

*Excise*

Insertion of new section 2A.	<b>87.</b> In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), after section 2, the following section shall be inserted, namely:—	1 of 1944.
References of certain expressions.	‘2A. In this Act, save as otherwise expressly provided and unless the context otherwise requires, references to the expressions “duty”, “duties”, “duty of excise” and “duties of excise” shall be construed to include a reference to “Central Value Added Tax (CENVAT)”’.	
Amendment of section 3.	<p><b>88.</b> In the Central Excise Act, in section 3, in sub-section (1),—</p> <p>(i) in clause (a), for the words “a duty of excise”, the words, brackets and letters “a duty of excise to be called the Central Value Added Tax (CENVAT)” shall be substituted;</p> <p>(ii) in the proviso,—</p> <p>(a) for the words and figures “under section 12 of the Customs Act, 1962”, the words and figures “under the Customs Act, 1962 or any other law for the time being in force” shall be substituted and shall be deemed to have been substituted on and from the 11th day of May, 1982;</p> <p>(b) for <i>Explanation 1</i>, the following <i>Explanation</i> shall be substituted and shall be deemed to have been substituted on and from the 11th day of May, 1982, namely:—</p> <p>“<i>Explanation 1.</i>—Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.” .</p>	

**89.** In section 3A of the Central Excise Act,—Amendment  
of section 3A.

(a) for sub-section (2), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000, namely:—

“(2) Where a notification is issued under sub-section (1), the Central Government may, by rules,—

(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity shall be deemed to be the annual production of such goods by such factory; or

(b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and

(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:

Provided that where a factory producing notified goods is in operation only during a part of the year, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be redetermined on a proportionate basis having regard to such alteration or modification.”;

(b) in sub-section (3),—

(i) for the words “at such rate as the Central Government may by notification in the Official Gazette specify”, the words “at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000;

(ii) in the proviso, for the words “any continuous period of not less than seven days”, the words “any continuous period of fifteen days or more” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000;

(c) in sub-sections (4) and (5), for the words “Commissioner of Central Excise”, the words “Central Excise Officer not below the rank of Joint Commissioner of Central Excise” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2000.

**90.** For section 4 of the Central Excise Act, the following section shall be substituted on and from the 1st day of July, 2000, namely:—

Substitution of  
new section for  
section 4.

‘4. (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, such value shall,—

Valuation of  
excisable  
goods for  
purposes of  
charging of  
duty of excise.

(a) in a case where the goods are sold by the assessee, the assessee and the buyer of such goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

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

(3) For the purposes of this section,—

(a) “assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) persons shall be deemed to be “related” if—

(i) they are officers or directors of one another’s business;

(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by any other person;

(vii) together they directly or indirectly control any other person; or

(viii) they are members of the same family;

(c) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to the assessee by reason of, or in respect of the sale, whether payable at the time of the sale or at any other time, including, any amount charged for, or to make provision for, advertising, financing, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid on such goods.'

Amendment of section 4A. **91.** In section 4A of the Central Excise Act, for *Explanation 2*, the following *Explanation* shall be substituted, namely:—

"*Explanation 2.*—(a) Where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

(b) Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates."

Amendment of section 11. **92.** In section 11 of the Central Excise Act, after the words "rules made thereunder", the words, figures and letter "including the amount required to be paid to the credit of the Central Government under section 11D" shall be inserted.

Amendment of section 11A. **93.** In section 11A of the Central Excise Act, in sub-section (1),—

(a) for the words "six months", wherever they occur, the words "one year" shall be substituted;

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

"Provided further that where the amount of duty which has not been levied or paid or has been short-levied or short-paid or erroneously refunded is one crore rupees or less a notice under this sub-section shall be served by the Commissioner of Central Excise or with his prior approval by any officer subordinate to him:

Provided also that where the amount of duty which has not been levied or paid or has been short-levied or short-paid or erroneously refunded is more than one crore rupees, no notice under this sub-section shall be served without the prior approval of the Chief Commissioner of Central Excise."

Amendment of section 11AA. **94.** In section 11AA of the Central Excise Act, for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen 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" shall be substituted.

Amendment of section 11AB. **95.** In section 11AB of the Central Excise Act, in sub-section (1), for the words "at such rate not below ten per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board", the words "at such rate not below eighteen 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" shall be substituted.

Amendment of section 11AC. **96.** In section 11AC of the Central Excise Act, for the proviso, the following shall be substituted, namely:—

"Provided that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty so determined:

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

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

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

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

(1) the provisions of this section shall also apply to cases in which the order determining the

duty under sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

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

**97.** In section 11B of the Central Excise Act, in sub-section (1), for the words “six months”, at both the places where they occur, the words “one year” shall be substituted. Amendment of section 11B.

**98.** In section 11BB of the Central Excise Act, for the words “by the Board”, the words “by the Central Government, by notification in the Official Gazette” shall be substituted. Amendment of section 11BB.

**99.** In section 11D of the Central Excise Act with effect from the 20th day of September, 1991,— Amendment of section 11D.

(a) in sub-section (1), for the words “every person who has collected any amount from the buyer of any goods”, the words “every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods” shall be substituted and shall be deemed to have been substituted;

(b) for sub-section (2), the following sub-sections shall be substituted and shall be deemed to have been substituted, namely:—

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

(3) The Central Excise 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.

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

(5) Where any surplus is left after the adjustment 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 11B and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.”.

**100.** In section 14A of the Central Excise Act, sub-section (4) shall be omitted. Amendment of section 14A.

**101.** In section 14AA of the Central Excise Act, sub-section (4) shall be omitted. Amendment of section 14AA.

**102.** In section 32E of the Central Excise Act, in sub-section (1), in the first proviso, in clause (a), for the words “filed monthly returns”, the words “filed returns” shall be substituted. Amendment of section 32E.

**103.** After section 32P of the Central Excise Act, the following section shall be inserted, namely:— Insertion of new section 32PA.

“32PA. (1) Notwithstanding anything contained in this Chapter, any person who has filed an appeal to the Appellate Tribunal under this Act, on or before the 29th day of February, 2000 and which is pending, shall, on withdrawal of such appeal from the Appellate Tribunal, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter:

Provided that no such person shall be entitled to make an application under this section in a case where the Commissioner of Central Excise or any officer on his behalf has, on or before the date on which the Finance Act, 2000 receives the assent of the President, applied to the Appellate Tribunal for the determination of such points arising out of the decision or order specified by the Board in its order under sub-section (1) of section 35E or filed an appeal under sub-section (2) of section 35B, as the case may be.

Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement Commission.

(2) Any person referred to in sub-section (1) may make an application to the Appellate Tribunal for permission to withdraw the appeal.

(3) On receipt of an application under sub-section (2), the Appellate Tribunal shall grant permission to withdraw the appeal.

(4) Upon withdrawal of the appeal, the proceedings in appeal immediately before such withdrawal

shall, for the purposes of this Chapter, be deemed to be a proceeding pending before a Central Excise Officer.

(5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the Appellate Tribunal permitting the withdrawal of the appeal is communicated to the person.

(6) An application made to the Settlement Commission under this section shall be deemed to be an application made under sub-section (1) of section 32E and the provisions of this Chapter, except sub-section (11) of section 32F, shall apply accordingly.

(7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then, the appeal shall be deemed to have been revived before the Appellate Tribunal and the provisions contained in section 35B, section 35C and section 35D shall, so far as may be, apply accordingly.”.

Amendment  
of section 37.

**104.** In section 37 of the Central Excise Act,—

(a) in sub-section (3), for the words “two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated”, the words “five thousand rupees” shall be substituted;

(b) in sub-section (4), for the portion beginning with the brackets, letter and words “(d) contravenes the provisions” and ending with the words “or five thousand rupees, whichever is greater”, the following shall be substituted, namely:—

“(d) contravenes the provisions of any such rule with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the manufacturer, producer or licensee shall be liable to a penalty not exceeding the duty leviable on such goods or ten thousand rupees, whichever is greater”;

(c) in sub-section (5), for the words “not exceeding three times the value of such goods or five thousand rupees, whichever is greater”, the words “not exceeding the duty leviable on such goods or ten thousand rupees, whichever is greater” shall be substituted.

Validation of  
action taken  
under section  
3 of Act  
1 of 1944.

**105.** Any action taken or anything done or purporting to have been taken or done under sub-section (1) of section 3 of the Central Excise Act, as amended by clause (ii) of section 88 at any time during the period commencing on and from the 11th day of May, 1982 and ending with the day, the Finance Act, 2000 receives the assent of the President shall be deemed to be and to always have been, for all purposes, as validly and effectively taken or done as if the amendment made by clause (ii) of section 88 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) all duties of excise levied, assessed or collected during the said period on any excisable goods under the Central Excise Act, shall be deemed to be and shall be deemed to always have been, as validly levied, assessed or collected as if the amendment made by clause (ii) of section 88 had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the refund of duties of excise, and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the amendment made by clause (ii) of section 88 had been in force at all material times;

(c) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, if the amendment made by clause (ii) of section 88 had been in force at all material times.

*Explanation.*—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Validation of  
certain action  
taken under  
section 11A of  
Act 1 of 1944.

**106.** (1) Any notice issued or served on any person under the provisions of section 11A of the Central Excise Act during the period commencing on and from the 17th day of November, 1980 and ending on the date on which the Finance Act, 2000 receives the assent of the President (hereinafter referred to as the said period) demanding duty on account of non-payment, short payment, non-levy, short-levy or erroneous refund within a period of six months or five years, as the case may be, from the relevant date as defined in clause (ii) of sub-section (3) of that section shall be deemed to be, and to always have been for, all purposes, validly and effectively issued or served under that section, notwithstanding any approval, acceptance or assessment relating to the rate of duty on or value of, the excisable goods by any Central Excise Officer under any other provisions of the Central Excise Act or the rules made thereunder.

(2) Any action taken or anything done or purporting to have been taken or done under section 11A of the Central Excise Act at any time during the said period shall be deemed to be and to have always been, for all purposes, as validly and effectively taken or done as if sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) all duties of excise levied, assessed or collected during the period specified in sub-section (1) on any excisable goods under the Central Excise Act, shall be deemed to be and shall be deemed to always have been, as validly levied, assessed or collected as if sub-section (1) had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of any such duties of excise which have been collected and which would have been validly collected if sub-section (1) had been in force at all material times;

(c) recovery shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, if sub-section (1) had been in force at all material times.

*Explanation.*— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

**107. (1)** The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. GSR 829(E), dated the 29th December, 1999, which was issued in exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, granting exemption from the duty of excise or, as the case may be, from the special duty of excise on goods supplied for the official use of foreign diplomatic or consular missions in India shall be deemed to have, and to always have for all purposes validly, come into force on and from the 11th day of May, 1999 at all material times. Validation of exemption given to diplomatic or consular missions with retrospective effect.

(2) Refund shall be made of all such duties of excise which have been collected but which would not have been so collected if the notification referred to in sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in section 11B of the Central Excise Act, an application for the claim of refund of the duty of excise under sub-section (2) shall be made within six months from the date on which the Finance Act, 2000 receives the assent of the President.

**108.(1)** Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, no credit of any duty paid on high speed diesel oil at any time during the period commencing on and from the 16th day of March, 1995 and ending with the day, the Finance Act, 2000 receives the assent of the President, shall be deemed to be admissible under rule 57A or rule 57B or rule 57D or any other rule of the Central Excise Rules, 1944. Validation of the denial of credit of duty paid on high speed diesel oil.

(2) Any action taken or anything done or purported to have been taken or done at any time during the said period under the Central Excise Act or any rules made thereunder to deny the credit of any duty in respect of high speed diesel oil, and also to disallow such credit to be utilised for payment of any kind of duty on any excisable goods shall be deemed to be, and to always have been, for all purposes, as validly and effectively taken or done as if the provisions of sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for allowing the credit of the duty paid on high speed diesel oil and no enforcement shall be made by any court, tribunal or other authority of any decree or order allowing such credit of duty as if the provisions of sub-section (1) had been in force at all material times;

(b) recovery shall be made of all the credit of duty, which have been taken or utilised but which would not have been allowed to be taken or utilised, if the provisions of sub-section (1) had been in force at all material times, within a period of thirty days from the date on which the Finance Act, 2000 receives the assent of the President and in the event of non-payment of such credit of duty within this period, in addition to the amount of credit of such duty recoverable, interest at the rate of twenty-four per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days till the date of payment.

*Explanation.*—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Amendment of Act 5 of 1986. **109.** In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act),—

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

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

Amendment of Act 58 of 1957. **110.** The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as the Additional Duties of Excise Act), shall be amended in the manner specified in the Fifth Schedule.

Amendment of Act 16 of 1955. **111.** With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, shall be amended in the manner specified in the Sixth Schedule.