

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."