

## CHAPTER IV

## INDIRECT TAXES

*Customs*

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Amendment of section 2.	<b>85.</b> In section 2 of the Customs Act, 1962 (hereinafter referred to as the Customs Act), in clause (41), for the words, brackets and figures “sub-section (1) of section 14”, the words, brackets and figures “sub-section (1) or sub-section (3) of section 14” shall be substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint.		52 of 1962.
Substitution of new section for section 14.	<b>86.</b> For section 14 of the Customs Act, the following section shall be substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:—	35	
Valuation of goods for purposes of assessment.	‘14. (1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, as determined in accordance with the rules made in this behalf:		51 of 1975.
	Provided that such transaction value in the case of imported goods shall include, in addition to the price actually paid or payable for the goods when sold for export to India, any amount that the buyer is liable to pay for costs and services, including commissions and brokerage, assists, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, and handling charges:	40	
	Provided further that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50.	45	
	(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.	50	
	(3) Where there is no sale of imported goods or export goods, or where the transaction value of		

the goods is not determinable, the value of such goods shall be determined in accordance with the rules made in this behalf.

*Explanation.*—For the purposes of this section—

(a) “rate of exchange” means the rate of exchange—

- 5           (i) determined by the Board, or  
             (ii) ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) “foreign currency” and “Indian currency” have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.’.

42 of 1999.

- 10   **87.** In section 27 of the Customs Act, in sub-section (1), in clause (b), after the third proviso, the following proviso shall be inserted, namely:— Amendment of section 27.

15           “Provided also that where the duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year or six months, as the case may be, shall be computed from the date of such judgment, decree, order or direction.”.

- 88.** In section 28E of the Customs Act, in clause (c), the following *Explanation* shall be inserted at the end, namely:— Amendment of section 28E.

20           ‘*Explanation.*—For the purposes of this clause, “joint venture in India” means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement;’.

- 89.** In section 75A of the Customs Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 75A.

25           “(2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AB and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.”.

**90.** Chapter XA of the Customs Act shall be omitted. Omission of Chapter XA.

- 30   **91.** In section 127A of the Customs Act, with effect from the 1st day of June, 2007, for clause (b), the following clause shall be substituted, namely:— Amendment of section 127A.

             “(b) “case” means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 127B is made:

35           Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause;’.

- 40   **92.** In section 127B of the Customs Act, with effect from the 1st day of June, 2007, for sub-section (1), the following sub-sections shall be substituted, namely:— Amendment of section 127B.

45           “(1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, in respect of a case, relating to him make an application, before adjudication to the Settlement Commission to have the case settled, in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification, under-valuation or inapplicability of exemption notification but excluding the goods not included in the entry made under this Act and such application shall be disposed of in the manner hereinafter provided:

50           Provided that no such application shall be made unless,—

             (a) the applicant has filed a bill of entry, or a shipping bill, in respect of import or export of such goods, as the case may be, and in relation to such bill of entry or shipping bill, a show cause notice has been issued to him by the proper officer;

(b) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(c) the applicant has paid the additional amount of customs duty accepted by him along with interest due under section 28AB:

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending in the Appellate Tribunal or any court: 5

Provided also that no application under this sub-section shall be made in relation to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed: 61 of 1985.

Provided also that no application under this sub-section shall be made for the interpretation of the classification of the goods under the Customs Tariff Act, 1975. 10 51 of 1975.

(1A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1) before the 1st day of June, 2007 but an order under sub section (1) of section 127C has not been made before the said date, the applicant shall within a period of thirty days from the 1st day of June, 2007 pay the accepted duty liability failing which his application shall be liable to be rejected." 15

Substitution of new section for section 127C.

**93.** For section 127C of the Customs Act, with effect from the 1st day of June, 2007, the following section shall be substituted, namely:—

Procedure on receipt of an application under section 127B.

"127C. (1) On receipt of an application under section 127B, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with or reject the application, as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection: 20

Provided that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with. 25

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

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Customs having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission: 30

Provided that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner. 35

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case: 40

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report. 45

(5) After examination of the records and the report of the Commissioner of Customs received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Commissioner of Customs having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Customs and Commissioner (Investigation) under sub-section (3) or sub-section (4). 50 55

(6) An order under sub-section (5) shall not be passed in respect of an application filed on or before the 31st day of May, 2007, later than the 29th February, 2008 and in respect of an application

made on or after the 1st day of June, 2007, after nine months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 127B had been made.

1 of 1944. 5 (7) Subject to the provisions of section 32A of the Central Excise Act, 1944, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, 1 of 1944. the provisions of section 32D of the Central Excise Act, 1944 shall apply.

10 (8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts:

15 Provided that the amount of settlement ordered by the Settlement Commission, shall not be less than the duty liability admitted by the applicant under section 127B.

(9) Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the applicant within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of section 142.

20 (10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the proper officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.”.

94. In section 127E of the Customs Act, after the proviso, the following proviso shall be inserted with effect from the 1st day of June, 2007, namely:—

Amendment of section 127E.

30 “Provided further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 127B is made on or after the 1st day of June, 2007.”.

95. In section 127F of the Customs Act, in sub-section (2), for the brackets and figures “(7)” and “(6)”, the brackets and figures “(5)” and “(4)” shall respectively be substituted with effect from the 1st day of June, 2007.

Amendment of section 127F.

96. In section 127H of the Customs Act, with effect from the 1st day of June, 2007,—

Amendment of section 127H.

(i) in sub-section (1),—

45 of 1860. 35 (a) for the words “or under the Indian Penal Code or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest”, the words “and also either wholly or in part from the imposition of any penalty and fine” shall be substituted;

(b) after the proviso, the following *Explanation* shall be inserted, namely:—

40 “*Explanation.*—For the removal of doubts, it is hereby declared that the application filed before the Settlement Commission on or before the 31st day of May, 2007 shall be disposed of as if the amendment in this section had not come into force.”;

45 (ii) in sub-section (2), for the words, brackets, figures and letter “sub-section (7) of section 127C within the time specified in such order or within such further time as may be allowed by the Settlement Commission”, the words, brackets, figures and letter “sub-section (5) of section 127C within the time specified in such order” shall be substituted.

97. In section 127J of the Customs Act, for the brackets and figure “(7)”, the brackets and figure “(5)” shall be substituted with effect from the 1st day of June, 2007.

Amendment of section 127J.

50 98. In section 127K of the Customs Act, for the brackets and figure “(7)”, the brackets and figure “(5)” shall be substituted with effect from the 1st day of June, 2007.

Amendment of section 127K.

99. Section 127L of the Customs Act shall be renumbered as sub-section (1) thereof and,—

Amendment of section 127L.

(i) in sub-section (1) as so renumbered, for the word “Where”, the words, figures and letters “Where, before the 1st day of June, 2007” shall be substituted;

55 (ii) after sub-section (1) as so renumbered, the following sub-section shall be inserted with effect from the 1st day of June, 2007, namely:—

“(2) Where an applicant has made an application under sub-section (1) of section 127B, on or after the 1st day of June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 127C, such applicant shall not be entitled to apply for settlement under section 127B in relation to any other matter:

Provided that such applicant shall not be prevented from filing an application for settlement if the issue in the subsequent application is, but for the period of dispute and amount, identical to the issue in respect of which the earlier application is pending before the Settlement Commission.”. 5

Omission of section 127MA. **100.** Section 127MA of the Customs Act shall be omitted with effect from the 1st day of June, 2007.

Amendment of section 129. **101.** In section 129 of the Customs Act, after sub-section (5), the following sub-section shall be inserted, namely:— 10

“(6) On ceasing to hold office, the President, Vice-President or other Member shall not be entitled to appear, act or plead before the Appellate Tribunal.”.

Amendment of section 129D. **102.** In section 129D of the Customs Act,—

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

“(3) The Committee of Chief Commissioners of Customs or Commissioner of Customs, as the case may be, shall make order under sub-section (1) or sub-section (2) within a period of three months from the date of communication of the decision or order of the adjudicating authority.”; 15

(ii) in sub-section (4), for the words “three months”, the words “one month” shall be substituted.

Amendment of section 135. **103.** In section 135 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:— 20

“(1) Without prejudice to any action that may be taken under this Act, if any person—

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or 25

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or 30

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,

he shall be punishable, —

(i) in the case of an offence relating to,— 35

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds thirty lakh of rupees, 40

with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year; 45

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.”.

Amendment of section 156. **104.** In section 156 of the Customs Act, in sub-section (2), for clause (a), the following clauses shall be substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:— 50

“(a) the manner of determining the transaction value of the imported goods and export goods

under sub-section (1) of section 14;

(aa) the manner of determining the value of imported goods and export goods under sub-section (3) of section 14;”.

*Customs tariff*

51 of 1975.

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**105.** In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act ),—

(i) the First Schedule shall be amended in the manner specified in the Second Schedule;

(ii) the Second Schedule shall be amended in the manner specified in the Third Schedule.

Amendment of  
First Schedule  
and Second  
Schedule.