

# THE CENTRAL EXCISES AND SALT ACT, 1944

ACT No. 1 OF 1944)

[24th February, 1944.]

An Act to consolidate and amend the law relating to Central duties  
of  
excise and to salt.

WHEREAS it is expedient to consolidate and amend the law  
relating  
to Central duties of excise on goods manufactured or produced  
in  
2[3[certain parts] of India] and to salt;

It is hereby enacted as follows:-

CHAP

## CHAPTER I

1.

Short title extent and commencement.

1.Short title extent and commencement. (1) This Act may be called  
the Central Excises and Salt Act, 1944;

(2) It extends to the whole of India 4\* \* \*;

(3) It shall come into force on such date<sup>5</sup> as the Central  
Government may, by notification in the Official Gazette, appoint in  
this behalf.

2.

Definitions.

2.Definitions. In this Act, unless there is anything repugnant in  
the subject or context,-

6[(a) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, (54 of 1963) Collector of Central Excise (Appeals) or Appellate Tribunal;

(aa) "Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962;] (52 of 1962)

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1For Statement of Objects and Reasons, see Gazette of India, 1943, Pt. V, p. 243 and for Report of the Select Committee, see Gazette of India, 1944, Pt. V, p. 12.

This Act has been applied to--

(1) all the partially excluded areas in the State of Orissa by Orissa Government notification No. 1226-II-C-13/44-Com., dated the 21st March, 1944;

(2) Darjeeling District with effect from 28th [February, 1944, see Bengal Government notification No. 342-R, dated the 22nd March, 1944;

(3) excluded areas in the State of Madras (with modifications), see Madras Government notification No. 37, Fort St. George Gazette, Pt. I, p. 281, dated 11th April, 1944;

(4) partially excluded areas in the State of Madras with effect from 28th February, 1944, see Madras Government notification No. 745-Public-Political, dated 4th March, 1944.

This Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s. 3 and Sch; to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I and to the whole of the Union territory of Lakshadweep by Reg. 8 of 1965, s. 3 and Sch.

2 Subs. by the A.O. 1948, for "British India".

3 Subs. by the A.O. 1950, for "the Provinces".

4 The words "except the State of Jammu and Kashmir, omitted by Act 41 of 1954, s. 2 and Sch.

5 28th February, 1944, see notification No. III-D, dated the 26th

February, 1944, Gazette of India, Extraordinary, 1944, p. 293.

6 Ins. by Act 44 of 1980, s. 50 and Sch. V (w.e.f. 11-10-1982).

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1[(aaa)] "broker" or "commission agent" means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

(b) "Central Excise Officer" means any officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the 2[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963] (54 of 1963) with any of the powers of a Central Excise Officer under this Act;

(c) "curing" includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture;

(d) "excisable goods" means goods specified in the 3[Schedule to the Central Excise Tariff Act, 1985] as being subject to a duty of excise and includes salt; (5 of 1986)

(e) "factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;

6[(ee) "Fund" means the Consumer Welfare Fund established under section 12C;]

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5[(f) "manufacture" includes any process,-

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, (5 of 1986).

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable, goods, but also any person who engages in their production or manufacture on his own account;]

(g) "Prescribed" means prescribed by rules made under this Act;

(h). "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;

(i) "saltpeter" includes rasi, sajji, and all other substances manufactured from saline earth, and kharinun and every form of sulphate or carbonate of soda;

(j) "salt factory" includes-

(i) a place used or intended to be used in the manufacture of salt and all embankments, reservoirs, condensing and evaporating pans, buildings and waste places situated within the limits of such place as defined from time to time by the Collector of Central Excise;

(ii) all drying grounds and storage platforms and storehouses appertaining to any such place;

(iii) land on which salt is spontaneously produced.;

and a "private salt factory" is one not solely owned or not solely worked by the Central Government;

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1. Cl. (a) relettered as cl. (aaa) by Act 44 of 1980, s.50 and Sch. V (w.e.f. 11-10-1982).

2. Subs. by Act 54 of 1963, s.5, for "Central Board of Revenue" (w.e.f. 1-1-1964).

3. Subs. by Act 5 of 1986, s.4, for "First Schedule" (w.e.f. 28-2-1986).

4. Cl. (ee) ins. by Act 25 of 1950, s.11 and Sch. IV, omitted by Act 41 of 1954, s.2 and Sch.

5. Subs. by Act 5 of 1986, s.4, for cl. (f) (w.e.f. 28-2-1986).

6. Subs. by Act 40 of 1991, S.2 (w.e.f. 20-9-1991).

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(k) 'wholesale dealer" means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

CHAP

LEVY AND COLLECTION OF DUTY

## CHAPTER II

### LEVY AND COLLECTION OF DUTY

3.

Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied.

3.Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied. (1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in 2[India] and a duty on salt manufactured in, or imported by land into, any part of 2[India] as, and at the rates, set forth in the 3[Schedule to the Central Excise Tariff Act, 1985:] (5 of 1986)

4[Provided that the duties of excise which shall be levied and collected on any 5[excisable goods which are produced or manufactured,-

(i) in a free trade zone and brought to any other place in India; or

(ii) by a hundred per cent., export-oriented undertaking and allowed to be sold in India,

shall be an amount equal to the aggregate of the duties of customs which would be leviable under section 12 of the Customs Act, 1962 (52

of 1962) on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision

of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. (51 of 1975)

Explanation 1.-Where in respect of any such like goods, any duty of customs leviable under the said section 12 is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable under the said section 12 at the highest of those rates.

6[Explanation 2.-In this proviso,-

(i) "free trade zone" means the Kandla Free Trade Zone and the Santa Cruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(ii) "hundred per cent. export-oriented undertaking" means an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951, (65 of 1951) and the rules made under that Act.]

7[(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.]

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under

general headings, in the 3[Schedule to the Central Excise Tariff Act, 1985] (5 of 1986) as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

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1. Cl. (jj) ins. by the A.O. 1950, omitted by Act 25 of 1950, s.11 and Sch. IV.

2. Subs. by s. 11 and Sch. IV, *ibid.*, for "the States".

3. Subs. by Act 5 of 1986, s. 4, for "First Schedule" (w.e.f. 28-2-1986).

4. Ins. by Act 14 of 1982, s. 46.

5. Subs. by Act 21 of 1984, s. 45, for certain words.

6. Subs. by s. 45, *ibid.*, for Explanation 2.

7. Subs. by Act 30 of 1963, s. 3, for sub-section (1A) (w.e.f. 1-10-1963).

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1[(3) Different tariff values may be fixed-

(a) for different classes or descriptions of the same excisable goods; or

(b) for excisable goods of the same class or description-

(i) produced or manufactured by different classes of producers or manufacturers; or

(ii) sold to different classes of buyers:

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.]

2 3A. [Emergency. power of Central Government to increase duties of

excise.] [Emergency. power of Central Government to increase duties of  
excise.] Rep. by the Repealing and Amending Act, 1960 (58 of 1960),  
S.  
2 and Sch. I.

4.

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

3[4. Valuation of excisable goods for purposes of charging of  
duty of excise. (1) Where under this Act, the duty of excise is  
chargeable on any excisable goods with reference to value, such  
value  
shall, subject to the other provisions of this section, be deemed to  
be-

(a) the normal price thereof, that is to say, the price at  
which such goods are ordinarily sold by the assessee to a  
buyer in the course of wholesale trade for delivery at the  
time and place of removal, where the buyer is not a related  
person and the price is the sole consideration for the sale :

Provided that-

(i) where, in accordance with the normal practice of  
the wholesale trade in such goods, such goods are  
sold by the assessee at different prices to different  
classes of buyers (not being related persons) each such  
price shall, subject to the existence of the other  
circumstances specified in clause (a), be deemed to be  
the normal price of such goods in relation to each such  
class of buyers;

(ii) where such goods are sold by the assessee in the  
course of wholesale trade for delivery at the time and  
place of removal at a price fixed under any law for the  
time being in force or at a price, being the maximum,  
fixed under any such law, then, notwithstanding anything  
contained in clause (iii) of this proviso, the price or  
the maximum price, as the case may be, so fixed, shall,  
in relation to the goods so sold, be deemed to be the  
normal price thereof;

(iii) where the assessee so arranges that the goods are  
generally not sold by him in the course of wholesale  
trade except to or through a related person, the normal  
price of the goods sold by the assessee to or through



such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail;

(b) where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) Where, in relation to any excisable goods the price thereof for delivery at the Place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.

(3) 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.

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1. Subs. by Act 25 of 1978, s. 19, for sub-section (3) (w.e.f. 1-7-1978).

2. Ins. by Act 81 of 1956, s. 2.

3. Subs. by Act 22 of 1973, s. 2, for s. 4 (w.e.f. 1-10-1975).

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(4) 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) "place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods; or

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from where such goods are removed;

(c) "related person" means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation.-In this clause "holding company", "subsidiary company and "relative" have the same meanings as in the Companies Act, 1956; (1 of 1956)

(d) "value", in relation to any excisable goods,-

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation.-In this sub-clause, "packing" means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale.

1[Explanation.-For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of-

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods,

and the effective duty of excise on such goods under each Act referred to in clause (a) or clause (b) shall be,-

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to, 2[or reduction of duty of excise under such Act on such goods equal to, any duty of excise under such Act, or the additional duty under section 3 of the Customs Tariff Act, 1975, (51 of 1975) already paid] on the raw material or component parts used in the production or manufacture of such, goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

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1. Ins. by Act 14 of 1982, s. 47 (w.e.f. 1-10-1975).

2. Subs. by Act 21 of 1984, s. 4 6, for certain words.  
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(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods;

(e) "wholesale trade" means sales to dealers, industrial consumers Government, local authorities and other buyers, who or which purchase their requirements otherwise than in retail.]

5.

Remission of duty on goods found deficient in quantity.

1[5. Remission of duty on goods found deficient in quantity. (1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.

(2) Any rules made under sub-section (1) may, having regard to

the nature of the excisable goods or of processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed :

Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons.]

8[5A. Power to grant exemption from duty of excise. (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 removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:

Provided that, unless specifically provided in such notification, no exemption. therein shall apply to excisable goods which are produced or manufactured-

(i) in a free trade zone and brought to any other place in India; or

(ii) by a hundred per cent. export-oriented undertaking and allowed to be sold in India.

Explanation.-In this proviso, "free trade zone" and "hundred per cent. export-oriented undertaking" shall have the same meanings as in

Explanation 2 to sub-section (1) of section 3.

(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 of 'excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon (the duty of excise 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 excisable goods in th manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation.--"Form or method", in relation to a rate of duty of excise means. the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1987 shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied rescinded or superseded under the provisions of this section.]

6.

Registration of certain persons.

9[6. Registration of certain persons. Any prescribed person who is engaged in-

(a) the production or manufacture or any process of production or manufacture of any specified goods included in the Schedule to the Central Excise Tariff Act, 1985, or

(b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in the Schedule to the Central Excise Tariff Act, 1985,

shall get himself registered with the proper officer in such manner as may be prescribed.]

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8.

Restriction on possession of goods specified in the Second Schedule.

8.Restrictio n on possession of goods specified in the Second Schedule. From such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, no person

shall, except as provided by rules made under this Act, have in his possession 5[any goods specified in the Second Schedule] in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of such goods or of any variety of such goods which may be possessed at any one time by such a person.

9.

Offences and penalties.

9. Offences and penalties. 6[(1)] Whoever commits any of the following offences, namely:-

9["(a) contravenes any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37;]

(b) evades the payment of any duty payable under this Act;

7[(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal;

(bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;]

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1. Ins. by Act 25 of 1978, s.20 (w.e.f. 1-7-1978). The original s.5 was omitted by Act 41 of 1954, s. 2 and Sch.

2. Subs. by Act 18 of 1956, s.33, for "any specified excisable goods".

3. Subs. by Act 5 of 1986, s.4 for "First Schedule" (w.e.f. 28-2-1986).

4. Subs. by Act 18 of 1956, s. 33, for "any excisable goods specified in this behalf in Part A of the second Schedule".

5. Subs. by s. 34, *ibid.*, for "any excisable goods specified in this behalf in Part B of the Second Schedule".

6 S. 9 renumbered as sub-section (1) of that section by Act 36 of 1973, s. 20.

7. Ins. by s.20, ibid.

8. Ins. by Act 29 of 1988, s.9 (w.e.f. 1-7-1988).

9. Subs. & omitted by Act 18 of 1992, s.113

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(c) fails to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

(d) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section;

1[shall be punishable,-

(i) in the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both.]

2[(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months.

(3) For the purposes of sub-sections (1) and (2), the following

shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) the age of the accused.]

3[9A. Certain offences to be non-cognisable. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 4,(5 of 1898) offences under section 9 shall be deemed to be non-cognisable within the meaning of that Code.

5[9AA. Offences by companies. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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1. Subs. by Act 36 of 1973, s. 20, for Certain words.

2.Ins. by s. 20, ibid.



3. Ins. by s. 21, *ibid.*

4. See now s. 9 of the Code of Criminal Procedure, 1973 (2 of 1974).

5. Ins. by Act 79 of 1985, s. 2.

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(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and 'includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.]

9B. Power of Court to publish name, place of business etc., of persons convicted under the Act. (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting- the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has

expired without any appeal having been preferred, or such an appeal,  
having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed  
by the Court.

9C. Presumption of culpable mental state. (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.-In this section, "culpable mental state" includes intention motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

9D. Relevancy of statements under certain circumstances. (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to- any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

9E. Application of section 562 of the Code of Criminal Procedure,

1898, and of the Probation of offenders Act, 1958. (1) Nothing contained in section 562 of the Code of Criminal Procedure 1898  
1,(5  
of 1898) or in the Probation of Offenders Act, 1958, (20 of 1958)  
shall apply to a person convicted of an offence under this Act unless  
that person is under eighteen years of age.

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1 See now the relevant provisions of the Code of Criminal  
Procedure, 1973 (2 of 1974).  
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(2) The provisions of sub-section (1) shall have effect  
notwithstanding anything contained in sub-section (3) of section 9.]

10.

Power of Courts to order forfeiture.

10.Power of Courts to order forfeiture. Any Court trying an  
offence under this Chapter may order the forfeiture to Government  
of  
any goods in respect of which the Court is satisfied that an offence  
under this Chapter has been committed, and may also order the  
forfeiture of any receptacles, packages or coverings in which such  
goods are contained and the animals, vehicles, vessels or other  
conveyances, used in carrying the goods and any implements or  
machinery used in the manufacture of the goods.

11.

Recovery of sums due to Government.

11.Recovery of sums due to Government. In respect of duty and  
any  
other sums of any kind payable to the Central Government under  
any of  
the provisions of this Act or of the rules made thereunder, the  
officer empowered by the 1[Central Board of Excise and  
Customs  
constituted under the Central Boards of Revenue Act, 1963] (54 of

1963) to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

2[11A. Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. (1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied 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: (54 of 1963)

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, 3[as if (5 xxx),] for the words "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 six months or five years, as the case may be.

(2) 4[The [Central Excise Officer]5 shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise 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.

(3) For the purposes of this section-

(i) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

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1. Subs. by Act 54 of 1963, s.5 for "Central Board of Revenue" (w.e.f. 1-1-1964).

2. S. 11A and 11B ins. by Act 25 of 1978, s. 21 (w.e.f. 17-11-1980); vide notification No. G.S.R. 654 (E), dated 15-11-1980 and s. 11C (w.e.f. 1-7-1978); vide notification No. G.S.R. 327 (E), dated 19-6-1978.

3. Subs. by Act 79 of 1985, s. 3, for "as if".

4. Subs. by 9. 3, ibid., for "The Assistant Collector of Central Excise".

5. Omitted & subs. by Act 18 of 1992, s.113.  
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(ii) "relevant date" means,-

(a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid-

(A) where under the rules made under this Act a monthly return, showing particulars of the duty paid on the excisable goods removed during the month to which the said return relates, is to be filed by a

manufacturer or producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;

(B) where no monthly return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(C) in any other case, the date on which the duty is to be paid under this Act or the rules made thereunder;

(b) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of-duty after the final assessment thereof ;

(c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

11B. Claim for refund of duty. (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months 1[from the relevant date 4["in such form as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of 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 the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of subsection (2) as substituted by that Act]:

4[Provided further that] the limitation of six months shall not apply where any duty has been paid under protest.

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4["(2) if, on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole or any part of

the duty of excise 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 duty of excise as determined by the Assistant Collector of Central Excise 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) rebate of duty of excise on excisable goods exported out of India or, on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's account current maintained with the Collector of Central Excise;
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;
- (e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;
- (f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

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 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 or any Court or in any other provision of this Act or the rules 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 subsection (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 reassembly, 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."]

3[Explanation.-For the purposes of this section,-

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means,-

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,-

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

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1. Subs. by Act 44 of 1980, s. 49, for "from the date of payment of duty".

2. Explanation to sub-section (1) omitted by s. 49, ibid.

3. Subs. s. 49, ibid., for Explanation

4 Ins. and Subs. by Act 40 of 1991, S.3 (w.e.f. 20-09-1991).



(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

4["(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;"]

(f) in any other case, the date of payment of duty.]

11C. Power not to recover duty of excise not levied or short-levied as a result of general practice. [(1)]<sup>3</sup> 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 of excise (including non-levy thereof) on any excisable goods; and

(b) that such goods were, or are, liable-

(i) to duty of excise, 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 of excise 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 of excise payable on such goods, or, as the case may be, the duty of excise 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 of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.]

5["(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise 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 in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 11B :

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 Assistant Collector of Central Excise, in expiry of six months in sub-section (1) Of section 11B, before the expiry of six months from the date of issue of the said notification."]

6[11D. Duties of excise collected from the buyer to be deposited with the Central Government. (1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who has collected any amount from the buyer of any goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) The amount paid to the credit of the Central Government under sub-section (1) shall be adjusted against the duty of excise payable by the person on finalisation of assessment and where any surplus is left after such adjustment, 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 the relevant date for making an application under that section in such cases shall be the date of the public notice to be issued by the Assistant Collector of Central Excise.

12.

Application of the provisions of Act 8 of 1878 to Central excise duties.

12. Application of the provisions of Act 8 of 1878 to Central excise duties. The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Sea Customs Act, 1878 1, relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3.

CHAP

INDICATING AMOUNT OF DUTY IN THE PRICE OF GOODS, ETC., FOR  
PURPOSE OF REFUND AND  
CREDITING CERTAIN AMOUNTS TO THE FUND

7["CHAPTER IIA

INDICATING AMOUNT OF DUTY IN THE PRICE OF GOODS, ETC.,  
FOR PURPOSE  
OF REFUND AND CREDITING CERTAIN AMOUNTS TO THE  
FUND

12A. Price of goods to indicate the amount of duty paid thereon. Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

12B. Presumption that incidence of duty has been passed on to the buyer. Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such

goods.

12C. Consumer Welfare Fund. (1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed,--

(a) the amount of duty of excise referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 11D;

(b) the amount of duty of customs referred to in sub-section (2) of section 27 or sub-section (2) of section 28A, or sub-section (2) of section 28B of the Customs Act, 1962;

(c) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

12D. Utilisation of the Fund. (1) Any money credited to the Fund shall be utilised by the Central Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India."]

CHAP

POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS

### CHAPTER III

POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS

8[12E] Powers of Central Excise Officers. (1) A Central Excise Officer may exercise the powers and discharge the duties conferred or

imposed under this Act on any other Central Excise Officer who is subordinate to him.

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1. See now the Customs Act, 1962 (52 of 1962).
  2. Ins. by Act 79 of 1985, s. 4.
  - 3 Renumbered and ins. by Act 29 of 1988, S.10 (w.e.f. 1-7-1988).
  - 4 Subs. by Act 40 of 1991, S.3 (w.e.f. 20-9-1991).
  - 5 Subs. by S.4, ibid. (w.e.f.20-9-1991).
  - 6 Ins. by S.5, ibid. (w.e.f. 20-9-1991).
  - 7 Ins. by S.6, ibid. (w.e.f. 20-9-1991).
  - 8 Renumbered by Act 40 of 1991, S.7 (w.e.f. 20-9-1991).
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12

(2) Notwithstanding anything contained in sub-section (1), the Collector of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA.]

13.

Power to arrest.

13. Power to arrest. (1) Any Central Excise Officer duly empowered by the Central Government in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected 'of committing an offence under this Act or any rules made thereunder, who on demand of

any officer duly empowered by the, Central Government in this behalf  
refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false, may be arrested by such officer in order that his name and residence may be ascertained.

14.

Power to summon persons to give evidence and produce documents in inquiries under this Act.

14. Power to summon persons to give evidence and produce documents in inquiries under this Act. (1) Any Central Excise Officer duly empowered by the Central Government in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may, direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section. (5 of 1980).

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code. (45 of 1860).

15.

Officers required to assist Central Excise Officers.

15. Officers required to assist Central Excise Officers. All officers of Police and Customs and all officers of Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the Central Excise Officers in the execution of this Act.

16.

Owners or occupiers of land to report manufacture of contraband excisable goods.

16. Owners or occupiers of land to report manufacture of contraband excisable goods. Every owner or occupier of land, and the agent of any such owner or occupier, in charge of the management of that land, if contraband excisable goods are manufactured thereon, shall in the absence of reasonable excuse be bound to give notice of such manufacture to a Magistrate, or to an officer of the Central Excise, Customs, Police, or Land Revenue Department, immediately the fact comes to his knowledge.

17.

Punishment or connivance at offences.

17. Punishment or connivance at offences. Any owner or occupier of land, or any agent of such owner or occupier in charge of the management of that land, who wilfully connives at any offence against the provisions of this Act or of any rules made thereunder shall for every Such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

18.

Searches and arrests how to be made.

18. Searches and arrests how to be made. All searches made under this Act or any rules 'made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 18981, relating respectively to 'searches and arrests made under that Code. (5 of 1898).

19.

Disposal of persons arrested.

19. Disposal of persons arrested. Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance, to the officer-in-charge of the nearest police-station.

20.

Procedure to be followed by officer-in-charge of police station.

20. Procedure to be followed by officer-in-charge of police station. The officer-in-charge of a police-station to whom any person is forwarded under section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

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1. See row the Code of Criminal Procedure, 1973 (2 of 1974).  
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13

21.

Inquiry how to be made by Central Excise Officers against arrested persons forwarded to them under section 19.



21. Inquiry how to be made by Central Excise Officers against arrested persons forwarded to them under section 19. (1) When any person is forwarded under section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police-station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case : (5 of 1898).

Provided that-

(a) if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the Central Excise Officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise Officer may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

22.

Vexatious search, seizure, etc., by Central Excise Officer.

22. Vexatious search, seizure, etc., by Central Excise Officer. Any Central Excise or other officer exercising powers under this Act or under the rules made thereunder who-

(a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;

(b) vexatiously and unnecessarily detains, searches or arrests any person;

(c) vexatiously and unnecessarily seizes the moveable

property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

23.

Failure of Central Excise Officer in duty.

23.Failure of Central Excise Officer in duty. Any Central Excise Officer who ceases or refuses to perform or withdraws himself from the duties of his office, unless he has obtained the express written permission of the Collector of Central Excise, or has given to his superior officer two months' notice in writing of his intention or has other lawful excuse, shall on conviction before a Magistrate be punishable with imprisonment for a term which may extend to three months or with fine which may extend to three months' pay, or with both.

CHAP

TRANSPORT BY SEA

## CHAPTER IV

### TRANSPORT BY SEA

24.

Penalties for carrying excisable goods in certain vessels.

24. Penalties for carrying excisable goods in certain vessels.  
When any excisable goods are carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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1. See now the Code of Criminal Procedure, 1973. (Act 2 of 1974).  
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14

25.

Exceptions.

25. Exceptions. Nothing in section 24 applies to-

(a) any excisable goods covered by a permit granted under rules made under this Act;

(b) any excisable goods covered by a pass granted by any officer whom the 1[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963] may appoint in this behalf; (54 of 1963).

(c) such amount of excisable goods carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the 1[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963] may from time to time exempt from the operation of section 24. (54 of 1963).

26.

Power of stoppage, search and arrest.

26. Power of stoppage, search and arrest. When any officer-empowered by the 1[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963], (54 of 1963) to act Under this section has reason to believe, from personal knowledge or from information taken down in writing, that any excisable goods are being carried, or have within the previous twenty-four hours been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties imposed by section 24, he may require such vessel to be brought-to and thereupon may-

(a) enter and search the vessel;

(b) require the master of the vessel to produce any documents in his possession relating to the vessel or the cargo thereof;

(c) seize the vessel if the officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in 2[India]; and

(d) where any excisable goods are found on board the vessel, search and arrest without a warrant any person on board the vessel whom he has reason to believe to be punishable under section 24.

27.

Penalties for resisting officer.

27. Penalties for resisting officer. Any master of a vessel refusing or neglecting to bring-to the vessel or to produce his papers when required to do so by an officer acting under section 26, and any person obstructing any such officer in the performance of his duty, may be arrested by such officer without a warrant, and shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

28.

Confiscation of vessel and cargo.

28. Confiscation of vessel and cargo. (1) Every vessel (including all appurtenances) in which any excisable goods are carried so as to render the owner or master of such vessel liable to penalties imposed by section 24, the cargo on board such vessel and the excisable goods in respect of which an offence under this Act has been committed shall be liable to confiscation on the orders of the officer empowered in this behalf by the Central Government.

(2) Whenever any Customs Officer is satisfied that any article is liable to confiscation under this section he may seize such article, and shall at once report the seizure to his superior officer for the information of the officer empowered to order confiscation under sub-section (1) and such officer may, if satisfied on such report or after making such inquiry as he thinks fit, that the article so seized is liable, to confiscation, either declare it to be confiscated, or impose a fine in lieu thereof not exceeding the value of the article.

29.

Jurisdiction.

29. Jurisdiction. Any offence punishable under section 24 or section 27 may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section 26 or section 27, he may be brought.

30.

Power to exempt from operation of his Chapter.

30. Power to exempt from operation of his Chapter. The Central Government may, by notification in the Official Gazette, exempt the carriage of excisable goods within any local limits or in any class of vessels from the operation of this Chapter, and, by like notification, again subject such carriage to the operation of this Chapter.

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1.Subs. by Act 54 of 1963, s. 5, for "Central Board of Revenue"  
(w.e.f. 1-1-1964).

2.Subs. by Act 25 of 1950, s. 11 and Sch. IV, for the States".  
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15

CHAP

SPECIAL PROVISIONS RELATING TO SALT

#### CHAPTER V

#### SPECIAL PROVISIONS RELATING TO SALT

31.

Special and permanent rights of manufacturing salt to be  
recognised.

31.Special and permanent rights of manufacturing salt to be  
recognised. The proprietor of a private salt factory who has by virtue  
of a sanad granted by 1[the Government] or any former  
Government, a  
special and permanent right to manufacture salt, or to excavate or  
collect natural salt, shall on application made in accordance with the  
rules made under this Act be entitled to a licence for such purpose  
and to the annual renewal thereof, unless on a breach of the  
provisions of this Act, his licence has been cancelled by an officer  
duly empowered by the Central Government in this behalf.

32.

Rights of ordinary proprietors of existing salt-works.

32.Rights of ordinary proprietors of existing salt-works. Every  
proprietor of a private salt-work, other than a private salt factory,  
to which section 31 applies, of which, under the provisions of section

17 of the Bombay Salt Act, 1890, (Bom. Act 11 of 1890) the proprietor was entitled on application to a licence to manufacture or to excavate or collect natural salt at such factory, shall continue to be entitled, on, application made in accordance with the rules made under this Act, to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act his licence has been cancelled by an officer duly empowered by the Central Government in this behalf:

Provided that the Collector of Central Excise may at any time withdraw or withhold a licence from the proprietor of any such salt factory, if no salt has been manufactured, excavated or collected in such salt factory for the three years ending on the thirtieth day of June last preceding the date of his order, or, with the previous sanction of the 2[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963],(54 of 1963) if such salt factory has not produced, on an average, during the said three years, at least five thousand maunds. of salt per annum.

CHAP

ADJUDICATION OF CONFISCATIONS AND PENALTIES

## CHAPTER VI

### ADJUDICATION OF CONFISCATIONS AND PENALTIES

33.

Power of adjudication.

33.Power of adjudication. Where by the rules made under this Act anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged-

(a) without limit, by a Collector of Central Excise;

(b) up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees, by an Assistant Collector of Central Excise :

Provided that the 2[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963] (54 of 1963) may, in the case of any officer performing the duties of an Assistant Collector of Central Excise, reduce the limits indicated in clause (b) of this section and may confer on any officer the powers indicated in clause (a) or (b) of this section.

34.

Option to pay fine in lieu of confiscation.

34.Option to pay fine in lieu of confiscation. Wherever confiscation is adjudged under this Act or the rules made thereunder, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

3[34A. Confiscation or penalty not to interfere with other punishments. No confiscation made or penalty imposed under the provisions, of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.]

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1. Subs. by the A.O. 1950, for "The British".

2. Subs. by Act 54 of 1963, s. 5, for "Central Board of Revenue" (w.e.f. 1-1-1964).

3. Ins. by Act 36 of 1973, s.22.  
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16

CHAP

APPEALS

1[CHAPTER VIA

APPEALS



35.

#### Appeals to Collector (Appeals).

35.Appeals to Collector (Appeals). (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer lower in rank than a Collector, of Central Excise may appeal to the Collector of Central, Excise (Appeals) [hereafter in this Chapter referred to as the Collector (Appeals)] within three months

from the date of the communication to him of such decision or order:

Provided that the Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

35A.Procedure in appeal. (1) The Collector (Appeals). shall give an opportunity to the appellant to be heard, if he so desires.

(2) The Collector (Appeals) may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Collector (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) The Collector (Appeals), may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary :

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Collector (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the

appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time limit specified in section 11 A to show cause against the proposed order.

(4) The order of the Collector (Appeals) disposing of the appeal shall be in writing and shall state the points for determination the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Central Excise.

35B. Appeals to the Appellate Tribunal. (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(a) a decision or order passed by the Collector of Central Excise as an adjudicating authority;

(b) an order passed by the Collector (Appeals) under section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Collector of Central Excise under section 35, as it stood immediately before the appointed day;

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1. Subs. by Act 44 of 1980, s. 50 and Sch. V. for ss. 35, 35A and 36 (w.e.f. 11-10-1982).  
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17

(d) an order passed by the Board or the Collector of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day:

1[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to

decide any appeal in respect of any order referred to in clause (b) if such order relates to,-

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty :

Provided further that] the Appellate Tribunal may, in its discretion, refuse, to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where-

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value, of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved ; or

(ii) the amount of fine or penalty determined by such order,

does not exceed [fifty thousand rupees]4

2[(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 47 of the Finance Act, 1984, (21 of 1984) before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.)

3(2) The Collector of Central Excise may, if he is of opinion that an order passed by the Appellate Collector of Central Excise under section 35, as it stood immediately before the appointed day,

or the Collector (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicate to the Collector of Central Excise, or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal, presented within the time specified in sub-section (3).

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1. Subs. by Act 21 of 1984, s. 47, for "Provided that".

2. Ins. by s. 47, *ibid*.

3. Sub-section (2) shall stand subs. by Act 62 of 1986, s. 34 (date to be notified) as follows :-

(2) The Collector of Central Excise may, if he is of opinion that an order passed by--

(a) the Appellate Collector of Central Excise under section 35, as it stood immediately before the appointed day, or

(b) the Collector (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs, and Excise Revenues Appellate Tribunal established under section 3 of 62 of 1986 the Customs And Excise Revenues Appellate Tribunal Act, 1986, against such order".

4 Subs. by Act 38 of 1993, S.45.

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(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

3["(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made on or after the 1st day of June, 1993, irrespective of the date of demand of duty or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,-

(a) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees :

(b) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than one lakh rupees, one thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-Section. (2) or a memorandum of cross-objections referred to in sub-section (4)."]

35C. Orders of Appellate Tribunal. (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, At any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Collector of Central Excise or the other party to the appeal:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Collector of Central Excise and the other party to the appeal.

(4) Save as provided in section 35G or section 35L, orders passed by the Appellate Tribunal on appeal shall be final.

35D. Procedure of Appellate Tribunal. (1) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962, shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962. (52 of 1962)

(2) Every appeal against a decision or order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment, shall be heard by a Special Bench constituted by the President for hearings such appeals and such Bench shall consist of not less than "[two members]" and shall include at least one judicial member and one technical member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where-

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) the amount of fine or penalty involved,

does not exceed 3[one lakh rupees]

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1. Subs. by Act 79 of 1985, s. 5, for "three members".

2. Subs. Act 21 of 1984, s. 48 for "ten thousand rupees"

35E. Powers of Board or Collector of Central Excise to pass certain orders. (1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Collector of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Collector to 'apply to the, Appellate Tribunal 1[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] (62 of 1986) for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

(2) The Collector of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order.

(3) No order shall be made under sub-section (1) or sub-section (2) after the expiry of 2[one year ] from the date of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under subsection (1) or sub-section the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal 1[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] (62 of 1986) or the Collector (Appeals) within a period of three

months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal 1[or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] or the Collector (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 35B 1[or, as the case may be the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986] shall, so far as may be, apply to such application.

4[(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation.-For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question-

(a) relating to the rate of duty of excise for the time being in force, whether under the Central Excise Tariff Act, 1985 or under any other Central Act providing for the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods are excisable goods or whether the rate of duty of excise on any goods is nil; or

(d) whether any goods fall under a particular heading or sub-heading of the Schedule to the Central Excise Tariff Act, 1985, (5 of 1986) or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, (40 of 1978) or that any goods are or not covered by a particular notification or order issued by the Central



Government or the Board, as the case may be, granting total or partial exemption from duty; or

(e) whether the value of any goods for the purposes of assessment of duty of excise shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.]

5[35EA. Powers of revision of Board or Collector of Central Excise in certain cases. (1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Collector of Central Excise has passed any decision or order [not being a decision or order passed under sub-section (2) of this section] of the nature referred to in sub-section (5) of section 35E for the purpose of satisfying itself as to correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

(2) The Collector of Central Excise may, of his own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of section 35E for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No decision or order under this section shall be made so as to prejudicially affect any person unless such person is given a reasonable opportunity of making representation and if, he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Collector of Central Excise is of the opinion that any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, no order requiring the affected person to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed under this section unless such person is given notice within the time limit specified in section 11A to show cause against the proposed order.

(4) No proceedings shall be initiated under sub-section (1) or sub-section (2) in respect of any decision or order after the expiry of a period of six months from the date of communication of such decision or order:

Provided that in respect of any decision or order passed before the commencement of the Customs and Central Excises Laws (Amendment)

Act, 1987, the provisions of this sub-section shall have effect as if for the words "six months", the words "one year" were substituted.

(5) Any person aggrieved by any decision or order passed under sub-section (1) or sub-section (2) may appeal to the Customs and Excise Revenues Appellate Tribunal established under section 3 the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such decision or order."]

3[35EE. Revision by Central Government. (1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to, sub-section (1) of section 35B, annul or modify such order.

Explanation.-For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 (21 of 1984) against which an appeal has not been preferred before such commencement and could have been. if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of two hundred rupees.

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

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1. Ins. by Act 62 o.' 1986, s. 34 (date to be notified).

2. Subs. by Act 21 of 1984, s. 49, for "two years".

3. Ins. by Act 21 of 1984, s.50.

4 Ins. by Act 29 of 1988, S.11 (w.e.f. ....)

5 Ins. by S.12, ibid. (w.e.f.....)  
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20

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,-

(a) in any case in. which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A.]

35F. Deposit, pending appeal of duty demanded or penalty levied. Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied :

Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

35G. Statement of case to High Court. (1) The Collector of Central Excise or the other party may, within sixty days of the date upon which he is served with notice of an order under section 35C (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such an application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the Appellate Tribunal as if it were an application presented within the time specified in sub-section (1).

(3) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the Collector of Central Excise, or, as the case may be, the other party may, within six months from the date on which he is served with notice of such refusal, apply to the High

Court and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(4) Where in the exercise of its powers under sub-section (3), the Appellate Tribunal refuses to state a case which it has been required by an applicant to state, the applicant may, within thirty days from the date on which he receives notice of such refusal, withdraw his application and, if he does so, the fee, if any, paid by him shall be refunded.

35H. Statement of case to Supreme court in certain cases. If, on an application made under section 35G, the Appellate Tribunal is of opinion that, on account of conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through the President direct to the Supreme Court.

21

35I. Power of High Court or Supreme Court to require statement to be amended. If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal, for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

35J. Case before High Court to be heard by not less than two Judges. (1) When any case has been referred to the High Court under section 35G, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the

majority of the Judges who have heard the case including those who first heard it.

35K. Decision of High Court or Supreme Court on the case stated.  
(1) The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

35L. Appeal to Supreme Court. An appeal shall lie to the Supreme Court from-

(a) any judgment of the High Court delivered on a reference made under section 35G in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

35M. Hearing before Supreme Court. (1) The provisions of the Code of Civil Procedure, 1908 1, (5 of 1908) relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 35L a, they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 35K or section 35N.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in

the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

35N. Sums due to be paid notwithstanding reference, etc. Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, sums due to the Government as a result of an order passed under sub-section (1) of section 35C shall be payable in accordance with the order so passed.

35O. Exclusion of time taken for copy. In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

35P. Transfer of certain pending proceedings and transitional provisions. (1) Every appeal which is pending immediately before the appointed day before the Board under section 35, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

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1. See now the relevant provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974).  
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22

(2) Every proceeding which is pending immediately before the

appointed day before the Central Government under section 36, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it:

Provided that if any such proceeding or matter relates to an order where-

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) the amount of fine or penalty determined by such order,

does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 36 had not been substituted:

Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the Collector of Central Excise under section 35A, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Collector of Central Excise, as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in section 35Q, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

35Q. Appearance by authorised representative. (1) Any person who is entitled or required to appear before a Central Excise Officer or



the Appellate Tribunal in connection with any proceedings under this

Act, otherwise than when required under this Act to appear personally

for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being-

(a) his relative or regular employee; or

(b) any legal practitioner who is entitled to practise in any civil court in India; or

(c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service-Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person,-

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968; or (45 of 1968)

(c) who has become an insolvent,

23

shall be qualified to represent any person under sub-section (1), for

all times in the case of a person referred to in clause (a), and for such time as the Collector of Central Excise or the competent authority under the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968, (45 of 1968) as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person,-

(a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to, practise as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely :-

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

36.

Definitions.

36.Definitions. In this Chapter-

(a) "appointed day" means the date<sup>1</sup> of coming into force of the amendments to this Act specified in Part II of the Fifth Schedule to the Finance (No. 2) Act, 1980; (44 of 1980).

(b) "High Court" means,--

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

(iii) in relation to the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay,;

(iv) in relation to an), other Union territory, the highest court of civil appeal for that territory other than the Supreme Court of India ;

(c) "President" means the President of the Appellate Tribunal.]

## CHAP

### PRESUMPTION AS TO DOCUMENTS]

#### 2[CHAPTER VIB

### PRESUMPTION AS TO DOCUMENTS]

3[36A. Presumption as to documents in certain cases. Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,-

(a) unless the contrary is proved by such person, presume--

(i) the truth of the contents of such document;

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1. 11-10-1982: vide Notification No. G.S.R. 592(E), dated 11-10-1982.

2. Ins, by Act 44 of 1980, s. 50 and Sch. V (w.e.f. 11-10-1982).

3. Ins.by Act 36 of 1973, s. 23.  
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24

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in' the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit, the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.]

6 [36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.

(1)

Notwithstanding anything contained in any other law for the time being in force,-

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not) ; or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a 'computer print out'), if the conditions mentioned in subsection (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:-

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this: Act and the rules made thereunder where it is desired to give a statement in evidence, by virtue of this section, a certificate doing any of the following things, that is to say,--

(a) identifying the document containing the statement and describing the manner in which It was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to; be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied, to a computer if it is supplied thereto in any appropriate form and whether It is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to Its, being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.-For the purposes of this section,-

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation comparison or an other process.]

## CHAP

## SUPPLEMENTAL PROVISIONS

### CHAPTER VII

### SUPPLEMENTAL PROVISIONS

37.

Power of Central Government to make rules.

37.Power of Central Government to make rules. (1) The Central Government may make rules to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may--

1[(i) provide for determining under section 4 the nearest ascertainable equivalent of the normal price;

(ia) having regard to the normal practice of the wholesale trade, define or specify the kinds of trade discount to be excluded from the value under section 4 including the circumstances in which and the conditions subject to which such discount is to be so excluded;]

2[(ib)] provide for the assessment and collection of duties

of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;

3[(ic) provide for the remission of duty of excise leviable on any excisable goods, which due to any natural cause are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons;]

(ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the production or manufacture, or any process of the production or manufacture, of excisable goods, or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose ;

(iii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, 4\* \* \* the transit of excisable goods from any part of a 5[India] to any other part thereof;

(iv) regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a [registered]<sup>7</sup> or a bonded warehouse, or to a market ;

(v) regulate the production or manufacture, or any process of the production or manufacture, the possession, storage and sale of salt, and so far as such regulation is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, or of any component parts or ingredients or containers thereof;

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1. Ins. by Act 22 of 1973, s. 3.
  2. Cl (i) renumbered as cl. (ib) by s. 3, *ibid*.
  3. Ins. by Act 25 of 1978, s. 25 (w.e.f. 1-7-1978).
  4. The words "the bringing of excisable goods into India from the State of Jammu and Kashmir, or" omitted by Act 41 of 1954, s. 2 and Sch.
  5. Subs. by Act 25 of 1950, s. 11 and Sch. IV, for "the States".



6. Ins. by Act 29 of 1988, s.13 (w.e.f. 1-7-1988).

7 Subs. by Act 18 of 1992, S.113.

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25

(vi) provide for the employment of officers of the Government to supervise the carrying out of any rules made under this Act ;

(vii) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation;

(viii) provide for the appointment, licensing, management, and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses;

(ix) provide for the distinguishing of goods which have been 2[manufactured after registration] of materials which have been imported under licence, and of goods on which duty has been paid, or which are exempt from duty under this Act;

(x) impose on persons engaged in the production or manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

(xi) require that excisable goods shall not be sold or, offered or kept for sale in 1[India] except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xii) provide for the issue of [registration certificates]<sup>2</sup> and transport permits and the fees, if any, to be charged therefor :

Provided that the fees for the licensing of the manufacture and refining of salt and saltpetre shall not exceed. in the case of each such licence, the following amounts, namely:-

RS.

Licence to manufacture and refine saltpetre  
and to separate and purify salt in the process  
of such manufacture and refining 50

Licence to manufacture saltpetre  
2

Licence to manufacture sulphate of soda  
(kharinun) by solar heat in evaporating pans 10

Licence to manufacture sulphate of soda  
(knarinun) by artificial heat 2

Licence to manufacture other saline sub-  
stances 2;

(xiii) provide for the detention of goods, plant, machinery or material, for the purpose of exacting the duty, the procedure in connection with the confiscation, otherwise than under section 10 or section 28, of goods in respect of which breaches of the Act or rules have been committed, and the disposal of goods so detained or confiscated;

(xiv) authorise and regulate the inspection of factories and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the, inspection or search of any place or conveyance used for the production, storage, sale or transport of salt, and so far as such inspection or search is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods;

(xv) authorise and regulate the composition of offences against, or liabilities incurred under, this Act or the rules made thereunder;

(xvi) provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India;

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1. Subs. by Act 25 of 1950, s. 11 and Sch, IV, for "the States".

2 Subs. by Act 18 of 1992, S.113.  
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26

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2[(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods;]

3[(xvib) provide for the giving of credit of sums of money with respect to raw materials used in the manufacture of excisable goods;]

(xvii) exempt any goods from the whole or any part of the duty imposed by this Act;

4[(xviiia) provide incentives for increased production or manufacture of any goods by way of remission of, or any concession with respect to, duty payable under this Act;]

(xviii) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of the Central Government, or of any factory in which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(xix) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area;

(xx) authorise the 5[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963] (54 of 1963) or Collectors of Central Excise appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section;

6[(xxi) provide for the publication, subject to such conditions as may be specified therein, of names and other particulars of persons

who have been found guilty of contravention of any of the provisions of this Act or of any rule made thereunder;]

7[(xxii) provide for the charging of fees for the examination of excisable goods intended for export out of India and for rendering any other service by a Central Excise Officer under this Act or the rules made thereunder.]

9[(xxiii) specify the form in which application for refund shall be made under section 11B;

(xxiv) provide for the manner in which money is to be credited to the Fund;

(xxv) provide for the manner in which the Fund shall be utilised for the welfare of the consumers;

(xxvi) specify the form in which the account and records relating to the Fund shall be maintained."]

10[(xxvii) specify the persons who shall get themselves registered under section 6 and the manner of their registration.]

(3) In making rules under this section, the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated

8[(4) Notwithstanding anything contained in sub-section (3), and without, prejudice to the provisions of section 9, in making rules under this section, the Central Government may provide that if any manufacturer, producer or licensee of a warehouse-

(a) removes any excisable goods in contravention of the provisions of any such rule, or

(b) does not account for all such goods manufactured, produced or stored by him, or

(c) engages in the manufacture, production or storage of such goods without having applied for the [registration as]10 required section 6, or

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1. Proviso to cl. (xvi) omitted by Act 49 of 1957, s. 2.

2. Ins. by Act 23 of 1986, s. 51.
  3. Ins. by Act 11 of 1987 s. 94.
  4. Ins. by Act 14 of 1982, s. 48.
  5. Subs. by Act 54 of 1963, s. 5, for "Central Board of Revenue" (w.e.f. 1-1-1964).
  6. Ins. by Act 36 of 1973, s. 24.
  7. Ins. by Act 79 of 1985, s. 6.
  8. Ins. Act 19 of 1968 s. 38.
  9. Ins. by Act 40 of 1991, S.8 (w.e.f. 20-9-1991).
  10. Ins. & Subs. by Act 18 of 1992, S.113.
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27

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

then-

(i) any land, building, plant, machinery, materials, conveyance, animal or any other thing used in connection with the manufacture, production, storage, removal or disposal of such goods, and

(ii) all excisable goods on such land or in such building or produced or manufactured with such plant, machinery, materials or thing,

belonging to such manufacturer, producer or licensee shall be liable to confiscation and the manufacturer, producer or licensee shall be liable to a penalty not exceeding three times the value 'of the excisable goods in respect of which any contravention of the nature referred to in clause (a), (b), (c) or (d) has been committed, or five' thousand rupees, whichever is greater.]

1[(5) Notwithstanding anything contained in sub-section (3), the Central Government any make rules to provide for the imposition upon

any person- who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder, a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater.]

2[37A. Delegation of powers. The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification-

(a) any power exercisable by the Board under this Act may be exercisable also by 4[ a Principal Collector of Central Excise or a Collector of Central Excise] empowered in this behalf by the Central Government;

(b) any power exercisable by a Collector of Central Excise under this Act may be exercisable also by a Deputy Collector of Central Excise or an Assistant Collector of Central Excise empowered in this behalf by the Central Government;

(c) any power exercisable by a Deputy Collector of Central Excise under this Act may be exercisable also by an Assistant Collector of Central Excise empowered in this behalf by the Central Government; and

(d) any power exercisable by an Assistant Collector of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.]

3[37B. Instructions to Central Excise Officers. The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:

Provided that no such orders, instructions or directions shall be issued-

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Collector of Central Excise (Appeals) in the exercise of his appellate functions.

37C. Service of decisions, orders, summons, etc. (1) Any decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be served,-

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorised agent, if any;

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1. Ins. by Act 36 of 1973, s. 24.

2. Ins. by Act 25 of 1978, s.26 (w.e.f. 1-7-1978).

3. Ins. by Act 79 of 1985, s.7.

4. Subs. by Act 29 of 1988, S.14 (w.e.f. 1-7-1988).  
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28

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or

issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or, delivered by post or a copy thereof is affixed in the manner provided in sub-section (1),]

5[37D. Rounding off of duty, etc. The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.]

38.

Publication of rules and notifications and laying of rules before Parliament.

1[38. Publication of rules and notifications and laying of rules before Parliament. (1) All rules made and notifications issued under this Act shall be published in the Official Gazette.

4["(2) Every rule made under this Act and every notification issued under sub-section (1) of section 5A and section 11C shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."]

39.

[Repeal of enactments.]



39. [Repeal of enactments.] Rep. by the Repealing and Amending Act, 1947 (2 of 1948), s. 2 and Sch.

40.

Protection of action taken under the Act.

2[40. Protection of action taken under the Act. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made thereunder.

(2) No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause.]

[The First Schedule.] Rep. by the Central Excise Tariff Act, 1985 (5 of 1986), s. 4 (w.e.f 28-2-1986).

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(See sections 6 and 8)

## THE SECOND SCHEDULE

(See sections 6 and 8)

### PART A

Excisable goods specified for the purposes of section 6-

#### 1. Tobacco

2. Betel-nuts When supplied by a curor to a wholesale dealer,
3. Coffee whether directly or through a broker or commission agent.

## PART B

Excisable goods specified for the purposes of section 8--

1. Tobacco.

[The Third Schedule.] Rep. by the Repealing and Amending Act, 1947 (2 of 1948), s. 2 and Sch.

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1. Subs. by Act 22 of 1973, s. 4, for s. 38.
  2. Subs. by s. 5, *ibid.*, for s. 40.
  3. Added by the Indian Finance Act, 1944. s. 5 and Sch. I.
  - 4 Subs. by Act 29 of 1988, S.15 (w.e.f. 1-7-1988).
  - 5 Ins. by Act 12 of 1990, S.65.
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