

CHAPTER IV

INDIRECT TAXES

*Customs*

52 of 1962.

**74.** In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 27A, for the Amendment of words "by the Board", the words "by the Central Government, by notification in the Official Gazette," section 27A. shall be substituted.

**75.** In section 28 of the Customs Act, in sub-section (1), after the proviso and before the *Explanation*, Amendment of the following provisos shall be inserted, namely:— section 28.

"Provided further that where the amount of duty which has not been levied or has been short-

levied or erroneously refunded or the interest payable has not been paid, part paid or erroneously refunded is one crore rupees or less, a notice under this sub-section shall be served by the Commissioner of Customs or with his prior approval by any officer subordinate to him:

Provided also that where the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable thereon has not been paid, part paid or erroneously refunded is more than one crore rupees, no notice under this sub-section shall be served except with the prior approval of the Chief Commissioner of Customs."

Amendment of section 28AA. **76.** In section 28AA of the Customs Act, for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of section 28AB. **77.** In section 28AB of the Customs Act, in sub-section (1), for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of section 28B. **78.** In section 28B of the Customs Act, with effect from the 20th day of September, 1991,—

(a) in sub-section (1), for the words "every person who has collected any amount from the buyer of any goods", the words "every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods" shall be substituted and shall be deemed to have been substituted;

(b) for sub-section (2), the following sub-sections shall be substituted and shall be deemed to have been substituted, namely:—

"(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount 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.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in sub-section (1).

(5) Where any surplus is left after the adjustment made under sub-section (4), 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 27 and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Customs for the refund of such surplus amount."

Amendment of section 47. **79.** In section 47 of the Customs Act, in sub-section (2), for the words "at such rate, not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate, not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette," shall be substituted.

Amendment of section 59. **80.** In section 59 of the Customs Act, in sub-section (1), in clause (b), in sub-clause (ii), for the words "at the rate of six per cent. per annum or such other rate as is for the time being fixed by the Board", the words "at such rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette" shall be substituted.

Amendment of section 114A. **81.** In section 114A of the Customs Act, for the first and second provisos, the following shall be substituted, namely:—

"Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available

subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest 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 or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeal), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

*Explanation.*—For the removal of doubts, it is hereby declared that—

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.”.

**82.** In section 127B of the Customs Act, in sub-section (1), in the first proviso, in clause (a), for the words “as the case may be, or”, the words “as the case may be, and in relation to such bill of entry or shipping bill,” shall be substituted. Amendment of section 127B.

**83.** After section 127M of the Customs Act, the following section shall be inserted, namely:— Insertion of new section 127MA.

“127MA. (1) Notwithstanding anything contained in this Chapter, any person who has filed an appeal to the Appellate Tribunal under this Act, on or before the 29th day of February, 2000 and which is pending, shall, on withdrawal of such appeal from the Appellate Tribunal, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter: Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement Commission.

Provided that no such person shall be entitled to make an application under this section in a case where the Commissioner of Customs or any officer on his behalf has, on or before the date on which the Finance Act, 2000 receives the assent of the President, applied to the Appellate Tribunal for the determination of such points arising out of the decision or order specified by the Board in its order under sub-section (1) of section 129D or filed an appeal under sub-section (2) of section 129A, as the case may be.

(2) Any person referred to in sub-section (1) may make an application to the Appellate Tribunal for permission to withdraw the appeal.

(3) On receipt of an application under sub-section (2), the Appellate Tribunal shall grant permission to withdraw the appeal.

(4) Upon withdrawal of the appeal, the proceedings in appeal immediately before such withdrawal shall, for the purposes of this Chapter, be deemed to be a proceeding pending before a proper officer.

(5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the Appellate Tribunal permitting the withdrawal of the appeal is communicated to the person.

(6) An application made to the Settlement Commission under this section shall be deemed to be an application made under sub-section (1) of section 127B and the provisions of this Chapter, except sub-section (11) of section 127C, shall apply accordingly.

(7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then, the appeal shall be deemed to have been revived before the Appellate Tribunal and the provisions contained in section 129A, section 129B and section 129C shall, so far as may be, apply accordingly.”.

**84.** In section 142 of the Customs Act, in sub-section (1), after the words “under this Act”, the words, figures and letter “including the amount required to be paid to the credit of the Central Government under section 28B” shall be inserted. Amendment of section 142.

**85.** In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act),— Amendment of Act 51 of 1975.

(a) in section 9A, after sub-section (7), the following sub-section shall be inserted, namely:—

“(8) The provisions of the Customs Act, 1962 and the rules and regulations made there-

under, relating to non-levy, short levy, refunds and appeals shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.”;

(b) after section 9A, the following section shall be inserted, namely:—

Refund of anti-dumping duty in certain cases.

'9AA. (1) Where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty:

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A.

*Explanation.*—For the purposes of this sub-section, the expressions "margin of dumping", "export price" and "normal value" shall have the meanings respectively assigned to them in the *Explanation* to sub-section (1) of section 9A.

(2) The Central Government may, by notification in the Official Gazette, make rules to—

(i) provide for the manner in which and the time within which the importer may make an application for the purposes of sub-section (1);

(ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and

(iii) provide the manner in which the excess duty referred to in sub-section (1) shall be—

(A) determined by the officer referred to in clause (ii); and

(B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, after such determination.;

(c) the First Schedule shall be amended in the manner specified in the Second Schedule.

Surcharge of customs.

**86.** (1) In the case of goods mentioned in the First Schedule to the Customs Tariff Act, or in that Schedule, as amended from time to time, there shall be levied and collected as surcharge of customs, an amount, equal to ten per cent. of the duty chargeable on such goods calculated at the rate specified in the said First Schedule, read with any notification for the time being in force, issued by the Central Government in relation to the duty so chargeable.

(2) Sub-section (1) shall cease to have effect after the 31st day of March, 2001, and upon such cesser, section 6 of the General Clauses Act, 1897 shall apply as if the said sub-section had been repealed by a Central Act.

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

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