

## **Taxation Laws (Amendment) Act, 2006**

**29 of 2006**

**[13 July 2006]**

### CONTENTS

#### **CHAPTER 1 :- PRELIMINARY**

1. Short Title

#### **CHAPTER 2 :- DIRECT TAXES**

2. Amendment Of Section 2
3. Amendment Of Section 10
4. Amendment Of Section 12A
5. Amendment Of Section 35
6. Amendment Of Section 35Ac
7. Amendment Of Section 35Cca
8. Amendment Of Section 40
9. Amendment Of Section 40A
10. Amendment Of Section 56
11. Amendment Of Section 80Gga
12. Amendment Of Section 139
13. Amendment Of Section 143
14. Amendment Of Section 155
15. Amendment Of Section 194 I
16. Amendment Of Section 194J
17. Amendment Of Section 246A
18. Amendment Of Section 275
19. Substitution Of New Section For Section 288B. Rounding Off Amount Payable And Refund Due

#### **CHAPTER 3 :- INDIRECT TAXES**

20. Amendment Of Section 17
21. Amendment Of Section 18
22. Amendment Of Section 28
23. Insertion Of New Section 28Ba
24. Amendment Of Section 104
25. Amendment Of Section 108
26. Insertion Of New Section 110A
27. Insertion Of New Section 114Aa
28. Amendment Of Section 124
29. Amendment Of Section 129D

30. Amendment Of Section 132
31. Amendment Of Section 133
32. Amendment Of Section 137
33. Insertion Of New Section 154B
34. Amendment Of Section 8B Of Act 51 Of 1975
35. Amendment Of Section 11A
36. Insertion Of New Section 11Dda
37. Amendment Of Section 35E
38. Insertion Of New Section 37E
39. Amendment Of Rule 16 Of The Central Excise Rules, 2002

## **SCHEDULE 1 :- THE SCHEDULE**

### **Taxation Laws (Amendment) Act, 2006**

**29 of 2006**

**[13 July 2006]**

AN ACT further to amend the Income-tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975 and the Central Excise Act, 1944. BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:--

#### **CHAPTER 1 PRELIMINARY**

##### **1. Short Title :-**

This Act may be called the Taxation Laws (Amendment) Act, 2006.

#### **CHAPTER 2 DIRECT TAXES**

##### **2. Amendment Of Section 2 :-**

In section 2 of the Income-tax Act, 1961 (43 of 1961) (hereafter in this Chapter referred to as the Income-tax Act), in clause (44), after the words "powers of a Tax Recovery Officer", the following shall be inserted, namely:--

"and also to exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under this Act and which may be prescribed".

##### **3. Amendment Of Section 10 :-**

In section 10 of the Income-tax Act, with effect from the 1st day of April, 2006,--

(a) after clause (23BBE), the following clause shall be inserted, namely:--

"(23BBF) any income of the North-Eastern Development Finance Corporation Limited, being a company formed and registered under the Companies Act, 1956 (1 of 1956):

Provided that in computing the total income of the North-Eastern Development Finance Corporation Limited, the amount to the extent of--

(i) twenty per cent. of the total income for assessment year beginning on the 1st day of April, 2006;

(ii) forty per cent. of the total income for assessment year beginning on the 1st day of April, 2007;

(iii) sixty per cent. of the total income for assessment year beginning on the 1st day of April, 2008;

(iv) eighty per cent, of the total income for assessment year beginning on the 1st day of April, 2009;

(v) one hundred per cent. of the total income for assessment year beginning on the 1st day of April, 2010 and any subsequent assessment year or years,

shall be included in such total income;"

(b) in clause (23C),--

(i) in the eighth proviso, for the words, brackets and letters "notification issued by the Central Government under sub-clause (iv) or sub-clause (v) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years", the words, brackets, figures and letters "notification issued by the Central Government under sub-clause (iv) or sub-clause (v), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years" shall be substituted;

(ii) after the eighth proviso, the following provisos shall be inserted, namely:--

"Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:

Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or

sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:".

#### **4. Amendment Of Section 12A :-**

In section 12A of the Income-tax Act, in clause (b), for the words and figures "the provisions of section 11 and section 12 exceeds fifty-thousand rupees in any previous year", the words and figures "the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year" shall be substituted with effect from the 1st day of April, 2006.

#### **5. Amendment Of Section 35 :-**

In the Income-tax Act, in section 35, with effect from the 1st day of April, 2006,--

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

(a) in clause (ii), for the proviso, the following proviso shall be substituted, namely:--

"Provided that such association, university, college or other institution for the purposes of this clause--

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government;"

(b) in clause (iii), for the proviso, the following proviso shall be substituted, namely:--

"Provided that such university, college or other institution for the purposes of this clause--

(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be

prescribed; and

(B) such university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government;";

(c) after clause (iii), the following Explanation shall be inserted, namely:--

"Explanation.--The deduction, to which the assessee is entitled in respect of any sum paid to a scientific research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn;";

(d) in the second proviso, for the word "authority", the word "Government" shall be substituted;

(e) in the third proviso, for the words, brackets and letters "notification issued by the Central Government under clause (ii) or clause (iii) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years", the words, brackets, figures and letters "notification issued, by the Central Government under clause (ii) or clause (iii), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years" shall be substituted;

(f) after the third proviso, the following proviso shall be inserted at the end, namely:--

"Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under clause (ii) or clause (iii) shall be issued or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received by the Central Government.";

(ii) in sub-section (2AA), the Explanation shall be numbered as Explanation 2 thereof and before the Explanation 2 as so numbered, the following Explanation shall be inserted, namely:--

"Explanation 1.--The deduction, to which the assessee is entitled in respect of any sum paid to a National Laboratory, University, Indian Institute of Technology or a specified person for the approved programme referred to in this sub-section, shall not be denied merely on the ground that, subsequent to the payment of such

sum by the assessee, the approval granted to,--

- (a) such Laboratory, or specified person has been withdrawn; or
- (b) the programme, undertaken by the National Laboratory, University, Indian Institute of Technology or specified person, has been withdrawn."

#### **6. Amendment Of Section 35Ac :-**

In section 35AC of the Income-tax Act, after sub-section (2), the following Explanation shall be inserted with effect from the 1st day of April, 2006, namely:--

"Explanation.--The deduction, to which the assessee is entitled in respect of any sum paid to a public sector company or a local authority or to an association or institution for carrying put the eligible project or scheme referred to in this section applies, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee,--

- (a) the approval granted to such association or institution has been withdrawn; or
- (b) the notification notifying the eligible project or scheme carried out by the public sector company or local authority or association or institution has been withdrawn."

#### **7. Amendment Of Section 35Cca :-**

In section 35CCA of the Income-tax Act, after sub-section (2A), the following Explanation shall be inserted with effect from the 1st day of April, 2006, namely:--

"Explanation.--The deduction, to which the assessee is entitled in respect of any sum paid to an association or institution for carrying out the programme of rural development referred to in sub-section (1), shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to such programme of rural development, or as the case may be, to the association or institution has been withdrawn."

#### **8. Amendment Of Section 40 :-**

In section 40 of the Income-tax Act, in clause (a), in sub-clause (ia), with effect from the 1st day of April, 2006,--

- (a) after the words "commission or brokerage,", the words "rent, royalty," shall be inserted;
- (b) in the Explanation, after clause (iv), the following clauses shall

be inserted at the end, namely:--

(v) "rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I;

(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;.

### **9. Amendment Of Section 40A :-**

In section 40A of the Income-tax Act, in sub-sections (3) and (4), for the words "a crossed cheque drawn on a bank or by a crossed bank draft", wherever they occur, the words "an account payee cheque drawn on a bank or account payee bank draft" shall be substituted.

### **10. Amendment Of Section 56 :-**

In section 56 of the Income-tax Act, in sub-section (2),--

(a) in clause (v), --

(i) after the words, letters and figures "after the 1st day of September, 2004", the words, letters and figures "but before the 1st day of April, 2006" shall be inserted with effect from the 1st day of April, 2006;

(ii) in the proviso, after clause (d), the following clauses shall be inserted, namely:--

"(e) from any local authority as defined in the Explanation to clause (20) of section 10; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(g) from any trust or institution registered under section 12AA.";

(b) after clause (v) and the Explanation, the following shall be inserted with effect from the 1st day of April, 2007, namely:--

"(vi) where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu undivided family, in any previous year from any person or persons on or after the 1st day of April, 2006, the whole of the aggregate value of such sum:

Provided that this clause shall not apply to any sum of money received --

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer; or

- (e) from any local authority as defined in the Explanation to clause (20) of section 10; or
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- (g) from any trust or institution registered under section 12AA.

Explanation.--For the purposes of this clause, "relative" means--

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendant or descendant of the individual;
- (vi) any lineal ascendant or descendant of the spouse of the individual;
- (vii) spouse of the person referred to in clauses (ii) to (vi)."

### **11. Amendment Of Section 80Gga :-**

In section 80GGA of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2006 --

(a) after clause (aa), the following Explanation shall be inserted, namely:--

"Explanation.--The deduction, to which the assessee is entitled in respect of any sum paid to a scientific research association, University, college or other institution to which clause (a) or clause (aa) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval to such association, University, college or other institution referred to in clause (a) or clause (aa), as the case may be, has been withdrawn;"

(b) after clause (b), the following Explanation shall be inserted, namely:--

"Explanation.--The deduction, to which the assessee is entitled in respect of any sum paid to an association or institution for carrying out the programme of rural development to which this clause applies, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to such programme, or as the case may be, to the association or institution has been withdrawn."

(c) in clause (bb), the Explanation shall be numbered as Explanation 1 thereof and before the Explanation 2 as so numbered, the following Explanation shall be inserted, namely:--

"Explanation 1.--The deduction, to which the assessee is entitled in respect of any sum paid to a public sector company, or to a local authority or to an association or institution for carrying out the eligible project or scheme referred to in section 35AC, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee,--

(a) the approval granted to such association or institution has been withdrawn; or

(b) the notification notifying the eligible project or scheme referred to in section 35AC carried out by the public sector company, or local authority or association or institution has been withdrawn."

## **12. Amendment Of Section 139 :-**

In section 139 of the Income-tax Act, with effect from the 1st day of April, 2006, --

(a) in sub-section (4C), in clause (e),--

(i) for the word, brackets and figures "sub-clause (vi)", the words, brackets, figures and letters "sub-clause (iiiad) or sub-clause (vi)" shall be substituted;

(ii) for the word, brackets, figures and letter "sub-clause (via)", the words, brackets, figures and letters "sub-clause (iiiiae) or sub-clause (via)" shall be substituted;

(b) after sub-section (4C), the following sub-section shall be inserted, namely:--

"(4D) Every university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35, which is not required to furnish return of income or loss under any other provision of this section, shall furnish the return in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1)."

## **13. Amendment Of Section 143 :-**

In section 143 of the Income-tax Act, in sub-section (3), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2006, namely:--

"Provided further that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was

approved, he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer."

#### **14. Amendment Of Section 155 :-**

In section 155 of the Income-tax Act, after sub-section (11), the following sub-section shall be inserted, namely:--

"(11A) Where in the assessment for any year, the deduction under section 10A or section 10B or section 10BA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee with the approval of the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 10A or section 10B or section 10BA, as the case may be, in respect of such income or part thereof as is so received in, or brought into, India, and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.";

#### **15. Amendment Of Section 194 I :-**

In section 194-I of the Income-tax Act, in the Explanation, for clause (i), the following clause shall be substituted, namely:--

(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any, --

(a) land; or

(b) building (including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

- (e) plant; or
  - (f) equipment; or
  - (g) furniture; or
  - (h) fittings,
- whether or not any or all of the above are owned by the payee;.

#### **16. Amendment Of Section 194J :-**

In section 194 J of the Income-tax Act, in sub-section (1), --

- (i) in clause (b), the word "or" shall be inserted at the end;
- (ii) after clause (b), the following clauses shall be inserted, namely:--

"(c) royalty, or

(d) any sum referred to in clause (va) of section 28,";

- (iii) in the first proviso, in clause (B),--

(a) in sub-clause (ii), for the word, brackets and letter "clause (b):", the words, brackets and letter "clause (b), or" shall be substituted;

(b) after sub-clause (ii), the following clauses shall be inserted, namely:--

"(iii) twenty thousand rupees, in the case of royalty referred to in clause (c), or

(iv) twenty thousand, rupees, in the case of sum referred to in clause (d):";

(iv) in the Explanation, after clause (b), the following clause shall be inserted, namely:--

(ba) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;.

#### **17. Amendment Of Section 246A :-**

In section 246A of the Income-tax Act, in sub-section (1), after clause (j), the following clause shall be inserted, namely:--

"(ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;".

#### **18. Amendment Of Section 275 :-**

In section 275 of the Income-tax Act, after sub-section (1), the following sub-section shall be inserted, namely:--

"(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal

under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264:

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed--

(a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed:

Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section."

### **19. Substitution Of New Section For Section 288B. Rounding Off Amount Payable And Refund Due :-**

In Income-tax Act, for section 288B, the following section shall be substituted, namely:--

"288B. Any amount payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple often, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple often and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a

multiple often".

### **CHAPTER 3 INDIRECT TAXES**

#### **20. Amendment Of Section 17 :-**

In the Customs Act, 1962 (52 of 1962) (hereafter referred to as the Customs Act), in section 17, after sub-section (4), the following sub-section shall be inserted, namely:--

"(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

#### **21. Amendment Of Section 18 :-**

In section 18 of the Customs Act, after sub-section (2), the following sub-sections shall be inserted, namely:-

"(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to-

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75."

## **22. Amendment Of Section 28 :-**

In section 28 of the Customs Act,--

(a) after sub-section (1), the following sub-section shall be inserted, namely:-

"(1A) When any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under the proviso to sub-section (1) by the proper officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 28AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.";

(b) to sub-section (2), the following provisos shall be added, namely:-

"Provided that if such person has paid the duty in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub-section (1) shall, without prejudice to the provisions of sections 135, 135A and 140, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the proper officer shall determine the amount of duty or interest not being in excess of the amount partly due from such person."

## **23. Insertion Of New Section 28Ba :-**

After section 28B of the Customs Act, the following section shall be inserted, namely:--

"28BA Provisional attachment to protect revenue in certain cases.

(1) Where, during the pendency of any proceeding under section

28 or section 28B, the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (2) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Customs may, for reasons to be recorded in writings extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement of case under section 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 127C is made shall be excluded from the period specified in the preceding proviso."

#### **24. Amendment Of Section 104 :-**

In section 104 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:--

"(1) If an officer of customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest."

#### **25. Amendment Of Section 108 :-**

In section 108 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:--

"(1) Any gazetted officer of customs 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 under this Act."

## **26. Insertion Of New Section 110A :-**

After section 110 of the Customs Act, the following section shall be inserted, namely:--

"110A Provisional release of goods, documents and things seized pending adjudication.

Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require."

## **27. Insertion Of New Section 114Aa :-**

After section 114A of the Customs Act, the following section shall be inserted, namely:--

"114AA Penalty for use of false and incorrect material.If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

## **28. Amendment Of Section 124 :-**

In section 124 of the Customs Act, in clause (a), for the words "writing informing", the words "writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing" shall be substituted.

## **29. Amendment Of Section 129D :-**

In section 129D of the Customs Act, in sub-section (2), for the words "such authority", the words "such authority or any officer of customs subordinate to him" shall be substituted.

## **30. Amendment Of Section 132 :-**

In section 132 of the Customs Act. for the words "six months", the words "two years" shall be substituted.

## **31. Amendment Of Section 133 :-**

In section 133 of the Customs Act, for the words "six months", the

words "two years" shall be substituted.

**32. Amendment Of Section 137 :-**

In section 137 of the Customs Act, in sub-section (1), for the word and figures "section 135", the words, figures and letter "section 135 or section 135A" shall be substituted.

**33. Insertion Of New Section 154B :-**

After section 154A of the Customs Act, the following section shall be inserted, namely:--

"154B Publication of information respecting persons in certain cases. (1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under this Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Commissioner (Appeals) under section 128 or the Appellate Tribunal under section 129A, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.-In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it".

**34. Amendment Of Section 8B Of Act 51 Of 1975 :-**

CUSTOMS TARIFF

In section 8B of the Customs Tariff Act, 1975, in the first proviso to sub-section (1), for the words "all such countries", the words "developing countries each with less than three per cent. import share" shall be substituted.

**35. Amendment Of Section 11A :-**

EXCISE

In section 11A of the Central Excise Act, 1944 (1 of 1944)

(hereafter referred to as the Central Excise Act),-

(a) after sub-section (1), the following sub-section shall be inserted, namely:--

"(1A) When 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 the rules made thereunder with intent to evade payment of duty, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 11AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.";

(b) to sub-section (2), the following provisos shall be added, namely:--

"Provided that if such person has paid the duty in full together with, interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub-section (1) shall, without prejudice to the provisions of sections 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the Central Excise Officer, shall determine the amount of duty or interest not being in excess of the amount partly due from such person."

### **36. Insertion Of New Section 11Dda :-**

After section 11DD of the Central Excise Act, the following section shall be inserted, namely:--

"11DDA Provisional attachment to protect revenue in certain cases.

(1) Where, during the pendency of any proceedings under section 11A or section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962 (52 of

1962).

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement of case under section 32E is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 32F is made shall be excluded from the period specified in the preceding proviso."

### **37. Amendment Of Section 35E :-**

In section 35E of the Central Excise Act, in sub-section (2), for the words "such authority", the words "such authority or any Central Excise Officer subordinate to him" shall be substituted.

### **38. Insertion Of New Section 37E :-**

After section 37D of the Central Excise Act, the following section shall be inserted, namely:--

"37E Publication of information respecting persons in certain cases.

(1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under this Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Commissioner (Appeals) under section 35 or the Appellate Tribunal under section 35B, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.--In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be

published if, in the opinion of the Central Government, circumstances of the case justify it."

### **39. Amendment Of Rule 16 Of The Central Excise Rules, 2002 :-**

(1) In the Central Excise Rules, 2002, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, rule 16 thereof as published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. G.S.R. 143(E), dated the 1st March, 2002 shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in column (2) of the Schedule for the period specified in column (3) of that Schedule against the rule specified in column (1) of that Schedule.

(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, at any time during the period commencing on and from the 29th day of May, 2003 and ending with the 8th day of July, 2004 under the rule as amended by sub-section (1), shall be deemed to be and always to have been, for all the purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times.

(3) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times.

Explanation.--For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence, which would not have been so punishable if this section had not come into force.

#### **SCHEDULE 1**

THE SCHEDULE

(See section 39)

Provisions of the Central Excise Rules, 2002 to be amended Amendment Period of effect of amendment

Rule 16 of the Central Excise Rules, 2002 as published vide notification No. G.S.R. 143(E), dated the 1st March, 2002. In the Central Excise Rules, 2002, in rule 16, after sub-rule (3), the following provisos shall be inserted, namely:--

Provided that for the purposes of this rule, "assessee" shall include wire drawing unit, which has cleared the goods on payment of an amount equal to the duty at the rate applicable to drawn wire on the date of removal and on the value

determined under relevant provisions of the Act and the rules made thereunder:  
Provided further that the amount paid under the first proviso shall be allowed as CENVAT credit as if it was duty paid by the assessee who removes the goods.. 29th day of May, 2003 to 8th day of July, 2004 (both days inclusive).