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THE CENTRAL EXCISE*ACT, 1944¹

[Act I of 1944]

[24th February 1944]

An Act to consolidate and amend the law relating to Central duties of excise ²[***]

Whereas it is expedient to consolidate and amend the law relating to Central duties of excise on goods manufactured or produced in ³[⁴ [certain parts] of India] ⁵[***]

* **The words “and Salt” omitted by Act 33 of 1996, s. 71, w.e.f. 28.9.1996.**

1. See Gazette of India, 1943, Pt. V, p. 243 for Statement of Objects and Reasons and see Gazette of India, 1944, Pt. V, p. 12 for Report of the Select Committee.

This Act has been applied to-

(i) **All the partially excluded areas in the State of Orissa by Orissa Govt. Noti. No. 1226-11-C-13/ 44-Com., dt. 21st March, 1944;**

(ii) **Darjeeling District with effect from 28th February, 1944, see Bengal Govt. Noti.- No. 342-R, dt. 22nd March, 1944;**

(iii) **Excluded areas in the State of Madras (with modifications), see Madras Govt. Noti. No. 37, Fort St. George Gazette, Pt. 1, p. 281, dt. 11th April, 1944;**

(iv) **Partially excluded areas in the state of Madras with effect from 28th February, 1944, see Madras Govt. Noti. No. 745-Public-Political, dt. 4th March, 1944.**

This Act has been extended to Goa, Daman and Diu by Regulation 12 of 1962, S. 3 and Sch.; to Dadra and Nagar Haveli by Regulation 6 of 1963, S. 2 and Sch-1. and to Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965 and w.e.f. 1.2.1983 to state of Sikkim vide GSR No. 597(E), dt. 11.10.1982.

2. The words “and to salt” omitted by Act 33 of 1996, S. 69, w.e.f. 28.9.1996.

3, Subs. by, the A.O. 1948, for “British India”

4. Subs. by the A.O. 1950, for “the Provinces”

5. The words “and to salt” omitted by Act 33 of 1996, s. 70, w.e.f. 28.9.1996.

It is hereby enacted as follows: -

CHAPTER-I

1. Short title, extent and commencement-

¹[(1) This Act may be called the Central Excise Act, 1944].

(2) It extends to the whole of India ²[***]

(3) It shall come into force on such date ³ as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

1. Subs. by Act 33 of 1996, s. 71, for subsection (1), w.e.f. 28.9.1996.

2. The words “except the State of Jammu and Kashmir” omitted by Act 41 of 1954, S. 2 and Sch.

3. Came into force on 28th February, 1944, vide Noti. No. III-D, G.O.I.(E), dt. 26.2.1944.

2. **Definitions-** In this Act, unless there is anything repugnant in the subject or context:-

¹[(a) “Adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) Commissioner of Central Excise (Appeals) or Appellate Tribunal;

(aa) “Appellate Tribunal” means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under Section 129 of the Customs Act, 1962 (52 of 1962);]

²(aaa)] “Broker” or “commission agent” means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

³ [(b) “Central Excise Officer” means the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, ⁴[joint Commissioner of Central Excise], ⁵[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act;]

(c) “Curing” includes wilting, drying, fermenting and any process for rendering an un-manufactured product fit for marketing or manufacture;

(d) “Excisable goods” means goods specified in the ⁶[Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)] as being subject to a duty of excise and includes salt;

(e) “Factory” means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;

⁷[(ee) “Fund” means the Consumer Welfare Fund established under Section 12C;]

⁸[(f) “Manufacture” includes any process-

(i) Incidental or ancillary to the completion of a manufactured product;

(ii) Which is specified in relation to any goods in the Section or Chapter Notes of ⁹[the first Schedule] to the Central Excise Tariff Act, 1985 as amounting to manufacturer, and the word “manufacture” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;]

(g) “Prescribed” means prescribed by rules made under this Act;

(h) “Sale” and “purchase”, with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business

for cash or deferred payment or other valuable consideration;

(i) 10[***]

(j) 10[***]

(jj) 11[***]

(k) “Wholesale dealer” means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent, who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

1. Ins. by Act 44 of 1980, s. 50 and Sch. V, w.e.f. 11.10.1982.

2. **Clause (a) re-lettered as clause (aaa) by Act 44 of 1980, s. 50 and Sch. w.e.f. 11.10.1982.**

3. **Subs. by Act 22 of 1995, s. 71, for clause (b), w.e.f. 26.5.1995.**

4. **Subs. by Act 27 of 1999, s. 119, for “Deputy Commissioner of Central Excise”, w.e.f. 11.5.1999.**

5. Subs. by Act 27 of 1999, s. 119, for “Assistant Commissioner of Central Excise”, w.e.f. 11.5.1999.

6. **Subs. by Act 5 of 1986, s. 4, for “First Schedule” w.e.f. 28.2.1986.**

7. **Ins. by Act 40 of 1991, s. 2, w.e.f. 20.9.1991.**

8. **Subs. by Act 5 of 1986, s. 4, for clause (f), “, w.e.f. 28.2.1986.**

9. **Subs. by Act 27 of 1999, s. 120 for “the Schedule”, w.e.f. 11.5.1999.**

10. **Clause (i) and (j) omitted by Act 33 of 1996, s. 72, w.e.f. 28.9.1996.**

11. **Clause (jj) omitted by Act 25 of 1950, s. II and Sch. IV.**

CHAPTER-II

LEVY AND COLLECTION OF DUTY

3. **Duties specified in the ¹[Schedule to the Central Excise Tariff Act, 1985] to be levied- ²[There shall be levied and collected in such manner as may be prescribed,-**

(a) A duty of excise on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) A special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.]

³[Provided that the duties of excise which shall be levied and collected on any ⁴[excisable goods which are produced or manufactured,-

(i) In a free trade zone and brought to any other place in India; or

(ii) By a hundred percent export-oriented undertaking and allowed to be sold in India, shall be an amount equal to] the aggregate of the duties of customs which would be leviable under Section 12 of the Customs Act, 1962 (52 of 1962) on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1- Where in respect of any such like goods, any duty of customs leviable under the said Section 12 is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable under the said Section 12 at the highest of those rates.

⁵[**Explanation 2-** In this proviso,-

(i) “Free trade zone” means the Kandla Free Trade Zone and the Santa Cruz Electronics Export Processing Zone and includes any other free trade zone, which the Central Government may, by notification in the Official Gazette, specify in their behalf;

(ii) “Hundred percent export-oriented undertaking” means an undertaking which has been approved as a hundred percent export oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by Section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.]

⁶[(IA) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.]

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the ⁷[Schedule to the Central Excise Tariff Act, 1985 (5 of 1886)] as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

⁸[(3) Different tariff values may be fixed-

- (a) For different classes or descriptions of the same excisable goods; or
- (b) For excisable goods of the same class of description-
 - (i) Produced or manufactured by different classes or producers or manufacturers; or
 - (ii) Sold to different classes of buyers.

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers of manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.]

- 1. Subs. by Act 5 of 1986,s. 4, w.e.f. 28.2.1986.**
- 2. Ins. by Act 27 of 1999,s. 121, w.e.f. 11.5.1999.**
- 3. Ins. by Act 14 of 1982,s. 46, w.e.f. 1.3.1982.**
- 4. Subs. by Act 21 of 1984,s. 45, for certain words.**
- 5. Subs. by Act 21 of 1984,s. 45.**
- 6. Subs. by Act 30 of 1963, sec. 3, w.e.f. 1.10.1963.**

7. Subs. by Act 5 of 1986, s. 4, for certain words, w.e.f. 28.2.1986

8. Ins. by Act 25 of 1978, s. 19, for sub-section (3), w.e.f. 1.7.1978.

¹[3A. Determination of annual capacity of production of the factory for levy of Excise duty-

(1) Notwithstanding anything contained in Section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods of such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.

(2) Where a notification is issued under sub-section (1), the Central Government may, by rules, provide for determination of the annual capacity of production, or such factor or factors relevant to the annual capacity of production of the factory in which such goods are produced, by the Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods of such factory.

Provided that where a factory producing notified goods is in operation only during a part of the year, the production thereof shall be calculated on proportionate basis of the annual capacity of production.

(3) The duty of excise on notified goods shall be levied at such rate as the Central Government may by notification in the Official Gazette specify, in collected in such manner as may be prescribed.

Provided that where a factory producing notified goods did not produce the notified goods during any continuous period of not less than seven days, duty calculated on a proportionate basis shall be abated in respect of, such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

(4) Where an assessee claims that the actual production of notified goods in his factory is lower than the production determined under sub-section (2), the Commissioner of Central Excise shall, after giving an opportunity to the assessee to produce evidence in support of his claim, determine the actual production and redetermine the amount of duty payable by the assessee with reference to such actual production at the rate specified in sub-section (3).

(5) Where the Commissioner of Central Excise determines the actual production under sub-section (4), the amount of duty already paid, if any, shall be adjusted against the duty so redetermined and if the duty already paid falls short of, or is in excess of, the duty so redetermined, the assessee shall pay the deficiency or be entitled to a refund, as the case may be.

(6) The provisions of this section shall not apply to goods produced or manufactured, -

(i) In a free-trade zone and brought to any other place in India; or

(ii) By a hundred per cent export-oriented undertaking and allowed to be sold in India.

Explanation 1- For the removal of doubts, it is hereby clarified that for the purposes of Section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under ²[the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986), read with any notification for the time being in force.

Explanation 2- For the purposes of this section the expressions “free-trade zone” and “hundred per cent export-oriented undertaking” shall have the meanings assigned to them in Section 3.]

1. Ins. by act 26 of 1997,s. 81, w.e.f. 14-05-1997.

2. Subs. by Act 27 of 1999,s. 119, for “ the Schedule”, w.e.f. 11-05-1999.

¹4. **Valuation of excisable goods for purposes of charging of duty of excise -**

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be-

(a) The normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale.

Provided that-

(i) Where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

²[(ia) Where the price at which such goods are ordinarily sold by the assessee is different for different places of removal, each such price shall, subject to the existence of other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such place of removal;]

(ii) Where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) Where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail;

(b) Where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.

(3) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3.

(4) For the purposes of this section,-

(a) “Assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) “Place of removal” means-

(i) A factory or any other place or premises of production or manufacture of the excisable goods;
3[***]

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from where such goods are removed;

4[(iii) A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory and;]

4[(ba) “Time of removal”, in respect of goods removed from the place of removal referred to in sub-clause (iii) of clause (b), shall be deemed to be the time at which such goods are cleared from the factory;]

(c) “Related person” means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation - In this clause “holding company”, “subsidiary company” and “relative” have the same meanings as in the Companies Act, 1956 (1 of 1956);

(d) “Value”, in relation to any excisable goods,-

(i) Where the goods are delivered at the time of removal in a packed condition includes, the cost of such packing except the cost of the packing, which is of a durable nature and is returnable by the buyer to the assessee;

Explanation- In this, sub-clause “packing” means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii) Does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale;

5[Explanation- For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of-

(a) The effective duty of excise payable on such goods under this Act; and

(b) The aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods, and the effective duty of excise on Such goods under each act referred to in clause (a) or clause (b) shall be,

(i) In a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to, ⁶[or reduction of duty of excise under such Act on such goods equal to, any duty of excise under such Act, or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), already paid] on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) In any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods.]

(e) “Wholesale trade” means sales to dealers, industrial consumers, Government local authorities and other buyers, who or which purchase their requirements otherwise than in retail.]

1. Subs. by Act 22 of 1973, s. 2, w.e.f. 1.10.1975.

2. **Ins. by Act 33 of 1996, s. 74, w.e.f. 28.9.1996.**
3. **The word “or” omitted by Act 33 of 1996, s. 74, w.e.f 28.9.1996.**
4. **Ins. by Act 33 of 1996, s. 74, w.e.f. 28.9.1996.**
5. **Ins. by Act 14 of 1982, s. 47, w.e.f. 1.10.1975.**
6. **Subs. by Act 21 of 1984, s. 46, for certain words.**

¹[4A. Valuation of excisable goods with reference to retail sale price-

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in Section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.

²[(4) If any manufacturer removes from the place of manufacture any excisable goods specified under sub-section (1) without declaring the retail sale price of such goods on the packages, or declares a retail sale price which does not constitute the sole consideration for such sale, or tampers with, obliterates or alters any such declaration made on the packages after removal, such goods shall be liable to confiscation.]

³[Explanation I- For the purpose 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.]

Explanation 2- Where on any excisable goods 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 purpose of this section.]

1. **Ins. by Act 26 of 1997, s. 82, w.e.f. 14.5.1997.**
2. **Ins. by Act 27 of 1999, s. 122, w.e.f. 11.5.1999.**
3. **Subs. by Act 21 of 1998, s. 105, w.e.f. 1.8.1998.**

¹[5. Remission of duty on goods found deficient in quantity-

(1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which duty to any natural cause are found to be deficient in quantity.

(2) Any rules made under sub-section (1) may, having regard to the nature of the excisable goods or of processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed.

Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons.]

1. **Ins. by Act 25 of 1978, sec. 20, w.e.f. 1.7.1978.**

¹[5A. Power to grant exemption from duty of excise- (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified descriptions from the whole or any part of the duty of excise leviable thereon.

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured-

- (i) In a free trade zone and brought to any other place in India; or

- (ii) By a hundred percent export-oriented undertaking and allowed to be sold in India.

Explanation- In this proviso, “free trade zone” and “hundred per cent export oriented undertaking” shall have the same meanings as in Explanation 2 to subsection (1) of Section 3.

²[(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, for reasons to be stated in such order, any excisable goods of strategic or secret nature, or for charitable purpose, on which duty is leviable.]

(3) An exemption under sub-section (1) or sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty

Explanation- “Form or method”, in relation to a rate of duty of excise means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of Rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excise Laws (Amendment) Act, 1987 shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section.]

³[(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.]

1. **Ins. by Act 29 of 1988, s. 9, w.e.f. 1.7.1988.**
2. **Subs. by Act 27 of 1999, s. 123, w.e.f. 11.5.1999.**
3. **Ins. by Act 21 of 1998, s. 106, w.e.f. 1.8.1998.**

¹[6. **Registration of certain persons-** Any prescribed person who is engaged in-

(a) The production or manufacture or any process of production or manufacture of any specified goods included in ²[the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (Act 5 of 1986), or

(b) The wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in ²[the First Schedule and the Second Schedule] to the Central Excise Tariff Act' 1985 (5 of 1986), Shall get himself registered with the proper officer in such manner as may be prescribed.]

1. **Subs. by Act 18 of 1992, s. 113, w.e.f. 14.5.1992.**
2. **Subs. by Act 27 of 1999, s. 119, for “the Schedule”, w.e.f. 11.5.1999.**

7. ¹[***]

1. **Omitted by Act 18 of 1992, s. 113, w.e.f. 14.5.1992.**

8. **Restriction on possession of goods specified in the Second Schedule-** From such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, no person shall, except as provided by rules made under this Act, have in his possession ¹[any goods specified in

the Second Schedule] in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of such goods or of any variety of such goods which may be possessed at any one time by such a person.

1. Subs. by Act 18 of 1956, s. 34.

9. Offences and penalties-

¹[(1)] Whoever commits any of the following offences, namely:-

²[(a) Contravenes any of the provisions of Section 8 or of a rule made under clause(iii) or clause (xxxii) of sub-section (2) of Section 37;]

(b) Evades the payment of any duty payable under this Act;

³[(bb) Removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal;

(bbb) Acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;]

⁴[(bbbb) Contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilized towards payment of excise duty on final products;]

(c) Fails to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

(d) Attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section;

⁵[shall be punishable, -

(i) In the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term, which may extend to seven years and with fine.

Provided that in the absence of special and adequate reasons to the contrary to i.e. recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;

(ii) In any other case, with imprisonment for a term, which may extend to three years or with fine or with both.]

⁶[(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine.

Provided that in the absence of special and -adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months.

(3) For the purposes of sub-sections (1) in (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-

(i) The fact that the accused has been convicted for the first time for an offence under this Act;

(ii) The fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) The fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) The age of the accused.]

- 1. Section 9 re-numbered as sub section (1) by Act 36 of 1973, s.20.**
- 2. Subs. by Act 18 of 1992, s. 113, w.e.f. 14.5.1992, s. 20.**
- 3. Ins. by Act. 36 of 1973, s. 20.**
- 4. Ins. by Act 21 of 1998,s. 107, w.e.f. 1.8.1998.**
- 5. Subs. by Act 36 of 1973,s. 20.**
- 6. Ins. by Act 36 of 1973,s. 20.**

1[9A. Certain offences to be non-cognizable- Notwithstanding anything contained in the **2[Code of Criminal Procedure, 1898 (5 of 1898)]**, offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code.

- 1. Section 9A to 9E ins. by Act 36 of 1973, s. 21.**
- 2. See now section 9 of the Code of Criminal Procedure, 1973 (2 of 1974).**

1[9AA. Offences by companies-

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Explanation- For the purposes of this section, -

- (a) “Company” means any body corporate and includes a firm or other association of individuals; and
- (b) “Director” in relation to a firm means a partner in the firm.]

1. Ins by Act 79 of 1985, s. 2.

9B. Power of Court to publish name, place of business, etc. of persons convicted under the Act-

(1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

9C. Presumption of culpable mental state-

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation- In this section, “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

9D. Relevancy of statements under certain circumstances-

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) When the person whom made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) When the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

9E. Application of Section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958-

(1) Nothing contained in Section 562 of the 1[Code of Criminal Procedure, 1898 (5 of 1898)], or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of subsection (1) shall have effect notwithstanding any thing contained in sub-section (3) of section 9].

1. See now the relevant provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

10. Power of Courts to order forfeiture- Any Court trying an offence under this Chapter may order the forfeiture to Government of any goods in respect of which the Court is satisfied that an offence under this Chapter has been committed, and may also order the forfeiture of any receptacles, packages or coverings in which such goods are contained and the animals, vehicles, vessels or other conveyances used in carrying the goods and any implements or machinery used in the manufacture of the goods.

11. Recovery of sums due to Government- In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the **1**[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

1. Subs. by Act 54 of 1963, s. 5, for “Central Board of Revenue”, w.e.f. 1.1.1964, wherever they occur in the Act

1[11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded-

(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, **2**[as if **3*****]] for the words “six months”, the words “five years” were substituted.

Explanation- Where the service of the notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be.

(2) 4[Central Excise Officer] shall, after considering the representation, if any, made by the person on whom notice is served under subsection (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) For the purposes of this section -

(i) “Refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods, which are exported out of India.

(ii) “Relevant date” means, -

5[(a) In the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid-

(A) Where under the rules made under this Act a periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse as the case may be, the date on which such return is so filed;

(B) Where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(C) In any other case, the date on which the duty is to be paid under this Act or the rules made thereunder;]

(b) In a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(c) In the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

1. **Ins. by Act 25 of 1978, s. 21, w.e.f. 17.11.1980.**
2. **Subs. by Act 79 of 1985, s. 3, w.e.f. 27.12.1985.**
3. **The words 'for the words “Central Excise Officer”, the word’s “Collector of Central Excise” and omitted by Act 18 of 1992, s. 113, w.e.f. 14-05-1992.**
4. **Subs. By Act 18 of 1992,s. 113 w.e.f. 14-05-1992.**
5. **Subs. By Act 22 of 1995,s. 72 w.e.f. 26-05-1995.**

1[11AA. Interest on delayed payment of duty- 2[Subject to the provisions contained in Section 11-AB] where a person], chargeable with duty determined under Sub-section (2) of Section 11-A, fails to pay such duty within three months from the date of determination, he shall pay, in addition to the duty, interest at such rate not below ten percent and not exceeding thirty percent per annum as is for the time being fixed by the Board, on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty.

Provided that where a person chargeable with duty determined under sub-section (2) of Section 11-A before the date on which the Finance Bill, 1995 receives the assent of the President, fails to pay such duty within three months from such date, then, such person shall be liable to pay interest under this section from the date immediately after three months from such date, till the date of payment of such duty

Explanation 1- Where the duty determined to be payable is reduced by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be the date on which an amount of duty is first determined to be payable.

Explanation 2- Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be,-

(a) For the amount of duty first determined to be payable, the date on which the duty is so determined;

(b) For the amount of increased duty, the date of order by which the increased amount of duty is first determined to be payable;

(e) For the amount of further increase of duty, the date of order on which the duty is so further increased.]

1. Ins. By Act 22 of 1995,s. 73, w.e.f. 26-05-1995.

2. Ins. By Act 33 of 1996,s.75, w.e.f. 28-09-1996.

1[11AB. Interest on delayed payment of duty-

(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the person liable to pay duty as determined under sub-section (2) of Section 11-A shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty per cent, per annum, as is for the time being fixed by the Board, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act or the rules made thereunder or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2) of Section 11-A, till the date of payment of such duty.

(2) For the removal of doubts, it is hereby declared that the provisions of subsection (1) shall not apply to cases where the duty became payable before the date on which the Finance (No. 2) Bill, 1996, receives the assent of the President.

Explanation 1- Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such reduced amount of duty.

Explanation 2- Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such increased or further increased amount of duty.

1. Section 11AB and 11 AC ins. By Act 33 of 1996,s. 76, w.e.f. 29-09-1996.

11AC. Penalty for short-levy or non-levy of duty in certain cases- Where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded by reasons of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of Section 11-A, shall also be liable to pay a penalty equal to the duty so determined.

Provided that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account.]

1[11B. Claim for refund of duty-

(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the **2**[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of six months **3** [from the relevant date] **4**~~**5**~~[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12-A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty had not been passed on by him to any other person.

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act:]

6[Provided further that] the limitation of six months shall not apply where any duty has been paid under protest.

7[***]

8(2) If, on receipt of any such application, the **10**[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund.

Provided that the amount of duty of excise as determined by the **10**[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

- (a) Rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods, which are exported out of India;
- (b) Unspent advance deposits lying in balance in the applicant's account current maintained with the **9**[Commissioner of Central Excise];
- (c) Refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) The duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;
- (e) The duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

The duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify.

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its reassembly, and the Central Government shall seek the approval of

Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

10[Explanation- For the purposes of this section, -

(A) “Refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods, which are exported out of India;

(B) “Relevant date” means, -

(a) In the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) If the goods exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) If the goods are exported by land, the date on which such goods pass the frontier, or

(iii) If the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;

(b) In the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) In the case of goods to which banderols are required to be affixed if removed for home

consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) In a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

11[(e) In the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

12[(ea) In the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of Section 5-A, the date of issue of such order;]

13[(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;]

(f) In any other case, the date of payment of duty]

1. Ins. by Act 25 of 1978,s. 21, w.e.f. 17.11.1980.

2. Subs. by Act 27 of 1999,s. 119, for “Assistant Commissioner of Central Excise”, w.e.f. 11.5.1999.

3. Subs. by Act 44 of 1980,s. 49.

4. Ins. by Act 40 of 1991, s. 3, w.e.f. 20.9.1991.

5. Subs. by Act 22 of 1995,s. 74, w.e.f. 26.5.1995.

6. Subs. by Act 40 of 1991,s. 3, w.e.f. 20.9.1991.

7. Omitted by Act 44 of 1980,s. 49.

8. Subs. by Act 40 of 1991,s. 3, for subsections (2) to (5), w.e.f. 20.9.1991.

9. Subs. by Act 22 of 1995,s. 70, for “Collector of Central Excise”, w.e.f. 26.5.1995.

10. Subs. by Act 44 of 1980,s. 49.

11. Subs. by Act 40 of 1991,s. 3, w.e.f. 20.9.1991.

12. Ins. by Act 33 of 1996,s. 77, w.e.f. 28.9.1996.

13. Ins. by Act 21 of 1998,s. 108, w.e.f. 1.8.1998.

1[11BB. Interest on delayed refunds- If any duty ordered to be refunded under sub-section (2) of Section 11-B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below tell per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Board, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty

Provided that where any duty ordered to be refunded under sub-section (2) of Section 11-B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation- Where any order of refund is made by the Commissioner (Appeals, Appellate Tribunal or any court against an order of the 2 [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], under sub-section (2) of Section 11-B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.]

1. Ins. by Act 22 of 1995, s. 75, w.e.f. 26.5.1995.

2. Subs. by Act 27 of 1999, s. 119, for “Assistant Commissioner of Central Excise”, w.e.f. 11.5.1999.

1[11C. Power not to recover duty of excise not levied or short-levied as a result of general practice-

2(l) Notwithstanding anything contained in this Act, if the Central Government is satisfied-

(a) That a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and

(b) That such goods were, or are, liable-

- (i) To duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or
- (ii) To a higher amount of duty of excise than what was, or is being, levied, according to the said practice,

Then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or, as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.]

3[(2) Where any notification under sub-section (1) in respect of ally goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of Section 11-B.

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the **4**[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], in the form referred to in sub-section (1) of Section 11-B, before the expiry of six months from the date of issue of the said notification.]

- 1. Ins. by Act 25 of 1978, s. 21, w.e.f. 1.7.1978, vide G.S.R. 327 (E), dt. 19.6.1978.**
- 2. Section 11C renumbered as sub-section (1) thereof by Act 29 of 1988, s. 10, w.e.f. 1.7.1988.**
- 3. Subs. by Act 40 of 1991, s. 4, w.e.f. 20.9.1991.**
- 4. Subs. By Act 27 of 1999,s. 119, for “Asth. Commissioner of Central Excise”, w.e.f 11-05-1999.**

1[11D. Duties of excise collected from the buyer to be deposited with the Central Government-

(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who has collected any amount from the buyer of any goods in any manner as representing duty of excise,

shall forthwith pay the amount so collected to the credit of the Central Government.

(2) The amount paid to the credit of the Central Government under sub-section (1) shall be adjusted against the duty of excise payable by the person on finalisation of assessment and where any surplus is left after such adjustment, the amount of such surplus shall either be credited to the fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of Section 11-B and the relevant date for making an application under that section in such cases shall be the date of the public notice to be issued by the 2[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise].]

1. Subs. by Act 27 of 1999, s. 119, for “Assistant Commissioner of Central Excise”, w.e.f. 11.5.1999.

2. Ins. by Act 40 of 1991, s. 5, w.e.f. 20.9.1991.

12. Application of the provisions of 1[Act 52 of 1962] to Central excise duties-The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the 1[Customs Act, 1962 (52 of 1962)], relating to the levy of an exemption from customs duties, drawback of duty warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by Section 3.

1. Subs. by Act 33 of 1996, s. 78, for “Sea Customs Act, 1878 (8 of 1878)”, w.e.f. 28.9.1996.

1[CHAPTER IIA

INDICATING AMOUNT OF DUTY IN THE PRICE OF GOODS, ETC., FOR PURPOSE OF REFUND AND CREDITING CERTAIN AMOUNTS TO THE FUND

1. Ins. by Act 40 of 1991, s. 6, w.e.f. 20.9.1991.

12A. Price of goods to indicate the amount of duty paid thereon. - Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

12B. Presumption that incidence of duty has been passed on to the buyer -Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

12C. Consumer Welfare Fund-

(1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

(a) The amount of duty of excise referred to in sub-section (2) of Section 11-B or sub-section (2) of Section 11-C or sub-section (2) of Section 11-D;

(b) The amount of duty of customs' referred to in sub-section (2) of Section 27 or sub-section (2) of Section 28-A, or sub-section (2) of Section 28-B of the Customs Act, 1962 (52 of 1962);

(c) Any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

12D. Utilization of the Fund-

(1) Any money credited to the Fund shall be utilized by the Central Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.]

CHAPTER III

POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS

1[12E. Powers of Central Excise Officers-

(1) A Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him.

(2) Notwithstanding anything contained in sub-section (1), the 2[Commissioner of Central Excise (Appeals)] shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in Section 14 or Chapter VI-A.]

1. Section 12A ins. by Act 79 of 1985, s. 4 and then renumbered as “12-E” by Act 40 of 1991, s. 7, w.e.f. 20.9.1991.

2. Subs. by Act 22 of 1995, s. 70, for “Collector of Central Excise (Appeals)”, w.e.f. 26.5.1995.

13. Power to arrest-

(1) Any Central Excise officer duly empowered by the Central Government in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made thereunder, who on demand of any officer duly empowered by the Central Government in this behalf refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false, may be arrested by such officer in order that his name and residence may be ascertained.

14. Power to summon persons to give evidence and produce documents in inquiries under this Act-

(1) Any Central Excise Officer duly empowered by the Central Government in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry, which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all, documents or things of a certain

description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required.

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure (5 of 1908) shall be applicable to requisitions of attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a “judicial proceeding” within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).

1[14A. Special audit in certain cases-

(1) If at any stage of enquiry, investigation or any other proceedings before him, any Central Excise Officer not below the rank of an 2[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person, he may, with the previous approval of the Chief Commissioner of Central Excise, direct such .manufacturer or such person to get the accounts of his factory, office, depots, distributors or any other place, as may be specified by the said Central Excise Officer, audited by a cost accountant, nominated by the Chief Commissioner of Central Excise in this behalf.

(2) The cost accountant, so nominated shall, within the period specified by the Central Excise Officer, submit a report of such audit duly signed and certified by him to the said Central Excise Officer mentioning therein such other particulars as may be specified.

Provided that the Central Excise Officer may, on an application made to him in this behalf by the manufacturer or the person and for any material and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (1) is received by the manufacturer or the person.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the manufacturer or person aforesaid have been audited under any other law for the time being in force or

otherwise.

(4) The expenses of, and incidental to, such audit (including the remuneration of the cost accountant) shall be determined by the Chief Commissioner of Central Excise (which determination shall be final) and paid by the manufacturer or person and in default of such payment, shall be recoverable from the manufacturer or the person in the manner provided in Section 11 for the recovery of sums due to the Government.

(5) The manufacturer or the person shall be given an opportunity of being heard in respect of any material gathered on the basis of audit under sub-section (1) and proposed to be utilized in any proceedings under this Act or rules made thereunder.

Explanation. - For the purpose of this section, “cost accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).]

1. Ins. by Act 22 of 1995, s. 76, w.e.f. 26.5.1995.

2. Subs. by Act 27 of 1999, s. 119, for “Assistant Commissioner of Central Excise”, w.e.f. 11.5.1999.

1[14AA. Special audit in cases where credit of duty availed or utilized is not within the normal limits, etc.-

(1) If the Commissioner of Central Excise has reason to believe that the credit of duty availed of or utilized under the rules made under this Act by a manufacturer of any excisable goods-

(a) Is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;

(b) Has been availed of or utilized by reason of fraud, collusion or any willful misstatement or suppression of facts, he may direct such manufacturer to get the accounts of his factory, office, depot, distributor or any other place, as may be specified by him, audited by a cost accountant nominated by him.

(2) The cost accountant so nominated shall, within the period specified by the Commissioner of

Central Excise, submit a report of such audit duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the said manufacturer aforesaid have been audited under any other law for the time being in force or otherwise.

(4) The expenses of, and incidental to, such audit (including the remuneration of the cost accountant) shall be determined by the Commissioner of Central Excise (which determination shall be final) and paid by the manufacturer and in default of such payment shall be recoverable from the manufacturer in the manner provided in Section 11 for the recovery of sums due to the Government.

(5) The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilized in any proceeding under this Act or rules made thereunder.

Explanation- For the purpose of this section, cost accountant shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).]

1. Ins. by act 26, of 1997, s. 83, w.e.f.14.5.1997

15. Officers required to assist Central Excise Officers- All officers of Police and Customs and all officers of Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the Central Excise Officers in the execution of this Act.

16. Owners or occupiers of land to report manufacture of contraband excisable goods- Every owner or occupier of land, and the agent of any such owner or occupier, in charge of the management of that land, if contraband excisable goods are manufactured thereon, shall in the absence of reasonable excuse be bound to give notice of such manufacture to a Magistrate, or to an officer of the Central Excise, Customs, Police, or Land Revenue Department, immediately the fact comes to his knowledge.

17. Punishment for connivance at offences- Any owner or occupier of land, or any agent of such owner or occupier in charge of the management of that land, who willfully connives at any offence against the provisions of this Act or of any rules made thereunder shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

18. Searches and arrests how to be made- All searches made under this Act or any rules made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating respectively to searches and arrests made under that Code.

19. Disposal of persons arrested- Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance, to the officer-in-charge of the nearest police station.

20. Procedure to be followed by officer-in-charge of police station. - The officer-in-charge of a police-station to whom any person is forwarded under section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

21. Inquiry how to be made by Central Excise Officers against arrested persons forwarded to them under Section 19-

(1) When any person is forwarded under Section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the 1[Code of Criminal Procedure, 1898 (5 of 1898),] when investigating a cognizable case:

Provided that-

(a) If the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) If it appears to the Central Excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise officer may direct, to appear, if and when so required before the

Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

1. See now the Code of Criminal Procedure, 1973 (Act 2 of 1974).

22. Vexatious search, seizure, etc., by Central Excise Officer- Any Central Excise or other officer exercising powers under this Act or under the rules made thereunder who-

- (a) Without reasonable ground of suspicion searches or causes to be searched any house, boat or place;
- (b) Vexatiously and unnecessarily detains, searches or arrests any person;
- (c) Vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;
- (d) Commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty; shall for every such offence, be punishable with fine which may extend to two thousand rupees. Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

23. Failure of Central Excise Officer in duty- Any Central Excise officer who ceases or refuses to perform or withdraws himself from the duties of his office, unless he has obtained the express written permission of the 1[Commissioner of Central Excise], or has given to his superior officer two months' notice in writing of his intention or has other lawful excuse, shall on conviction before a Magistrate be punishable with imprisonment for term which may extend to three months, or with fine which may extend to three months' pay, or with both.

1. Subs. By Act 22 of 1995,s. 70 for “Collector of Central Excise”, w.e.f. 26-05-1995.

1[CHAPTER IIIA

ADVANCE RULINGS

1. Chapter IIIA, Sections 23A to 23H ins. by Act 27 of 1999, s. 124, w.e.f. 11.5.1999.

23A. Definitions- In this Chapter, unless the context otherwise requires, -

- (a) “Activity” means production or manufacture of goods:
- (b) “Advance ruling” means the determination, by the authority of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity proposed to be undertaken, by the applicant;
- (c) “Applicant” means a nonresident setting up a joint venture in India in collaboration with a non-resident or resident, or a resident setting up a joint venture in India in collaboration with a non-resident, making application;
- (d) “Application” means an application made to the Authority under sub-section (1) of section 23C;
- (e) “Authority” means the Authority for Advance Rulings constituted under section 28F of the Customs Act, 1962 (52 of 1962);
- (f) “Non-resident” shall have the meaning assigned to it in clause (30) of section 2 of the Income-tax Act, 1961 (43 of 1961).

23B. Vacancies etc., not to invalidate proceedings- No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

23C. Application f or advance ruling-

- (1) Applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on winch the advance ruling is sought.

- (2) The question on which the advance ruling is sought shall be in respect of, -
- (a) Classification of any goods under the Central Excise Tariff Act, 1985 (5 of 1986);
- (b) Applicability of a notification issued under sub-section (1) of section 5A having a bearing on the rate of duty;
- (c) The principles to be adopted for the purposes of, determination of value of the goods under the provisions of this Act.
- (3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.
- (4) An applicant may withdraw an application within thirty days from the date of the application.

23D. Procedure on receipt of application-

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records.

Provided that where the Authority has called for any records in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.

- (2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application.

Provided that the Authority shall not allow the application except in the case of a resident applicant where the question raised in the application is, -

- (a) Already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court;

(b) The same as in a matter already decided by the Appellate Tribunal or any Court. Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

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

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation- For the purposes of this sub-section, “authorised representative” shall have the meaning assigned to it in sub-section (2) of section 35Q.

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Central Excise, as soon as may be, after such pronouncement.

23E. Applicability of advance ruling-

(1) The advance ruling pronounced by the Authority under section 23D shall be binding only-

- (a) On the applicant who had sought it;
 - (b) In respect of any matter referred to in sub-section (2) of section 23C;
 - (c) On the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

23F. Advance ruling to be void in certain circumstances-

- (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 28-I has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this subsection) to the applicant as if such advance ruling had never been made.
- (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

23G. Powers of authority-

- (1) The authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).
- (2) The Authority shall be deemed to be a civil court for the purposes of section- 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

23H. Procedure of Authority- The Authority shall, subject to the provisions of the Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.]

CHAPTER IV

TRANSPORT BY SEA

24. Penalties for carrying excisable goods in certain vessels - when any excisable goods are carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

25. Exceptions- Nothing in Section 24 applies to-

- (a) Any excisable goods covered by a permit granted under rules made under this Act;
- (b) Any excisable goods covered by a pass granted by any officer whom the 1[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] may appoint in this behalf;
- (c) Such amount of excisable goods carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the 1[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], may from time to time exempt from the operation of Section 24.

1. Subs. by Act 54 of 1963, s. 5, for “Central Board of Revenue”, w.e.f. 1.1.1964.

26. Power of stoppage, search and arrest- When any officer empowered by the 1[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any excisable goods are being carried, or have within the previous twenty-four hours been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties imposed by Section 24, he may require such vessel to be brought to and thereupon may-

- (a) Enter and search the vessel;
- (b) Require the master of the vessel to produce any documents in his possession relating to the vessel or the cargo thereof;
- (c) Seize the vessel if the officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in 2[India]; and
- (d) Where any excisable goods are found on board the vessel, search and arrest without a warrant any person on board the vessel whom he has reason to believe to be punishable under Section 24.

1. Subs. by Act 54 of 1963, s. 5, for “Central Board of Revenue”, w.e.f. 1.1.1964.

2. Subs. by Act 25 of 1950, s. 11 and Sch. IV, for “the States”.

27. Penalties for resisting officer- Any master of a vessel refusing or neglecting to bring to the vessel or to produce his papers when required to do so by an officer acting under Section 26, and any person obstructing any such officer in the performance of his duty, may be arrested by such officer without a warrant, and shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

28. Confiscation of vessel and cargo-

(1) Every vessel (including all appurtenances) in which any excisable goods are carried so as to render the owner or master of such vessel liable to penalties imposed by Section 24, the cargo on board such vessel and the excisable goods in respect of which an offence under this Act has been committed shall be liable to confiscation on the orders of the officer empowered in this behalf by the Central Government:

(2) Whenever any Customs Officer is satisfied that any article is liable to confiscation under this section he may seize such article, and shall at once report the seizure to his superior officer for the information of the officer empowered to order confiscation under sub-section (1) and such officer may, if satisfied on such report or after making such inquiry as he thinks fit, that the article so seized is liable to confiscation, either declare it to be, confiscated, or impose a fine in lieu thereof not exceeding the value of the article.

29. Jurisdiction- Any offence punishable under Section 24 or Section 27 may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under Section 26 or Section 27, he may be brought.

30. Power to exempt from operation of this Chapter- The Central Government may, by notification in the Official Gazette, exempt the carriage of excisable goods within any local limits or in any class of vessels from the operation of this Chapter, and, by like notification, again subject such carriage to the operation of this Chapter.

1[CHAPTER V]

SETTLEMENT OF CASES

1. Chapter V. Sections 31 to 32P ins. by Act of 1998, s. 110, w.e.f. 1.8.1998.

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 subsection (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 within 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 and Chapter XIVA of the Customs Act, 1962.
- (2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen 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 authorize 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-Chairmen as the Central Government may, by notification in the Official Gazette, authorize 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-Chairmen as the Central Government may, by notification in the Official Gazette, authorize 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 or 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 particulars 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 this 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 of the classification of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986).

- (2) Where any excisable goods, books of accounts, 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, by order, allow the application to be proceeded with or reject the application.

Provided that an application shall not be rejected under this subsection, 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 Commissioner of Central Excise has no object 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 that 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 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 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 cases not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under subsection (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 facts.

(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 of 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 any 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. If Settlement Commission is of the opinion (the reasons for such

32H. Power of Settlement Commission to reopen completed proceedings. –If settlement commission is of the 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.

32I. 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 32F, the Settlement Commission shall, until an order is passed under sub-section (7) of section 32F, have, subject to the provisions of subsection (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 as 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.

32J. Inspection, etc., of reports- No person shall be entitled to inspect, or obtain copies of, any reports 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 Indian Penal Code (45 of 1860) 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 from 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 subsection (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.

32L. 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 cooperated 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 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 result 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 and 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.

32M. 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 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.

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

(i) 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

(ii) 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 purpose of section 196 of the Indian Penal Code (45 of 1860).]*

* Chapter V, Section 31 to 32P, ins. By Act 21 of 1998, s. 110, w.e.f. 1.8.1998.

CHAPTER VI

ADJUDICATION OF CONFISCATIONS AND PENALTIES

33. Power of adjudication- 1 [Where under this Act or by the rules made thereunder] anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged-

(a) Without limit, by a 2[Commissioner of Central Excise]

(b) Up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty

not exceeding two hundred and fifty rupees, by an 3[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise].

Provided that the 4[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], may, in the case of any officer performing the duties of an 3[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], reduce the limits indicated in clause (b) of this section, and may confer on any officer the powers indicated in clause (a) or of this section.

1. Subs. By Act 27 of 1999, s. 125, w.e.f. 11.5.1999.
2. Subs. By Act 22 of 1995, s. 70 “Collector of Central Excise”, w.e.f. 6.5.1995.
3. Subs. By Act 27 of 1999, s. 119 “Assistant Commissioner of Central Excise”, w.e.f. 11.5.1999.
4. Subs. By Act 54 of 1963, s. 5 for “Central Board of Revenue”, w.e.f. 1.1.1964.

34. Option to pay fine in lieu of confiscation- Wherever confiscation is adjudged under this Act or the rules made thereunder, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

1[34A. Confiscation or penalty not to interfere with other punishments – No Confiscation made or penalty imposed under the provisions of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.]

1. Ins. By Act 36 of 1973, s. 22.

1 [CHAPTER VIA APPEALS

1. Subs. by Act 44 of 1980, s. 50 and Sch. V, for sections 35, 35A and 36, w.e.f. 11.10.1982, vide GSR 592(E), dt. 11.10.1982.

35. Appeals to Commissioner (Appeals)-

(1) Any person aggrieved by any decision or order passed under this Act by a Excise Officer lower in rank than a Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within three months from the date of the communication to him of such decision or order.

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 three months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

35A. Procedure in appeal -

(1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard, if he so desires.

(2) The Commissioner (Appeals) may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) The Commissioner (Appeals) may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

Provided further that where the Commissioner (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in Section 11-A to show cause

against the proposed order.

(4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the commissioner of Central Excise.

35B. Appeals to the Appellate Tribunal-

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(a) A decision or order passed by the Commissioner of Central Excise as an adjudicating authority;

(b) An order passed by the Commissioner (Appeals) under Section 35-A;

(c) An order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;

(d) An order passed by the Board or the Commissioner of Central Excise, either before or after the appointed day, under Section 35-A, as it stood immediately before that day.

1[Provided that no appeal shall lie to the appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) A case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) A rebate of duty of excise on goods, exported to any country or territory outside India or on excisable materials used in the manufacture of goods, which are exported to any country or territory outside India;

(c) Goods exported outside India (except to Nepal or Bhutan) without payment of duty;]

2[(d) Credit of any duty allowed to be utilized 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 Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No.2) Act, 1998.]

Provided further that] the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where-

(i) In any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) The amount of fine or penalty determined by such order, does not exceed 3[fifty thousand rupees].

4[(I-A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of Section 47 of the Finance Act, 1984 (21 of 1984), before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under Section 35-EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

5[(2) The Commissioner of Central Excise may, if he is of opinion that an order passed by the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under Section 35-A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal against such order.]

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

6[(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made on or after the 1st day of June, 1993, irrespective of the date of demand of duty or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, -

- (a) Where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;
- (b) Where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than one lakh rupees, one thousand rupees.

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

1. **Subs. by Act 21 of 1984, s. 47.**
2. **Ins. by Act 21 of 1998, s. 109 (date to be notified).**
3. **Subs. by Act 38 of 1993, s. 45, for “ten thousand rupees”, w.e.f. 13.5.1993.**
4. **Ins. by Act 21 of 1984, s. 47, w.e.f. 11.5.1984.**
5. **Sub-section (2) shall stand subs. by Act 62 of 1986, s. 34 (date to be notified)**
as follows:

“(2) The Collector of Central Excise may, if he is of opinion that an order passed by-

(a) The Appellate Collector of Central Excise under section 35, as it stood immediately before the appointed day, or

(b) **The Collector (Appeals) under section 35 A, is not legal or proper; direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal or, as the case Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order”.**

6. Subs. by Act 38 of 1993, s. 45, w.e.f. 13.5.1993.

35C. Orders of Appellate Tribunal-

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case maybe, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party of the appeal.

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Central Excise and the other party to the appeal.

(4) Save as provided in Section 35-G or Section 35-L, orders passed by the Appellate Tribunal on appeal shall be final.

35D. Procedure of Appellate Tribunal-

(1) The provisions of sub-sections (1), (2), (5) and (6) of Section 129-C of the Customs Act, 1962 (52 of 1962), shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

(2) **1**[***]

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where-

(a) In any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) The amount of fine or penalty involved, does not exceed **2**[ten lakh rupees].

1. Sub-section (2) omitted by Act 22 of 1995, s. 77, w.e.f. 26.5.1995.

2. Subs. by Act 33 of 1996, s. 80, for “one lakh rupees” ,w.e.f. 28.9.1996.

35E. Powers of Board or Commissioner of Central Excise to pass certain orders-

(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner to apply to the Appellate Tribunal **1**[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

(2) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of such decision or

order and may, by order, direct such authority to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(3) No order shall be made under sub-section (1) or sub-section (2), after the expiry of 2[one year] from the date of the decision or order of the adjudicating authority

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal 3[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] or the Commissioner (Appeals) within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal 3[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of subsection (4) of Section 35-B 4 [or, as the case may be, the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986] shall, so far as may be, apply to such application.

4[(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation- For the purposes of sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question-

(a) Relating to the rate of duty of excise for the time being in force, whether under the Central Excise Tariff Act, 1985 (5 of 1986), or under any other Central Act providing for the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of February, 1986; or

(b) Relating to the value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) Whether any goods are excisable goods or whether the rate of duty of excise on any goods is nil; or

(d) Whether any goods fall under a particular heading or sub-heading of 5[the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986), or the Additional duties Importance) Act, 1957 (58 of 1957), or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), or that any goods are or not covered by a particular notification or order issued by the Central Government or the Board, as the case may be, granting total or partial exemption from duty; or

(e) Whether the value of any goods for the purposes of assessment of duty of excise shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.]

1. **Ins. by Act 62 of 1986, s. 34, (date to be notified).**
2. **Subs. by Act 21 of 1984, s. 49, for “two years”, w.e.f. 11.5.1984.**
3. **Ins. by Act 62 of 1986, s. 34 (date to be notified).**
4. **Ins. by Act 29 of 1988, s. 11 (date to be notified).**
5. **Subs. by Act 27 of 1999, s. 119, for “the Schedule”, w.e.f. 11.5.1999.**

1[35EA. Powers of revision of Board or Commissioner of Central Excise in certain cases-

(1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Commissioner of Central Excise has passed any decision or order [not being a decision or order passed under sub-section (2) of this section] of the nature referred to in sub-section (5) of Section 35-E for the purpose of satisfying itself as to correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

(2) The Commissioner of Central Excise may, of his own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of Section 35E, for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No decision or order under this section shall be made so as to prejudicially affect any person unless such person is given a reasonable opportunity of making representation and if, he so

desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Commissioner of Central Excise is of the opinion that any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, no order requiring the affected person to pay any duty not levied or paid, short levied or short-paid or erroneously refunded shall be passed under this section unless such person is given notice within the time limit specified in Section 11-A to show cause against the proposed order.

(4) No proceedings shall be initiated under sub-section (1) or sub-section (2) in respect of any decision or order after the expiry of a period of six months from the date of communication of such decision or order.

Provided that in respect of any decision or order passed before the commencement of the Customs and Central Excise Laws (Amendments) Act, 1987, the provisions of this sub-section shall have effect as if for the words “six-months”, the words “one year” were substituted.

(5) Any person aggrieved by any decision or order passed under sub-section (1) or sub-section (2) may appeal to the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986 (62 of 1986), against such, decision or order.]

1. Ins. by Act 29 of 1988, s. 12 (date to be notified).

1[35EE. Revision by Central Government-

(1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35-A, where the order is of the nature referred to in the first proviso to subsection (1) of Section 35-B, annul or modify such order.

2[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]

Explanation- For the purposes of this sub-section, “order passed under Section 35-A” includes an order

passed under that section before the commencement of Section 47 of the Finance Act, 1984 (21 of 1984) against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

3[(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.]

(2) An application under sub-section (1) shall be made within three months from the date of the communication of the applicant of the order against which the application is being made.

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

4[(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of,-

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

(b) One thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise Officer in the case to which the application relates is more than one lakh rupees.

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).]

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, -

(a) In any case in which an order passed under Section 35-A has enhanced any penalty or fine in lieu

of confiscation or has confiscated goods of greater value, and

(b) In any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in Section 11-A.]

1. Subs. by Act 21 of 1984, s. 50.
2. Proviso ins. by Act 27 of 1999, s. 126(a), w.e.f. 11.5.1999.
3. Sub-section (1A) ins. by Act 27 of 1999, s. 126(b), w.e.f. 11.5.1999.
4. Sub-section (3) subs. by Act 27 of 1999, s. 126(c), w.e.f. 11.5.1999.

35F. Deposit, pending appeal, of duty demanded or penalty levied- Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded, in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority -the duty demanded or the penalty levied.

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

35G. Statement of case to High Court-

(1) The Commissioner of Central Excise or the other party may, within sixty days of the date upon which is served with notice of an order under Section 35-C 1[passed before 1st day of July, 1999] (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the

prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days, of the receipt of such application, draw up a statement of the case and refer it to the High Court.

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such an application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the Appellate Tribunal as if it were an application presented within the time specified in sub-section (1).

(3) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the Commissioner of Central Excise, or, as the case may be, the other party may, within six months from the date on which he is served with notice of such refusal, apply to the High Court and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly

(4) Where in the exercise of its powers under sub-section (3), the Appellate Tribunal refuses to state a case which it has been required by an applicant to state, the applicant may, within thirty days from the date on which he receives notice of such refusal, withdraw his application and, if he does so, the fee, if any, paid by him shall be refunded.

1. Ins. by Act 27 of 1999, s. 127, w.e.f. 11.5.1999.

1[35H. Application to High Court-

(1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed on or after the 1st day of July, 1999 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by

application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

(2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

(3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty- five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

(4) If, on an application made under sub-section (1), the high Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.]

1. Section 35H subs. by Act 27 of 1999, s. 128, w.e.f. 11.5.1999.

35I. Power of High Court or Supreme Court to require statement to be amended- If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

35J. Case before High Court to be heard by not less than two Judges. –

(1) When any case has been referred to the High Court 1[under Section 35G or Section 35H], it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ and

the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

1. Subs. by Act 27 of 1999, s. 129, w.e.f. 11.5.1999.

35K. Decision of High Court or Supreme Court on the case stated-

(1) The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court **and the** signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

(2) The costs of any reference to the High Court or the Supreme Court, which shall not include the fee for making the reference, shall be in the discretion of the Court.

35L. Appeal to Supreme Court- An appeal shall lie to the Supreme Court from-

(a) Any judgment of the High Court delivered on a reference made 1[under Section 35G or Section 35H] in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) Any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

1. Subs. by Act 27 of 1999, s. 130, w.e.f. 11.5.1999.

35M. Hearing before Supreme Court-

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the

Supreme Court shall, so far as may be, apply in the case of appeals under Section 35-L as they apply in the case of appeals from decrees of a High Court.

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of Section 35-K or Section 35-N.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 35-K in the case of a judgment of the High Court.

35N. Sums due to be paid notwithstanding reference, etc.- Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, sums due to the Government as a result of an order passed under sub-section (1) of Section 35-C shall be payable in accordance with the order so passed.

35O. Exclusion of time taken for copy. - In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

35P. Transfer of certain pending proceedings and transitional provisions-

(1) Every appeal which is pending immediately before the appointed day before the Board under Section 35, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day.

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

(2) Every proceeding which is pending immediately before the appointed day before the Central

Government under Section 36, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it.

Provided that if any such proceeding or matter relates to an order where-

(a) In any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) The amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said Section 36 had not been substituted.

Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Central Excise under Section 35-A, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Central Excise, as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under sub-section (1) or subsection (2) shall, notwithstanding anything contained in Section 35-Q, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

35Q. Appearance by authorised representative-

(1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination or oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, “authorised representative” means a person authorised by the person referred to in sub-section (1) to appear on this behalf, being-

(a) His relative or regular employee; or

(b) Any legal practitioner who is entitled to practice in any civil court in India; or

(c) Any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service-Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person, -

(a) Who has been dismissed or removed from Government service; or

(b) Who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or

(c) Who has become an insolvent, shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Commissioner of Central Excise or the competent authority under the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968), as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person,-

(a) Who is a legal practitioner, is found guilty of misconduct in his professional capacity by any

authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practice as a legal practitioner;

(b) Who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall, thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (d) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely: -

(a) No such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) Any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) No such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

36. Definitions- In this Chapter-

(a) “Appointed day” means the date* of coming into force of the amendments to this Act specified in Part 11 of the Fifth Schedule to the Finance (No. 2) Act, 1980 (44 of 1980);

(b) “High Court” means,-

(i) In relation to any State, the High Court for that State;

(ii) In relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

(iii) In relation to the Union Territories of Dadra and Nagar Haveli and 1[Daman and Diu], the High Court at Bombay;

(iv) In relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

(c) “President” means the President of the Appellate Tribunal.]

*. 11.10.1982; vide G.S.R. 592 (E), dt. 11.10.1982.

1. Subs by Act 10 of 1987, w.e.f. 30.5.1987.

1[CHAPTER VI B

PRESUMPTION AS TO DOCUMENTS]

1. Ins. by Act 44 of 1980i, s. 50, and Sch. V, w.e.f. 11.10.1982; vide GSR 597(E), dt. 11.10.1982.

1[36A. Presumption as to documents in certain cases-Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,-

(a) Unless the contrary is proved by such person, presume-

(i) The truth of the contents of such document;

(ii) That the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) Admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.]

1. Ins. by Act 36 of 1973, s. 23.

1[36B. Admissibility of micro films, facsimile copies of documents and computer print-outs as documents and as evidence-

(1) Notwithstanding anything contained in any other law for the time being in force, -

(a) A micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) A facsimile copy of a document; or

(c) A statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a “computer printout”), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely:-

(a) The computer print-out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) During the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) Throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) The information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) By a combination of computers operating over that period; or

(b) By different computers operating in succession over that period; or

(c) By different combinations of computers operating in succession over that period; or

(d) In any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) Identifying the document containing the statement and describing the manner in which it was produced;

(b) Giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) Dealing with any of the matters of which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) Information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) Whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities' that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) A document shall be taken to have -been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation- For the purposes of this section, -

(a) “Computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) Any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.]

1. Ins. by Act 29 of 1988, s. 13, w.e.f. 1.7.1988.

CHAPTER VII

SUPPLEMENTAL PROVISIONS

37. Power of Central Government to make rules-

- (1) The Central Government may make rules to carry into effect the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may-
 - 1[(i) Provide for determining under Section 4 the nearest ascertainable equivalent of the normal price;
 - (ia) Having regard to the normal practice of the wholesale trade, define or specify the kinds of trade discount to be excluded from the value under Section 4 including the circumstances in which and the conditions subject to which such discount is to be so excluded;]
 - 2[(ib)] Provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;
 - 3[(ibb) Provide for charging or payment of interest on the differential amount of duty which becomes payable or refundable upon finalisation of all or any class of provisional assessments.]
 - 4[(ic) Provide for the remission of duty of excise leviable on any excisable goods, which due to any natural cause are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons;]
 - (ii) Prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the production or manufacture, or any process of the production or manufacture, of excisable goods, or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;
 - (iii) Prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, 5[***] the transit of excisable goods from any part of 6[India] to any other part thereof;

- (iv) Regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a **7**[registered] person, or a bonded warehouse, or to a market;
- (v) Regulate the production or manufacture, or any process of the production or manufacture, the possession, storage and sale of salt, and so far as such regulation is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, or of any component parts or ingredients or containers thereof;
- (vi) Provide for the employment of officers of the **8**[Government] to supervise the carrying out of any rules made under this Act;
- (vii) Require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation;
- (viii) Provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses;
- (ix) Provide for the distinguishing of goods which have been **9**[manufactured after registration], of materials which have been imported under licence, and of goods on which duty has been paid, or which are exempt from duty under this Act;
- (x) Impose on persons engaged in the production of manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;
- (xi) Require that excisable goods shall not be sold or offered or kept for sale in **10**[India] except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;
- (xii) Provide for the issue of **11**[registration certificates] and transport permits and the fees, if any, to be charged therefore.

Provided that the fees for the licensing of the manufacture and refining of salt and saltpeter shall not exceed, in the case of each such licence, the following amounts, namely: -

Licence to manufacture and refine saltpeter and to	Rs.
Separate and purify salt in the process of such	
Manufacture and refining	50
Licence to manufacture saltpeter	2
Licence to manufacture sulphate of soda (Kharinun)	
By solar heat in evaporating pans	10
Licence to manufacture sulphate of soda (Kharinun)	
By artificial heat	2
Licence to manufacture other saline substances	2;

(xiii) Provide for the detention of goods, plant, machinery or material, for the purpose of exacting the duty, the procedure in connection with the confiscation, otherwise than under Section 10 or Section 28, of goods in respect of which breaches of that Act or rules have been committed, and the disposal of goods so detained or confiscated;

(xiv) Authorise and regulate the inspection of factories and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale or transport of salt, and so far as such inspection or search is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods;

(xv) Authorise and regulate the composition of offences against, or liabilities incurred under this Act or the rules made thereunder;

(xvi) Provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India **12**[including interest thereon];

13[* * * * * * * * * * * * * *]

14[(xvi-a) Provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods;]

15[(xvi-b) Provide for the giving of credit of sums of money with respect to raw materials used in the manufacture of excisable goods;]

16[(xvi-c) Provide for charging and payment of interest, at the case may be, on credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods where such credit is varied subsequently;]

(xvii) Exempt any goods from the whole or any part of the duty imposed by this Act;

17[(xvii-a) Provide incentives for increased production or manufacture of any goods by way of remission of, or any concession with respect to, duty payable under this Act;]

(xviii) Define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of the Central Government, or of any factory in which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(xix) Define an area and any other place in which salt is manufactured; and regulate the possession, storage and sale of salt within such area;

(xx) Authorise the **18**[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] or **19**[Commissioners of Central Excise] appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section;

20[(xxi) Provide for the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or of any rule made thereunder;]

21[(xxii) Provide for the charging of fees for the examination of excisable goods intended for export

out of India and for rendering any other service by a Central Excise Officer under this Act or the rules made thereunder;]

22[(xxiii) Specify the **23**[form and manner] in which application for refund shall be made under Section 11-B;

(xxiv) Provide for the manner in which money is to be credited to the Fund;

(xxv) Provide for the manner in which the Fund shall be utilised for the welfare of the consumers;

(xxvi) Specify form in which the account and records relating to the Fund shall be maintained;]

24[(xxvii) Specify the persons who shall get themselves registered under Section 6 and the manner of their registration;]

25[(xxviii) Provide for the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods on an appointed date and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods on and from such date.]

26[(2-A) The power to make rules conferred by clause (xvi) of sub-section (2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs.]

(3) In making rules under this section, the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated.

27[(4) Notwithstanding anything contained **in** sub-section (3), and without prejudice to the provisions of Section 9, in making rules under this section, the Central Government may provide that if any manufacture, producer or licensee of a warehouse-

(a) Removes any excisable goods in contravention of the provisions of any such rule, or

- (b) Does not account for all such goods manufactured, produced or stored by him, or
- (c) Engaged in the manufacture, production or storage of such goods without having applied for the **28**[registration as] required under Section 6, or
- (d) Contravenes the provisions of any such rule with intent to evade payment of duty, then-
 - (i) Any land, building, plant, machinery, materials, conveyance, animal or any other thing used in connection with the manufacture, production, storage, removal or disposal of such goods, and
 - (ii) All excisable goods on such land or in such building or produced or manufactured with such plant, machinery, materials or thing,

Belonging to such manufacturer, producer or licensee shall be liable to confiscation and the manufacturer, producer or licensee shall be liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention of the nature referred to in clause (a), (b), (c) or (d) has been committed, or five thousand rupees, whichever is greater.]

29[(5) Notwithstanding anything contained in sub-section (3), the Central Government may make rules to provide for the imposition upon any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder, a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater.]

- 1. Ins. by Act 22 of 1973, s. 3.**
- 2. Clause (i) re-numbered as clause (ib) by Act 22 of 1973, s. 3.**
- 3. Ins. by Act 27 of 1999, s. 131(a), w.e.f. 11.5.1999.**
- 4. Ins. by Act 25 of 1978, s. 25, w.e.f. 1.7.1978.**
- 5. Certain words omitted by Act 41 of 1954, s. 2 and Sch.**
- 6. Subs. by Act 25 of 1950, s. 11 and Sch. IV, for “the States”.**

7. Subs. by Act 18 of 1992, s. 113, for “licensed”, w.e.f. 14.5.1992.
8. Subs. by A.O. 1950.
9. Subs. by Act 18 of 1992, s. 113, for “manufactured under licence”, w.e.f. 14.5.1992.
10. Subs. by Act 25 of 1950, s. 11 and Sch. IV, for “the States”.
11. Subs. by Act 18 of 1992, s. 113, for “licences”, w.e.f. 14.5.1992.
12. Ins. by Act 22 of 1995, s. 78, w.e.f. 26.5.1995.
13. Proviso to clause (xvi) omitted by Act 49 of 1957, s. 2.
14. Ins. by Act 23 of 1986, s. 51.
15. Ins. by Act 11 of 1987, s. 94.
16. Ins. by Act 22 of 1995, s. 78, w.e.f. 26.5.1995.
17. Ins. by Act 14 of 1982, s. 48, w.e.f. 28.2.1982.
18. Subs. by Act 54 of 1963, s. 5, for “Central Board of Revenue”, w.e.f. 1.1.1964.
19. Subs. by Act 22 of 1995, s. 70, for “Collectors of Central Excise”, w.e.f. 26.5.1995.
20. Ins. by Act 36 of 1973, s. 24.
21. Ins. by Act 79 of 1985, s. 6, w.e.f. 27.12.1985.
22. Ins. by Act 40 of 1991, s. 8, w.e.f. 20.9.1991.
23. Ins. by Act 22 of 1995, s. 78, w.e.f. 26.5.1995.
24. Ins. by Act 18 of 1992, s. 113, w.e.f. 14.5.1992.
25. Ins. by Act 27 of 1999, s. 131(b), w.e.f. 11.5.1999.
26. Ins. by Act 22 of 1995, s. 78, w.e.f. 26.5.1995.
27. Ins. by Act 19 of 1968, s. 38.
28. Subs. by Act 18 of 1992, s. 113, for “licence”, w.e.f. 14.5.1992.
29. Ins. by Act 36 of 1973, s. 24.

1[37A. Delegation of powers- The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification-

- (a) Any power exercisable by the Board under this Act may be exercisable also by 2[a 3[Principal Commissioner of Central Excise] or a 4[Commissioner of Central Excise]] empowered in this behalf by

the Central Government;

(b) Any power exercisable by a 3[Commissioner of Central Excise] under this Act may be exercisable also by a 5[joint Commissioner of Central Excise] or an 6[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] empowered in this behalf by the Central Government;

(c) Any power exercisable by a 5[joint Commissioner of Central Excise] under this Act may be exercisable also by an 6[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] empowered in this behalf by the Central Government; and

(d) Any power exercisable by an 6[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.]

1. Ins. by Act 25 of 1978, s. 26, w.e.f. 1.7.1978.

2. The words “a Principal Collector of Central Excise or a Collector of Central Excise” subs. by Act 29 of 1988, s. 14, for “a Collector of Central Excise”, w.e.f. 1.7.1988.

3. Subs. by Act 22 of 1995, s. 70, for “Principal Collector of Central Excise”, w.e.f. 26.5.1995.

4. Subs. by Act 22 of 1995, s. 70, for “Collector of Central Excise”, w.e.f. 26.5.1995.

5. Subs. by Act 27 of 1999, s. 119, for “Deputy Commissioner of Central Excise”, w.e.f. 11.5.1999.

6. Subs. by Act 27 of 1999, s. 119, for “Assistant Commissioner of Central Excise”, w.e.f. 11.5.1999.

1[37B. Instructions to Central Excise Officers- The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board.

Provided that no such orders, instructions or directions shall be issued-

- (a) So as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or
- (b) So as to interfere with the discretion of the 2[Commissioner of Central Excise (Appeals)] in the exercise of his appellate functions.

1. Sections 37B and 37C ins. by Act 79 of 1985, s. 7, w.e.f. 27.12.1985.
2. Subs. by Act 22 of 1995, s. 70, for “Collector of Central Excise (Appeals), w.e.f. 26.5.1995.

37C. Service of decisions, orders, summons, etc.-

(1) Any decision or order passed or any summons or notice issued under this act or the rules made thereunder, shall be served, -

- (a) By tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorised agent, if any;
- (b) If the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof, to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;
- (c) If the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1).]

1[37D. Rounding off of duty, etc.- The amount of duty, interest, penalty, fine or **any** other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this propose, where such amount contains a part of a rupee

consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.]

1. Ins. by Act 12 of 1990, s. 65.

1[38. Publication of rules and notifications and laying of rules before Parliament-

(1) All rules made and notifications issued under this Act shall be published in the Official Gazette.

2[(2) Every rules made under the Act, every notification issued under 3[Section 3-A, Section 4-A] sub-section (1) of Section 5-A and Section 11-C and every order made under sub-section (2) of Section 5-A, other than an order relating to goods of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid, both Houses agree in making any modification in the rule or notification or order, or both Houses agree that the rule should not be made or notification or order should not be issued or made, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.]]

1. Subs. by Act 22 of 1973, s. 4.

2. Subs. by Act 22 of 1995, s. 79, w.e.f. 26.5.1995.

3. Ins. by Act 26 of 1997, s. 84, w.e.f. 14.5.1997.

39 [Repeal of enactments.] Rep. by the Repealing and Amending Act, 1947 (2 of 1948), S. 2 and Sch.

1[40. Protection of action taken under the Act- (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made thereunder.

1. Subs. by Act 22 of 1973, s. 5.

(2) No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause.)

THE FIRST SCHEDULE

[Repealed by the Central Excise Tariff Act, 1985 (5 of 1986), s. 4, w.e.f. 28.2.1986.]

THE SECOND SCHEDULE

(See section 8)

Tobacco

THE THIRD SCHEDULE

[Repealed by the Repealing and Amending Act, 1947 (2 of 1948), s. 2 and Sch.]