

CHAPTER IV

30

INDIRECT TAXES

Customs

Insertion of
new section
26A.

Refund of
import duty
in certain
cases.

84. After section 26 of the Customs Act, 1962 (hereinafter referred to as the Customs Act), the following section shall be inserted, namely:— 52 of 1962.

'26A. (1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if— 35

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

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications; 40

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

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

(d) (i) the goods are exported; or 45

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

(iii) such goods are destroyed or rendered commercially valueless in the presence of the

proper officer,

in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:

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

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

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

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

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

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

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

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

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

85. In section 28F of the Customs Act, after sub-section (2), the following sub-sections shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:— Amendment of section 28F.

25 ‘(2A) Notwithstanding anything contained in sub-sections (1) and (2), or any other law for the time being in force, the Central Government may, by notification in the Official Gazette, authorise an Authority constituted under section 245-O of the Income-tax Act, 1961, to act as an Authority under this Chapter.

43 of 1961.

(2B) On and from the date of publication of notification under sub-section (2A), the Authority constituted under sub-section (1) shall not exercise jurisdiction under this Chapter.

30 (2C) For the purposes of sub-section (2A), the reference to “an officer of the Indian Revenue Service who is qualified to be a Member of Central Board of Direct Taxes” in clause (b) of sub-section (2) of section 245-O of the Income-tax Act, 1961 shall be construed as reference to “an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board”.

43 of 1961.

35 (2D) On and from the date of the authorisation of Authority under sub-section (2A), every application and proceeding pending before the Authority constituted under sub-section (1) shall stand transferred to the Authority so authorised from the stage at which such proceedings stood before the date of such authorisation.’

86. In section 130 of the Customs Act, after sub-section (2), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2003, namely:— Amendment of section 130.

40 “(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.”.

87. In section 130A of the Customs Act, after sub-section (3), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 1999, namely:— Amendment of section 130A.

“ (3A) The High Court may admit an application or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.”.

88. In section 137 of the Customs Act, in sub-section (3),—

50 (i) for the words “such compounding amount”, the words “such compounding amount and in such manner of compounding” shall be substituted;

Amendment of section 137.

(ii) the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply to-

(a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;

(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:—

(i) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(ii) the Chemical Weapons Convention Act, 2000;

(iii) the Arms Act, 1959;

(iv) the Wild Life (Protection) Act, 1972;

(c) a person involved in smuggling of goods falling under any of the following, namely:—

(i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(e) a person who has been convicted under this Act on or after the 30th day of December, 2005.”.

Amendment of section 156.

89. In section 156 of the Customs Act, in sub-section (2), in clause (h), for the words “for compounding”, the words “for compounding and the manner of compounding” shall be substituted.

Amendment of section 157.

90. In section 157 of the Customs Act, in sub-section (2) after clause (a), the following clauses shall be inserted, namely:—

“(a) the manner of export of goods, relinquishment of title to the goods and abandoning them to customs and destruction or rendering of goods commercially valueless in the presence of the proper officer under clause (d) of sub-section (1) of section 26A;

(aii) the form and manner of making application for refund of duty under sub-section (2) of section 26A;”.

Validation of certain actions taken by officers of customs appointed under section 4.

91. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 27/2009-CUSTOMS (N.T.), published in the Official Gazette *vide* number G.S.R. 173(E), dated the 17th March, 2009, issued for the purpose of appointment of officers of customs under sub-section (1) of section 4 read with sub-section (1) of section 5 of the Customs Act, shall be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 9th day of May, 2000 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 officers of customs appointed by the said notification to discharge duties as an officer of customs on and from the 9th day of May, 2000 to the 16th day of March, 2009, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the appointment so made with respect to the area of jurisdiction specified in 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 officers of customs appointed 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 during the period on and from the 9th day of May, 2000 to the 16th day of March, 2009, as if the appointment made with respect to the area of jurisdiction specified in 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 officers of customs appointed by the said notification during the period on and from the 9th day of May, 2000 to the 16th day of March, 2009 shall be deemed to be valid, and to have always been, for all purposes, as validly and effectively made as if the appointment made with respect to area of jurisdiction specified in 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 sub-section (1) of section 4 read with sub-section (1) of section 5 of the Customs Act, retrospectively, at all material times.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the said

notification had not come into force retrospectively.

92. (1) The notification of the Government of India, in the Ministry of Finance (Department of Revenue) number G.S.R. 260(E), dated the 1st May, 2006, issued under sub-section (1) of section 25 of the Customs Act shall stand amended and shall be deemed to have been amended in the manner as specified in column (3) of the Second Schedule, on and from the corresponding date mentioned in column (4) of that Schedule retrospectively, 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 notification, shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done as if the notification as amended by this sub-section had been in force at all material times.

Amendment of notification issued under section 25 of the Customs Act.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notification referred to in the said sub-section with retrospective effect as if the Central Government had the power to amend the said notification under sub-section (1) of section 25 of the Customs Act, retrospectively, at all material times.

(3) Recovery shall be made of the amount which has not been paid but which would have been paid as if the amendment made by sub-section (1) had been in force at all material times from the day on which the Finance (No. 2) Bill, 2009 receives the assent of the President.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Customs tariff

51 of 1975. **93.** In section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

Amendment of section 3.

1 of 1944. 25 “Provided further that in the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under sub-section (2) of section 3 of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value.”.

94. In section 8B of the Customs Tariff Act, after sub-section (4), the following sub-section shall be inserted and shall be deemed to have been inserted on and from the 14th day of May, 1997, namely:—

Amendment of section 8B.

52 of 1962. 30 “(4A) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.”.

95. Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under any rule, regulation, notification or order made or issued under the Customs Act, or any notification or order issued under such rule or regulation at any time during the period commencing on and from the 14th day of May, 1997 and ending with the day, the Finance (No. 2) Bill, 2009 receives the assent of the President shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in section 8B of the Customs Tariff Act by section 94 of Finance (No. 2) Act, 2009 had been in force at all material times and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

Validation of certain actions taken under section 8B of Act 51 of 1975.

(a) any action taken or anything done or omitted to be done, during the said period in respect of any goods, under any such rule, regulation, notification or order, shall be deemed to be and shall be deemed always to have been, as validly taken or done or omitted to be done as if the amendment made by the said section had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or omitted to be done, in respect of any goods, under any such rule, regulation, notification or order, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or omitted to be done as if the amendment made by the said section had been in force at all material times;

(c) recovery shall be made of all such amounts of duty or interest or penalty or fine or other charges which have not been collected or, as the case may be, which have been refunded, as if the amendment made by the said section had been in force at all material times.

55 *Explanation.*— For the removal of doubts, it is hereby declared that no act or omission on the

part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Amendment of section 8C. **96.** In section 8C of the Customs Tariff Act, after sub-section (5), the following sub-section shall be inserted and shall be deemed to have been inserted on and from the 11th day of May, 2002, namely:—

“(5A) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.”. 5 52 of 1962.

Validation of certain actions taken under section 8C of Act 51 of 1975. **97.** Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under any rule, regulation, notification or order made or issued under the Customs Act, or any notification or order issued under such rule or regulation at any time during the period commencing on and from the 11th day of May, 2002 and ending with the day, the Finance (No. 2) Bill, 2009 receives the assent of the President shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in section 8C of the Customs Tariff Act by section 96 of the Finance (No. 2) Act, 2009 had been in force at all material times and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,— 10 15

(a) any action taken or anything done or omitted to be done, during the said period in respect of any goods, under any such rule, regulation, notification or order, shall be deemed to be and shall be deemed always to have been, as validly taken or done or omitted to be done as if the amendment made by the said section had been in force at all material times; 20

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or omitted to be done, in respect of any goods, under any such rule, regulation, notification or order, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or omitted to be done as if the amendment made by the said section had been in force at all material times; 25

(c) recovery shall be made of all such amounts of duty or interest or penalty or fine or other charges which have not been collected or, as the case may be, which have been refunded, as if the amendment made by the said section had been in force at all material times.

Explanation.— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force. 30

Amendment of section 9. **98.** In section 9 of the Customs Tariff Act, for sub-section (7A), the following sub-section shall be substituted and shall be deemed to have been substituted on and from the 1st day of January, 1995, namely:—

“(7A) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.”. 35 52 of 1962.

Validation of certain actions taken under section 9 of Act 51 of 1975. **99.** Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under any rule, regulation, notification or order made or issued under the Customs Act, or any notification or order issued under such rule or regulation at any time during the period commencing on and from the 1st day of January, 1995 and ending with the day, the Finance (No. 2) Bill, 2009 receives the assent of the President shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in section 9 of the Customs Tariff Act by section 98 of the Finance (No. 2) Act, 2009 had been in force at all material times and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,— 40 45

(a) any action taken or anything done or omitted to be done, during the said period in respect of any goods, under any such rule, regulation, notification or order, shall be deemed to be and shall be deemed always to have been, as validly taken or done or omitted to be done as if the amendment made by the said section had been in force at all material times; 50

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or omitted to be done, in respect of any goods, under any such rule, regulation, notification or order, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or omitted to be done as if the amendment made by the said section had been in force at all material times; 50

(c) recovery shall be made of all such amounts of duty or interest or penalty or fine or other charges which have not been collected or, as the case may be, which have been refunded, as if the

amendment made by the said section had been in force at all material times.

Explanation.— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

5 **100.** In section 9A of the Customs Tariff Act,—

Amendment of section 9A.

(i) in sub-section (1), for the words “any article is exported”, the words “any article is exported by an exporter or producer” shall be substituted;

(ii) after sub-section (6), the following sub-section shall be inserted, namely:—

10 “(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:

15 Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.”;

(iii) for sub-section (8), the following sub-section shall be substituted and shall always be deemed to have been substituted on and from the 1st day of January, 1995, namely:—

52 of 1962.

20 “(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.”.

25 **101.** Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under any rule, regulation, notification or order made or issued under the Customs Act, or any notification or order issued under such rule or regulation at any time during the period commencing on and from the 1st day of January, 1995 and ending with the day, the Finance (No. 2) Bill, 2009 receives the assent of the President shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in section 9A of the Customs Tariff Act by clause (iii) of section 100 of the Finance (No. 2) Act, 2009 had been in force at all material times and accordingly, notwithstanding anything contained in
30 any judgment, decree or order of any court, tribunal or other authority,—

Validation of certain actions taken under section 9A of Act 51 of 1975.

(a) any action taken or anything done or omitted to be done, during the said period in respect of any goods, under any such rule, regulation, notification or order, shall be deemed to be and shall be deemed always to have been, as validly taken or done or omitted to be done as if the amendment made by the said section had been in force at all material times;

35 (b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or omitted to be done, in respect of any goods, under any such rule, regulation, notification or order, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or omitted to be done as if the amendment made by the said section had been in force at all material times;

40 (c) recovery shall be made of all such amounts of duty or interest or penalty or fine or other charges which have not been collected or, as the case may be, which have been refunded, as if the amendment made by the said section had been in force at all material times.

45 *Explanation.*— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

102. The First Schedule to the Customs Tariff Act shall be amended in the manner as specified in the Third Schedule.

Amendment of First Schedule.