



SECTIONWISE ANALYSIS – CUSTOMS AMENDMENTS (FINANCE BILL 2020)

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CUSTOMS AMENDMENTS – HIGHLIGHTS AT A GLANCE

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1. Amendment in Section 11(2)(f) under Chapter IV of Custom Act 1962

Source

Clause 105 of the Finance Bill,2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 11(2)(f) of the Customs Act, 1962.

Provision before amendment

- (1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.
- (2) The purposes referred to in sub-section (1) are the following :-
 - (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver.

Provision after Amendment

- (2) The purposes referred to in sub-section (1) are the following :-
 - (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver or any other goods.

Effect of the Amendment

To prevent the injury to the economy of the country, the Central Government may prohibit either absolutely or conditionally uncontrolled import or export of other goods apart from gold or silver also.

2. Amendment in section 28 of Chapter V of Custom Act 1962

Source

Clause 106 of the Finance Bill,2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 28 Explanation 4 of the Customs Act, 1962.

Provision before amendment

Explanation 4.—For the removal of doubts, it is hereby declared that in cases where notice has been issued for non-levy, not paid, short-levy or short-paid or erroneous refund after the 14th day of May, 2015, but before the date on which the Finance Bill, 2018 receives the assent of the President, they shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.

Provision after Amendment

Explanation 4.—For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018, such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date.

Effect of the Amendment

1. With the insertion of clause 106, Explanation 4 of section 28 of the Customs Act shall override any judgment, decree or order of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules or regulations made thereunder or in any other law which contains anything contrary.
2. This amendment shall come into effect retrospectively from the 29th day of March 2018.
3. If notice is issued prior to 29/3/2018, then such notice shall continue to be governed by the provisions of section 28.

3. Amendment in Section 28AAA under Chapter V of Custom Act 1962**Source**

Clause 107 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 28AAA of the Customs Act, 1962

Provision before amendment

Recovery of duties in certain cases. —

(1) Where an instrument issued to a person has been obtained by him by means of —

- a) Collusion, or,
- b) Wilful misstatement, or,
- c) Suppression of facts,

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

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

Provision after Amendment

Recovery of duties in certain cases. —

(1) Where an instrument issued to a person has been obtained by him by means of —

- a) Collusion, or,
- b) Wilful misstatement, or,
- c) Suppression of facts,

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or any other law, or any scheme of the Central Government, for the time being in force, by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules or regulations made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued.

Explanation 1.— For the purposes of this sub-section, “instrument” means any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or duty credit issued under section 51B, with respect to a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme

bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.

Effect of the Amendment

For the purpose of protecting the interests of revenue of the government proper officer may with the prior approval of Principal Commissioner of Customs or Commissioner of Customs recover the duty against “instrument” also issued under any other law, or under any scheme of the Central Government, for the time being in force, in addition to the Foreign Trade (Development and Regulation) Act, 1992.

Here it expanded the scope of the term “instrument” to include duty credit issued under section 51B.

4. Insertion of New Chapter VAA under Custom Act 1962

Source

Clause 108 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

New Provision

New section 28(DA) has been inserted

Provision Inserted

- 1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall,—
 - a. make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement.
 - b. possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied.
 - c. furnish such information in such manner as may be provided by rules.
 - d. exercise reasonable care as to the accuracy and truthfulness of the information furnished.

- 2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

- 3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.
- 4) Where importer fails to provide the requisite information for any reason, the proper officer may,—
 - i. cause further verification consistent with the trade agreement in such manner as may be provided by rules.
 - ii. pending verification, temporarily suspend the preferential tariff treatment to such goods:
Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.
- 5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:
Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.
- 6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.
- 7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.
- 8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:
Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information furnished by such authority, in such circumstances and in such manner as may be provided by rules.

- 9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.
- 10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:—
- i. the tariff item is not eligible for preferential tariff treatment.
 - ii. complete description of goods is not contained in the certificate of origin.
 - iii. any alteration in the certificate of origin is not authenticated by the Issuing Authority.
 - iv. the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as “INAPPLICABLE”.
- 11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

Explanation.—For the purposes of this Chapter,—

- a) “certificate of origin” means a certificate issued in accordance with a trade agreement certifying that the goods fulfil the country of origin criteria and other requirements specified in the said agreement.
- b) “identical goods” means goods that are same in all respects with reference to the country of origin criteria under the trade agreement.
- c) “Issuing Authority” means any authority designated for the purposes of issuing certificate of origin under a trade agreement.
- d) “trade agreement” means an agreement for trade in goods between the Government of India and the Government of a foreign country or territory or economic union.’.

Effect of the Amendment

New Chapter VAA and a new section 28DA in the Customs Act have been inserted which provide:

- i. Administration of rules of origin under a trade agreement, AND
- ii. Procedure regarding claim of preferential rate of duty on goods imported under a trade agreement entered between the Government of India and the Government of a foreign country or territory or economic union.

5. Insertion of New Section 51B under chapter VIIA of Custom Act 1962

Source

Clause 110 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

New Section

Section 51B of Custom Duty Act ,1962.

Provision

- 1) The Central Government may, by notification in the Official Gazette, specify the manner in which it shall issue duty credit,—
 - a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
 - b) in lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein.
- 2) The duty credit issued under sub-section (1) shall be maintained in the customs automated system in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in such manner as may be prescribed.
- 3) The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed.”.

Effect of the Amendment

There will be a new ledger in custom automated system called “electronic duty credit ledger” for which the provisions have been given here.

6. Amendment of heading of Chapter VII A under Custom Act 1962

Source

Clause 109 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Chapter

Chapter VII A of Customs Duty Act ,1962

Amendment

Name of the chapter before amendment was "Payments Through Electronic Cash Ledger".

After amendment name of the chapter has been revised to "Payments Through Electronic cash and Electronic Duty Credit Ledger"

Effect of the Amendment

1. Heading of the Chapter VIIA of the Customs Act 1962 has been modified as "Payments through electronic cash ledger and Electronic Duty Credit Ledger"
2. Chapter VIIA discusses about amount available in the electronic cash ledger which may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law. Thereafter, Electronic Duty Credit Ledger may also be used for making said payment after this amendment.

7. Amendment in Section 157 under Chapter XVII of Custom Act 1962**Source**

Clause 113 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

New Provision

Section 157(2) of the Custom Duty Act,1962

Provision

In section 157 of the Customs Act, in sub-section (2), after clause (j), the following clause shall be inserted, namely:—

“(ja) the manner of maintaining electronic duty credit ledger, making payment from such ledger, transfer of duty credit from ledger of one person to the ledger of another and the conditions, restrictions and time limit relating thereto;”.

Effect of the Amendments

The Board has been empowered to make regulations regarding:

- i. Maintaining electronic duty ledger
- ii. Making of payment from that ledger
- iii. Transfer of duty credit from ledger of one person to the ledger of another
- iv. The conditions, restrictions and the time limit.

8. Amendment of section 111 under Chapter XIV of Custom Act 1962

Source

Clause 111 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 111 of the Custom Duty Act,1962.

Provision

In section 111 of the Customs Act, after clause (p), the following clause shall be inserted, namely:—

“(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.”.

Effect of the Amendment

Section 111 of the Customs Act 1962 discusses about “Confiscation of improperly imported goods”. After this amendment, any goods imported on a claim of preferential rate of duty contravening the provisions will be confiscated.

9. Amendment of Section 156 under Chapter XVII of Custom Act 1962

Source

Clause 112 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 156 (2) of the Custom Duty Act, 1962.

Provision

In section 156 of the Customs Act, in sub-section (2), after clause (h), the following clause shall be inserted, namely:—

“(i) the form, time limit, manner, circumstances, conditions, restrictions and such other matters for carrying out the provisions of Chapter VAA.”.

Effect of the Amendment

This has been issued to empower the Government to make rules for carrying out the provisions of Chapter VAA.

This publication contains information for general guidance only. It is not intended to address the circumstances of any particular individual or entity. Although the best of endeavour has been made to provide the provisions in a simpler and accurate form, there is no substitute to detailed research with regard to the specific situation of a particular individual or entity. S. Khaitan & Associates or any of its officials do not accept any responsibility for loss incurred by any person for acting or refraining to act as a result of any matter in this publication



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