

Changes in Customs Act – A Brief Analysis

Section 14 - Valuation of imported goods

As per sub-section (1) of section 14 of the Customs Act, 1962, valuation of goods is based on the concept of 'deemed value'. Sub-section (1A) of section 14 provides that valuation of imported goods shall be based on the concept of 'transaction value'. To remove this contradiction, existing section 14 is being substituted by a new section 14. The new section provides that the value of imported goods and export goods shall be the transaction value of such goods, as determined in accordance with the rules made in this behalf. Moreover, transaction value of imported goods shall include any amount that the buyer is liable to pay for costs and services, including commissions and brokerages, assists, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, and insurance and handling charges. Further, where there is no sale or the transaction value of the imported goods or export goods is not determinable, the value of such goods shall be determined in accordance with the rules made in this behalf. This change will come into effect from a date to be notified after enactment of Finance Act, 2007.

Section 27- Refund claim

Section 27 of the Customs Act, 1962 provides that a refund claim shall be made within a period of six-months/one year from the relevant date. This section is being amended by inserting a proviso in sub-section (1) to provide that the relevant date for the purpose of refund of duty in consequence of any judgement, decree, order or direction of appellate authority, Appellate Tribunal or any court shall be the date of such judgement, decree, order or direction.

Section 28E - Definition of "Applicant"

Section 28E (c)(ii) of the Customs Act, 1962 defines an "applicant" who is entitled to seek Advance Ruling. Under this section 'applicant' includes a "joint venture in India". This section is being amended by inserting an Explanation in clause I so as to clarify that 'joint venture in India' means a venture in which at least one of the participants, partners or equity holders is a non-resident having substantial interest in the joint venture and exercising joint control over it.

Section 75A(2) - Erroneous payment of interest on duty drawback

Section 75A of the Customs Act, 1962 deals with payment of interest on drawback paid to a claimant erroneously. It provides that in addition to payment of said amount of drawback, the claimant shall pay interest at the rate fixed under section 28AA, within a period of two months from the date of demand. Sub-section (2) of Section 75A is being amended to provide that in case of erroneous refund, the interest shall be charged at the rate fixed under section 28AB, from the date of payment of drawback till the date of recovery of such drawback.

Omission of Chapter XA of Special Economic Zone (SEZ) Act, 2005

Prior to operationalisation of Special Economic Zone (SEZ) Act, 2005, the scheme of SEZs was implemented through Chapter XA of the Customs Act, 1962, and the rules notified under the said Act. In view of the specific legislation covering SEZs, Chapter XA of the Customs Act, 1962 has become redundant. Customs Act, 1962 is accordingly being amended to omit Chapter XA of the said Act.

Section 127A(b) – Definition of the term 'Case'

Section 127A of the Customs Act, 1962 is being amended so as to provide that an



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applicant can file an application before the Settlement Commission only in respect of cases pending before the adjudicating authority. It further provides that in respect of cases referred back by the Appellate Tribunal, Court or any other authority to the adjudicating authority for fresh adjudication, the applicant shall not be entitled to file an application.

Section 127B - Application for Settlement Commission

Section 127B of the Customs Act, 1962 is being amended so as to provide that an applicant shall be eligible to file an application in respect of cases in which he admits short levy on account of misclassification, under valuation, inapplicability of exemption notification but not in respect of the goods not included in the Bill of Entry or Shipping Bill, as the case may be. It further provides that while filing any application, he shall deposit the additional amount of customs duty accepted by him along with

stipulated interest due thereon. It also proposes to enhance the minimum settlement amount from Rs. 2 lakh to Rs. 3 lakh. It also provides that in respect of an application filed before 1.06.2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted duty by 30.06.2007, failing which the application shall be rejected.

Section 127C - Time limit for the disposal of application

Section 127C of the Customs Act, 1962 is being amended so as to specify time limit at every stage for disposal of the application filed before the Settlement Commission. It, inter alia, provides that in respect of an application filed on or before 31st May 2007, the order shall be passed by 29th February 2008, and in respect of application made on or after 1st June 2006, the order should be passed within 9 months of the application. It also provides that amount of settlement ordered by the Commission shall

in no case be less than duty liability admitted by the applicant. It further provides that the settlement amount shall be paid within 30 days of the receipt of the order and no extension for payment of this amount shall be granted by the Commission.

Section 127E - Re-opening of completed proceedings

Section 127E of the Customs Act, 1962 is being amended with a view to debar the Settlement Commission from re-opening the completed proceedings in respect of applications received on or after 1.6.2007.

Section 127F - Consequential changes

Section 127F of the Customs Act, 1962 is being amended so as to make consequential changes in view of the amendments made in section 127C.

Section 127H - Immunity from prosecution and penalty.

Section 127H of the Customs Act, 1962 is being amended so as to debar the Settlement Commission from granting immunity from prosecution for any offence under Indian Penal Code or any Central Act for the time being in force other than Customs Act. It also provides that the Settlement Commission shall not have power to grant immunity from payment of interest as provided under this Act. It further provides that applications pending before the Settlement Commission on 31.05.2007 shall be decided in accordance with the existing provisions.

Section 127J and 127K - Consequential changes

Section 127J and 127K of the Customs Act, 1962 are being amended so as to make consequential changes in view of the amendments made in section 127C.

Section 127L - Bar on subsequent application

Section 127L of the Customs Act, 1962 is being amended so as to provide that an applicant can apply for settlement only once during his lifetime so that the scheme of settlement is not treated as a permanent amnesty scheme by the tax evaders. It also provides that in respect of cases involving identical recurring issue, the applicant can file application for settlement provided that his earlier application is pending before the Settlement Commission.

Section 127MA - Omitted

Section 127MA of the Customs Act, 1962 is being omitted as it has outlived its utility.

Section 129 - Limitation from appearing, acting or pleading before Tribunal

Section 129 of the Customs Act, 1962 is being amended by inserting a new subsection (6) therein with a view to debar the President, Vice-President or other Member of the Customs, Excise and Service Tax Appellate Tribunal from appearing, acting or pleading before the said Tribunal on ceasing to hold office.

Section 129D - Reduction of time limit to review of orders

Section 129D of the Customs Act, 1962 is being amended so as to provide that the Committee of Chief Commissioners or the Commissioners shall review the orders of the Commissioner or adjudicating authorities below the rank of Commissioner within a period of three months as against the present period of one year from the date of communication of the decision or order of the Adjudicating Authority. It is also proposed to reduce the time available under sub-section (4) for authorized officer to file appeal before the Appellate Tribunal or the Commissioner (Appeals), as the case may be, from three months at present to one month. □