

## Customs Act, 1962

### Chapter 5 - Levy Of, and Exemption From, Customs Duties

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(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the<sup>1</sup>[Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

<sup>2</sup>[(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]

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1.Substituted by Act 51 of 1975, section 13, for "Indian Tariff Act, 1934 (32 of 1934)" (w.e.f. 2-8-1976).

2.Substituted by Act 30 of 19 63 , section 2, for sub-section (2) (w.e.f. 1-10-1963).

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#### Section 13 - Duty on pilfered goods

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If any imported goods are pilfered after unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

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#### Section 14 - Valuation of goods for purposes of assessment

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##### <sup>10</sup>[14. Valuation of goods .--

For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case:
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

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

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation.--For the purposes of this section--

(a) "rate of exchange" means the rate of exchange--

- (i) determined by the Board, or
- (ii) ascertained in such manner as the Board may direct,

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

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999(42 of 1999).]

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1. Substituted by Act 51 of 1975, section 13, for "Indian Tariff Act, 1934 (32 of 1934)" (w.e.f. 2-8-1976).

2. Brackets and letter "(a)" omitted by Act 27 of 1988, section 2 (w.e.f. 16-8-1988).

3. Substituted by Act 20 of 2002, section 118, for certain words (w.e.f. 11-5-2002).

4. Proviso inserted by Act 20 of 1966, section 2, (w.e.f. 31-8-1966) and substituted by Act 25 of 1978, section 3 (w.e.f. 1-7-1978).
5. Clause (b) omitted by Act 27 of 1988, section 2 (w.e.f. 16-8-1988).
6. Inserted by Act 27 of 1988, section 2 (w.e.f. 16-8-1988).
7. Substituted by Act 20 of 2002, section 118, for "Central Government" (w.e.f. 11-5-2002).
8. Inserted by Act 25 of 1978, section 3 (w.e.f. 1-7-1978).
9. Substituted by Act 20 of 2002, section 118, for clause (b) (w.e.f. 11-5-2002).
10. Substituted by the Finance Act, 2007, w.e.f. 10.10.2007. Prior to substitution, it read as under:-

"(1) For the purposes of the<sup>1</sup>[Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be--

<sup>2</sup>[\*\*\*] the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of<sup>3</sup>[ international trade, where--

(a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of the other,

and the price is the sole consideration for the sale or offer for sale ] :

<sup>4</sup>[ Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50;]

<sup>5</sup>[ \*\*\*]

<sup>6</sup>[(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.]

(2) Notwithstanding anything contained in sub-section (1), or<sup>6</sup>[sub-section (1A)] if the<sup>7</sup>[ Board] is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

<sup>8</sup>[(3) For the purposes of this section --

(a) "rate of exchange" means the rate of exchange --

(i) determined by the<sup>7</sup>[ Board], or

(ii) ascertained in such manner as the<sup>7</sup>[ Board] may direct,

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

<sup>9</sup>[(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m ) and clause (q ) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]"

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## Section 15 - Date for determination of rate of duty and tariff valuation of imported goods

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(1)<sup>1</sup>[The rate of duty<sup>2</sup>[\*\*\*]] and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, --

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which<sup>3</sup>[ a bill of entry for home consumption in respect of such goods is presented under that section ];

(c) in the case of any other goods, on the date of payment of duty :

<sup>4</sup>[ Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.

<sup>5</sup>[\*\*\*]

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1. Substituted by Act 20 of 1966, section 3, for "The rate of duty" (w.e.f. 31-8-1966).

2. The words ", rate of exchange" omitted by Act 25 of 1978, section 4 (w.e.f. 1-7-1978).

3. Substituted by Act 32 of 2003, section 106, for "the goods are actually removed from the warehouse" (w.e.f. 14-5-2003).

4. Substituted by Act 33 of 1996, section 59, for the proviso (w.e.f. 28-9-1996).

5. Sub-section (3) inserted by Act 20 of 1966, section 3 (w.e.f. 31-8-1966) and omitted by Act 25 of 1978, section 4 (w.e.f. 1-7-1978).

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## Section 16 - Date for determination of rate of duty and tariff valuation of export goods

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<sup>1</sup>[(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, --

( a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;

( b) in the case of any other goods, on the date of payment of duty.

(2) The provisions of this section shall not apply to baggage and goods exported by post.

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1. Substituted by Act 23 of 1986, section 50, for sub-section (1) (w.e.f. 13-5-1986).

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## Section 17 - Assessment of duty

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(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, 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 it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

<sup>1</sup>[(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be.]

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1. Inserted by the Taxation Laws ( Amendment ) Act, 2006.

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## Section 18 - Provisional assessment of duty

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(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in section 46 --

( a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be ; or

( b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon ; or

( c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty ;

the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, 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 finally assessed and the duty provisionally assessed.

(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then --

( a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of<sup>1</sup>[ the duty finally assessed] the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be ;

( b) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

<sup>2</sup>[(3)The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to-

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.]

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1. Substituted by Act 56 of 1974, section 3 and Second Schedule, for "the finally assessed" (w.e.f. 20-12-1974).

2. Inserted by the Taxation Laws (Amendment) Act, 2006.

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### **Section 19 - Determination of duty where goods consist of articles liable to different rates of duty**

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Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows :

(a) articles liable to duty with reference to quantity shall be chargeable to that duty ;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates ;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b) :

Provided that,

(a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

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### **Section 20 - Re-importation of goods**

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#### **<sup>1</sup>[20. Re-importation of goods**

If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

<sup>2</sup>[\*\*\*]]

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1. Substituted by Act 32 of 1994, section 60, for section 20(w.e.f. 13-5-1994).

2. Provisos and Explanations omitted by Act 22 of 1995, section 53 (w.e.f. 26-5-1995).

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### **Section 21 - Goods derelict, wreck, etc.**

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All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

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## Section 22 - Abatement of duty on damaged or deteriorated goods

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- (1) Where it is shown to the satisfaction of the<sup>1</sup>[Assistant Commissioner of Customs or Deputy Commissioner of Customs] --
- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India ; or
  - (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent ; or
  - (c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent, such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).
- (2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.
- (3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner: --
- (a) the value of such goods may be ascertained by the proper officer, or
  - (b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods.

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1. Substituted by Act 22 of 1995, section 50 for "Assistant Collector of Customs," (w.e.f. 26-5-1995) and again Substituted by Act 27 of 1999, section 100, for "Assistant Commissioner of Customs" (w.e.f. 11-5-1999).

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## Section 23 - Remission of duty on lost, destroyed or abandoned goods

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(1)<sup>1</sup>[Without prejudice to the provisions of section 13, where it is shown] to the satisfaction of the<sup>2</sup>[Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost<sup>3</sup>[(otherwise than as a result of pilferage)] or destroyed, at any time before clearance for home consumption, the<sup>2</sup>[Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall remit the duty on such goods.

<sup>4</sup>(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.]

<sup>5</sup>[Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]

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1. Substituted by Act 11 of 1983, section 48, for "where it is shown" (w.e.f. 13-5-1983).

2. Substituted by Act 22 of 1995, section 50, for "Assistant Collector of Customs," (w.e.f. 26-5-1995) and again Substituted by Act 27 of 1999, section 100, for "Assistant Commissioner of Customs" (w.e.f. 11-5-1999).

3. Inserted by Act 11 of 1983, section 48 (w.e.f. 13-5-1983).

4. Substituted by Act 32 of 1994, section 60, for sub-section (2) (w.e.f. 13-5-1994).

5. Inserted by the Finance Act, 2006

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## Section 24 - Power to make rules for denaturing or mutilation of goods

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The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes ; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

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## Section 25 - Power to grant exemption from duty

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(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 clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

<sup>1</sup>(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 the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable. ]

<sup>2</sup>(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.]

<sup>3</sup>[ (3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs 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 goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

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

<sup>4</sup>[ (4) Every notification issued under sub-section (1)<sup>2</sup>[ 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 of the Board, New Delhi.

(5) Notwithstanding anything contained in sub-section (4), 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.]

<sup>5</sup>[ (6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees. ]

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1. Sub-section (2) substituted by Act 27 of 1999, section 102 (w.e.f. 11-5-1999) and again substituted by Act 32 of 2003, section 107 (w.e.f. 14-5-2003).

2. Inserted by Act 20 of 2002, section 119 (w.e.f. 11-5-2002).

3. Inserted by Act 11 of 1983, section 49 (w.e.f. 13-5-1983).

4. Inserted by Act 21 of 1998, section 99 (w.e.f. 1-8-1998).

5. Inserted by Act 32 of 2003, section 107 (w.e.f. 14-5-2003).

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## **Section 26 - Refund of export duty in certain cases**

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Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if--

(a) the goods are returned to such person otherwise than by way of resale ;

(b) the goods are re-imported within one year from the date of exportation ; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

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## **Section 26A - Refund of import duty in certain cases**

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<sup>1</sup>[(1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if--

(a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) the importer does not claim drawback under any other provisions of this Act; and

(d) (i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months:

Provided further that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(2) An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and in such manner as may be prescribed.

Explanation.-- For the purposes of this sub-section, relevant date means,--

(a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;

(b) in cases where the title to the goods is relinquished, the date of such relinquishment;

(c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(3) No refund under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(4) The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund under sub-section (1) may be allowed.]

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1. Inserted by the Finance (No. 2) Act, 2009.

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## Section 27 - Claim for refund of duty

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(1) Any person claiming refund of any duty and interest, if any, paid on such duty-

(i) paid by him in pursuance of an order of assessment ; or

(ii) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or Deputy Commissioner of Customs-

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

(b) in any other case, before the expiry of six months,

from the date of payment of duty and interest, if any, paid on such duty, in such form and manner as may be specified in the regulations made in this behalf and the application 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 and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on 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, such application shall be deemed to have been made under this sub-section and the same shall be dealt with in accordance with the provisions of sub-section (2) :

Provided further that the limitation of one year or six months, as the case may be, shall not apply where any duty and interest, if any, paid on such duty has been paid under protest :

Provided also that 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 or six months, as the case may be, shall be computed from the date of issue of such order.

<sup>3</sup>[Provided also that where the duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year or six months, as the case may be, shall be computed from the date of such judgment, decree, order or direction.]

Explanation I.-For the purposes of this sub-section, "the date of payment of duty and interest, if any, paid on such duty", in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

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

(2) If, on receipt of any such application, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty 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 and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or Deputy Commissioner of Customs 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) the duty and interest, if any, paid on such duty paid by the importer<sup>1</sup>[or the exporter, as the case may be], if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use ;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person ;
- (d) the export duty as specified in section 26 ;
- (e) drawback of duty payable under sections 74 and 75 ;
- (f) the duty and interest, if any, paid on such duty 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 and interest, if any, paid on such 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<sup>2</sup>[, the National Tax Tribunal] or any Court or in any other provision of this Act or the regulations 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.

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1. Inserted by the Finance Act, 2003 w.e.f. 14.05.2003.

2. Inserted by the National Tax Tribunal Act, 2005.

3. Inserted by the Finance Act, 2007.

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## Section 27A - Interest on delayed refunds

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If any duty ordered to be refunded under sub-section (2) of section 27 to an 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, not below five per cent and not exceeding thirty 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 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 27 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<sup>1</sup>[, the National Tax Tribunal] or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal <sup>1</sup>[, the National Tax Tribunal] or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

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1. Inserted by the National Tax Tribunal Act, 2005.

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## Section 28 - Notice for payment of duties, interest, etc

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### <sup>1</sup> [28. Notice for payment of duties, interest, etc.

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,--

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

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

from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part 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 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 misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted :

<sup>2</sup> [\*\*\*].

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 one year or six months or five years, as the case may be.

<sup>5</sup> [(1A) When 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 misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under the proviso to sub-section (1) by the proper officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 28AB 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) The proper officer, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), shall determine the amount of duty or interest 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.

<sup>5</sup> [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 135, 135A and 140, 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 proper officer shall determine the amount of duty or interest not being in excess of the amount partly due from such person.]

<sup>3</sup> [(2A) Where any notice has been served on a person under sub-section (1), the proper officer,--

(i) in case any duty has not been levied or has been short-levied, or the interest has not been paid 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, where it is possible to do so, shall determine the amount of such duty or the interest, within a period of one year; and

(ii) in any other case, where it is possible to do so, shall determine the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable which has not been paid, part 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 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, the person, chargeable with the duty or the interest, may pay the amount of duty or interest before service of notice on him under sub-section (1) in respect of the duty or the interest, as the case may be, and inform the proper 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 or the interest so paid:

Provided that the proper officer may determine the amount of short-payment of duty or interest, if any, which in his opinion has not been paid by such person and, then, the proper officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" or "six months" as the case may be, 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 the interest was not paid or was part paid or the duty or interest was 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 employee of the importer or exporter.

Explanation 2.-For the removal of doubts, it is hereby declared that the interest under section 28AB 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 proper officer, but for this sub-section.

(2C) The provisions of sub-section (2B) shall not apply to any case where the duty or the interest had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President<sup>4</sup> .]

(3) For the purposes of sub-section (1), the expression "relevant date" means,--

(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 the 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.]

1. Substituted by Act 22 of 1995, section 56, for section 28 (w.e.f. 26-5-1995).
2. Second and third provisos inserted by Act 10 of 2000, section 79 (w.e.f. 12-5-2000) and omitted by Act 32 of 2003, section 109 (w.e.f. 14-5-2003).
3. Inserted by Act 14 of 2001, section 103 (w.e.f. 11-5-2001).
4. Ed. The Finance Bill, 2001 received the assent of the President on 11th May, 2001.
5. Inserted by the Taxation Laws (Amendment) Act, 2006.

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## Section 28A - Power not to recover duties not levied or short-levied as a result of general practice

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### <sup>1</sup>[28A. Power not to recover duties not levied or short-levied as a result of general practice

<sup>2</sup>[(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 (including non-levy thereof) on any goods imported into, or exported from India; and

(b) that such goods were, or are, liable --

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

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

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

<sup>3</sup>[(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty 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 27 :

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<sup>4</sup>[ Assistant Commissioner of Customs or Deputy Commissioner of Customs], in the form referred to in sub-section (1) of section 27, before the expiry of six months from the date of issue of the said notification.]

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1. Inserted by Act 25 of 1978, section 7 (w.e.f. 1-7-1978).

2. Section 28A re-numbered as sub-section (1), thereof by Act 29 of 1988, section 3 (w.e.f. 1-7-1988).

3. Sub-section (2) inserted by Act 29 of 1988, section 3 (w.e.f. 1-7-1988) and substituted by Act 40 of 1991, section 11 (w.e.f. 20-9-1991).

4. Substituted by Act 22 of 1995, section 50, for "Assistant Collector of Customs" (w.e.f. 26-5-1995) and again Substituted by Act 27 of 1999, section 100, for "Assistant Commissioner of Customs" (w.e.f. 11-5-1999).

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## Section 28AA - Interest on delayed payment of duty

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(1) Subject to the provisions contained in section 28AB, where a person, chargeable with the duty determined under sub-section (2) of section 28, fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest at such rate not below 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 28 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<sup>1</sup>], the 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<sup>1</sup>], the 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.

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

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1. Inserted by the National Tax Tribunal Act, 2005.

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### **Section 28AB - Interest on delayed payment of duty in special cases**

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(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B), of section 28, shall, in addition to the duty, be liable to pay interest at such rate not below 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 day 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 28, 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 151A, 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.

(2) The provisions of sub-section (1) shall not apply to cases where the duty or interest 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<sup>1</sup>[, the 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<sup>1</sup>[, the 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.

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1. Inserted by the National Tax Tribunal Act, 2005.

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### **Section 28B - Duties collected from the buyer to be deposited with the Central Government**

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(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal<sup>1</sup>[

the National Tax Tribunal] or any Court or in any other provision of this Act or the regulations made thereunder, every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

<sup>2</sup>[(1A) Every person who has collected any amount in excess of the duty assessed or determined or paid on

any goods or has collected any amount as representing duty of customs on any goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.]

(2) Where any amount is required to be paid to the credit of the Central Government under <sup>3</sup>[sub-section

(1) or sub-section (1A), as the case may be,] and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.

(3) The proper 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 <sup>3</sup>[sub-section (1) or sub-section (1A) or

sub-section (3), as the case may be,] shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in <sup>3</sup>[sub-section (1) or sub-section (1A) or sub-section (3), as the case may be].

(5) Where any surplus is left after the adjustment made 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 27 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 Customs for the refund of such surplus amount.

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1. Inserted by the National Tax Tribunal Act, 2005.

2. Inserted by the Finance Act, 2008.

3. Substituted by the Finance act, 2008 for the word, brackets and figure sub-section (1)" and sub-section (1) or sub-section (3).

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## **Section 28BA - Provisional attachment to protect revenue in certain cases**

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<sup>1</sup>[Section 28BA - Provisional attachment to protect revenue in certain cases

(1) Where, during the pendency of any proceeding under section 28 or section 28B, the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (2) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Customs may, for reasons to be recorded in writings extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement of case under section 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 127C is made shall be excluded from the period specified in the preceding proviso.]

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1. Inserted by the Taxation Laws ( Amendment ) Act, 2006.

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