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OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
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C.No. VIII/09/02/2017-Cus.Tech

Date: 14.02.2018

STANDING ORDER No. Q3 /2018-Cus.

**Subject:- Summary of Budget Changes through Finance Bill, 2018 -
Regarding.**

Attention of all the Customs Officers of Hqrs. Office, CPC, Vijayawada and the Officers working in field formations i.e. Krishnapatnam Customs House, ICD, Marripalem and Kakinada Customs House, Customs Preventive Divisions and the CFSs is invited to the Board's letter D.O.F. No. 450/177/2017-Cus. IV dated 01.02.2018 issued by Special Secretary & Member, CBEC attaching a summary of changes that have been brought in the Customs Act, 1962 through Finance Bill, 2018.

2. **Summary of Budget changes through Finance Bill, 2018**

TRADE FACILITATION

1. **Broadening the scope of Assessment and introducing “risk based selection” for verifying Self-Assessment [Section 2(2), Section 17, Section 46 and Section 50]**

The present definition of “Assessment” in the Customs Act, 1962 related merely to “assessment to duty”. However, process of assessment involves not just determination of duty but also other aspects such as verification of origin, prohibitions, restrictions and other regulatory compliance requirements, in case of both imports and exports. Vast majority of consignments are cleared under “self-assessment”. A small fraction of the imported consignments around 10 to 20% are taken up for verification and

are subject to reassessment, if required. Therefore, with a broader definition of assessment under Section 2(2), the person making the declaration under Section 46 or Section 51 (Importer, exporter, Customs Broker) will be required to vouch for the accuracy, authenticity, validity of the declaration made under Customs Act or other laws that govern the imports or exports.

This is in line with the department's strategy for encouraging voluntary compliance and to instil greater discipline, responsibility and care in preparing and presenting documents to the departments. At the same time, it also helps the departmental officers in discharging their responsibility while they are carrying out 'reassessment'.

In the light of Article 7.3 of Trade Facilitation Agreement, new sub-section (2A) is inserted in Section 17 to introduce the concept of risk-based selectivity. The law would now explicitly provide that the selection of cases for verification of self-assessment shall be based on risk assessment through appropriate selectivity criteria.

2. Broadening the scope and imposing time limit on finalization of Provisional Assessment [Section 18]

Scope of provisional assessment has been widened to include provisional clearance of export consignment under bond. A new sub-section (1A) is inserted so as to provide time-limit for the importer or exporter to submit the documents and information, if required for finalization of provisional assessments and for the proper officer to finalise the provisional assessment, by way of regulations. This would ensure timely completion of provisional assessment.

3. Establishing single point of reference for importer, exporters and officers with regard to Regulatory Controls imposed by various Ministries, Departments and Agencies [Section 11]

The import and export of goods are subjected to prohibition, restrictions and conditions imposed by various Ministries, Departments and Agencies of the Government. While the Foreign Trade Policy covers

prohibition and restrictions to a large extent, off late it has been noticed that each government department is independently notifying various restrictions / conditions on imports and exports over and above the foreign trade policy. With each government department independently notifying prohibitions and restrictions, it is difficult for the trade to keep track of pronouncement under all other laws and regulations, and the notifications issued there under.

It has become difficult for the trade as well officers to collate all regulatory information and implement the controls. As a trade facilitation measure, it has been decided that there should be a mechanism whereby the entire regulatory information on behalf of government should have a single point of reference. Section 11 is being amended so as to provide this mechanism.

4. Inward and outward processing [Section 25A and 25B]

In the light of Article 10.9 of TFA, a new section 25A related to 'Inward processing of goods' is being inserted. The new provision empowers the Central Government to exempt goods imported for repair, further processing or manufacture from payment of whole or any part of duty of Customs, leviable thereon subject to certain conditions. Similarly, a new section 25B on outward processing is being introduced to empower the Central Government to exempt goods re-imported after export for repair, further processing or manufacture from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions. These provisions are expected to give a boost to 'Make in India' and to facilitate the establishment of India as a global manufacturing hub.

5. Appointment of a new Customs Advance Ruling Authority with Appellate mechanism [Section 28E to 28M]

Advance Rulings impart predictability to the business environment and encourage business and investment by ensuring certainty of regulatory treatment during the clearance process. The WTO Trade Facilitation Agreement envisage as original authority of advance ruling along with an appellate body. Currently, there is only one apex Authority on Advance Ruling

without scope for appeal. In line with international practice, it is proposed to make a separate advance ruling authority. In line with international practices, it is proposed to make a separate advance ruling authority under CBEC and to convert the present Advance Ruling Authority into an appellant body.

6. Minor changes in manifest provisions to provide for integrated declaration by vessels, aircraft and vehicles [Section 30 and Section 41]

It is proposed to make minor amendments in Section 30 and Section 41 to introduce the terms arrival manifest and departure manifest. This would strengthen the risk analysis of manifest information and provide basis for filing integrated manifests and undertake pre-arrival processing.

7. Clearance by Customs Automated System [Section 46,47,50,51,60,68 and 69]

A reference to clearance through Customs Automated Systems is being introduced in these sections to give legal backing to automated mode of clearance.

8. Introduction of Electronic Cash ledger on the lines similar to provisions in CGST Act [Section 51A]

A new Chapter and Section are being introduced in the Customs Act wherein every deposit made towards duty, interest, penalty, fee or any other amount by a person shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed. It further provides that the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made hereunder in such manner and subject to such conditions and within such time as may be prescribed. The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under would be refunded through a procedure which would be prescribed under regulations.

9. Post Clearance Audit and related amendments [Chapter XIIA and Section 99A]

A new Chapter for Post Clearance audit and consequently amendments has been proposed. Post clearance audit becomes extremely important in the context of high levels of facilitation at the time of import and export clearance.

10. Introducing a new Section on Trade Facilitation for simplifying procedures and documentation [Section 143AA]

A new section 143AA is being proposed to empower the Board to prescribe trade facilitation measures or separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods for maintenance of transparency in import and export documentation and procedure, expeditious clearance or release of goods entered for import or export, maintenance of balance between Customs control and facilitation of legitimate trade.

11. New Section for exchange of information with Government or competent authorities of other countries [Section 151B]

A new section 151B on reciprocal arrangement for exchange of information is being proposed which would authorize the Central Government to enter into an arrangement or any other arrangement with the Government of any country or with such competent authorities of that country as it deems fit for facilitation of trade, enforcing the provisions of Customs Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences. This section would also authorize the Central Government to provide by notification that the application of this section in relation to a contracting state with which reciprocal agreement or arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

This section would also strengthen enforcement efforts as the information received under as a result of the agreement could be used as evidence in investigations and proceedings under this Act.

In addition, where the Central Government has entered in to a multilateral agreement for exchange of information or documents for purpose of verification of compliance in identified cases, the Board would specify the procedure for such exchange, the conditions such information shall be exchange.

A definition of “contracting state” and “corresponding law” is also being introduced.

12. Amendment in Customs Tariff Act to cater to levy of IGST and GST Composition cess on sale of goods in warehouse [Section 3 of CTA]

Customs law provides that in case of warehoused goods, the value for computation of import duties/IGST shall be the value declared or assessed at the time of filing into Bond Bill of Entry. As a result, value addition by way of sale escape levy. These amendments are being proposed so as to capture the value addition accruing on account of sale of imported warehoused goods within the warehouse.

DISPUTE RESOLUTION

13. Pre-notice consultation in the case of demand notices which don't involve suppression, willful mis-statements etc.

With ever burgeoning litigation in tax matters, management of tax disputes has rightly become a cause of concern. The unending litigation in tax disputes has to be addressed with a multi-pronged approach. Some of the measures which have been taken in the past like prescribing a monetary limit for Government appeals though effective is however, post facto in nature.

It has been therefore, proposed to introduce pre-notice consultation by making amendments in the section 28 of the Customs Act in those cases which do not involve charges of collusion, suppression etc. This would help avoid/reduce litigation.

14. Time bound Adjudication and deemed closure of cases:

To ensure time- bound disposal of notices, it is proposed to bind the Adjudicating Authority to adjudicate cases within six months from the date of notice, in respect of where normal time period for issue of notice is invoked and within one year from the date of notice, in respect of cases involving the invoking the extended period of limitation for issuance of notice. This period can be further extended only by senior officers for valid reasons. A major amendment being introduced is that if the cases are not adjudicated or the time-limit for adjudication is not extended, the notices would be deemed to have been concluded.

15. Power to board to notify value limit of goods to be adjudged by different ranks of officers [Section 122]

This amendment would give flexibility to Board to fix values for officers below the rank of Commissioner for adjudication of cases involving confiscation and penalties. This would help in faster disposal of cases.

16. Power to close cases without redemption fine once conditions in section 28(6) are met [Section 125]

Provision of deemed conclusion for proceedings against notice and co-noticees was introduced in the Section 28 so as to bring about closure to the cases where the dues to the Government could be realized without going through the process of adjudication on one hand and to cut the protracted litigation which generally follows the adjudication on the other. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and / or penalty. However, deemed closure provisions were silence about the treatment of redemption fine on the goods. In view of this, deemed closure has been a partial success. It has been therefore proposed to make deemed closure applicable on confiscated goods also by suitable amendment in section 125.

17. Power of Commissioner (Appeals) to remand cases [Section 128A]

The power to remand the matter back to original authority was withdrawn from Commissioner (Appeals). However, even after the said amendments Commissioner (Appeals) continues to remand the cases to original authority which has been upheld by the Court and Tribunal. The amendment proposes to allow Commissioner (Appeals) to remand back the matters to original adjudicating authority in specified categories of cases.

ENFORCEMENT

18. Extension of scope of the Customs Act [Sec. 1(2)]

Action to commit, aid or abet offences under the Customs Act, 1962 usually involves persons residing both inside and outside India. Presently, the Customs Act applies only to the India territory and comes in the way of action being taken on persons who have committed aided or abetted offences outside India, even if they are available physically in India. Therefore, scope of Customs Act is being extended to any offender or contravention there under committed outside India by any person.

19. Expand definition of Indian Customs Waters [Section 2(27)]

Under the chairmanship of the Cabinet Secretary, the high-powered National Committee for Monitoring of Coastal Security had asked CBEC to examine whether the powers of the Customs Act, could be extended to the Exclusive Economic Zone (200 nautical miles from the baseline of the coast). This was considered necessary for effective enforcement of the provisions of the Customs Act, 1962 relating to prohibitions, restriction, search, seizure and confiscation of goods and conveyances, arrest, prosecution etc., by Indian authorities (Navy, Coastguard, Customs etc). Presently, these powers can be exercised within the Indian Customs Waters defined under the Customs Act as limit of up to 'contiguous Zone' (24 nautical miles from the baseline). It is extended to the Exclusive Economic Zone only for the limited purpose of imposing/exempting duties in the off-shore oil installations. The proposed changes would extend jurisdiction of Customs and other security agencies up to exclusive economic Zone.

20. Issue to supplementary show cause notice [Section 28 and 124]

Many a times certain evidences are received after show cause notice has been assured already. In order to fortify the allegations made in the Show Cause Notice, it has been proposed to give the power to issue supplementary show cause notice.

21. Controlled Delivery [Section 109A]

Customs plays a major role in ensuring National Security by preventing cross-border smuggling of contraband goods. At present, Customs formations are facing difficulty in collecting evidence and linking the actual kingpin of the syndicate, beneficial owners and financiers etc., with offences. Controlled Delivery technique can play a significant role in identifying such persons in many areas such as firearms, goods under strategic control (dual use SCOMET items), antiques, fake Indian currencies, foreign currencies, wildlife, Ozone Depleting Substance (ODS), e-waste, hazardous waste, cigarettes, firecrackers etc. Therefore, it has been proposed to introduce the provision of controlled delivery operations.

22. Extended period for issue of Show Cause Notice by recording reasons on file [Section 110]

This amendment is being proposed so as to give Principal Commissioner of Customs or Commissioner of Customs may, for reason to be recorded in writing, extended the six months period by a period not exceeding six months and inform the person the person from whom such goods have been seized before the expiry of the earlier time period of six months.

23. Goods not redeemed within 120 days shall vest with the Government [Section 125(3)]

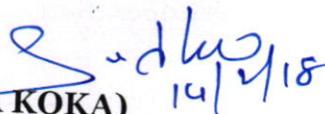
Whenever goods are confiscated under the Customs Act, Section 125n mandated that the officer adjudicating it may or shall give to the owner of the goods or the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer

thinks fit. There are occasions, where the redemption option is not availed to by the person concerned. The department also is not in a position to dispose of the goods in such situation and has to wait indefinitely. Therefore, it has been proposed to provide a time frame within which the goods should be redeemed after adjudicating failing which the goods shall vest in the Central Government.

24. Mode of delivery of notice has been aligned with the provisions of GST

Section 153 is being substituted so as to bring it on lines of Section 169 of CGST Act so as to include Speed Post, Courier and registered email as valid mode of delivery and in case of non-service by such means, to also provide for affixing it at some conspicuous place at the last known place of business or residence in addition to affixing it on the notice board to the Customs House etc.

25. Difficulties, if any, in implementation of this Standing order may be brought to the notice of the Commissioner of Customs (Preventive), Vijayawada.


(SUDHA KOKA)
COMMISSIONER

To

1. The Joint Commissioner of Customs, Krishnapatnam Customs House, Mutukuru, S.P.S.R., Nellore District.
2. The Joint Commissioner of Customs, Kakinada Customs House, Kakinada, E.G. District.
3. The Assistant/Deputy Commissioner of Customs, ICD, Mairipalem, Guntur.
4. The Assistant/Deputy Commissioner of Customs, Customs Preventive Divisions, Tirupathi/Kakinada/Visakhapatnam.
5. Copy to Computer Section, CPC, Hqrs. Office, Vijayawada to upload into website.
6. Copy Submitted to
The Chief Commissioner of Customs & Central Tax, Visakhapatnam Zone,
G. S.T. Bhavan, Port area, Visakhapatnam.
Notice Board