WWW.GNTMASTERMINDS.COM

Recent Amendments in Central Excise Act FA 2009 Applicable for May & Nov. 2010 CA final Examinations

1. **Chartered Accountants can also be nominated for conducting the valuation audit - Section 14A-Amendment made by Finance (No.2) Act, 2009**

   Section 14A has been amended to provide that now; the Chartered Accountants may also be nominated for the aforementioned purpose.

   For the purpose of this section, "Chartered Accountant" shall have the meaning assigned to it in section 2(1)(b) of the Chartered Accountants Act, 1949.

   Note : Section 2(1)(b) of the Chartered Accountants Act, 1949 defines Chartered Accountant as a person who is a member of the Institute of Chartered Accountants of India. (Effective from 19.08.2009)

2. **Chartered Accountants can also be nominated for conducting the CENVAT audit - Section 14AA -Amendment made by Finance (No.2) Act, 2009**

   Section 14AA has been amended to provide that now; the Chartered Accountants may also be nominated for the aforementioned purpose.

   For the purpose of this section, "Chartered Accountant" shall have the meaning assigned to it in section 2(1)(b) of the Chartered Accountants Act, 1949. (Effective from 19.08.2009)

3. **Change in Excise duty rate:** There is no change in the mean CENVAT rate of 8% ad valorem. However, the concessional excise duty rate of 4% has been increased to 8%, with certain exceptions.

4. **Rule 12(2A) inserted- Annual Installed Capacity Statement**

   This rule provides that every assessee shall submit to the Superintendent of Central Excise, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates in Form ER-7 by the 30th April of the succeeding financial year.

   However, the Central Government may specify assessee or class of assessees who may not require to submit such an Annual Installed Capacity Statement.

   For the year 2007-08, the said statement shall be furnished by 31st October, 2008.

   [Notification No. 38/2008 CE (NT) & Notification No. 39/2008 CE (NT) dated 29.09.2008]

5. **Amendments to rule 17 - Removal of goods by a 100% EOU for DTA**

   Notification No. 23/2008 CE (NT) dated 23.05.2008 has amended rule 17 of the Central Excise Rules, 2002 with effect from 01.06.2008 as follows:-

   (a) **Rule17(1)Monthly payment of duty by 100% EOUs**
   In case of removal of excisable goods from 100% Export Oriented Unit (EOU) to Domestic Tariff Area (DTA), the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8. Thus, duty can be paid monthly in case of removals from 100% EOUs also.

   (b) **Rule17(4)Scrutiny by the proper officer**
   The proper officer may on the basis of information contained in the return filed by the unit under rule 17(3), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

(c) **Rule17(5)Furnishing of documents and records by assessee**
Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

6. Rule 2(k) - Amendment in the definition of "inputs"

Explanation 2 to rule 2(k) has been amended so as to exclude cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods from the definition of 'inputs'.

Now, Explanation 2 to rule 2(k) reads as follows:-

Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. [Notification No. 16/2009 - CE (NT) dated 07.07.2009]

7. Rule 3(7)(a) - CENVAT credit admissible on inputs received from 100% EOU/unit in EHTP/STP: Rule 3(7)(a) provided that CENVAT credit in respect of inputs/capital goods produced or manufactured, by a 100% Export Oriented Undertaking (EOU) or by a unit in an Electronic Hardware Technology Park (EHTP) or in a Software Technology Park (STP) and which pays excise duty levied under section 3 of the Excise Act read with serial number 2 of Notification No. 23/2003-CE, dated 31.03.2003, used in the manufacture of the final products or in providing an output service, in any other place in India, shall be admissible equivalent to the amount calculated in the following manner namely :-

=Assessable Value [(1+BCD/400)×(CVD/100)]

wherein, BCD stands for Basic Custom Duty, CVD stands for Countervailing Duty

Notification No. 48/ 2008-Central Excise (N.T.) dated 05.12.2008 has amended the aforesaid formula. Consequently, the CENVAT credit in respect of inputs cleared by a 100% EOU, by a unit in EHTP, or by a unit in STP to any other place in India shall be as follows:-

=Assessable Value [(1+BCD/200)×(CVD/100)]

8. Section 11D not applicable to amount collected under rule 6(3) of the CENVAT Credit Rules, 2004

It has been clarified that so long as the amount of 8% or 10% is paid to the Government in terms of rule 6(3) of the CENVAT Credit Rules, 2004*, the provisions of section 11D shall not be applied even if the amount is recovered from the buyers. As per section 11D, the Central Government shall be liable to recover any amount which has been collected as excise duty and not paid to the credit of the Central Government. It is to be noted that the CENVAT credit can be taken by the buyer only if it is a payment of duty in terms of rule 3(1) of the aforementioned rules. Therefore, the CENVAT credit of the said amount of 8% or 10% cannot be taken since such payment is not a payment of duty interms of rule 3(1) of the said rules. So, the said 10% amount should be shown in the invoice as "10% amount paid under rule 6 of the CENVAT Credit Rules, 2004".

[Circular No. 870/08/2008-CX dated 16.05.2008]

***Note -** Notification No. 16/2009 - CE (NT) dated 07.07.2009 has amended rule 6(3)(i) so as to prescribe that a provider of both taxable and exempted services, who does not maintain separate accounts of inputs, shall pay an amount equal to 6% of the value of exempted services instead of 8% and the manufacturer of both dutiable and exempted goods, opting not to maintain separate accounts, shall pay an amount equal to 5% of the value of the exempted goods instead of 10%. The clarification provided in the above mentioned circular is applicable to the new rule 6(3) also.

9. **Proviso to clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001* amended** If a person has more than one premise requiring registration, he may obtain a single registration for all such premises if following conditions are satisfied:-

(i) Such person manufactures Compressed Natural Gas (falling under heading 2711 of the of First Schedule to the Central Excise Tariff Act, 1985), and

(ii) all the premises fall within the jurisdiction of one Chief Commissioner of Central Excise, and

(iii) he has submitted the details of all such premises along with the application for registration.

However, prior intimation shall be given before starting any additional premises subsequent to obtaining such registration. Further, if the assessee is registered under the existing provision, he may apply for fresh registration or file amendment to the registration as the case may be, in accordance with provisions of this notification.

[Notification No.43/2008-CE (NT) dated 06.10.2008]

*__Note -__ Clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001 prescribes that if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

10. **SSI exemption extended to SSIs producing specified packing materials bearing the brand name of another person**
Notification No. 47/2008 CE dated 01.09.2008 (as amended by Notification No. 02/2009 dated 11.02.2009 and Notification No. 9/2009 dated 07.07.2009)

Has amended Notification No. 8/2003 CE dated 01.03.2003 to extend the benefit of small scale exemption of excise duty to SSIs producing goods bearing the brand name or trade name of another person if these goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels, plastic bags and printed laminated rolls.

11. **LTUs to pay duty electronically only:**

The Large Taxpayer Units (LTUs) shall pay the central excise and service tax dues electronically only, through internet banking.

However, in case of difficulties in e-payment, a large taxpayer is permitted to pay the duty through banks (except in such cases where e-payment is mandatory) in the jurisdiction of the LTU Commissionerate only. [Circular No.878/16 /2008-CX dated 21.11.2008]

12. **Guidelines for provisional attachment of property under section 11DDA of the Central Excise Act, 1944**

The key points of guidelines issued to implement section 11DDA of the Act to maintain uniformity in its implementation are as follows:-

(a) The types of offences which may be considered for provisional attachment of property (resorted only when the duty or CENVAT Credit alleged is more than Rs. 25 lakhs) are as follows:

(i) When the goods are removed without the cover of an invoice and without payment of duty, or without declaring the correct value.

(ii) CENVAT Credit has been taken without receipt of goods or on the basis of Excise duty invoices or other documents which a person has a reason to believe as not genuine.

(iii) Excise duty invoice is issued without delivery of goods.

(iv) Refund or rebate is claimed in a fraudulent manner

(b) The property which is attached is immovable property/ properties which is/ are used for commercial purpose. If immovable property is not sufficient to protect the interest of revenue then movable property can be attached

(c) The property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 11A or Section 11D of the Act.

(d) Provisional attachment of the property shall be made only between sunrise and sunset.

(e) After attachment, the proper officer shall prepare an inventory and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is destrained.

(f) All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final

.

[Circular No. 874/12/2008-CX dated 30.06.2008]

Recent Amendments in Service Tax
Applicable for May & Nov. 2010 CA final Examinations

1. Amendments in Chapter V and VA of the Finance Act, 1994

3 new services brought under the service tax net - Section 65

With effect from September 1, 2009, service tax has been levied on the following three new categories of services:-

A) Service provided in relation to transport of coastal goods and goods transported through inland water including National Waterways:

Finance (No.2) Act, 2009 has inserted **sub-clause (zzzzl) in section 65(105)**.

Now, any service provided or to be provided to any person, by any other person, in relation to transportation of coastal goods (as defined under the Customs Act, 1962) and transportation of goods through inland waters including National Waterways has been made liable to service tax.

Explanation to section 65(105) (zzzzl) reads as under:-

For the purpose of this sub-clause:-

(a) "**coastal goods**" has the meaning assigned to it in clause (7) of section 2 of the Customs Act, 1962;

(b) "**national waterway**" has the meaning assigned to it in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985;

(c) "**inland water**" has the meaning assigned to it in clause (b) of section 2 of the Inland Vessels Act, 1917.

B) Cosmetic and plastic surgery service:

Finance (No.2) Act, 2009 has inserted sub-clause (zzzzk) in section 65(105). Now, any service provided or to be provided to any person, by any other person, in relation to cosmetic surgery or plastic surgery has been made liable to service tax. However, the surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma shall not be liable to tax. In this respect, an earlier circular of Board provides the indicative surgeries that can be taxed under this service listed as under:-

(a) Mammoplasty

(b) Bletharoplasty (eyelid surgery)

(c) Abdominoplasty (tummy tuck)

(d) Buttock augmentation and lift

(e) Rhinoplasty (reshaping of nose)

(f) Otoplasty (ear surgery)

(g) Rhytidectomy (face lift)

(h) Liposuction (removal of fat from the body)

(i) Brow lift

(j) Cheek augmentation

(k) Facial implants

(l) Lip augmentation

(m) Forehead lift

(n) Cosmetic dental surgery

(o) Orthodontics

(p) Aesthetic dentistry

(q) Laser skin surfacing

C) Legal consultancy service:

Finance (No.2) Act, 2009 has inserted sub-clause (zzzzm) in section 65(105). Now, any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law has been made liable to service tax. However, in the following cases, the legal consultancy services provided shall not be liable to service tax:-

(a) Any service provided by way of appearance before any court, tribunal or authority.

(b) The service provider and/or service recipient is an individual.

Explanation to section 65(105) (zzzzm) reads as under:- For the purpose of this sub-clause clause, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual. (Effective from 01.09.2009)

2. Amendment in the scope of existing taxable services - Section 65

1. Business auxiliary service

Amendment made by Finance (No.2) Act, 2009

The definition of business auxiliary service under section 65(19) of the Finance Act, 1994 has been amended to exclude any activity that amounts to manufacture of excisable goods. Therefore, manufacture of non-excisable goods for or on behalf of the client shall attract service tax. Besides, clause (b) and (c) have been inserted in the Explanation to section 65(19) so as to define the terms – 'manufacture' and 'excisable goods'.

Now, the clause (vii) of section 65(19) of the Finance Act, 1994 reads as follows:-

"Business auxiliary service" means any service in relation to a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods.

Clause (b) and (c) of Explanation to section 65(19)(vii) reads as follows:-

(b) "**excisable goods**" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944;

(c) "**manufacture**" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944.

2. Stock broker services

Amendment made by Finance (No.2) Act, 2009

The definition of stock-broker (in stock-broker service) under section 65(101) has been amended to exclude sub-broker from its ambit. Consequently, sub-brokers would be outside the purview of service tax.

3. Information technology software services

Amendment made by Finance (No.2) Act, 2009

The same has been amended to "providing the right to use the information technology software .....". This service is amended with retrospective effect from 16.05.2008.

Now, item (v) and (vi) of Section 65(105)(zzzze) reads as under:-

(v) providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(v) providing the right to use information technology software supplied electronically.

4. Transport of goods in containers by rail services

Amendment made by Finance (No.2) Act, 2009

Finance (No.2) Act, 2009 has imposed service tax on goods transported by railways including Government railways, whether in containers or otherwise.

Now, the amended section 65(105)(zzzp) reads as under:-

Any service provided or to be provided to any person, by any other person, in relation to transport of goods by rail, in any manner. (Effective from 01.09.2009)

3. **Refund of service tax by Assistant Commissioner/Deputy Commissioner of Central Excise:** The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself, -

(i) that the claim filed is complete in every respect;

(ii) that all the documents requiring certification have been filed after due certification; and

(iii) about the arithmetical accuracy of the claim,

shall refund the service tax paid on the specified service within a period of one month from the receipt of said claim. However**,** where the Assistant Commissioner/Deputy Commissioner of Central Excise has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such refund, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made there under.

4. **Recovery of service tax erroneously refunded**

Where any refund of service tax paid on specified service utilised for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is a recovery of service tax erroneously refunded.

5. **Notification No. 18/2009 – ST dated 07.07.2009 – Services in relation to 'transport of goods by road' and 'commission paid to foreign agents' exempted from service tax subject to certain conditions**

The aforesaid notification exempts the taxable services specified in column (3) of the Schedule below (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A subject to the conditions specified in the corresponding entry in column (4) of the Schedule.

Sr.No	**Classification of subclauses of clause (105) of section 65 of the Finance Act, 1994**	**Description of the taxable service**	**Conditions**
(1)	(2)	(3)	(4)
1.	(zzp)	Service provided to an exporter for transport of the said goods by road from any container reight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or Service provided to an exporter in relation to transport of said goods by road directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.	The exporter shall have to produce the consignment note, by whatever name called, issued in his name.

2.	(zzb)	Service provided by a commission agent located outside India and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	(1) The exporter shall declare the amount of commission paid or payable to the commission agent in the shipping bill or bill of export, as the case may be. (2) The exemption shall be limited to one per cent of the free on board value of export goods for which the said service has been used. (3) The exemption shall not be available on the export of canalised item, project export, or export financed under lines of credit extended by Government of India or EXIM Bank, or export made by Indian partner in a company with equity participation in an overseas joint venture or wholly owned subsidiary. (4) The exporter shall submit with the half yearly return after certification of the same as specified in clause (g) of the proviso – (i) the original documents showing actual payment of commission to the commission agent; and (ii) a copy of the agreement or contract entered into between the commission agent located outside India and the exporter in relation to sale of export goods, outside India :

6. Amendments to abatement notification - Notification No.1/2006 ST dated 01.03.2006

(a) With effect from 16.05.2008, Notification No. 22/2008 ST dated 10.05.2008 has made the following amendments in Notification No.1/2006 ST dated 01.03.2006 which prescribes various abatements in respect of certain taxable services specified therein:

In the said notification,

S.no.	in case of	for the words	the words that have been substituted are
1.	mandap keeper services to	the client	to any person
2.	convention services	client	recipient of service
3.	erection, commissioning or installation service	customer	recipient of service

(b) **Abatement of 30% from the gross amount charged in case of services in relation to chit**
Notification No. 27/2008 ST dated 27.05.2008 has amended Notification No. 1/2006 ST dated 01.03.2006 so as to provide an abatement of 30% in case of services provided in relation to chit from the gross amount charged for such service.

"Chit" has been defined to mean a transaction whether called chit, chit fund, chitty, kuri, or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

7. Whether the theatre owners are required to pay service tax on the rent received by them from distributors? Screening of movie is not taxable except in the following case:-

Where the distributor leases out the hall for screening of the movie,

(i) the theater owner gets a fixed rent from the distributor.

(ii) the profit or loss from exhibiting the film is borne by the distributor.

In such a case, the theatre owner provides the taxable service of 'renting of immovable property' for furtherance of business or commerce and is accordingly liable to pay service tax on the rent received from the distributor. [Circular No. 109/03/2009 dated 23.02.2009]

8. Service Tax (Provisional Attachment of Property) Rules, 2008

These rules introduced by Notification No.30/2008 ST dated 01.07.2008 with effect from 01.07.2008 provide as follows:-

Rule 3 - Procedure for provisional attachment of property

(a) The Assistant or the Deputy Commissioner of Central Excise, after due verification of the facts and circumstances of the case, for the purpose of protecting the interest of revenue, during the pendency of any proceeding under section 73/73A of the Finance Act, 1994, may forward a proposal for provisional attachment of property belonging to a person on whom a notice has been served under section 73(1)/73A(3) of the Act, to the Commissioner in the format prescribed in these Rules.

(b) The Commissioner may cause service of a notice on such person who can make a submission in this regard within 15 days of service of the notice.

(c) Upon consideration of submission, the Commissioner may pass an order to attach the property provisionally.

Rule 4 - The property that can be attached

(1) Value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.

(2) The movable property of such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

Rule 5 - Obligations of person whose property has been attached provisionally

The said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner of Central Excise.

Rule 6 - Period for which order of provisional attachment of property remains in force

Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the service of the order passed.

However, Chief Commissioner of Central Excise may grant an extension for a maximum period of two years.

Recent Amendments in Custom Act
Applicable for May & Nov. 2010 CA final Examinations

1. **Refund of import duty in certain cases - new section 26A inserted after section 26**
Section 26 of the Customs Act, 1962 contains the provisions for refund of the export duty. Section 26A inserted after section 26 provides for refund of the import duty. The section reads as follows:—

Conditions for claiming the refund of duty

Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, subject to the fulfillment of the following conditions:-

(a) **Goods are defective/not as per specifications**
The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods: Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) **Goods identified as imported goods:** The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) **No drawback claimed:** The importer does not claim drawback under any other provisions of this Act; and

(d) **Importer exports the goods/relinquishes title to goods and abandons them/destroys or renders them commercially valueless**

(i) The goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer,

in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.

Moreover, nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Application for refund of import duty: An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed.

Meaning of relevant date: For the purposes of this sub-section:-

S.No.	In cases	where relevant date means the date
1.	the goods are exported out of India	on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51
2.	where the title to the goods is relinquished	of such relinquishment
3.	the goods are destroyed or rendered commercially valueless	of such destruction or rendering of goods commercially valueless

No refund shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed.(Effective from 19.08.2009)

2. Authority for Advance Ruling under Income Tax Act, 1962 may also be notified by the Central Government to act as Authority under the customs law - Sub-section (2A) to (2D) inserted after section 28F(2)

In section 28F of the Customs Act, after sub-section (2), the following sub-sections shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:—

Sub-section (2A): Notwithstanding anything contained in sub-sections (1) and (2), or any other law for the time being in force, the Central Government may, by notification in the Official Gazette, authorize an Authority constituted under section 245-O of the Income-tax Act, 1961, to act as an Authority under this Chapter.

Sub-section (2B): On and from the date of publication of notification under sub-section (2A), the Authority constituted under sub-section (1) shall not exercise jurisdiction under Chapter V-B of the Act.

Sub-section (2C): For the purposes of sub-section (2A), the reference to "an officer of the Indian Revenue Service who is qualified to be a Member of Central Board of Direct Taxes" in clause (b) of sub-section (2) of section 245-O of the Income Tax Act, 1961 shall be construed as reference to "an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board".

Sub-section (2D): On and from the date of the authorization of Authority under sub-section (2A), every application and proceeding pending before the Authority constituted under sub-section (1) shall stand transferred to the Authority so authorized from the stage at which such proceedings stood before the date of such authorization.

3. Certain types of offences and circumstances excluded from the purview of the compounding provisions - Section 137(3)

Section 137(3) provides that any offence under Chapter XVI of the Act may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

Amendments in sub-section (3)

A. For the words "such compounding amount", the words "such compounding amount and in such manner of compounding" shall be substituted.

B. Finance (No.2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding:-

(a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;

(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:—

(i) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(ii) the Chemical Weapons Convention Act, 2000;

(iii) the Arms Act, 1959;

(iv) the Wild Life (Protection) Act, 1972;

(c) a person involved in smuggling of goods falling under any of the following, namely:—

(i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d) person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(e) person who has been convicted under this Act on or after 30.12.2005. (Effective from 19.08.2009)

4. Additional duty of customs - Second proviso inserted to section 3(2)

Section 3 of the Customs Tariff Act, 1975 levies on any article which is imported into India, an additional duty of customs, equal to the excise duty for the time being leviable on a like article if produced or manufactured in India.

Finance (No.2) Act, 2009 has inserted second proviso to section 3(2) after first proviso. It reads as under:-

In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value. (Effective from 19.08.2009)

5. Section 9A amended - Anti-Dumping Duty

Sub-section (1) amended

A. Sub-section (1) provides that where any article is exported from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Finance (No.2) Act, 2009 has substituted the words “any article is exported by an exporter or producer” for the words “any article is exported” in sub-section (1).

(Effective from 19.08.2009)

B. Sub-section (6A) inserted after sub-section (6)

The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer. However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available. (Effective from 19.08.2009)

4. Custom duty rate

There is no change in the overall rate structure of customs duties. As such, the peak rate for industrial goods has been retained at 10% and the major ad valorem rates of 5% and 7.5% have also been retained.