issued vide F. No. 296/34/2004-CX(Pt) dated 12.08.2004. Sub: Outstanding Arrears of Central Excise and Customs Duties- Constitution of a Task Force for Recovery.

(v) Instructions issued vide F. No. CC/TAR/50/2007 dated 23.04.2008 Sub: Write-off/ abandonment of irrecoverable amount of arrears of revenue.

(vi) Circular No. 946/07/2011, dated 01.06.2011 **Sub:** Writing off of arrears of Central Excise, Service Tax and Customs Duty- Constitution of Committees to advise the authority for writing off of arrears.

(vii) Instruction issued vide F. No. 296/10/2009-CS-9(Pt.) dated 29.05.2013. **Sub:** Writing off of arrears of Central Excise, Service Tax and Customs duty- Constitution of Committees to advise the authority for writing off of arrears.

(viii) F. No. 296/202/2017-CX-9 dated Sep 2017 **Sub:** Writing off of arrears of Central Excise, Service Tax and Customs duty- Constitution of Committees to advise the authority for writing off of arrears read with corrigendum w.r.t 20/10/2017.

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ANNEXURE-B

FORM FOR FILING CLAIM WITH OL/DRT
Affidavit of proof of arrear (may be filed in the form of application as the case may be)
(PETITION No.....of..... (20.....)

I, ... of ..... (full name, address and occupation of deponent to be given) do solemnly affirm and state as follows:--

1. The Company/firm .....(full name, address etc. of the company/firm/entity to be given) was, at the date of the order of winding-up the same* viz., the ..... day of ..... 20..... and still is, justly and truly indebted to the Department of indirect Taxes & Customs as arrears mentioned as follows are pending for recovery by the office of *Jurisdictional* **Pr. Commissioners/Commissioners** of ..... (full address)

Arrears of- Duty/Penalty/Fine/other dues arising out of OIO /OIA /FO ..... (complete details)			
Duty of..... (Rs)	**Fine (Rs)**	**Penalty (Rs)**	**Other Dues**

2. In respect of the said sum or any part thereof, I say I have not, nor to my/our knowledge or belief, had or have received any arrear or dues except the following:-
[Here state the particulars of recoveries made (if any) on the defaulter from the date of arising the arrear to date of filing this Affidavit.
[If the claim is made as a preferential claim, say so and set out the grounds on which the preference is claimed.]
Solemnly, affirmed at .....on .....(day), the .....day of.....20 .....
Before me.

Deponent's signature.

Notes: --
Final orders of confirmation of arrears and other related documents must be attached with the claim and produced before the Authority as and when required.

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Annexure 'C'

PROFORMA FOR SENDING PROPOSALS FOR WRITE-OFF OF IRRECOVERABLE ARREARS OF REVENUE

RANGE/GROUP/ETC.

DIVISION/BRANCH

COMMISSIONERATE

1.	Name of the Defaulter	
2.	Address	
3.	Registration No.	
4.	Name of the commodity and TH/Service- Description in brief	
5.	Brief facts of the case (if necessary, separate sheet may be attached)	
6.	Date of issue of Show Cause Notice and of OIO /OIA /Final Order etc.	
7.	Details of efforts made and result (outcome) thereof -	
	(a) for realizing amounts from any money owed to the defaulter	
	(b) for attachment and sale of goods belonging to the defaulter	
	(c) for attachment and sale of goods belonging to the defaulter, under the control of Customs	
	(d) w.r.t. certificate for recovery sent to the Distt. Collector of the district where the defaulter owns any property.	
	(e) to detain/attach and sell the goods as per provisions of Section 142(i) C(ii) of Customs Act, 1962.	
	(f) to attach/and sell the goods in the possession/custody of the transferee/successor in business under Section 11 of Central Excise Act, 1944/ Sec. 142 of Customs Act, 1962, Section 87 of Finance Act, 1994.	
	(g) invoking the garnishee provisions	
	(h) attachment of Bank account appropriation of Bank Guarantee/enforcement of bail – bond etc.	
	(i) to ascertain the location of any moveable/ immoveable assets belonging to the defaulter through sources mentioned at para 6 (iv) (a) to (j) of the circular and result thereof.	
	(j) others, if any	
8.	Amount to be written off:	
	Total Amount due	Rs.
	Duty	Rs.
	Penalty	Rs.
	Fine Rs.	
	Less:	
	Amount realized from the defaulter	Rs.
	Amount recovered out of sale of goods	Rs.

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	Sale of excisable goods	Rs.
	Sale of moveable property	Rs.
	Sale of immoveable property	Rs.
	Appropriation of Bank Guarantee/recovery from of Bank Account etc	Rs.
	Adjustment of refunds	Rs.
	Other (specify)	Rs.
	Net amount to be written off	Rs.
9.	Details of financial position of the defaulter	
10.	Any other relevant facts/remarks	

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Asst./Deputy Commissioner In-charge
(Name and Signature with Date)