

The Central Excise Act, 1944

February 20, 2013

Notification 58/2008-CE, dated 07-12-2008

Amendment Certain Notifications

GOVERNMENT OF INDIA MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

(New Delhi, the 7th December, 2008)

Notification No.58/2008 – Central Excise

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table hereto annexed shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table, namely :-

S. No.	Notification number and date	Amendments
(1)	(2)	(3)
1.	23/2003-Central Excise, dated the 31st March, 2003	<p>In the said notification, in the Table, -(i) against Sr. No. 5, for the entry in column (4), the entry "In excess of "Nil"Explanation.- The value of the goods shall be determined in terms of section 4 of the Central Excise Act." shall be substituted;</p> <p>(ii) against Sr. No. 5A, for the entry in column (4), the entry "In excess of amount equal to 4% of duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986).</p> <p>Explanation.- The value of the goods shall be determined in terms of section 4 of the Central Excise Act." shall be substituted;</p> <p>(iii) against Sr. No. 6, for the entry in column (4), the entry "In excess of amount equal to 4% of duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986).</p>

S. No.	Notification number and date	Amendments
(1)	(2)	(3)
		<p>Explanation.- The value of the goods shall be determined in terms of section 4 of the Central Excise Act." shall be substituted;</p> <p>(iv) against Sr. No. 7, for the entry in column (4), the entry "In excess of "Nil"</p> <p>Explanation.- The value of the goods shall be determined in terms of section 4 of the Central Excise Act." shall be substituted;</p> <p>(v) against Sr. No. 7A, for the entry in column (4), the entry "In excess of amount equal to 4% of duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986).</p> <p>Explanation.- The value of the goods shall be determined in terms of section 4 of the Central Excise Act." shall be substituted.</p>
2.	29/2004-Central Excise, dated the 9th July, 2004	In the said notification, in the Table, in column (4), -(i) for the entry "8%", wherever it occurs, the entry "4%" shall be substituted;(ii) for the entry "4%", wherever it occurs, the entry "Nil" shall be substituted.
3.	3/2005-Central Excise, dated the 24th February, 2005	In the said notification, in the Table, against S. No.73, for the entry "8%" in column (4), the entry "4%" shall be substituted.
4.	3/2006-Central Excise, dated the 1st March, 2006	In the said notification, in the Table, in column (4), -(i) for the entry "14%", wherever it occurs, the entry "10%" shall be substituted;(ii) for the entry "8%", wherever it occurs, the entry "4%" shall be substituted.
5.	4/2006-Central Excise, dated the 1st March, 2006	<p>In the said notification, in the Table, in column (4), -(i) for the entry "12%", wherever it occurs, the entry "8%" shall be substituted;(ii) for the entry "8%", wherever it occurs except for the entry occurring against S. No. 22 and 27, the entry "4%" shall be substituted;</p> <p>(iii) for the entry "Rs.220 per tonne", wherever it occurs, the entry "Rs.145 per tonne" shall be substituted;</p> <p>(iv) for the entry "Rs.370 per tonne", wherever it occurs, the entry "Rs.250 per tonne" shall be substituted;</p>

S. No.	Notification number and date	Amendments
(1)	(2)	(3)
		<p>(v) for the entry "Rs.350 per tonne", wherever it occurs, the entry "Rs.230 per tonne" shall be substituted;</p> <p>(vi) for the entry "12% of retail sale price", wherever it occurs, the entry "8% of retail sale price" shall be substituted;</p> <p>(vii) for the entry "Rs.250 per tonne", wherever it occurs, the entry "Rs.170 per tonne" shall be substituted;</p> <p>(viii) for the entry "14% or Rs.400 per tonne, whichever is higher", wherever it occurs, the entry "10% or Rs.290 per tonne, whichever is higher" shall be substituted</p> <p>(ix) for the entry "14% of the value of such gold potassium cyanide excluding the value of gold used in the manufacture of such goods", wherever it occurs, the entry "10% of the value of such gold potassium cyanide excluding the value of gold used in the manufacture of such goods" shall be substituted;</p> <p>(x) for the entry "14% of the value of material , if any, added and the amount charged for such manufacture", wherever it occurs, the entry "10% of the value of material , if any, added and the amount charged for such manufacture" shall be substituted.</p>
6.	5/2006-Central Excise, dated the 1st March, 2006	<p>In the said notification, in the Table, in column (4), -(i) for the entry "14%", wherever it occurs, the entry "10%" shall be substituted;(ii) for the entry "12%", wherever it occurs, the entry "8%" shall be substituted;</p> <p>(iii) for the entry "8%", wherever it occurs, the entry "4%" shall be substituted.</p>

S. No.	Notification number and date	Amendments
(1)	(2)	(3)
7.	6/2006-Central Excise, dated the 1st March, 2006	<p>In the said notification, in the Table, in column (4), -(i) for the entry "24%", wherever it occurs, the entry "20%" shall be substituted;(ii) for the entry "24% + Rs.15,000 per unit", wherever it occurs, the entry "20% + Rs.15,000 per unit" shall be substituted;</p> <p>(iii) for the entry "14%", wherever it occurs, the entry "10%" shall be substituted;</p> <p>(iv) for the entry "14% + Rs.10,000 per chassis", wherever it occurs, the entry "10% + Rs.10,000 per chassis" shall be substituted;</p> <p>(v) for the entry "12%", wherever it occurs, the entry "8%" shall be substituted;</p> <p>(vi) for the entry "12% + Rs.10,000 per chassis", wherever it occurs, the entry "8% + Rs.10,000 per chassis" shall be substituted;</p> <p>(vii) for the entry "8%", wherever it occurs, the entry "4%" shall be substituted.</p>
8.	10/2006-Central Excise, dated the 1st March, 2006	In the said notification, in the Table, in column (4), for the entry "8%", wherever it occurs, the entry "4%" shall be substituted.
9.	49/2006-Central Excise, dated the 30th December, 2006	In the said notification, in the Table, in column (4), for the entry "12%", wherever it occurs, the entry "8%" shall be substituted.
10.	2/2008-Central Excise, dated the 1st March, 2008	<p>In the said notification, in the Table, in column (3), -(i) for the entry "14%", wherever it occurs except for the entry occurring against S. No. 14, 16 and 18, the entry "10%" shall be substituted;</p> <p>(ii) for the entry "14% + Rs.10,000 per chassis", wherever it occurs, the entry "10% + Rs.10,000 per chassis" shall be substituted.</p>

[F. No.354/210/2008-TRU]**[Unmesh Wagh]****Under Secretary to the Government of India****Notification 59/2008-CE, dated 07-12-2008 Exempts certain goods from excise duty**

GOVERNMENT OF INDIA MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

(New Delhi, the 7th December, 2008)

Notification No.59/2008 – Central Excise

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling under the Chapter, heading, sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as are specified in column (2) of the Table below, from so much of the duty of excise leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the Table aforesaid.

Explanation. – For the purposes of this notification, the rates specified in column (3) of the said Table are ad valorem rates, unless otherwise specified.

S.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Rate
(1)	(2)	(3)
1.	1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516 (excluding 1516 10 00), 1517 (excluding 1517 10 22) and 1518	4%
2.	1905 31 00, 1905 32 19, 1905 90 10 and 1905 90 20	4%
3.	5004, 5005, 5006 and 5007	4%
4.	5105, 5106, 5107, 5108, 5109, 5110, 5111, 5112 and 5113	4%
5.	5204, 5205, 5206, 5207, 5208, 5209, 5210, 5211 and 5212	4%
6.	5302, 5305, 5306, 5308 (excluding 5308 10 10 and 5308 10 90), 5309, 5310 and 5311	4%
7.	5401, 5404 90, 5405 00 00, 5407 (excluding 5407 10 15, 5407 10 25, 5407 10 35, 5407 10 45, 5407 10 95, 5407 20 10, 5407 20 20, 5407 20 30, 5407 20 40, 5407 20 90, 5407 30 10, 5407 30 20, 5407 30 30, 5407 30 40, 5407 30 90, 5407 41 19, 5407 41 29, 5407 42 90, 5407 43 00, 5407 44 90, 5407 71 10, 5407 71 20, 5407 72 00, 5407 73 00, 5407 74 00, 5407 81 19, 5407 81 29, 5407 82 90, 5407 83 00, 5407 84 90, 5407 91 10, 5407 91 20, 5407 92 00, 5407 93 00 and 5407 94 00) and 5408	4%
8.	5407 10 15, 5407 10 25, 5407 10 35, 5407 10 45, 5407 10 95, 5407 20 10, 5407 20 20, 5407 20 30, 5407 20 40, 5407 20 90, 5407 30 10, 5407 30 20, 5407 30 30, 5407 30 40, 5407 30 90, 5407 41 19, 5407 41 29, 5407 42 90, 5407 43 00, 5407 44 90, 5407 71 10, 5407 71 20, 5407 72 00, 5407 73 00, 5407 74 00, 5407 81 19, 5407 81 29, 5407 82 90, 5407 83 00, 5407 84 90, 5407 91 10, 5407 91 20, 5407 92 00, 5407 93 00 and 5407 94 00	8%
9.	5508, 5509, 5510, 5511, 5512, 5513, 5514, 5515 and 5516	4%
10.	5601 (excluding 5601 10 00 and 5601 22 00), 5602, 5603, 5604,	4%

	5605, 5606, 5607 (excluding 5607 50 10), 5608 (excluding 5608 11 10 and 5608 11 90) and 5609	
11.	5607 50 10, 5608 11 10 and 5608 11 90	8%
12.	57	4%
13.	5801 (excluding 5801 22 10 and 5801 35 00), 5802, 5803, 5804 (excluding 5804 30 00), 5806, 5808, 5809, 5810 and 5811.	4%
14.	5901, 5902 (excluding 5902 10 10 and 5902 10 90), 5903, 5904, 5905, 5906, 5907, 5908, 5909, 5910 and 5911.	4%
15.	60	4%
16.	61	4%
17.	62	4%
18.	63 (excluding 6309 00 00 and 6310)	4%
19.	8523 80 20	8%
20.	8702 10 11, 8702 10 12, 8702 10 19, 8702 90 11, 8702 90 12, 8702 90 19, 8703 23 10, 8703 23 91, 8703 23 92, 8703 23 99, 8703 24 10, 8703 24 91, 8703 24 92, 8703 24 99, 8703 32 10, 8703 32 91, 8703 32 92, 8703 32 99, 8703 33 10, 8703 33 91, 8703 33 92, 8703 33 99, 8703 90 90.	20% + Rs 20,000 per unit
21.	8702 90 13, 8703 (excluding 8703 23 10, 8703 23 91, 8703 23 92, 8703 23 99, 8703 24 10, 8703 24 91, 8703 24 92, 8703 24 99, 8703 32 10, 8703 32 91, 8703 32 92, 8703 32 99, 8703 33 10, 8703 33 91, 8703 33 92, 8703 33 99, 8703 90 90), 8704 10 90, 8704 31 10, 8704 31 90, 8704 32, 8704 90, 8706 00 21, 8706 00 39	20%
22.	8706 00 43, 8706 00 49	20% + Rs 10,000 per chassis
23.	9001 30 00, 9001 40 10, 9001 40 90, 9001 50 00	4%
24.	9504 40 00	4%

[F. No. 354/210/2008-TRU]

(Unmesh Wagh)

Under Secretary to the Government of India

SECTION 1 SHORT TITLE, EXTENT AND COMMENCEMENT

¹(1) This Act may be called the Central Excise Act, 1944.

(2) It extends to the whole of India. ²[***]

(3) It shall come into force on such date ³ as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

1. Subs. by Act 33 of 1996, sec. 71, for sub-section (1) (w.e.f. 28-9-1996).

2. The words "except the State of Jammu and Kashmir" omitted by Act 41 of 1954, sec. 2 and Sch. (w.e.f. 8-10-1954).

3. Came into force on 28th February, 1944, see Notification No. III-D, dated 26th February, 1944, Gazette of India, Extra., 1944, p. 293.

2. DEFINITIONS.

In this Act, unless there is anything repugnant in the subject or context, –

¹[(a) “adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), ²[Commissioner of Central Excise (Appeals)] or Appellate Tribunal;]

³[(aa) “Appellate Tribunal” means the Customs, Excise and ⁴[Service Tax] Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962);]

⁵[(aaa)] “broker” or “commission agent” means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

⁶[(b)] “Central Excise Officer” means the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, ⁷[Joint Commissioner of Central Excise,] Deputy Commissioner of Central Excise, Assistant Commissioner of Central Excise or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act;

(c) “curing” includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture;

(d) “excisable goods” means goods specified in ⁸[the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986)] as being subject to a duty of excise and includes salt;

(e) “factory” means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;

⁹[(ee) “fund” means the Consumer Welfare Fund established under section 12C];

¹⁰[(f) “manufacture” includes any process —

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of ¹¹[The First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to ¹²[manufacture; or]

¹³[(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;]

And the word “manufacture” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

14(ff) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005 (49 of 2005);]

(g) "prescribed" means prescribed by rules made under this Act;

(h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;

15[***]

16[***]

(k) "wholesale dealer" means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

COMMENTS

'Goods' meaning of

The mudguns and the hydraulic drilling machines which are created and installed at the site and could not be shifted from one place to another without dismantling and re-creating it cannot be described as "goods" within the meaning of Excise Act and exigible to excise duty; T.T.G. Industries Ltd., Madras v. Collector of Central Excise, Raipur, (2004) 4 SCC 751.

For the purposes of the Act, "Goods" would refer to an article which would ordinarily come to the market to be bought and sold; South Bihar Sugar Mills Limited v. Union of India, 1977 ELT J 199 (SC): 1977 (2) SCJ 433.

Imposition of excise duty

The mere coverage that an item falls in a tariff entry is not sufficient to impose excise duty on it. There must be manufacture and marketability of the product and the burden to prove that there was manufacture and what was manufactured, was on the Revenue. Otherwise duty levied on it again, would amount to levying double duty on the same product; Commissioner of Central Excise, Chandigarh-I v. Markfed Vanaspati & Allied Industries, (2003) 4 SCC 184.

Manufacture: burden of proof

It cannot be said that merely because an item falls in a tariff it must be deemed that there is manufacture. The law still remains that the burden to prove that there is manufacture and that what is manufactured is on the revenue, Lal Woollen & Silk Mills Ltd. v. Collector, AIR 1999 SCW 1436.

Manufacture: meaning of

After processing, lead and aluminium sheets are converted into electrodes which is new product known in the market with a distinct name, character and use amounts to manufacture; Commissioner of Central Excise, Jaipur v. Hindustan Zinc Ltd., (2004) 4 SCC 455.

Printing on bottles does not amount to 'manufacture' within the meaning of section 2(f); Union of India v. J.G. Glass Industries Ltd., (1998) 2 scc 32.

Section 2(f) of the Act does not define the expression "manufacturer" but only lays down an inclusive definition. Therefore, the word "manufacture" for the purposes of Central Excise has to be construed in its natural and plain meaning but it shall also include any process incidental or ancillary to the completion of a manufactured product; *Metal Forgings Pvt. Ltd. v. Union of India*, 1987 (32) ELT 15 (Del).

The word "manufacture" means to bring into existence a new substance and does not mean merely to produce some change in a substance. It is true that etymological word "manufacture" properly construed would doubtless cover the transformation but the question is whether that transformation brings about fundamental change, a new substance is brought into existence or a new different article having distinctive name, character or use results from a particular process or a particular activity; *Collector of Central Excise v. Kiran Spinning Mills*, (1988) 2 SCJ 140.

Where manufacture involves series of processes and if any one of such processes is carried on with the aid of power, the case is taken out of the purview of the notification; *Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan*, (1992) 1 SCJ 325.

Making a paper-making machine by assembling various components has been held that what has been produced is something quite different from the components that had been purchased for making a paper-making machine. A new marketable commodity has emerged as a result of the manufacturing activity. It amounts to manufacture; *Sirpur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad*, (1998) 1 SCC 400.

- 1. Ins. by Act 44 of 1980, sec. 50 and Sch. V (w.e.f. 11-10-1982).**
- 2. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise (Appeals)" (w.e.f. 26-5-1995).**
- 3. Ins. by Act 44 of 1980, sec. 50 and Sch. V (w.e.f. 11-10-1982).**
- 4. Subs. by Act 32 of 2003, sec. 135, for "Gold (Control)" (w.e.f. 14-5-2003).**
- 5. Clause (a) relettered as clause (aaa) by Act 44 of 1980, sec. 50 and Sch. V (w.e.f. 11-10-1982).**
- 6. Subs. by Act 22 of 1995, sec. 71, for clause (b) (w.e.f. 26-5-1995).**
- 7. Ins. by Act 27 of 1999, sec. 120 (w.e.f. 11-5-1999).**
- 8. Subs. by Act 27 of 1999, sec. 119, for "the Schedule" (w.e.f. 11-5-1999). Earlier they were substituted by Act 5 of 1986, sec. 4, for "the First Schedule" (w.e.f. 28-2-1986).**
- 9. Clause (ee) ins. by Act 40 of 1991, sec. 2 (w.e.f. 20-9-1991). Earlier clause (ee) was inserted by Act 25 of 1950, sec. 11 and Sch. IV and was omitted by Act 41 of 1954, sec. 2 and Sch. (w.e.f. 8-10-1954).**
- 10. Subs. by Act 5 of 1986, sec. 4, for clause (f) (w.e.f. 28-2-1986).**
- 11. Subs. by Act 27 of 1999, sec. 120, for "the Schedule" (w.e.f. 11-5-1999).**
- 12. Subs. by Act 20 of 2002, sec. 132, for "manufacture" (w.e.f. 11-5-2002).**

13. Subs. by Act 32 of 2003, sec. 135, for sub-clause (iii) (w.e.f. 14-5-2003). Earlier sub-clause (iii) was inserted by Act 20 of 2002, sec. 132 (w.e.f. 11-5-2002).

14. Ins. by the Act 49 of 2005, sec. 30 and Sch., Pt. VII-1 (w.e.f. 28-12-2005).

15. Clauses (i) and (j) omitted by Act 33 of 1996, sec. 72 (w.e.f. 28-9-1996).

16. Clause (jj) omitted by Act 25 of 1950, sec. 11 and Sch. IV. Earlier clause (jj) was inserted by the A.O. 1950.

2A. References of certain expressions.

¹2A. References of certain expressions.—In this Act, save as otherwise expressly provided and unless the context otherwise requires, references to the expressions “duty”, “duties”, “duty of excise” and “duties of excise” shall be construed to include a reference to “Central Value Added Tax (CENVAT)”.]

1. Ins. by Act 10 of 2000, sec. 91 (w.e.f. 12-5-2000).

3. Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied.—

(1) ¹[There shall be levied and collected in such manner as may be prescribed,—

(a) ²[a duty of excise, to be called the Central Value Added Tax (CENVAT)] on all excisable goods ³[(excluding goods produced or manufactured in special economic zones)]* which are produced or manufactured in India as,] and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods ³[(excluding goods produced or manufactured in special economic zones)]* specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule:]

⁴[Provided that the duties of excise which shall be levied and collected on any ⁵[excisable goods which are produced or manufactured,—

⁶[***]

(ii) by a hundred per cent export oriented undertaking and ⁷[brought to any other place in India],

shall be an amount equal to] the aggregate of the duties of customs which would be leviable ⁸[under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force] on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 (51 of 1975).

⁹[Explanation 1.—Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this

proviso, be deemed to be leviable at the highest of those rates.]

¹⁰[Explanation 2.—In this proviso,—

¹¹[***]

¹¹[***]

(ii) “hundred per cent export-oriented undertaking” means an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.]]

¹²[(iii) “Special Economic Zone” has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).]

¹³[(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.]

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in ¹⁴[the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986)] as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

¹⁵[(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, as the case may be, the normal practice of the wholesale trade in such goods.]

COMMENTS

Excisable goods

Carbide (Lime) sludge arising in manufacture of acetylene gas – Is not an excisable item particularly when it was not established to be a marketable commodity; Collector of Central Excise, Bolpur v. Ellenbarrie Industrial Gases Ltd., 2003 (151) ELT 25 (SC).

To attract excise duty under section 3 of the Central Excise Act the article must satisfy the twin attributes of excisable goods – Mobility and Marketability – Or it should find a place by that name in the Schedule to the Act; Commissioner of Central Excise, Mumbai v. Josts Engineering Co. Ltd., 2002 (146) ELT 29 (SC).

It is now well settled that the burden to establish that certain products are liable to excise duty is on the department and in the absence of any finding by the authorities that the process adopted by the petitioners amounts to manufacture, the order to levying excise duty deserves to be quashed; *Sohanlal & Brothers v. Union of India*, (1990) 46 ELT 211 (Bom).

The ownership of goods is not a relevant consideration for the levy of the excise duty. Assessable value of manufactured products includes the cost of free supplies; *Texmaco Ltd. v. Collector of Central Excise, Calcutta*, AIR 1992 SC 1801.

The expression "duty of excise" is limited in its connotation only to basic duty of excise levied under the Act or it also covers special duty of excise levied under various Finance Bills and Acts, additional duty of excise levied under the Additional Duty of Excise (Goods of Special Importance) Act, 1957 and any other kind of duty of excise levied under a Central enactment; *Union of India v. Modi Rubber Limited*, (1986) 3 SCJ 447.

16[***]

1. Subs. by Act 27 of 1999, sec. 121, for certain words (w.e.f. 11-5-1999).

2. Subs. by Act 10 of 2000, sec. 92, for "a duty of excise" (w.e.f. 12-5-2000).

3. Ins. by Act 20 of 2002, sec. 133 (w.e.f. 11-5-2002).

*** This shall be effective from such date appointed by the Central Government by Notification in the Official Gazette.**

4. Ins. by Act 14 of 1982, sec. 46 (w.e.f. 11-5-1982).

4. Subs. by Act 21 of 1984, sec. 45, for certain words (w.e.f. 11-5-1984).

6. Clause (i) omitted by Act 22 of 2007, sec. 115(i) (w.e.f. 11-5-2007). Earlier clause (i) was amended by Act 14 of 2001, sec. 120 (w.e.f. 11-5-2001) and by Act 20 of 2002, sec. 133(ii)(a) (w.e.f. 11-5-2002). Clause (i), before omission by Act 22 of 2007, stood as under:

"(i) in a free trade zone or a special economic zone and brought to any other place in India; or".

7. Subs. by Act 14 of 2001, sec. 120, for "allowed to be sold in India" (w.e.f. 11-5-2001).

8. Subs. by Act 10 of 2000, sec. 92, for "under section 12 of the Customs Act, (52 of 1962)" (w.r.e.f. 11-5-1982).

9. Subs. by Act 10 of 2000, sec. 92, for Explanation 1 (w.r.e.f. 11-5-1982).

10. Subs. by Act 21 of 1984, sec. 45, for Explanation 2 (w.e.f. 11-5-1984).

11. Clause (i) omitted by Act 22 of 2007, sec. 115(ii)(a) (w.e.f. 11-5-2007). Earlier clause (i) was substituted by Act 20 of 2002, sec. 133(ii)(b) (w.e.f. 11-5-2002). Clause (i), before omission by Act 22 of 2007, stood as under:

“(i) “free trade zone” means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf;”.

12. Subs. by Act 22 of 2007, sec. 115(ii)(b), for clause (iii) (w.e.f. 11-5-2007). Earlier clause (iii) was inserted by Act 14 of 2001, sec. 120 (w.e.f. 11-5-2001). Clause (iii), before substitution by Act 22 of 2007, stood as under:

“(iii) “special economic zone” means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf.”.

13. Subs. by Act 30 of 1963, sec. 3, for sub-section (1A) (w.e.f. 1-10-1963). Earlier sub-section (1A) was inserted by Act 45 of 1951, sec. 6 (w.e.f. 27-8-1951).

14. Subs. by Act 27 of 1999, sec. 119, for “the Schedule” (w.e.f. 11-5-1999). Earlier they were substituted by Act 5 of 1986, sec. 4, for “the First Schedule” (w.e.f. 28-2-1986).

15. Subs. by Act 25 of 1978, sec. 19, for sub-section (3) (w.e.f. 1-7-1978).

16. Section 3A omitted by Act 14 of 2001, sec. 121 (w.e.f. 11-5-2001). Earlier section 3A was inserted by Act 81 of 1956, sec. 2 (w.e.f. 22-12-1956) and was repealed by Act 58 of 1960,

sec. 2 and Sch. I (w.e.f. 26-12-1960) and again inserted by Act 26 of 1997, sec. 81 (w.e.f. 14-5-1997).

3A . POWER OF CENTRAL GOVERNMENT TO CHARGE EXCISE DUTY ON THE BASIS OF CAPACITY OF PRODUCTION IN RESPECT OF NOTIFIED GOODS. –

(1) Notwithstanding anything contained in section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.

(2) Where a notification is issued under sub-section (1), the Central Government may, by rules, provide for determination of the annual capacity of production, or such factor or factors relevant to the annual capacity of production of the factory in which such goods are produced, by the Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory :

Provided that where a factory producing notified goods is in operation only during a part of the year, the production thereof shall be calculated on proportionate basis of the annual capacity of production.

(3) The duty of excise on notified goods shall be levied, at such rate as the Central Government may by notification in the Official Gazette specify, and collected in such manner as may be prescribed :

Provided that, where a factory producing notified goods did not produce the notified goods during any continuous period of not less than seven days, duty calculated on a proportionate

basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

(4) Where an assessee claims that the actual production of notified goods in his factory is lower than the production determined under sub-section (2), the Commissioner of Central Excise shall, after giving an opportunity to the assessee to produce evidence in support of his claim, determine the actual production and redetermine the amount of duty payable by the assessee with reference to such actual production at the rate specified in sub-section (3).

(5) Where the Commissioner of Central Excise determines the actual production under sub-section (4), the amount of duty already paid, if any, shall be adjusted against the duty so redetermined and if the duty already paid falls short of, or is in excess of, the duty so redetermined, the assessee shall pay the deficiency or be entitled to a refund, as the case may be.

(6) The provisions of this section shall not apply to goods produced or manufactured, –

(i) in a free trade zone and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India.

Explanation 1 : For the removal of doubts, it is hereby clarified that for the purposes of section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under 13a the First Schedule and Second Schedule 13a to the Central Excise Tariff Act, 1985 (5 of 1986), read with any notification for the time being in force.

Explanation 2 : For the purposes of this section the expressions “free trade zone” and “hundred per cent export-oriented undertaking” shall have the meanings assigned to them in section 3. 24

4. VALUATION OF EXCISABLE GOODS FOR PURPOSES OF CHARGING OF DUTY OF EXCISE.

¹[Valuation of excisable goods for purposes of charging of duty of excise.—(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

²[Explanation.—For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purposes of this section,—

(a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) persons shall be deemed to be “related” if—

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

Explanation.—In this clause—

(i) “inter-connected undertakings” shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (64 of 1969); and

(ii) “relative” shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);

(c) “place of removal” means —

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place on premises wherein the excisable goods have been permitted to be deposited without ³[payment of duty;]

⁴[(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;] from where such goods are removed;

⁴[(cc) “time of removal”, in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;]

(d) “transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.]

Comments

Assessment of value of goods

If a higher discount on goods sold to stockists and a lower discount on goods sold to sub-stockists is allowed and the differential discount is passed on to the stockists then differential

discount is not deductible in assessing the value of goods to sub-stockists; Escorts Ltd. v. Collector of Central Excise, Chandigarh, (2003) 4 SCC 285.

Basis of excise duty

Under the Central Excise Act, excise duty is chargeable on the value of the goods. The Value is the normal price, i.e., the price at which such goods are ordinarily sold by the assessee to a buyer, where the buyer is not related person and the price is the sole consideration for sale; Tata Iron & Steel Co. Ltd. v. Collector of Central Excise, AIR 2003 SC 144.

The mere fact of making an interest free advance by a buyer to the manufacturer, by itself will not be a sufficient ground to reload the assessable value with notional interest. It would be necessary for the revenue to show that such advance has influenced in the lowering of the price and that it is not depicting the normal price of the goods; Commr. of Central Excise v. I.S.P. Industries Ltd., 2003 AIR SCW 2264

Freight and insurance charges upto depot would be includible in assessable value for purposes of excise; Prabhat Zarda Factory Limited v. Commissioner of Central Excise, 2002 (146) ELT 497 (SC).

Show-cause notice

If all the requirements of clause (a) are fulfilled but the allegations in show-cause notice proceeded on the basis as if clause (b) was applicable, the authorities lacks jurisdiction to issue show-cause notice; Union of India v. Hindalco Industries, (2003) 5 SCC 194.

1. Subs. by Act 10 of 2000, sec. 94 , for section 4 (w.e.f. 1-4-2000). Earlier section 4 was substituted by Act 22 of 1973, sec. 2 (w.e.f. 1-10-1975).

2. Ins. by Act 32 of 2003, sec. 136 (w.e.f. 14-5-2003).

3. Subs. by Act 32 of 2003, sec. 136, for "payment of duty," (w.e.f. 14-5-2003).

4. Ins. by Act 32 of 2003, sec. 136 (w.e.f. 14-5-2003).

4A. VALUATION OF EXCISABLE GOODS WITH REFERENCE TO RETAIL SALE PRICE.

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on

such goods.

²[(4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer—

(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,

then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.

Explanation 1.—For the purposes of this section, “retail sale price” means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:

Provided that in case the provisions of the Act, rules or other law as referred to in sub-section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Explanation 2.—For the purposes of this section,—

(a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;

(b) where the retail sale price, declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;

(c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.]

1. Ins. by Act 26 of 1997, sec. 82 (w.e.f. 14-5-1997).

2. Subs. by Act 32 of 2003, sec. 137, for sub-section (4) (w.e.f. 14-5-2003). Earlier sub-section (4) was inserted by Act 27 of 1999, sec. 122 (w.e.f. 11-5-1999).

5. REMISSION OF DUTY ON GOODS FOUND DEFICIENT IN QUANTITY.

¹[5. Remission of duty on goods found deficient in quantity.—(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.]

Comments

Benefit of exemption

The benefit of exemption will accrue to a unit found to be a small scale industrial unit from the date on which the application was made for grant of registration certificate; Commissioner of Central Excise v. M.P.V. & Engg. Industries, AIR 2003 SCW 2108.

When goods become exempted goods

It cannot be said that merely because goods were included in the table, they became exempted goods. The goods became exempted goods only provided all conditions of the Notification are fulfilled. If any condition of the Notification is not fulfilled, goods are not exempted goods; Union of India v. Ganesh Metal Processors Industries, 2003 (151) ELT 21 (SC).

1. Ins. by Act 25 of 1978, sec. 20 (w.e.f. 1-7-1978). Earlier section 5 was omitted by Act 41 of 1954, sec. 2 and Sch. (w.e.f. 8-10-1954).

5A. POWER TO GRANT EXEMPTION FROM DUTY OF EXCISE.

¹[5A. Power to grant exemption from duty of excise.—(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured—

(i) in a ²[free trade zone ³[or a special economic zone]] and brought to any other place in India; or

(ii) by a hundred per cent. export-oriented undertaking and ⁴[brought to any other place in India].

Explanation.—In this proviso, ²["free trade zone" ³["special economic zone"]] and "hundred per cent. export-oriented undertaking" shall have the same meanings as in Explanation 2 to sub-section (1) of section 3.

⁵[(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.]

⁶[(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.]

⁷[(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2) insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.]

(3) An exemption under sub-section (1) or sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation.—"Form or method", in relation to a rate of duty of excise means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-rule (1), and every order made under sub-rule (2) of rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excise Laws (Amendment) Act, 1987 shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section.]

⁸[(5) Every notification issued under sub-section (1) ⁹[or sub-section (2A)] shall,—

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).

(6) Notwithstanding anything contained in sub-section (5), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.]

1. Ins. by Act 29 of 1988, sec. 9 (w.e.f. 19-5-1988).

2. Subs. by Act 14 of 2001, sec. 122, for "free trade zone" (w.e.f. 11-5-2001).

3. The words "or a special economic zone" shall stand omitted with effect from such date as may be appointed by the Central Government, vide Act 20 of 2002, sec. 134.

4. Subs. by Act 14 of 2001, sec. 122, for "allowed to be sold in India" (w.e.f. 11-5-2001).

5. Ins. by Act 18 of 2005, sec. 75 (w.e.f. 13-5-2005).

6. Subs. by Act 32 of 2003, sec. 138, for sub-section (2) (w.e.f. 14-5-2003). Earlier sub-section (2) was substituted by Act 27 of 1999, sec. 123 (w.e.f. 11-5-1999).

7. Ins. by Act 20 of 2002, sec. 134.

8. Ins. by Act 21 of 1998, sec. 106 (w.e.f. 1-8-1998).

9. Ins. by Act 20 of 2002, sec. 134 (w.e.f. 11-5-2002).

5B. Non-reversal of CENVAT credit.

¹[5B. Non-reversal of CENVAT credit.—Where an assessee has paid duty of excise on a final product and has been allowed credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for non-reversal of such credit allowed to the assessee subject to such conditions as may be specified in the said notification:

Provided that the order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him:

Provided further that the Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product.]

1. Ins. by the Finance Act, 2007.

6. REGISTRATION OF CERTAIN PERSONS.

¹ REGISTRATION OF CERTAIN PERSONS.

Any prescribed person who is engaged in –

(a) The production or manufacture or any process of production or manufacture of any specified goods included in ²the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), or

(b) The wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in the the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

Shall get himself registered with the proper officer in such manner as may be prescribed.

Comments

Stock registers when not maintained The appellants had not maintained required stock registers thereby they contravened section 6 of the Act; Shalimar Rubber Industries v. Collector of Central Excise, Cochin, AIR 2003 SC 237.

1. Subs. by Act 18 of 1992, sec. 113 (w.e.f. 14-5-1992).

2. Subs. by Act 27 of 1999, sec. 119, for "the Schedule" (w.e.f. 11-5-1999).

7. Form and Conditions of licence.—

[Rep. by the Finance Act, 1992 (18 of 1992), sec. 113 (w.e.f. 14-5-1992).]

8. RESTRICTION ON POSSESSION OF EXCISABLE GOODS.

From such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, no person shall, except as provided by rules made under this Act, have in his possession ¹[any goods specified in the Second Schedule] in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of such goods or of any variety of such goods which may be possessed at any one time by such a person.

1. Subs. by Act 18 of 1956, sec. 34, for certain words (w.e.f. 27-4-1956).

9. OFFENCES AND PENALTIES

¹(1) Whoever commits any of the following offences, namely : –

²(a) Contravenes any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37;

(b) Evades the payment of any duty payable under this Act;

³(bb) Removes any excisable goods in contravention of any of the provisions of this Act or any rules made there under or in any way concerns himself with such removal;

(bbb) Acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;

⁴(bbbb) Contravenes any of the provisions of this Act or the rules made there under in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;

(c) Fails to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

(d) Attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section;

⁵**Shall be punishable, –**

(i) In the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;

(ii) In any other case, with imprisonment for a term which may extend to three years or with fine or with both.

⁶(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely :-

(i) The fact that the accused has been convicted for the first time for an offence under this Act;

(ii) The fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) The fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) The age of the accused.

1. Section 9 re-numbered as sub-section (1) of that section by Act 36 of 1973, sec. 20 (w.e.f. 1-9-1973).

2. Subs. by Act 18 of 1992, sec. 113, for clause (a) (w.e.f. 14-5-1992).

3. Ins. by Act 36 of 1973, sec. 20 (w.e.f. 1-9-1973).

4. Ins. by Act 21 of 1998, sec. 107 (w.e.f. 1-8-1998).

5. Subs. by Act 36 of 1973, sec. 20, for certain words (w.e.f. 1-9-1973).

6. Ins. by Act 36 of 1973, sec. 20 (w.e.f. 1-9-1973).

9A. CERTAIN OFFENCES TO BE NON-COGNIZABLE.

¹ CERTAIN OFFENCES TO BE NON-COGNIZABLE.

²(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) ³, offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code.

⁴[(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.]

1. Ins. by Act 36 of 1973, sec. 21 (w.e.f. 1-9-1973).

2. Section 9A renumbered as sub-section (1) thereof by Act 23 of 2004, sec. 79 (w.e.f. 10-9-2004).

3. See now section 9 of the Code of Criminal Procedure, 1973 (2 of 1974).

4. Ins. by Act 23 of 2004, sec. 79 (w.e.f. 10-9-2004).

9AA. OFFENCES BY COMPANIES.

¹OFFENCES BY COMPANIES.

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section, –

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm means a partner in the firm.

1. Ins. by Act 79 of 1985, sec. 2 (w.e.f. 27-12-1985).

9B. POWER OF COURT TO PUBLISH NAME, PLACE OF BUSINESS, ETC., OF PERSONS CONVICTED UNDER THE ACT.

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¹POWER OF COURT TO PUBLISH NAME, PLACE OF BUSINESS, ETC., OF PERSONS CONVICTED UNDER THE ACT

(1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in

the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

1. Ins. by Act 36 of 1973, sec. 21 (w.e.f. 1-9-1973).

9C. PRESUMPTION OF CULPABLE MENTAL STATE.

¹PRESUMPTION OF CULPABLE MENTAL STATE. (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation : In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

1. Ins. by Act 36 of 1973, sec. 21 (w.e.f. 1-9-1973).

9D. RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES .

¹ RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES .

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, –

(a) When the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) When the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding

before a Court.

1. Ins. by Act 36 of 1973, sec. 21 (w.e.f. 1-9-1973).

9E. APPLICATION OF SECTION 562 OF THE CODE OF CRIMINAL PROCEDURE, 1898, AND OF THE PROBATION OF OFFENDERS ACT, 1958.

¹APPLICATION OF SECTION 562 OF THE CODE OF CRIMINAL PROCEDURE, 1898, AND OF THE PROBATION OF OFFENDERS ACT, 1958.

(1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 47 (5 of 1898)², or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9.

1. Ins. by Act 36 of 1973, sec. 21 (w.e.f. 1-9-1973).

2. See now the relevant provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

10. POWER OF COURTS TO ORDER FORFEITURE.

Any Court trying an offence under this Chapter may order the forfeiture to Government of any goods in respect of which the Court is satisfied that an offence under this Chapter has been committed, and may also order the forfeiture of any receptacles, packages or coverings in which such goods are contained and the animals, vehicles, vessels or other conveyances used in carrying the goods, and any implements or machinery used in the manufacture of the goods.

11. RECOVERY OF SUMS DUE TO GOVERNMENT.

In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, ¹[including the amount required to be paid to the credit of the Central Government under section 11D] the officer empowered by the ²[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue]:

³[Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or

otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.]

1. Ins. by Act 10 of 2000, sec. 96 (w.e.f. 12-5-2000).

2. Subs. by Act 54 of 1963, sec. 5, for "Central Board of Revenue" (w.e.f. 1-1-1964).

3. Ins. by Act 23 of 2004, sec. 80 (w.e.f. 10-9-2004).

11A. RECOVERY OF DUTIES NOT LEVIED OR NOT PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED.

¹[11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or ²[erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder], a Central Excise Officer may, within ³[one year] 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 mis-statement 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, ⁴[as if ⁵[***]] for the words ⁶["one year"], the words "five years" were substituted:

⁷[***]

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 ⁷[one year] or five years, as the case may be.

⁸[(1A) When 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 the rules made thereunder with intent to evade payment of duty, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 11AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.]

(2) ⁹[¹⁰[Central Excise Officer]] 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:

⁸[Provided that if such person has paid the duty in full together with, interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub-section (1) shall, without prejudice to the provisions of sections 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the Central Excise Officer, shall determine the amount of duty or interest not being in excess of the amount partly due from such person.]

¹¹[(2A) Where any notice has been served on a person under sub-section (1), the Central Excise Officer,—

(a) in case 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, where it is possible to do so, shall determine the amount of such duty, within a period of one year; and

(b) in any other case, where it is possible to do so, shall determine the amount of duty of excise which has not been levied or paid or has been short-levied or short-paid or erroneously refunded, within a period of six months,

from the date of service of the notice on the person under sub-section (1).

(2B) Where any duty or excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person, chargeable with the duty, may pay the amount of duty ¹²[on the basis of his own ascertainment of such duty or on the basis of duty ascertained by a Central Excise Officer] before service of notice on him under sub-section (1) in respect of the duty, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the duty so paid:

Provided that the Central Excise Officer may determine the amount of short payment of duty, if any, which in his opinion has not been paid by such person and then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1.—Nothing contained in this sub-section shall apply in a case where the duty was not levied or was not paid or was short-levied or was short-paid or was erroneously refunded by reason of fraud, collusion or any wilful mis-statement 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.

Explanation 2.—For the removal of doubts, it is hereby declared that the interest under section 11AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the Central Excise Officer, but for this sub-section.

(2C) The provisions of sub-section (2B) shall not apply to any case where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the

assent of the President.]

(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,—

¹³[(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 periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;

(B) where no periodical 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.]

COMMENTS

Determination of amount

The officer on consideration of the representation, must determine the amount of duty due and thereupon the assessee is to pay the amount so determined; *Lajya Dyeing & Bleaching Works. v. Union of India*, (2003) 5 SCC 485.

Jurisdiction of Dy. Collector

Notice issued by Deputy Collector by invoking sec.11A for extended period, would be wholly without jurisdiction. Even for shorter period notice based on grounds contained in proviso could be issued only by Collector, *Collector of Central Excise v. Oil and Natural Gas Commissions*, AIR 1999 SC 2625.

Limitation

Mere failure or negligence on the part of the manufacturer in not taking out a licence and in not paying duty does not attract the extended period of limitation; *Jaiprakash Industries Ltd. v. Commissioner of Central Excise, Chandigarh*, AIR 2003 SC 349.

Show-cause notice

Where the show-cause notice under section 11A has been issued regarding the levy of duty within the extended period of limitation, no preliminary enquiry or preliminary decision is

required unless there is serious dispute of facts in reply to show-cause notice; Union of India v. M/s. Maheshwari Woollen Mills, AIR 1993 SC 1251.

Where the purpose of show-cause notice is recovery of duties or charges short levied, etc., it must be issued within the prescribed period; Ballarpur Industries Ltd. v. Assistant Collector of Customs and Central Excises, AIR 1995 SC 1439.

Treatment of notice

Notice issued under proviso to sec. 11A for larger period. It cannot be treated as Notice under main sec.11A for shorter period of six months, Collector of Central Excise, Jaipur v. Alcobex Metals, AIR 2003 SCW 1925.

- 1. Ins. by Act 25 of 1978, sec. 21 (w.e.f. 1-8-1978).**
- 2. Subs. by Act 10 of 2000, sec. 97, for "erroneously refunded" (w.r.e.f. 17-11-1980).**
- 3. Subs. by Act 10 of 2000, sec. 97, for "six-months" (w.e.f. 12-5-2000).**
- 4. Subs. by Act 79 of 1985, sec. 3, for "as if" (w.e.f. 27-12-1985).**
- 5. The words 'for the words "Central Excise Officer", the words "Collector of Central Excise", and' omitted by Act 18 of 1992, sec. 113 (w.e.f. 14-5-1992).**
- 6. Ins. by Act 10 of 2000, sec. 97 (w.e.f. 12-5-2000).**
- 7. Second and third provisos omitted by Act 32 of 2003, sec. 139 (w.e.f. 14-5-2003).**
- 8. Ins. by Act 29 of 2006, sec. 35 (w.e.f. 13-7-2006).**
- 9. Subs. by Act 79 of 1985, sec. 3, for "The Assistant Collector of Central Excise" (w.e.f. 27-12-1985).**
- 10. Subs. by Act 18 of 1992, sec. 113, for "Assistant Collector of Central Excise or, as the case may be, the Collector of Central Excise" (w.e.f. 14-5-1992).**
- 11. Ins. by Act 14 of 2001, sec. 123 (w.e.f. 11-5-2001).**
- 12. Ins. by Act 32 of 2003, sec. 139 (w.e.f. 14-5-2003).**
- 13. Subs. by Act 22 of 1995, sec. 72, for sub-clause (a) (w.e.f. 26-5-1995).**

11AA. INTEREST ON DELAYED PAYMENT OF DUTY.

¹[11AA. Interest on delayed payment of duty.—²[(1)] ³[Subject to the provisions contained in section 11AB, where a person] chargeable with duty determined under sub-section (2) of section 11A, fails to pay such duty within three months from the date of determination, he shall pay, in addition to the duty, interest ⁴[at such rate not below ⁵[ten per cent.] and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette] on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty:

Provided that where a person chargeable with duty determined under sub-section (2) of section 11A before the date on which the Finance Bill, 1995 receives the assent of the President, fails to pay such duty within three months from such date, then, such person shall be liable to pay interest under this section from the date immediately after three months from such date, till the date of payment of such duty.

Explanation 1.—Where the duty determined to be payable is reduced by the Commissioner (Appeals), Appellate Tribunal ⁶[, National Tax Tribunal] or, as the case may be, the Court, the date of such determination shall be the date on which an amount of duty is first determined to be payable.

Explanation 2.—Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), Appellate Tribunal ⁶[, National Tax Tribunal] or, as the case may be, the Court, the date of such determination shall be,—

(a) for the amount of duty first determined to be payable, the date on which the duty is so determined;

(b) for the amount of increased duty, the date of order by which the increased amount of duty is first determined to be payable;

(c) for the amount of further increase of duty, the date of order on which the duty is so further increased].

⁷[(2) The provisions of sub-section (1) shall not apply to cases where the duty becomes payable on and after the date on which the Finance Bill, 2001 receives the assent of the President.]

1. Ins. by Act 22 of 1995, sec. 73 (w.e.f. 26-5-1995).

2. Section 11AA renumbered as sub-section (1) thereof by Act 14 of 2001, sec. 124 (w.e.f. 11-5-2001).

3. Subs. by Act 33 of 1996, sec. 75, for "Where a person" (w.e.f. 28-9-1996).

4. Subs. by Act 10 of 2000, sec. 98, for certain words (w.e.f. 12-5-2000).

5. Subs. by Act 20 of 2002, sec. 135, for "eighteen per cent." (w.e.f. 11-5-2002).

6. Ins. by Act 49 of 2005, sec. 30 and Sch., Pt. VII-2 (w.e.f. 28-12-2005).

7. Ins. by Act 14 of 2001, sec. 124 (w.e.f. 11-5-2001).

11AB. INTEREST ON DELAYED PAYMENT OF DUTY.

¹[11AB. Interest on delayed payment of duty.—²[(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay duty as determined under sub-section (2), or has paid the duty under sub-section 2(B), of section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below ³[ten per cent.] and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of section 11A till the date of payment of such duty:

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid.]

⁴[(2) The provisions of sub-section (1) shall not apply to cases where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.]

Explanation 1.— Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal ⁵[, National Tax Tribunal] or, as the case may be, the Court, the interest shall be payable on such reduced amount of duty.

Explanation 2.—Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal ⁵[, National Tax Tribunal] or, as the case may be, the Court, the interest shall be payable on such increased or further increased amount of duty.]

1. Ins. by Act 33 of 1996, sec. 76 (w.e.f. 28-9-1996).

2. Subs. by Act 14 of 2001, sec. 125, for sub-section (1) (w.e.f. 11-5-2001).

3. Subs. by Act 20 of 2002, sec. 136, for "eighteen per cent." (w.e.f. 11-5-2002).

4. Subs. by Act 14 of 2001, sec. 125, for sub-section (2) (w.e.f. 11-5-2001).

5. Ins. by Act 49 of 2005, sec. 30 and Sch., Pt. VII-3 (w.e.f. 28-12-2005).

11AC. PENALTY FOR SHORT-LEVY OR NON-LEVY OF DUTY IN CERTAIN CASES.

¹[11AC. Penalty for short-levy or non-levy of duty in certain cases.—Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement 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, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined:

²[Provided that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section be twenty-five per cent. of the duty so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the

purposes of this section, the duty, as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect.

Explanation.—For the removal of doubts, it is hereby declared that—

(1) the provisions of this section shall also apply to cases in which the order determining the duty under sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(2) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

1. Ins. by Act 33 of 1996, sec. 76 (w.e.f. 28-9-1996).

2. Subs. by Act 10 of 2000, sec. 100, for the proviso (w.e.f. 12-5-2000).

11B. CLAIM FOR REFUND OF DUTY.

¹[11B. Claim for refund of duty.—(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the ²[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of ³[one year] ⁴[from the relevant date] ⁵⁶[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 (40 of 1991), such application shall be deemed to have been made under this sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act:]

⁷[Provided further that] the limitation of ⁸[one year] shall not apply where any duty has been paid under protest.

⁹[***]

¹⁰[(2) If, on receipt of any such application, the ¹¹[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise as determined by the ¹¹[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this

sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) 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;
- (b) unspent advance deposits lying in balance in the applicant's current account maintained with the ¹²[Commissioner of Central Excise];
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;
- (e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;
- (f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

¹³[Explanation.—For the purposes of this section,—

(A) "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;

(B) "relevant date" means,—

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

¹⁴[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

¹⁵[(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;]

¹⁶[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;]

¹⁷[(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

(f) in any other case, the date of payment of duty.]

Comment

The claim for refund of excess duty paid under protest falls under section 11B, but application should be made after finalisation of assessment; Commissioner of Central Excise, Mumbai-II v. Allied Photographics India Ltd., (2004) 4 SCC 34.

1. Ins. by Act 25 of 1978, sec. 21 (w.e.f. 17-11-1980).

2. Subs. by Act 22 of 1995, sec. 70, for "Assistant Collector of Central Excise" (w.e.f. 26-5-1995) and again subs. by Act 27 of 1999, sec. 119, for "Assistant Commissioner of Central Excise" (w.e.f. 11-5-1999).

3. Subs. by Act 10 of 2000, sec. 101, for "six months" (w.e.f. 12-5-2000).

4. Ins. by Act 44 of 1980, sec. 49, for "from the date of payment of duty" (w.e.f. 21-8-1980).

5. Ins. by Act 40 of 1991, sec. 3 (w.e.f. 20-9-1991).

6. Subs. by Act 22 of 1995, sec. 74, for "in such form" (w.e.f. 26-5-1995).

7. Subs. by Act 40 of 1991, sec. 3, for "Provided that" (w.e.f. 20-9-1991).

8. Subs. by Act 10 of 2000, sec. 101, for "six months" (w.e.f. 12-5-2000).

9. Explanation omitted by Act 44 of 1980, sec 49 (w.e.f. 21-8-1980).

10. Subs. by Act 40 of 1991, sec. 3, for sub-sections (2) to (5) (w.e.f. 20-9-1991).

11. Subs. by Act 22 of 1995, sec. 70, for "Assistant Collector of Central Excise" (w.e.f. 26-5-1995) and again subs. by Act 27 of 1999, sec. 119, for "Assistant Commissioner of Central Excise" (w.e.f. 11-5-1999).

12. Subs. by Act 22 of 1995, 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

13. Subs. by Act 44 of 1980, sec. 49, for Explanation (w.e.f. 21-8-1980).

14. Subs. by Act 40 of 1991, sec. 3, for sub-clause (e) (w.e.f. 20-9-1991).

15. Ins by Act 33 of 1996, sec. 77 (w.e.f. 28-9-1996).

16. Ins. by Act 21 of 1998, sec. 108 (w.e.f. 1-8-1998).

17. Ins. by Act 22 of 2007, sec. 117 (w.e.f. 11-5-2007).

11BB. INTEREST ON DELAYED REFUNDS. –

¹INTEREST ON DELAYED REFUNDS.

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, ²not below ten per cent and not exceeding thirty per cent per annum as is for the time being fixed ³by the Board, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal ⁴[National Tax Tribunal] or any court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.

Comments

Adjustment entry

Where an assessee maintains a personal ledger account, duty is paid by way of debit therein and goes to reduce the amount of deposit paid by the assessee. It is not a mere adjustment entry; it is effective payment; *Samrat International (P) Ltd. v. Collector of Central Excise*, AIR 1991 SC 369.

Scope

Section 11B is an independent section under which appellant would be entitled to work out his claim for refund notwithstanding the fact that the appellant has not chosen to file the appeal against the RT 12 assessment of the Superintendent of Central Excise; *Bharat Earth Movers Ltd. v. Collector of Central Excise*, 1991 (52) ELT 600 (Tribunal).

Section 11B does not only apply prospectively but also retrospectively to the pending cases in which refund has been claimed; *Union of India v. I.T.C. Limited*, AIR 1993 SC 2135.

1. Ins. by Act 22 of 1995, sec. 75 (w.e.f. 26-5-1995).

2. Subs. by Act 14 of 2001, sec. 126, for "not below ten per cent." (w.e.f. 11-5-2001).

3. Subs. by Act 10 of 2000, sec. 102, for "by the Board" (w.e.f. 12-5-2000)

4. Ins. by Act 49 of 2005, sec. 30 and Sch., Pt. VII-4 (w.e.f. 28-12-2005).

11C. POWER NOT TO RECOVER DUTY OF EXCISE NOT LEVIED OR SHORT-LEVIED AS A RESULT OF GENERAL PRACTICE.

¹POWER NOT TO RECOVER DUTY OF EXCISE NOT LEVIED OR SHORT-LEVIED AS A RESULT OF GENERAL PRACTICE.

²(1)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 74 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.

³(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 11B :

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the ⁴Assistant Commissioner of Central Excise, in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.

1. Ins. by Act 25 of 1978, sec. 21 (w.e.f. 1-7-1978).

2. Section 11C renumbered as sub-section (1) thereof by Act 29 of 1988, sec. 10 (w.e.f. 1-7-1988).

3. Subs. by Act 40 of 1991, sec. 4, for sub-section (2) (w.e.f. 20-9-1991). Earlier sub-section (2) was inserted by Act 29 of 1988, sec. 10 (w.e.f. 1-7-1988).

4. Subs. by Act 22 of 1995, sec. 70, for "Assistant Collector of Central Excise" (w.e.f. 26-5-1995).

11D. DUTIES OF EXCISE COLLECTED FROM THE BUYER TO BE DEPOSITED WITH THE CENTRAL GOVERNMENT.

¹[Duties of excise collected from the buyer to be deposited with the Central Government.—(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, ²[every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods] in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

³[(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(3) The Central Excise officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount 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.

(4) The amount paid to the credit of the Central Government under sub-section (1) of sub-section (3) shall be adjusted against the duty of excise, payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1).

(5) Where any surplus is left after the adjustment under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and

such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.]

1. Ins. by Act 40 of 1991, sec. 5 (w.e.f. 20-9-1991).

2. Subs. by Act 10 of 2000, sec. 103, for certain words (w.r.e.f. 20-9-1991).

3. Subs. by Act 10 of 2000, sec. 103, for sub-section (2) (w.r.e.f. 20-9-1991).

12. APPLICATION OF THE PROVISIONS OF ACT NO. 52 OF 1962 TO CENTRAL EXCISE DUTIES.

The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the ¹Customs Act, 1962 (52 of 1962), relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3.

1. Subs. by Act 33 of 1996, sec. 78, for "Sea Customs Act, 1878 (8 of 1878)" (w.e.f. 28-9-1996).

12A. PRICE OF GOODS TO INDICATE THE AMOUNT OF DUTY PAID THEREON.

* PRICE OF GOODS TO INDICATE THE AMOUNT OF DUTY PAID THEREON.

Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

*** Chapter IIA (containing sections 12A to 12D) ins. by Act 40 of 1991, sec. 6 (w.e.f. 20-9-1991).**

12B. PRESUMPTION THAT THE INCIDENCE OF DUTY HAS BEEN PASSED ON TO THE BUYER.

Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

*** Chapter IIA (containing sections 12A to 12D) ins. by Act 40 of 1991, sec. 6 (w.e.f. 20-9-1991).**

12C. CONSUMER WELFARE FUND.

*12C. Consumer Welfare Fund.—(1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed,—

(a) the amount of duty of excise referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 11D;

(b) the amount of duty of customs referred to in sub-section (2) of section 27 or sub-section (2) of section 28A, or sub-section (2) of section 28B of the Customs Act, 1962 (52 of 1962);

(c) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

¹[(d) the surplus amount referred to in sub-section (6) of section 73A of the Finance Act, 1994.]

*** Chapter IIA (containing sections 12A to 12D) ins. by Act 40 of 1991, sec. 6 (w.e.f. 20-9-1991).**

1. Ins. by Act 21 of 2006, sec. 64 (w.e.f. 18-4-2006).

12D. UTILISATION OF THE FUND.

*UTILISATION OF THE FUND.

(1) Any money credited to the Fund shall be utilised by the Central Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

*** Chapter IIA (containing sections 12A to 12D) ins. by Act 40 of 1991, sec. 6 (w.e.f. 20-9-1991).**

12E. POWERS OF CENTRAL EXCISE OFFICERS.

¹[²[12E]POWERS OF CENTRAL EXCISE OFFICERS.

(1) A Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA.

1. Section 12A ins. by Act 79 of 1985, sec. 4 (w.e.f. 27-12-1985).

2. Section 12A renumbered as section 12E by Act 40 of 1991, sec. 7 (w.e.f. 20-9-1991).

13. POWER TO ARREST.

¹[13. Power to arrest.—Any Central Excise Officer not below the rank of Inspector of Central Excise may, with the prior approval of the Commissioner of Central Excise, arrest any person whom he has reason to believe to be liable to punishment under this Act or the rules made thereunder.]

1. Subs. by Act 32 of 2003, sec. 141, for section 13 (w.e.f. 14-5-2003).

14. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS IN INQUIRIES UNDER THIS ACT.

(1) Any Central Excise Officer duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required :

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

14A. SPECIAL AUDIT IN CERTAIN CASES.

¹SPECIAL AUDIT IN CERTAIN CASES.

(1) If at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of an Assistant Commissioner of Central Excise, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person, he may, with the previous approval of the Chief Commissioner of Central Excise, direct such manufacturer or such person to get the accounts of his factory, office, depots, distributors or any other place, as may be specified by the said Central Excise Officer, audited by a cost accountant, nominated by the Chief Commissioner of Central Excise in this behalf.

(2) The cost accountant, so nominated shall, within the period specified by the Central Excise Officer, submit a report of such audit duly signed and certified by him to the said Central Excise Officer mentioning therein such other particulars as may be specified :

Provided that the Central Excise Officer may, on an application made to him in this behalf by the manufacturer or the person and for any material and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (1) is received by the manufacturer or the person.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the manufacturer or person aforesaid have been audited under any other law for the time being in force or otherwise.

(4) The expenses of, and incidental to, such audit (including the remuneration of the cost accountant) shall be determined by the Chief Commissioner of Central Excise (which determination shall be final) and paid by the manufacturer or person and in default of such payment, shall be recoverable from the manufacturer or the person in the manner provided in section 11 for the recovery of sums due to the Government.

²[***]

(5) The manufacturer or the person shall be given an opportunity of being heard in respect of any material gathered on the basis of audit under sub-section (1) and proposed to be utilised in any proceedings under this Act or rules made there under.

Explanation : For the purpose of this section, "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).

1. Ins. by Act 22 of 1995, sec. 76 (w.e.f. 26-5-1995).

2. Sub-section (4) omitted by Act 10 of 2000, sec. 104 (w.e.f. 12-5-2000).

14AA. SPECIAL AUDIT IN CASES WHERE CREDIT OF DUTY AVAILED OR UTILISED IS NOT WITHIN THE NORMAL LIMITS, ETC.

¹SPECIAL AUDIT IN CASES WHERE CREDIT OF DUTY AVAILED OR UTILISED IS NOT WITHIN THE NORMAL LIMITS, ETC.

(1) If the Commissioner of Central Excise has reason to believe that the credit of duty availed of or utilised under the rules made under this Act by a manufacturer of any excisable goods –

(a) Is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;

(b) Has been availed of or utilised by reason of fraud, collusion or any willful mis-statement or suppression of facts,

He may direct such manufacturer to get the accounts of his factory, office, depot, distributor or any other place, as may be specified by him, audited by a cost accountant nominated by him.

(2) The cost accountant so nominated shall, within the period specified by the Commissioner of Central Excise, submit a report of such audit duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the said manufacturer aforesaid have been audited under any other law for the time being in force or otherwise.

(4) The expenses of, and incidental to, such audit (including the remuneration of the cost accountant) shall be determined by the Commissioner of Central Excise (which determination shall be final) and paid by the manufacturer and in default of such payment shall be recoverable from the manufacturer in the manner provided in section 11 for the recovery of sums due to the Government.

²[***]

(5) The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under this Act or rules made there under.

Explanation : For the purpose of this section, "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).

1. Ins. by Act 26 of 1997, sec. 83 (w.e.f. 14-5-1997).

2. Sub-section (4) omitted by Act 10 of 2000, sec. 105 (w.e.f. 12-5-2000).

15. OFFICERS REQUIRED TO ASSIST CENTRAL EXCISE OFFICERS.

All officers of Police and Customs and all officers of Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the Central Excise Officers in the execution of this Act.

16. OWNERS OR OCCUPIERS OF LAND TO REPORT MANUFACTURE OF CONTRABAND EXCISABLE GOODS.

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 137 (w.e.f. 11-5-2002).]

17. PUNISHMENT FOR CONNIVANCE AT OFFENCES.

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 137 (w.e.f. 11-5-2002).]

18. SEARCHES AND ARRESTS HOW TO BE MADE.

All searches made under this Act or any rules made there under and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) ¹, 85 relating respectively to searches and arrests made under that Code.

1. See now the Code of Criminal Procedure, 1973 (2 of 1974).

19. DISPOSAL OF PERSONS ARRESTED.

Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise Officer 86 empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance, to the officer-in-charge of the nearest police station.

20. PROCEDURE TO BE FOLLOWED BY OFFICER-IN-CHARGE OF POLICE STATION.

The officer-in-charge of a police station to whom any person is forwarded under section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

21. INQUIRY HOW TO BE MADE BY CENTRAL EXCISE OFFICERS AGAINST ARRESTED PERSONS FORWARDED TO THEM UNDER SECTION 19.

(1) When any person is forwarded under section 19 to a Central Excise Officer empowered 82a to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to enquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898)¹, when investigating a cognizable case :

Provided that –

(a) If the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) If it appears to the Central Excise Officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

1. See now the Code of Criminal Procedure, 1973 (2 of 1974).

22. VEXATIOUS SEARCH, SEIZURE, ETC., BY CENTRAL EXCISE OFFICER.

Any Central Excise or other officer exercising powers under this Act or under the rules made there under who –

(a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;

(b) vexatiously and unnecessarily detains, searches or arrests any person;

(c) vexatiously and unnecessarily seizes the movable property of any

person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

23. FAILURE OF CENTRAL EXCISE OFFICER IN DUTY.

Any Central Excise Officer who ceases or refuses to perform or withdraws himself from the duties of his office, unless he has obtained the express written permission of the ¹Commissioner of Central Excise, or has given to his superior officer two months' notice in writing of his intention or has other lawful excuse, shall on conviction before a Magistrate be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

1. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

24. PENALTIES FOR CARRYING EXCISABLE GOODS IN CERTAIN VESSELS.

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 139 (w.e.f. 11-5-2002).]

25. EXCEPTIONS.

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 139 (w.e.f. 11-5-2002).]

26. POWER OF STOPPAGE, SEARCH AND ARREST.

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 139 (w.e.f. 11-5-2002).]

27. PENALTIES FOR RESISTING OFFICER. –

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 139 (w.e.f. 11-5-2002.)]

28. CONFISCATION OF VESSEL AND CARGO. –

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 139 (w.e.f. 11-5-2002.)]

29. JURISDICTION. –

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 139 (w.e.f.11-5-2002.)]

30. POWER TO EXEMPT FROM OPERATION OF THIS CHAPTER.

[Rep. by the Finance Act, 2002 (20 of 2002), sec. 139 (w.e.f. 11-5-2002.)]

31. DEFINITIONS. – IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES, –

¹[31. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “assessee” means any person who is liable for payment of excise duty assessed under this Act or any other Act and includes any producer or manufacturer of excisable goods or a registered person under the rules made under this Act, of a private warehouse in which excisable goods are stored;

(b) “Bench” means a Bench of the Settlement Commission;

²[(c) “case” means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made:

Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause;]

(d) “Chairman” means the Chairman of the Settlement Commission;

(e) “Commissioner (Investigation)” means an officer of the customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes of this Chapter;

(f) “Member” means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(g) “Settlement Commission” means the Customs and Central Excise Settlement Commission constituted under section 32; and

(h) “Vice-Chairman” means a Vice-Chairman of the Settlement Commission.]

1. Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f.1-8-1998). Earlier Chapter V (containing sections 31 to 32) was omitted by Act 33 of 1996, sec. 79 (w.e.f. 28-9-1996).

2.Subs. by Act 22 of 2007, sec. 119, for clause (c) (w.e.f. 1-6-2007). Clause (c), before substitution, stood as under:

‘(c) “case” means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a Central Excise Officer or Central Government on the date on which an application under sub-section (1) of section 32E is made:

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;’.

32. CUSTOMS AND CENTRAL EXCISE SETTLEMENT COMMISSION. –

(1) The Central Government shall, by notification in the Official Gazette, constitute a Commission to be called the Customs and Central Excise Settlement Commission for the settlement of cases under this Chapter and Chapter XIVA of the Customs Act, 1962 (52 of 1962).

(2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters.

(3) The Chairman, Vice-Chairman and other Members of the Settlement

Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of customs and central excise laws :

Provided that, where a member of the Board is appointed as the Chairman, Vice-Chairman or as a Member of the Settlement Commission, he shall cease to be a member of the said Board.

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

32A. JURISDICTION AND POWERS OF SETTLEMENT COMMISSION. –

¹JURISDICTION AND POWERS OF SETTLEMENT COMMISSION.

(1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the presiding officer shall be the principal Bench and other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-section (1) and sub-section

(2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) The principal Bench shall sit at Delhi and the Central Government shall, by notification in the Official Gazette, establish additional Benches at such places as it considers necessary.

(6) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other Members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench :

²Provided that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a special Bench consisting of more than three Members.

(8) Subject to the other provisions of this Chapter, the special Bench shall sit at a place to be fixed by the Chairman.

1.Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998). Earlier Chapter V (containing sections 31 to 32) was omitted by Act 33 of 1996, sec. 79 (w.e.f. 28-9-1996).

2.Ins. by Act 22 of 2007, sec. 120 (w.e.f. 11-5-2007).

32B. VICE-CHAIRMAN TO ACT AS CHAIRMAN OR TO DISCHARGE HIS FUNCTIONS IN CERTAIN CIRCUMSTANCES.

—

(1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions' owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

32C. POWER OF CHAIRMAN TO TRANSFER CASES FROM ONE BENCH TO ANOTHER. –

On the application of the assessee or the Chief Commissioner or Commissioner of Central Excise and after giving notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

32D. DECISION TO BE BY MAJORITY. –

*32D. Decision to be by majority.—If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

32E. APPLICATION FOR SETTLEMENT OF CASES. –

¹[32E. Application for settlement of cases.—²[(1) An assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or CENVAT credit but excluding the goods in respect of which no proper record has been maintained by the assessee in his daily stock register and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,— (a) the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;

(b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;

(c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under section 11AB:

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any Court:

Provided also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986).

(1A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1), before the 1st day of June, 2007 but an order under sub-section (1) of section 32F has not been made before the said date or payment of amount so ordered by the Settlement Commission under sub-section (1) of section 32F has not been made, the applicant shall within a period of thirty days from the 1st day of June, 2007, pay the accepted duty liability failing which his application shall be liable to be rejected.]

(2) Where any excisable goods, books of account, other documents have been seized under the provisions of this Act or rules made thereunder, the assessee shall not be entitled to make an application under sub-section (1), before the expiry of one hundred and eighty days from the date of the seizure.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.]

1. Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998). Earlier Chapter V (containing sections 31 to 32) was omitted by Act 33 of 1996, sec. 79 (w.e.f. 28-9-1996).

2. Subs. by Act 22 of 2007, sec. 121, for sub-section (1) (w.e.f. 1-6-2007). Earlier sub-section (1) was amended by Act 10 of 2000, sec. 106 (w.e.f. 12-5-2000). Sub-section (1), before substitution by Act 22 of 2007, stood as under:

“(1) An assessee may, at any stage of a case relating to him make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his duty or liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification or otherwise of such excisable goods, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,—

- (a) the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;
- (b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant; and
- (c) the additional amount of duty accepted by the applicant in this application exceeds two lakh rupees:

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any court:

Provided also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986)."

32F. PROCEDURE ON RECEIPT OF AN APPLICATION UNDER SECTION 32E. –

¹[²32F. Procedure on receipt of an application under section 32E.—(1) On receipt of an application under sub-section (1) of section 32E, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with, and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection:

Provided that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission:

Provided that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case:

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

(5) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (3) or sub-section (4).

(6) An order under sub-section (5) shall not be passed in respect of an application filed on or before the 31st day of May, 2007, later than the 29th day of February, 2008 and in respect of an application made on or after the 1st day of June, 2007, after nine months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

(7) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D shall apply.

(8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts:

Provided that the amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

(9) Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5), is not paid by the assessee within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

(10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.]]

1.Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110

2. Subs. by Act 22 of 2007, sec. 122, for section 32F (w.e.f. 1-6-2007). Section 32F, before substitution, stood as under:

"32F. Procedure on receipt of an application under section 32E.—(1) On receipt of an application under sub-section (1) of section 32E, the Settlement Commission shall call for a report from the Commissioner of Central Excise having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this sub-section, unless an opportunity has been given to the applicant of being heard:

Provided further that the Commissioner of Central Excise shall furnish such report within a period of one month of the receipt of the communication from the Settlement Commission, failing which it shall be presumed that the Commissioner of Central Excise has no objection to such application; but he may raise objections at the time of hearing fixed by the Settlement Commission for admission of the application and the date of such hearing shall be communicated by the Settlement Commission to the applicant and the Commissioner of Central Excise within a period not exceeding two months from the date of receipt of such application, unless the presiding officer of the Bench extends the time, recording the reasons in writing.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.

(3) Subject to the provisions of sub-section (4), the applicant shall within thirty days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the amount of additional duty admitted by him as payable and shall furnish proof of such payment to the Settlement Commission.

(4) If the Settlement Commission is satisfied, on an application made in this behalf by the assessee that he is unable for good and sufficient reasons to pay the amount referred to in sub-section (3), within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments, if the assessee furnishes adequate security for the payment thereof.

(5) Where the additional amount of duty referred to in sub-section (3) is not paid by the assessee within the time specified or extended period, as the case may be, the Settlement Commission may direct that the amount which remains unpaid, together with simple interest at the rate of eighteen per cent. per annum or at the rate notified by the Central Board of Excise and Customs from time to time on the amount remaining unpaid, be recovered, as the sum due to Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

(6) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner of Central Excise having jurisdiction and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner (Investigation) to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(7) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (1), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (6), and after giving an opportunity to the

applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (1) or sub-section (6).

(8) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the Bench concerned before passing any order under sub-section (7) and, in relation to the passing of such order, the provisions of section 32D shall apply.

(9) Every order passed under sub-section (7) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts.

(10) Where any duty payable in pursuance of an order under sub-section (7) is not paid by the assessee within thirty days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such duty or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at the rate of eighteen per cent. per annum or at such other rate as notified by the Central Board of Excise and Customs on the amount remaining unpaid from the date of expiry of the period of thirty days aforesaid.

(11) Where a settlement becomes void as provided under sub-section (9) the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void."

32G. POWER OF SETTLEMENT COMMISSION TO ORDER PROVISIONAL ATTACHMENT TO PROTECT REVENUE. –

(1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as may be prescribed.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date, the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

32H. POWER OF SETTLEMENT COMMISSION TO REOPEN COMPLETED PROCEEDINGS. –

¹[32H. Power of Settlement Commission to reopen completed proceedings.—If Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 32E was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application:

²[Provided further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 32E is made on or after the 1st day of June, 2007.]]

1.Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110

2.Ins. by Act 22 of 2007, sec. 123 (w.e.f. 1-6-2007).

32-I. POWERS AND PROCEDURE OF SETTLEMENT COMMISSIONS. –

¹[32-I. Powers and procedure of Settlement Commissions.—(1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in a Central Excise Officer under this Act or the rules made thereunder.

(2) Where an application made under section 32E has been allowed to be proceeded with under section 32F, the Settlement Commission shall, until an order is passed under sub-section ²[(5)] of section 32F, have, subject to the provisions of sub-section ³[(4)] of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.

(3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(4) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.]

1.Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110

2. Subs. by Act 22 of 2007, sec. 124, for "(7)" (w.e.f. 1-6-2007).

3. Subs. by Act 22 of 2007, sec. 124, for "(6)" (w.e.f. 1-6-2007).

32J. INSPECTION, ETC., OF REPORTS. –

No person shall be entitled to inspect, or obtain copies of, any reports made by any Central Excise Officer to the Settlement Commission; but the Settlement Commission may, in its discretion furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

32K. POWER OF SETTLEMENT COMMISSION TO GRANT IMMUNITY FROM PROSECUTION AND PENALTY.

¹[32K. Power of Settlement Commission to grant immunity from prosecution and penalty.—(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 32E has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act ²[and also either wholly or in part from the imposition of any penalty and fine] under this Act, with respect to the case covered by the settlement:

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 32E.

³[Explanation.—For the removal of doubts, it is hereby declared that applications filed before the Settlement Commission on or before the 31st day of May, 2007 shall be disposed of as if the amendment in this section had not come into force.]

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under ⁴[sub-section (5) of section 32F within the time specified in such order] or fails to comply with any other condition subject to which the immunity has granted and thereupon the provisions of this Act shall apply as if such immunity has not been granted.

(3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.]

1. Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110

2. Subs. by Act 22 of 2007, sec. 125(i)(a), for "or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest" (w.e.f. 1-6-2007).

3. Ins. by Act 22 of 2007, sec. 125(i)(b) (w.e.f. 1-6-2007).

4. Subs. by Act 22 of 2007, sec. 125(ii), for "sub-section (7) of section 32F within the time specified in such order or within such further time as may be allowed by the Settlement Commission" (w.e.f. 1-6-2007).

32L. POWER OF SETTLEMENT COMMISSION TO SEND A CASE BACK TO THE CENTRAL EXCISE OFFICER. –

*32L. Power of Settlement Commission to send a case back to the Central Excise Officer.—(1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 32E has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

(2) For purpose of sub-section (1), the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the result of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Central Excise Officer or held or recorded by him in the course of the proceedings before him.

(3) For the purposes of the time limit under section 11A and for the purposes of interest under section 11BB, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 32E and ending with the date of receipt by the Central Excise Officer of the order of the Settlement Commission sending the case back to the Central Excise Officer shall be excluded.

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

32M. ORDER OF SETTLEMENT TO BE CONCLUSIVE. –

¹[32M. Order of settlement to be conclusive.—Every order of settlement passed under sub-section ²[(5)] of section 32F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.]

1. Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110

1. Subs. by Act 22 of 2007, sec. 126, for "(7)" (w.e.f. 1-6-2007).

32N. RECOVERY OF SUMS DUE UNDER ORDER OF SETTLEMENT. -.

¹RECOVERY OF SUMS DUE UNDER ORDER OF SETTLEMENT. -.Any sum specified in an order of settlement passed under sub-section ²(5) of section 32F may, subject to such conditions if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions under section 11 by the Central Excise Officer having jurisdiction over the person who made the application for settlement under section 32E.

1.Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110

2.Subs. by Act 22 of 2007, sec. 127, for "(7)" (w.e.f. 1-6-2007).

32-O. BAR ON SUBSEQUENT APPLICATION FOR SETTLEMENT IN CERTAIN CASES. -

²(i)³Where An order of settlement passed under sub-section (7) of section 32F provides for the imposition of a penalty on the person who made the application under section 32E for settlement, on the ground of concealment of particulars of his duty liability; or

(ii) After the passing of an order of settlement under the said sub-section (7) in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) The case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L, then, he shall not be entitled to apply for settlement under section 32E in relation to any other matter.

⁴[(2) Where an assessee has made an application under sub-section (1) of section 32E, on or after the 1st day of June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 32F, such assessee shall not be entitled to apply for settlement under section 32E in relation to any other matter:

Provided that such assessee shall not be prevented from filing an application for settlement if the issue in the subsequent application is, but for the period of dispute and amount, identical to the issue in respect of which the earlier application is pending before the Settlement Commission.]]

1.Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110

2. Section 32-O renumbered as sub-section (1) thereof by Act 22 of 2007, sec. 128 (w.e.f. 11-5-2007).

3. Subs. by Act 22 of 2007, sec. 128(i), for "Where" (w.e.f. 11-5-2007).

4.Ins. by Act 22 of 2007, sec. 128(ii) (w.e.f. 1-6-2007).

32P. PROCEEDINGS BEFORE SETTLEMENT COMMISSION TO BE JUDICIAL PROCEEDINGS. –

Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860).

*** Chapter V (containing sections 31, 32, 32A to 32P) ins. by Act 21 of 1998, sec. 110 (w.e.f. 1-8-1998).**

33. POWER OF ADJUDICATION.

¹[Where under this Act or by rules made thereunder] anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged—

(a) without limit, by a ²[Commissioner of Central Excise];

(b) up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees, by an ³[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise]:

Provided that the ⁴[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] may, in the case of any officer performing the duties of an ³[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], reduce the limits indicated in clause (b) of this section and may confer on any officer the powers indicated in clause (a) or (b) of this section.

1. Subs. by Act 27 of 1999, sec. 125, for "Where by the rules made under this Act" (w.e.f. 11-5-1999).

2. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

3. Subs. by Act 27 of 1999, sec. 119, for "Assistant Commissioner of Central Excise" (w.e.f. 11-5-1999). Earlier the words "Assistant Commissioner of Central Excise" were substituted for "Assistant Collector of Central Excise" by Act 22 of 1995, sec. 70 (w.e.f. 26-5-1995).

4. Subs. by Act 54 of 1963, sec. 5, for "Central Board of Revenue" (w.e.f. 1-1-1964).

34. OPTION TO PAY FINE IN LIEU OF CONFISCATION.

Whenever confiscation is adjudged under this Act or the rules made there under, the officer adjudging it, shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

34A. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS.

¹34A. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS. No confiscation made or penalty imposed under the provisions of the Act or of any rule made there under shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

1. Ins. by Act 36 of 1973, sec. 22 (w.e.f. 1-9-1973).

35. APPEALS TO COMMISSIONER (APPEALS).

35. Appeals to ¹[Commissioner (Appeals)].—(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer lower in rank than a ²[Commissioner of Central Excise] may appeal to the ³[Commissioner of Central Excise (Appeals)] [hereafter in this Chapter referred to as the ¹[Commissioner (Appeals)]] ⁴[within sixty days] from the date of the communication to him of such decision or order:

⁵[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

⁶[(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

COMMENTS

When prima facie there was no mala fide on the part of applicants, impugned order for making pre-deposit had to be stayed till the disposal of the appeals; Gujarat State Fertilizers Ltd. v. Collector of Central Excise, 1991 (52) ELT 548 (Tri).

1. Subs. by Act 22 of 1995, sec. 70, for "Collector (Appeals)" (w.e.f. 26-5-1995).

2. Subs. by Act 22 of 1995, sec. 70 "Collector of Central Excise" (w.e.f. 26-5-1995)..

3. Subs by Act 22 of 1995, sec. 70, for "Collector of Central Excise (Appeal)" (w.e.f. 26-5-1995).

4. Subs. by Act 14 of 2001, sec. 127, for "within three months" (w.e.f. 11-5-2001).

5. Subs. by Act 14 of 2001, sec. 127, for the proviso (w.e.f. 11-5-2001).

6. Ins. by Act 23 of 2004, sec. 82 (w.e.f. 10-9-2004).

35A. PROCEDURE IN APPEAL.

(1) The ¹[Commissioner (Appeals)] shall give an opportunity to the appellant to be heard, if he so desires.

(2) The ¹[Commissioner (Appeals)] may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the ¹[Commissioner (Appeals)] is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) ²[The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order as he thinks just and proper confirming, modifying or annulling the decision or order appealed against:]

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the ¹[Commissioner (Appeals)] is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time limit specified in section 11A to show cause against the proposed order.

(4) The order of the ¹[Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

³[(4A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.]

(5) On the disposal of the appeal, the ¹[Commissioner (Appeals)] shall communicate the order passed by him to the appellant, the adjudicating authority ⁴[, the Chief Commissioner of Central Excise and the Commissioner of Central Excise].

1. Subs. by Act 22 of 1995, sec. 70, for "Collector (Appeals)" (w.e.f. 26-5-1995).

2. Subs. by Act 14 of 2001, sec. 128, for certain words (w.e.f. 11-5-2001).

3. Ins. by Act 14 of 2001, sec. 128 (w.e.f. 11-5-2001).

4. Subs. by Act 18 of 2005, sec. 78, for "and of the Commissioner of Central Excise" (w.e.f. 13-5-2005).

35B. APPEALS TO THE APPELLATE TRIBUNAL

35B. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) a decision or order passed by the ¹[Commissioner of Central Excise] as an adjudicating authority;

(b) an order passed by the ²[Commissioner (Appeals)] under section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or

the ³[Appellate Commissioner of Central Excise] under section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the ⁴[Commissioner of Central Excise], either before or after the appointed day, under section 35A, as it stood immediately before that day:

⁵[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods, exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

⁶[(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:]

Provided further that] the appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined by such order, does not exceed ⁷[fifty thousand rupees].

⁸[(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 47 of the Finance Act, 1984 (21 of 1984), before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.]

⁹[(1B) (i) The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Act.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.]

¹⁰[(2) ¹¹[The Committee of Commissioners of Central Excise may, if it is] of opinion that an order passed by the ¹²[Appellate Commissioner of Central Excise] under section 35, as it stood immediately before the appointed day, or the ¹³[Commissioner (Appeals)] under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter

in this Chapter referred to as the authorised officer) to appeal ¹⁴[on its behalf] to the Appellate Tribunal against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the ¹⁵[Commissioner of Central Excise], or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

¹⁶[(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees;

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub-section.]

Comments

(i) The date of initial presentation of appeal, which though defective, but is not returnable in toto for rectification, has to be taken as the date of filing of appeal for purpose of computing the period of limitations; VXL India Ltd. (OCM Woollen Mills) v. Collector of Customs, 1991 (52) ELT (Tri).

(ii) While to remand the case the Tribunal should analyse the evidence and give a factual conclusion; M.G. Shahani & Co. (Delhi) Ltd. v. Collector, Central Excise, AIR 1994 SC 2413.

1. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).
2. Subs. by Act 22 of 1995, sec. 70, for "Collector (Appeals)" (w.e.f. 26-5-1995).
3. Subs. by Act 22 of 1995, sec. 70, for "Appellate Collector of Central Excise" (w.e.f. 26-5-1995).
4. Subs. by Act 18 of 2005, sec. 78, for "and of the Commissioner of Central Excise" (w.e.f. 13-5-2005).
5. Subs. by Act 21 of 1984, sec. 47, for "Provided that" (w.e.f. 11-5-1984).
6. Ins. by Act 21 of 1998, sec. 109 (w.e.f. 1-8-1998).
7. Subs. by Act 38 of 1993, sec. 45, for "ten thousand rupees" (w.e.f. 13-5-1993).
8. Ins. by Act 21 of 1984, sec. 47 (w.e.f. 11-5-1984).
9. Ins. by Act 18 of 2005, sec. 79 (w.e.f. 13-5-2005).
10. Sub-section (2) shall stand subs. by Act 62 of 1986, sec. 34 as follows:—

“(2) The Collector of Central Excise may, if he is of opinion that an order passed by—

(a) the Appellate Collector of Central Excise under section 35, as it stood immediately before the appointed day, or

(b) the Collector (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of 62 of 1986 the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order”.
11. Subs. by Act 18 of 2005, sec. 79, for "The Commissioner of Central Excise may, if he is" (w.e.f. 13-5-2005).
12. Subs. by Act 22 of 1995, sec. 70, for "Appellate Collector of Central Excise" (w.e.f. 26-5-1995).
13. Subs. by Act 22 of 1995, sec. 70, for "Collector (Appeals)" (w.e.f. 26-5-1995).
14. Subs. by Act 18 of 2005, sec. 79, for "on his behalf" (w.e.f. 13-5-2005).
15. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).
16. Subs. by Act 23 of 2004, sec. 83, for sub-section (6) (w.e.f. 10-9-2004). Sub-section (6), before substitution, stood as under:

“(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made on or after the 1st day of June, 1993, irrespective of the date of demand of duty or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;

(b) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than one lakh rupees, one thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).”.

35C. ORDERS OF APPELLATE TRIBUNAL. –

35C. Orders of Appellate Tribunal.—(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

¹(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) The Appellate Tribunal may, at any time within ²six months] from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the ³[Commissioner of Central Excise] or the other party to the appeal:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

⁴[(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

Provided that where an order of stay is made in any proceedings relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.]

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the ³[Commissioner of Central Excise] and the other party to the appeal.

(4)⁵[Save as provided in the National Tax Tribunal Act, 2005], orders passed by the Appellate Tribunal on appeal shall be final.

Comments

The firm is a separate legal entity from its partners for the purpose of Central Excise Act, irrespective of the treatment of the firm and partners under general law. In view of this finding charging firm for under valuation and for short levy is unjustified in the absence of issue of show-cause notice to the firm; Hindustan Foam Industry v. Collector of Central Excise, 1990 (48) ELT 33 (Tri).

1. Ins. by Act 23 of 2004, sec. 84 (w.e.f. 10-9-2004).

2. Subs. by Act 20 of 2002, sec. 140, for "four years" (w.e.f. 11-5-2002).

3. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

4. Ins. by Act 20 of 2002, sec. 140 (w.e.f. 11-5-2002).

5. Subs. by Act 49 of 2005, sec. 30 and Sch., Pt. VII-5, for "Save as provided in section 35G or section 35L" (w.e.f. 28-12-2005).

35D. PROCEDURE OF APPELLATE TRIBUNAL. 104 –

35D. Procedure of Appellate Tribunal.—(1) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962), shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

¹[***]

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where—

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or (b) the amount of fine or penalty involved, does not exceed ²[³⁴[ten lakh rupees]]].

1. Sub-section (2) omitted by Act 22 of 1995, sec. 77 (w.e.f. 26-5-1995).

2. Subs. by Act 21 of 1984, sec. 48, for "ten thousand rupees" (w.e.f. 11-5-1984).

3. Subs. by Act 38 of 1993, sec. 45, for "fifty thousand rupees" (w.e.f. 13-5-1993).

4. Subs. by Act 33 of 1996, sec. 80, for "one lakh rupees" (w.e.f. 28-9-1996).

35E. POWERS OF BOARD OR COMMISSIONER OF CENTRAL EXCISE TO PASS CERTAIN ORDERS. – 108

35E. Powers of Board or ¹[Commissioner of Central Excise] to pass certain orders.—(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a ¹[Commissioner of Central Excise] as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such ²[Commissioner] ³[or any other commissioner] to apply to the Appellate Tribunal ⁴[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986)] for the determination of such points arising out of the decision or order as may be specified by the ⁵[Committee of Chief Commissioners of Central Excise] in its order.

(2) The ¹[Commissioner of Central Excise] may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct ⁶[such authority or any Central Excise Officer subordinate to him] to apply to the ⁷[Commissioner (Appeals)] for the determination of such points arising out of the decision or order as may be specified by the ¹[Commissioner of Central Excise] in his order.

⁸[(3) The Committee of Chief Commissioners of Central Excise or the Commissioner of Central Excise, as the case may be, shall make order under sub-section (1) or sub-section (2) within a period of three months from the date of communication of the decision or order of the adjudicating authority.]

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal ⁴[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986)] or the ⁷[Commissioner (Appeals)] within a period of 9[one month] from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal ⁴[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] or the ⁷[Commissioner (Appeals)], as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 35B ⁴[or, as the case may be, the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986] shall, so far as may be, apply to such application.

¹⁰[(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation.—For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question—

(a) relating to the rate of duty of excise for the time being in force, whether under the Central Excise Tariff Act, 1985 (5 of 1986), or under any other Central Act providing for the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods are excisable goods or whether the rate of duty of excise on any goods is nil; or

(d) whether any goods fall under a particular heading or sub-heading of ¹¹the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986), or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), or that any goods are or not covered by a particular notification or order issued by the Central Government or the Board, as the case may be, granting total or partial exemption from duty; or

(e) whether the value of any goods for the purposes of assessment of duty of excise shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.]

1. Subs. by Act 22 of 1995, sec. 70, for "Collector" (w.e.f. 26-5-1995)

2. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

3. Ins. by Act 14 of 2001, sec. 129 (w.e.f. 11-5-2001).

4. Ins. by Act 62 of 1986, sec. 34.

5. Subs. by Act 18 of 2005, sec. 80, for "Board" (w.e.f. 13-5-2005).

6. Ins. by Act 29 of 2006, sec. 37, for such authority" (w.e.f. 13-7-2006).

7. Subs. by Act 22 of 1995, sec. 70, for "Collector (Appeals)" (w.e.f. 26-5-1995).

8. Subs. by Act 22 of 2007, sec. 130(i), for sub-section (3) (w.e.f. 11-5-2007). Earlier sub-section (3) was substituted by Act 20 of 2002, sec. 141 (w.e.f. 11-5-2002) and was amended by Act 18 of 2005, sec. 80 (w.e.f. 13-5-2005). Sub-section (3), before substitution by Act 22 of 2007, stood as under:

"(3) The Committee of Chief Commissioners of Central Excise or Commissioner of Central Excise, as the case may be, shall, where it is possible to do so, make order under sub-section (1) or sub-section (2), within a period of six months, but not beyond a period of one year, from the date of the decision or order of the adjudicating authority."

9. Subs. by Act 22 of 2007, sec. 130(ii), for "three months" (w.e.f. 11-5-2007).

10. Ins. by Act 29 of 1988, sec. 11 (w.e.f. 16-8-1988).

11. Subs. by Act 27 of 1999, sec. 119, for "the Schedule" (w.e.f. 11-5-1999).

35EA. POWERS OF REVISION OF BOARD OR COMMISSIONER OF CENTRAL EXCISE IN CERTAIN CASES.

¹[35EA. Powers of revision of Board or ²[Commissioner of Central Excise] in certain cases.—(1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a ²[Commissioner of Central Excise] has passed any decision or order [not being a decision or order passed under sub-section (2) of this section] of the nature referred to in sub-section (5) of section 35E for the purpose of satisfying itself as to correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

(2) The ²[Commissioner of Central Excise] may, of his own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of section 35E, 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 made so as to prejudicially affect any person unless such person is given a reasonable opportunity of making representation and if, he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the ²[Commissioner of Central Excise] is of the opinion that any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, no order requiring the affected person to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed under this section unless such person is given notice within the time limit specified in section 11A to show cause against the proposed order.

(4) No proceedings shall be initiated under sub-section (1) or sub-section (2) in respect of any decision or order after the expiry of a period of six months from the date of communication of such decision or order:

Provided that in respect of any decision or order passed before the commencement of the Customs and Central Excise Laws (Amendment) Act, 1987 (29 of 1988), the provisions of this sub-section shall have effect as if for the words "six months", the words "one year" were substituted.

(5) Any person aggrieved by any decision or order passed under sub-section (1) or sub-section (2) may appeal to the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986), against such decision or order.]

Comments

Limitation

Where the Collector of Excise has been directed by the Central Board of Excise and Customs to file an appeal before the tribunal after the expiry of limitation period from the date of order of Collector, the appeal will be barred by limitation. When the appeal is being filed at the instance of the Board, the limitation starts from the date of Collector's order and not from the date of its knowledge to the Board; Collector of Central Excise, Madras v. M.M. Rubber & Co., AIR 1991 SC 2141.

1. Ins. by Act 29 of 1988, sec. 12 (w.e.f. 16-8-1988).

2. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

35EE. REVISION BY CENTRAL GOVERNMENT. –

¹[35EE. Revision by Central Government.—(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order:

²[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]

Explanation.—For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 (21 of 1984) against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

²[(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.]

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

³[(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of,—

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise Officer in the case to which application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an Central Excise Officer in the case to which the application relates is more than one lakh rupees:

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).]

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,—

(a) in any case in which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of excise 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 11A.]

1. Ins. by Act 21 of 1984, sec. 50 (w.e.f. 11-5-1984).

2. Ins. by Act 27 of 1999, sec. 126 (w.e.f. 11-5-1999).

3. Subs. by Act 27 of 1999, sec. 126, for sub-section (3) (w.e.f. 11-5-1999).

35F. DEPOSIT, PENDING APPEAL, OF DUTY DEMANDED OR PENALTY LEVIED.

Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the ¹[Commissioner (Appeals)] or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the ¹[Commissioner (Appeals)] or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

²[Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.]

³[Explanation.—For the purposes of this section “duty demanded” shall include,—

(i) amount determined under section 11D;

(ii) amount of erroneous CENVAT credit taken;

(iii) amount payable under rule 57CC of Central Excise Rules, 1944;

(iv) amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004;

(v) interest payable under the provisions of this Act or the rules made thereunder.]

COMMENTS

Pre-deposit

Where the Collector passed an order rejecting the stay application as to pre-deposit without giving an opportunity to hear the parties and consequently dismissed the appeal also, the order being in violation of the rule of natural justice, cannot be sustained and the matter was remanded; Mahindra and Mahindra Ltd. v. Union of India, 1991 (51) ELT 219 (Bom).

1. Subs. by Act 22 of 1995, sec. 70, for "Collector (Appeals)" (w.e.f. 26-5-1995).

2. Ins. by Act 14 of 2001, sec. 130 (w.e.f. 11-5-2001).

3. Ins. by Act 22 of 2007, sec. 131 (w.e.f. 11-5-2007)

35G. STATEMENT OF CASE TO HIGH COURT.

¹[35G. Appeal to High Court.—[Rep. by the National Tax Tribunal Act, 2005 (49 of 2005), sec. 30 and Sch., Pt. VII-6 (w.e.f. 28-12-2005).]]

1. Section 35G, before repeal, stood as under:

"35G. Appeal to High Court.—(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon

which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the

opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.”

35H. STATEMENT OF CASE TO SUPREME COURT IN CERTAIN CASES. – 111 .

¹[35H. Application to High Court.—[Rep. by the National Tax Tribunal Act, 2005 (49 of 2005), sec. 30 and Sch., Pt. VII-6 (w.e.f. 28-12-2005).]]

1. Section 35H, before repeal, stood as under:

“**35H. Application to High Court.**—(1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed before the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

(2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

(3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within

one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.”.

35-I. POWER OF HIGH COURT OR SUPREME COURT TO REQUIRE STATEMENT TO BE AMENDED. –

¹[35-I. Power of High Court or Supreme Court to require statement to be amended.—

[Rep. by the National Tax Tribunal Act, 2005 (49 of 2005), sec. 30 and Sch., Pt. VII-6 (w.e.f. 28-12-2005).]]

1. Section 35-I, before repeal, stood as under:

“35-I. Power of High Court or Supreme Court to require statement to be amended.—If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.”.

35J. CASE BEFORE HIGH COURT TO BE HEARD BY NOT LESS THAN TWO JUDGES. –

¹[35J. Case before High Court to be heard by not less than two Judges.—[Rep. by the National Tax Tribunal Act, 2005 (49 of 2005), sec. 30 and Sch., Pt. VII-6 (w.e.f. 28-12-2005).]]

1. Section 35J, before repeal, stood as under:

“35J. Case before High Court to be heard by not less than two Judges.—(1) When any case has been referred to the High Court under section 35G or section 35H, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.”.

35K. DECISION OF HIGH COURT OR SUPREME COURT ON THE CASE STATED. –

35K. Decision of High Court or Supreme Court on the case stated.—(1) The ¹[***] Supreme Court hearing any such case shall decide the questions of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

²[(1A) Where the High Court delivers a judgment in an appeal filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned Central Excise Officer on the basis of a certified copy of the judgment.]

(2) The costs of any ³[reference to the ⁴***] an appeal to ⁵*** the Supreme Court, ⁵***]] which shall not include the fee for making the reference shall be in the discretion of the Court.

COMMENTS

Scope

Section 35K provides for the passing of a judgment by the High Court and the Supreme Court on the case stated before them. Section 35L makes provisions for an appeal to the Supreme Court from any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of the goods for purpose of assessment or from any judgment of the High Court delivered on a reference; Basti Sugar Mills Co. Ltd. v. Collector of Central Excise, 1990 (47) ELT 408 (Tri).

1. The words "High Court or the" omitted by Act 49 of 2005, sec. 30 and Sch., Pt. VII-7 (w.e.f. 28-12-2005).

2. Ins. by Act 32 of 2003, sec. 146 (w.e.f. 1-7-2003).

3. Subs. by Act 32 of 2003, sec. 146, for "reference to the High Court or the Supreme Court." (w.e.f. 14-5-2003).

4. The words "the High Court or" omitted by Act 49 of 2005, sec. 30 and Sch., Pt. VII-7 (w.e.f. 28-12-2005).

5. The words "as the case may be," omitted by Act 49 of 2005, sec. 30 and Sch., Pt. VII-7 (w.e.f. 28-12-2005).

35L. APPEAL TO THE SUPREME COURT 113

35L. Appeal to Supreme Court.—An appeal shall lie to the Supreme Court from—

¹[(a) any judgment of the High Court delivered—

(i) in an appeal made under section 35G; or

(ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or]

(b) any order passed ²[before the establishment of the National Tax Tribunal] by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

1. Subs. by Act 32 of 2003, sec. 147, for clause (a) (w.e.f. 14-5-2003).

2. Ins. by Act 49 of 2005, sec. 30 and Sch., Pt. VII-8 (w.e.f. 28-12-2005).

35M. HEARING BEFORE SUPREME COURT.

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 35L as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 35K or section 35N.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

35N. SUMS DUE TO BE PAID NOTWITHSTANDING REFERENCE, ETC.

Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, sums due to the Government as a result of an order passed ¹under sub-section (1) of section 35C shall be payable in accordance with the order so passed.

1. Ins. by Act 49 of 2005, sec. 30 and Sch., Pt. VII-9 (w.e.f. 28-12-2005).

35-O. EXCLUSION OF TIME TAKEN FOR COPY.

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

35P. TRANSFER OF CERTAIN PENDING PROCEEDINGS AND TRANSITIONAL PROVISIONS.

(1) Every appeal which is pending immediately before the appointed day before the Board under section 35, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day :

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

(2) Every proceeding which is pending immediately before the appointed day before the Central Government under section 36, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it :

Provided that if any such proceeding or matter relates to an order where –

(a) In any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) The amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 36 had not been substituted :

Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the ¹ Commissioner of Central Excise under section 35A, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Central Excise as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in section 35Q, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

1. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f 26-5-1995).

35Q. APPEARANCE BY AUTHORISED REPRESENTATIVE.

(1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

(a) his relative or regular employee; or

(b) any legal practitioner who is entitled to practise in any civil Court in India; or

(c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service—Group A and has retired or resigned from such service after having served for not less than three years in any capacity in that service, shall be

entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person,—

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or

(c) who has become an insolvent,

shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the ¹[Commissioner of Central Excise] or the competent authority under the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968), as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person,—

(a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

1. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

36. DEFINITIONS.

In this Chapter –

(a) "Appointed day" means the date¹ of coming into force of the amendments to this Act specified in Part II of the Fifth Schedule to the Finance (No. 2) Act, 1980;

(b) "High Court" means, –

(i) In relation to any State, the High Court for that State;

(ii) In relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

(iii) In relation to the Union Territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay;

(iv) In relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

(c) "President" means the President of the Appellate Tribunal.

Comments

Limitation

The review show-cause notice levying duty, the time limit for review as contained in third proviso to section 36 (2) is six months. Hence notice issued beyond six months period is hit by bar of limitation; Collector of Central Excise v. Voltas Ltd., 1991 (53) ELT 82 (Tri).

Scope

Suo motu power of revision of the Central Government is provided in sub-section (2) wherein the correctness, legality or propriety of any decision or order passed under section 35 or section 35A is subjected to the revisional power; M/s. Kirloskar Cummins Ltd. v. Union of India, 1990 (47) ELT 242 (Bom).

1. Came into force on 11-10-1982, vide G.S.R. 592 (E), dated 11th October, 1982.

36A. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES.

Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall, –

(a) Unless the contrary is proved by such person, presume –

(i) The truth of the contents of such document;

(ii) That the signature and every other part of such document which

purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) Admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

1. Ins. by Act 36 of 1973, sec. 23 (w.e.f. 1-9-1973).

36B. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINT OUTS AS DOCUMENTS AND AS EVIDENCE.

¹[36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.—(1) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regular supply to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section,—

- (a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and
- (b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

1. Ins. by Act 27 of 1988, sec. 13 (w.e.f. 16-8-1988).**37. POWER OF CENTRAL GOVERNMENT TO MAKE RULES.**

37. Power of Central Government to make rules.—*(1) The Central Government may make rules to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may —

¹[(i) provide for determining under section 4 the nearest ascertainable equivalent of the normal price;

(ia) having regard to the normal practice of the wholesale trade, define or specify the kinds of trade discount to be excluded from the value under section 4 including the circumstances in which and the conditions subject to which such discount is to be so excluded;]

²[(ib)] provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;

³[(ibb) provide for charging or payment of interest on the differential amount of duty which becomes payable or refundable upon finalisation of all or any class of provisional assessments.]

⁴[(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;]

⁵[(id) provide for the amount to be paid for compounding under sub-section (2) of section 9A;]

(ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the production or manufacture, or any process of the production or manufacture, of excisable goods, or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;

(iii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, ⁶***] the transit of excisable goods from any part of ⁷[India] to any other part thereof;

(iv) regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a ⁸[registered] person, or a bonded warehouse, or to a market;

(v) regulate the production or manufacture, or any process of the production or manufacture, the possession, storage and sale of salt, and so far as such regulation is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, or of any component parts or ingredients or containers thereof;

(vi) provide for the employment of officers of the Government to supervise the carrying out of any rules made under this Act;

(vii) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation;

(viii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses;

(ix) provide for the distinguishing of goods which have been ⁹[manufactured after registration], of materials which have been imported under licence, and of goods on which duty has been paid, or which are exempt from duty under this Act;

(x) impose on persons engaged in the production or manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

(xi) require that excisable goods shall not be sold or offered or kept for sale in ¹⁰[India] except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xii) provide for the issue of ¹¹[registration certificates] and transport permits and the fees, if any, to be charged therefore:

Provided that the fees for the licensing of the manufacture and refining of salt and saltpetre shall not exceed, in the case of each such licence, the following amounts, namely:—

Licence to manufacture and refine saltpetre and to separate and purify	Rs.
salt in the process of such manufacture and refining	50
Licence to manufacture saltpetre	02
Licence to manufacture sulphate of soda (<i>kharinun</i>) by	Rs
solar heat in evaporating pans	10
Licence to manufacture sulphate of soda (<i>kharinun</i>) by artificial heat	02
Licence to manufacture other saline substances	02

(xiii) provide for the detention of goods, plant, machinery or material, for the purpose of exacting the duty, the procedure in connection with the confiscation, otherwise than under section 10 or section 28, of goods in respect of which breaches of the Act or rules have been committed, and the disposal of goods so detained or confiscated;

(xiv) authorise and regulate the inspection of factories and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale or transport of salt, and so far as such inspection or search is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods;

(xv) authorise and regulate the composition of offences against, or liabilities incurred under this Act or the rules made thereunder;

(xvi) provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India ¹²[including interest thereon];

¹³[***]

¹⁴[(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods;]

¹⁵[(xviaa) provide for credit of service tax leviable under Chapter V of the Finance Act, 1994 (32 of 1994), paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods;]

¹⁶[(xvib) provide for the giving of credit of sums of money with respect to raw materials used in the manufacture of excisable goods;]

¹⁷[(xvic) provide for charging and payment of interest as the case may be, on credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods where such credit is varied subsequently;]

(xvii) exempt any goods from the whole or any part of the duty imposed by this Act;

¹⁸[(xviia) provide incentives for increased production or manufacture of any goods by way of remission of, or any concession with respect to, duty payable under this Act;]

(xviii) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of the Central Government, or of any factory in which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(xix) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area;

(xx) authorise the ¹⁹[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] or ²⁰[Commissioners of Central Excise] appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section;

²¹[(xxi) provide for the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or of any rule made thereunder;]

²²[(xxii) provide for the charging of fees for the examination of excisable goods intended for export out of India and for rendering any other service by a Central Excise Officer under this Act or the rules made thereunder.]

²³[(xxiii) specify the ²⁴[form and manner] in which application for refund shall be made under section 11B;

(xxiv) provide for the manner in which money is to be credited to the Fund;

(xxv) provide for the manner in which the Fund shall be utilised for the welfare of the consumers;

(xxvi) specify the form in which the account and records relating to the Fund shall be maintained;]

²⁵[(xxvii) specify the persons who shall get themselves registered under section 6 and the manner of their registration.]

²⁶[(xxviii) provide for the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods on an appointed date and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods on and from such date.]

²⁷[(2A) The power to make rules conferred by clause (xvi) of sub-section (2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs.]

(3) In making rules under this section, the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding ²⁸[five thousand rupees].

²⁹[(4) Notwithstanding anything contained in sub-section (3), and without prejudice to the provisions of section 9, in making rules under this section, the Central Government may provide that if any manufacturer, producer or licensee of a warehouse—

(a) removes any excisable goods in contravention of the provisions of any such rule, or

(b) does not account for all such goods manufactured, produced or stored by him, or

(c) engages in the manufacture, production or storage of such goods without having applied for the ³⁰[registration as] required under section 6, or

³¹[(d) contravenes the provisions of any such rule with intent to evade payment of duty, then all such goods shall be liable to confiscation and the manufacturer, producer or licensee shall be liable to a penalty not exceeding the duty leviable on such goods or ³²[two thousand rupees], whichever is greater.]

³³[(5) Notwithstanding anything contained in sub-section (3), the Central Government may make rules to provide for the imposition upon any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder, a penalty ³⁴[not exceeding the duty leviable on such goods or ³⁵[two thousand rupees], whichever is greater].]

— — — —

* For the period commencing on and from the 1st day of March, 1983 and ending with the 28th day of February, 1987, sub-section (1) of section 37 shall stand substituted and shall be deemed to have effect as if for the said sub-section, the following sub-section had been so substituted, namely:—

“(1) The Central Government may make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.”.

Note.—Amendment made to sub-section (1) shall be in addition to, and not in derogation of, the provisions of section 4.

Vide The Central Excise Laws (Amendment and Validation) Ordinance, 2005 (1 of 2005), sec. 2 (w.e.f. 25-1-2005).

1. Ins. by Act 22 of 1973, sec. 3 (w.e.f. 1-9-1973).

2. Clause (i) re-numbered as clause (ib) by Act 22 of 1973, sec. 3 (w.e.f. 1-9-1973).

3. Ins. by Act 27 of 1999, sec. 131 (w.e.f. 11-5-1999).

- 4. Ins. by Act 25 of 1978, sec. 25 (w.e.f. 1-7-1978).**
- 5. Ins. by Act 23 of 2004, sec. 85 (w.e.f. 10-9-2004).**
- 6. Certain words omitted by Act 41 of 1954, sec. 2 and Sch. (w.e.f. 8-10-1954).**
- 7. Subs. by Act 25 of 1950, sec. 11 and Sch. IV, for "the States".**
- 8. Subs. by Act 18 of 1992, sec. 113, for "licensed" (w.e.f. 4-5-1992).**
- 9. Subs. by Act 18 of 1992, sec. 113, for "manufactured under licence" (w.e.f. 4-5-1992).**
- 10. Subs. by Act 25 of 1950, sec. 11 and Sch. IV, for "the States".**
- 11. Subs. by Act 18 of 1992, sec. 113, for "licences" (w.e.f. 4-5-1992).**
- 12. Ins. by Act 22 of 1995, sec. 78 (w.e.f. 26-5-1995).**
- 13. Proviso omitted by Act 49 of 1957, sec. 2 (w.e.f. 20-12-1957).**
- 14. Ins. by Act 23 of 1986, sec. 51 (w.e.f. 13-5-1987).**
- 15. Ins. by Act 23 of 2004, sec. 85 (w.e.f. 10-9-2004).**
- 16. Ins. by Act 11 of 1987, sec. 94 (w.e.f. 12-5-1987).**
- 17. Ins. by Act 22 of 1995, sec. 78 (w.e.f. 26-5-1995).**
- 18. Ins. by Act 14 of 1982, sec. 48 (w.e.f. 11-5-1982).**
- 19. Subs. by Act 54 of 1963, sec. 5, for "Central Board of Revenue" (w.e.f. 1-1-1964).**
- 20. Subs. by Act 22 of 1995, sec. 70, for "Collectors of Central Excise" (w.e.f. 26-5-1995).**
- 21. Ins. by Act 36 of 1973, sec. 24 (w.e.f. 1-9-1973).**
- 22. Ins. by Act 79 of 1985, sec. 6 (w.e.f. 27-12-1985).**
- 23. Ins. by Act 40 of 1991, sec. 8 (w.e.f. 20-9-1991).**
- 24. Ins. by Act 22 of 1995, sec. 78 (w.e.f. 26-5-1999).**
- 25. Ins. by Act 18 of 1992, sec. 113 (w.e.f. 4-5-1992).**
- 26. Ins. by Act 27 of 1999, sec. 131 (w.r.e.f. 16-3-1995).**
- 27. Ins. by Act 22 of 1995, sec. 78 (w.e.f. 26-5-1999).**
- 28. Subs. by Act 10 of 2000, sec. 108, for certain words (w.e.f. 12-5-2000).**
- 29. Ins. by Act 19 of 1968, sec. 38(1) (w.e.f. 11-5-1968).**
- 30. Subs. by Act 18 of 1992, sec. 113, for "licence" (w.e.f. 4-5-1992).**

31. Subs. by Act 10 of 2000, sec. 108, for certain words, (w.e.f. 12-5-2000).

32. Subs. by Act 22 of 2007, sec. 132(i), for "ten thousand rupees" (w.e.f. 11-5-2007

33. Ins. by Act 36 of 1973, sec. 24 (w.e.f. 1-9-1973).

34. Subs. by Act 10 of 2000, sec. 108, for certain words, (w.e.f. 12-5-2000).

35. Subs. by Act 22 of 2007, sec. 132(ii), for "ten thousand rupees" (w.e.f. 11-5-2007).

37A. DELEGATION OF POWERS.

¹[37A. Delegation of powers.—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 ²[a ³[Chief Commissioner of Central Excise] or a ⁴[Commissioner of Central Excise]] empowered in this behalf by the Central Government;

(b) any power exercisable by a ⁴[Commissioner of Central Excise] under this Act may be exercisable also by a ⁵[Joint Commissioner of Central Excise] or an ⁶[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] empowered in this behalf by the Central Government; and

(c) any power exercisable by a ⁷[Joint Commissioner of Central Excise] under this Act may be exercisable also by an ⁶[Assistant Commissioner of Central Excise] empowered in this behalf by the Central Government; and

(d) any power exercisable by an ⁶[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.]

1. Ins. by Act 25 of 1978, sec. 26 (w.e.f. 1-7-1978).

2. Subs. by Act 29 of 1988, sec. 14, for "a Collector of Central Excise" (w.e.f. 16-8-1988).

3. Subs. by Act 22 of 1995, sec. 70, for "Principal Collector of Central Excise" (w.e.f. 26-5-1995).

4. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise" (w.e.f. 26-5-1995).

5. Subs. by Act 27 of 1999, sec. 119(a), for "Deputy Commissioner of Central Excise" (w.e.f. 11-5-1999).

6. Subs. by Act 27 of 1999, sec. 119(a), for "Assistant Commissioner of Central Excise" (w.e.f. 11-5-1999). Earlier the words "Assistant Commissioner of Central Excise" were substituted by Act 22 of 1995, sec. 70, for "Assistant Collector of Central Excise" (w.e.f. 26-5-1995).

7. Subs. by Act 27 of 1999, sec. 119(a), for "Deputy Commissioner of Central Excise" (w.e.f. 11-5-1999). Earlier the words "Deputy Commissioner of Central Excise" were

substituted by Act 22 of 1995, sec. 70, for "Deputy Collector of Central Excise (w.e.f. 26-5-1995).

37B. INSTRUCTIONS TO CENTRAL EXCISE OFFICERS.

¹37B. INSTRUCTIONS TO CENTRAL EXCISE OFFICERS.

The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board :

Provided that no such orders, instructions or directions shall be issued –

(a) So as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) So as to interfere with the discretion of the ²Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

1. Ins. by Act 79 of 1985, sec.7 (w.e.f. 27-12-1985).

2. Subs. by Act 22 of 1995, sec. 70, for "Collector of Central Excise (Appeals)" (w.e.f. 26-5-1995).

37C. SERVICE OF DECISIONS, ORDERS, SUMMONS, ETC.

(1) Any decision or order passed or any summons or notices issued under this Act or the rules made there under, shall be served, –

(a) By tendering the decision, order, summons or notice, or sending it by registered post with acknowledgement due, to the person for whom it is intended or his authorised agent, if any;

(b) If the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) If the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made there under, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1).

37D. ROUNDING OFF OF DUTY, ETC.

¹37D. ROUNDING OFF OF DUTY, ETC.

The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

1. Ins. by Act 12 of 1990, sec. 65 (w.e.f. 31-5-1990).

38. PUBLICATION OF RULES AND NOTIFICATIONS AND LAYING OF RULES BEFORE PARLIAMENT.

¹[38. Publication of rules and notifications and laying of rules before Parliament.—(1) All rules made and notifications issued under this Act shall be published in the Official Gazette.

²[(2) Every rule made under the Act, every notification issued under ³[section 3A, section 4A,] sub-section (1) of section 5A, and section 11C and every order made under sub-section (2) of section 5A, other than an order relating to goods of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or order, or both Houses agree that the rule should not be made or notification or order should not be issued or made, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.]]

1. Subs. by Act 22 of 1973, sec. 4, for section 38 (w.e.f. 1-9-1973).

2. Subs. by Act 22 of 1995, sec. 79, for sub-section (2) (w.e.f. 26-5-1995). Earlier sub-section (2) was substituted by Act 29 of 1988, sec. 15, (w.e.f. 16-8-1988).

3. Ins. by Act 26 of 1997, sec. 84 (w.e.f. 14-5-1997).

39 . REPEAL OF ENACTMENTS.

[Repealed by the Repealing and Amending Act, 1947 (2 of 1948) s. 2 and Sch.]

40. PROTECTION OF ACTION TAKEN UNDER THE ACT.

¹40. PROTECTION OF ACTION TAKEN UNDER THE ACT.

(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made there under.

(2) No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule made there under, without giving the

Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause.

1. Subs. by Act 22 of 1973, sec. 5, for section 40 (w.e.f. 1-9-1973).

SCHEDULES

THE FIRST SCHEDULE –

The First Schedule.—[Rep. by the Central Excise Tariff Act, 1985 (5 of 1986), sec. 4 (w.e.f. 28-2-1986)].

THE SECOND SCHEDULE

(See sections 6 and 8)

PART A

Excisable goods specified for the purposes of section 6—

1. Tobacco
2. Betel-nuts When supplied by a curior to a wholesale dealer,
3. Coffee Whether directly or through a broker or commission agent.

PART B

Excisable goods specified for the purposes of section 8—

1. Tobacco.

THE THIRD SCHEDULE –

1[THE THIRD SCHEDULE

[See section 2(f)(iii)]

NOTES

1. In this Schedule, "heading", "sub-heading" and "tariff item" mean respectively a heading, sub-heading and, tariff item in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).
2. The rules for the interpretation of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, apply to the interpretation of this Schedule.

S.No	Heading, sub-heading	Description of goods

	or tariff item	
1	2	3
1	0402 91 10 or 0402 99 20	Concentrated (condensed) milk, whether sweetened or not put up in unit containers and ordinarily intended for sale
2	1702	Preparations of other sugar
3	1702	Sugar syrups not containing added flavouring or colouring matter, artificial honey whether or not mixed with natural honey; caramel
4	1704	Gums, whether or not sugar coated (including chewing gum, bubble gum and the like)
5	1704 90	All goods
6	1805 00 00 or 1806 10 00	Cocoa powder, whether or not containing added sugar or other sweetening matter
7	1806	Other food preparations containing cocoa
8	1806 90 10	Chocolates in any form, whether or not containing nuts, fruit, kernels or fruits including drinking chocolates
9	1901 20 00 or 1901 90	All goods
10	1902	All goods other than seviyan (Vermicelli)
11	1904	All goods
12	1905 31 00 or 1905 90 20	Biscuits, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power
13	1905 32 11 or 1905 32 90	Waffles and wafers, coated with chocolate or containing chocolate
14	1905 32 19 or 1905 32 90	All goods
15	2101 11 00 or 2101 12 00	Extracts, essences and concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee
16	2102	All goods
17	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
18	2106 90 20	Pan masala, only in retail packs containing ten grams or more per pack, other than the goods containing not more than 15% betel nut by weight and not containing tobacco in any proportion
19	2106 90 30	Betel nuts powder known as "Supari"
20	2106 90 11	Sharbat
21	2106 10 00, 2106	Edible preparations (excluding "Prasad or prasadam"), not elsewhere specified or included, bearing a brand name

	90 19, 2106 90 40, 2106 90 50, 2106 90 60, 2106 90 70, 2106 90 80, 2106 90 91, 2106 90 99	
22	2201	Waters, including natural or artificial mineral waters (excluding Aerated waters), bearing a brand name
23	2201 10 20	Aerated waters
24	2201 10 10	Aerated waters
25	2201 10 90	Waters, including mineral waters, bearing a brand name
26	2209	Vinegar and substitutes for vinegar obtained from acetic acid
27	2403 99 10, 2403 99 20, 2403 99 30	Chewing tobacco and preparations containing chewing tobacco
28	2403 99 90	Pan masala containing tobacco
29	2523 21 00	White cement, whether or not artificially coloured and whether or not with rapid hardening properties
1[29A.	252329	All Goods]
30	2710	Lubricating oils and lubricating preparations
31	3004	(i) Patent or proprietary medicaments, other than those medicaments which are exclusively ayurvedic, Unani, Siddha, Homoeopathic or Biochemic; (ii) Medicaments (other than patent or proprietary) other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homoeopathic or Biochemic systems. Explanation.—For the purposes of this heading, "Patent or proprietary medicaments" means any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia, Formulary or other publications, namely:—(a) the Indian Pharmacopoeia; (b) the International Pharmacopoeia; (c) the National Formulary of India; (d) the British Pharmacopoeia; (e) the British Pharmaceutical Codex; (f) the British Veterinary Codex; (g) the United States Pharmacopoeia; (h) the National Formulary of the U.S.A.; (i) the Dental Formulary of the U.S.A.; and (j) the State Pharmacopoeia of the U.S.S.R., or which is a brand name, that is, a name or a

		registered trade mark under the Trade Marks Act, 1999 (47 of 1999), or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicine for the purpose of indicating or so as to indicate a connection in the course of trade between the medicine and some person, having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identify of that person.
32	3204 20 or 3204 90 00	Synthetic organic products of a kind used as florescent brightening agents or as a uminophores
33	3206	All goods other than pigments and inorganic products of a kind used as luminophores
34	2201 10 10	All goods
35	2201 10 10	Dyes and other colouring matter put up in forms or small packing of kind used for domestic or laboratory purposes
36	(i) 3213(ii) 3214	All goodsAll goods excluding primers (heading 3208), varnishes (heading 3209)
37	(i) 3303 or 3304(ii) or 3305	Perfumes and toilet waters, not containing the substances specified in Note 1(d) to this Chapter.All goods
38	3306	Toothpaste
39	3307	All goods, not containing the substances specified in Note 1(d) to this Chapter
40	3401	Soaps in any form other than the following: (i) soap, other than for toilet use, whether or not containing medicament or disinfectant; (ii) soap, in or in relation to the manufacture of which no process has been carried on with the aid of power or of steam; and (iii) laundry soaps produced by a factory owned by the Khadi and Village Industries Commission or any organisation approved by the said Commission for the purpose of manufacture of such soaps.
41	(i) 3401(ii) 3402	Organic surface-active products and preparations for use as soap in the form of bars, cakes, moulded pieces of shapes(ii) All goods other than sulphonated castor oil, fish oil or sperm oil
42	3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, antirust or anti-corrosion preparations and mould release preparations based on lubricants)
43	3405	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, non-wovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading No. 3404
44	3506	Prepared glues and other prepared adhesives, not elsewhere specified or included
45	3702	All goods other than for X-ray and cinematograph films, unexposed
46	3808	Insecticides, fungicides, herbicides, weedicides and pesticides
47	3808	Disinfectants and similar products
47A	3808 9340	Plant growth regulators
48	3814 00 10	Thinners

49	3819	Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing or containing less than 70% by weight of petroleum oils obtained from bituminous minerals
50	3820 20 00	Anti-freezing preparations and prepared de-icing fluids
51	3824 or 3825	Stencil correctors and other correcting fluids, ink removers put up in packings for retail sale
52	3919	Self-adhesive tapes of plastics
53	3923 or 3924	Insulated ware
54	4816	Carbon paper, self-copy paper, duplicator stencils of paper
55	4818	Cleansing or facial tissues, handkerchiefs and towels of paper pulp, paper cellulose wadding or webs of cellulose fibres
56	6401 to 6405	Footwear
57	6506 10	Safety headgear
58	6907	Vitrified tiles, whether polished or not
59	6908	Glazed tiles
60	7321	Cooking appliances and plate warmers
61	7323	Pressure cookers
62	7324	Sanitary ware of iron or steel

1. Ins. by the Finance Act, 2007

1	2	3
63	7418	Sanitary ware of copper
64	7615 19 10	Pressure cookers
65	8212	Razor and razor blades (including razor blade blanks in strips)
66	8305	Staples in strips, paper clips of base metal
67	8414	Electric fans
68	8415	Window room air-conditioners and split airconditioners of capacity up to 3 tonnes
69	8418	Refrigerators
70	8421	Water filters and water purifiers, of a kind used for domestic purposes
71	8422	Dish washing machines
71A	8443 3100 or 844332	Printer, whether or not combined with the functions of copying or facsimile transmission
71B	84433260 or 84433970	Facsimile machines
71C	84439951	Ink cartridges, with print head assembly]
72	8450	Household or laundry type washing machines, including machines which both wash and dry
73	8469	Typewriters, other than braille typewriters
74	8470	Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions
74A	847130	All goods]
74B	847160	All goods]
75	8472	Stapling machines (Staplers)

76	8506	Primary cells and primary batteries
76A	8508	Vacuum Cleaners with self contained electric motor]
77	8509	4[Electro-mechanical domestic appliances with self contained electric motor, other than vacuum cleaners of heading 8508]
78	8510	Shavers, hair clippers and hair-removing appliances, with self-contained electric motor
79	8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 8512
80	8516	Electric instantaneous or storage water heaters and immersion heaters, electric space heating apparatus and soil heating apparatus, electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing iron; other electro-thermic appliances of a kind used for domestic purposes

1. Subs. by the Finance Act, 2007, sec. 133 and Sch. IV, for S. No. 71A. Earlier S. No. 71A was inserted by Act 21 of 2006, sec. 66 and Sch. V w.e.f. 1-1-2007). S. No. 71A, before substitution by the Finance Act, 2007, stood as under: "71A. 8443 Fascimile machines".

2. Ins. by the Finance Act, 2007.

3. Ins. by Act 21 of 2006, sec. 66 and Sch. V. (w.e.f. 1-1-2007).

4. Subs. by Act 21 of 2006, for "Electro-mechanical domestic appliances with self-contained electric motor" (w.e.f. 1-1-2007).

1	2	3
81	8517	Telephone sets including telephones with cordless handsets; video phones; 1[***]
81A	85176230	Modems (modulators-demodulators)
81B	85176960	Set top boxes for gaining access to internet]
82	3[8519]	All goods
83	8521	All goods
84	8523	4[Unrecorded audio cassettes; recorded or unrecorded video cassettes; recorded or unrecorded magnetic discs]
85	5[***]	5[***]
86	6[***]	6[***]
87	7[***]	7[***]
88	8[***]	8[***]
89	8525 or 8517	Cellular or mobile phones
89A	8527	Pagers]
90	8527	Radio sets including transistor sets, having the facility of receiving radio signals and converting the same into audio output with no other additional facility like sound recording or reproducing or clock in the same housing or attached to it
91	8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock
92A	8528	Monitors of a kind solely or principally used in an automatic data processing machine

92B	85287100	Set top boxes for television sets]
93	¹⁰ [8536	All goods

1. Words "Facsimile machines" omitted by Act 21 of 2006, sec. 66 (w.e.f. 1-1-2007).

2. Ins. by the Finance Act, 2007.

3. Subs by the Finance Act, 2007, for "8519 or 8520".

4. Subs. by Act 21 of 2006, sec. 66 for "Unrecorded audio cassette" (w.e.f. 1-1-2007).

5. Figures and words "8523 Video cassettes" omitted by Act 21 of 2006, sec. 66 (w.e.f. 1-1-2007).

6. Figures and words "8523 magnetic discs" omitted by Act 21 of 2006, sec. 66 (w.e.f. 1-1-2007).

7. Figures and words "8524 Video cassettes" omitted by Act 21 of 2006, sec. 66 (w.e.f. 1-1-2007).

8. Figures and words "8524 Magnetic discs" omitted by Act 21 of 2006, sec. 66 (w.e.f. 1-1-2007).

9. Subs. by Act 21 of 2006, sec. 66 (w.e.f. 1-1-2007). Before substitution, Sr. No. 89 stood as: "89. 8525 Pagers. Cellular or mobile phones".

10. Subs by the Finance Act, 2007, for "8536".

94	8539	Electric filament or discharge lamps, including sealed beam lamp units and ultra-violet or infra-red lamps; arc lamps
95	9006	All goods]
96	9101 or 9102	Stapling machines (Staplers)
97	9103 or 9105	Clocks
97A	96032100	Toothbrush]
98	9612	All goods]
99	9617	Vacuum flasks
100	Any heading	Parts, components and assemblies of automobiles

1. Ins. by the Finance Act, 2007.

2. Ins. by Act 21 of 2006, sec. 66 (w.e.f. 1-6-2006).

3. S. No. 101 omitted by the Finance Act, 2007. S. No. 101, before omission, stood as under: "101. 3808 30 40 Plant-growth regulator".

4. S. No. 102 omitted by the Finance Act, 2007. S. No. 102, before omission, stood as under: "102. 9603 21 00 Toothbrush".
