

**THE CENTRAL EXCISES AND CUSTOMS LAWS
(AMENDMENT) ACT, 1991**

No. 40 OF 1991

[18th September, 1991.]

**An Act further to amend the Central Excises and Salt Act, 1944 and
the Customs Act, 1962.**

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Central Excises and Customs Laws
(Amendment) Act, 1991.

Short
title and
com-
mence-
ment.

(2) It shall come into force on such date¹ as the Central Government
may, by notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENTS TO THE CENTRAL EXCISES AND SALT ACT, 1944

1 of 1944.

2. In section 2 of the Central Excises and Salt Act, 1944 (hereafter in
this Chapter referred to as the Central Excises Act), after clause (e), the
following clause shall be inserted, namely:—

Amend-
ment of
section 2.

‘(ee) “Fund” means the Consumer Welfare Fund established
under section 12C;’

3. In section 11B of the Central Excises Act,—

(a) in sub-section (1),—

Amend-
ment of
section
11B.

(i) after the words “from the relevant date”, the following
shall be inserted, namely:—

“in such form as may be prescribed and the application
shall be accompanied by such documentary or other evidence
(including the documents referred to in section 12A) 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:

¹20-9-1991 vide notification No. S.O-610 (E), dated 19-9-1991.

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";

(ii) in the existing proviso, for the words "Provided that", the words "Provided further that" shall be substituted;

(b) for sub-sections (2) to (5), the following sub-sections shall be substituted, namely:—

"(2) If, on receipt of any such application, the Assistant Collector 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 Assistant Collector 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 Collector 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;

(f) 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 or any Court or 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 re-assembly, 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.”;

(c) in the *Explanation*, in clause (B), for sub-clause (e), the following sub-clause shall be substituted, namely:—

“(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;”.

4. In section 11C of the Central Excises Act, for sub-section (2), the following sub-section shall be substituted, 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 dealt with in accordance with the provisions of sub-section (2) of section 11B:

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, in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.”.

5. After section 11C of the Central Excises Act, the following section shall be inserted, namely:—

“11D. (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 accord-

Amendment of section 11C.

Insertion of new section 11D.

Duties of excise collected from the buyer to be deposited with the Central Government.

ance with the provisions of section 11B 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 Assistant Collector of Central Excise."

Insertion
of new
Chapter
IIA.

6. After Chapter II of the Central Excises Act, the following Chapter shall be inserted, namely:—

"CHAPTER IIA

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

Price of
goods to
indicate
the
amount
of duty
paid
thereon.

12A. 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.

Presump-
tion that
inci-
dence of
duty has
been
passed
on to the
buyer.

12B. 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.

Consumer
Welfare
Fund.

12C. (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 11B or sub-section (2) of section 11C or sub-section (2) of section 11D;

(b) the amount of duty of customs referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 28B of the Customs Act, 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.

52 of 1962.

Utili-
sation of
the Fund.

12D. (1) Any money credited to the Fund shall be utilised 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."

7. In Chapter III of the Central Excises Act, existing section 12A shall be renumbered as section 12E.

Renumbering of existing section 12A as section 12E.

8. In section 37 of the Central Excises Act, in sub-section (2), after clause (xxii), the following clauses shall be inserted, namely:—

Amendment of section 37.

“(xxiii) specify the form in which application for refund shall be made under section 11B;

(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 the form in which the account and records relating to the Fund shall be maintained.”

CHAPTER III

AMENDMENTS TO THE CUSTOMS ACT, 1962

52 of 1962.

9. In section 2 of the Customs Act, 1962 (hereafter in this Chapter referred to as the Customs Act), after clause (21), the following clause shall be inserted, namely:—

Amendment of section 2.

1 of 1944.

“(21A) “Fund” means the Consumer Welfare Fund established under section 12C of the Central Excises and Salt Act, 1944;”

10. For section 27 of the Customs Act, the following section shall be substituted, namely:—

Substitution of new section for section 27.

‘27. (1) Any person claiming refund of any duty—

(i) paid by him in pursuance of an order of assessment; or

(ii) borne by him,

Claim for refund of duty.

may make an application for refund of such duty to the Assistant Collector of Customs—

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year;

(b) in any other case, before the expiry of six months,

from the date of payment of duty, in such form as may be specified in the regulations made in this behalf and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty in relation to which such re-

fund 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 and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year or six months, as the case may be, shall not apply where any duty has been paid under protest.

Explanation.—For the purposes of this sub-section, “the date of payment of duty”, in relation to a person, other than the importer, shall be construed as “the date of purchase of goods” by such person.

(2) If, on receipt of any such application, the Assistant Collector of Customs is satisfied that the whole or any part of the duty 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 as determined by the Assistant Collector of Customs 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) the duty paid by the importer, if he had not passed on the incidence of such duty to any other person;

(b) the duty on imports made by an individual for his personal use;

(c) the duty borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75;

(f) the duty 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 or any Court or in any other provision of this Act or the regulations 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 re-assembly, 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.

11. In section 28A of the Customs Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 28A.

“(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 been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 27:

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 Customs, in the form referred to in sub-section (1) of section 27, before the expiry of six months from the date of issue of the said notification.”

12. In Chapter V of the Customs Act, after section 28A, the following section shall be inserted, namely:—

Insertion of new section 28B.

“28B. (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 regulations made thereunder, every person who has collected any amount from the buyer of any goods in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

Duties collected from the buyer to be deposited with the Central Government.

(2) The amount paid to the credit of the Central Government under sub-section (1) shall be adjusted against the duty 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 27 and the application under that section in such cases shall be made before the expiry of six months from the date of the public notice to be issued by the Assistant Collector of Customs.”

Insertion
of new
Chapter
VA.

13. After Chapter V of the Customs Act, the following Chapter shall be inserted, namely:—

“CHAPTER VA

INDICATING AMOUNT OF DUTY IN THE PRICE OF GOODS, ETC.,
FOR PURPOSE OF REFUND

Price of
goods to
indicate
the
amount
of duty
paid
thereon.

28C. Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty 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.

Presump-
tion that
incidence
of duty
has been
passed on
to the
buyer.

28D. Every person who has paid the duty 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.”

Amend-
ment of
section
157.

14. In section 157 of the Customs Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—

“(aa) the form in which an application for refund shall be made under section 27;”.

Amend-
ment of
section
159.

15. In section 159 of the Customs Act, for the word “rule”, wherever it occurs, the words “rule or regulation” shall be substituted.