

Finance Act 2008

Chapter IV - Indirect Taxes

Section 68 - Amendment of Section 28B

68. Amendment of Section 28B.--

In section 28B of the Customs Act, 1962(52 to 1962) (hereinafter referred to as the Customs Act),--

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

(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.;

(ii) in sub-section (2), for the word, brackets and figure sub-section (1), the words, brackets, figures and letter sub-section (1) or sub-section (1A), as the case may be, shall be substituted;

(iii) in sub-section (4),--

(a) for the words, brackets and figures sub-section (1) or sub-section (3), the words, brackets, figures and letter sub-section (1) or sub-section (1A) or sub-section (3), as the case may be, shall be substituted;

(b) for the word, brackets and figure sub-section (1), the words, brackets, figures and letter sub-section (1) and sub-section (1A) shall be substituted.

Section 69 - Amendment of Section 108

In section 108 of the Customs Act, in sub-section (1), the words duly empowered by the Central Government in this behalf, shall be omitted and shall be deemed to have been omitted with effect from the 13th July, 2006.

Section 70 - Amendment of Section 117

In section 117 of the Customs Act, for the words ten thousand rupees, the words one lakh rupees shall be substituted.

Section 71 - Amendment of Section 129A

In section 129A of the Customs Act, in sub-section (2), the following proviso and Explanation shall be inserted at the end, namely:--

Provided that where the Committee of Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

Explanation.--For the purposes of this sub-section, jurisdictional Chief Commissioner means the Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter..

Section 72 - Amendment of Section 129D

In section 129D of the Customs Act,--

(i) in sub-section (1), the following proviso shall be inserted at the end, namely:--

Provided that where the Committee of Chief Commissioners of Customs differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Customs, it shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the decision or order

passed by the Commissioner of Customs, if is of the opinion that the decision or order passed by the Commissioner of Customs is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:--

(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority..

Section 73 - Insertion of new Section 129EE

After section 129E of the Customs Act, the following section shall be inserted, namely:--

Interest on delayed refund of amount deposit under the Proviso to Section 129E

129EE. Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as appellate authority), under the first proviso to section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 27A after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount..

Section 74 - Amendment of Section 141

Section 141 of the Customs Act shall be numbered as sub-section (1) thereof and, after subsection (1) as so numbered, the following sub-section shall be inserted, namely:--

(2) The imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed..

Section 75 - Amendment of Section 158

In section 158 of the Customs Act, in sub-section (2), for clause (ii), the following clause shall be substituted, namely:--

(ii) that any person who contravenes any provision of a rule or regulation or abets such contravention or who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees..

Section 76 - Amendment of Notification Issued Under Sub Section (1) of Section 25 of the Customs Act, 1962

In the notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 277(E), dated the 1st April, 2003 which was issued in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, the condition No. 7, as inserted vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 673(E), dated the 17th November, 2005 which provides that the importer shall be entitled to avail of the drawback or CENVAT credit of additional duty leviable under section 3 of the said Customs Tariff Act against the amount debited in the said certificate, shall be deemed to have, and always to have for all purposes validly, come into force on and from the 4th day of June, 2005 at all material times.

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.

Section 77 - Customs Tariff

Section 77 - Amendment of Act 51 of 1975

In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act),--

(i) in section 9A, for sub-section (2A), the following sub-section shall be substituted, namely:

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), shall not apply to articles imported by a hundred per

cent export-oriented undertaking unless,

- (i) specifically made applicable in such notifications or such impositions, as the case may be; or
- (ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Explanation.-For the purposes of this sub-section, the expression hundred per cent export-oriented undertaking shall have the meaning assigned to it in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944)

- (ii) the First Schedule shall be amended in the manner specified in the Second Schedule;
- (iii) the Second Schedule shall be amended in the manner specified in the Third Schedule.

Section 78 to 88 - Excise

Section 78 - Amendment of section 2

In section 2 of the Central Excise Act, 1944(1 of 1944) (hereinafter referred to as the Central Excise Act), after clause (d), the following Explanation shall be inserted, namely:--

Explanation.-- For the purposes of this clause, goods includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable..

Section 79 - Insertion of new section 3A

After section 3 of the Central Excise Act, the following section shall be inserted, namely:--

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,--

(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity shall be deemed to be the annual production of such goods by such factory; or

(b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and

(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant 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 during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis having regard to such alteration or modification.

(3) The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, 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 fifteen days or more, the 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) The provisions of this section shall not apply to goods produced or manufactured, by a hundred per cent. export-

oriented undertaking and brought to any other place 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 the First Schedule and the Second Schedule 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 expression hundred per cent. export-oriented undertaking shall have the meaning assigned to it in section 3..

Section 80 - Amendment of section 11B

In section 11B of the Central Excise Act,--

(i) in sub-section (1),--

(a) for the words duty of excise, wherever they occur, the words duty of excise and interest, if any, paid on such duty shall be substituted;

(b) for the word duty, wherever it occurs, the words duty and interest, if any, paid on such duty shall be substituted;

(ii) in sub-section (2), except in clauses (a) and (c) of the first proviso,--

(a) for the words duty of excise, wherever they occur, the words duty of excise and interest, if any, paid on such duty shall be substituted;

(b) for the word duty, wherever it occurs, the words duty and interest, if any, paid on such duty shall be substituted.

Section 81 - Amendment of section 11D

In section 11D of the Central Excise Act,--

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

(1A) Every person, who has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable 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.;

(ii) in sub-section (2), for the word, brackets and figure sub-section (1), the words, brackets, figures and letter sub-section (1) or sub-section (1A), as the case may be, shall be substituted;

(iii) in sub-section (4),--

(a) for the words, brackets and figures sub-section (1) or sub-section (3), the words, brackets, figures and letter sub-section (1) or sub-section (1A) or sub-section (3), as the case may be, shall be substituted;

(b) for the word, brackets and figure sub-section (1), the words, brackets, figures and letter sub-section (1) and sub-section (1A) shall be substituted.

Section 82 - Amendment of section 11DD

In section 11DD of the Central Excise Act, in sub-section (1), for the words buyer of such goods, the person, the words buyer of such goods or from any person or where a person has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty, the person shall be substituted.

Section 83 - Amendment of section 35B

In section 35B of the Central Excise Act, in sub-section (2), the following proviso and Explanation shall be inserted at the end, namely:--

Provided that where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Central Excise who shall, after considering the facts of the

order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against such order.

Explanation.--For the purposes of this sub-section, jurisdictional Chief Commissioner means the Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter..

Section 84 - Amendment of section 35E

In section 35E of the Central Excise Act,--

(i) in sub-section (1), the following proviso shall be inserted at the end, namely:--

Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the decision or order, if is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:--

(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority..

Section 85 - Insertion of new section 35FF

After section 35F of the Central Excise Act, the following section shall be inserted, namely:--

"35FF. Interest on delayed refund of amount deposited under the proviso to section 35F- Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount..

Section 86 - Amendment of Central Excise Rules,1944

(1) In the Central Excise Rules, 1944, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, rule 12, as substituted by rule 2 of the Central Excise (Eleventh Amendment) Rules, 1994 published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue), number. G.S.R. 699(E), dated the 22nd September, 1994 shall stand amended and shall be deemed to have been amended retrospectively in the manner specified in column (2) of the Fourth Schedule on and from the corresponding date specified in column (3) of that Schedule against the rule specified in column (1) of that Schedule.

(2) 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, at any time during the period commencing on and from the 8th July, 1999 and ending with the 30th day of June, 2001 under the rule as amended by sub-section (1), shall be deemed to be and always to have been, for all the purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(3) Notwithstanding the supersession of the Central Excise Rules, 1944 referred to in sub-section (1), for the purposes of that sub-section, the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

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.

Section 87 - Amendment of Central Excise (No. 2) Rules, 2001

(1) In the Central Excise (No. 2) Rules, 2001, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, rule 18 thereof as published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue), number G.S.R. 444(E), dated the 21st June, 2001 shall stand amended and shall be deemed to have been amended retrospectively in the manner specified in column (2) of the Fifth Schedule on and from the corresponding date specified in column (3) of that Schedule against the rule specified in column (1) of that Schedule.

(2) 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, at any time during the period commencing on and from the 1st day of July, 2001 and ending with the 28th day of February, 2002 under the rule as amended by sub-section (1), shall be deemed to be and always to have been, for all the purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(3) Notwithstanding the supersession of the Central Excise (No. 2) Rules, 2001 referred to in subsection (1), for the purposes of that sub-section, the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

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.

Section 88 - Amendment of Central Excise Rules, 2002

(1) In the Central Excise Rules, 2002, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, rule 18 thereof as published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue), number G.S.R. 143(E), dated the 1st March, 2002 shall stand amended and shall be deemed to have been amended retrospectively in the manner specified in column (2) of the Sixth Schedule on and from the corresponding date specified in column (3) of that Schedule against the rule specified in column (1) of that Schedule.

(2) 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, at any time during the period commencing on and from the 1st day of March, 2002 and ending with the 7th day of December, 2006 under the rule as amended by sub-section (1), shall be deemed to be and always to have been, for all the purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(3) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

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.

Section 89 - Excise tariff

Section 89 - Amendment of act 5 of 1986

The First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act) shall be amended in the manner specified in the Seventh Schedule.
