

CHAPTER IV
INDIRECT TAXES
Customs

- Amendment of section 2. **35.** In section 2 of the Customs Act, 1962 (hereinafter referred to as the Customs Act), for clause (2), the following clause shall be substituted, namely:— 5 52 of 1962.
- “(2) “assessment” includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;”.
- Amendment of section 3. **36.** In section 3 of the Customs Act, in clause (e), the words “or Deputy Commissioner of Customs” shall be omitted.
- Substitution of new section for section 17. Assessment of duty. **37.** For section 17 of the Customs Act, the following section shall be substituted, namely:— 10
- “17.(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
- (2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary. 15
- (3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker’s note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information. 20
- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
- (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be. 25
- (6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed. 35
- Explanation.*— For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.”. 40
- Amendment of section 18. **38.** In section 18 of the Customs Act,—
- (a) for sub-section (1), the following sub-section shall be substituted, namely:—
- “(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,—
- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or 45
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or 50
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed.”;

- 5 (b) in sub-section (2), in the opening portion, for the words “in accordance with the provisions of this Act”, the words “by the proper officer” shall be substituted.

39. In section 19 of the Customs Act, in the proviso, in clause (b), after the words “proper officer”, the words “or the evidence is available” shall be inserted. Amendment of section 19.

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

‘(1) Any person claiming refund of any duty or interest,—

(a) paid by him; or

(b) borne by him,

- 15 may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

20 Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

25 *Explanation.*— For the purposes of this sub-section, “the date of payment of duty or interest” in relation to a person, other than the importer, shall be construed as “the date of purchase of goods” by such person.

30 (1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:—

35 (a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

40 (c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof.’.

41. For section 28 of the Customs Act, the following section shall be substituted, namely:— Substitution of new section for section 28.

45 ‘28. (1) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,—

(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied 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;

50 (b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,—

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,— 15

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so 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. 20

(5) Where any duty has not been levied or has been short-levied or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing. 25 30

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion— 35

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (5). 40

(7) In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded. 45

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice. 50

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),—

- (a) within six months from the date of notice in respect of cases falling under clause (a) of sub-section (1);
- (b) within one year from the date of notice in respect of cases falling under sub-section (4).

(10) Where an order determining the duty is passed by the proper officer under this section, the 55

person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

Explanation.— For the purposes of this section, “relevant date” means,—

5 (a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.’.

10 **42.** For sections 28AA and 28AB of the Customs Act, the following section shall be substituted, namely:—

Substitution of new section for sections 28AA and 28AB.

15 “28AA. (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

Interest on delayed payment of duty.

20 (2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

25 (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.”.

43. In section 46 of the Customs Act,—

Amendment of section 46.

(a) in sub-section (1),—

30 (i) after the words “by presenting”, the word “electronically” shall be inserted;

(ii) for the words “Provided that”, the following shall be substituted, namely:—

“Provided that the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

Provided further that”;

35 (b) in sub-section (4), the words “at the foot thereof” shall be omitted.

44. In section 50 of the Customs Act,—

Amendment of section 50.

(a) in sub-section (1),—

(i) after the words “thereof by presenting”, the word “electronically” shall be inserted;

(ii) the following proviso shall be inserted, namely:—

40 “Provided that the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner.”;

(b) in sub-section (2), the words “at the foot thereof” shall be omitted.

45 **45.** In section 75 of the Customs Act, in sub-section (1), in the second proviso, after the words “such drawback shall”, the words “, except under such circumstances or such conditions as the Central Government may, by rules, specify,” shall be inserted.

Amendment of section 75.

46. In section 110A of the Customs Act, for the words “adjudicating officer” and “Commissioner of Customs”, the words “adjudicating authority” shall be substituted.

Amendment of section 110A.

- Amendment of section 124. **47.** In section 124 of the Customs Act, for the words “a Deputy Commissioner of Customs”, the words “an Assistant Commissioner of Customs” shall be substituted.
- Insertion of new section 131BA. **48.** After section 131B of the Customs Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of October, 2010, namely:—
- Appeal not to be filed in certain cases. “131BA. (1) The Board may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Commissioner of Customs under the provisions of this Chapter. 5
- (2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Commissioner of Customs has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Commissioner of Customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law. 10
- (3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Commissioner of Customs pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Commissioner of Customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference. 15
- (4) The Appellate Tribunal or court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the Commissioner of Customs in pursuance of orders or instructions or directions issued under sub-section (1). 20
- (5) Every order or instruction or direction issued by the Board on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing appeal, application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.”. 25
- Insertion of new section 142A. **49.** After section 142 of the Customs Act, the following section shall be inserted, namely:—
- Liability under Act to be first charge. “142A. Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.”. 30 1 of 1956. 51 of 1993. 54 of 2002.
- Amendment of section 150. **50.** In section 150 of the Customs Act, in sub-section (2), the following proviso shall be inserted, namely:— 35
- “Provided that where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.”.
- Amendment of section 151A. **51.** In section 151A of the Customs Act, after the words “levy of duty thereon”, the words “or for the implementation of any other provisions of this Act or of any other law for the time being in force, in so far as they relate to any prohibition, restriction or procedure for import or export of goods” shall be inserted. 40
- Amendment of section 157. **52.** In section 157 of the Customs Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:— 45
- “(d) the manner of conducting audit of the assessment of duty of the imported or export goods at the office of the proper officer or the premises of the importer or exporter, as the case may be.”.
- Amendment of notifications issued under section 25 of Customs Act. **53.** (1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 605(E), dated the 10th September, 2004, G.S.R.282(E), dated the 9th May, 2005, G.S.R.528(E), dated the 1st September, 2006, G.S.R.529(E), dated the 1st September, 2006, G.S.R.349(E), dated the 9th May, 2008 and G.S.R.878(E), dated the 24th December, 2008 issued under sub-section (1) of section 25 of the Customs Act shall stand amended and shall be deemed to have been amended in the manner specified against each of them in column (3) of the Second Schedule on and from the corresponding date mentioned in column (4) of that Schedule retrospectively, and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under 50 55

the said notifications shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done as if the notifications as amended by this sub-section had been in force at all material times.

- 5 (2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notifications referred to in the said sub-section with retrospective effect as if the Central Government had the power to amend the said notifications under sub-section (1) of section 25 of the Customs Act, retrospectively, at all material times.

10 *Explanation.*— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

15 **54.** Notwithstanding anything contained in sub-section (1) of section 25 of the Customs Act, the item and its description specified under column (1) in the Third Schedule shall be and shall be deemed to have been exempted as specified in the said column on and from the corresponding date specified in column (2) thereof.

Special provisions exempting duty of customs on certain imports of fresh garlic.

15 *Customs tariff*

51 of 1975.

55. In section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), in sub-section (2), in the proviso, in clause (a), for the words and figures “Standards of Weights and Measures Act, 1976”, the words and figures “Legal Metrology Act, 2009” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of March, 2011.

Amendment of section 3.

60 of 1976.

1 of 2010.

20 **56.** In section 9AA of the Customs Tariff Act, in sub-section (1), for the portion beginning with the words “Where an importer proves” and ending with the words “entitled to refund of such excess duty”, the following shall be substituted, namely:—

Amendment of section 9AA.

25 “Where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty”.

30 **57.** In the Customs Tariff Act,—

Amendment of First Schedule and Second Schedule.

(a) the First Schedule shall,—

(i) be amended in the manner specified in the Fourth Schedule;

(ii) also be amended in the manner specified in the Fifth Schedule with effect from the 1st day of January, 2012;

35 (b) the Second Schedule shall be amended in the manner specified in the Sixth Schedule.

58. (1) Notwithstanding anything contained in sub-section (1) of section 8B of Customs Tariff Act, safeguard duty at the rate, on the item specified under column (1) in the Seventh Schedule shall be and shall be deemed to have been imposed for the period specified in column (2) thereof.

Special provisions to impose final safeguard duty on Caustic Soda Lye during certain period.

40 (2) Nothing contained in sub-section (1) shall apply to imports of Caustic Soda Lye from countries notified as developing countries under clause (a) of sub-section (6) of section 8B of the said Act, other than the People's Republic of China, Indonesia, Qatar, Saudi Arabia and Thailand.