



प्रधान आयुक्त कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर व केन्द्रीय उत्पाद शुल्क आयुक्तालय, जयपुर

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F.No. II-3(9)CCU/JZ/2013/Pt-III/ 1817

Dated: 15.11.2022

**ESTABLISHMENT ORDER NO.:CCU-32/2022**

**DATED: 15.11.2022**

**SPEAKING ORDER**

This order is being issued in compliance of the Hon'ble High Court Rajasthan Bench Jaipur's Judgment/Order dated 30.09.2022 in D.B Civil Writ Petition No. 6903/2019 and Judgment/Order dated 18.08.2022 in DB Civil Writ Petition No. 6246/2019 and batch of petitions. The 17 Inspectors who were respondents of the aforesaid D.B.C.W.P No. 6903/2019, had been allowed Inter Commissionerate Transfer (hereinafter referred to as ICT) basis from other CGST, Central Excise & Customs Zones to CGST & Central Excise, Jaipur Zone including Customs (P) Commissionerate, Jodhpur (hereinafter referred to as Jaipur Zone) after the coming into force of the Recruitment Rules of Inspector, Central Excise, 2016 and treated as working on deemed loan basis in the Jaipur Zone till 31.03.2019 vide Estt. Order No. 93/2018 dated 03.10.2018 in pursuance of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs (now Central Board of Indirect Taxes & Customs and hereinafter referred to as Board), New Delhi's Circular issued under F.No. A-22015/117/2016-Ad.IIIA dated 20.09.2018. Out of aforesaid 17 Inspectors, 3 Inspectors namely S/Shri Akhileshwar Mathur, Manish Kumar Chaudhary and Ankit Singh Rathore have already been repatriated from Jaipur Zone to their parent zone, on their requests.

2.1 While deciding the aforesaid D.B. Civil Writ Petition No. 6903/2019 filed by the Department, the Hon'ble High Court Rajasthan Bench Jaipur, vide Judgment/Order dated 30.09.2022 has held that:

*"After hearing learned counsel for the parties, we are of the view that the issue raised in this petition is covered by order dated 18.08.2022 passed by this Court in the case of **The Union of India & Others Vs. Akash Atolia (D.B. Civil Writ Petition No. 6246/2019 and batch of petitions)**. In fact, this petition was also listed along with the aforesaid batch of petitions, but could not be taken up.*

*In view of the order passed in the aforesaid matters, this writ petition is also allowed in the terms and directions mentioned in the aforesaid order passed by this Court.*

*All pending applications stand disposed off."*

2.2 Further, while deciding the aforesaid D.B. Civil Writ Petition No. 6246/2019 connected with D.B. Civil Writ Petition Numbers 6273/2019, 6365/2019, 6375/2019, 6814/2019, 6824/2019, 9183/2019 filed by the Department, the Hon'ble High Court Rajasthan Bench Jaipur, vide Judgment/Order dated 18.08.2022 had issued specific directions as under:

*"The orders passed by the Tribunal in these cases proceed on the basis of the order earlier passed by the Central Administrative Tribunal, Bangalore Bench, whereby, the Circular dated 20.09.2018 was quashed. Now the validity of the said Circular has been upheld by the Hon'ble Supreme Court in its order dated 10.03.2022, the orders of the Tribunal impugned in each of petitions, cannot be allowed to stand and are, therefore, set aside.*

*Instead of remanding the case back to the Tribunal, keeping in view that the grievance arise out an orders of transfer and in view of the statement made by learned counsel for both the parties, we are inclined to direct the petitioner-Union of India to examine representations*

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*of respective respondents, if submitted before the Competent Authority within a period of one month. The Competent Authority is directed to decide those representations in the light of the order passed by the Hon'ble Supreme Court in the case of SK Nausad Rahaman & Ors. Versus Union of India & Ors. (supra), not later than three weeks from the date of submission of the representations.*

*It goes without saying that in case the grievance is not redressed/fully redressed, the respondents-applicants would be at liberty to take recourse to such remedy as may be available to them under the law.*

*Accordingly, writ petitions are allowed, with directions as aforesaid.*

*All the pending applications are also disposed off."*

### 3. **RELIEF SOUGHT BY THE 14 ICT INSPECTORS (RESPONDENTS OF THE AFORESAID D.B. CIVIL WRIT PETITION No. 6903/2019) VIDE REPRESENTATIONS:**

In compliance of the aforesaid Judgments/Orders dated 30.09.2022 and 18.08.2022 of Hon'ble High Court Rajasthan Bench Jaipur, 14 Inspectors who are presently working in the Jaipur Zone submitted the identical representations (except the grounds) dated 27.10.2022 and 28.10.2022, addressed to the Chief Commissioner CGST & CX Jaipur Zone mentioning the Board's instructions, Recruitment Rules of Inspector, 2002 & 2016, DoPT's instructions and observations made by the Hon'ble Supreme Court/High Court/CAT in various Judgements, have requested to dispose of their representations taking into consideration the following points:-

- (i) The Policy decision dated 20.09.2018 and judgment dated 10.03.2022, has dealt only with the cases of 'appointment/recruitment' in the cadre of 'Commissionerate' which ceased to exist consequent upon Cadre Restructuring-2002 in terms of 'otherwise direction' issued by the Board exercising the power as observed in **Para 31 of judgment dated 10.03.2022**, why cases of 'appointment/recruitment' in a distinct 'CCA Cadre' were made non-est by the Chief Commissioner (CCA) without appreciating the policy decision dated 20.09.2018 (which speaks of '**Inter Commissionerate Transfer**') and without seeking any clarification from the Board regarding recruitment/appointment **from one 'Zonal CCA Cadre' to another 'Zonal CCA Cadre'** which is different from recruitment/appointment from one '**Commissionerate**' to **another Commissionerate**'?
- (ii) As per observations made in **Para 30 & 39** of judgment dated 10.03.2022 of the Hon'ble Supreme Court, Rule 4(ii) of RRs, 2002 was meant for 'absorption' from the cadre of one 'Commissionerate' to the cadre of another 'Commissionerate' but not meant for absorption from one 'CCA Cadre' to another 'CCA Cadre' **as no suitable amendment in Rule 4(ii) (i.e. 'CCA' in place of 'Commissionerate')** was made by the Board like as it was made in **Rule 5 of RRs, 2016** and all the cases of recruitment/appointment in a distinct 'Zonal CCA Cadre' were governed only by policy decision dated 27.10.2011 which is also admitted in **Para 5.4(ii)** of Speaking order dated 03.10.2022, then why the cases of recruitment/appointment in a distinct 'CCA Cadre' effected during RRs, 2016 by the same policy decision dated 27.10.2011 were invalidated by the Chief Commissioner (CCA) by making **discrimination** between the '**similarly placed persons**' which is violative of Article 14 & 16 as per the judgment of the constitutional Bench of Hon'ble Supreme Court in the case of **E. P. Royappa v. State of Tamil Nadu [1974 AIR 555, 1974 SCR (2) 348]** since cases of recruitment/appointment in 'CCA Cadre' was not either mentioned/specified in the Policy decision dated 20.09.2018 and no case of recruitment/appointment in 'CCA Cadre' was not governable by Rule 4(ii) in the light of Para 30 & 39 of judgment dated 10.03.2022 ?
- (iii) In view of **Para 42(vii)** of the **judgment dated 10.03.2022 of the Apex Court** "**.....it is within the powers of the employer to take a policy decision either to grant or not to grant ICTs to employees**" which follows

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decisions of the (i) constitutional Bench (5 judge bench) in the case of Sant Ram Sharma vs State Of Rajasthan & Anr (1967 AIR 1910) (ii) 3 judge bench in the case of Amarjit Singh Ahluwalia vs The State of Punjab & Ors (1975 AIR 984) (iii) 2 judge bench in Ramesh K. Sharma And Anr vs Rajasthan Civil Services And Ors (2001 (1) SCC 637) (iv) 2 judge bench in Nagpur Improvement Trust vs Yadaorao Jagannath Kumbhare & Others (1999 SC 3084) & (v) Indu Shekhar Singh & Ors. vs. State of U.P. & Ors. (UP (2006) 8 SCC 129) settling the law that if no statutory rules are made regulating recruitment/appointment or conditions of service, the State always can, in exercise of its executive power/residuary power/policy decision, issue administrative instructions, providing for recruitment/appointment and laying down conditions of service, then why the judgment dated 10.03.2022 should be interpreted for drawing the conclusion that the power of policy decision dated 27.10.2011 could not be exercised by the Chief Commissioner in the absence of source of recruitment for 'absorption' in RRs, 2016 which itself is contradictory to the **Para 42(vii)** of the judgment dated 10.03.2022 and the law settled by the larger bench of the Apex Court as shown above ?

- (iv) The judgment dated 10.03.2022 upholds the judgment dated 10.04.2019 of Hon'ble HC of Kerala which is only related to the respondents therein seeking transfer/absorption, which is evident from the conclusion of the Hon'ble Supreme Court that *"In the absence of a specific provision to that effect, an employee from outside the cadre under the control of a CCA cannot claim an ICT based on executive instructions."*, then how the conclusion in Para 42 (vi) of the judgment dated 10.03.2022 rendered in the context of Para 24 of judgment dated 10.04.2019 that *"Moreover, the question as to whether Annexure A3 (Circular dated 27.10.2011) or Annexure R4 (RRs, 2016) would govern the ICT of the respondents is .....after coming into force of the Recruitment Rules, 2016."* is being made applicable to the cases of persons who are not claimant but already 'recruited/appointed' in a distinct 'CCA Cadre' or is being interpreted in the manner that all cases of recruitment/appointment in a distinct 'CCA Cadre' effected during RRs, 2016 in terms of policy decision dated 27.10.2011 would be invalid especially considering that the fact that such cases were effected against the sanctioned cadre strength of 'Direct Recruitment' by maintaining sanctity of the 'Cadre' and such interpretation is against the conclusion in **Para 42(vii)** of the judgment dated 10.03.2022?
- (v) How the direction/mandamus of the Hon'ble Supreme Court as given under **Para 53** of the judgment to revisit the policy decision dated 20.09.2018 to accommodate posting of spouses, the needs of the disabled and compassionate grounds observing that any change made in policy decision must ensure the protection of the constitutional values of Articles 14, 15 and 16 and Article 21 of the Constitution, should be treated only as suggestive in nature and as not binding upon the department especially when the Hon'ble High Court of Gujarat in its order/decision dated 11.10.2022 & 17.10.2022 in the **Special Civil Application No. 20692 of 2022 (Munesh Kumar Vs. UOI)** has treated the same as being a direction/mandamus from the Hon'ble Supreme Court and why such mandamus/direction should not be followed by the department for granting right to 'protection of family life' and right to 'equal treatment' in respect of all the cases of inspectors who were already recruited in terms of policy decision dated 27.10.2011 ?
- (vi) Why the cases of already recruited/appointed persons should not be decided on merit in accordance with law without making discrimination between the persons already recruited/appointed in a distinct 'CCA Cadre' during RRs, 2002 & RRs, 2016 and not in the light of the Policy decision dated 20.09.2018 when there is already a mandamus/direction to the department from the Apex Court to revisit its policy decision to accommodate posting of spouses, the needs of the disabled and compassionate grounds?
- (vii) Why the cases of already recruited/appointed persons should not be decided on merit in accordance with law without making discrimination between the

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persons already recruited/appointed in a distinct 'CCA Cadre' during RRs, 2002 & RRs, 2016 and not in the light of the Policy decision dated 20.09.2018 since the same is relevant only for **ICT (recruitment in a cadre of Commissionerate)** but not for the cases of recruitment/appointment in a 'CCA Cadre'?

- (viii) Why the cases of already recruited/appointed persons should not be decided on merit in accordance with law without taking recourse to Rule 4(ii) of RRs, 2002 which is otherwise not applicable to the cases of appointment/recruitment from one 'CCA Cadre' to another 'CCA Cadre', was only related to transfer/absorption '**in public interest**' whereas all the cases were related to personal requests only and were '**not strictly in public interest**' as per Para 5 of DOP&T O.M. dated 03.07.1986 in view of the terms & condition of the policy decision dated 27.10.2011 as linking these appointments with Rule 4(ii) under public interest would lead to another set of litigation of seniority for forcing to give undertaking for loss of seniority being arbitrary & violative of Article 14 & 16 ?
- (ix) Why clarification should not be sought from the Board to review the action taken by CCA, Jaipur Zone against the cases of recruitment/appointment effected in a distinct 'CCA Cadre' during RRs, 2016 which are not ICTs (Inter Commissionerate Transfer/Absorption) as mentioned in the Board in Policy Decision dated 20.09.2018 citing Rule 4(ii) of RRs, 2002 since the ICTs were prevalent during RRs, 1979 when the cadres of Commissionerate were in existence which ceased to exist during Cadre Restructuring-2002 for the officers upto Group B (non-gazetted) by the 'otherwise direction' of the Board in exercise of Rule 4(i) of RRs, 2002?
- (x) The judgment dated 10.03.2022 upholds the judgment dated 10.04.2019 of the Hon'ble Kerala High Court which was related to persons claiming transfers wherein only challenge of prospective operation of the policy decision dated 20.09.2018 was negated by the Court holding that transfer cannot be claimed as vested right and such policy decision cannot be reviewed, then how, **in view of Para 42(vii) of judgment dated 10.03.2022**, should this conclusion be interpreted in the manner that the Court also upheld that all cases of recruitment/appointment in a distinct 'CCA Cadre' effected in terms of policy decision dated 27.10.2011 were violative of RRs only on the ground of absence of provision especially when there is a direction/mandamus from the Apex Court to revisit the policy decision to accommodate posting of spouses, the needs of the disabled and compassionate grounds by granting constitutional right to '**protection of family life**' & right to '**equality**' amongst the others similarly placed persons who got recruited/appointed in a distinct 'CCA Cadre' during RRs, 2002 without any provision as Rule 4(ii) was interpreted by the Apex Court for absorption at level of 'Commissionerate' (ICT) but not at level of 'CCA' ?
- (xi) In **Para 5.4(ii), 5.4(iii) & 5.4(iv)** of Speaking order E.O. No. CCU-22/2022 dated 03.10.2022, it has been categorically admitted that there was no strength/quota for 'recruitment by absorption' under Rule 3 of RRs, 2002 as per Para 33 of the judgment dated 10.03.2022; that such recruitment/appointment was not made Commissionerate wise; that such recruitment/appointment in a distinct 'CCA Cadre' was made in terms of Policy decision dated 27.10.2011, then, by ignoring conclusion under **Para 42(vii) of judgment dated 10.03.2022**, why it should be interpreted that only cases of recruitment/appointment effected during RRs, 2002 in terms of policy decision dated 27.10.2011, **without any provision for recruitment by absorption under Rule 3 of RRs, 2002 by misplacing reliance upon Rule 4(ii) which was not otherwise applicable having been only meant for 'Commissionerate' and not for 'CCA'**, were valid but cases of recruitment/appointment effected during RRs, 2016 by the same policy decision dated 27.10.2011 were invalid ?

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- (xii) Though the Hon'ble Apex Court in judgment dated 10.03.2022 did not discuss about Rule 3 of RRs, 2002 however, in **Para 33**, discuss the meaning of 'Cadre' which is created by the strength/quota of different methods/sources of recruitment prescribed under the Recruitment Rules as per the observations made under **larger bench judgment in Jarnail Singh Vs. Lacchmi Narain Gupta (Civil Appeal No. 629 of 2022)**. When no cadre strength for absorption was available during RRs, 2002 and it was not possible for the Chief Commissioner to override Rule 3 or create a new 'source of recruitment by absorption', how interpretation should be adopted that RRs, 2002 was having provision of 'recruitment by absorption' considering the fact that all the cases of such recruitment/appointment in 'CCA Cadre' were only adjusted against strength/quota of 'Direct Recruitment' in terms of policy decision dated 27.10.2011 and not in exercise of any special provision?
- (xiii) Rule 4(ii) of RRs, 2002 (**meant for 'Commissionerate' only**) vesting power with the Chief Commissioner to fill up vacancy through another source of recruitment (deputation/absorption) earmarked for 'direct recruitment' was deviating from '**cadre strength**' as prescribed under **Rule 3** which was already pointed out by the UPSC vide letter F.No. 3/8(1)2008-RR dated 24.03.2008 (Point No. 15) and duly agreed upon by the Board vide letter A.12018/30/2003-AD.III(B) dated 19.04.2008. When such deviation as pointed out by UPSC and agreement by the Board, was in accordance with the definition of 'Cadre/Cadre Strength' as discussed in Hon'ble Supreme Court judgment **Jarnail Singh Vs. Lacchmi Narain Gupta** as relied upon in **Para 33** of the judgment in **SK Nausad Rahaman & Ors. Vs. UOI & Ors.**, how different interpretation only for the cases of appointment/recruitment effected during RRs, 2016 in terms of policy decision dated 27.10.2011 should be allowed under the law deviating from own agreement which is also in consonance with the present proposal of amendment in RRs and observations of the Hon'ble Supreme Court made in Para 33 in **SK Nausad Rahaman & Ors. Vs. UOI & Ors.** without following the mandamus/direction of the Hon'ble Apex Court in the same judgment in order to revisit/review the policy decision and actions made pursuant to such policy decision which only dealt with ICTs having no application otherwise to the cases of recruitment/appointment in a distinct 'CCA Cadre' ?
- (xiv) When the department is aware and accepts that any special provision, in the absence of strength/quota for 'recruitment by absorption' under the Rule having Method of Recruitment, does not serve the purpose of 'recruitment by absorption' from one cadre to another cadre and vide letter dated 08.04.2021 itself proposes to bring certain strength/quota for Method of Recruitment through 'absorption' in order to absorb a person from one 'CCA Cadre' to another 'CCA Cadre' and to avoid any inconsistency in RRs, then why **discrimination**, without following the direction/mandamus of the Hon'ble Supreme Court to protect constitutional values of Article 14 & 16, is being made between the cases of recruitment/appointment effected during RRs, 2002 and RRs, 2016 when all cases were effected by the Chief Commissioner in terms of the policy decision dated 27.10.2011 by making adjustment against strength/quota for 'Direct Recruitment'?
- (xv) When, in **Para 5.4(ii) & 5.4(iii)** of Speaking order E.O. No. CCU-22/2022 dated 03.10.2022, it has been admitted that residuary power/executive instruction dated 27.10.2011 was utilized by the CCA for effecting recruitment/appointment during RRs, 2002 against vacancies in the strength/quota of 'Direct Recruitment' and such residuary power/executive instruction dated 27.10.2011 was allowing transfer/appointment from one 'CCA Cadre' to another 'CCA Cadre' against the vacancy of 'Direct Recruitment', why should it be interpreted that such residuary power/executive instruction dated 27.10.2011 was not exercisable for effecting recruitment/appointment during RRs, 2016 in ignorance of **Para 42(vii)** of judgment dated 10.03.2022 and law settled in the larger bench judgments **in the case of Sant Ram Sharma vs State Of Rajasthan & Anr (1967 AIR 1910) and Amarjit Singh Ahluwalia vs The State of Punjab & Ors (1975 AIR 984)** which are binding over lower bench judgment ?

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- (xvi) When no source of 'recruitment by absorption' was available in RRs, 2002, why should such an interpretation be adopted by the department which would tantamount to opening a new source of recruitment which was not specified under RRs by going against the decisions of Hon'ble Supreme Court in **Arun Kumar & Ors Vs Union of India & Ors [JT 2007 (5) SC 181]** and **Mrigank Johri & Ors Versus Union of India & Ors. (Civil Appeal Nos. 9316-9320 OF 2013)** which specially dealt with the source of recruitment by absorption and treated such recruitment/appointment against DR quota as effected in exercise of residuary power/executive instruction but not in exercise of RRs without finding therein any infirmity ?
- (xvii) The judgment dated **15.03.2022** of the **larger bench (3 judge bench)** of the Hon'ble Apex Court in **B.S. MURTHY & ORS. Vs. A. RAVINDER SINGH & ORS. (CIVIL APPEAL NO. 3968 OF 2009 & connected appeals)** while deciding questions over quota rule of the RRs, 1979 which had the similar special provisions akin to Rule 4(ii) of RRs, 2002 for the cadre of Commissionerate/Collectorate, has also considered appointments made through Inter Commissionerate Transfer (ICT) as Direct Recruitment but not as 'recruitment by transfer/absorption' since only two sources of recruitment i.e. Direct Recruitment & Promotion like as in RRs, 2002 & RRs, 2016, were available and the said judgment has been duly accepted by the department. Such ICTs during RRs, 1979 were effected in terms of policy decision/executive instruction dated 20.05.1980 by making such adjustment against quota of Direct Recruitment which, in the absence of third source of 'recruitment by absorption' under RRs and even with the presence of special provision, have now been treated by the larger bench of the Hon'ble Court only as '**Direct Recruitment**' in a distinct cadre of Commissionerate/Collectorate and such observations are in line with observations of judgment of the Hon'ble Apex Court in **Arun Kumar & Ors vs Union of India & Ors and principles of Recruitment framed by DOP&T**. Since such observations passed by the larger bench of the Hon'ble Apex Court in judgment dated 15.03.2022 would have binding effect upon the department, why, in the absence of source/method of 'recruitment by absorption', cases of recruitment/appointment from one 'CCA Cadre' to another 'CCA Cadre' effected during RRs, 2002 & RRs, 2016 should not be treated only as 'Direct Recruitment' which are purely governed by the terms & conditions of policy decision/executive instruction dated 27.10.2011 and why the action taken by the CCA of invalidating such recruitment/appointment in Jaipur Zone during RRs, 2016 should not be revisited/reviewed in the light of direction/mandamus from the Hon'ble Apex Court in judgment dated 10.03.2022 and observations made in **Para 33** thereof?
- (xviii) All the inspectors appointed/recruited in terms of policy decision dated 27.10.2011, were immediately got absorbed in the seniority list of Jaipur Zone and were not having any lien or seniority in ex-cadre as per law laid down in **Palure Bhaskar Rao and Ors. Vs. P. Ramaseshaian and Ors. (2017 5 SCC 783)** and in terms of **Proviso to Fundamental Rule 13** issued under Article 309, how such appointments/recruitments in Jaipur Zone were invalidated by converting into loan/deputation for future repatriation to ex-cadre which would be in violation of the law settled in **Palure Bhaskar Rao and Ors. Vs. P. Ramaseshaian and Ors. (2017 5 SCC 783)** and statutory provision of F.R. 13 by converting them into loan/deputation leading to another set of litigation for such re-patriated persons to be created by the persons of ex-cadre affected with seniority or promotion by such re-patriation ?
- (xix) For the mere reason of non-availability of provision for 'recruitment by absorption' in RRs, 2016 and without showing or proving any other inconsistency or infirmity in the 'appointment/recruitment' governed by the policy decision dated 27.10.2011, all the cases of recruitment/appointment in a distinct 'CCA Cadre' during RRs, 2016 have been converted into loan/deputation without the consent of the affected persons. Why such 'appointment/recruitment' should be converted into loan/deputation without taking consent by violating the principle laid down by the Apex Court in the

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case of **State of Punjab and others vs. Inder Singh and others, [1998 SCC (L&S) 34]** which is followed by the Principal Bench, CAT, New Delhi in its decision dated 14.07.2008 in the case of **H.P. Singh vs Union Of India (OA No. 826/2008)** while rendering a decision in the matter of transfer on loan basis?

- (xx) All cases of transfer effected during RRs, 2016 in terms of policy decision dated 27.10.2011 are only related to 'direct recruitment' in a distinct cadre which is a vested right and the service of the inspectors rendered in the Jaipur Zone could not be invalidated retrospectively by an executive action in view of the **judgment dated 22.09.2022** of the Hon'ble Supreme Court in the case of **M/s BSNL Others etc. Vs. M/s Tata Communications Ltd. Etc. (Civil Appeals No. (S).1699-1723 OF 2015)** which lays down a law that administrative/executive order or Circular cannot be made applicable with retrospective effect in the absence of any legislative competence. Why the ratio of the above judgment should not be made applicable to the cases of inspectors already recruited in terms of policy decision dated 27.10.2011 especially when there is a mandamus/direction from the Apex Court in judgment dated 10.03.2022 to revisit the decision to accommodate posting of spouses, the needs of the disabled and compassionate grounds by protecting the constitutional values of Articles 14, 15 and 16 and Article 21 and considering the observations in **Para 42(vii)** that it is well within the power of the Board to take policy decision to grant such appointment/recruitment by transfer ?
- (xxi) The inspectors who applied and got recruited/appointed in Jaipur Zone during RRs, 2016 in terms of policy decision dated 27.10.2011 with no fault, are settled with their family; have incurred loans for residential houses to settle their family lives; are looking after their old aged parents and their ailments having been posted in or nearby hometown; are giving good education to their children; are settled with their spouses working in or nearby hometown; are having adequate balance between the family life and professional life. If such inspectors, having made all future planning to settle nearby hometown, are repatriated again without following the mandamus/direction of the Hon'ble Supreme Court in judgment dated 10.03.2022, how the department would ensure preservation or protection of family life of those inspectors taking into consideration the observations of the Hon'ble Supreme Court "In crafting is policy however the State cannot be heard to say that it will be oblivious to basic constitutional values, including the preservation of family life which is an incident of Article 21"?

#### 4. BRIEF FACTS OF THE CASE:

4.1 In terms of the instructions contained in the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, New Delhi's letter F.No. A.22015/23/2011-Ad.IIIA dated 27.10.2011, following 14 Inspectors were transferred from other CGST, Central Excise and Customs Zones to CGST, Central Excise and Customs (Jaipur Zone), Jaipur on Inter Commissionerate Transfer basis after the coming into force of Recruitment Rules of Inspector, Central Excise, 2016:

S. No	Name of Inspector S/Shri	Grounds of ICT	Parent Zone	Estt Order No. & date of issuance	Date of Joining in Jaipur Zone
1	Rahul Bhatia	Compassionate	Vadodara Zone	28/2017 dated 22.02.2017	21.03.2017
2	Gulshan Manchanda	Disabled Person	Vadodara Zone	07/2017 dated 13.01.2017	01.02.2017
3	Ms. Mandeepika Sandhu	Spouse	Chandigarh Zone	162/2017 dated 13.12.2017	26.12.2017
4	Neeraj Singh	Compassionate	Vadodara Zone	07/2017 dated 13.01.2017	13.02.2017

5	Bharat Chaudhary	Compassionate	Vadodara Zone	07/2017 dated 13.01.2017	01.02.2017
6	Shiv Lal	Compassionate	Bhopal Zone	07/2017 dated 13.01.2017	03.04.2017
7	Mangilal	Compassionate	Vishakhapatnam Zone	146/2017 dated 06.11.2017	20.11.2017
8	Radhey Shyam	Compassionate	Vadodara Zone	95/2017 dated 21.07.2017	11.09.2017
9	Jairam Choudhary	Compassionate	Chennai Zone	14/2018 dated 22.01.2018	06.02.2018
10	Kuldeep Paliwal	Compassionate	Vadodara Zone	07/2017 dated 13.01.2017	13.02.2017
11	Vijay Raj Badigar	Compassionate	Vadodara Zone	146/2017 dated 06.11.2017	15.11.2017
12	Rajesh Kumar Meena	Spouse	Kolkata Zone	14/2018 dated 22.01.2018	19.02.2018
13	Lokesh Kumar Verma	Compassionate	Mumbai Zone-I	95/2017 dated 21.07.2017	10.08.2017
14	Piyush Sharma	Compassionate	Vadodara Zone	95/2017 dated 21.07.2017	01.08.2017

4.2.1 That, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs (now Central Board of Indirect Taxes & Customs and herein after referred as Board), New Delhi had issued instructions in respect of Inter Commissionerate Transfer in the light of Recruitment Rules of Inspector Group 'B', 2016 contained in Circular issued under F.No. A-22015/117/2016-Ad.IIIA dated 20.09.2018. The Board *vide* aforesaid Circular dated 20.09.2018 had stated that any executive instruction in contravention of the Recruitment Rules will be void in accordance with the ratio of the Judgment of the **Hon'ble Supreme Court of India** in the case of **UOI & others Vs. Somasundram Viswanath & Ors.** dated 22.09.1988 [1990 SC 166 (10) which held as follows:-

- (1) *"It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail." Thus, the Recruitment Rules formulated under Article 309 will prevail over any executive instruction that may be contradictory to it"*

4.2.2 The issue of Inter Commissionerate Transfer under "**Central Excise and Customs Commissionerate Inspector (Central Excise, Preventive Officer and Examiner) Group B Posts Recruitment Rules, 2016**" was examined by the Board and observed *vide* aforesaid Circular dated 20.09.2018 as under:

*"The ICT applications were being considered under Rule 4 of erstwhile Central Excise and Land Customs Department Inspector (Group 'C' Posts) Recruitment Rules, 2002 which stated that:*

*"Rule 4: Special Provision. - (i) Each Cadre Controlling Authority (CCA) shall have its own separate cadre unless otherwise directed by the Central Board of Excise and Customs.*

*(ii) Notwithstanding anything contained in sub-rule (i), the jurisdictional Chief Commissioner of Central Excise may, if he considers to be necessary or expedient in the public interest so to do and subject to such conditions as he may determine having regard to the circumstance of the case and for reasons to be recorded in writing, order any post in the Commissionerate of Central Excise to be filled by absorption of persons*

*ab/n*

*holding the same or comparable posts but belonging to the cadre of another Commissionerate or Directorate under the Central Board of Excise and Customs.*

*However, under Recruitment Rules, 2016 the corresponding provision containing the special provision under Rule 5 provides that "Each Cadre Controlling Authority (CCA) shall have its own separate cadre unless otherwise directed by the Central Board of Excise and Customs."*

4.2.3 **The Board, vide aforesaid Circular dated 20.09.2018, had stated that it is clear that Recruitment Rules of Inspector, 2016 do not have any provision for recruitment by absorption and accordingly, no ICT application can be considered after coming into force of the Recruitment Rules, 2016 and it was clarified that an office order for Inter Commissionerate Transfer in the Grade of Inspectors issued on or after 26.12.2016 (i.e. from the date of enactment of RR, 2016) will be *non-est* and accordingly, any officer who has joined another zone in pursuance of such order shall be treated as a deemed case on loan basis w.e.f. 26.12.2016. These officers shall be on deemed loan till 31.03.2019, on which date the officers shall stand relieved and be reverted to their parent Zones.**

4.3 That, in compliance of CBIC Circular F.No. A-22015/117/2016-Ad.IIIA, dated 20.09.2018, the 14 ICT Inspectors (mentioned in above Para 4.1) who had been allowed ICT to Jaipur Zone after 26.12.2016, were treated as working on deemed loan basis in Jaipur Zone till 31.03.2019 *vide* Establishment Order No. 93/2018 dated 03.10.2018.

4.4.1 That, being aggrieved, the said 14 ICT Inspectors, had approached Hon'ble CAT Jaipur Bench, Jaipur by way of filing Original Application before Hon'ble CAT Bench, Jaipur in the year 2018. The details of this Original Application, is as under:

S. No.	O.A. Number	Filed by	Number of applicants
1	291/00509/2018	Shri Rahul Bhatia & Others	17

\*3 Inspectors, namely, S/Shri Akhileshwar Mathur, Manish Kumar Choudhary and Ankit Singh Rathore have already been repatriated from Jaipur Zone to their parent zone on their request.

4.4.2 That, the Hon'ble CAT Bench Jaipur *vide* Order dated 07.01.2019 disposed of the said O.A as having been rendered infructuous in view of the Order dated 15.11.2018 of Hon'ble CAT Bench, Bangalore in O.A. No. 170/101/2018 (filed by Shri Ajay Pratap Singh) whereby the Board's aforesaid Circular dated 20.09.2018, was quashed.

4.5 That, the Department filed Writ Petition before the Hon'ble High Court Rajasthan Bench Jaipur against the aforesaid Order dated 07.01.2019 of the Hon'ble CAT Bench, Jaipur. The details of the said Writ Petition is as under :

S.No.	DB Civil Writ Petition Number.	Writ Petition filed against order dated 07.01.2019 in O.A. No.	Name of Respondents	Number of Respondents
1	6903/2019	291/00509/2018	Shri Rahul Bhatia & Others	17

\*3 Inspectors, namely, S/Shri Akhileshwar Mathur, Manish Kumar Choudhary and Ankit Singh Rathore have already been repatriated from Jaipur Zone to their parent zone on their request.

4.6 Meanwhile, in the identical issue, the **Hon'ble Supreme Court** *vide* Judgment dated 10.03.2022 in C.A. No. 1243 of 2022 in the case of **SK Nausad Rahaman & Ors Vs. Union of India and Ors.** and in other Civil Appeals, upheld the Circular F.No. A-22015/117/2016-Ad.IIIA dated 20.09.2018 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs (now Central Board of Indirect Taxes & Customs), New Delhi.

4.7 That, the **Hon'ble High Court Rajasthan Bench Jaipur** *vide* Judgment/Order dated 30.09.2022 has allowed the D.B Civil Writ Petition No. 6903/2019 with directions as mentioned in aforesaid Para 2.1 & 2.2.

## 5. DISCUSSION AND FINDINGS:

5.1 Being Cadre Controlling Authority (CCA)/Appointing Authority for the post of Inspector, Central Excise, Group 'B' (Non-Gazetted), I have carefully gone through the Judgments/Orders dated 30.09.2022 and 18.08.2022 of Hon'ble High Court Rajasthan Bench Jaipur in D.B Civil Writ Petition No. 6903/2019 and D.B Civil Writ Petition No. 6246/2019 & batch of petitions respectively (as mentioned/discussed in aforesaid Paras 2.1 & 2.2) and I observe that the Hon'ble High Court Rajasthan Bench Jaipur vide aforesaid Judgment/Order dated 30.09.2022 read with judgment/Order dated 18.08.2022 has issued specific directions to decide the representations in light of the Judgment/Order dated 10.03.2022 of the Hon'ble Supreme Court in the case of SK Nausad Rahaman & Ors. Versus Union of India & Ors.

5.2 The representations submitted by all 14 Inspectors, were forwarded to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, New Delhi vide this office letter F.No. II-3(9)CCU/JZ/2013/Pt-II/1047 dated 31.10.2022. The Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, New Delhi vide letter F.No.A.32012/43/2022-Ad.IIIA dated 07.11.2022 has given directions mentioning the observations as under:

*"2. The representations have been gone through which are identical except the grounds submitted by the applicants against repatriation. It has been seen from the representations that the core issue of these Inspectors is related to retrospectively implementing of the Board's letter dated 20.09.2018 vide which all the ICT orders issued on or after 26.12.2016 (the date of notification of RRs of Inspectors, 2016 which do not have any provision for ICT as was in RRs, 2002) were declared as invalid and the officers transferred on the basis of any such order had to be repatriated to their parent zone. However, to regularize their services in the zone, the period already spent in the new zone before repatriation, was to be treated as transfer on loan basis. All these 14 applicants were transferred to Jaipur zone from different zones on the basis of orders issued on or after 26.12.2016 and hence, they were to be repatriated.*

*3. Now, it is stated that the Board is concerned only with the policy issues and the transfer of Inspectors, being de-centralized cadre, is in the domain of the CCA. So far as the policy is concerned, the Hon'ble Supreme Court in its Judgment dated 10.03.2022 passed in SK Nausad Rahaman case, has upheld the Board's letter dated 20.09.2018. Hence, there is no point in further clarification on this letter.*

*4. Here, the issue is not the interpretation of 'Cadre' but to decide the representations for Inter Zonal Transfer under the CBIC. As per the RRs of 2016, which provides that "All CCA shall have its own separate cadre.....", and the appointment has been made on merit-cum-preference basis, and in its order dated 30.09.2022, the Hon'ble High Court of Rajasthan has directed to decide the representations in light of the order passed by Hon'ble Supreme Court of India in S K Naushad Rahaman case which upheld the letter dated 20.09.2018, it is very clear that no further policy clarification from the Board is required in this case. The CCA is therefore, requested to dispose these representations by issuing speaking order as per the instructions given in Board's letter dated 20.09.2018.*

*This issues with the approval of Competent Authority."*

5.3 I have carefully gone through the Judgment dated 10.03.2022 of **Hon'ble Supreme Court** in C.A. No. 1243 of 2022 in the case of **SK Nausad Rahaman & Ors. Vs. Union of India and Ors.** and in other Civil Appeals. I find that the Hon'ble Supreme Court vide Judgment dated 10.03.2022 in the aforesaid case of SK Nausad Rahaman & Ors. has upheld the Circular F.No. A-22015/117/2016-Ad.IIIA dated 20.09.2018 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs (now Central Board of Indirect Taxes & Customs), New Delhi after detailed consideration/examination of the Board's/DoPT's instructions in the matter, Recruitment Rules of Inspector, Judgments delivered in the other cases and law, etc.. The relevant paragraphs of the said Judgment dated 10.03.2022, are reproduced as under:

*"1. A Division Bench of the High Court of Kerala dealt with a batch of petitions under Article 226 of the Constitution challenging the orders of the Central*

*Administrative Tribunal on the issue of the withdrawal of Inter-Commissionerate Transfers. The High Court has come to the conclusion that the Central Excise and Customs Commissionerates Inspector (Central Excise, Preventive Officer and Examiner) Group 'B' Posts Recruitment Rules 2016 do not contain any provision for ICTs and, on the contrary, stipulate that each Cadre Controlling Authority will have its own separate cadre, unless otherwise directed by the Central Board of Excise and Customs. The High Court held that ICTs would violate the unique identity of each cadre envisaged under Rule 5 of RR 2016 and hence the Circular withdrawing ICTs is not invalid. The judgment of the High Court has given rise to the batch of civil appeals.*

8. *The validity of the Circular dated 20 September 2018 was challenged before the Central Administrative Tribunal. The challenge was upheld by the Tribunal. The High Court, in the exercise of its jurisdiction under Article 226, reversed the decision of the Tribunal.*

27. The above principle was cited with approval in **Union of India v. SL Abbas** where the Court held that transfer is an incident of service:

*“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. **The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.**”*

39. The above tabulation indicates that the proposal which was under consideration was the provision for Inter-Commissionerate deputation without deputation allowance. This was suggested for deletion. DoPT observed that such a provision is generally not made in the recruitment rules and thus, the proposal may be agreed to. But apart from this, the Department of Revenue did not deem it fit to adopt the specific provision which was contained in Rule 4(ii) of RR 2002 under which absorption of persons from other cadres was envisaged at the Commissionerate level, when Rule 5 of RR 2016 was framed. **In the absence of a specific provision to that effect, an employee from outside the cadre under the control of a CCA cannot claim an ICT based on executive instructions. The executive instructions which have been issued by DoPT in the form of OMs will not prevail over RR 2016 which have been framed under the proviso to Article 309. Similarly, the instructions which were issued by the Department of Revenue on 27 March 2009, relaxing the ban on ICT, which was imposed on 19 February 2004 and the subsequent instructions dated 27 October 2011 were issued at the time when RR 2016 were yet to be framed. These instructions will not govern or prevail when the regime envisaged under RR 2016 came into force.**

42. *For the above reasons, we have arrived at the conclusion that the High Court was justified in coming to the conclusion that:*

- (i) *RR 2002 contained a specific provision for ICTs;*
- (ii) *There is an absence of a provision comparable to Rule 4(ii) of RR 2002 in RR 2016;*
- (iii) *On the contrary, Rule 5 of RR 2016 specifically stipulates that each CCA shall have its own separate cadre unless directed by the CBEC;*
- (iv) *Any ICT would violate the unique identity of each cadre envisaged in Rule 5;*
- (v) *Any ICT order would transgress a field which is occupied by the rules which have been framed in terms of the proviso to Article 309 of the Constitution;*

- (vi) *The Circular dated 20 September 2018 makes it absolutely clear that RR 2016 do not have any provision for recruitment by absorption and no ICT application could be considered after the coming into force of RR 2016;*
- (vii) *Transfer is a condition of service and it is within the powers of the employer to take a policy decision either to grant or not to grant ICTs to employees; and*
- (viii) *The power of judicial review cannot be exercised to interfere with a policy decision of that nature.*

52. *The Circular dated 20 September 2018 has taken into account, what it describes "exceptional circumstances" such as "extreme compassionate grounds". Leaving these categories undefined, the Circular allows for individual cases to be determined on their merits on a case by case basis, while prescribing that transfers on a "loan basis" may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the Circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving*

*(i) postings of spouses;*

*(ii) disabled persons; or*

*(iii) compassionate transfers, is a matter which should be considered at a policy level by the Board.*

53. *In considering whether any modification of the policy is necessary, they must bear in mind the need for a proportional relationship between the objects of the policy and the means which are adopted to implement it. The policy above all has to fulfill the test of legitimacy, suitability, necessity and of balancing the values which underlie a decision making process informed by constitutional values. Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected. The appeals shall be disposed of in the above terms.*

54. *Pending application(s), if any, stand disposed of."*

5.4 I have also carefully considered the submissions made by the said 14 Inspectors in their representations, Judgment dated 10.03.2022 of the Hon'ble **Supreme Court** in C.A. No. 1243 of 2022 in the case of **SK Nausad Rahaman & Ors Vs. Union of India and Ors.** and in other Civil Appeals, Judgments/Orders dated 30.09.2022 and 18.08.2022 of Hon'ble High Court Rajasthan Bench Jaipur as mentioned/discussed in above Paras 2.1 & 2.2, Board's instructions in the matter and found that the said 14 ICT Inspectors have mentioned various Judgments of Hon'ble Supreme Court/High Court/CAT in their representations and requested to dispose of their representations taking into consideration the observations made in the Judgments of the Hon'ble Courts/CAT. Whereas, the Hon'ble High Court Rajasthan Bench, Jaipur vide aforesaid Judgments dated 30.09.2022 and 18.08.2022 has issued specific directions to decide the representations in light of the order passed by the **Hon'ble Supreme Court** in the case of **SK Nausad Rahaman & Ors.** versus Union of India & Ors. Therefore, I am of the view that representations are to be decided only in light of the Judgment dated 10.03.2022 in the said case of SK Nausad Rahaman & Ors. The discussion and findings on the points submitted in the representations, as mentioned in above Para 3, are also as under:

**(i)&(ii):** The Board vide letter F.No. A-22015/23/2011-Ad.IIIA dated 27.11.2011 had decided to lift the ban on Inter Commissionerate Transfer (ICT) and stated that any willing Group 'B' and 'C' employee may apply for transfer from the jurisdiction of one Cadre Contrlloing Authority (CCA) to another CCA subject to availability of vacancy, **consent of the concerned two Cadre Controlling Authorities** and other terms & conditions. The Board vide Circular F.No. A-22015/117/2016-Ad.IIIA dated 20.09.2018 mentioning the Board's aforesaid letter dated 27.11.2011, had stated that the issue of Inter Commissionerate Transfer was examined under Recruitment Rules of

Inspector, 2016 and clarified that Recruitment Rules of Inspector, 2016 do not have any provision for recruitment by absorption and accordingly no ICT application can be considered after coming into force of the Recruitment Rules of Inspector, 2016. It was also clarified that an Office Order for Inter Commissionerate Transfer in the grade of Inspector issued on or after 26.12.2016 ( i.e. from the date of enactment of RR, 2016) will be *non-est* and accordingly any officer who has joined **another zone** in pursuance of such order shall be treated as deemed case on loan basis w.e.f. 26.12.2016. These officers shall be deemed loan till 31.03.2019, on which date the officers shall stand relieved and be reverted to their **parent zones**.

**The aforesaid Circular dated 20.09.2018 has been upheld by the Hon'ble Supreme Court vide Order dated 10.03.2022 in the case of SK Naushad Rahaman (supra) and the Hon'ble High Court Rajasthan vide Judgment/Order dated 18.08.2022 (mentioned in above Para 2.2) has also confirmed that now the validity of the Board's Circular dated 20.09.2018 has been upheld by the Hon'ble Supreme Court in its Order dated 10.03.2022. Further, Board vide letter F.No. A-32012/43/2022-Ad.IIIA dated 07.11.2022 has also stated that no further policy clarification from the Board is required in this case.**

From the above , it is abundantly clear that the Board's Circular dated 20.09.2018 and Judgment dated 10.03.2022 of Hon'ble Supreme Court in the case of SK Naushad Rahaman (supra) is related to Inter Commissionerate Transfer of Inspectors from one Zonal CCA to another Zonal CCA.

**(iii)&(iv):**As per Paras 39 and 42 (vi) of Judgment dated 10.03.2022 of Hon'ble Supreme Court in the case of SK Naushad Rahaman (supra) and Judgement dated 22.09.1988 of Hon'ble Supreme Court in the case of UOI & Ors. Vs. Somesundram Viswanath & Ors. as mentioned in the Board's Circular dated 20.09.2018, the Board's letter dated 27.11.2011 will not govern or prevail when the regime envisaged under RR of Inspector, 2016 came into force.

**(v):** The Board's Circular dated 20.09.2018 has been upheld by the Hon'ble Kerala High Court and Hon'ble Supreme Court in the case of **SK Nausad Rahaman & Ors. Versus Union of India & Ors.** The Hon'ble Supreme Court in the said case has **left it open** to the respondents to revisit the policy to accommodate posting of spouses, disabled persons and on compassionate grounds. The Hon'ble Supreme Court has not ordered that the Board's Circular dated 20.09.2018 should be implemented after revisiting the policy to accommodate posting of spouses, disabled persons and on compassionate grounds. The said observations (i.e. **left it open to the respondents** to revisit the policy) are rather suggestive in nature.

**The Hon'ble High Court Rajasthan Bench Jaipur vide Judgment/Order 18.08.2022 (mentioned in above para 2.2) has also confirmed that now the validity of the Board's Circular dated 20.09.2018 has been upheld by the Hon'ble Supreme Court in its Order dated 10.03.2022.** Further, as per the directions of the Hon'ble High Court Rajasthan, the representations are to be decided in light of the Order passed by the Hon'ble Supreme Court in the case of **SK Nausad Rahaman & Ors. Versus Union of India & Ors (supra)**. The Board *vide* letter F.No. A-32012/43/2022-Ad.IIIA dated 07.11.2022 has also stated that no further policy clarification from the Board is required in the present case. Hence, after upholding the validity of the Board's Circular dated 20.09.2018 by the Hon'ble Supreme Court, no question/objection on validity and consequent action thereof on Board's Circular dated 20.09.2018 can be raised by the ICT Inspectors who have submitted the representations.

**(vi)to(viii):** The Para 42 (i) and (vi) of the Judgment dated 10.03.2022 of the Hon'ble Supreme Court in the case of **SK Nausad Rahaman & Ors. Versus Union of India & Ors (supra)**, provides that Recruitment Rules of Inspector, 2002 contained a specific provision for ICTs and the Circular dated 20.09.2018 makes it absolutely clear that RR, 2016 do not have any provision for recruitment by absorption and no ICT application could be considered after the coming into force of RR, 2016. The Board vide letter dated 07.11.2022 (mentioned in above Para 5.2) has stated that so far as the policy is concerned, the Hon'ble Supreme Court in its Judgment dated 10.03.2022

passed in SK Nausad Rahaman case, has upheld the Board's letter dated 20.09.2018. Hence, there is no point in further clarification on this letter.

**(ix)&(x):** The representations of 14 ICT Inspectors were forwarded to the Board. The Board vide letter F.No. A-32012/43/2022-Ad.IIIA dated 07.11.2022 has given directions mentioning the observations as mentioned in above Para 5.2. The Board vide Circular dated 20.09.2018 had also clarified that *“an office order for Inter Commissionerate Transfer in the Grade of Inspectors issued on or after 26.12.2016 (i.e. from the date of enactment of RR, 2016) will be non-est and accordingly any officer who has joined another zone in pursuance of such order shall be treated as a deemed case on loan basis w.e.f. 26.12.2016. These officers shall be on deemed loan till 31.03.2019, on which date the officers shall stand relieved and be reverted to their parent Zones.”*

The said Board Circular dated 20.09.2018 has been mentioned/discussed in Para 6 & 11 (vi) of the Judgment dated 10.03.2022 of the Hon'ble Supreme Court in the case of **SK Nausad Rahaman & Ors.** Versus Union of India & Ors (supra). The Para 42 (vi) of the said Judgment dated 10.03.2022 also provides that *“The Circular dated 20 September 2018 makes it absolutely clear that RR 2016 do not have any provision for recruitment by absorption and no ICT application could be considered after the coming into force of RR 2016;”* The validity of the Board's Circular dated 20.09.2018 has been upheld by the Hon'ble Supreme Court and the same has also been confirmed by the Hon'ble High Court Rajasthan Bench Jaipur vide Order dated 18.08.2022 as mentioned/discussed in above paras, therefore, question on implementation of Board's Circular dated 20.09.2018 retrospectively, does not arise.

**(xi)to(xiii):** The discussion and findings in Para 5.4 (ii), 5.4 (iii) & 5.4 (iv) of Speaking Order E.O No. CCU-22/2022 dated 03.10.2022 are just, proper and correct in terms of Recruitment Rules of Inspector, 2002 and Board's instructions in the matter. After detailed discussion on the issue of 'special provisions', 'cadre', 'own separate cadre', 'Cadre of another Commissionerate', 'Cadre Controlling Authority', 'separate cadre for each CCA', 'absorption', 'ICT', 'Article 309', etc. mentioning the Recruitment Rules of Inspector, 2002 & RRs of Inspector, 2016 in Para 30 to 34, the validity of Board's Circular dated 20.09.2018 has been upheld by the Hon'ble Supreme Court vide Judgment dated 10.03.2022 in the case of **SK Nausad Rahaman & Ors.** Versus Union of India & Ors (supra). The Hon'ble Supreme Court has not directed to the effect that Board's Circular dated 20.09.2018 should only be implemented after revisiting the policy.

**(xiv):** The Board's letter dated 08.04.2021 is only proposal for amendment in Recruitment Rules of various posts in CBIC for inclusion of absorption as one of the method of recruitment. The same cannot be implemented till finalization and publication in the Gazette of India. Further, the Board vide letter dated 07.11.2022 has stated that *“Now, it is stated that the Board is concerned only with the policy issue and the transfer of Inspectors, being de-centralized cadre, is in the domain of the CCA. So far as the policy is concerned, the Hon'ble Supreme Court in its Judgment dated 10.03.2022 passed in SK Nausad Rahaman & Ors. Versus Union of India & Ors (supra), has upheld the Board's letter dated 20.09.2018. Hence there is no point in further clarification on this letter.”*

After upholding the validity of Board's Circular dated 20.09.2018 by the Hon'ble Supreme Court, there is no illegality in taking further action in accordance with the Board's Circular dated 20.09.2018.

**(xv)&(xvi):** As the Para-39 of Judgment dated 10.03.2022 of Hon'ble Supreme Court in the case of **SK Nausad Rahaman & Ors.** Versus Union of India & Ors (supra), in the absence of a specific provision of absorption in the RR of Inspector, 2016, an employee from outside the cadre under the control of a CCA cannot claim an ICT based on executive instruction. The executive instruction dated 27.10.2011 will not govern or prevail when the regime envisaged under RR, 2016 came into force.

**(xvii)to(xx):** The Hon'ble High Court Rajasthan Bench Jaipur vide Judgment dated 18.08.2022 (mentioned above in Para-2.2) has directed to decide the representations in the light of

the Order passed by the Hon'ble Supreme Court in the case of **SK Nausad Rahaman & Ors.** Versus Union of India & Ors (supra), therefore, discussion and findings on the Judgment of Hon'ble Supreme Court in the other cases as mentioned by the ICT Inspectors in their representations cannot be made beyond the direction of the Hon'ble High Court Rajasthan. The Board vide letter dated 07.11.2022 (mentioned in above Para 5.2) has stated that:

*"2. The representations have been gone through which are identical except the grounds submitted by the applicants against repatriation. It has been seen from the representations that the core issue of these Inspectors is related to retrospectively implementing of the Board's letter dated 20.09.2018 vide which all the ICT orders issued on or after 26.12.2016 (the date of notification of RRs of Inspectors, 2016 which do not have any provision for ICT as was in RRs, 2002) were declared as invalid and the officers transferred on the basis of any such order had to be repatriated to their parent zone. However, to regularize their services in the zone, the period already spent in the new zone before repatriation, was to be treated as transfer on loan basis. All these 14 applicants were transferred to Jaipur zone from different zones on the basis of orders issued on or after 26.12.2016 and hence, they were to be repatriated.*

However, it is to mention here that after upholding the validity of the Board's Circular dated 20.09.2018 by the Hon'ble Supreme Court after detailed discussion on all related issues, there is no illegality in taking further action in accordance with the Board's Circular dated 20.09.2018

(xxi): The Hon'ble Supreme Court has upheld the validity of Board's Circular dated 20.09.2018 after detailed discussion on the issue of **gender equality, need for equal treatment of disabled persons, equality, discrimination, spouse posting, protecting family life** etc. in Paras 45 to 51 of its Order dated 10.03.2022 in the case of **SK Nausad Rahaman & Ors.** Versus Union of India & Ors (supra),

5.5 With regard to issue of compassionate grounds raised by Inspectors in their representations, I observe that the Hon'ble Supreme Court in its Judgment dated 10.03.2022 in the case of SK Nausad Rahaman & Ors. Versus Union of India & Ors. (Supra) has observed as under :

*"52. The Circular dated 20 September 2018 has taken into account, what it describes "exceptional circumstances" such as "extreme compassionate grounds". Leaving these categories undefined, the Circular allows for individual cases to be determined on their merits on a case by case basis, while prescribing that transfers on a "loan basis" may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the Circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving*

*(i) postings of spouses;*

*(ii) disabled persons; or*

*(iii) compassionate transfers, is a matter which should be considered at a policy level by the Board."*

Further, I observe that the Board in its Circular dated 20.09.2018 has specifically discussed the issue of compassionate grounds and has stated as under :

*"6. In exceptional circumstances depending upon the merit of each case such as extreme compassionate grounds, such transfers may be allowed on case to case on loan basis alone keeping in view the administrative requirements of transferee and transferred Cadre Controlling Authority. However, maximum tenure of such transfer will be three years and can be extended with the specific approval of the Board for a further period of two years depending upon the administrative requirement. It is further reiterated that the officials*

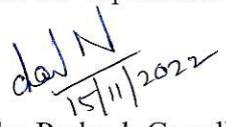
*transferred on the loan basis shall not be considered for promotion unless they re-join their parent cadre.”*

From the above, it is abundantly clear that the facility of loan basis for limited period has been specifically allowed on compassionate ground. It is also noted that all the officers mentioned in Para 4.1 above have completed more than 4 years in Jaipur Zone since their transfer to Jaipur Zone. This issue has already been considered by Hon'ble Supreme Court as well as by the Board.

5.6 The Board's Circular/letter dated 20.09.2018 has been upheld by the Hon'ble Kerala High Court and Hon'ble Supreme Court in the case of **SK Nausad Rahaman & Ors. Versus Union of India & Ors.** The Hon'ble Supreme Court in the said case has **left it open** to the respondents to revisit the policy to accommodate posting of spouses, disabled persons and on compassionate grounds. The Hon'ble Supreme Court has not ordered/directed that the Board's Circular dated 20.09.2018 should be implemented only after revisiting the policy to accommodate posting of spouses, disabled persons and on compassionate grounds. The said observations (i.e. left it open to the respondents to revisit the policy) are rather suggestive in nature. The Board vide letter F.No. A-32012/43/2022-Ad.IIIA dated 07.11.2022 (mentioned in above Para 5.2) has stated that after upholding the Board's Circular dated 20.09.2018, no further policy clarification is required from the Board in this case.

### ORDER

In view of the foregoing discussion and findings, all the representations submitted by the aforesaid 14 Inspectors deserve to be rejected being devoid of merit and the same are hereby rejected being Cadre Controlling Authority (CCA)/Appointing Authority in respect of the post of Inspector, Central Excise Group 'B' (Non-Gazetted). It is also ordered that in pursuance of Estt. Order No. 93/2018 dated 03.10.2018 issued in compliance of Board's Circular F.No.A-22015/117/2016-Ad.IIIA dated 20.09.2018, the 14 Inspectors as mentioned above in Para 4.1, are treated to have been transferred from their parent zone to Jaipur Zone on deemed loan from the date of their joining in Jaipur Zone, till date and they shall stand relieved for repatriation from this zone to their parent zone, with immediate effect.

  
 (Chandra Prakash Goyal)  
 Principal Commissioner

To,

As per enclosed list.

F.No. II-3(9)CCU/JZ/2013/Pt-III/

Dated: 15.11.2022

Copy for information and necessary action:

1. Shri Ravish Kumar, Under Secretary (Ad.IIIA), CBIC, New Delhi w.r.t. his office letter F.No. A-32012/43/2022-Ad.IIIA dated 07.11.2022.
2. The Chief Commissioner, CGST & Central Excise, Jaipur Zone, Jaipur.
3. The Pr. Commissioner/Commissioner, CGST & Central Excise Commissionerate, Jaipur/Jodhpur/Udaipur/Alwar/Audit-Jaipur/Audit-Jodhpur/Appeals-Jaipur/Appeals-Jodhpur/Customs (Prev.) Jodhpur (Hqrs at Jaipur).
4. The Chief Commissioner, Customs, CGST & Central Excise, Vadodara Zone, 2<sup>nd</sup> Floor, Central Excise Building, Race Course Circle, Vadodara — 390007.
5. The Chief Commissioner of CGST & Central Excise, Kolkata Zone, G.S.T. Bhawan, 2<sup>nd</sup> Floor, 180, Shanty Pally, Rajdanga Main Road, R.B. Connector, Kolkata — 700107.
6. The Chief Commissioner of CGST & Central Excise, Tamilnadu & Puducherry Zone, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai — 600 034.
7. The Chief Commissioner, CGST & Central Excise, Chandigarh Zone, Central Revenue Building, Plot No. 19, Sector-17C, Chandigarh — 160017.
8. The Chief Commissioner, CGST & Central Excise, Mumbai Zone-I, New Central Excise Building, 115, Maharshi Karve Road, Opp. Churchgate Station Mumbai — 400020.
9. The Chief Commissioner, Central Excise, Customs & Service Tax, Hyderabad Zone, Lal Bahadur Stadium Road, Basheerbagh, Hyderabad — 500 004.

10. The Chief Commissioner, Central Excise, Customs & Service Tax, Bhopal Zone, 48, Administrative Area, Arera Hills, Hoshangbad Road, Bhopal — (MP) -462011.
11. The Chief Commissioner, Central Excise, Customs & Service Tax, Vishakhapatnam Zone, New Central Excise Building, Port Area, Vishakhapatnam-35
12. The Supdt. (Admn./Vig.), CCO, CGST & CE (JZ), Jaipur.
13. ✓ The Supdt. (Comp.), CGST & Central Excise Commissionerate, Jaipur for uploading on departmental website.
14. The PAO, CGST & Central Excise & Customs, Jaipur.
15. Guard file/ concerned Association/Notice Board.

*d/N*  
*15/11/2022*  
Principal Commissioner

## LIST OF ICT INSPECTORS

<b>S. No.</b>	<b>Name of Inspector S/Shri</b>	<b>Present place of posting</b>
1	Rahul Bhatia	Audit, Jaipur (Alwar)
2	Gulshan Manchanda	Audit, Jaipur (Alwar)
3	Ms. Mandeepika Sandhu	Audit, Jaipur (Ajmer)
4	Neeraj Singh	Customs (P) (ICD Rajsico, Jodhpur)
5	Bharat Chaudhary	Customs (P) (ADC Office, Jodhpur)
6	Shiv Lal	CGST, Jaipur
7	Mangilal	Customs (P) (ICD Concor, Jodhpur)
8	Radhey Shyam	Customs (P) (ICD Concor, Jodhpur)
9	Jairam Choudhary	Audit, Jodhpur
10	Kuldeep Paliwal	Customs (P) (ADC Office, Jodhpur)
11	Vijay Raj Badigar	CGST, Udaipur
12	Rajesh Kumar Meena	CGST, Udaipur (Kota)
13	Lokesh Kumar Verma	Audit, Jaipur
14	Piyush Sharma	Customs (P) (FPO Jaipur)