

Excise

- 1 of 1944. **106.** In section 3 of the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), Amendment of
10 in sub-section (1),— section 3.
- (i) in the proviso, clause (i) shall be omitted;
- (ii) in *Explanation 2*,—
- (a) clause (i) shall be omitted;
- (b) for clause (iii), the following clause shall be substituted, namely:—
- 15 '(iii) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of
28 of 2005. the Special Economic Zones Act, 2005.'
- 107.** In section 11B of the Central Excise Act, in the *Explanation*, in clause (B), after sub-clause (eb), Amendment of
the following sub-clause shall be inserted, namely:— section 11B.
- 20 "(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order
or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree,
order or direction ;",
- 108.** In section 23A of the Central Excise Act, in clause (c), the following *Explanation* shall be Amendment of
inserted at the end, namely:— section 23A.
- 25 '*Explanation.*—For the purposes of this clause, "joint venture in India" means a contractual
arrangement whereby two or more persons undertake an economic activity which is subject to joint
control and one or more of the participants or partners or equity holders is a non-resident having
substantial interest in such arrangement;'
- 109.** In section 31 of the Central Excise Act, with effect from the 1st day of June, 2007, for clause (c), Amendment of
the following clause shall be substituted, namely:— section 31.
- 30 '(c) "case" means any proceeding under this Act or any other Act for the levy, assessment and
collection of excise duty, pending before an adjudicating authority on the date on which an application
under sub-section (1) of section 32E is made:
- 35 Provided that when any proceeding is referred back in any appeal or revision, as the case may
be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh
adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a
proceeding pending within the meaning of this clause;'
- 110.** In section 32A of the Central Excise Act, after the proviso to sub-section (6), the following Amendment of
proviso shall be inserted, namely:— section 32A.
- 40 "Provided further that at any stage of the hearing of any such case or matter, referred to in the
first proviso, the Chairman may, if he thinks that the case or matter is of such a nature that it ought
to be heard by a Bench consisting of three Members, constitute such Bench and if Vice-Chairman
is not one of the Members, the senior among the Members shall act as the presiding officer of such
Bench."
- 111.** In section 32E of the Central Excise Act, with effect from the 1st day of June, 2007, for sub- Amendment of
45 section (1), the following sub-sections shall be substituted, namely:— section 32E.
- 50 "(1) An assessee may, in respect of a case relating to him, make an application, before adjudication,
to the Settlement Commission to have the case settled, in such form and in such manner as may be
prescribed and containing a full and true disclosure of his duty liability which has not been disclosed
before the Central Excise Officer having jurisdiction, the manner in which such liability has been
derived, the additional amount of excise duty accepted to be payable by him and such other particulars
as may be prescribed including the particulars of such excisable goods in respect of which he
admits short levy on account of misclassification, under-valuation, inapplicability of exemption
notification or CENVAT credit but excluding the goods in respect of which no proper record has

been maintained by the assessee in his daily stock register and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,—

(a) the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner; 5

(b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;

(c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under section 11AB: 10

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any court :

Provided also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985. 15

5 of 1986.

(1A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1), before the 1st day of June, 2007 but an order under sub-section (1) of section 32 F has not been made before the said date or payment of amount so ordered by the Settlement Commission under sub-section (1) of section 32F has not been made, the applicant shall within a period of thirty days from the 1st day of June, 2007, pay the accepted duty liability failing which his application shall be liable to be rejected.”. 20

Substitution of new section for section 32F. 112. For section 32F of the Central Excise Act, with effect from the 1st day of June, 2007, the following section shall be substituted, namely:—

Procedure on receipt of an application under section 32E. “32F. (1) On receipt of an application under sub-section (1) of section 32E, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with, and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection: 25 30

Provided that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction. 35

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission: 40

Provided that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case: 45 50

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

(5) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be 55

placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (3) or sub-section (4).

5 (6) An order under sub-section (5) shall not be passed in respect of an application filed on or before the 31st day of May, 2007, later than the 29th day of February, 2008 and in respect of an application made on or after the 1st day of June, 2007, after nine months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was
10 pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

(7) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D shall apply.

15 (8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud, or misrepresentation of facts:

20 Provided that the amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

25 (9) Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5), is not paid by the assessee within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

30 (10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.”.

113. In section 32H of the Central Excise Act, after the proviso, the following proviso shall be inserted with effect from the 1st day of June, 2007, namely:— Amendment of section 32H.

35 “Provided further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 32E is made on or after the 1st day of June, 2007.”.

114. In section 32-I of the Central Excise Act, in sub-section (2), for the brackets and figures “(7)” and “(6)”, the brackets and figures “(5)” and “(4)” shall respectively be substituted with effect from the
40 1st day of June, 2007. Amendment of section 32-I.

115. In section 32K of the Central Excise Act, with effect from the 1st day of June, 2007,— Amendment of section 32K.

(i) in sub-section (1),—

45 of 1860.

(a) for the words “or under the Indian Penal Code or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, fine and interest” the words
45 “and also either wholly or in part from the imposition of any penalty and fine” shall be substituted;

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

“*Explanation.*—For the removal of doubts, it is hereby declared that applications filed before the Settlement Commission on or before the 31st day of May, 2007 shall be disposed of as if the amendment in this section had not come into force.”;

50 (ii) in sub-section (2), for the words, brackets, figures and letter “sub-section (7) of section 32F within the time specified in such order or within such further time as may be allowed by the Settlement Commission”, the words, brackets, figures and letter “sub-section (5) of section 32F within the time specified in such order” shall be substituted.

116. In section 32M of the Central Excise Act, for the brackets and figure “(7)”, the brackets and
55 figure “(5)” shall be substituted with effect from the 1st day of June, 2007. Amendment of section 32M.

117. In section 32N of the Central Excise Act, for the brackets and figure “(7)”, the brackets and
figure “(5)” shall be substituted with effect from the 1st day of June, 2007. Amendment of section 32-N.

Amendment of section 32-O.	<p>118. Section 32-O of the Central Excise Act shall be renumbered as sub-section (1) thereof and,—</p> <p>(i) in sub-section (1) as so renumbered, for the word “Where”, the words, figures and letters “Where, before the 1st day of June, 2007” shall be substituted;</p> <p>(ii) after sub-section (1) as so renumbered, the following sub-section shall be inserted with effect from the 1st day of June, 2007, namely:—</p> <p>“(2) Where an assessee has made an application under sub-section (1) of section 32E, on or after the 1st day of June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 32F, such assessee shall not be entitled to apply for settlement under section 32E in relation to any other matter:</p> <p>Provided that such assessee shall not be prevented from filing an application for settlement if the issue in the subsequent application is, but for the period of dispute and amount, identical to the issue in respect of which the earlier application is pending before the Settlement Commission.”.</p>	5
Omission of section 32PA.	<p>119. Section 32PA of the Central Excise Act shall be omitted with effect from the 1st day of June, 2007.</p>	10
Amendment of section 35E.	<p>120. In section 35E of the Central Excise Act,—</p> <p>(i) for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>“(3) The Committee of Chief Commissioners of Central Excise or Commissioner of Central Excise, as the case may be, shall make order under sub-section (1) or sub-section (2) within a period of three months from the date of communication of the decision or order of the adjudicating authority.”;</p> <p>(ii) in sub-section (4), for the words “three months”, the words “one month” shall be substituted.</p>	15
Amendment of section 35F.	<p>121. In section 35F of the Central Excise Act, after the second proviso, the following <i>Explanation</i> shall be inserted, namely:—</p> <p>‘<i>Explanation.</i>—For the purposes of this section “duty demanded” shall include,—</p> <p>(i) amount determined under section 11D;</p> <p>(ii) amount of erroneous CENVAT credit taken;</p> <p>(iii) amount payable under rule 57CC of Central Excise Rules, 1944;</p> <p>(iv) amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004;</p> <p>(v) interest payable under the provisions of this Act or the rules made thereunder.’.</p>	20
Amendment of section 37.	<p>122. In section 37 of the Central Excise Act,—</p> <p>(i) in sub-section (4), for the words “ten thousand rupees”, the words “two thousand rupees” shall be substituted;</p> <p>(ii) in sub-section (5), for the words “ten thousand rupees”, the words “two thousand rupees” shall be substituted.</p>	25
Amendment of Third Schedule.	<p>123. In the Central Excise Act,—</p> <p>(i) the Third Schedule shall be amended in the manner specified in Part I of the Fourth Schedule; and</p> <p>(ii) the Third Schedule except as amended in clause (i) shall also be amended with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, in the manner specified in Part II of the Fourth Schedule.</p>	30
Amendment of First Schedule to Act 5 of 1986.	<p style="text-align: center;"><i>Excise tariff</i></p> <p>124. In the Central Excise Tariff Act, 1985, the First Schedule shall be amended in the manner specified in the Fifth Schedule.</p>	35