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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 7th June, 1978/Jyaistha 17, 1900 (Saka)

The following Act of Parliament received the assent of the President on the 6th June, 1978, and is hereby published for general information:—

THE CUSTOMS, CENTRAL EXCISES AND SALT AND CENTRAL BOARDS OF REVENUE (AMENDMENT) ACT, 1978

No. 25 OF 1978

[*6th June*, 1978.]

An Act to provide for certain amendments to the Customs Act, 1962, the Central Excises and Salt Act, 1944 and the Central Boards of Revenue Act, 1963.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act, 1978.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE CUSTOMS ACT, 1962

Amendment of section 2.

52 of 1962.

2. In section 2 of the Customs Act, 1962 (hereafter in this Chapter referred to as the Customs Act), in clause (28), for the words "waters extending into the sea to a distance of twelve nautical miles measured

from the appropriate base line on the coast of India", the words and figures "waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976" shall be substituted. 80 of 1976.

Amendment of section 14.

3. In section 14 of the Customs Act,—

(*a*) in sub-section (*1*), in clause (*a*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50;";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

'(*3*) For the purposes of this section—

(*a*) "rate of exchange" means the rate of exchange—

(*i*) determined by the Central Government, or

(*ii*) ascertained in such manner as the Central Government may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(*b*) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in the Foreign Exchange Regulation Act, 1973.'. 46 of 1973.

Amendment of section 15.

4. In section 15 of the Customs Act—

(*a*) in sub-section (*1*), the words ", rate of exchange" shall be omitted;

(*b*) sub-section (*3*) shall be omitted.

Amendment of section 27.

5. In section 27 of the Customs Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any person claiming refund of any duty paid by him in pursuance of an order of assessment made by an officer of customs lower in rank than an Assistant Collector of Customs may make an application for refund of such duty to the Assistant Collector of Customs—

(*a*) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year;

(*b*) in any other case, before the expiry of six months, from the date of payment of duty:

Provided that the limitation of one year or six months, as the case may be, shall not apply where any duty has been paid under protest.

Explanation.—Where any duty is paid provisionally under section 18, the period of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof.".

Amendment of section 28.

6. In section 28 of the Customs Act, in sub-section (*1*),—

(*a*) for the opening paragraph, the following shall be substituted, namely:—

"When any duty has not been levied or has been short-levied or erroneously refunded, the proper officer may,—

(*a*) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(*b*) in any other case, within six months,

from the relevant date, serve notice on the person chargeable with the duty which has not been levied or which has been so short-levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:";

(*b*) in the proviso, for the words ' "six months" ', the words ' "one year" and "six months" ' shall be substituted.

Insertion of new section 28A.

7. After section 28 of the Customs Act, the following section shall be inserted, namely:—

Power not to recover duties not levied or short-levied as a result of general practice.

"28A. Notwithstanding anything contained in this Act, if the Central Government is satisfied—

(*a*) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from, India; and

(*b*) that such goods were, or are, liable—

(*i*) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or

(*ii*) to a higher amount of duty than what was, or is being, levied, according to the said practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.".

Amendment of section 46.

8. In section 46 of the Customs Act, in sub-section (*3*),—

(*a*) in the proviso, for the words "such manifest or report", the words "such report" shall be substituted;

(*b*) after the proviso as so amended, the following further proviso shall be inserted, namely:—

"Provided further that a bill of entry may be presented even before the delivery of such manifest if the vessel by which the goods have been shipped for importation into India is expected to arrive within a week from the date of such presentation.".

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Amendment of section 61.

9. In section 61 of the Customs Act,—

(*a*) for the opening paragraph, the following shall be substituted, namely:—

"Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,—

(*a*) in the case of non-consumable stores, till the expiry of three years; and

(*b*) in the case of any other goods, till the expiry of one year,

after the date on which the proper officer made an order under section 60 permitting the deposit of the goods in a warehouse:";

(*b*) in the first proviso for the words "three years", in both places where they occur, the words "three years or one year, as the case may be," shall be substituted.

Amendment of section 75.

10. In section 75 of the Customs Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured in India and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (*1*), be deemed to be imported material.";

(*b*) in sub-section (*2*), in clause (*a*), for the words "goods of that class or description", the words "export goods of that class or description" shall be substituted.

Amendment of section 113.

11. In section 113 of the Customs Act, in clause (*i*), after the words "dutiable or prohibited goods", the words "or goods entered for exportation under claim for drawback" shall be inserted.

Amendment of section 122.

12. In section 122 of the Customs Act, for clauses (*b*) and (*c*), the following clauses shall be substituted, namely:—

"(*b*) where the value of the goods liable to confiscation does not exceed twenty-five thousand rupees, by an Assistant Collector of Customs;

(*c*) where the value of the goods liable to confiscation does not exceed two thousand five hundred rupees, by a gazetted officer of customs lower in rank than an Assistant Collector of Customs.".

Amendment of section 128.

13. In section 128 of the Customs Act, in sub-section (*1*), in the opening paragraph, after the words "any decision or order passed under this Act", the brackets, words and figures "(not being an order passed under section 130)" shall be inserted.

Substitution of new section for section 130.

14. For section 130 of the Customs Act, the following section shall be substituted, namely:—

Powers of revision of Board or Collector.

"130. (*1*) The Board may, of its own motion or otherwise, call for and examine the record of any proceeding in which a Collector of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

(*2*) The Collector of Customs may of his own motion or otherwise call for and examine the record of any proceeding in which an officer of customs subordinate to him has passed any decision or order under this Act (not being an order passed in appeal under section 128) for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (*a*) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section unless the person affected by the proposed order has been given a reasonable opportunity of showing cause against it.

(*b*) Where the Board or, as the case may be, the Collector of Customs is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28.

(4) No proceeding shall be initiated under this section in respect of any decision or order after the expiry of a period of one year from the date of such decision or order:

Provided that where in respect of any decision or order passed by an officer of customs before the commencement of the Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act, 1978, the period of one year for initiating revision proceedings had expired at such commencement, then, revision proceedings may be initiated within a period of six months from such commencement.".

Amendment of section 131.

15. In section 131 of the Customs Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) An application under sub-section (*1*) shall be accompanied by a fee of one hundred and twenty-five rupees.".

Amendment of section 135.

16. In section 135 of the Customs Act, for the words "six months", wherever they occur, the words "one year" shall be substituted.

Insertion of new section 143A.

17. After section 143 of the Customs Act, the following section shall be inserted, namely:—

Duty deferment.

"143A. (*1*) When any material is imported under an import licence belonging to the category of Advance Licence granted under the Imports and Exports (Control) Act, 1947, subject to an obligation to export the goods as are specified in the said Licence within the period specified therein, the Assistant Collector of Customs may, notwithstanding anything contained in this Act, permit clearance of such material without payment of duty leviable thereon.

18 of 1947.

(2) The permission for clearance without payment of duty under sub-section (1) shall be subject to the following conditions, that is to say—

(a) the duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act or under any other law for the time being in force on the export of goods specified in the said Advance Licence; and

(b) where the duty is not so adjusted either for the reason that the goods are not exported within the period specified in the said Advance Licence, or within such extended period not exceeding six months as the Assistant Collector of Customs may, on sufficient cause being shown, allow, or for any other sufficient reason, the importer shall, notwithstanding anything contained in section 28, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent. per annum from the date the said permission for clearance is given to the date of payment.

(3) While permitting clearance under sub-section (1), the Assistant Collector of Customs may require the importer to execute a bond with such surety or security as he thinks fit for complying with the conditions specified in sub-section (2).".

Amendment of section 159.

18. In section 159 of the Customs Act, for the words "in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following", the words "in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted.

CHAPTER III

AMENDMENTS TO THE CENTRAL EXCISES AND SALT ACT, 1944

Amendment of section 3.

19. In section 3 of the Central Excises and Salt Act, 1944 (hereafter in this Chapter referred to as the Central Excises and Salt Act), for sub-section (3), the following sub-section shall be substituted, namely:— 1 of 1944.

"(3) Different tariff values may be fixed—

(a) for different classes or descriptions of the same excisable goods; or

(b) for excisable goods of the same class or description—

(i) produced or manufactured by different classes of producers or manufacturers; or

(ii) sold to different classes of buyers:

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, the the case may be, the normal practice of the wholesale trade in such goods.".

Insertion of new section 5.

20. After section 4 of the Central Excises and Salt Act, the following section shall be inserted, namely:—

Remission of duty on goods found deficient in quantity.

"5. (*1*) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.

(*2*) Any rules made under sub-section (*1*) may, having regard to the nature of the excisable goods or of processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed:

Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons.".

Insertion of new sections 11A, 11B and 11C.

21. After section 11 of the Central Excises and Salt Act, the following sections shall be inserted, namely:—

Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

'11A. (*1*) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "six months", the words "five years" were substituted.

Explanation.—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be.

(*2*) The Assistant Collector of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (*1*), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(*3*) For the purposes of this section—

(*i*) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(*ii*) "relevant date" means,—

(*a*) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid—

(*A*) where under the rules made under this Act a monthly return, showing particulars of the duty paid on the excisable goods removed during the month to which the said return relates, is to be filed by a manufacturer or producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;

(*B*) where no monthly return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(*C*) in any other case, the date on which the duty is to be paid under this Act or the rules made thereunder;

(*b*) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(*c*) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

Claim for refund of duty.

11B. (*1*) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty:

Provided that the limitation of six months shall not apply where any duty has been paid under protest.

Explanation.—Where any duty of excise is paid provisionally under this Act or the rules made thereunder, the period of six months shall be computed from the date of adjustment of duty after the final assessment thereof.

(*2*) If on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant should be refunded to him, he may make an order accordingly.

(*3*) Where as a result of any order passed in appeal or revision under this Act refund of any duty of excise becomes due to any person, the Assistant Collector of Central Excise may refund the amount to such person without his having to make any claim in that behalf.

(*4*) Save as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained.

(*5*) Notwithstanding anything contained in any other law, the provisions of this section shall also apply to a claim for refund of any amount collected as duty of excise made on the ground that the goods in respect of which such amount was collected were not excisable or were entitled to exemption from duty and no court shall have any jurisdiction in respect of such claim.

Explanation.—For the purposes of this section, "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India.

Power not to recover duty of excise not levied or short-levied as a result of general practice.

11C. Notwithstanding anything contained in this Act, if the Central Government is satisfied—

(*a*) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and

(*b*) that such goods were, or are, liable—

(*i*) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or

(*ii*) to a higher amount of duty of excise than what was, or is being, levied, according to the said practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or, as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.'.

Amendment of section 35.

22. In section 35 of the Central Excises and Salt Act, in sub-section (*1*), after the words "the rules made thereunder", the brackets, words, figures and letter "(not being an order passed under section 35A)" shall be inserted.

Substitution of new section for section 35A.

23. For section 35A of the Central Excises and Salt Act, the following section shall be substituted, namely:—

Revision by Board or Collector.

"35A. (*1*) The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, (hereinafter referred to as the Board), may, of its own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been passed under this Act or the rules made thereunder by a Collector of Central Excise (not being a decision or order passed on appeal under section 35) for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

54 of 1963.

(*2*) The Collector of Central Excise may, of his own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been passed under this Act or the rules made thereunder by a Central Excise Officer subordinate to him (not being a decision or order passed on appeal under section 35) for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No decision or order under this section shall be varied so as to prejudicially affect any person unless such person is given a reasonable opportunity of making a representation and, if he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Collector of Central Excise is of opinion that any duty of excise has not been levied or has been short-levied or erroneously refunded, no order levying or enhancing the duty, or no order requiring payment of the duty so refunded, shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A.

(4) No proceedings shall be commenced under this section in respect of any decision or order [whether such decision or order has been passed before or after the commencement of the Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act, 1978] after the expiration of a period of one year from the date of such decision or order.".

Amendment of section 36.

24. In section 36 of the Central Excises and Salt Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Every application under sub-section (1) shall be accompanied by a fee of rupees one hundred and twenty-five.";

(b) in sub-section (2), after the second proviso, the following further proviso shall be inserted, namely:—

"Provided also that where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied or erroneously refunded, no order levying or enhancing the duty, or no order requiring payment of the duty so refunded, shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A.".

Amendment of section 37.

25. In section 37 of the Central Excises and Salt Act, in sub-section (2), after clause (ib), the following clause shall be inserted, namely:—

"(ic) provide for the remission of duty of excise leviable on any excisable goods, which due to any natural cause are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons;".

Insertion of new section 37A.

26. After section 37 of the Central Excises and Salt Act, the following section shall be inserted, namely:—

Delegation of powers.

"37A. The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification—

(a) any power exercisable by the Board under this Act may be exercisable also by a Collector of Central Excise empowered in this behalf by the Central Government;

(b) any power exercisable by a Collector of Central Excise under this Act may be exercisable also by a Deputy Collector of Central Excise or an Assistant Collector of Central Excise empowered in this behalf by the Central Government;

(c) any power exercisable by a Deputy Collector of Central Excise under this Act may be exercisable also by an Assistant Collector of Central Excise empowered in this behalf by the Central Government; and

(d) any power exercisable by an Assistant Collector of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.".

CHAPTER IV

AMENDMENT TO THE CENTRAL BOARDS OF REVENUE ACT, 1963

Amendment of Act 54 of 1963.

27. In section 3 of the Central Boards of Revenue Act, 1963, in sub-section (2), for the words "not exceeding five", the words "not exceeding seven" shall be substituted.

S. HARIHARA IYER,
Secy. to the Govt. of India.

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