

Finance (No. 2) Act, 1998

Chapter V - Indirect Taxes

In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 25, after sub-section (3), the following sub-sections shall be inserted, namely :--

"(4) Every notification issued under sub-section (1) 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".

Section 100 - Amendment of section 27

In section 27 of the Customs Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so renumbered, the following Explanation shall be inserted, namely:--

"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".

Section 101 - Substitution of new section for section 53 to 55

In the Customs Act, for section 53 to 55, the following section shall be substituted, namely :--

"53. Transit of certain goods without payment of duty.--Subject to the provision of section 11, any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or any customs station may be allowed to be so transited without payment of duty.

54. Transshipment of certain goods without payment of duty.--(1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form.

(2) Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment--

(a) to any major port as defined in the Indian Ports Act, 1908, or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or

(b) to any another customs station and the proper officer is satisfied that the goods are bona fide intended to transshipment to such customs station,

the proper officer may allow the goods to be transshipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

55. Liability of duty on goods transited under section 53 or transshipped under section 54.--Where any goods are allowed to be transited under section 53 or transshipped under sub-section (3) or section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first Importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods."

Section 102 - Insertion of new Chapter XIVA

In the Customs Act, after Chapter XIV, the following shall be inserted, namely :--

"CHAPTER XIV A

SETTLEMENT OF CASES

127A. Definitions. In this Chapter unless the context otherwise requires,--

(a) "Bench" means a Bench of the Settlement Commission;

(b) "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a proper officer or the Central Government on the date on which an application under sub-section (1) of section 127B is made:

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

(c) "Chairman" means the Chairman of the Settlement Commission;

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

(e) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(f) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under Section 32 of the Central Excise Act, 1944; and

(g) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

127B. Application for settlement of cases.

(1) Any importer, exporter or any other person (hereafter in this Chapter referred to as the applicant) may, at any stage of a case relating to him, make an application in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admit short levy on account of misclassification or otherwise of goods, to the Settlement Commission to have the case settled and such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless--

(a) the applicant has filed a bill of entry, or a shipping bill, in respect of import or export of goods, as the case may be, or a show cause notice has been issued to him by the proper officer;

(b) the additional amount of duty accepted by the applicant in his application exceeds two lakh rupees:

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

Provided also that no application under this sub-section shall be made in relation to goods to which S. 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed:

Provided also that no application under this sub-section shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975.

(2) Where any dutiable goods, books of account, other documents or any sale proceeds of the goods have been seized under section 110, the applicant shall not be entitled to make an application under sub-section (1) before the expiry of one hundred and eighty days from the date of the seizure.

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

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

127C. Procedure on receipt of application under section 127B.

(1) On receipt of an application under section 127B, the Settlement Commission shall call for a report from the Commissioner of Customs having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application;

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

Provided further that the Commissioner of customs shall furnish such report within a period of one month of the receipt of the communication from the Settlement Commission, failing

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

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

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

(4) If the Settlement Commission is satisfied, on an application made under sub-section (1) that the applicant is unable for good and sufficient reasons to pay the amount referred to in sub-section (3), within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by installments, if the applicant furnishes adequate security for the payment thereof.

(5) Where the additional amount of customs duty referred to in sub-section (3) is not paid by the applicant within the time specified or extended period, as the case may be, the Settlement Commission may direct that the amount which remains unpaid, together with simple interest at the rate of eighteen per cent. per annum or at the rate notified by the board from time to time on the amount remaining unpaid, be recovered as the sum due to the Central Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of Section 142.

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

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

(8) Subject to the provisions of section 32A of the Central Excise Act, 1944, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (7) and, in relation to the passing of such order, the provisions of section 32D of the Central Excise Act, 1944 shall apply.

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

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

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

127D. Power of Settlement Commission to order provisional attachment to protect revenue.

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

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

127E. Power of Settlement Commission to reopen completed proceedings.

If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 127B was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application under sub-section (1) of section 127B.

127F. Power and procedure of Settlement Commission.

(1) In addition to the powers conferred on the Settlement Commission under Chapter V of the Central Excise Act, 1944, it shall have all the powers which are vested in an officer of the customs under this Act or the rules made thereunder.

(2) Where an application made under section 127B has been allowed to be proceeded with under Section 127C, the Settlement Commission shall, until an order is passed under sub-section (7) of section 127C, have, subject to the provisions of sub-section (6) of that section, exclusive

jurisdiction to exercise the powers and perform the functions of any officer of customs or Central Excise Officer as the case may be, under this Act or in the Central Excise Act, 1944, as the case may be, in relation to the case.

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

(4) The Settlement Commission shall, subject to the provisions of Chapter V of the Central Excise Act, 1944 and this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

127G. Inspection etc., of reports.

No person shall be entitled to inspect, or obtain copies of, any report made by any officer of the Customs to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of such fee as may be specified by rules:

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

127H. Power of Settlement Commission to grant immunity from prosecution and penalty.

(1) The Settlement Commission may, if it is satisfied that any person who made the application for Settlement under section 127B has co-operated with the Settlement Commission in the proceedings before it and has made a full true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty fine and interest under this Act, with respect to the case covered by the settlement:

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 127B.

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-section (7) of section 127C within the time specified in such order or within such further time as may be allowed by the Settlement Commission or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

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

127I. Power of Settlement Commission to send a case back to the proper officer.

(1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 127B has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the proper officer who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 127B had been made.

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

(3) For the purposes of the time limit under section 28 and for the purposes of interest under section 28AA, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 127B and ending with the date of receipt of receipt by the officer of customs of the order of the Settlement Commission sending the case back to the officer of customs shall be excluded.

127J. Order of settlement to be conclusive.

Every order of settlement passed under sub-section (7) of section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

127K. Recovery of sums due under order of settlement.

Any sum specified in an order of settlement passed under sub-section (7) of section 127C may, subject to such conditions, if any, as may be specified therein, be recovered, any any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions of section 142, by the proper officer having jurisdiction over the applicant.

127L. Bar on subsequent application for settlement in certain cases. Where--

(i) an order of settlement passed under sub-section (7) of section 127C provides for the imposition of a penalty on the applicant under section 127B for settlement, on the ground of concealment of particulars of his duty liability; or

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

(iii) the case of such person is sent back to the proper officer by the Settlement Commission under Section 127-I.

then such person shall not be entitled to apply for settlement under section 127B in relation to any other matter.

127M. Proceedings before Settlement Commission to be judicial proceedings.

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

127N. Application of certain provisions of Central Excise Act. The provisions of Chapter V of the Central Excise Act, 1944 in so far as it is not inconsistent with the provisions of this Chapter shall apply in relation to proceedings before the Settlement Commission under this Chapter.'.

Section 103 - Additional duty of customs (motor spirit)

(1) In the case of goods specified in the Second Schedule, being goods imported into India, there shall be levied and collected as an additional duty of customs an amount calculated at the rate set forth in the said Schedule.

(2) The additional duty of customs referred to in sub-section (1) shall be in addition to any other duties of customs chargeable on such goods under the Customs Act, or any other law for the time being in force.

(3) The provisions of the Customs Act and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the additional duty of customs leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of customs on such goods under that Act or those rules and regulations, as the case may be.

Section 104 - Amendment of Act 51 of 1975

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

(a) after section 3, the following section shall be inserted, namely:--

3A. Special additional duty.

(1) Any article which is imported into India shall in addition be liable to a duty (hereafter in this section referred to as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India:

Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent. of the value of the article imported into India.

Explanation.-- In this sub-section, the expression "maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India" means the maximum sales-tax, local tax, other charges for the time being in force, which shall be leviable on a like article, if sold or purchased in India, or if a like article is not so sold or purchased which shall be leviable on the class or description of articles to which the imported article belongs.

(2) For the purpose of calculating under this section additional duty on any imported article the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 or section 3 of this Act, be the aggregate of--

(i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be;

(ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the special additional duty referred to in sub-section (1); and

(iii) the additional duty of customs chargeable on that article under section 3 of this Act.

(3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(4) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

(5) Nothing contained in this section shall apply to any article, which is chargeable to additional duties levied under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957";

(b) the First Schedule shall be amended in the manner specified in the Third Schedule.

Section 105 - Amendment of section 4A

In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), in section 4A, for Explanation 1, the following Explanation shall be substituted, namely:--

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

Section 106 - Amendment of section 5A

In the Central Excise Act, in section 5A, after sub-section (4), the following sub-sections shall be inserted, namely--

"(5) Every notification issued under sub-section (1) shall,--

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

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

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

Section 107 - Amendment of section 9

In the Central Excise Act, in section 9, in sub-section (1), after clause (bbb), the following clause shall be inserted, namely:--

"(bb) contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products."

Section 108 - Amendment of section 11B

In the Central Excise Act, in section 11B, in the Explanation, in clause (B), after sub-clause (ea), the following sub-clause shall be inserted, namely:--

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

Section 109 - Amendment of section 35B

In the Central Excise Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, in section 35B, in sub-section (1), in the first proviso after clause (c), the following clause shall be inserted, namely:--

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

Section 110 - Insertion of new Chapter V

In the Central Excise Act, after section 30, the following Chapter shall be inserted, namely:--

"CHAPTER V

Settlement Of Cases

31. Definitions. In this Chapter, unless the context otherwise requires,--

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

(b) "Bench" means a Bench of the Settlement Commission:

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

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

(d) "Chairman" means the Chairman of the Settlement Commission;

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

(f) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice Chairman;

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

(h) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

32. Customs and Central Excise Settlement Commission.

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

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

(3) The Chairman, Vice-Chairman and other Members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of customs and central excise laws:

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

32A. Jurisdiction and powers of Settlement Commission.

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

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

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

(4) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

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

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

Provided that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard of by a

Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

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

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

32B. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.

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

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

32C. Power of Chairman to transfer cases from one Bench to another.

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

32D. Decision to be by majority.

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

32E. Application for settlement of cases.

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

Provided that no such application shall be made unless.--

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

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

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

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

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

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

32F. Procedure on receipt of an application under section 32E.

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

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

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

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

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

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

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

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

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

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

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

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

(11) Where a settlement becomes void as provided under sub-section (9) the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in

any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

32G. Power of Settlement Commission to order provisional attachment to protect revenue.

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

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

32H. Power of Settlement Commission to reopen completed proceedings.

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

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

32-I. Powers and procedure of Settlement Commission.

(1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in a Central Excise Officer under this Act or the rules made thereunder.

(2) Where an application made under section 32E has been allowed to be proceeded with under section 32E, the Settlement Commission shall, until an order is passed under sub-section (7) of section 32F, have, subjected to the provisions of sub-section (6) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.

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

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

32-J. Inspection etc. of reports.

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

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

32K. Power of Settlement Commission to grant immunity from prosecution and penalty.

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

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

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-section (7) of section 32F within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

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

32-L. Power of Settlement Commission to send a case back to the Central Excise Officer.

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

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

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

back to the Central Excise Officer shall be excluded.

32-M. Order of settlement to be conclusive.

Every order of settlement passed under sub-section (7) of section 32F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

32N. Recovery of sums due under order of settlement.

Any sum specified in an order of settlement passed under sub-section (7) of section 32F may, subject to such conditions if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions under section 11 by the Central Excise Officer having jurisdiction over the person who made the application for settlement under section 32E.

32-O. Bar on subsequent application for settlement in certain cases. Where--

- (i) an order of settlement passed under sub-section (7) of section 32F provides for the imposition of a penalty on the person who made the application under section 32E for settlement, on the ground of concealment of particulars of his duty liability; or
- (ii) after the passing of an order of settlement under the said sub-section (7) in relation to a case, such person is convicted of any offence under this Act in relation to that case; or
- (iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L.

then, he shall not be entitled to apply for settlement under section 32E in relation to any other matter.

32P. Proceedings before Settlement Commission to be judicial proceedings.

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

Section 111 - Additional duty of excise (motor spirit)

(1) In the case of goods specified in the Second Schedule, being goods manufactured in India, there shall be levied and collected as an additional duty of excise an amount calculated at the rate set forth in the said Schedule.

(2) The additional duty of excise referred to in sub-section (1) shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, or any other law for the time being in force.

(3) The provisions of the Central Excise Act and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the additional duty of excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules and regulations, as the case may be.

(4) The additional duty of excise leviable under sub-section (1) shall be for the purposes of the Union and the proceeds thereof shall not be distributed among the States.

Section 112 - Amendment of Act 5 of 1986

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

Section 113 - Amendment of Act 58 of 1957

The additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as the Additional Duties of Excise Act) shall be amended in the manner specified in the Fifth Schedule.

Section 114 - Amendment of Act 40 of 1978

The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (hereinafter referred to as the Additional Duties of Excise (Textiles and Textile Article) Act, shall be amended in manner specified in the Sixth Schedule.

Section 115 - Amendment of Act 16 of 1955

In the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, in the Schedule, in item No. 4 for the entry in the third column, the entry "fifty percent ad valorem" shall be substituted.
