Finance (No. 2) Act, 2004

Chapter 4 - Indirect Taxes

Section 66 - Amendment of Section 41

In section 41 of the Customs Act, 1962(52 of 1962) (hereinafter referred to as the Customs Act), in sub-section (1), the proviso shall be omitted.

Section 67 - Insertion of new Section 128A

After section 122 of the Customs Act, the following section shall be inserted, namely:--

"122A. Adjudication Procedure:

(1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding."

Section 68 - Amendment of Section 128

In section 128 of the Customs Act, after sub-section (1), the following sub-section shall be inserted, namely:--

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

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

Section 69 - Amendment of Section 129A

In section 129A of the Customs Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:--

"(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,--

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

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

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

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

(7) Every application made before the Appellate Tribunal --

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

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees;

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

Section 70 - Amendment of Section 129B

In section 129B of the Customs Act, after sub-section (1), the following sub-section shall be inserted, namely:--

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

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

Section 71 - Amendment of Section 137

In section 137 of the Customs Act, after sub-section (2), the following sub-section shall be inserted, namely:--

"(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be specified by rules.".

Section 72 - Amendment of Section 142

In section 142 of the Customs Act, in sub-section (1), the following proviso shall be inserted at the end, namely:--

"Provided that where the person (hereinafter referred to as predecessor), by whom any sum payable under this Act including the amount required to be paid to the credit of the Central Government under section 28B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the Commissioner of Customs, for the purposes of recovering the amount so payable by such predecessor at the time of such transfer or otherwise disposal or change.".

Section 73 - Amendment of Section 156

In section 156 of the Customs Act, in sub-section (2), after clause (g), the following clause shall be inserted, namely:--

"(h) the amount to be paid for compounding under sub-section (3) of section 137.".

Section 74 - Validation of certain actions taken by Central Excise Officers

(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 83/2004-Customs (N.T.), dated the 30th June, 2004, published in the Official Gazette vide No.G.S.R. 393(E), dated the 30th June, 2004 (hereinafter referred to as the said notification) shall, for the purposes of hundred per cent. export-oriented undertakings, be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 11th day of May, 1982 and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority--

(a) any action taken or anything done by a Central Excise Officer appointed by the said notification as an officer of customs to discharge the duties of an officer of customs in respect of hundred per cent. export-oriented undertakings, on and from the 11th day of May, 1982 to 30th day of June, 2004, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the appointment made by the said notification was in force at all material times;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority against the Central Government or the Central Excise Officer appointed as an officer of customs by the said notification for any action taken or anything done in good faith during the discharge of his duties as an officer of customs in respect of hundred per cent. export-oriented undertakings during the period on and from the 11th day of May, 1982 to 30th day of June, 2004, as if the appointment made by the said notification was in force at all material times;

(c) recovery made of any amount of duty or interest or penalty or fine or other charges by or under the order or direction of the Central Excise Officer appointed as an officer of customs by the said notification during the period on and from the 11th day of May, 1982 to 30th day of June, 2004 shall be deemed to be valid, and to have always been, for alt purposes, as validly and effectively, made as if the appointment made by the said notification was in force at all material times.

(2) For the purposes of sub-section (1), the Central Board of Excise and Customs shall have and shall be deemed to have always had the power to bring into force the said notification with retrospective effect as if the Central Board of Excise and Customs had the power to bring into force the said notification under section 4 of the Customs Act, 1962(52 of 1962), retrospectively, at all material times.

(3) For the purposes of this section, the designations of the officers of customs and the Central Excise Officers as existed before the commencement of the Finance Act, 1995(22 of 1995), shall be deemed to be the corresponding substituted designations as specified in the Tables respectively below section 50 and section 70 of the said Finance Act.

Explanation 1.--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 the said notification had not come retrospectively into force.

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

Section 75 to 78 - Customs Tariff

Section 75 - Amendment of Section 3

In section 3 of the Customs Tariff Act, 1975(51 of 1975) (hereinafter referred to as the Customs Tariff Act), in sub-section (2), in clause (ii), the following amendments shall be deemed to have been made on and from the 9th day of July, 2004, namely:--

(a) in sub-clause (d), the word "and", occuring at the end, shall be omitted;

(b) after sub-clause (d), the following sub-clause shall be inserted, namely:--

"(dd) the Education Cess on imported goods referred to in section 94 of the Finance (No. 2) Act, 2004; and".

Section 76 - Amendment of Section 9A

In section 9A of the Customs Tariff Act, in sub-section (5), for the words "relating to non-levy, short-levy, refunds and appeals", the words "relating to, the date for determination of rate of duty, non-levy, short-levy, refunds, interest, appeals, offences and penalties" shall be substituted.

Section 77 - Amendment of Section 9C

In section 9C of the Customs Tariff Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, after sub-section (1), the following sub-sections shall be inserted, namely:--

"(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(1B) Every application made before the Appellate Tribunal,--

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.".

Section 78 - Amendment of First Schedule

In the First Schedule to the Customs Tariff Act,--

(i) in Chapter 11, in tariff items 1108 1200, 1108 1400, 1108 19 10 and 1108 19 90, for the entry in column (4) occurring against each of them, the entry "50%" shall be substituted;

(ii) in Chapter 19, in tariff item 1903 00 00, for the entry in column (4), the entry "50%" shall be substituted;

(iii) in Chapter 29, in tariff item 2922 42 20, for the entry in column (2), the entry "--Monosodium glutamate" shall be substituted;

(iv) in Chapter 35, in tariff items 3505 10 10 and 3505 10 90, for the entry in column (4) occurring against each of them, the entry "50%" shall be substituted.

Section 79 to 88 - Excise

Section 79 - Amendment of Section 9A

Section 9A of the Central Excise Act, 1944(1 of 1944) (hereinafter referred to as the Central Excise Act) shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:--

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

Section 80 - Amendment of Section 11

In section 11 of the Central Excise Act, the following proviso shall be inserted at the end, namely:-

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

Section 81 - Insertion of new Section 33A

After section 33 of the Central Excise Act, the following section shall be inserted, namely:--

"33A. Adjudication procedure:

(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.".

Section 82 - Amendment of Section 35

In section 35 of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:--

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

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

Section 83 - Amendment of Section 35B

In section 35B of the Central Excise Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:--

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

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

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

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

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

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

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

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees:

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

Section 84 - Amendment of Section 35C

In section 35C of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:--

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

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

Section 85 - Amendment of Section 37

In section 37 of the Central Excise Act, in sub-section (2),--

(a) after clause (ic), the following clause shall be inserted, namely:--

"(id) provide for the amount to be paid for compounding under sub-section (2) of section 9A;";

(b) after clause (xvia), the following clause shall be inserted, namely:--

"(xviaa) provide for credit of service tax leviable under Chapter V of the Finance Act, 1994(32 of 1994), paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods;".

Section 86 - Amendment of Third Schedule

In the Third Schedule to the Central Excise Act, against serial No. 91, in column (3), in the entry, the words "other than monochrome," shall be omitted.

Section 87 - Validation of certain actions taken by officers of customs

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(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 38/2001-Central Excise (N.T.), dated the 26th June, 2001, published in the Official Gazette vide No. G.S.R. 467(E), dated the 26th June, 2001, (hereinafter referred to as the principal notification), as amended by the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 32/2002-Central Excise (N.T.), dated the 17th September, 2002, published in the Official Gazette vide No. G.S.R. 655(E), dated the 17th September, 2002 Hereinafter referred to as the first amendment and the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 1/2003-Central Excise (N.T.), dated the 13th January, 2003, published in the Official Gazette vide No. GS.R. 27(E), dated the 13th January, 2003 (hereinafter referred to as the second amendment) shall, for the purposes of hundred per cent. export-oriented undertakings, be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 11th day of May, 1982 and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority--

(a) any action taken or anything done by an officer of customs invested with the powers of a Central Excise Officer to discharge the duties of the Central Excise Officer in respect of hundred percent, export-oriented undertakings, on and from the 11th day of May, 1982 to 13th day of January, 2003, by the first amendment and the second amendment to the principal notification, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority against the Central Government or an officer of customs invested with powers of the Central Excise Officer, by the first amendment and the second amendment to the principal notification, for any action taken or anything done in good faith during the discharge of his duties as the Central Excise Officer in respect of hundred per cent. export-oriented undertakings during the period on and from the 11th day of May, 1982 to 13th day of January, 2003, as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(c) recovery made of any amount of duty or interest or penalty or fine or other charges by or under the order or direction of an officer of customs invested with powers of the Central Excise Officer by the first amendment and the second amendment to the principal notification during the period on and from the 11th day of May, 1982 to 13th day of January, 2003 shall be deemed to be valid, and to have always been, for all purposes, as validly and effectively made as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times.

(2) For the purposes of sub-section (1), the Central Board of Excise and Customs shall have and shall be deemed to have always had the powers to bring into force the principal notification, the first amendment and the second amendment with retrospective effect as if the Central Board of Excise and Customs had the powers to bring into force the principal notification, the first amendment and the second amendment under clause (b) of section 2 of the Central Excise Act, 1944(1 of 1944), retrospectively, at all material times.

(3) For the purposes of this section, the designations of the officers of customs and the Central Excise Officers as existed before the commencement of the Finance Act, 1995(22 of 1995) shall be deemed to be the corresponding substituted designations as specified in the Tables respectively below section 50 and section 70 of the said Finance Act.

Explanation 1.--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 the principal notification as amended by the first amendment and the second amendment had not come retrospectively into force.

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

Section 88 - Amendment of the CENVAT Credit Rules, 2002

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(1) In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944(1 of 1944), in rule 3, in sub-rule (6), in clause (b), the Explanation shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule 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 the said Explanation shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as if the said Explanation as amended by this sub-section had been in force at all material times. .

(2) 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, 1944(1 of 1944), retrospectively, at all material times.

(3) The CENVAT credit shall be allowed of such additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) which has been disallowed but which would not have been disallowed if the amendment made by sub-section (1) was in force at all material times.

(4) Recovery shall be made of such CENVAT credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times and the provisions of CENVAT Credit Rules, 2002 relating to the recovery of CENVAT credit, along with interest, shall apply for the recovery made under this sub-section subject to the modification that the relevant date defined in section 11A of the Central Excise Act, 1944(1 of 1944), shall, for the purposes of recovery under this sub-section, be deemed to be the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.

1 [(5) Notwithstanding anything contained in sub-section (4), the following procedure shall be followed for the recovery of the CENVAT credit of additional duty leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times (hereinafter referred to in this section as the amount of credit), namely:--

(i) the Central Excise Officer shall, on or before the 25th day of May, 2005, serve notice on the person from whom the recovery is to be made (hereinafter referred to as the assessee), requiring the assessee to declare the amount of credit utilised by him on different dates for payment of duty of excise (hereinafter referred to as the CENVAT duty) leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(ii) the assessee shall furnish the declaration as required under clause (i) on or before the 31st day of May, 2005;

(iii) the Central Excise Officer shall, after considering the declaration made by the assessee under clause (ii), determine the amount of credit utilised on different dates for payment of CENVAT duty;

(iv) the Central Excise Officer shall separately determine the amount of interest on the amount of credit (hereinafter referred to as the amount of interest) utilised for paying the CENVAT duty, in accordance with the provisions of clause (v);

(v) the amount of interest on amount of credit utilised for paying the CENVAT duty shall be at a rate of thirteen per cent. per annum for the period beginning on and from the day when each time the amount of credit was so utilised and ending on the 10th day of September, 2004;

(vi) the Central Excise Officer shall, on or before the 15th day of June, 2005, inform the assessee, in writing, the amount of credit and the amount of interest so determined under clauses (iii) and (iv);

(vii) the assessee shall pay an amount equal to one-thirty sixth part of each of the amount determined under clauses (iii) and (iv) by the fifth day of every month, commencing from the month, following the month of receipt of information of the amount determined by the Central Excise Officer;

(viii) the assessee may make payment on his own towards the amount of credit or, as the case may be, the amount of interest, in excess of the amount required to be paid upto a particular month;

(ix) where the assessee pays the total amount of credit and the amount of interest so determined under clauses (iii) and (iv), respectively, the Central Excise Officer shall issue an order confirming the payment of credit and the amount of interest and discharging the assessee from any recovery of the amount of credit;

(x) for the purposes of this sub-section, it is hereby clarified that the amount of credit has been fully utilised first towards payment of the CENVAT duty before utilising the CENVAT credit of additional duty leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) paid on or after the 1st day of April, 2000 for payment of the CENVAT duty.

(6) Where the assessee fails to furnish the declaration as required under clause (i), or has furnished the declaration but failed to pay the amount by the day as specified in clause (vii), of sub-section (5), the provisions of sub-section (4) shall apply subject to the modification that the notice, requiring the assessee to show cause why he should not pay the amount specified in the notice, shall be served upon him within three months from the date of his such failure.]

Explanation 1.--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.

Explanation 2.**--**For the purposes of this section, the expression "CENVAT credit" has the meaning assigned to it in the CENVAT Credit Rules, 2002.

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1. Inserted by the Finance Act, 2005, w.e.f 13.05.2005.

Section 89 - Amendment of First Schedule to Act 5 of 1986

Central Excise Tariff

In the First Schedule to the Central Excise tariff Apt, 1985,--

(i) in Chapter 50, in sub-heading Nos. 5004.11, 5004.90, 5005.10, 5005.20 and 5005.90, for the entry in column (4) occurring against each of them, the entry "8%" shall be substituted;

(ii) in Section XV, after NOTE 9, the following NOTE shall be inserted, namely:--

"10. In relation to the products of this Section, the process of drawing or redrawing a rod, wire or any other similar article, into wire shall amount to 'manufacture'.";

(iii) in Chapter 90, in sub-heading No. 9001.10, for the entry in column (4), the entry "8%" shall be substituted;

(iv) in Chapter 95, in sub-heading No. 9504.10, for the entry in column (4), the entry "8%" shall be substituted.