Customs Amendment by FinAnCe ACt 2011
the Custom ACt 1962

Section 3

Classes of Officers of Custom

1. CCC
2. CC
3. CC (A)
4. JC
5. DC
6. AC / ~~DC~~
7. Other Officers

Section 27 Refund of Import Duty or Interest

Sec 27 (1)

→ Application for Refund to be filed within ONE year of date of payment of duty / interest to AC/DC

→ No limitation in case of Duty paid under protest

Note: There may be a situation when demand is raised on an assessee who is unwilling to pay it on legal grounds. But litigation process takes a long time. In such case manufacturer can make payment under protest and continue to fight the case with the department.

Sec 27 (1A)

→ Documentary evidence to be furnished to prove that incidence of the Duty / Interest for which refund claim has been filed is not passed on to any other person.

Sec 27 (1B)

The period of limitation of ONE year shall be computed in the following manner.

S. No	In Case	The limitation of ONE year shall be computed from
1	Exempted Goods by a special order	Date of issue of such order
2	Where the duty becomes refundable as a consequence of judgment of any court.	Date of such judgment
3	Provisional Payment of Duty	Date of Adjustment of Duty

<u>Section 28</u>

<u>Cases other than collusion, willful-misstatement etc</u>

Where any duty / interest payable

- → Has not been levied
- → Has been short –levied
- → Has been erroneously refunded

For any reason other than the reason of

- → Collusion
- → Any willful mis-statement
- → Suppression of facts

Following provisions shall apply

<u>Sec 28(1)(a)</u>

- o PO shall serve a SCN
- o Within ***ONE year***.
- o From the ***relevant date***
- o To show cause why he should not pay the **Duty.**

Note 1: If service of SCN is stayed by any order of court, the **period of stay** shall be excluded while computing the period of ONE year. *<u>(Sec 28(7))</u>*

<u>Sec 28(1)(b)</u>

If the assessee pay the Duty + Interest before service of SCN on him

- → On the basis of his own ascertainment **or**
- → On the basis of duty ascertained by PO

AND

- → Inform the PO of such payment in writing

THEN

- → No SCN would be issued if amount paid in full *<u>Sec 28(2)</u>*
- → SCN may be issued if amount is short paid. *<u>Sec 28(3)</u>*

Note: Period of ONE year shall be computed from the date of receipt of Information of payment

Cases of collusion, willful-misstatement etc

Where any duty / interest payable

- → Has not been levied
- → Has been short –levied
- → Has been erroneously refunded

For reason of

- → Collusion
- → Any willful mis-statement
- → Suppression of facts

Following provisions shall apply

Sec 28(4)

- o PO shall serve a SCN
- o Within ***FIVE year***.
- o From the ***relevant date***
- o To show cause why he should not pay the **Duty.**

Note 1: If service of SCN is stayed by any order of court, the **period of stay** shall be excluded while computing the period of ONE year. *Sec 28(7)*

Sec 28(5)

Penalty reduced to 25% of duty if duty, interest and penalty paid within 30 days of the SCN

Sec 28(6)

Determination of Duty or Interest by the PO

(i) Conclusion of proceedings if amount paid in full
(ii) SCN may be issued for recovery if amount is short paid.

Sec 28(7)

If service of SCN is stayed by any order of court, the period of stay shall be excluded while computing the period of ONE year / FIVE year.

Sec 28(8)

The PO shall determine the amount of duty or interest after giving an OBH to the assessee

Section 28(9)

Time limit for determination of amount of Duty.

In respect of cases falling under	Time Limit
Sec 28(4)	One Year
Sec 28(1)(a)	Six Months

Section 28(10)

Payment of Interest mandatory even if not specified in the order determining duty.

Explanation 1 to Sec 28

Meaning of Relevant Date

In case where	Relevant Date means
Duty is Not Levied Interest in not charged	The Date of order of PO for clearance of goods
Duty is Provisionally assessed	The Date of Adjustment of Duty
Duty or Interest has been erroneously refunded	The Date of Refund
Any Other Case	The Date of Payment of Duty or Interest

Section 28AA

Section 28AA (1) **Interest on Delayed payment of duty**

Notwithstanding anything contained in any judgment of court, or provision of this Act or rules, the assessee shall in addition to Duty, be liable to pay Interest

→ whether payment is made voluntarily or

→ duty as determined u/s 28

Section 28AA (2) **Rate and Time Period for computation of Interest**

Rate of Interest

→ CG may by NOG fix the ROI ranging b/w 10% to 36% p.a.

→ w.e.f. 01.04.2011, ROI is 18% p.a. notified.

Time Period

Interest shall be calculated

→ From the date on which Duty become due

→ Or From the date of such erroneous refund

→ Upto the date of actual payment

No Interest payable subject to certain condition

- → The Duty is payable after issue of direction by CBEC
- → Full amount of Duty is paid voluntarily within 45days from the date of issue of such direction
- → No right to appeal against such payment at any subsequent stage is reserved.

Section 46 **e-Filing of Bill of Entry for Importation**

Section 46 (1)

E-filing of Bill of Entry to PO, for Import of any goods (other than goods intended for transit / transshipment) is mandatory.

However, where it is not feasible to e-filing of Bill of Entry, commissioner of custom may allow a Bill to be presented manually.

Section 50 **e-Filing of Bill of Export / Shipping Bill for Exportation**

Section 50 (1)

E-filing of Bill of Export to PO, for Import of any goods is mandatory.

However, where it is not feasible to e-filing of Bill of Export, commissioner of custom may allow a Bill to be presented manually.

Note:

- → **Transit**: Any stores imported in a vessel or aircraft may without payment of duty, remain on board such vessel or air craft while it is in India
- → **Transshipment**: Such stores may be transferred to any other vessel or aircraft as stores for consumption with the permission of PO

Self Assessment in Customs

Section 2(2)

Assessment includes

→ Provisional Assessment
→ Self Assessment
→ Re-Assessment and
→ Any assessment in which duty assessed is NIL.

Section 17

→ Duty to be self-assessed by Importer / Exporter
→ Except where the stores allowed to be warehoused.
→ The PO may verify the self-assessment of such goods.
→ And for this purpose, examine or test any imported goods or exported goods.
→ Where it is found that the self-assessment is not done correctly, the PO may re-assess the duty leviable on such goods.
→ Where any re-assessment is done is contrary to the self-assessment , the PO shall pass a speaking order on the re-assessment within 15 days from the date of re-assessment of Bill of Entry or Shipping Bill.
→ Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the PO may audit the assessment of duty of the imported goods or exported goods.

Section 18

→ Where the importer or exporter is <u>unable to make self-assessment</u> and make a request in writing to the PO for assessment
→ Where the PO deems it necessary to do any **chemical or other test** for assessment
→ Where the importer or exporter produced all the necessary documents etc but the PO wants to make further enquiry
→ Where necessary documents have **not** been produced etc and the PO wants to make further enquiry.
  - The PO may direct that the duty leviable on such goods be assessed provisionally.
  - If the importer or the exporter furnishes such security as the PO deems fit for the payment of the deficiency between the duty finally assessed and the duty provisionally assessed.

Where the duty is finally assessed or reassessed by PO

→ In case of goods cleared for home consumption or exportation, the deficiency or excess shall be adjusted

→ In case of warehoused goods, where the duty finally assessed or re-assessed > duty provisionally assessed, Importer is required to execute a bond twice the amount of excess duty. Section 28(2)

Interest if differential duty is payable. Section 28(3)

→ The assessee shall be liable to pay interest on amount payable to CG consequent to Final Assessment or **Re-assessment** at the rate prescribed u/s 28AB.

Interest on Refund Section 28(4)

→ If any amount is refundable after final assessment or **Re-assessment**, interest will be payable if refund is not granted within 3 months of final assessment or reassessment interest will be at the rates specified u/s 27A.

Goods liable to different rates of duty

→ If the importer produces evidence to the satisfaction to the PO **or the evidence is available** regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Audit Sec 157(2)(d)

→ CBEC empowered to prescribe regulations for specifying the manner of conducting audit at the office of the PO of customs / at the premises of the importer.

Section 75 Second Proviso : Duty Drawback

Prior to Amendment

→ If the drawback has been allowed and the sale proceeds are not received in time under FEMA, such drawback shall be recovered.

After Amendment

→ CG has power to prescribe circumstances under which duty drawback would not be disallowed even though the sale proceeds are not received in time under FEMA

Section 110A

Prior to Amendment

→ Any goods, documents or things seized may be released to the owner, pending the order of the Adjudicating Officer.

→ Such release shall be made when the owner executes a bond as the Commissioner of Customs may require.

After Amendment

→ Now the Adjudicating Authority has been empowered to allow the provisional release of any goods, documents or things seized, pending adjudication.

Section 124

Prior to Amendment

→ AC could not issue SCN without prior approval of DC for confiscating any goods, or imposing any penalty.

After Amendment

→ Now, AC can issue SCN without prior approval of DC for confiscating any goods, or imposing any penalty.

Section 131BA Non filing of Appeal in certain cases

→ The CBEC may issue directions fixing such monetary limits for the purposes of filing of appeal, application, revision or reference (AARR) by CC

→ However, CC not to be precluded from filing any AARR in any other case involving the issue / questions of law on which he has earlier not filed such AARR.

→ Non-filing of AARR by CC cannot be considered to be his acquiescence (consent) in the decision on disputed issue.

→ The AT / Court hearing such AARR shall have regard to the circumstances under which AARR was not filed by the CC in pursuance of directions of CBEC

→ Every directions issued by CBEC b/w 20.10.2010 & 08.04.2011 fixing monetary limits for filing of AARR shall be deemed to have been issued u/s 131BA

Section 142A : Liability under Custom Act to be first charge.

This section creates a first charge on the property of a defaulter for recovery of the custom due, subject to the Provision of

→ Companies Act
→ Recovery of Debt due to Bank & FI Act and
→ SARFAESI Act

Section 150(2)

Balance of sale proceeds of unclaimed cargo in auction to be paid to CG when it cannot be paid to the owner within 6 months.

Section 151A

CBEC empowered to issued Orders / instructions / directions to the Custom Oficers for implementation of any custom provisions relating to any

→ Prohibition
→ Restriction
→ Procedure

For import or export of goods.

Amendment in the Custom Tariff Act,1975

Section 9A(1A)

→ In case of circumvention of anti-dumping duty (ADD) imposed on an article, CG may extend the ADD to such article or an article originating in / exported from such country.

Section 9AA(1)

Where upon determination by an officer authorized by CG, an importer proves to the satisfaction of CG that he has paid ADD on any article, in excess of actual margin of dumping, the CG shall reduce such ADD, and such importer shall be entitled to refund of such excess duty.