

CHAPTER IV
INDIRECT TAXES

Customs

Amendment of section 27A.	96. In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 27A, for the words “not below ten per cent.”, the words “not below five per cent.” shall be substituted.	52 of 1962. 5
Amendment of section 28.	97. In section 28 of the Customs Act, after sub-section (2), the following shall be inserted, namely: — ‘(2A) Where any notice has been served on a person under sub-section (1), the proper officer,— (i) in case any duty has not been levied or has been short-levied, or the interest has not been paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, where it is possible to do so, shall determine the amount of such duty or the interest, within a period of one year; and (ii) in any other case, where it is possible to do so, shall determine the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable which has not been paid, part paid or erroneously refunded, within a period of six months, from the date of service of the notice on the person under sub-section (1). (2B) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part paid or erroneously refunded, the person, chargeable with the duty or the interest, may pay the amount of duty or interest before service of notice on him under sub-section (1) in respect of the duty or the interest, as the case may be, and inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the duty or the interest so paid: Provided that the proper officer may determine the amount of short-payment of duty or interest, if any, which in his opinion has not been paid by such person and, then, the proper officer shall proceed to recover such amount in the manner specified in this section, and the period of “one year” or “six months” as the case may be, referred to in sub-section (1) shall be counted from the date of receipt of such information of payment. <i>Explanation 1.</i> —Nothing contained in this sub-section shall apply in a case where the duty was not levied or was not paid or the interest was not paid or was partpaid or the duty or interest was erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter. <i>Explanation 2.</i> —For the removal of doubts, it is hereby declared that the interest under section 28AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the proper officer, but for this sub-section. (2C) The provisions of sub-section (2B) shall not apply to any case where the duty or the interest had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.’	10 15 20 25 30 35
Amendment of section 28AA.	98. Section 28AA of the Customs Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely: — “(2) The provisions of sub-section (1) shall not apply to cases where the duty or the interest becomes payable or ought to be paid on and after the date on which the Finance Bill, 2001 receives the assent of the President.”	40
Amendment of section 28AB.	99. In section 28AB of the Customs Act,— (a) for sub-section (1), the following shall be substituted, namely:— “(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B), of section 28, shall, in addition to the duty, be liable to pay interest at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of section 28, till the date of payment of such duty: Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 151A, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent	45 50 55

stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid.”;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

- 5 “(2) The provisions of sub-section (1) shall not apply to cases where the duty or interest had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.”.

100. In section 61 of the Customs Act, in sub-section (2), in clause (ii), for the words “six months”, wherever they occur, the words “thirty days” shall be substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint. Amendment of section 61.

101. In section 112 of the Customs Act,—

Amendment of section 112.

(a) in clause (i), for the words “not exceeding five times the value of the goods or one thousand rupees,” the words “not exceeding the value of the goods or five thousand rupees,” shall be substituted;

- 15 (b) in clause (ii), for the words “not exceeding five times the duty sought to be evaded on such goods or one thousand rupees,” the words “not exceeding the duty sought to be evaded on such goods or five thousand rupees,” shall be substituted;

(c) in clause (iii), for the words “not exceeding five times the difference between the declared value and the value thereof or one thousand rupees,” the words “not exceeding the difference between the declared value and the value thereof or five thousand rupees,” shall be substituted;

- 20 (d) in clause (iv), for the words “not exceeding five times the value of the goods or five times the difference between the declared value and the value thereof or one thousand rupees,” the words “not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees,” shall be substituted;

- 25 (e) in clause (v), for the words “not exceeding five times the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or one thousand rupees,” the words “not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees,” shall be substituted.

102. In section 114 of the Customs Act,—

Amendment of section 114.

- 30 (a) in clause (i), for the words “not exceeding five times the value of the goods or one thousand rupees,” the words “not exceeding the value of the goods or five thousand rupees,” shall be substituted;

(b) in clause (ii), for the words “not exceeding five times the duty sought to be evaded on such goods or one thousand rupees,” the words “not exceeding the duty sought to be evaded or five thousand rupees,” shall be substituted;

- 35 (c) in clause (iii), for the words “not exceeding five times the amount of drawback claimed or one thousand rupees,” the words “not exceeding the amount of drawback claimed or five thousand rupees,” shall be substituted.

103. In section 128 of the Customs Act, in sub-section (1),—

Amendment of section 128.

(a) for the words “within three months”, the words “within sixty days” shall be substituted;

(b) for the proviso, the following proviso shall be substituted, namely:—

- 40 “Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.”.

104. In section 128A of the Customs Act,—

Amendment of section 128A.

- 45 (a) in sub-section (3), for the portion beginning with the words and brackets “The Commissioner (Appeals) may” and ending with the words “additional evidence, if necessary:”, the following shall be substituted, namely:—

“The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against.”;

- 50 (b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.”.

105. In section 129D of the Customs Act, in sub-section (1), after the words “direct such Commissioner”, the words “or any other Commissioner” shall be inserted. Amendment of section 129D.

- 55 **106.** In section 129E of the Customs Act, after the proviso, the following proviso shall be inserted, namely:— Amendment of section 129E.

"Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

Insertion of new section 159A.

Effect of amendments, etc., of rules, regulations, notifications or orders.

107. After section 159 of the Customs Act, the following section shall be inserted and shall be deemed to have been inserted on and from the 1st day of February, 1963, namely:— 5

"159A. Where any rule, regulation, notification or order made or issued under this Act or any notification or order issued under such rule or regulation, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not— 10

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or 15

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, 20

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded."

Validation of certain action taken.

108. 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 February, 1963 and ending with the day the Finance Bill, 2001 receives the assent of the President shall be deemed to be, and to always have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made by section 107 of the Finance Act, 2001 had been in force at all material time and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,— 25 30

(a) any action taken or anything done or, omitted to be done, during the said period in respect of any goods under any of such rule, regulation, notification or order, shall be deemed to be and shall be deemed to always have been, as validly taken or done or omitted to be done as if the amendment made by section 107 of the Finance Act, 2001 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 of 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 section 107 of the Finance Act, 2001 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 section 107 of the Finance Act, 2001 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.

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

109. (1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 465(E), dated the 3rd May, 1990, G.S.R. 423(E), dated the 20th April, 1992, G.S.R. 946(E), dated the 28th December, 1992 and G.S.R. 417(E), dated the 14th May, 1993, issued under sub-section (1) of section 25 of the Customs Act by the Central Government shall stand amended and shall be deemed to have been amended in the manner as specified in the Eighth Schedule, on and from the date mentioned in column (4) of that Schedule against each of such notifications 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 notifications, shall be deemed to be, and always to have been, for all purposes, as validly or effectively taken or done as if the notifications as amended by this sub-section had been in force at all material times. 50 55

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

51 of 1975.

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Customs Tariff

110. In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), in section 3,— Amendment of section 3.

(a) in sub-section (1) and before the *Explanation*, the following proviso shall be inserted, namely:—

10 “Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States, or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs”;

15 (b) in sub-section (2), after clause (ii), the following proviso and *Explanation* shall be inserted, namely:—

“Provided that in case of an article imported into India,—

60 of 1976.

(a) in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and

20 (b) where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is the goods specified by notification in the Official Gazette under sub-section (1) of section 4A of the Central Excise Act, 1944,

1 of 1944.

25 the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article under sub-section (2) of section 4A of the Central Excise Act, 1944.

1 of 1944.

30 *Explanation.*—Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.”.

111. In section 8B of the Customs Tariff Act,—

Amendment of section 8B.

(a) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

35 “Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.”;

(b) after sub-section (2), the following shall be inserted, namely:—

40 ‘(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

1 of 1944.

Explanation.—For the purposes of this section, the expressions “hundred per cent. export-oriented undertaking”, “free trade zone” and “special economic zone” shall have the meanings assigned to them in *Explanation 2* to sub-section (1) of section 3 of Central Excise Act, 1944.’.

45 **112.** In section 9A of the Customs Tariff Act, after sub-section (2), the following shall be inserted, Amendment of section 9A.
namely:—

50 ‘(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

1 of 1944.

Explanation.—For the purposes of this section, the expressions “hundred per cent. export-oriented undertaking”, “free trade zone” and “special economic zone” shall have the meanings assigned to them in *Explanation 2* to sub-section (1) of section 3 of the Central Excise Act, 1944.’.

55 **113.** In the Customs Tariff Act, the First Schedule shall,—

Amendment of First Schedule.

(a) be amended in the manner specified in the Second Schedule; and

(b) with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, be also amended in the manner specified in the Third Schedule.