

Modification of the original SCN after expiry of six years by issuing a corrigendum is not permissible under the law – Orissa HC

16 September 2022



Summary

The Orissa High Court (HC) has held that a corrigendum could not be issued after expiration of six years from the issue of the original Show Cause Notice (SCN) on matters not included therein. Since the corrigendum has materially changed both the content and the grounds of the original SCN, it constitutes a fresh SCN. The HC concluded that the impugned determination of short levy of duty was not saved by limitation under the Customs Act and therefore set aside the order.

Facts of the case

- A SCN was issued to the appellant¹ alleging to recover the customs duty which was short paid as per the department.
- After expiry of six years from the issue of the original SCN, the department issued a corrigendum to the original SCN and enhanced the demand of customs duty as well as adverted to matters not mentioned in the original SCN.
- The appellant replied to the SCN stating that the demand of duty through corrigendum is not legally tenable and is time barred.
- The appellant filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), which confirmed the demand on the ground that the original assessments were provisional.
- Therefore, an appeal was filed before the Orissa HC to consider whether the determination of impugned short levy of duty is saved by limitation under the Customs Act.

Orissa HC observations and ruling²

- **Corrigendum altering the original SCN would be treated as fresh SCN:** The corrigendum should be treated as fresh SCN since it altered the original SCN materially, both in terms of the demand raised as well as the grounds on which the demand was raised.
- **Impugned order for collection of short levy set aside:** The HC held that the determination of impugned short levy of duty is not saved by limitation under the Customs Act. Therefore, the impugned orders confirming demand of short levy of customs duty from the appellant needs to be set aside.

¹ M/s Hope Cardamom Estate Limited

² CUSREF No.01 of 2002 dated 16 August 2022

Our comments

In the case of Gas Authority of India Limited, the Apex Court had held that SCN is the foundation of the demand and an addendum cannot seek to bring into purview new matters which were not mentioned in the original SCN. A similar view was taken by the Apex Court in the case of Nizam Sugar Factory, wherein it had held that an addendum to an original SCN making material changes was equivalent to a fresh SCN and cannot be treated as merely an extension of the original SCN.

Further, as per the master circular³ on SCN, Adjudication, and Recovery, it has been clarified that a corrigendum cannot alter the original SCN because it may be issued only when there is a change in adjudicating authority or to correct minor clerical mistakes. After issuing an adjudication order, the adjudicating authority becomes *functus officio*, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case. As a concept, *functus officio* is bound by the doctrine of *res judicata*, which prevents the reopening of a matter before the same court or authority.

The present ruling is in line with the Apex Court's verdicts and should provide relief to businesses on similar matters.

³ F.NO 96/1/2017-CX.1 dated 19 January 2017

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