

## **CUSTOMS ACT, 1962**

## **BUDGET ANALYSIS 2022-23**

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**CUSTOMS ACT 1962:**

Section	Existing	Amendment	Bizsol Analysis
2(34)	(34) " <b>proper officer</b> ", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the <sup>29</sup> [Principal Commissioner of Customs or Commissioner of Customs];	(34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs <b>under section 5;</b>	<p><b>The definition has been broadened so as to include any officer has designated / deputed that Principal Commissioner of Customs. It is mainly to include DRI officers, since number of judicial decisions held that there is no authority to issue the SCN to DRI Offices / offices &amp; their Jurisdictions &amp; class of officers &amp; class of taxpayers etc.</b></p> <p><b>Further, this mainly to facilitate the faceless assessment and adjudication of any import and export consignment throughout India.</b></p>
3	<p><b>3. Classes of officers of customs:</b></p> <p>There shall be the following classes of officers of customs, namely:-</p> <p>2 [(a) Principal Chief Commissioners of Customs; (b) Chief Commissioners of Customs; (c) Principal Commissioners of Customs; (d) Commissioners of Customs; (e) Commissioners of Customs (Appeals); (f) Joint Commissioners of Customs; (g) Deputy Commissioners of Customs; (h) Assistant Commissioner of Customs; (i) such other class of officers of customs as may be appointed for the purposes of this Act.]</p>	<p><b>3. Classes of officers of customs:</b></p> <p>3. There shall be the following classes of officers of customs, namely:- (a) Principal Chief Commissioner of Customs or Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence (b) Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or Director General of Revenue Intelligence; (c) Principal Commissioner of Customs or Principal Commissioner of Customs (Preventive) or Principal Additional Director General of Revenue Intelligence or Principal Commissioner of Customs (Audit); (d) Commissioner of Customs or Commissioner of Customs (Preventive) or Additional Director General of Revenue Intelligence or Commissioner of Customs (Audit);</p>	

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		(e) Principal Commissioner of Customs (Appeals); (f) Commissioner of Customs (Appeals); (g) Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or Additional Director of Revenue Intelligence or Additional Commissioner of Customs (Audit); (h) Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or Joint Director of Revenue Intelligence or Joint Commissioner of Customs (Audit); (i) Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or Deputy Director of Revenue Intelligence or Deputy Commissioner of Customs (Audit); (j) Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or Assistant Director of Revenue Intelligence or Assistant Commissioner of Customs (Audit); (k) such other class of officers of customs as may be appointed for the purposes of this Act.”.	
5(1A) & (1B)	<b>Powers of officers of customs:</b>	<b>Powers of officers of customs:</b> “(1A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such	

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		<p>functions. (1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.”;</p>	
<p><b>5(4) &amp; (5)</b></p>		<p>“(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to— (a) territorial jurisdiction; (b) persons or class of persons; (c) goods or class of goods; (d) cases or class of cases; (e) computer assigned random assignment; (f) any other criterion as the Board may, by notification, specify. (5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under</p>	

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14 Second proviso to Sub-Section (1) (iv)	14. Valuation of goods :	<p>this Act.”.</p> <p><b>Valuation of Goods:</b></p> <p>(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:”.</p>	<p><b>Importer has to exercise proper check of ensuring comparative value of identical goods / similar goods.</b></p> <p><b>New Rules will be framed w.r.t. additional checks for seeking declaration by importer for class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. This amendment is a measure to address the issue of undervaluation in imports.</b></p>
28E(c) & (h)	<p><b>Definitions</b></p> <p>(C) Explanation. - For the purposes of this clause, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.'</p> <p>(h) "non-resident", "Indian company" and "foreign company" have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961).]</p>	Omitted	<p><b>Now, explanation has been omitted and definition of “non-resident”, "Indian company foreign company" have been removed for the purpose of Advance Ruling provisions.</b></p>

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28H(1), (3) & (4)	<p><b>Application for advance ruling:</b></p> <p>(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.</p> <p>(3) The application shall be made in quadruplicate and be accompanied by a fee of 4[ten thousand rupees].</p> <p>(4) An applicant may withdraw his application <del>within thirty days from the date of the application.</del></p>	<p><b>Application for advance ruling:</b></p> <p>(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner and <b>accompanied by such fee as may be prescribed</b>, stating the question on which the advance ruling is sought.</p> <p>Omitted</p> <p>(4) An applicant may withdraw his application <b>at any time before an advance ruling is pronounced</b></p>	<p><b>Provision of payment of fees has been included in the section itself and it can be enhanced any time by issuance of notification.</b></p> <p><b>Advance Ruling Application can be withdrawn any time before announcement of the order.</b></p>
28I (7)	<p><b>28I Procedure on receipt of application.</b></p> <p>(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the 6 [Principal Commissioner of Customs or Commissioner of Customs], as soon as may be, after such pronouncement.</p>	<p><b>28I Procedure on receipt of application.</b></p> <p>(7) A copy of the advance ruling pronounced by the Authority, duly signed <del>by the Members</del> and certified in the prescribed manner shall be sent to the applicant and to the 6 [Principal Commissioner of Customs or Commissioner of Customs], as soon as may be, after such pronouncement.</p>	<p><b>In the digitized era, it may not be necessary to sign by the members. Such order can be directly sent after certification by proper officer.</b></p>
28J(2)	<p><b>28J : Applicability of advance ruling:</b></p> <p>(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.</p>	<p><b>28J: Applicability of advance ruling:</b></p> <p>(2) The advance ruling referred to in sub-section (1) shall remain valid for three years</p>	<p><b>This is the welcome provision.</b></p> <p><b>Validity of Advance Ruling Application will be for 3 years or change of the law or fact whichever is earlier.</b></p>

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		<p>or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier:</p> <p>Provided that in respect of any advance ruling in force on the date on which the Finance Bill, 2022 receives the assent of the President, the said period of three years shall be reckoned from the date on which the said Finance Bill receives the assent of the President.”.</p>	
110AA	Newly Inserted	<p><b>110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose.</b></p> <p>Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that :</p> <p>(a) any duty has been short-levied, not levied, short paid or not paid in a case where assessment has already been made;</p> <p>(b) any duty has been erroneously refunded;</p> <p>(c) any drawback has been erroneously allowed; or (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded, then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit,</p>	<p><b>This provision was necessary in the view of e-assessment / e-adjudication, where assessment can be take place by any officer and if such issues of evasion / wrong refund / drawback etc. noticed then it can be informed to the Jurisdictional Customs officer.</b></p> <p><b>Further, if any officers notices based on any information, such information will be shared to the proper officer for appropriate action.</b></p> <p><b>Further, in case of multiple jurisdiction of import &amp; export consignments at different ports, it can be assigned to any specified proper officer to decide the issue for all the custom ports.</b></p>

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		transfer the relevant documents, along with a report in writing– (a) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or (b) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5, and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5.	
135AA	Newly Inserted	<b>135AA. Protection of data.</b>  (1) If a person publishes any information relating to the value or classification or quantity of goods entered for export from India, or import into India, or the details of the exporter or importer of such goods under this Act, unless required so to do under any law for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.	<b>This is also welcome provision.</b>  <b>Section 135AA is being inserted to protect the import and export data submitted to Customs by importers or exporters in their declarations by making the publishing of such information unless provided by the law, as an offence under Customs Act.</b>  <b>Now, import and export data will not be readily available, which was otherwise available as of now for sale.</b>

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		<p>(2) Nothing contained in this section shall apply to any publication made by or on behalf of the Central Government.</p> <p>Explanation: For the purposes of this section, the expression “publishes” includes reproducing the information in printed or electronic form and making it available for the public.</p>	
137	<p><b>137 Cognizance of offences.</b></p> <p>(1) No court shall take cognizance of any offence under section 132, section 133, section 134 or 1 [section 135 or section 135A], except with the previous sanction of the 2 [Principal Commissioner of Custom or Commissioner of Customs].</p>	<p><b>137 Cognizance of offences:</b></p> <p>(1) No court shall take cognizance of any offence under section 132, section 133, section 134 or section 135 or section 135A <b>or section 135AA</b>, except with the previous sanction of the Principal Commissioner of Custom or Commissioner of Customs.</p>	<p><b>If data has been disclosed by any person, it will be treated as offence and penalty &amp; fine will be imposed.</b></p>
Validation of certain actions taken under Customs Act.		<p>96. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act),—</p> <p>(i) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIIA, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken;</p>	<p><b>This clause seeks to give validation to any action taken or functions performed before the date of commencement of the Finance Act, 2022, under certain Chapters of the Customs Act by any officer of Customs, as specified in Section 3 of the Customs Act, as amended, where such action was in pursuance of their appointment and assigning of functions by the Central government or the Board under the Customs Act.</b></p>

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		<p>(ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;</p> <p>(iii) for the purposes of this section, sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.</p> <p>Explanation. For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by this Act.</p>	

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