

E-BOOK
on
Inter-linking provisions
in
Customs Act, 1962,
Central Excise Act, 1944
&
Finance Act, 1994.

Inter-linking provisions

Note: In this E-book, attempts have been made to understand the Inter-linking provisions in Customs Act, 1962, Central Excise Act, 1944 & Finance Act, 1994. It is expected that it will help the new entrants into the service. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors or if you have any suggestion to improve this document, the same may be brought to the notice to the NACEN, RTI, Kanpur on the Email addresses: rtinacenkanpur@yahoo.co.in or goyalcp@hotmail.com (Email address of ADG, RTI, NACEN, Kanpur). This may not be a perfect E-book and all are requested to assist us to make it better.

INDEX

Introduction.....3

Borrowing Act: Finance Act, 19947

Borrowing Act: The Central Excise Act, 1944.10

Borrowing Act: The Customs Act, 1962.....13

Inter-linking provisions

Introduction

You might have noticed that at times, a statute may have certain provisions, which borrow provisions from other statutes. At times, borrowed provisions of other statutes may be specifically mentioned in the borrowing provision. Sometimes, only power is taken to apply provision(s) of other statute(s) applicable to it by issuing a notification. These inter-linking provisions or notifications are often missed while reading a statute.

Has you ever noticed as to why there are no specific provisions in the Central Excise Act, 1944 regarding seizure of goods, documents and things; confiscation of conveyance; confiscation of goods used for concealing offending goods; confiscation of sale proceeds; issue of SCN before confiscation of goods; recovery of sum due to Government etc. while such specific provisions exists in the Customs Act, 1962? The answer lies is the fact that these provisions have been borrowed from the Custom Act, 1962 and the same has been made applicable to Central Excise matters by issuing a **notification No. 68/63-Central Excise, dated 4.5.1963 as amended** under Section 12 of the Central Excise Act, 1944. Similarly, provision of newly inserted section 28AAA of the Customs Act, 1962 which deals with recovery of Custom duty where duty has been paid using Scrip/ Instrument issued by DGFT, has been extended to Central Excise *vide* **notification No. 29/2012-CE (NT), dated 10.10.2012**. Presently, the scrip/instrument issued by DGFT is also allowed to be used for payment of Central Excise duty.

The provisions of Customs Act, which have made applicable to Central Excise, are as under:-

- Section 105 (1) deals with power to search premises.
- Section 110 deals with seizure of goods, documents and things.
- Section 115 deals with confiscation of conveyances.
- Section 118 deals with confiscation of packages and their contents.

Inter-linking provisions

- Section 119 deals with things goods used for concealing smuggled goods.
- Section 120 deals with confiscation of smuggled goods notwithstanding any changes in form, etc.
- Section 121 deals with confiscation of sale-proceeds of smuggled goods.
- Section 124 deals with issue of show cause notice before confiscation of goods, etc.
- Section 142 deals with recovery of sum due to Government.
- Section 150 deals with procedure for sale of goods and application of sale proceeds.

Note: The abovementioned provisions are subject to the following modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the circumstances as have been specified in the notification itself.

Similarly, the Finance Act, 1994, which deals with service tax, has borrowed large number of provisions of Central Excise Act, 1944. The borrowed provisions are listed in Section 83 of the Finance Act, 1994 and are as under:-

Section of the Central Excise Act, 1944	Heading of the section
<i>Sub-section (2A) of Section 5A</i>	Power to grant exemption from duty of excise <i>Note: The sub-section (2A) empowers government to insert any explanation to any notification or order issued by it under Section 5(1) or 5(2) of CEA, 44 at any time within a period of one year of issuance of such notification or order, then such explanation is deemed to be part of notification or order from the date of issuance of such notification or order.</i>

Inter-linking provisions

<i>Sub- section (2) of Section 9A</i>	Certain offences to be non-cognizable <i>Note: This sub-section provides for compounding of offences and empowers the Chief Commissioner /principal chief commissioner to compound such offences on payment to compounding amount. It also provides for situations where offences cannot be compounded.</i>
<i>Section 9AA</i>	Offences by companies
<i>Section 9B</i>	Power of Court to publish name, place of business, etc., of persons convicted under the Act
<i>Section 9C</i>	Presumption of culpable mental state.
<i>Section 9D</i>	Relevancy of statements under certain circumstances
<i>Section 9E</i>	Application of section 562 of the Code of Criminal Procedure, 1898, and that of the Probation of Offenders Act, 1958.
<i>Section 11B</i>	Claim of refund of duty and interest, if any, paid on such duty.
<i>Section 11BB</i>	Interest on delayed refunds
<i>Section 11C</i>	Power not to recover duty of excise not levied or short levied as a result of general practice
<i>Section 12</i>	Application of the provisions of Act No. 52 of 1962 to Central Excise duties.
<i>Section 12A</i>	Price of goods to indicate the amount of duty paid thereon
<i>Section 12B</i>	Presumption that the incidence of duty has been passed on to the buyer.

Inter-linking provisions

<i>Section 12C</i>	Consumer Welfare Fund
<i>Section 12D</i>	Utilisation of Fund
<i>Section 12E</i>	Power of Central Excise Officers
<i>Section 14</i>	Power to summon persons to give evidence and produce document in inquiries under this Act.
<i>Section 15</i>	Officers required to assist Central Excise Officer
<i>Section 15A</i>	Obligation to furnish information return
<i>Section 15B</i>	Penalty for failure to furnish information return
<i>Section 31</i>	Settlement of cases: Definition
<i>Section 32</i>	Custom and Central Excise Settlement Commission
<i>Section 32A to 32P (both inclusive)</i>	Provisions relating to Settlement of cases by Settlement Commission
<i>Section 33A</i>	Adjudication Procedure
<i>Section 34A</i>	Confiscation or Penalty not to interfere with other punishment
<i>Section 35EE</i>	Revision by Central Government
<i>Section 35F</i>	Deposit, pending appeal, of duty demanded or penalty levied.
<i>Section 35FF to 35O (both inclusive)</i>	Provisions relating to appeal to High Court and Supreme Court
<i>Section 35Q</i>	Appearance by Authorised Representative
<i>Section 35R</i>	Appeal not be filed in Certain Cases.
<i>Section 36</i>	Definitions

Inter-linking provisions

<i>Section 36A</i>	Presumption as to documents in certain cases
<i>Section 37A</i>	Delegation of powers
<i>Section 37B</i>	Instructions to Central Excise Officers
<i>Section 37C</i>	Service of decisions, orders, summons etc.
<i>Section 37D</i>	Rounding off of duty, etc.
<i>Section 38A</i>	Effect of amendments, etc., of rules, notifications or orders.
<i>Section 40</i>	Protection of action taken under the Act

In addition, there are number of provisions of Code of Civil Procedure, 1908; and Code of Criminal Procedure, 1898, which have been made applicable to three indirect tax statutes mentioned above.

To help the trainees, the borrowed or interlinked provisions amongst the indirect tax statutes, namely, Customs Act, 1962; Central Excise Act, 1994 and Finance Act, 1994, have been studied and summarized in the Table below:-

Table

Borrowing Act	Provisions of other Statutes (borrowed Act) made applicable to the borrowing Act.	Remarks
Borrowing Act: Finance Act, 1994		
1. Section 83 of the Finance Act, 1994 specify certain provisions of Central Excise Act, 1944 which have been made applicable to Finance Act, 1994	Sub-section (2A) of Section 5A, Sub-section (2) of 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14,15, 15A, 15B, 31, 32, 32A to 32P, 33A, 34A, 35EE, 35F, 35FF to 35-O, 35Q,	It may be noted that Section 12 of the Central Excise Act, 1944 provides application of provisions of Customs Act, 1962 to the Central Excise Act, 1944 as
The Section 83 of Finance Act,		

Inter-linking provisions

<p>1994 reads as under:</p> <p><i>The provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:-</i></p> <p><i>Sub-section (2A) of Section 5A, sub-section (2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF to 35O (both inclusive), 35Q, 35R, 36, 36A, 37A, 37B, 37C, 37D, 38A and 40.</i></p>	<p>35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A, and 40 of the Central Excise Act, 1944.</p>	<p>government may specify by issuing a notification.</p> <p>In other words, under section 83 of the Finance Act, 1994 read with section 12 of the Central Excise Act, 1944, the Government may extend any provision of Customs Act, subject to such modification as may be specified in the notification, to Service Tax matters also.</p> <p>So far, the Government has not issued any notification under Section 83 of the Finance Act, 1994 read with section 12 of the Central Excise Act, 1944.</p>
<p>Section 85 (5) of the Finance Act, 1994</p> <p>Sub-Section (5) of the Section 85 of the Finance Act, 1994, which reads as under:-</p> <p><i>(5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).</i></p>	<p>Section 35 A of the Central Excise Act, 1944</p>	

Inter-linking provisions

Section 86 (7) of the Finance Act, 1994

Sub-section (7) of the Section 86 of the Finance Act, 1994 reads as under:

(7) Subject to the provisions of this Chapter, in hearing the appeal and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

Section 35 D of the Central Excise Act, 1944

Inter-linking provisions

Borrowing Act: The Central Excise Act, 1944.

Section 12 of the Central Excise Act, 1944

Under Section 12 of the Central Excise Act, 1944, Government has taken power to apply provisions of Customs Act, 1962 to Central Excise matters by issuing a notification.

The Section 12 of the Central Excise Act, 1944 reads as under:-

The Central Government may, by notification in the official Gazette, declare that any of the provisions of the Customs Act, 1962 relating to levy of and exemption from Customs duties, drawback of duty, warehousing, offences, and penalties, confiscation, and procedure relating to offence and appeals shall, with such modifications and alternations as it may consider necessary or desirable to adopt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3 and section 3A.

By issuing the notification No. 68/63-Central Excise, dated 4-5-1963, as amended from time to time, under Section 12 of the Central Excise Act, 1944, the Government has made the following provisions of the Customs Act, 1962 to Central Excise matters:-

- the provisions of sub-section (1) of Section 105,
- Section 110,
- Section 115 [excluding clauses (a) and (e) of sub-section (1)]
- clause (a) of Section 118,
- Sections 119, 120, 121 and 124,
- clause (b) and sub-clause (ii) of clause (c) of sub-section (1) of Section 142
- and 150 of the Customs Act, 1962, (52 of 1962),

relating to matters specified therein, shall be applicable in regard to like matters in respect of the duties imposed by Section 3 of the first mentioned Act.

Inter-linking provisions

	<p>Vide notification No. 29/2012-CE (NT), dated 10/10/2012, the Government made the provisions to Section 28AAA of the Customs Act, 1962, which deals with recovery of duty where duty has been paid using Scrips /instrument issued by DGFT, has been extended to the Central Excise subject to such modifications as mentioned in the notification.</p>	<p>Recovery of Central Excise Duty- where Scrips / instrument issued by DGFT has been used for payment of Central Excise Duty- provision of Section 28AAA of Customs Act, 1962 adopted for the purpose of Central Excise.</p>
	<p>Vide notification No. 29/88-CE (NT), dated 21-10-88, the Government has exercised its power under section 110 (1A) of the Customs Act, 1962, which has been made applicable to Central Excise Act, 1944 vide notification No. 68/63-CE, dated 4/5/1963 and having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature of the goods, the Government has specified the goods of perishable goods and like goods, which can be disposed of immediately after seizure.</p>	<p><u>Disposal of perishable goods and like goods immediately after seizure under Central Excise Act, 1944- provision of Section 110(1A) of Customs Act, 1962 has been extended and list of such items has been specified . The specified goods are</u></p> <ol style="list-style-type: none"> 1.Primary cells and primary batteries including rechargeable batteries; 2. Wrist watches including electronic wrist watches, watch movements, parts or components thereof; 3. All electronic goods including television sets, video cassette recorders, tape recorders, calculators, computers, components and spares thereof; 4. All varieties of paper and paper products;

Inter-linking provisions

		<p>5. All items of food, whether packed in containers or not;</p> <p>6. All varieties of drugs and medicines;</p> <p>7. Cigarettes, biris and other tobacco products;</p> <p>8. Textiles and textile articles;</p> <p>9. Photographic films; and</p> <p>10. Matches .</p>
<p><u>Section 35D (1) of the Central Excise Act, 1944, which deals with the procedure of Appellate Tribunal, makes provision of sub-section (1), (2), (5) and (6) of section 129 C of the Customs Act, 1962 applicable to discharge of functions by Appellate Tribunal under Central Excise Act, 1944</u></p>	<p><u>Sub-section (1), (2), (5) and (6) of Section 129 C of the Customs Act, 1962, which reads as under:-</u></p> <p><i>SECTION 129C. Procedure of Appellate Tribunal.</i></p> <p><i>(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.</i></p> <p><i>(2) Subject to the provisions contained in sub-section (4), a Bench shall consist of one judicial member and one technical member.</i></p> <p><i>(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the</i></p>	

Inter-linking provisions

	<p><i>point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.</i></p> <p><i>(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.</i></p>	
--	--	--

Borrowing Act: The Customs Act, 1962

<p><u>Section 127 N of the Customs Act, 1962</u></p> <p>Section 127N of the Customs Act, 1962 reads as under:-</p> <p><i>“the provisions of Chapter V of the Central Excise Act, 1944 in so far it is not inconsistent with the provisions of this Chapter shall apply in relation to proceedings before the Settlement Commission under this Chapter”.</i></p>	<p>Provision of Central Excise Act contained in Chapter V [which deals with settlement Commission] of the Central Excise Act, 1944 and these provisions has been made applicable to Custom matter.</p>	
--	--	--

Inter-linking provisions

Text of notifications issued under Section 12 of the Central Excise Act, 1944 extending provisions of Customs Act, 1962 to the Central Excise matters.

Following three notifications have been issued by the Government in exercise of powers under Section 12 of the Central Excise Act, 1944

- (i) Notification No. 68/63-CE (NT), dated 4.5.1963
- (ii) Notification No. 29/88-CE (NT), dated 21.10.88
- (iii) Notification No. 29/2012-CE (NT), dated 10.10.2012

(i) Notification No. 68/63-C.E., dated 4th May, 1963 as amended by Notifications No. 9/65-C.E., dated 6th February, 1965; No. 46/68-C.E., dated 23rd March, 1968; No. 13/88-C.E. (NT.), dated 29-4-1988; No. 26/95-C.E. (N.T.), dated 6-6-1995 and No. 48/97-C.E. (N.T.), dated 2-9-1997.

In supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) Central Excise No. 69/59 (G.S.R. No. 822 of 1959), dated the 18th July, 1959, the Central Government hereby declares that the **provisions of sub-section (1) of Section 105, Section 110, Section 115 [excluding clauses (a) and (e) of sub-section (1)], clause (a) of Section 118, Sections 119, 120, 121 and 124, clause (b) and sub-clause (ii) of clause (c) of sub-section (1) of Section 142 and 150 of the Customs Act, 1962, (52 of 1962)**, relating to matters specified therein, shall be applicable in regard to like matters in respect of the duties imposed by Section 3 of the first mentioned Act, subject to the following modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the circumstances, namely :-

1. In the said provisions –

- (i) references to "this Act" shall be deemed to be references to "the Central Excise Act, 1944 (1 of 1944) and the Central Excise Rules, 1944";
- (ii) references to "Assistant Commissioner of Customs" shall be deemed to be references to "Assistant Commissioner of Central Excise";
- (iii) references to "officer of customs" shall be deemed to be references to "Central Excise Officer not inferior in rank to a Sub-inspector";
- (iv) references to "proper officer" shall be deemed to be references to "proper officer as defined in clause (xi) of Rule 2 of the Central Excise Rules, 1944"; and
- (v) references to "smuggled goods" shall be deemed to be references to "excisable goods which have been removed in contravention of any of the provisions of the Central Excise Rules, 1944".

Inter-linking provisions

2. *In the proviso to sub-section (2) of the said Section 110, -*

the reference to "Commissioner of Customs" shall be deemed to be a reference to "Commissioner" as defined in clause (ii) of Rule 2 of the Central Excise Rules, 1944.

3. *In the said Section 115 [excluding clauses (n) and (e) of sub-section (1)]-*

(a) in sub-section (1), -

(i) in clause (c), the reference to "Section 106" shall be deemed to be a reference to "Rule 200 of the Central Excise Rules, 1944";

(ii) in clause (d), the reference to "claim for drawback" shall be deemed to be a reference to "claim for rebate";

(b) in sub-section (2), -

(i) the reference to "smuggling" shall be deemed to be a reference to "removal of excisable goods in contravention of any of the provisions of the Central Excise Rules, 1944";

(ii) the reference to "the rules" shall be deemed to be a reference to the "Central Excise Rules, 1944";

(iii) in the proviso, the reference to "goods which are sought to be smuggled" shall be deemed to be a reference to "goods which are sought to be removed in contravention of any of the provisions of the Central Excise Rules, 1944".

4. *In the said clause (a) of Section 118, -*

the reference to "goods imported" shall be deemed to be a reference to excisable goods in respect of which any of the provisions of the Central Excise rules, 1944, has been contravened".

5. *In the said Section 124, -*

the reference to "under this Chapter" shall be deemed to be a reference to under any of the provisions of the Central Excise Rules, 1944".

6. In clause (e) of sub-section (2) of Section 150, the reference to "any other law relating to customs" shall be deemed to be a reference to "any other law relating central duties of excise.

[Source: www.cbec.gov.in]

Inter-linking provisions

Note: It may be seen that certain terms used in the above said notification are no longer in existence such as Central Excise Rules, 1944 or Central Excise officer not inferior in rank to a sub-inspector or proper officer. In fact, Central Excise Rules, 1944 has been superseded by first by the Central Excise Rules, 2001 and then by Central Excise Rules, 2002. Similarly, the term "proper officer" has since been replaced with term " Central Excise officer". The term " Central Excise Officer" has been defined in clause (b) of section 2 of the Central Excise Act, 1944.

(ii) Notification No. 29/88-C.E. (N.T.), dated 21-10-1988 as amended by notification No. 14/89-C.E.-(N.T.), dated 3-3-1989.

(2) List of goods notified under Section 110(1A) of the Customs Act, 1962 and as made applicable to Central Excise. — In exercise of the powers conferred by sub-section (1A) of Section 110 of the Customs Act, 1962 (52 of 1962) as made applicable to the duties of excise vide notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 68/63-Central Excises, dated the 4th May, 1963, issued under Section 12 of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature, of the goods, mentioned in the Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section as made applicable to the duties of excise.

THE SCHEDULE

1. Primary cells and primary batteries including rechargeable batteries;
2. Wrist watches including electronic wrist watches, watch movements, parts or components thereof;
3. All electronic goods including television sets, video cassette recorders, tape recorders, calculators, computers, components and spares thereof;
4. All varieties of paper and paper products;
5. All items of food, whether packed in containers or not;
6. All varieties of drugs and medicines;
7. Cigarettes, biris and other tobacco products;
8. Textiles and textile articles;
9. Photographic films; and
10. Matches .

[Source: www.cbec.gov.in]

Inter-linking provisions

(iii) Notification No. 29/2012-Central Excise (N.T.), dated 10.10.2012

G.S.R.(E) In exercise of powers under section 12 of the Central Excise Act, 1944(1 of 1944), the Central Government hereby declares that the provisions of section 28AAA of the Customs Act, 1962 (5 of 1962) shall be applicable in regard to like matters in respect of the duties imposed by section 3 of the first mentioned Act, subject to the following modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the Circumstances, namely:-

(I) In sub-section (1),-

- (a) In the opening paragraph, the second reference to “this Act” shall be deemed to be reference to “the Central Excise Act,1944 (1 of 1944)”;
- (b) In the proviso, the reference to “importer under section 28” shall be deemed to be reference to “person chargeable with the duty under section 11A of the Central Excise Act, 1944 (1 of 1944)”;
- (c) In the *Explanation 1*, the reference to “this Act” shall be deemed to be reference to “the Central Excise Act, 1944 (1 of 1944)”.

(II) In sub-section (2), the reference to “section 28AA” shall be deemed to be reference to “section 11AA of the Central Excise Act, 1944(1 of 1944)”.

(III) In sub-section (3), the reference to “proper officer” shall be deemed to be reference to “Central Excise Officer as defined in clause(b) of section 2 of the Central Excise Act,1944(1 of 1944)”.

(IV) In sub- section (4), the reference to “section 28” shall be deemed to be reference to “section 11A of the Central Excise Act, 1944 (1 of 1944).”

[Source: www.cbec.gov.in]

**