

CHAPTER VB

ADVANCE RULINGS

- Definitions. 28E. In this Chapter, unless the context otherwise requires,—
- (a) “activity” means import or export; 40
- (b) “advance ruling” means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant;
- (c) “applicant” means a non-resident setting up a joint venture in India in collaboration with a non-resident or resident, or a resident setting up a joint venture in India in collaboration with a non-resident, making application; 45
- (d) “application” means an application made to the Authority under sub-section (1) of section 28H;
- (e) “Authority” means the Authority for Advance Rulings constituted under section 28F;
- (f) “Chairperson” means the Chairperson of the Authority; 50
- (g) “Member” means a Member of the Authority and includes the Chairperson; and

43 of 1961.

(h) "non-resident" shall have the meaning assigned to it in clause (30) of section 2 of the Income-tax Act, 1961.

28F. (1) **The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as "the Authority for Advance Rulings".** Authority for advance rulings.

5 (2) The Authority shall consist of the following Members appointed by the Central Government, namely:—

(a) a Chairperson, who is a retired Judge of the Supreme Court;

(b) an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;

10 (c) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(3) **The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as the Central Government may by rules determine.**

15 (4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Delhi.

28G. No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority. Vacancies, etc., not to invalidate proceedings.

20 28H. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought. Application for advance ruling.

(2) The question on which the advance ruling is sought shall be in respect of,—

51 of 1975.

(a) classification of goods under the Customs Tariff Act, 1975;

25 (b) applicability of a notification issued under sub-section (1) of section 25, having a bearing on the rate of duty;

(c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act.

30 (3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(4) An applicant may withdraw his application within thirty days from the date of the application.

28-I. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Customs and, if necessary, call upon him to furnish the relevant records: Procedure on receipt of application.

35 Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Customs.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

Provided that the Authority shall not allow the application except in the case of a resident applicant where the question raised in the application is,—

40 (a) already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

45 Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Customs.

50 (4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation.—For the purposes of this sub-section, “authorised representative” shall have the meaning assigned to it in sub-section (2) of section 146A. 5

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Customs, as soon as may be, after such pronouncement. 10

Applicability of advance ruling.

28J. (1) The advance ruling pronounced by the Authority under section 28-I shall be binding only—

(a) on the applicant who had sought it;

(b) in respect of any matter referred to in sub-section (2) of section 28H;

(c) on the Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant. 15

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

Advance ruling to be void in certain circumstances.

28K. (1) Where the Authority finds, on a representation made to it by the Commissioner of Customs or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 28-I has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made. 20

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Customs. 25

Powers of Authority.

28L. (1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. 5 of 1908.

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code. 2 of 1974. 45 of 1860.

Procedure of Authority.

28M. The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act. 35

Amendment of section 30.

104. 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 a vessel or an aircraft carrying imported goods shall, deliver to the proper officer, an import manifest, and in the case of a vehicle, an import report, within twenty-four hours after arrival thereof at a customs station in the case of a vessel and twelve hours after arrival in the case of an aircraft or a vehicle, in the prescribed form: 40

Provided that,—

(a) in the case of a vessel or an aircraft, any such manifest may be delivered to the proper officer before the arrival of the vessel or aircraft;

(b) if the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof within the time specified in this sub-section, he may accept it at any time thereafter.”. 45

Amendment of section 47.

105. In section 47 of the Customs Act, in sub-section (2), for the words “within seven days”, the words “within two days, excluding holidays,” shall be substituted.

Amendment of section 54.

106. In section 54 of the Customs Act, in sub-section (1), the following proviso shall be inserted, namely:— 50

“Provided that where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.”. 55

107. In section 61 of the Customs Act, in sub-section (2), for the opening paragraph, the following shall be substituted, namely:— Amendment of section 61.

“Where any warehoused goods—

5 (i) specified in sub-clause (a) of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;

10 (ii) specified in sub-clause (b) of sub-section (1), remain in a warehouse beyond a period of six months, interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said six months till the date of payment of duty on the warehoused goods.”.

15 **108.** In section 111 of the Customs Act, in clause (m), for the words “in respect thereof;”, the words “in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;” shall be substituted. Amendment of section 111.

109. In section 117 of the Customs Act, for the words “one thousand rupees”, the words “ten thousand rupees” shall be substituted. Amendment of section 117.

20 **110.** In section 129DD of the Customs Act,— Amendment of section 129DD.

(a) in sub-section (1), before the *Explanation*, the following proviso shall be inserted, namely:—

“Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.”;

25 (b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.”;

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

30 “(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of,—

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;

35 (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees:

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).”.

40 **111.** In section 130 of the Customs Act, in sub-section (1), after the words, figures and letter “an order under section 129B”, the words, figures and letters “passed before the 1st day of July, 1999” shall be inserted. Amendment of section 130.

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

Substitution of new section for section 130A.

45 “130A. (1) The Commissioner of Customs or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 129B passed on or after the 1st day of July, 1999 (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), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal. Application to High Court.

(2) The Commissioner of Customs or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

55 (3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed

such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.” 5

Amendment of section 130C. **113.** In section 130C of the Customs Act, in sub-section (1), for the words and figures “under section 130”, the words, figures and letter “under section 130 or section 130A” shall be substituted. 10

Amendment of section 130E. **114.** In section 130E of the Customs Act, for the words and figures “under section 130”, the words, figures and letter “under section 130 or section 130A” shall be substituted.

Amendment of section 157. **115.** In section 157 of the Customs Act, in sub-section (2), in clause (a), for the words “bill of transshipment”, the words “bill of transshipment, declaration for transshipment” shall be substituted.

Additional duty of customs (high speed diesel oil). **116.** (1) In the case of goods specified in the Second Schedule, being goods imported into India, there shall be levied and collected as an additional duty of customs an amount calculated at the rate set forth in the said Schedule. 15

(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. 20

(3) The provisions of the Customs Act, and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties, 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 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. 25

Amendment of Act 51 of 1975. **117.** The Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), shall be amended in the manner specified in the Third Schedule.

Surcharge of customs. **118.** (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. 30

(2) Sub-section (1) shall cease to have effect after the 31st day of March, 2000, 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. 35 10 of 1897.

(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. 40