

CHAPTER IV

INDIRECT TAXES

Customs

Amendment of section 2.	97. In section 2 of the Customs Act, 1962 (hereinafter referred to as the Customs Act), in clause (1B), for the words and brackets "Gold (Control)", the words "Service Tax" shall be substituted.	5	52 of 1962.
Amendment of section 7.	98. Section 7 of the Customs Act shall be numbered as sub-section (1) thereof,— (a) in sub-section (1) as so numbered, for the words "Central Government", the word "Board" shall be substituted; (b) after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:— "(2) Every notification issued under this section and in force immediately before the commencement of the Finance Act, 2003 shall, on such commencement, be deemed to have been issued under the provisions of this section as amended by section 98 of the Finance Act, 2003 and shall continue to have the same force and effect after such commencement until it is amended, rescinded or superseded under the provisions of this section."	10	
Amendment of section 15.	99. In section 15 of the Customs Act, in sub-section (1), in clause (b), for the words "the goods are actually removed from the warehouse", the words "a bill of entry for home consumption in respect of such goods is presented under that section" shall be substituted.	15	
Amendment of section 25.	100. In section 25 of the Customs Act,— (a) for sub-section (2), the following sub-section shall be substituted, namely:— "(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 the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable"; (b) after sub-section (5), the following sub-section shall be inserted, namely:— "(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees."	20	
Amendment of section 27.	101. In section 27 of the Customs Act, in sub-section (2), in the first proviso, in clause (a), after the word "importer", the words "or the exporter, as the case may be" shall be inserted.		
Amendment of section 28.	102. In section 28 of the Customs Act, in sub-section (1), the second and third provisos shall be omitted.		
Amendment of section 28E.	103. In section 28E of the Customs Act,— (a) for clause (c), the following clause shall be substituted, namely:— '(c) "applicant" means— (i) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or (ii) a resident setting up a joint venture in India in collaboration with a non-resident; or (iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who proposes to undertake any business activity in India and makes application for advance ruling under sub-section (1) of section 28H;'; (b) for clause (h), the following clause shall be substituted, namely:— '(h) "non-resident", "Indian company" and "foreign company" have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961.'	30	
Amendment of section 28H.	104. In section 28H of the Customs Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:— "(d) applicability of notifications issued in respect of duties under this Act, the Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act."	45	43 of 1961.
Amendment of section 30.	105. In section 30 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:— "(1) The person-in-charge of— (i) a vessel; or (ii) an aircraft; or (iii) a vehicle,	50	51 of 1975.

- carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an import manifest prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form and if the import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient caused for such delay, the person-in-charge or any other person referred to in this sub-section, who causes such delay, shall be liable to a penalty not exceeding fifty thousand rupees."
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- 10 **106.** In section 61 of the Customs Act,— Amendment of section 61.
- (a) in sub-section (1),—
- (i) in clause (a), the word "and" shall be omitted;
- (ii) after clause (a), the following clause shall be inserted, namely:—
- 15 "(aa) in the case of goods other than capital goods intended for use in any hundred per cent. export-oriented undertaking, till the expiry of three years; and";
- (iii) in the proviso, in clause (i), for the words, brackets and letters "clause (a) or clause (b)", the words, brackets and letters "clause (a) or clause (aa) or clause (b)" shall be substituted;
- (b) in sub-section (2),—
- (i) in clause (i), for the word, brackets and letter "sub-clause (a)", the words, brackets and letters "sub-clause (a) or sub-clause (aa)" shall be substituted;
- 20 (ii) in clause (ii), for the words "thirty days", wherever they occur, the words "ninety days" shall be substituted.
- 107.** In section 68 of the Customs Act, after clause (c), the following proviso shall be inserted, Amendment of section 68.
namely:—
- 25 "Provided that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon."
- 108.** In section 75A of the Customs Act, in sub-section (1),— Amendment of section 75A.
- 30 (a) for the words "two months", wherever they occur, the words "one month" shall be substituted;
- (b) the proviso shall be omitted.
- 109.** In section 113 of the Customs Act,— Amendment of section 113.
- (a) in clauses (c), (e), (f), (g) and (h), the words "dutiable or prohibited", wherever they occur, shall be omitted;
- 35 (b) for clause (i), the following clause shall be substituted, namely:—
- "(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;";
- (c) in clause (k), the words "under a claim for drawback" shall be omitted.
- 40 **110.** In section 114 of the Customs Act,— Amendment of section 114.
- (a) in clause (i), for the words "not exceeding the value of the goods or five thousand rupees", the words "not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act" shall be substituted;
- (b) for clause (iii), the following clause shall be substituted, namely:—
- 45 "(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater."
- 111.** In section 122 of the Customs Act,— Amendment of section 122.
- (a) in clause (b), for the words "fifty thousand", the words "two lakh" shall be substituted;
- (b) in clause (c), for the words "two thousand five hundred", the words "ten thousand" shall be substituted.
- 50 **112.** In section 129 of the Customs Act,— Amendment of section 129.

(a) in sub-section (1), for the words and brackets "Gold (Control)", the words "Service Tax" shall be substituted;

(b) in sub-section (2), for the words "Central Legal Service", the words "Indian Legal Service" shall be substituted;

(c) sub-section (4A) shall be omitted; 5

(d) in sub-section (5), for the words "The Senior Vice-President or a Vice-President", the words "A Vice-President" shall be substituted.

Substitution of new section for section 130. Appeal to High Court.

113. For section 130 of the Customs Act, the following section shall be substituted, namely:—

"130. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law. 10

(2) The Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be— 15

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Customs or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved. 20

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: 25

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. 30

(6) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1). 35

(7) When an appeal has been filed before the High Court, 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.

(8) 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. 40

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section." 45 5 of 1908.

Amendment of section 130A.

114. In section 130A of the Customs Act, in sub-section (1), for the words, figures and letters "on or after the 1st day of July, 1999", the words, figures and letters "before the 1st day of July, 2003" shall be substituted.

Amendment of section 130D.

115. In section 130D of the Customs Act,—

(a) after sub-section (1), the following sub-section shall be inserted with effect from the 1st day of July, 2003, namely:— 50

"(1A) Where the High Court delivers a judgment in an appeal filed before it under section 130,

effect shall be given to the order passed on the appeal by the proper officer on the basis of a certified copy of the judgment.";

(b) in sub-section (2), for the words "reference to the High Court or the Supreme Court", the words "reference to the High Court or an appeal to the High Court or the Supreme Court, as the case may be," shall be substituted.

116. In section 130E of the Customs Act, for clause (a), the following clause shall be substituted, namely:—

Amendment of section 130E.

"(a) any judgment of the High Court delivered—

(i) in an appeal made under section 130; or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 130A,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or".

117. In section 135 of the Customs Act, in sub-section (1),—

Amendment of section 135.

(a) in clause (a), after the words "knowingly concerned", the words "in mis-declaration of value or" shall be inserted;

(b) in clause (b), for the word and figures "section 111," the words and figures "section 111 or section 113, as the case may be, or" shall be substituted;

(c) after clause (b), the following clause shall be inserted, namely:—

"(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113,".

118. In section 136 of the Customs Act, in sub-section (1), for the words "connives at any act or thing whereby", the words "connives at any act or thing, whereby any fraudulent export is effected or" shall be substituted.

Amendment of section 136.

119. (1) The notifications of the Government of India in the erstwhile Ministry of Finance (Department of Revenue) Nos. G.S.R. 465(E), dated the 3rd May, 1990 and G.S.R. 423(E), dated the 20th April, 1992, issued under sub-section (1) of section 25 of the Customs Act by the Central Government shall stand amended and shall be deemed to have been amended in the manner as specified against each of them in column (3) of the Second Schedule, on and from the corresponding date mentioned in column (4) of that Schedule retrospectively and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said notifications, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the notifications as amended by this sub-section had been in force at all material times.

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

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

120. (1) The notifications of the Government of India in the erstwhile Ministry of Finance (Department of Revenue) Nos. G.S.R. 308(E), dated the 31st March, 1995, G.S.R. 309(E), dated the 31st March, 1995, G.S.R. 480 (E), dated the 5th June, 1995, G.S.R. 657(E), dated the 19th September, 1995, G.S.R. 658(E), dated the 19th September, 1995, G.S.R. 184(E), dated the 1st April, 1997, G.S.R. 186(E), dated the 1st April, 1997, G.S.R. 187(E), dated the 1st April, 1997, G.S.R. 197(E), dated the 7th April, 1997, G.S.R. 216(E), dated the 11th April, 1997, G.S.R. 623(E), dated the 16th October, 1998, G.S.R. 299(E), dated the 29th April, 1999, G.S.R. 366(E), dated the 27th April, 2000 and G.S.R. 367(E), dated the 27th April, 2000, issued under sub-section (1) of section 25 of the Customs Act by the Central Government shall stand amended and shall be deemed to have been amended in the manner as specified against each of them in column (3) of the Third Schedule, on and from the corresponding date mentioned in column (4) of that Schedule retrospectively and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said notifications, shall be deemed to be and always to have been, for all purposes, as validly and effectively, taken or done as if the notifications as amended by this sub-section had been in force at all material times.

Amendment of notifications, relating to export promotion schemes issued under section 25 of the Customs Act.

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

(3) Refund shall be made of all amounts of interest which have been paid or, as the case may be, which have not been refunded but which would not have been paid or, as the case may be, which would have been refunded if the provisions of this section had been in force at all material times, within a period of thirty days from the day on which the Finance Bill, 2003 receives the assent of the President and subject to the provisions of this sub-section, the provisions of section 27 of the Customs Act shall be applicable for such refund. 5

Additional duty of customs (tea and tea waste).

121. (1) In the case of goods specified in the Fourth Schedule, being goods imported into India, there shall be levied and collected for the purposes of the Union, by surcharge, an additional duty of customs, at the rate specified in the said Schedule.

(2) The additional duty of customs referred to in sub-section (1) shall be in addition to any other duties of customs chargeable on such goods under the Customs Act or any other law for the time being in force. 10

(3) The provisions of the Customs Act and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall, as far as may be, apply in relation to the levy and collection of the additional duty of customs leviable under this section in respect of the goods specified in the Fourth Schedule 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. 15

Customs tariff

Amendment of section 3.

122. In section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), in sub-section (2), in clause (ii), for the words, brackets and figure "but not including the duty referred to in sub-section (1)", the following shall be substituted and shall be deemed to have been substituted retrospectively on and from the 1st day of March, 2002, namely:— 20

"but does not include—

(a) the special additional duty referred to in section 3A;

(b) the safeguard duty referred to in sections 8B and 8C;

(c) the countervailing duty referred to in section 9; 25

(d) the anti-dumping duty referred to in section 9A; and

(e) the duty referred to in sub-section (1)".

Amendment of section 3A.

123. In section 3A of the Customs Tariff Act, in sub-section (2), in clause (ii), for the words, brackets and figure "but not including the special additional duty referred to in sub-section (1); and", the following shall be substituted and shall be deemed to have been substituted retrospectively on and from the 1st day of March, 2002, namely:— 30

"but does not include—

(a) the safeguard duty referred to in sections 8B and 8C;

(b) the countervailing duty referred to in section 9;

(c) the anti-dumping duty referred to in section 9A; 35

(d) the special additional duty referred to in sub-section (1); and".

Amendment of section 9A.

124. In section 9A of the Customs Tariff Act, in sub-section (1), in the *Explanation*, in clause (c), in sub-clause (ii), in item (a), for the words "territory or", the words "territory to" shall be substituted.

Amendment of section 9C.

125. In section 9C of the Customs Tariff Act, in sub-section (1), for the words and brackets "Gold (Control)", the words "Service Tax" shall be substituted. 40

National Calamity Contingent Duty of Customs.

126. (1) In the case of goods specified in the Seventh Schedule to the Finance Act, 2001 as amended by the Thirteenth Schedule, being goods imported into India, there shall be levied and collected for the purposes of the Union, by surcharge, a duty of customs, to be called the National Calamity Contingent Duty of Customs (hereinafter referred to as the National Calamity Duty of Customs), at the rates specified in the said Seventh Schedule, as amended by the Thirteenth Schedule. 45

(2) The National Calamity Duty of Customs chargeable on the goods specified in the Seventh Schedule to the Finance Act, 2001 as amended by the Thirteenth Schedule shall be in addition to any other duties of customs chargeable on such goods under the Customs Act or any other law for the time being in force. 14 of 2001.

(3) For the purposes of calculating the National Calamity Duty of Customs under this section on any goods specified in the Seventh Schedule to the Finance Act, 2001 as amended by the Thirteenth Schedule, where such duty is leviable at any percentage of its value, the value of such goods shall be calculated in the same manner as the value of article for the purposes of additional duty is calculated under the provisions of sub-section (2) of section 3 of the Customs Tariff Act. 50 14 of 2001.

(4) The provisions of the Customs Act and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall, as far as may be, apply in relation to the levy and collection of the National Calamity Duty of Customs leviable under this section in respect of the goods specified in the Seventh Schedule to the Finance Act, 2001 as amended by the Thirteenth Schedule, 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. 55 14 of 2001.

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this section, on the expiry of the period of operation of the amendments made in the Seventh Schedule to the Finance Act, 2001 in terms of section 161, the said Seventh Schedule but for such amendment shall continue to operate as if the said amendment had not taken place. 60 14 of 2001.