

Excise

1 of 1944.

40 **69.** Section 9A of the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act) shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:— Amendment of section 9A.

“(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.”.

45 **70.** In section 11 of the Central Excise Act, the following proviso shall be inserted at the end, namely:— Amendment of section 11.

50 “Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.”.

Insertion of new section 33A. Adjudication procedure.	<p>71. After section 33 of the Central Excise Act, the following section shall be inserted, namely:—</p> <p>“33A. (1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.</p> <p>(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:</p> <p>Provided that no such adjournment shall be granted more than three times to a party during the proceeding.”.</p>	5
Amendment of section 35.	<p>72. In section 35 of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>“(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:</p> <p>Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”.</p>	10 15
Amendment of section 35B.	<p>73. In section 35B of the Central Excise Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:—</p> <p>“(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—</p> <p>(a) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> <p>(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;</p> <p>(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:</p> <p>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).</p> <p>(7) Every application made before the Appellate Tribunal,—</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application,</p> <p>shall be accompanied by a fee of five hundred rupees.”.</p>	20 25 30 35
Amendment of section 35C.	<p>74. In section 35C of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>“(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:</p> <p>Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”.</p>	40
Amendment of section 37.	<p>75. In section 37 of the Central Excise Act, in sub-section (2),—</p> <p>(a) after clause (ic), the following clause shall be inserted, namely:—</p> <p>“(id) provide for the amount to be paid for compounding under sub-section (2) of section 9A;”;</p> <p>(b) after clause (xvii), the following clause shall be inserted, namely:—</p> <p>“(xviiia) provide for credit of service tax leviable under Chapter V of the Finance Act, 1994, paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods;”.</p>	45 32 of 1994.
Amendment of Third Schedule.	<p>76. In the Third Schedule to the Central Excise Act, against serial No. 91, in column (3), in the entry, the words “other than monochrome,” shall be omitted.</p>	50

77. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 38/2001-Central Excise (N.T.), dated the 26th June, 2001, published in the Official Gazette *vide* No. G.S.R. 467(E), dated the 26th June, 2001, (hereinafter referred to as the principal notification), as amended by the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 32/2002-Central Excise (N.T.), dated the 17th September, 2002, published in the Official Gazette *vide* No. G.S.R. 655(E), dated the 17th September, 2002 (hereinafter referred to as the first amendment) and the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 1/2003-Central Excise (N.T.), dated the 13th January, 2003, published in the Official Gazette *vide* No. G.S.R. 27(E), dated the 13th January, 2003 (hereinafter referred to as the second amendment) shall, for the purposes of hundred per cent. export-oriented undertakings, be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 11th day of May, 1982 and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

Validation of certain actions taken by officers of customs.

(a) any action taken or anything done by an officer of customs invested with the powers of a Central Excise Officer to discharge the duties of the Central Excise Officer in respect of hundred per cent. export-oriented undertakings, on and from the 11th day of May, 1982 to 13th day of January, 2003, by the first amendment and the second amendment to the principal notification, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority against the Central Government or a officer of customs invested with powers of the Central Excise Officer, by the first amendment and the second amendment to the principal notification, for any action taken or anything done in good faith during the discharge of his duties as the Central Excise Officer in respect of hundred per cent. export-oriented undertakings during the period on and from the 11th day of May, 1982 to 13th day of January, 2003, as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(c) recovery made of any amount of duty or interest or penalty or fine or other charges by or under the order or direction of a officer of customs invested with powers of the Central Excise Officer by the first amendment and the second amendment to the principal notification during the period on and from the 11th day of May, 1982 to 13th day of January, 2003 shall be deemed to be valid, and to have always been, for all purposes, as validly and effectively made as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times.

(2) For the purposes of sub-section (1), the Central Board of Excise and Customs shall have and shall be deemed to have always had the powers to bring into force the principal notification, the first amendment and the second amendment with retrospective effect as if the Central Board of Excise and Customs had the powers to bring into force the principal notification, the first amendment and the second amendment under clause (b) of section 2 of the Central Excise Act, 1944 retrospectively at all material times.

(3) For the purposes of this section, the designations of the officers of customs and the Central Excise Officers as existed before the commencement of the Finance Act, 1995 shall be deemed to be the corresponding substituted designations as specified in the Tables respectively below section 50 and section 70 of the said Finance Act.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the principal notification as amended by the first amendment and the second amendment had not come retrospectively into force.

Explanation 2.—For the purposes of this section, “hundred per cent. export-oriented undertaking” shall have the meaning assigned to it in clause (ii) of *Explanation 2* to the proviso to clause (b) of section 3 of the Central Excise Act, 1944.

78. (1) In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944, in rule 3, in sub-rule (6), in clause (b), the *Explanation* shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule 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 *Explanation* shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as if the said *Explanation* as amended by this sub-section had been in force at all material times.

Amendment of the CENVAT Credit Rules, 2002.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944, retrospectively, at all material times.

(3) The CENVAT credit shall be allowed of such additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which has been disallowed but which would not have been disallowed if the amendment made by sub-section (1) was in force at all material times. 58 of 1957.

(4) Recovery shall be made of such CENVAT credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times and the provisions of CENVAT Credit Rules, 2002 relating to the recovery of CENVAT credit, along with interest, shall apply for the recovery made under this sub-section subject to the modification that the relevant date defined in section 11A of the Central Excise Act, 1944, shall, for the purposes of recovery under this sub-section, be deemed to be the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President. 5 58 of 1957. 10 1 of 1944.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force. 15

Explanation 2.—For the purposes of this section, the expression “CENVAT credit” has the meaning assigned to it in the CENVAT Credit Rules, 2002.

Central Excise Tariff

Amendment of the First Schedule to Act 5 of 1986. **79.** In the First Schedule to the Central Excise Tariff Act, 1985,—

(i) in Chapter 50, in sub-heading Nos. 5004.11, 5004.90, 5005.10, 5005.20 and 5005.90, for the entry in column (4) occurring against each of them, the entry “8%” shall be substituted; 20

(ii) in Section XV, after NOTE 9, the following NOTE shall be inserted, namely:—

“10. In relation to the products of this Section, the process of drawing or redrawing a rod, wire or any other similar article, into wire shall amount to ‘manufacture’.”;

(iii) in Chapter 90, in sub-heading No. 9001.10, for the entry in column (4), the entry “8%” shall be substituted; 25

(iv) in Chapter 95, in sub-heading No. 9504.10, for the entry in column (4), the entry “8%” shall be substituted.