

Chapter V – LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

SECTION 12. 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 1 [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.

2 [(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.]

SECTION 13. 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.

3 [SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :

Provided also 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 of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. - For the purposes of this section -

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

- (i) determined by the Board, or
- (ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

SECTION 15. Date for determination of rate of duty and tariff valuation of imported goods. - (1) 4 [The rate of duty⁵ [***]] 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 ⁶ [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 a bill of entry for home consumption in respect of such goods is presented under that section;
- (c) in the case of any other goods, on the date of payment of duty :

⁷ [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 ⁸[or the vehicle] 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 [***]

SECTION 16. Date for determination of rate of duty and tariff valuation of export goods.-¹⁰ [(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -

- (a) 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;
- (b) 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.

11 [SECTION 17. Assessment of duty. – (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the ¹²[the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

¹³[Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

14[(3) For 15[the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 16[***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

17[***]

Explanation.- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

SECTION 18. Provisional assessment of duty- 18[(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 19[and section 50],-

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods 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 as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.]

20[(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.]

(2) When the duty leviable on such goods is assessed finally 21[or reassessed by the proper officer] 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 22[finally assessed or re-assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of 23 [the duty 24[finally assessed or re-assessed, as the case may be,]], 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 25[finally assessed or re-assessed, as the case may be,] 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.

26[(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order 27[or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under section 28[28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.]

29[(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment, of duty finally 30[or re-assessment of duty, as the case may be,] there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.]

29 [(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, 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 duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such 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.]

SECTION 19. 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 liable 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 satisfy 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 31[or the evidence is available] 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.

32 [SECTION 20. Re-importation of goods. - 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;
33 [***]]

SECTION 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.

SECTION 22. Abatement of duty on damaged or deteriorated goods. - (1) Where it is shown to the satisfaction of the 34 [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

(c) 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.

SECTION 23. Remission of duty on lost, destroyed or abandoned goods.- (1) 35[Without prejudice to the provisions of section 13, where it is shown] to the satisfaction of the 36[Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost 37[(otherwise than as a result of pilferage)] or destroyed, at any time before clearance for home consumption, the

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

38[(2) The owner of any imported goods may, at any time before an order for clearance of 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;]

39[Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]

SECTION 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.

SECTION 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.

40[(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 the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

41[(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.]

42[(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.]

43[(4) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise

provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.]

44[***].

45[(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.]

46[(7) The mineral oils (including petroleum and natural gas) extracted or produced in the continental shelf of India or exclusive economic zone of India as referred to in section 6 and section 7, respectively, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), and imported prior to the 7th day of February, 2002 shall be deemed to be and shall always be deemed to have been exempted from the whole of the duties of customs leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.]

46 [(8) Notwithstanding the exemption provided under sub-section (7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made.]

47[SECTION 25A. Inward processing of goods.- Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—
(a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;
(b) the imported goods are identifiable in the export goods; and
(c) such other conditions as may be specified in that notification.

SECTION 25B. Outward processing of goods.- . Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—
(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;
(b) the exported goods are identifiable in the re-imported goods; and
(c) such other conditions as may be specified in that notification.]

SECTION 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.

48 [SECTION 26A. Refund of import duty in certain cases- (1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if-

(a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) the importer does not claim drawback under any other provisions of this Act; and

(d) (i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer,

in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the 49[Principal Commissioner of Customs or Commissioner of Customs] for a period not exceeding three months:

Provided further that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(2) An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and in such manner as may be prescribed.

Explanation- For the purposes of this sub-section, "relevant date" means,-

a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;

b) in cases where the title to the goods is relinquished, the date of such relinquishment;

c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(3) No refund under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(4) The Board may, by notification in the Official Gazette, specify any other condition subject to which the

refund under sub-section (1) may be allowed.]

50[(SECTION 27. Claim for refund of duty. – 51[(1) Any person claiming refund of any duty or interest,-

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

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

52[Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.]

Explanation.- For the purposes of this sub-section, "the date of payment of duty or interest"" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(1A) The application under sub-section (1) 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 duty or interest, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:-

(a) 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 shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.]

(2) If, on receipt of any such application, the 53[Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that the whole or any part of the 54 [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 54 [(duty and interest, if any, paid on such duty] as determined by the 53 [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 54[duty and interest, if any, paid on such duty paid] by the importer, 55[or the exporter, as the

case may be] if he had not passed on the incidence of such⁴³[duty and interest, if any, paid on such duty] to any other person;

(b) the ⁵⁴[duty and interest, if any, paid on such duty] on imports made by an individual for his personal use;

(c) the ⁵⁴ [duty and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such ⁵⁴ [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 ⁵⁴ [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 :

⁵⁶[(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.]

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 ⁵⁴[duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, ⁵⁷[National Tax 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).

(4) 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 thereunder.

(5) 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.

58[SECTION 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 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,⁵⁹[not below five percent.] and not exceeding thirty percent per annum as is for the time being fixed ⁶⁰[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 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, 57[National Tax Tribunal] or any court against an order of the 53[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, 57[National Tax Tribunal] 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.

SECTION 28. 61[Recovery of 62[duties not levied or not paid or short-levied or short- paid] or erroneously refunded. - (1) Where any 63[duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within 64[two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied 65[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;

66 [Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-

- (i) his own ascertainment of such duty; or
- (ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

67[Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

68[Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.]

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the

manner specified under that sub-section and the period of 69[two years] shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been 70 [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been 71[so levied or not paid] or which has been so 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.

(5) Where any 72[duty has not been levied or not paid or has been short-levied or short paid] 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 wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to 73[fifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of 74[two years] shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of 75[two years] referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

76[(7A) Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub section (1) or sub-section (4).]

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-

(a) within six months from the date of notice, 77[***] in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, 77[***] in respect of cases falling under sub-section (4).

78 [Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.

(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that—

(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or

(b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

(c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or

(d) the Settlement Commission has admitted an application made by the person concerned, the proper officer shall inform the person concerned the reason for non determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.]

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

79[(10A) Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest

thereon at the rate fixed by the Central Government under section 28AA, from the date of refund up to the date of recovery, as a sum due to the Government.

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.]

80[(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.]

Explanation 1- For the purposes of this section, "relevant date" means,-

(a) in a case where duty is 81[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

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

(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.

Explanation 2. – For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.]

82[Explanation 3. – For the removal of doubts, it is hereby declared that the proceedings in respect of any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been issued under sub-section (1) or sub-section (4), as the case may be, but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, shall, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, be deemed to be concluded, if the payment of duty, interest and penalty under the proviso to sub-section (2) or under sub-section (5), as the case may be, is made in full within thirty days from the date on which such assent is received.]

83[Explanation 4.—For the removal of doubts, it is hereby declared that in cases where notice has been issued for non-levy, not paid, short-levy or short-paid or erroneous refund after the 14th day of May, 2015,

but before the date on which the Finance Bill, 2018 receives the assent of the President, they shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.]

84[SECTION 28A. Power not to recover duties not levied or short-levied as a result of general practice. –85[(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.]

86[(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 53[Assistant Commissioner of Customs or Deputy Commissioner of Customs], 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.]

SECTION 87[28AA. Interest on delayed payment of duty— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of (2) such duty.

Notwithstanding anything contained in sub-section (1), no interest shall be payable where,— (3)

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

SECTION 88[28AAA. Recovery of duties in certain cases. —(1) Where an instrument issued to a

person has been obtained by him by means of —

- (a) collusion; or
- (b) wilful misstatement; or
- (c) suppression of facts,

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relating to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued :

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

Explanation 1.— For the purposes of this sub-section, “instrument” means any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), with respect to a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.

Explanation 2. — The provisions of this sub-section shall apply to any utilisation of instrument so obtained by the person referred to in this sub-section on or after the date on which the Finance Bill, 2012 receives the assent of the President, whether or not such instrument is issued to him prior to the date of the assent.

Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at the rate fixed by the Central Government under section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.

(2)

For the purposes of recovery under sub-section (2), the proper officer shall serve notice on the person to whom the instrument was issued requiring him to show cause, within a period of thirty days from the date of receipt of the notice, as to why the amount specified in the notice (excluding the interest) should not be recovered from him, and after giving that person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty or interest or both to be recovered from such person, not being in excess of the amount specified in the notice, and pass order to recover the amount of duty or interest or both and the person to whom the instrument was issued shall repay the amount so specified in the notice within a period of thirty days from the date of receipt of the said order, along with the interest due on such amount, whether or not the amount of interest is specified separately.

Where an order determining the duty has been passed under section 28, no order to recover that duty shall be passed under this section. (4)

Where the person referred to in sub-section (3) fails to repay the amount within the period of thirty days specified therein, it shall be recovered in the manner laid down in sub-section (1) of section 142.] (5) contained in any order or direction of the Appellate Tribunal, 57[National Tax Tribunal] or any Court or in any other provision of this Act or the regulations made thereunder, 90[every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods] in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

89[SECTION 28B. Duties collected from the buyer to be deposited with the Central Government.-

(1) Notwithstanding anything to the contrary

91[(1A) Every person who has collected any amount in excess of the duty assessed or determined or paid on any goods or has collected any amount as representing duty of customs on any goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.]

92[(2) Where any amount is required to be paid to the credit of the Central Government under 93[sub-section (1) or sub-section (1A), as the case may be,] and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.]

94[(3) The proper officer shall, after considering the representation, if any, made by the person 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.]

94[(4) The amount paid to the credit of the Central Government under 95[sub-section (1) or sub-section (1A) or sub-section (3) as the case may be,] shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in 96[sub-section (1) or sub-section (1A).]]

97[(5) Where any surplus is left after the adjustment made under sub-section (4), 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 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 Customs for the refund of such surplus amount.]

98[SECTION 28BA. Provisional attachment to protect revenue in certain cases. - (1) Where, during the pendency of any proceeding under section 28 99[or section 28AAA or section 28B], the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the 100[Principal Commissioner of Customs or Commissioner of Customs], by order in writing, attach provisionally any property belonging to the person on whom notice is served under 101[sub-section (1) or sub-section (4) of section 28] 102[or sub-section (3) of section 28AAA or sub-section (2) of section 28B], as the case may be, in accordance with the rules made in this behalf under section 142.

(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 103[Principal Chief Commissioner of Customs or Chief Commissioner of Customs] 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 127B 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 127C is made shall be excluded from the period specified in the preceding proviso.

1. Substituted by Act 51 of 1975, section 13, for “Indian Tariff Act, 1934(32 of 1934)”(w.e.f. 2-8-1976).

2. Substituted by Act 30 of 1963, section 2, for sub-section(2) (w.e.f. 1-10-1963).

3. Substituted by Act 22 of 2007, section 95, for section 14 (w.e.f. 10-10-2007). Earlier Section 14 was amended by Act 20 of 1966, section 2(w.e.f. 1-8-1966), by Act 51 of 1975, section 13(w.e.f. 2-8-1976), by Act 25 of 1978, section 3(w.e.f. 1-7-1978), by Act 27 of 1988, section 2(w.e.f.16-8-1988) and by Act 20 of 2002, section 118(w.e.f. 11-5-2002). Section 14, before substitution by Act 22 of 2007 stood as under:
“14. Valuation of goods for purposes of assessment.—(1) For the purposes of 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 be—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 maybe in the course of international trade where—
(a) the seller and the buyer have no interest in the business of each other; or
(b) one of them has no interest in the business of the other,
and the price is the sole consideration for the sale or offer for sale:
Provided that such price should 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 presented under section 50;
(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
(2) Notwithstanding anything contained in sub-section (1) or sub-section(1A) if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, in the Official Gazette fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed the duty shall be chargeable with reference to such tariff value.
(3) For the purposes of the section—
(a) rate of exchange means he rate of exchange—
(i) determined by the Board, or
(ii)ascertain in such manner as the Board may direct,
for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
(b) “foreign currency” and “Indian currency” have the meaning respectively assigned to them in clause (m) and clause (q) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)”.

4. Substituted by Act 20 of 1966, section 3(a), for ‘the rate of duty’ (w.e.f. 31-8-1966).

5. The words “rate of exchange” omitted by Act 25 of 1978, section 4(a) (w.e.f.1-7-1978)

6. Substituted by Act 32 of 2003, section 106, for “the goods are actually removed from the warehouse” (w.e.f. 14-5-2003).

7. Substituted by Act 33 of 1996, section 59, for the proviso (w.e.f. 28-9-1996).

8. Inserted by Act 25 of 2014, section 80 (w.e.f. 6-8-2014).

9. Sub-section (3) omitted by Act 25 of 1978, section 4(b)(w.e.f 1-7-1978). Earlier sub-section(3) was inserted by Act 20 of 1966, section 3(b) (w.e.f. 31-8-166).

10. Substituted by Act 23 of 1986, section 50, for sub-section(1) (w.e.f. 13-5-1986).

11. Substituted by Act 8 of 2011, section 38, for section 17 (w.e.f. 08-4-2011).Earlier section 17 was amended by Act 29 of 2006, section 20, (w.e.f. 13-7-2006). Section 17 before substitution by Act 8 of 2011 stood as under:
“17. 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 maybe, 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 of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods as the case maybe, can be ascertained and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such documents and furnish such information.

(4) Notwithstanding anything contained 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.

(5) where any assessment done under sub-section 2 is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification, therefore, under this Act, in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be.

12. Substituted by Finance Act, 2018 (13 of 2018), section 60 (w.e.f.29.03.2018) for the words "the self-assessment of such goods".

13. Inserted by Finance Act, 2018 (13 of 2018), section 60 (w.e.f.29.03.2018).

14. Substituted by Finance Act, 2017 (7 of 2017), section 91, (w.e.f. 31.03.2017). Prior to substitution, Section 17(3) stood as under:

"17(3) For verification of self-assessment under sub-section(2) the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, 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 is in his power to produce or furnish, any thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

15. Substituted by Finance Act, 2018 (13 of 2018), section 60 (w.e.f.29.03.2018) for the words "verification of self-assessment".

16. Omitted by Finance Act, 2018 (13 of 2018), section 60 (w.e.f.29.03.2018) the words "regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act".

17. Omitted by Finance Act, 2018 (13 of 2018), section 60 (w.e.f.29.03.2018). Prior to omission sub-section (6) of Section 17 stood as under:

"17 (6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed."

18. Substituted by Act 8 of 2011, section 39(a), for sub-section (1)(w.e.f. 08.04.2011). Sub-section (1) before substitution stood as under:

"(1) Notwithstanding anything contained in this Act, but without prejudice to the provisions contained in section 4—

(a) where the proper officer is satisfied that an importer or exporter is unable to produce any documents

or furnish any information necessary for the assessment of duty on the imported goods or the export goods as the case maybe; 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 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 maybe, 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.”

19. Inserted by Finance Act, 2018 (13 of 2018), section 61 (w.e.f. 29.03.2018).

20. Inserted by Finance Act, 2018 (13 of 2018), section 61 (w.e.f. 29.03.2018).

21. Inserted by Act 8 of 2011, section 39(b)(i) (w.e.f. 8-4-2011)

22. Substituted by Act 8 of 2011, section 39(b)(ii) for “finally assessed”(w.e.f. 8-4-2011)

23. Substituted by Act 56 of 1974, section 3, and Second Schedule for “finally assessed”(w.e.f. 20-12-1974).

24. Substituted by Act 8 of 2011, section 39(b)(ii) for “finally assessed”(w.e.f. 8-4-2011).

25. Substituted by Act 8 of 2011, section 39(b)(ii) for “finally assessed”(w.e.f. 8-4-2011)

26. Inserted by Act 29 of 2006, section 21(w.e.f. 13-7-2006).

27. Inserted by Act 8 of 2011, section 39(c)(w.e.f. 08-4-2011).

28. Substituted by Finance Act, 2018 (13 of 2018), section 61 (w.e.f. 29.03.2018) for “28AB” and shall be deemed to have been substituted retrospectively with effect from the 8th day of April, 2011.

29. Inserted by Act 29 of 2006, section 21(w.e.f. 13-7-2006).

30. Inserted by Act 8 of 2011, section 39 (d)(w.e.f. 08-4-2011).

31. Inserted by Act 8 of 2011, section 40(w.e.f. 08-4-2011).

32. Substituted by Act 32 of 1994, section 60(i) for section 20(w.e.f. 13-5-1994). Earlier section 20 was amended by Act 14 of 1982, section 45(w.e.f. 11-5-1982). And by Act 80 of 1985, section 2(w.e.f. 27-12-1985).

33. Provisos and Explanations omitted by Act 22 of 1995, Section 53(w.e.f.26.05.1995).

34. Substituted by Act 27 of 1999, section 100, for “Assistant Commissioner of Customs” (w.e.f. 11-5-1999). Earlier the words “Assistant Commissioner of Customs”were substituted by Act 22 of 1995, section 50, for the words “Assistant Collector of Customs (w.e.f. 26-5-1995).

35. Substituted by Act 11 of 1983, section 48(a)for “Where it is shown” (w.e.f. -5-1983).

36. Substituted by Act 27 of 1999, section 100, for “Assistant Commissioner of Customs”(w.e.f. 11-5-1999). Earlier the words “Assistant Commissioner of Customs”were substituted by Act 22 of 1995, section 50, for the words “Assistant Collector of Customs (w.e.f. 26-5-1995).

37. Inserted by Act 11 of 1983,section 48(b)(w.e.f. 13-5-1983).

38. Substituted by Act 32 of 1984, section 60(2), for sub-section (2)(w.e.f. 13-5-1984).

39. Inserted by Act 21 of 2006, section 58 (w.e.f 18-4-2006).

40. Substituted by Act 32 of 2003, section 107(a), for sub-section(2)(w.e.f. 14-5-2003). Earlier sub-section(2) was substituted by Act 27 of 1999, section 102(w.e.f. 11.5.1999).

41. Inserted by Act 20 of 2002, section 119(a) (w.e.f. 11-5-2002).

42. Inserted by Act 11 of 1983, section 49(w.e.f. 13-5-1983).

43. Substituted by Finance Act, 2016, section 119(i), for-sub-section (4). Earlier sub-section (4) was inserted by Act 21 of 1988, section 99(w.e.f. 1-8-1988) and was amended by Act 20 of 2002, section 119(b) (w.e.f. 11-5-2002). Sub-section (4), before substitution by the Finance Act, 2016, stood as under:
“(4) Every notification issued under sub-section (1) or sub-section (2A) 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.”

44. Sub-section(5) omitted by the Finance Act, 2016, section 119(ii). Sub-section(5), before omission stood as under:

“(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.”

45. Inserted by Act 32 of 2003, section 107(b) (w.e.f. 14-5-2003).

46. Inserted by Act 25 of 2014, section 81(w.e.f.6-8-2014).

47. Inserted by Finance Act, 2018 (13 of 2018), section 62 (w.e.f. 29.03.2018).

48. Inserted by Act 33 of 2009, section 85(w.e.f. 19-8-2009).

49. Substituted by Act 25 of 2014, section 78, for “Commissioner of Customs”(w.e. 6-8-2014).

50. Substituted by Act 40 of 1991, section 10, for section 27(w.e.f. 20-9-1991). Earlier section 27 was amended by Act 25 of 1978, section 5(w.e.f. 1-7-1978) and by Act 26 of 1988, section 78(w.e.f. 13-5-1988).

51. Substituted by Act 8 of 2011, section 41, for sub-section (1) (w.e.f. 8-4-2011). Earlier sub-section(1) was amended by Act 55 of 1991, section 2(i)(w.e.f. 23-12-1991) by Act 22 of 1995, sections 50 and 54(w.e.f. 26-5-1995), by Act 33 of 1996, section 60(w.e.f. 28-9-1996), by Act 21 of 1998, section 100(w.e.f. 1-8- 1988), by Act 27 of 1999, section 100(w.e.f. 11-5-1999) and by Act 22 of 2007, section 96 (w.e.f. 11-5-2007). Sub-section(1) before substitution by Act 8 of 2011, stood as under:

“(1) Any person claiming refund of any duty—

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

(ii) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or the 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 duty and interest, if any, paid on such duty in such form and manner as maybe specified in the regulations made in this behalf and the application shall be accompanied by such documentary or other evidence (including the document referred to in section 28C) as the applicant may furnish to establish that the amount of 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 on incidence of such 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 Central Excises and Customs laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section and the same shall be dealt with in accordance with the provision 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 duty or interest, if any paid on such duty has been paid under protest:

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:

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

direction.

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

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.”

52. Inserted by Act 17 of 2013, section 65 (w.e.f. 10-5-2013).

53. Substituted by Act 27 of 1999, section 100, for “Assistant Commissioner of Customs” (w.e.f. 11-5-1999). Earlier the words “Assistant Commissioner of Customs” were substituted by Act 22 of 1995, section 50, for the words “Assistant Collector of Customs (w.e.f. 26-5-1995).

54. Substituted by Act 55 of 1991, section 2(ii), for “duty” (w.e.f. 23-12-1991).

55. Inserted by Act 32 of 2003, section 108 (w.e.f. 14-5-2003).

56. Inserted by Finance Act, 2017(7 of 2017), section 92 (w.e.f. 31-03-2017).

57. Inserted by Act 49 of 2005, section 30 and Schedule, Part VI- 2 (w.e.f. 28-12-2005).

58. Inserted by Act 22 of 1995, section 55 (w.e.f. 26-5-1995).

59. Substituted by Act 14 of 2001, section 102, for “not below ten percent” (w.e.f. 11-5-2001).

60. Substituted by Act 10 of 2000, section 78, for “by the Board” (w.e.f. 12-5-2000).

61. Substituted by Act 8 of 2011, section 42, for Section 28 (w.e.f. 08-04-2011). Earlier section 28 was amended by Act 25 of 1978, section 6(w.e.f. 1-7-1978), by Act 21 of 1984, section 37(w.ef.11-5-1984), by Act 80 of 1985, section 3(w.e.f 27-12-1985), by Act 18 of 1992, section 109(2) (w.e.f. 14-5-1992), by Act 22 of 1995, section 56(w.e.f. 26-5-1995) by Act 10 of 2000, section 79 (w.e.f. 12-5-2000), by Act 14 of 2001, section 103(w.e.f. 11-5-2001), by Act 32 of 2003, section 109(w.e.f. 14-5-2003), by Act 29 of 2006, section 22(w.e.f. 13-7-2006). Section 28, before substitution by Act 8 of 2011, stood as under:

“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 so 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 not 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 wilful 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.

(1A) When any duty has not 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 willfulmis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under the proviso to sub-section (1) by the proper officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under

Section 28AB 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.

(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:

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 is served under sub-section (1) shall, without prejudice to the provisions of Sections 135, 135A and 140, 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 proper officer 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 proper officer,--

(i) in case any duty has not been levied or has been short-levied, or the interest has not been paid 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, where it is possible to do so, shall determine the amount of such duty or the interest, within a period of one year; and

(ii) in any other case, where it is possible to do so, shall determine the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable which has not been paid, part 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 has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part paid or erroneously refunded, the person, chargeable with the duty or the interest, may pay the amount of duty or interest before service of notice on him under sub-section (1) in respect of the duty or the interest, as the case may be, and inform the proper 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 or the interest so paid:

Provided that the proper officer may determine the amount of short-payment of duty or interest, if any, which in his opinion has not been paid by such person and, then, the proper officer shall proceed to recover such amount in the manner specified in this section, and the period of 'one year' or 'six months' as the case may be, 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 the interest was not paid or was part paid or the duty or interest was 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.

Explanation 2.-For the removal of doubts, it is hereby declared that the interest under Section 28AB 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 proper officer, but for this sub-section.

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

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

(a) in 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.”.

62. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(a), for “duties not levied or short-levied”. (w.e.f. 14-08-2016)
63. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(b)(i) for “duty has not been levied or has been short-levied”. (w.e.f. 14-08-2016)
64. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(b)(ii)(A), for “one year”. (w.e.f. 14-08-2016).
65. Inserted by the Finance Act, 2016, Act 28 of 2016, section 120(b)(ii)(B) (w.e.f. 14-08-2016).
66. Inserted by Finance Act, 2018(13 of 2018), section 63 (w.e.f.29.03.2018)
67. Inserted by Act 17 of 2016, section 66 (w.e.f. 10-5-2013).
68. Inserted by Act 20 of 2015, section 82(a) (w.e.f. 14-5-2015).
69. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(c), for “one year” (w.e.f. 14-08-2016).
70. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(d)(i) for “levied or has been short levied”. (w.e.f. 14-08-2016).
71. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(d)(ii), for “so levied”(w.e.f. 14-08-2016).
72. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(e), for “duty has not been levied or has been short- levied” (w.e.f. 14-08-2016).
73. Substituted by Act 20 of 2015, section 82(b), for “twenty-five percent”. (w.e.f. 14-05-2015).
74. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(f), for “one year”(w.e.f. 14-08-2016).
75. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(g), for “one year”(w.e.f. 14-08-2016).
76. Inserted by Finance Act, 2018(13 of 2018), section 63 (w.e.f.29.03.2018).
77. Omitted by Finance Act, 2018(13 of 2018), section 63 (w.e.f.29.03.2018) the words “where it is possible to do so”.
78. Inserted by Finance Act, 2018(13 of 2018), section 63 (w.e.f.29.03.2018).
79. Inserted by Finance Act, 2018(13 of 2018), section 63 (w.e.f.29.03.2018).
80. Inserted by Customs (Amendment & Validation), 2011 (Act 14 of 2011), section 2(w.e.f. 16-9-2011).
81. Substituted by the Finance Act, 2016, Act 28 of 2016, section 120(h), for “not levied”(w.e.f. 14-08-2016).
82. Inserted by Act 25 of 2016, section 82(c) w.e.f. 14-05-2016).
83. Inserted by Finance Act, 2018(13 of 2018), section 63 (w.e.f.29.03.2018).
84. Inserted by Act 25 of 1978, section 7 (w.e.f. 1-7-1978).
85. Section 28A renumbered as sub-section(1), thereof by Act 29 of 1988, section 3(w.e.f. 01-7-1988).
86. Substituted by Act 40 of 1991, section 11, for sub-section (2) (w.e.f. 20-9-1991). Earlier sub-section(2) was inserted by Act 29 of 1988, section 3(w.e.f. 1-7-1988).
87. Substituted by Act 8 of 2011, section 43, for section 28AA and section 28AB (w.e.f. 08-04-2011). Earlier Section 28AA was inserted by Act 22 of 1995, section 57(w.e.f 26-5-1995) and was amended by Act 33 of 1996, section 61(w.e.f. 28-07-1996), by Act 10 of 2000, section 80(w.e.f 12-5-2000), by Act 14 of 2001, section 104(w.ef 11-5-2001), by Act 20 of 2002, section 120 (w.e.f. 11-5-2002) and by Act 49 of 2005, section 30 and Schedule, Part V(w.e.f.28-12-2005). Section 28 AB was inserted Act 33 of 1996, section 32(w.e.f. 28 -9-1996) and was amended by Act 10 of 2000, section 81(w.e.f.12-5-2000), by Act 14 of 2001, section 105(w.e.f. 11-5-2001), by Act 20 of 2002, section 121(w.e.f.11.5.2002), and by Act 49 of 2005, section 30 and Schedule VI-5(w.e.f. 28-12-2005). Sections 28AA and 28 AB, before substitution by Act 8 of 2011, stood as under:

28AA. Interest on delayed payment of duty. - (1) 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-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 28 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, the 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 or, the 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 or the interest becomes payable or ought to be paid on and after the date on which the Finance Bill, 2001 receives the assent of the President.

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

(1) Where any duty 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 28, 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 day 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 28, 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 151A, 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 or interest 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.”.

88. Inserted by Act 23 of 2012, section 122 (w.e.f. 28-5-2012).

89. Inserted by Act 40 of 1991, section 12 (w.e.f. 20-9-1991).

90. Substituted by Act 10 of 2000, section 82(a) (w.r.e.f. 20-9-1991)
91. Inserted by Act 18 of 2008, section 68(i) (w.e.f. 10-5-2008).
92. Substituted by Act 10 of 2000, section 82(b) for sub-section (2)(w.r.e.f. 20-9-1991).
93. Substituted by Act 18 of 2008, section 68(ii), for sub-section (1) (w.e.f. 10-5-2008).
94. Substituted by Act 10 of 2000, section 82(b) for sub-section (2)(w.r.e.f. 20-9-1991).
95. Substituted by Act 18 of 2008, section 68(iii)(a), for “sub-section (1) ör sub-section(3)” (w.e.f. 10-5-2008).
96. Substituted by Act 18 of 2008, section 68(iii)(b), for “sub-section (1)”(w.e.f. 10-5-2008).
97. Substituted by Act 10 of 2000, section 82(b) for sub-section (2)(w.r.e.f. 20-9-1991).
98. Inserted by Act 29 of 2006, section 23(w.e.f.13-7-2006).
99. Substituted by Act 23 of 2012, section 123(a), for “or section 28B” (w.e.f. 28-5-2012).
100. Substituted by Act 25 of 2014, section 78, for “Commissioner of Customs” (w.e.f. 06-08-2014).
101. Substituted by Act 17 of 2013, section 67, for “sub-section (1) of section 28” (w.e.f. 10-5-2013).
102. Substituted by Act 23 of 2012, section 123(b), for “or sub-section (2) of section 28B” (w.e.f. 28-5-2012).
103. Substituted by Act 25 of 2014, section 78, for “Chief Commissioner of Customs” (w.e.f. 06-08-2014).