

THE CUSTOMS AND CENTRAL EXCISES LAWS  
(AMENDMENT) ACT, 1988

(S. 1-7-1988)

No. 29 of 1988

[18th May 1988]

An Act further to amend the Customs Act, 1962, the Central Excises and Salt Act, 1944 and the Customs and Excise Revenues Appellate Tribunal Act, 1986.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Customs and Central Excises Laws (Amendment) Act, 1988.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE CUSTOMS ACT, 1962

Amendment of section 3.

2. In section 3 of the Customs Act, 1962 (hereafter in this Chapter referred to as the Customs Act) clause (a) shall be re-lettered as clause (aa), and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:—

52 of 1962.

“(a) Principal Collectors of Customs;”.

Amendment of section 28A.

3. Section 28A of the Customs Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had

1. 1-7-1988, Vide Notification No. G.S.R. 752(E), dated 29-6-1988 (in respect of all sections except sections 4, 5, 11, 12 and 16), Gazette of India, Extraordinary, 1988, Pt. II; Sec.3 (i).



subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of section 129D 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 Collector of Customs is of the opinion that any duty 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 28 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 Excises Laws (Amendment) Act 1988, 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, against such decision or order.

6. After section 138B of the Customs Act, the following section shall be inserted, namely:—

138C. (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 print out"), 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

Insertion of new section 138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.

21 of 1987

21 of 1987

62 of 1987

Section 138C

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 print-out 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 orders 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;

Amendment of section 153  
Amendment of section 159  
Insertion of new section 154A  
Power to grant exemption from duty of excise



(c) dealing with any of the matters to 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.

(S) 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 therefrom by calculation, comparison or any other process.

Amendment of section 152.

7. In section 152 of the Customs Act, in clause (a), for the words "a Collector of Customs" the words "a Principal Collector of Customs or a Collector of Customs" shall be substituted.

Amendment of section 159.

8. In section 159 of the Customs Act, after the figures "25," the figures and letter "29A" shall be inserted.

CHAPTER III

AMENDMENTS TO THE CENTRAL EXCISES AND SALT ACT, 1944

Insertion of new section 5A.

9. After section 5 of the Central Excises and Salt Act, 1944 (hereafter in this Chapter referred to as the Central Excises Act), the following section shall be inserted, namely:—

1 of 1944.

Power to grant exemption from duty of excise.

"5A. (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 description 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 per cent. 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 sub-section (1) of section 3.

(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 of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise 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 Excises Laws (Amendment) Act, 1988 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.

10. Section 11C of the Central Excises Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Where any notification under sub-section (1) in respect of any 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 refunded in accordance with the said notification:

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 Assistant Collector of Central Excise before the expiry of six months from the date of issue of the said notification

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and proves to the satisfaction of the Assistant Collector of Central Excise that the incidence of such duty had not been passed on to any other person."

Amendment of section 35E.

11. In section 35E of the Central Excises Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(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 this 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 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 the Schedule to the Central Excise Tariff Act, 1985, or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 or the Additional Duties of Excise (Textiles and Textile Articles) Act, 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"

12. After section 35E of the Central Excises Act, the following section shall be inserted, namely:—

35EA. (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 Collector 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 35E 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.

Insertion of new section 35EA. Powers of revision of Board or Collector of Central Excise in certain cases.

5 of 1986.

5 of 1986.

58 of 1957.

40 of 1978.

(2) The Collector 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 (1) of section 35B for the purpose of satisfying himself as to the correctness, legality and 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 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 Collector 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 11A 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 Excises Act (Amendment) Act, 1988, 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, against such decision or order.

62 of 1986.

13. In Chapter VIB of the Central Excises Act, after section 36A, the following section shall be inserted, namely:—

Insertion of new section 36B.

36B. (1) Notwithstanding anything contained in any other law for the time being in force,—

Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.

(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 print out"), 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 print out 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

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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 to 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 therefrom by calculation, comparison or any other process.'

14. In section 37A of the Central Excises Act, in clause (a), for the words "a Collector of Central Excise", the words "a Principal Collector of Central Excise or a Collector of Central Excise" shall be substituted.

Amendment of section 37A.

15. In section 38 of the Central Excises Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 38.

"(2) Every rule made under this Act and every notification issued under sub-section (1) of section 5A and section 11C 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 both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification 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."

CHAPTER IV

AMENDMENTS TO THE CUSTOMS AND EXCISE REVENUES APPELLATE TRIBUNAL ACT, 1986

Amendment of section 14.

16. In section 14 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, in sub-section (1),—

62 of 1986.

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

"(bb) a decision or order passed by the Board or the Collector of Central Excise under section 35EA of the Central Excises Act;" and

(ii) after clause (d) the following clause shall be inserted, namely:—

"(e) a decision or order passed by the Board or the Collector of Customs under section 129DA of the Customs Act."

Amendment of section 14.

Amendment of section 16.

14. In section 14 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, in sub-section (1),—

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

"(bb) a decision or order passed by the Board or the Collector of Central Excise under section 35EA of the Central Excises Act;" and

(ii) after clause (d) the following clause shall be inserted, namely:—

"(e) a decision or order passed by the Board or the Collector of Customs under section 129DA of the Customs Act."