

XC4.9907/16

Commissionerate of Excise,
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Dated: 23.07.2016.
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CIRCULAR

Sub:- Seizure and sampling of Narcotic Drugs and Psychotropic substance Guidelines issued based on the observation of the Hon'ble Supreme Court of India in Judgment dated 28.01.2016.

Ref:- Judgment in Crl.Appeal No.652/12 dated 28.01.2016 of the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India in its judgement dated 28.01.2016 made some observations regarding the seizure and sampling of Narcotic Drugs and Psychotropic controlled substances. The direction of the Hon'ble Supreme Court is as follows.

1. "No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under Sub-Section 3 of Section 52 A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order".

In the judgment, the court observed that it is manifest from Section 52 A (2) (C) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the

nearest police station or to the officer empowered under section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purpose of allowing to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn. There is no provision in the Act that mandates taking of samples at the time of seizure. Also, there is a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of the interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties.


In this circumstances, all concerned offices of the Excise Department are hereby directed to comply with the direction of Hon'ble Supreme Court in the matter of sampling of seized narcotic Drugs and psychotropic substances particularly in the following matters, namely:-

1. Upon seizure of the contraband, the same has to be forwarded either to the officer in charge of the nearest police station or to the officer empowered under s.53 of the Act, who shall prepare an inventory of such narcotic drugs and psychotropic substances as provided in the NDPS Act, 1985 and make an application to the Magistrate for the purpose of
 - (a) Certifying the correctness of the inventory so prepared; or

- (b) Taking, in the presence of such Magistrate photographs of such drugs or substances and certifying such photographs as true; or
- (c) Allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.
2. An application for sampling and certification are to be made without undue delay
3. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application before the Magistrate to the superior officer.

Sd/-
Excise Commissioner

Forwarded by Order



Superintendent



To

1. Joint Excise Commissioners (all)
2. Deputy Commissioners of Excise (All)