

LEVY AND COLLECTION OF DUTY

SECTION 3. Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. —

(1) There shall be levied and collected in such manner as may be prescribed, -

(a) a duty of excise to be called the Central Value Added Tax (CENVAT)] on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods [(excluding goods produced or manufactured in special economic zones)] specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured, -

(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force], on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1. — Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Explanation 2. — In this proviso, -

- (ii) “hundred per cent export-oriented undertaking” means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.;
- (iii) “Special Economic Zone” has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

provisions of sub-section (1A) The (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as chargeable with duty *ad valorem* and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed -

- (a) for different classes or descriptions of the same excisable goods; or
- (b) for excisable goods of the same class or description -
 - (i) produced or manufactured by different classes of producers or manufacturers; or
 - (ii) sold to different classes of buyers :

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause

(i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.

SECTION [3A] * * *

SECTION 4.excisable Valuation of goods for purposes of charging of duty of excise. -

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation. - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding

sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

(2) The provisions of this respect of any excisable goods for which a tariff section shall not apply in value has been fixed under sub-section (2) of section 3.

(3) For the purpose of this section,-

- (a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;
- (b) persons shall be deemed to be “related” if -
 - (i) they are inter-connected undertakings;
 - (ii) they are relatives;
 - (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub- distributor of such distributor;or
 - (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

Explanation. — In this clause -

shall (i) “inter-connected undertakings” have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (64 of 1969); and

shall have the meaning (ii) “relative” assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);

means (c) “place of removal” -

- (i) factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without [payment of duty;]
- (iii) depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed;

(cc) “time of removal”, in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;

(d) “transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether

payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

SECTION 4A. Valuation of excisable goods with reference to retail sale price. -

- (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.
- (2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.
- (3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.
- (4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer
 - (a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or
 - (b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,

then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.

Explanation 1. — For the purposes of this section, “retail sale price” means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise,

freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale :

Provided that in case the provisions of the Act, rules or other law as referred to in sub- section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Explanation 2. — For the purposes of this section, -

- (a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;
- (b) where the retail sale price, declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;
- (c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.]

SECTION 5. duty on Remission of goods found deficient in quantity. —

(1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.

(2) Any rules made under to the nature of the excisable goods or of sub-section (1) may, having regard processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed :

Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons.

SECTION 5A. Power to grant exemption from duty of excise. —

(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 removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon :

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured —

in a free trade zone or a special (i) brought to any other place in India; or

economic zone]] and by a hundred per cent export-oriented (ii) [brought to any

place in India. undertaking and

Explanation. — In this proviso, “free trade zone”, “special economic zone” and “hundred per cent export-oriented undertaking” shall have the same meanings as in *Explanation 2* to sub-section (1) of section 3.

(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section

(1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods. 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 of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

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

Explanation. — “Form or method”, in relation to a rate of duty of excise means

the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable :

(3) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1988 (29 of 1988) shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section.

(4) Every notification issued under sub-section (1) or sub-section 2(A) 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, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).

(5) Notwithstanding anything contained in sub-section (5), 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.

SECTION 5B. Non-reversal of CENVAT credit. —

Where an assessee has paid duty of excise on a final product and has been allowed credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for non-reversal of such credit allowed to the assessee subject to such conditions as may be specified in the said notification :

Provided that the order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him :

Provided further that the Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product.

SECTION 6. Any prescribed person who is engaged in - Registration of certain persons.

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- (a) the production or manufacture or any process of production or manufacture of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), or
- (b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in [the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986),

shall get himself registered with the proper officer in such manner as may be prescribed

SECTION 8. Restriction on possession of excisable — goods.

From such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, no person shall, except as provided by rules made under this Act, have in his possession [any goods specified in the Second Schedule] in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of such goods or of any variety of such goods which may be possessed at any one time by such a person.

SECTION 9. Offences and penalties. —

- (1) Whoever commits any of the following offences, namely: -
- contravenes any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37;
 - (b) evades the payment of any duty payable under this Act; removes any excisable goods in contravention of any of the provisions of this Act or any rules made thereunder or in any way concerns himself with such removal;
 - acquires (bbb) transporting, depositing, possession of, or in any way concerns
 - (bb) himself in keeping, concealing, selling or purchasing, or in any other
 - b) manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;

the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;
fails to supply any information which he is required by rules made under this Act to

- (c) supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;
attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section;

shall be punishable, -

- (i) the duty leviable in the case of an offence relating to any excisable goods, thereon under this Act exceeds one lakh of rupees, 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 a term of less than six months;

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

- (2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence 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 a term of less than six months.

- (3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely :-

- the fact that the accused has been (i) time for an offence under this convicted for the first Act;
- (ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

- (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;
- (iv) the age of the accused.]

SECTION 9A. Certain offences to be non-cognizable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code.

(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

SECTION 9AA. Offences by companies. —

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section, -

- (a) “company” means any body corporate and includes a firm or other

- association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm.

SECTION 9B. Power of Court to publish name, place of business, etc., of persons convicted under the Act. —

- (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.
- (2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.
- (3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

SECTION 9C. Presumption of culpable mental state. —

- (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. — In this section, “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

- (2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

SECTION 9D. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

The provisions of sub-section (2) be, apply in relation to any proceeding under this (1) shall, so far as may Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

SECTION 9E. section 562 of the Application of Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958. —

- (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.
- (2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9.

SECTION 10. Power of Courts to order forfeiture. —

Any Court trying an offence under this Chapter may order the forfeiture to Government of any goods in respect of which the Court is satisfied that an offence under this Chapter has been committed, and may also order the forfeiture of any receptacles, packages or coverings in which such goods are contained and the animals, vehicles, vessels or other conveyances used in carrying the goods, and any implements or machinery used in the

manufacture of the goods.

SECTION 11. Recovery of sums due to Government. —

In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the [Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.

11A. SECTION Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. —

(1) When any duty of excise has not been levied or paid or has been short-

levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, a Central Excise Officer may, within [one year] from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-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 of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, [as if, [***]] for the words [one year], 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 five years, as the case may be.

(1A) When any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 11AB and penalty equal to twenty-five per cent of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.

- (1) The [Central Excise the representation, if any, made by the Officer] shall, after considering person on whom notice is served under sub-section (1), determine the amount of duty of excise 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.

Provided that if such person has paid the duty in full together with,

interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice are served under sub-section (1) shall, without prejudice to the provisions of section 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein :

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the Central Excise Officers, shall determine the amount of duty or interest not being in excess of the amount partly due from such person.

(2A) Where any notice has been served on a person under sub-section (1), the Central Excise Officer, -

- (a) in case any duty of excise has not been short-levied or short-paid or erroneously been levied or paid or has refunded, by reason of fraud, collusion or any wilful mis- statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, where it is possible to do so, shall determine the amount of such duty, within a period of one year; and
- (b) in any other case, where it is determine the amount of duty of excise which has not possible to do so, shall been levied or paid or has been short-levied or short-paid or erroneously refunded, within a period of six months, from the date of service of the notice on the person under sub-section (1).

(2B) Where any duty of excise has not been levied or paid or has been short-levied or short- paid or erroneously refunded, the person, chargeable with the duty, may pay the amount of duty [on the basis of his own ascertainment of such duty or on the basis of duty ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of the duty, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the duty so paid :

Provided that the Central Excise Officer may determine the amount of short payment of duty, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of “one year” referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1. - Nothing contained in this sub-section shall apply in a case where the duty was not levied or was not paid or was short-levied or

was short-paid or was erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.

Explanation 2. - For the removal of doubts, it is hereby declared that the interest under section 11AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the Central Excise Officer, but for this sub-section(2C) The provisions of sub-section (2B) shall not apply to any case where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.

For the purposes of this section, -

“refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

“relevant date” means, -

in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid -

where under the rules made under this Act a periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed; where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules; in any other case, the date on under this Act or the rules made which the duty is to be paid there under; in a case where duty of excise is under this Act or the rules made thereunder, the date of provisionally assessed adjustment of duty after the final assessment thereof; in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

SECTION 11AA. Interest on delayed payment of duty. —

(1) Subject to the provisions contained in section 11AB, where a person chargeable with duty determined under sub-section (2) of section 11A,

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-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette], 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 11A before the date on which the Finance Bill, 1995 receives 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 [, National Tax 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 [, National Tax 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.]

(2) The provisions of sub-section (1) shall not apply to cases where the duty becomes payable on and after the date on which the Finance Bill, 2001 receives the assent of the President.

SECTION 11AB. Interest on delayed payment of duty. -

(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B), of section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below [ten per cent.] and not exceeding thirty-

six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of section 11A till the date of payment of such duty :

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid.].

(2) The provisions of sub-section (1) shall not apply to cases where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.

Explanation 1. - Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal [, National Tax 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 [, National Tax Tribunal] or, as the case may be, the court, the interest shall be payable on such increased or further increased amount of duty.]

SECTION 11AC. Penalty for short-levy or non-levy of duty in certain cases. —

Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined :

[**Provided** that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the

Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account :

Provided also that in case where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect.

Explanation. - For the removal of doubts, it is hereby declared that -

(1) the provisions of this section which the order determining the duty under shall also apply to cases in sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(2) any amount paid to the credit of to the date of communication of the order referred the Central Government prior to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

SECTION 11B. Claim for refund of duty. —

(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :]

[**Provided** further that] the limitation of [one year] shall not apply where any duty has been paid under protest.

- (1) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Commissioner of Central Excise];
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;
- (e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

- (f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(2) Notwithstanding anything any judgment, decree, order or direction of the to the contrary contained in Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(3) Every notification under proviso to sub-section (2) shall be laid before each clause (f) of the first House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(4) For the removal of any notification issued under clause (f) of doubts, it is hereby declared that 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.]

[Explanation. — For the purposes of this section, -

- (A) “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (B) “relevant date” means, -
- (a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -
- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

- (ii) if the goods are exported by land, the date on which such goods pass the frontier, or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
 - (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;
 - (c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;
 - (d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;
 - [(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]
- in the case of goods which are exempt from payment of duty
- (eb) this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
 - (ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

(f) in any other case, the date of payment of duty SECTION 11BB. — Interest on delayed refunds.

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within 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 five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], 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 11B 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 [, National Tax Tribunal] or any court against an order of the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], under sub-section (2) of section 11B, 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 the said sub-section (2) for the purposes of this section.]

SECTION 11C. Power not to recover duty of excise not levied or short-levied as a result of general practice. —

- (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 of excise (including non-levy thereof) on any excisable goods;
 - (b) and that such goods were, or are, liable -
 - (i) to duty of excise, 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 of being, levied, according to the said excise than what was, or is practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or as the case may be, the duty of excise 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 of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

- (2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in

force, shall be dealt with in accordance with the provisions of sub-section (2) of section 11B :

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.

SECTION 11D. Duties of excise 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 rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any amount is of the Central Government under sub-section required to be paid to the credit (1) and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(3) The Central Excise representation, if any, made by the person Officer shall, after considering the on whom the notice is served under sub-section (2), determine the amount 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.

(4) The amount paid to the under sub-section (1) or sub-section (3) shall credit of the Central Government be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1).

(5) Where any surplus is left sub-section (4), the amount of such surplus shall after the adjustment under 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 11B and such

person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.

SECTION 11DD. Interest on the amounts collected in excess of the duty. -

(1) Where an amount has been collected in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods, the person who is liable to pay such amount as determined under sub-section (3) of section 11D, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent., and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Act, but for the provisions contained in sub-section (3) of section 11D, till the date of payment of such amount :

Provided that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B, and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole amount, including the amount already paid.

(2) The provisions of sub-section (1) shall not apply to cases where the amount had become payable or ought to have been paid before the day on which the Finance Bill, 2003 receives the assent of the President.

Explanation 1. - Where the amount determined under sub-section (3) of section 11D is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under sub-section (1) shall be on such reduced amount.

Explanation 2. - Where the amount determined under sub-section (3) of section 11D is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under sub-section (1) shall be on such increased amount.].

SECTION 11DDA. Provisional attachment to protect revenue in certain cases. -

(1) Where, during the pendency of any proceedings under section 11A or section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interest of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962 (52 of 1962).

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

Provided further that where an application for settlement of case under section 32E is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 32F is made shall be excluded from the period specified in the preceding proviso.

SECTION 12. Application of the provisions of [Act No. 52 of to Central Excise Duties. — 1962]

The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Customs Act, 1962 (52 of 1962), relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3.