

LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

5. Dutiable goods

(1) Except as otherwise provided in this Act or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under 11[the Customs Tariff Act, 1975 (51 of 1975),] or any other law for the time being in force, on goods imported into, or exported from, India.

12[(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to government as they apply in respect of goods not belonging to Government.]

6. Duty on pilfered goods

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

7. Valuation of goods for purposes of assessment

For the purposes of 11[the Customs Tariff Act, 1975 (51 of 1975),] or any other law for the time being in force where- under a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be¹³ the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale:

14[PROVIDED 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;]

15[(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.]

(1) Notwithstanding anything contained in sub-section (1) 14[or sub-section (1A)], if the Central Government 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.

(2) For the purposes of this section-

(a) "rate of exchange" means the rate of exchange-

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government 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 the Foreign Exchange Regulation Act, 1973 (46 of 1973)

8. Date for determination of rate of duty and tariff valuation of imported goods

(1) 16[The rate of duty 17[***]] and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty:

18[PROVIDED that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.

9. Date for determination of rate of duty and tariff valuation of export goods

19[(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force-

in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;

(a) in the case of any other goods, on the date of payment of duty.]

(2) The provisions of this section shall not apply to baggage and goods exported by post.

10. Assessment of duty

(1) After an importer has entered any imported goods under section 46, or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

11. Provisional assessment of duty

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in section 46-

(a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon ; or

(c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty,

the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then-

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be

adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of 20[the duty finally assessed,] the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

12. Determination of duty where goods consist of articles liable to different rates of duty Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows:-

(a) articles to duty with reference to quantity shall be chargeable to that duty;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

PROVIDED that-

(a) accessories of, and spare parts or maintenance and repairing implements for any article which satisfies the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

21[20.Re-importation of goods produced or manufactured in India

(1) If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.]

21. Goods derelict, wreck, etc.

All goods, derelict, jetsam, flotsam, and wreck brought or coming into India shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

22[* * *]

22. Abatement of duty on damaged or deteriorated goods

(1) Where it is shown to the satisfaction of the 23[Assistant Commissioner of Customs or Deputy Commissioner of Customs]-

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.

(3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods.

23. Remission of duty on lost, destroyed or abandoned goods

(1) 24[Without prejudice to the provisions of section 13, Where it is shown] to the satisfaction of the 23[Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost 6[(otherwise than as a result of pilferage)] or destroyed, at any time before clearance for home consumption, the

23[Assistant Commissioner of Custom or Deputy Commissioner of Customs] shall remit the duty on such goods.

21[(2) The owner of any imported goods may at any time before an order for clearance of the goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.]

24. Power to make rules for denaturing or mutilation of goods

The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

25. Power to grant exemption from duty

(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 clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

25[(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 payment of duty, for reasons to be stated in such order, any goods, of strategic or secret nature, or for charitable purpose, on which duty is leviable.]

6[(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs, 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 goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation: "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.]

26[(4) Every notification issued under sub-section (1) shall-

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.]

26. Refund of export duty in certain cases

Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if-

(a) the goods are returned to such person otherwise than by way of re-sale;

(b) the goods are re-imported within one year from the date of exportation; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

27[27. Claim for refund of duty

(1) Any person claiming refund of any 28[duty and interest, if any, paid on such duty]-

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

(b) borne by him,

may make an application for refund of such 28[duty and interest, if any, paid on such duty] to the 23[Assistant Commissioner of Customs or Deputy Commissioner 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 28[duty and interest, if any, paid on such duty], in such form and manner 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 28[duty and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such 28[duty and interest, if any, paid on 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 Excise and Customs Laws (Amendment) Act, 1991, such applications 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 28[duty and interest, if any, paid on such duty] has been paid under protest.

29[PROVIDED ALSO that in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year or six months, as the case may be, shall be computed from the date of issue of such order.]

Explanation I: For the purposes of this sub-section, the date of payment of 28[duty and interest, if any, paid on such duty], in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

26[Explanation II : Where any duty is paid provisionally under section 18, the limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof.]

(1) If, on receipt of any such application, the 23[Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that the whole or any part of the 29[duty and interest, if any, paid on such 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 28[duty and interest, if any, paid on such duty] as determined by the 23[Assistant Commissioner of Customs or Deputy Commissioner 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 28[duty and interest, if any, paid on such duty] paid by the importer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the 28[duty and interest, if any, paid on such duty] on imports made by an individual for his personal use;

(c) the 28[duty and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such 29[duty and interest, if any, paid on 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 28[duty and interest, if any, paid on such 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 28[duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

(2) Notwithstanding anything to the contrary contained in any judgement, 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).

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 there under.

(3) 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.

CHAPTER V : LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

30[27A. Interest on delayed refunds

If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded with three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below ten per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Board, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

PROVIDED that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation: Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the 23[Assistant Commissioner of Customs or Deputy Commissioner of Customs] under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

5[28. Notice for payment of duties, interest, etc.

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,-

(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, within one year;

(b) in any other case, within six months,

from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that where any duty has been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted. Explanation : Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or six months or five years, as the case may be.

(2) The proper officer, after considering the representation, if any, made by the person on whom notice is served under sub-section (1) ,shall determine the amount of duty or interest due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) For the purposes of sub-section (1), the expression "relevant date" means,-

(a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of the goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.]

31[28A. Power not to recover duties not levied or short-levied as a result of general practice

32[(1) Notwithstanding anything contained in this Act, if the Central Government is satisfied-

(a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof
) on any goods imported into, or exported from India; and

(b) that such goods were, or are, liable-

(i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty than what was, or is being , levied, according to the said practice, then the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.]

33[(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 23[Assistant Commissioner of Customs or Deputy Commissioner of Custom], 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.]

30[28AA. Interest on delayed payment of duty

34[Subject to the provisions contained in section 28AB, where a person,] chargeable with the duty determined under sub-section (2) of section 28, fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest at such rate not below ten per cent and not exceeding thirty per cent per annum, as is for the time being fixed by the Board, on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty:

PROVIDED that where a person chargeable with duty determined under sub-section (2) of section 28 before the date on which the Finance Bill, 1995 received the assent of the President, fails to pay such duty within three months from such date, then, such person shall be liable to pay interest under this section from the date immediately after three months from such date, till the date of payment of such duty.

Explanation 1 : Where the duty determined to be payable is reduced by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be the date on which an amount of duty is first determined to be payable.

Explanation 2 : Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be,-

(a) for the amount of duty first determined to be payable, the date on which the duty is so determined;

(b) for the amount of increased duty, the date of order by which the increased amount of duty is first determined to be payable;

(c) for the amount of further increase of duty, the date of order on which the duty is so further increased.]

29[28AB. Interest on delayed payment of duty in special cases

(1) Where any duty has not been levied or has been short levied or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty as determined under sub-section (2) of section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty per cent per annum, as is for the time being fixed by the Board, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, but for the provisions contained in sub-section (2) of section 28, till the date of payment of such duty.

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall not apply to cases where the duty became payable before the date on which the Finance (No. 2) Act, 1996 receives the assent of President.

Explanation 1 : Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such reduced amount of duty.

Explanation 2 : Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such increased or further increased amount of duty.]

7[28B. Duties collected from the buyer to be deposited with the Central Government

(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.

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 23[Assistant Commissioner of Customs or Deputy Commissioner of Customs].

**7[CHAPTER V-A : INDICATING AMOUNT OF DUTY IN PRICE OF GOODS,
ETC., FOR PURPOSE OF RE-FUND**

28C. Price of goods to indicate the amount of duty paid thereon

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.

28D. Presumption that incidence of duty has been passed on to the buyer

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.]

28E. Definitions

In this Chapter, unless the context otherwise requires, -

- (a) "**activity**" means import or export;
- (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;
- (d) "**application**" means an application made to the authority under sub-section (1) of section 28H;
- (e) "**authority**" means the authority for advance ruling constituted under section 28F;
- (f) "**chairperson**" means the Chairperson of the authority;
- (g) "**member**" means a member of the authority and includes the chairperson; and
- (h) "**non-resident**" shall have the meaning assigned to it in clause (30) of section 2 of the Income Tax Act, 1961 (43 of 1961).

28F. Authority for advance rulings

(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".

(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; 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.

(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. Vacancies, etc. not to invalidate proceedings

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.

28H. Application for advance ruling

(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.

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

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

(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.

(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. Procedure on receipt of application

(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:

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,-

(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:

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.

(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.

(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.

28J. Applicability of advance ruling

(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.

(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.

28K. Advance ruling to be void in certain circumstances

(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.

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

28L. Powers of authority

(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). 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 (2 of 1974), 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 (45 of 1860).

28M. Procedure of authority

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.]

CHAPTER VI : PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORTED GOODS

29. Arrival of vessels and aircraft in India

(1) The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land-

(a) for the first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel

or aircraft; at any place other than a customs port or a customs airport, as

the case may be.

(2) The provisions of sub-section (1) shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person in- charge of any such vessel or aircraft-

(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;

(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and

(c) shall comply with any directions given by any such officer with respect to any such goods,

and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft:

PROVIDED that nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

30. Delivery of import manifest or import report

25[(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:

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;

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.]

(2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.

31. Imported goods not to be unloaded from vessel until entry inwards granted

(1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

(2) No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

32. Imported goods not to be unloaded unless mentioned in import manifest or import report

No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

33. Unloading and loading of goods at approved places only

Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

34. Goods not to be unloaded or loaded except under supervision of customs officer

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer:

PROVIDED that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

35. Restrictions on goods being water-borne

No imported goods shall be water-borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form:

PROVIDED that the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

36. Restrictions on unloading and loading of goods on holidays, etc.

No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any:

PROVIDED that no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

37. Power to board conveyances

The proper officer may, at any time, board any conveyance carrying imported goods

or export goods and may remain on such conveyance for such period as he considers necessary.

38. Power to require production of documents and ask questions

For the purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions and thereupon such person shall produce such documents and answer such questions.

39. Export goods not to be loaded on vessel until entry-outwards granted

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

40. Export goods not be loaded unless duly passed by proper officer

The person-in-charge of a conveyance shall not permit the loading at a customs station-

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

41. Delivery of export manifest or export report

(1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form:

PROVIDED that if the agent of the person-in-charge of the conveyance furnishes such security as the proper officer deems sufficient for duly delivering within seven days from the date of departure of the conveyance the export manifest or the export report, as the case may be, the proper officer may (subject to such rules as the Central Government may make in this behalf) accept such manifest or report within the aforesaid period.

(2) The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

42. No conveyance to leave without written order

(1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until-

(a) the person-in-charge of the conveyance has answered the questions put to him under section 38;

(b) the provisions of section 41 have been complied with;

(c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents,

as the proper officer may require have been delivered to him;

(d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods,-

(i) such goods have been unloaded, or

(ii) where the 23[Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India

43. Exemption of certain classes of conveyances from certain provisions of this Chapter

(1) The provisions of sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants.

(2) The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this Chapter-

(a) conveyances belonging to the government or any foreign government;

(b) vessels and aircraft which temporarily enter India by reason of any emergency.