

‘CHAPTER IIIA

ADVANCE RULINGS

23A. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) “activity” means production or manufacture of goods;

35 (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 proposed to be undertaken, by the applicant;

40 (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;

(d) “application” means an application made to the Authority under sub-section (1) of section 23C;

52 of 1962. (e) “Authority” means the Authority for Advance Rulings constituted under section 28F of the Customs Act, 1962;

43 of 1961. 45 (f) “non-resident” shall have the meaning assigned to it in clause (30) of section 2 of the Income-tax Act, 1961.

23B. 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.

50 23C. (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,—

(a) classification of any goods under the Central Excise Tariff Act, 1985;

(b) applicability of a notification issued under sub-section (1) of section 5A 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.

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(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 an application within thirty days from the date of the application.

Procedure on receipt of application.

23D. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records: 10

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 Central Excise.

(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 15 where the question raised in the application is,—

(a) already pending in the applicant's case before any Central Excise Officer, 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 20 has been given to the applicant of being heard:

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 Central Excise. 25

(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 30 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 35Q.

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application. 35

(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 Central Excise, as soon as may be, after such pronouncement.

Applicability of advance ruling.

23E. (1) The advance ruling pronounced by the Authority under section 23D shall be binding only— 40

(a) on the applicant who had sought it;

(b) in respect of any matter referred to in sub-section (2) of section 23C;

(c) on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is 45 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.

23F. (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise 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 50 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.

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

23G. (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. Powers of Authority.

(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.

23H. 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. Procedure of Authority.

125. In section 33 of the Central Excise Act, in the opening paragraph, for the words "Where by the rules made under this Act", the words "Where under this Act or by the rules made thereunder" shall be substituted. Amendment of section 33.

126. In section 35EE of the Central Excise Act,—

Amendment of section 35EE.

(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.";

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

"(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A 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:—

"(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 any Central Excise Officer in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise Officer 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)."

127. In section 35G of the Central Excise Act, in sub-section (1), after the words, figures and letter "an order under section 35C", the words, figures and letters "passed before the 1st day of July, 1999" shall be inserted. Amendment of section 35G.

128. For section 35H of the Central Excise Act, the following section shall be substituted, namely:—

Substitution of new section for section 35H.

"35H. (1) The Commissioner of Central Excise 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 35C 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 excise 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 Central Excise 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.

(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.”.

Amendment of section 35J.	129. In section 35J of the Central Excise Act, in sub-section (1), for the words, figures and letter “under section 35G,”, the words, figures and letters “under section 35G or section 35H,” shall be substituted.	5
Amendment of section 35L.	130. In section 35L of the Central Excise Act, for the words, figures and letter “under section 35G,”, the words, figures and letters “under section 35G or section 35H” shall be substituted.	
Amendment of section 37.	131. In section 37 of the Central Excise Act, in sub-section (2),—	10
	(a) after clause (ib), the following clause shall be inserted, namely:—	
	“(ibb) provide for charging or payment of interest on the differential amount of duty which becomes payable or refundable upon finalisation of all or any class of provisional assessments;”;	
	(b) after sub-clause (xxvii), the following sub-clause shall be inserted and shall be deemed to have been inserted with effect from the 16th day of March, 1995, namely:—	15
	“(xxviii) provide for the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods on an appointed date and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods on and from such date.”.	
Validation of certain rules.	132. (1) In the Central Excise Rules, 1944, made by the Central Government in exercise of the powers conferred under section 37 of the Central Excise Act, in rule 57F,—	20
	(a) sub-rule (4A), as inserted by the Central Excise (Fourth Amendment) Rules, 1995, shall be deemed to have and to have always had effect from the 16th day of March, 1995;	
	(b) sub-rule (17), as inserted by the Central Excise (Amendment) Rules, 1997, shall be deemed to have and to have always had effect from the 1st day of March, 1997;	
	(c) clauses (c) and (d) of sub-rule (17), as inserted by the Central Excise (Seventh Amendment) Rules, 1997, shall be deemed to have and to have always had effect from the 1st day of August, 1997;	25
	(d) clause (e) of sub-rule (17), as inserted by the Central Excise (Eleventh Amendment) Rules, 1997, shall be deemed to have and to have always had effect from the 1st day of October, 1997.	
	(2) Any action taken or anything done or purported to have been taken or done at any time during the period commencing from the 16th day of March, 1995 and ending with the day the Finance Act, 1999 receives the assent of the President (hereinafter referred to as the said period) under the Central Excise Act or any rules made thereunder in relation to the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods shall be deemed to be, and to always have been, for all purposes, as validly and effectively taken or done as if the amendments made by sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—	30
	(a) the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods, during the said period shall be deemed to always have been, as validly lapsed, as if the amendments made by sub-section (1) had been in force at all material times;	40
	(b) no suit or other proceedings shall be maintained or continued in any court for allowing the credit of, and no enforcement shall be made by any court of any decree or order allowing the credit of duty which has been lapsed and not allowed to be utilised and which would have been validly lapsed and not allowed to be utilised if the amendments made by sub-section (1) had been in force at all material times;	45
	(c) recovery shall be made of all the credit of duty, which have not been lapsed or, as the case may be, which have been taken or utilised but which would have been lapsed, or as the case may be, would not have been allowed to be taken or utilised, if the amendments made by sub-section (1) had been in force at all material times, within a period of thirty days from the day, the Finance Act, 1999 receives the assent of the President and in the event of non-payment of such credit of duties within this period, in addition to the amount of credit of such duties recoverable, interest at the rate of thirty six per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days till the date of payment.	50
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	<i>Explanation .—</i> 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.	

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

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

(3) The provisions of the Central Excise Act and the rules 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 excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be.

(4) The additional duty of excise leviable under sub-section (1), shall be for the purposes of the Union and the proceeds thereof shall not be distributed among the States.

134. (1) In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act),— Amendment of Act 5 of 1986.

(a) in sections 2 and 3, for the words “the Schedule”, wherever they occur, the words “the First Schedule and the Second Schedule” shall be substituted;

(b) the Schedule shall be re-numbered as the First Schedule and,—

(i) in the First Schedule as so re-numbered,—

(A) for the heading “THE SCHEDULE—EXCISE TARIFF”, the heading “THE FIRST SCHEDULE” shall be substituted;

(B) for the word “Schedule” wherever it occurs, the words “First Schedule” shall be substituted;

(ii) the First Schedule as so re-numbered shall be further amended in the manner specified in the Fourth Schedule;

(iii) after the First Schedule as so re-numbered, the Schedule specified in the Fifth Schedule shall be inserted.

(2) Any reference to the Schedule to the Central Excise Tariff Act in any Central Act, or rules and regulations made or the notifications issued thereunder shall, save as otherwise expressly provided and unless the context otherwise requires, be construed as a reference to the First Schedule and the Second Schedule to the Central Excise Tariff Act.

135. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as the Additional Duties of Excise Act) shall be amended in the manner specified in the Sixth Schedule. Amendment of Act 58 of 1957.