27

STANDING COMMITTEE ON FINANCE (2005-2006)

FOURTEENTH LOK SABHA

THE TAXATION LAWS (AMENDMENT) BILL, 2005

TWENTY SEVENTH REPORT

LOK SABHA SECRETARIAT
NEW DELHI

December, 2005/*Agrahayana*, 1927 (*Saka*)

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Presented to Lok Sabha on 13.12.2005
Laid in Rajya Sabha on 13.12.2005

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COF No. 27

Price : Rs. 50.00

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Eleventh Edition) and Printed by Jainco Art India, New Delhi.

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INTRODUCTION

I, the Chairman of the Standing Committee on Finance having been authorised to submit the Report on their behalf present this Twenty Seventh Report on the Taxation Laws (Amendment) Bill, 2005.

2. The Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12th May, 2005, was referred to the Committee on 13th May, 2005 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Revenue), who also briefed them at their sitting held on 14th July, 2005.

4. Written views/memoranda were received from Confederation of Indian Industry (CII), Taxindiaonline, Shri R.N. Lakhotia, Senior Tax Consultant and Advocate, Shri R. Krishnan, Advocate and Consultant-Indirect Taxes, Shri S. Sampath, Consultant-Corporate Taxes, Shri P.N. Mittal, Member, CBDT (Retd.), Shri Vijay Mathur, DGIT (International Taxation), Delhi (Retd.) and Shri A.N. Prasad, CCIT, Delhi (Retd.)

5. The Committee, at their sitting held on 6 September, 2005 heard the views of the representatives of Confederation of Indian Industry (CII), Shri P.N. Mittal, Shri Vijay Mathur and Shri A.N. Prasad.

6. On 29th September, 2005 the Committee heard the views of Shri R. Krishnan and Shri S. Sampath.

7. On 30th September, 2005 the Committee heard the views of Shri R.N. Lakhotia and the representatives of Taxindiaonline.

8. The Committee took oral evidence of the Ministry of Finance (Department of Revenue) on 8th November, 2005.

9. The Committee considered and adopted the draft report at their sitting held on 8th December, 2005.

10. The Committee wish to express their thanks to the officers of the Ministry of Finance (department of Revenue), representatives of

the Confederation of Indian Industry (CII), Shri R. Krishnan, Shri S. Sampath, Shri R.N. Lakhotia, Shri P.N. Mittal, Shri Vijay Mathur, Shri A.N. Prasad and the representatives of Taxindiaonline for their co-operation in placing before them their considered views and perceptions on the provisions of the Bill and for furnishing written notes and information that the Committee had desired in connection with the examination of the Taxation Laws (Amendment) Bill, 2005.

11. For facility of reference, recommendations/observations of the Committee have been printed in thick type.

NEW DELHI;
12 *December,* 2005
21 *Agrahayana,* 1927 *(Saka)*

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

REPORT

Background

The Taxation Laws (Amendment) Bill, 2005 proposes to carry out certain amendments in the Income Tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956 with the object of rationalising and simplifying certain procedures, widening of tax base and plugging loopholes leading to leakage of revenue.

2. The Finance Minister, in his Budget speech, while introducing the Finance Bill, 2005 had stated:

> "I have received many suggestions on amendments to the direct tax laws and the indirect tax laws. I have decided to accept some suggestions that require to be acted upon immediately, but I do not propose to burden the Finance Bill with those changes. Instead, I intend to introduce a separate Bill for that purpose during this session. In due course, I intend to place before Parliament a revised and simplified Income Tax Bill.

3. The Taxation Laws (Amendment) Bill, 2005 was introduced in Lok Sabha on 12 May, 2005 and referred to the Standing Committee on Finance by the Hon'ble Speaker on 13 May, 2005 for examination and report thereon.

4. On the purport of introducing the Bill and the current status in regard to formulation of the revised simplified Income Tax Bill mentioned about by the Finance Minister in the Budget Speech (2005-06), the Ministry, in their written reply to queries raised by the members of the Committee, *inter alia*, states as under:

> "…certain consequential and procedural provisions have been introduced in the Taxation Laws (Amendment) Bill, 2005. The new simplified Income-tax Bill is only intended to be a simplified form of the existing Act. Therefore, these provisions have been proposed through the Taxation Laws (Amendment) Bill, 2005."

Overview of the provisions

5. Some of the provisions of the Taxation Laws (Amendment) Bill, 2005 pertaining to Direct Taxes (Income Tax) as well as Indirect Taxes

(Customs and Central Excise) and the rationale and purpose of introducing the provisions, as seen from the Notes furnished by the Ministry and the Statement of Objects and Reasons of the Bill, are briefly delineated as under:

(a) Direct Taxes:

(i) Clause 2

6. As per the existing provisions of the Income Tax Act, "Tax Recovery Officer" means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer. The amendment proposal under Clause 2 of the Bill seeks to provide that the Tax Recovery Officer may also exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under the Income-tax Act, and which may be prescribed.

(ii) Clause 3

7. Tax exemptions that are provided to various entities under the Income Tax Act *inter alia*, include:

(i) Charitable fund or institution having importance throughout India or throughout any State or States—Section 10 (23C) (iv);

(ii) Trust or legal obligation or institution wholly for public religious purposes or wholly for public religious and charitable purposes—Section 10(23C) (vi);

(iii) University or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution exceed the prescribed amount of Rs. 1 crore—Section 10(23C) (v);

(iv) Hospital or other medical institution existing solely for philanthropic purposes and not for purposes and profit if the aggregate annual receipts of such hospital or other medical institution exceed the prescribed amount of Rs. 1 crore—Section 10 (23C) (via).

8. As the procedure of periodic renewal of approval has proved to be cumbersome and is also resulting in considerable delays, with the amendment proposals under Clause 3, the requirement of renewal for

entities claiming exemption under section 10(23C) (iv), (v), (vi) and (via) is sought to be done away with. Once the approval is granted/ notification issued, the same will be valid till it is withdrawn or rescinded, as the case may be. Further, it is proposed to provide a one year time limitation for grant/refusal of the approval or issue of notification, and simultaneously make it mandatory for entities claiming exemption under section 10(23C) (iv), (v), (vi) and (via) to get the accounts audited by an accountant, obtain an audit report and file a copy of such audit report along with their return of income.

9. The universities or other educational institutions or hospitals or other medical institutions whose aggregate annual receipts do not exceed the prescribed amount of Rs. 1 crore are given unconditional exemption without requirement of any approval or renewal under section 10(23C) (iiiad) and (iiiae) of the Income-tax Act. There is no stipulation for these entities to file their tax returns or get their accounts audited. With a view to enable the department to ascertain whether the aggregate annual receipts of such entities is below Rs. 1 crore and are established solely for educational/medical/philanthropic purposes, as the case may be, and not for the purpose of profit, the Income-tax Act, 1961, is proposed to be amended to make it mandatory for the entities to file their returns of income, if the income exceeds the basic exemption limit.

(iii) Clauses 5 and 10

10. Under the existing provisions contained in the provisos to clause (ii) and clause (iii) of sub-section (1) of section 35 of the Income-tax Act, the Central government grants approval to an association, university, college or other institution donations to which are entitled to a deduction to the extent of 125% of the sum donated. With the proposals under Clause 5, the provisos to clause (ii) and clause (iii) of sub-section (1) of section 35 are *inter alia* sought to be amended so as to empower the Central Board of Direct Taxes to lay down, by rules, the manner in which an association, university, college or other institution is to be granted approval and the guidelines and conditions to be fulfilled for grant of such approval by the Central Government. it is further proposed to do away with the requirement of renewal of approval for such institutions and to provide a time limit of one year, from the end of the month in which the application is received, within which the Central Government may grant approval in suitable cases.

11. With the amendments proposed to be carried out in Section 143 of the Income Tax Act, 1961 (in terms of Clause 10) the assessment

procedure would be used as a check-point against any malpractice in the absence of any requirement for renewal. In a case of contravention found during the assessment proceedings, the Assessing Officer would be required to intimate the contravention to the Central Government and thereupon, the Central Government may withdraw the Notification rescinding the approval granted earlier.

(b) Indirect Taxes (Customs and Central Excise)

(iv) Clause 18

12. Presently, Section 18 of the Customs Act, which provides for provisional assessment of duty does not provide for various issues arising from the finalisation of provisional assessment. The proposals of Clause 18 seek to insert sub-section (3), sub-section (4) and sub-section (5) to section 18 of the Customs Act, 1962 to provide for a mechanism to regularise the payments of duty short levied and interest thereon and duties that are to be refunded on finalisation of a provisional assessment.

(v) Clause 19 (Amendment of Section 28 of the Customs Act) and Clause 32 (Amendment of Section 11A of the Central Excise Act)

13. An optional scheme for enabling voluntary payment of duty by assessees, in full or in part, in cases involving fraud, mis-statement etc. alongwith interest and 25% of the duty amount as penalty within 30 days of the receipt of the show-cause-notice is proposed to be introduced by amending Section 28 of the Customs Act, 1962 in terms of the proposals under Clause 19. This scheme is intended to be an additional facility to the Trade to settle disputes at an early stage and is independent of the existing Section 114A of the Act, which *inter alia* allows a reduction in the penalty by 75% of the duty determined if all the dues are paid within 30 days of the communication of the adjudication order.

14. With the proposals under Clause 32, a similar optional scheme for enabling voluntary payment of duty by assessees, in full or in part within 30 days of the receipt of the show-cause-notice is sought to introduced in the Central Excise Act, 1944 by amending Section 11A of the Act. As in the case of the Customs Act, the proposal is independent of the existing Section 11A of the Central Excise Act, which allows a reduction in the penalty by 75% of the duty determined if all the dues are paid within 30 days of the communication of the adjudication order.

(vi) Clause 20 (Insertion of a new Section 28BA in the Customs Act)

15. Whereas the proposals of Clause 20 seek to insert a new section 28BA in the Customs Act, 1962, Clause 33 aims to insert a new Section 11DDa in the Central Excise Act, 1944 to provide for provisional attachment of property during the pendency of proceedings relating to the determination of Custom duty or Excise duty evaded as the case may be.

16. The Committee received written views/suggestions on the various provisions of the Taxation Laws (Amendment) Bill from (i) Confederation of Indian Industry, (ii) Shri R.N. Lakhotia, Senior Tax Consultant and Advocate, (iii) Shri K. Vijay Kumar, Editor-in-Chief, Taxindiaonline.com Pvt. Ltd., (iv) Shri Krishnan, (v) Shri S. Sampath, (vi) Shri P.N. Mittal, (vii) Shri Vijay Mathur, and (viii) Shri A.N. Prasad.

17. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) to further enlighten themselves on various aspects of the proposed legislation.

18. The Committee note that the amendments proposed in the Income Tax, Customs and Central Excise Acts are mainly intended to rationalise and simplify certain procedures, widen the tax base and plug loopholes, that lead to leakage of revenue. While some of the proposals, which *inter-alia* include streamlining the approval and monitoring processes for Charitable Institutions, Scientific Research Institutions etc. under the Income Tax Act; and issuance of 'speaking order' within 15 days in the event of contradictory views on valuation of import and export goods under the Customs Act have been generally welcomed by the Experts and other interested bodies, certain other provisions have been viewed with an element of skepticism.

19. Upon considering the provisions of the Taxation Laws (Amendment) Bill, 2005 in the light of the views expressed by Experts and other interested bodies, and the clarifications furnished by the Ministry of Finance, the Committee endorse the same for enactment subject to the observations/recommendations as detailed in the subsequent paragraphs of the report.

Clause 2 (Amendment of section 2)

20. The Clause reads as under:

In section 2 of the Income-tax Act, 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".

21. Questioned about the rationale or the justification for seeking to confer certain powers of the Assessing Officer (AO) on the Tax Recovery Officer (TRO), the representative of the Ministry stated as under during the briefing meeting:

> "…what we noticed and what was happening was that the TRO was being asked by the Assessing Officer to make recovery. When he issues the notice and the assessee comes to him and says that he has already made the payment or some rectification is required or some appeal effect has not been given, the TRO says him to go to the Assessing Officer and get this done, or he does not listen to him at all and says: "No. No, you are making misrepresentation, you make the payment right now." That was happening. The TRO himself did not have any power to provide instant relief to the person. Suppose a TRO has issued a notice and somebody comes to him and explains him that that amount is not due, he should have the power to pass an order, stating that he has seen the receipts, he has seen the evidence. That is what is being provided here."

22. Questioned further whether the proposal intend to confer upon the TRO the powers of imposing 'punishment' in addition to providing relief to the assessees, the representative stated as follows:

> "It is only a power to give relief. It is because whenever assessees come to TRO, they only say that they have already paid it or some adjustment is required, some appeal effect is pending or rectification is pending. But the TRO did not have the power to do it. He used to tell them to go to the Assessing Officer and get the same done. That created some problems. That is why in order that these things get done expeditiously, this provision is put here."

23. The individual experts, who gave their views on the provisions of the Bill have been generally skeptical on the proposal to confer additional powers of the Assessing Officer on the TRO in terms of the provisions of clause 2. It was *inter-alia* pointed out that the move would be practicable or effective only if the TRO has easy access to the assessment records for carrying out rectifications; problems relating

to co-ordination between the TRO and the Assessing Officer would arise owing to the proposal; and the issue of conferring additional powers, as may be needed on the TRO, could be achieved through administrative means rather than the proposed amendment.

24. Asked to respond to these view points expressed before the Committee, the Ministry, in a written reply stated as follows:

> "Clause 2 of the Bill seeks to enable a Tax Recovery Officer (TRO) to exercise limited functions of an Assessing Officer (AO) as may be prescribed. Such limited functions shall be like carrying of rectification of apparent mistakes, giving effects to order of appellate authorities, etc. Such power will enable a TRO to expeditiously determine the demand to be collected by him in cases where a claim is made before him that demand referred to him for collection needs some adjustments. The delay in giving appeal effects, etc. in such cases, may not be solved administratively, because TRO has to refer the matter back to the Assessing Officer. Therefore, it is appropriate to assign such powers to TRO himself. Further, as a TRO will have to act upon in respect of application made to him, there will be no problem in fixing responsibility for delay in disposing off such application by him. There is also no legal conflict in assigning the limited functions of AO to TRO."

25. In this regard, a representative of the Ministry *inter alia* stated as follows during oral evidence:

> "It was felt by the Committee that most probably the role which we are assigning to the TRO may not be in line with the functional requirement of the work. It was also felt that the TRO is given only the work of recovery, and, with much more functional specialization, he may be able to perform better. But our experience has been that sometimes, the TRO is not effective. The point is that when he proceeds to recover the demand dues, the point that comes is that some rectification is pending or sometimes it is found that some other appeal effect is not given. We want to give limited powers to the TRO. We are not giving all the powers of the Assessing Officer but only a limited power."

26. By way of conferring additional powers of the Assessing Officer on the TRO—which are proposed to be limited to rectification of mistakes in the assessment orders, giving effect to orders of appellate authorities etc., it is intended to enable speedy and effective settlement of the demands/applications of the assessees. Though the proposal enabling for speedy settlement of assessment related issues

would be tax payer friendly, the Committee feel that for achieving the intended purpose it may be essential to comprehensively address the prevailing norms, procedures and regulations relating to the functioning of the 'Tax Administration'. The Committee, therefore, desire that the administrative instructions/regulations relating to the additional powers proposed to be conferred on the TRO are clear and specific on confining such powers to rectification of mistakes in assessment orders, effecting orders of Appellate Authorities etc. The Committee also expect the Government to ensure that the proposal would, in no way, affect the co-ordination in the hierarchy of Income Tax authorities.

27. The Committee find that the Government are bringing in amendments to the Income Tax Act very frequently, which cause difficulties in comprehending the law by various people concerned. The Committee, therefore, urge the Government to come out with a comprehensive simplified single legislation at the earliest.

Clause 5 (Amendment of section 35) and clause 10 (Amendment of section 43)

28. Clause 5 of the Bill which relates to 'Expenditure on Scientific Research' reads as follows:

"In the Income-tax Act, in section 35, in sub-section (1), with effect from the 1st day of April, 2006,—

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

(d) 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 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, 2005 received the assent of the President, shall, at any time, have effect for such assessment year or years, not exceeding three assessment years" shall be substituted;

(e) 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, 2005 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:".

29. Clause 10, which relates to 'withdrawal' of approval to institutions referred to under the provisions of clause 5 of the Bill reads as follows:

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."

30. Giving the rationale behind the proposals made under clause 5 of the Bill, a representative of the Ministry stated as follows during the briefing meeting:

"Under the present provisions, even if approval is granted in any case, it has to be renewed again after three years. It was observed that there were great delays both in grant of approval and in renewal. It is proposed, therefore, to do away with the requirement of renewal of approval. This will make it possible for us to use our manpower resources more effectively in grant of approvals. We have, therefore, provided a time-limit of one year, from the end of the month in which the application is received, within which the Central Government may grant approval in suitable cases.

However, it is necessary to maintain constant vigil to ensure that this concession is not misused. We are, therefore, proposing to amend the Income Tax Act to ensure that all entities furnish their returns of income, irrespective of whether their income is taxable or below the taxable limit. If the Assessing Officer finds any case of contravention during the assessment procedures, he would be required to inform the Central Government whereupon a notification may be issued rescinding the approval granted earlier."

31. The written submission made by an expert on the proposals relating to 'granting' and 'rescinding' of approvals to research institutions in terms of the provisions of clauses 5 and 10 of the Bill *inter-alia* reads are as follows:

"Clause 10 seeks to insert another proviso in sub-section (3) of Section 143 of the Act to require an Assessing Officer to satisfy himself whether a university/college/institution referred to in Section 35(1)(ii) and 35(1)(iii) is carrying out its activities in accordance with the guidelines and conditions set out at the time of according approval and, if necessary to recommend to the Central Government, withdrawal of the said approval.

Two questions arise for consideration:

First why have the persons covered under Section 10(23C) been left out? The second revolves round the competence and adequacy of the Assessing Officer to conduct an objective evaluation, if the shortcomings relate to matters other than financial norms. There may also be a charge of bias or vindictiveness. It may, therefore, be advisable, that he be assisted by experts of repute and integrity, in arriving at his conclusion."

32. The written submission, made by yet another expert on these issues reads as follows:

"…one problem faced by associations applying for approval as a research unit is that they have to satisfy first the Department of Science and Technology and then the Income-tax Department. The nodal agency for determining as to whether an association is carrying on or is capable of carrying on scientific research is the Department of Science and Technology. Once this is accorded by this department, the Income-tax Department should thereafter make no enquiries in this regard. The parameters of enquiry by the Income-tax Department should be limited to examine only the accounts of the institution. The functions of the Department of Science and Technology and the Income-tax Department/DG exemptions should be prescribed in the rules."

33. He added:

"…the person claiming the deduction in the computation of business income in respect of the payments made to the University, College or other institutions should not be denied such deduction because of the withdrawal of the approval of an organisation. The expenditure by way of payment to the organisation would have been made in good faith and only after the approval has been granted by the Central Government. Specific provision in this regard should be enacted for protecting the interest of the taxpayer incurring an expenditure in this regard."

34. In the course of personal hearing, the following viewpoint was expressed by an expert on the proposed amendment of section 143(3) in terms of the provisions of clause 10:

"I am apprehensive about this particular provision. The reason for that is the exemption is granted by very high authority, that is, Director General, in coordination with the Ministry of Finance by

way of a notification. If the assessing officer is supposed to go into the aspects of the society's or the institution's activities and try to frame a conclusion and withdraw that exemption, then it is not fair."

The views expressed before the Committee have generally been in favour of ensuring a system of consultation or co-ordination, particularly with other departments in deciding on 'approvals' and rescinding of the approvals.

35. Questioned whether it was appropriate to confer the assessing officer with the power to recommend for withdrawal of approvals granted under the Section, the Ministry in a written reply stated as follows:

"The Assessing Officer under the Income-tax Act is equipped with technical knowledge which enables him to notice shortcomings and requisition necessary details from the applicants. Assessing Officer, therefore, will not need any external expertise to assist in the assessment proceedings by virtue of his competence to examine the evidence produced before him and to see the compliance of the provisions of the Act."

36. Asked whether it would not be appropriate to give the aggrieved party an opportunity of being heard before an order is issued rejecting the applications made under the proviso to Section 35, the Ministry, in a written reply, stated as under:

"The prevailing practice is that an opportunity of being heard is always given in accordance with the principles of natural justice. There is no proposal in the Taxation Laws (Amendment) Bill, 2005, which dilutes this principle of natural justice. Administrative instructions can be issued once again to reiterate the prevailing practice."

37. Asked further whether any provision could be made to provide for an appeal mechanism if an applicant is aggrieved of the decision, the Ministry in a written reply stated as follows:

"The power to pass an order rejecting the application has been vested in the Central Government. Orders passed by the Central Government are not appealable under the Income-tax Act, 1961. The applicant may, however, take recourse to writ jurisdiction of the High Court against the order of rejection by the Central Government. Further, the assessee may also file an application for review of the order rejecting his application."

38. On the role of the Income Tax Department *vis-a-vis* other Government bodies/agencies such as the Department of Science and Technology in recognising research institutions, the Ministry, in a written response, *inter-alia* stated as follows:

> "As per the existing provisions of section 35(1)(ii), a scientific research association is approved by the Central Government which would mean the Ministry of Finance. The Department of Science and Technology (DST) is not the nodal agency for approval of a scientific research association for the purposes of section 35(1)(ii). Since the authority granting the approval is the Central Government, the withdrawal and rescinding of the approval is also by the Central Government. In fact, as per sub-section (3) of section 35, the Central Government is the final authority to decide to what extent an activity constitutes or constituted or any asset is or was being used for scientific research. Therefore, there is no overlap of functions between DST and the Income Tax Department, as the former is not the nodal agency for rescinding/withdrawing approvals."

39. Section 35(2) AB of the Income Tax Act provides as follows:

> "[(2AB)(1) Where a company engaged in the business of [bio-technology or in the business of] manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the ***prescribed authority**, then, there shall be allowed a deduction of [a sum equal to one and one-half times of the expenditure] so incurred.
>
> [*Explanation*. For the purposes of this clause, expenditure on scientific research, in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).]
>
> (2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act.

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*(Prescribed authority is Secretary, Department of Scientific & Industrial Research, Government of India).

(3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of the accounts maintained for that facility.

(4) The prescribed authority shall submit its report in relation to the approval of the said facility to the Director General in such form and within such time as may be prescribed.]

[(5) No deduction shall be allowed in respect of the expenditure referred to in clause (1) which is incurred after the 31st day of March, (2005)].

40. The Committee find substantial credence in the viewpoints expressed that matters relating to granting of approvals to research institutions for tax exemption purposes, as well as rescinding of such approvals or recognition should also involve such authority concerned with the activity of the institution. They are of the opinion that the assessing officer may not be competent enough to recommend either for according approval or withdrawal of the licence of the institutions. In terms of the present provisions of Section 35(2)AB, deduction is allowed to institutions only after approval by the prescribed authority. On similar analogy, the Committee feel that the guidelines to be formulated and prescribed for approval of research institutions should involve the consent of the authority concerned.

41. The Committee perceive the proposal to fix a time limit of one year for considering applications of research institutions as a step in the right direction which would put an end to the inordinate delays presently witnessed in considering the applications. This move, as well as the proposal to do away with renewal of approvals, and making it mandatory for the institutions to file their tax returns, would help in streamlining the approval and monitoring process.

42. The Committee are further of the view that a donee who is entitled for tax deduction on sums donated to a 'recognised' research institution should not be deprived of such benefit owing to the subsequent rescinding of the recognition within the same financial year. The Committee therefore, desire that suitable provisions be made to protect the interests of the taxpayer/donee in such instances.

Clause 7 (Amendment of Section 40A)

43. Clause 7 of the Bill reads as follows:

> 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.

44. On the proposals of clause 7 of the Bill, the Background Note of the Ministry, states as follows:

> "Under the existing provisions of sub-section (3) of section 40A of the Income-tax Act, where any sum exceeding Rs. 20,000 is paid by a business or professional concern otherwise than by a crossed cheque or crossed bank draft, 20% of such sum is disallowed in the computation of income. A crossed cheque or a crossed bank draft can, however, be endorsed to any third person any number of times. An account payee cheque or account payee bank draft can be deposited only in the account of the person named in the cheque or draft and therefore, helps in verification of expenditure. This would help to put a stop to claims of bogus expenditure resulting from endorsement of crossed cheque or crossed bank draft."

45. An expert, in the course of personal hearing, expressed the following viewpoint on the issue of negotiability or transferability of account payee cheques:

> "I just happened to go through the Negotiable Instruments Act and I find that account payee cheque is not defined whereas the crossed cheque is. Secondly, the account payee cheque according to certain commentaries, it has been stated that it would not restrain negotiability. Negotiability can be only restrained if you write non-negotiable or not negotiable. So, if the purpose is to see that there should be no negotiation or no discounting of the cheque or the cheque is used by somebody else, then it would be best served by writing not-negotiable."

46. Questioned whether it was essential to add the words 'not negotiable' to the 'crossing' on a cheque to restrict the negotiability or transferability of account payee cheques, the Ministry in a written reply *inter-alia* stated as follows:

> If 'Account Payee' cheques can be negotiable/transferable, the purpose of preventing bogus claims of expenditure may not be

served. The Reserve Bank of India has, however, issued a circular *vide* DBOD. No. BC. 193/17.4.001/93 dated 18th November, 1993, as per which an account payee cheque should be credited only to the account of the payee. The RBI, in this circular at paragraph 3, addressed to the Chief Executives of all commercial banks (other than RRBs), has stated the following:

"3. In this connection, a reference is invited to our circular DBOD No. GC.BC.62/C.409 (A)-87 dated 11th November, 1987 and subsequent circulars issued from time to time on the subject. We also invite your attention to paras 1.10, 1.11 and 1.13 to 1.15 (Part II) of Ghosh Committee report indicating precautions to be taken by the banks in regard to opening and conduct of deposit accounts. We are, however, constrained to observe that despite our repeated instructions/guidelines issued to the banks, instances of fraudulent encashment of instrument either through opening of accounts in fictitious names or irregularly collecting such 'Account Payee' instrument through the third party accounts are on the increase which goes to provide that these instructions are not being followed by the banks scrupulously at the operating level (*i.e.* branches) and no punitive action is taken by bank management for such gross violation of the instructions by the erring officials."

47. The Ministry also informed that the issue was referred to the Reserve Bank for their advice in the matter. Subsequently, in a post-evidence reply, the Ministry informed that the Reserve bank had advised as follows:

"As advised to you *vide* our letter dated October 4, 2005, even if the words "not transferable" are inscribed in the crossing of cheques or drafts, it would not restrict the negotiability/transferability of a cheque or a draft as there is no provisions under Negotiable Instruments Act, 1881 restricting the transferability/negotiability of a cheque or a draft. However, it is mentioned in Bhashyam and Adiga's Negotiable Instruments Act, 1881 [17th edition, Page 667] that "to have the effect of thus restricting the negotiability, it is necessary that the words 'not negotiable' should appear on the instrument and as part of crossing. It is said that they must occur in close proximity to the lines or to the name of the bank. It must be noticed that there is clear distinction between a cheque crossed 'not negotiable' and a cheque in its origin not transferable, as where it is drawn payable to "AB only" and having the words "bearer' or 'order' struck out.

Thus if a cheque is crossed "not negotiable" and drawn payable to "AB only" i.e. "payee only" and the words "bearer" or "order" are struck out, the cheque would be paid to the payee only and no one else and no endorsement or transfer can be recognised."

48. On the need to enlarge the scope of modes of payment permissible under section 40A(3) to cover payments made through credit cards and Electronic Clearance System (ECS) etc., the Ministry in a written reply *inter-alia* stated as follows:

"Payments made by using credit cards though varifiable may have been issued by companies which do not exist for long. In such cases verification of the expenditure claimed by the assessee will not become possible. As regards payments by the electronic clearance system, sub-clause (iii) of clause (d) of rule 6DD of the Income-tax Rules, 1962 reproduced below apparently covers such payments:

"(d) where the payment is made by—

(i) any letter of credit arrangements through a bank;

(ii) a mail or telegraphic transfer through a bank;

(iii) a book adjustment from any account in a bank to any other account in that or any other bank;

(iv) a bill of exchange made payable only to a bank."

... suitable clarifications may be issued that payments by electronic clearance system through banks would be covered under the exceptions laid down at sub-clause (iii) of clause (d) of rule 6DD and, therefore, shall not attract any disallowance in the computation of income."

49. From the information furnished by the Ministry, the Committee note that the proposal to replace the words "a crossed cheque or crossed bank draft" with "an account payee cheque or account payee draft" in Section 40A is intended to prevent bogus claims of expenditure on account of third party endorsement of crossed cheques or bank drats. However, the Committee note from the Reserve Bank's Circular cited by the Ministry that despite their repeated instructions/guidelines issued to the banks, 'instances of fraudulent encashment of instrument either through opening of accounts in fictitious names or irregularly collecting such 'Account

Payee' instrument through the third party accounts are on the increase.' The Committee, therefore, expect the Government to address this issue in clear terms so that the intended purpose of preventing bogus claims of expenditure on account of third party endorsement of cheques and drafts is achieved.

50. The Committee find that as per the amendments proposed in section 40A, the modes of payment permissible for the purpose of deduction in computation of income are sought to be confined to the instrument of account payee cheques/drafts. The Committee are of the opinion that in the present day circumstances, payments made through other modes or instruments, inclusive of Electronic Clearance System (ECS), that may be offered or made available by banking companies, should be made permissible for purposes of deduction in computation of income in clear and unambiguous terms. The Committee, therefore, recommend the government to seriously consider enlarging the scope of section 40A to include bonafide payments made through such instruments.

Clause 20 and Clause 33: (Provisional Attachment to Protect Revenue in certain cases)

51. Clause 20 of the Bill reads as under:

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 subsection (1):

Provided that the Chief Commissioner of Customs may, for reasons to be recorded in writing, extend 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."

52. Clause 33 of the Bill relating to the Central Excise Act reads as under:

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 proceeding 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.".

53. The Background Note of the Ministry on the provisions of Clause 20 and Clause 33 reads as follows:

"Often, after the proceedings for evasion of duty are initiated against an importer/exporter/assessee, he alienates his property

by way of creating encumbrance or by sale or transfer. By the time the proceedings are completed, no property or assets are legally available with the defaulter for effecting recoveries of dues. This creates serious handicap before the Government and manipulative defaulters contrive to thwart the recoveries of dues.

To remove the aforesaid situation, a new provision is proposed to be inserted to enable the Government to provisionally attach the property belonging to such offenders during the pendency of proceedings relating to the determination of Customs/Excise duties evaded. The proposed provisional attachment may be done only with the previous approval of the Commissioner of Customs/ Central Excise and it shall be valid only for six months. However, in suitable cases, the Chief Commissioner of Customs/Central Excise may, for the reasons to be recorded in writing, extend the aforesaid period subject to the condition that the total period of extension shall be limited to only two years.

Such a proposal is in line with the similar provisions already contained in Section 281B of the Income Tax Act 1961."

54. An expert, in his written comments on the amendments, stated that the provisions are repugnant to Principles of fairness and natural justice; that most of the cases are settled in favour of the assessees and in case of companies with manufacturing facilities, the proposed provisions may hamper the manufacturing operations, which may impact adversely on excise revenues in the event of stoppage of production. Similar views were expressed by other interested bodies as well.

55. On the point that the concept of provisional attachment of property before adjudication was repugnant to the principles of fairness and natural justice, the Ministry, when asked to comment, replied as under:

"Provisional attachment is resorted to only after the proceedings for evasion of duty are initiated against an importer or exporter to ensure that he does not alienate such property by way of creating encumbrance or by sale or transfer. This provision can be resorted to only with the previous approval of the Commissioner of Customs/Central Excise, by an order in writing and in respect of the property belonging to the person to whom notice is served

under sub-section (1) of section 28/sub-section (2) of section 28BA. This shall be valid only for six months period and only in suitable cases, the Chief Commissioner of Customs/Central Excise, for the reasons to be recorded in writing, can extend the aforesaid period subject to the condition that the total period of extension shall be limited to only two years. Hence the power of provisional attachment is to be exercised with adequate care and caution at senior level and is proposed to be resorted to only in deserving cases to protect the interests of revenue. Further, the procedure relating to actual attachment of property envisages following of the principles of natural justice by issue of notice of attachment to the assessee as prescribed under section 142 of the Customs Act, 1962. Hence it can be said that principles of fairness and natural justice will be followed even for exercising the powers of provisional attachment of property."

56. The representatives of the industry expressed the concern that the provisions relating to provisional attachment of property can be used by junior officers to harass the industry by the power given to them to issue show cause notice. Further, they felt that attachment of movable property may lead to closing down of the business. As regards the similar provisions contained in the Income Tax Act, providing for provisional attachment of properties, it was pointed out to the Committee that the interaction between the industry and the Customs and Central Excise Officers was more frequent and hence would lead to harassment.

57. When asked to furnish data relating to the success ratio on settlement of litigations involving the Customs as well as the Central Excise Departments, the Ministry furnished the following information:

"The expert group set up by the Department collected relevant data from Customs field formations for the period 1998-99 to 2001-02. The range of success ratio at various appellate levels is indicated below:

Sl.No.	Appellate Authority	Success Ratio
1.	Commissioner (Appeals)	41%-45%
2.	Tribunal	32%-49%
3.	High Court	51%-66%

The data for the later period 2004-05 (upto December 2004) indicate the following:

Sl.No.	Appellate Authority	Success Ratio
1.	Commissioner (Appeals)	33%
2.	Tribunal	58%
3.	High Court	56%
4.	Supreme Court	60%

The C&AG in its report No. 11/2003 pertaining to Central Excise and Service Tax highlighted *inter-alia* the poor success ratio of the Department in defending its cases. This conclusion was arrived on the basis of sample study by audit of 29 commissionerates for the period 1998-99 and 2000-01. The expert group set up by the Dept. collected relevant data from 64 Central Excise commissionerates for the period 1998-99 to 2001-02. The range of success ratio for the above four year period at various appellate levels is indicated below:

Sl.No.	Appellate Authority	Success Ratio
1.	Commissioner (Appeals)	37%-47%
2.	Tribunal	30%-32%
3.	High Court	51%-65%
4.	Supreme Court	29%

De-novo orders only remand the matter for a fresh look by the adjudicating/appellate authority and are not to be taken as adverse decisions.

The data for the later period 2004-05 (upto December 2004) indicate the following:

Sl.No.	Appellate Authority	Success Ratio
1.	Commissioner (Appeals)	41.2%
2.	Tribunal	37.4%
3.	High Court	53%
4.	Supreme Court	29.5%

58. Asked to detail the means by which the concerns expressed from various quarters on preventing harassment, ensuring that manufacturing activities were not hampered etc., could be addressed, the Ministry responded by *inter-alia* proposing as follows:

> "It is emphasized here such attachment will not hamper the manufacturing activities. The business activities of the assessees will carry on in the normal fashion. The Government will only provisionally attach the property so that the evaders cannot alienate or create encumbrances by way of sale or transfer of the property."

> "…In order to ensure that there is no harassment to the assessees, the Government proposes to issue administrative instructions that the value of the property attached will be equal to the duty liability only. The Government will attach only the immovable property and only if the duty liability is not covered, then the movable property of the company will be provisionally attached. The personal property of the proprietor/Directors will not be provisionally attached on any account. As regards the initial order of provisional attachment, it is proposed that the Commissioner will order such attachment only after the receipt of a report from the jurisdictional Deputy/Assistant Commissioner justifying the reasons for seeking provisional attachment and duly certified by the controlling Additional/Joint Commissioner. It is envisaged that the report will be in the nature of a speaking order giving the reasons, backed by sufficient evidence to justify such provisional attachment."

59. The Committee note that though the proposal to incorporate provisions enabling for provisional attachment of property in the Customs as well as the Central Excise Acts is akin to the existing provisions under the Income Tax Act, serious apprehensions and misgivings have been expressed on this count. The apprehensions expressed, particularly by the representatives of the Trade and Industry include, the adverse affect the move may have on business activities of manufacturing units and the possibility of harassment in the hands of tax officials owing to enhanced powers.

60. The Committee's questioning on the means by which such concerns are to be addressed evoked the response from the Ministry that administrative instructions would be issued to effectively address the apprehensions expressed. As informed by the Ministry, the administrative instructions would clearly stipulate that the Commissioner of Customs/Excise would order attachment of property

only upon receipt of a report from the jurisdictional Deputy/Assistant Commissioner, which would be in the nature of 'speaking order' detailing the reasons, evidence, and justification for the provisional attachment. Also, the value of the property attached would be equal to the duty liability only; the possibility of attaching moveable property would be considered only if the duty liability is not covered by attaching the immovable property; and the personal properties of Directors/Proprietors would not be provisionally attached on any count. The Government have also expressed in clear terms that the move 'will not hamper the manufacturing activities' and 'the business activities of the assessees will carry on in the normal fashion.'

61. The Committee recommend that apart from ensuring proper usage of the provision, appropriate disciplinary action should be initiated against such tax officials who may be found to exercise the proposed powers frivolously and without sound reasons.

Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows:

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."

63. The information furnished by the Ministry states as follows on the proposed provision:

> "Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."

64. It was *inter-alia* expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under:

> "The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

65. The Ministry also informed as under:

> "The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.

NEW DELHI;
12 *December,* 2005
21 *Agrahayana,* 1927 *(Saka)*

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

MINUTES OF THE THIRTY-EIGHTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 14th July, 2005 from 1215 to 1320 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Bhartruhari Mahtab
3. Shri Shyama Charan Gupta
4. Dr. Rajesh Kumar Mishra
5. Shri Madhusudan Mistry
6. Shri K.S. Rao
7. Shri Lakshman Seth
8. Shri G.M. Siddeshwara
9. Shri M.S. Reddy

Rajya Sabha

10. Shri Yashwant Sinha
11. Shri Chittabrata Majumdar
12. Shri C. Ramachandraiah
13. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri R.K. Jain — *Deputy Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

Part-I
(at 1030 hours)

2. ** ** ** **

3. ** ** ** **

4. ** ** ** **

5. ** ** ** **

Part-II
(1215 to 1320 hours)

WITNESSES

Ministry of Finance (Department of Revenue)

1. Shri K.M. Chandrasekhar, Secretary
2. Shri K. Mohandas, Additional Secretary
3. Shri Berjinder Singh, Chairman & Spl. Secretary, CBDT
4. Shri M. Jayaraman, Chairman & Spl. Secretary, CBEC
5. Shri V.P. Singh, Member (P&V/RI&I), CBEC
6. Shri Kailash Sethi, Member (L&J/ST/Comp.), CBEC
7. Ms. Chitra Saha, Member CBEC
8. Shri A.P. Sudhir, Member, CBEC
9. Ms. M.H. Kherawala, Member (Legislation), CBDT
10. Shri Shibaji Das, Member, CBDT

2. At the outset, the Chairman welcomed the witnesses from the Ministry of Finance (Department of Revenue) to the sitting of the Committee and invited their attention to the provisions contained in the Direction 55 of the Directions by the Speaker.

3. Then the representatives of the Ministry of Finance (Department of Revenue) briefed the Committee on the various provisions contained in the Taxation Laws (Amendment) Bill, 2005. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives of the Ministry that the information with regard to queries of the Members which were not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE FOURTH SITTING OF STANDING COMMITTEE ON FINANCE (2005-06)

The Committee sat on Tuesday, 6th September, 2005 from 1030 to 1300 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri A. Krishnaswamy
4. Shri Madhusudan Mistry
5. Shri Shriniwas D. Patil
6. Shri K.S. Rao
7. Shri Jyotiraditya Madhavrao Scindia
8. Shri M.A. Kharabela Swain

Rajya Sabha

9. Shri Murli Deora
10. Shri Jairam Ramesh
11. Shri Yashwant Sinha
12. Shri Chittabrata Majumdar
13. S.P.M. Syed Khan
14. Shri Mangani Lal Mandal

SECRETARIAT

1. Smt. (Dr.) P.K. Sandhu — *Additional Secretary*
2. Shri R.K. Jain — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

Part I

Confederation of Indian Industry (CII)

1. Dr. Rajiv Kumar, Chief Economist
2. Shri K.S. Ghai, Senior Advisor

2. At the outset, the Chairman welcomed the representatives of Confederation of Indian Industry (CII) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives of Confederation of Indian Industry (CII) on the provisions of the Taxation Laws (Amendment) Bill, 2005. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

WITNESSES

Part II

Non Official Experts

1. Shri Vijay Mathur, DGIT (Retd.)
2. Shri P.N. Mittal, Member (Retd.) CBDT
3. Shri A.N. Prasad, CCIT (Retd.)

2. At the outset, the Chairman welcomed the Non-official experts to the sitting of the Committee and invite their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the Non-official experts on the provisions of the Taxation Laws (Amendment) Bill, 2005. The Members asked clarificatory questions which were replied

to by the Non-official experts. The Chairman, then, directed the experts that the information with regard to queries of the Member which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

MINUTES OF THE FIFTH SITTING OF STANDING COMMITTEE ON FINANCE (2005-06)

The Committee sat on Thursday, 29 September, 2005 from 1100 to 1300 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri A. Krishnaswamy
4. Shri Shriniwas D. Patil
5. Shri K.S. Rao
6. Shri Jyotiraditya Madhavrao Scindia
7. Shri M.A. Kharabela Swain

Rajya Sabha

7. Shri Jairam Ramesh
8. Shri Yashwant Sinha
9. Shri S.P.M. Syed Khan
10. Shri Amar Singh
11. Shri Mangani Lal Mandal

SECRETARIAT

1. Smt. (Dr.) P.K. Sandhu — *Additional Secretary*
2. Shri A.K. Singh — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.G. Chandrasekhar — *Under Secretary*

Part-I

(1100 to 1130 hours)

2. ** ** ** **

Part-II
(at 1130 hours)

WITNESSES

1. Shri R. Krishnan, Advocate
2. Shri S. Sampath, Tax Consultant

2. The Chairman welcomed the Non-official experts to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker. The Committee then took oral evidence of the Non-official experts on the provisions of the Taxation Laws (Amendment) Bill, 2005. The Members asked clarificatory questions which were replied to by the Non-official experts. The Chairman, then, directed the experts that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

MINUTES OF THE SIXTH SITTING OF STANDING COMMITTEE ON FINANCE (2005-06)

The Committee sat on Friday, 30 September, 2005 from 1100 to 1300 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Madhusudan Mistry
6. Shri K.S. Rao
7. Shri M.A. Kharabela Swain

Rajya Sabha

8. Shri M. Venkaiah Naidu
9. Shri Mangani Lal Mandal

SECRETARIAT

1. Smt. (Dr.) P.K. Sandhu — *Additional Secretary*
2. Shri A.K. Singh — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.G. Chandrasekhar — *Under Secretary*

Part-I
(at 1130 hrs.)

WITNESSES

1. Shri R.N. Lakhotia, Senior Tax Consultant and Advocate (Direct Taxes)

Taxindiaonline.com Pvt. Ltd. (Direct and Indirect Taxes)

2. Shri K. Vijay Kumar, Editor-in-Chief

3. Shri Shailendra Kumar, Managing Editor

4. Shri Shiva Kant Jha, Advocate, Supreme Court of India & Senior Resource person

2. At the outset, the Chairman welcomed the Non-official experts to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the Non-official experts on the provisions of the Taxation Laws (Amendment) Bill, 2005. The Members asked clarificatory questions which were replied to by the Non-official experts. The Chairman, then, directed the experts that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

Part-II
(at 1530 hours)

2.	**	**	**	**
3.	**	**	**	**
4.	**	**	**	**

The Committee then adjourned.

MINUTES OF THE EIGHTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, 8 November, 2005 from 1030 hrs. to 1200 hrs. and thereafter from 1200 to 1330 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri Shyama Charan Gupta
5. Shri Jyotiraditya Madhavrao Scindia
6. Shri G.M. Siddeshwara
7. Shri M.A. Kharabela Swain

Rajya Sabha

8. Shri Jairam Ramesh

SECRETARIAT

1. Shri S.B. Arora — *Deputy Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

Part I

(1030 hrs. to 1200 hrs.)

2. ** ** ** **
3. ** ** ** **
4. ** ** ** **
5. ** ** ** **

Part II

(1200 hrs. to 1330 hrs.)

Ministry of Finance (Department of Revenue)

1.	Shri K.M. Chandrasekhar	— Secretary (Revenue)
2.	Shri M.S. Darda	— Chairman, CBDT
3.	Ms. M.H. Kherawala	— Member (L) CBDT
4.	Shri V.P. Singh	— Member (CX) CBEC
5.	Shri A.P. Sudhir	— Member (Customs/RI & I) CBEC
6.	Ms. Kameshwari Subramanian	— Joint Secretary (Customs) CBEC
7.	Shri Vinay Chhabra	— Commissioner (Coord.) CBEC
8.	Mrs. Anita Kapur	— Joint Secretary (TPL I) CBDT
9.	Shri Arbind Modi	— Joint Secretary (TPL II) CBDT

2. At the outset the Chairman welcomed the representatives of the Ministry of Finance (Department of Revenue) to the sitting of the Committee and invited their attention to the provisions contained in the Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the above representatives on the provisions of the Taxation Laws (Amendment) Bill, 2005.

4. Thereafter the members raised queries which were replied to by the witnesses. The Chairman directed the witnesses to send written replies to some of the queries on which information was not readily available with them during the evidence.

5. The evidence was concluded.

6. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE NINTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 8th December, 2005 from 1500 to 1600 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Bhartruhari Mahtab
3. Shri Shyama Charan Gupta
4. Shri Bir Singh Mahato
5. Shri Rupchand Pal
6. Shri Shriniwas D. Patil
7. Shri Lakshman Seth
8. Shri M.A. Kharabela Swain
9. Shri Vijoy Krishna

Rajya Sabha

10. Shri Chittabrata Majumdar
11. Shri C. Ramachandraiah
12. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri S.B. Arora — *Deputy Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee.

3. ** ** ** **

4. The Committee also considered and adopted the draft report on the Taxation Laws (Amendment) Bill, 2005 with minor modifications/ amendments as shown in the Annexure-II.

5. ** ** ** **

6. The Committee, thereafter authorised the Chairman to finalise the Reports in the light of the amendments suggested as also to make verbal and other consequential changes and present the same to both the Houses of Parliament.

The Committee then adjourned.

ANNEXURE

[MODIFICATIONS/AMENDMENTS MADE BY STANDING COMMITTEE ON FINANCE IN THEIR DRAFT REPORT ON THE TAXATION LAWS (AMENDMENT) BILL, 2005 AT THEIR SITTING HELD ON 8 DECEMBER, 2005]

Page 31, Para 60, Line 15

For That the move would not have any adverse affect on the regular activity of the manufacturing industries

Substitute That the move 'will not hamper the manufacturing activities' and 'the business activities of the assessees will carry on in the normal fashion'.

Page 34, Para 66, Lines 1-4

For The Committee observe that the proposal to introduce the provision enabling for levy of penalty upto five times the value of goods in cases involving willful misrepresentation of material facts is owing to increased instances of fraudulent usage of export promotion schemes.

Substitute The Committee observe that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed.

Page 34, Para 66, Line 9

Delete of Corporate Houses.

As Introduced in Lok Sabha

Bill No. 74 of 2005

THE TAXATION LAWS (AMENDMENT) BILL, 2005

A

BILL

further to amend the Income-tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

Short title and commence-ment.

1. (1) This Act may be called the Taxation Laws (Amendment) Act, 2005.

(2) Save as otherwise provided in this Act, sections 2 to 16 (except sections 2, 7 and 11 to 16) shall be deemed to have come into force on the 1st day of April, 2005.

CHAPTER II

DIRECT TAXES

Income-Tax

Amendment of section 2.

2. In section 2 of the Income-tax Act, 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:— 43 of 1961.

"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".

Amendment of section 10.

3. 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, 2005 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, 2005 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:".

Amendment of section 12A.

4. 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.

Amendment of section 35.

5. In the Income-tax Act, in section 35, in sub-section (l), with effect from the 1st day of April, 2006,—

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

(d) 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 time, have effect for such assessment year or years, not exceeding three asssessment 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, 2005 receives the assent of the President, shall, at any time, have effect for such assessment year or years, not exceeding three assessment years" shall be substituted;

(e) 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, 2005 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 :".

Amendment of section 40.

6. 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;'.

Amendment of section 40A.

7. 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.

Amendment of section 56.

8. 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 form 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) form 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).".

Amendment of section 139.

9. 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 and figures, "sub-clause (iiiad) or sub-clause (vi)" shall be substituted;

(ii) for the word, brackets and figures "sub-clause (via)", the words, brackets and figures, "sub-clause (iiiae) 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).".

Amendment of section 143.

10. 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."

Amendment of section 155.

11. 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.".

Amendment of section 194-I.

12. 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;'

Amendment of section 194J.

13. In section 194J of the Income-tax Act, in sub-section (l),—

(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 words and brackets "clause (b):", the words and brackets "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):";

(iii) 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;'.

Amendment of section 246A.

14. 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;".

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

"(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.".

Substitution of new section for section 288B.

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

Rounding off amount payable and refund due.

"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 of ten, 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 of ten and if the last figure is less than five the amount shall be reduced to the next lower amount which is a multiple of ten.".

CHAPTER III

INDIRECT TAXES

Customs

Amendment of section 17.

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

"(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".

Amendment of section 18.

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 sections 26;

(e) drawback of duty payable under sections 74 and 75.".

Amendment of section 28.

19. 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 mis-statement 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 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 are 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.".

Insertion of new section 28BA.

20. After section 28B of the Customs Act, the following section shall be inserted, namely:—

Provisional attachment to protect revenue in certain cases.

"28BA. (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 writing, extend 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.".

Amendment of section 104.

21. 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."

Amendment of section 108.

22. 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.".

Insertion of new section 110A.

23. After section 110 of the Customs Act, the following section shall be inserted, namely:—

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

"110A. 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.".

Insertion of new section 114AA.

24. After section 114A of the Customs Act, the following section shall be inserted, namely:—

Penalty for use of false and incorrect material.

"114AA. 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.".

Amendment of section 124.

25. 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.

Amendment of section 129D.

26. 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.

Amendment of section 132.

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

Amendment of section 133.

28. In section 133 of the Customs Act, for the words "six months", the words "two years" shall be substituted.

Amendment of section 137.

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

Insertion of new section 154B.

30. After section 154A of the Customs Act, the following section shall be inserted, namely:—

Publication of information respecting persons in certain cases.

"154B. (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.".

Customs tariff

Amendment of section 8B of Act 51 of 1975.

31. 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.

Amendment of section 11A.

32. In section 11A of the Central Excise Act, 1 of 1944. 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 mis-statement 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 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 are 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.".

Insertion of new section 11DDA.

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

Provisional attachment to protect revenue in certain cases.

"11DDA. (1) Where, during the pendency of any proceeding 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.".

Amendment of section 35E.

34. 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.

Insertion of new section 37E.

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

Publication of information respecting persons in certain cases.

"37E. (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.".

Amendment of rule 16 of the Central Excise Rules, 2002.

36. (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 rules 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.

CHAPTER IV

MISCELLANEOUS

Amendment of section 25 of Act 74 of 1956.

37. In section 25 of the Central Sales Tax Act, 1956, for the words and figures "under section 19", the words, brackets and figures "by notification under sub-section (1) of section 24" shall be substituted.

THE SCHEDULE

(*See* section 36)

Provisions of the Central Excise Rules, 2002 to be amended	Amendment	Period of effect of amendment
1	2	3
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 purpose 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).

STATEMENT OF OBJECTS AND REASONS

Several suggestions on amendments to Direct Tax Laws and Indirect Tax Laws have been received in the course of the current year and after due consideration, some of these have been accepted. It is proposed to take up these suggestions in this Bill, which will thereby supplement the proposals made through the Finance Bill, 2005. The Bill, *inter alia*, proposed to carry out certain amendments in the Income-Tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956 with the object of rationalizing and simplifying certain procedures, widening of tax base and plugging loopholes leading to leakage of revenue.

2. The Bill seeks to amend the Income-tax Act, 1961 so as to streamline the approval and monitoring process for certain charitable entities, scientific research associations, etc., prescribing filing of return by certain charitable entities with aggregate annual receipts below one crore rupees, requiring payment exceeding twenty thousand rupees by way of an account payee cheque or account payee bank draft, prescribing TDS on renting of plant and machinery, equipment, royalty and non-compete fee and phased withdrawal of exemption to North-Eastern Finance Development Corporation Limited over the next five years. It is further proposed to exclude (from the previous year 2004-2005) any sum received from a charitable entity or a local authority without consideration from the ambit of 'income from other sources'. It is also proposed to aggregate the said sums received without consideration (from the previous year 2006-2007) and to enhance the existing limit of twenty-five thousand rupees to fifty thousand rupees for the purpose of inclusion under 'income from other sources'. Certain other amendments such as rounding off of demands or refunds to the nearest multiple of ten rupees, empowering the Tax Recovery Officer to exercise limited powers of the Assessing Officer, allowing for revision of penalty orders on receipt of appellate orders regarding assessment, etc., are also proposed to be carried out in the Income-tax Act.

3. The Bill also seeks to carry out certain amendments in the Customs Act, 1962, Customs Tariff Act, 1975 and Central Excise Act, 1944 with *inter alia* facilitates voluntary payment of tax dues so as to provide a mechanism for resolving disputes at the earliest, to facilitate recovery of amount due as revenue to the Government and to incorporate certain measures to curb evasion of Customs and Central Excise duties.

4. The Bill also seeks to amend the Central Sales Tax Act, 1956 so as to expeditiously and smoothly resolve inter-State disputes, regarding levy of Central Sales Tax by the State Governments by ensuring that all pending proceedings are transferred to the Authority notified under sub-section (1) of section 24 of the said Act.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions of the Bill.

New Delhi;
The 9th May, 2005.

P. CHIDAMBARAM.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. J. No. 4/TLA/3/2005-TPL, dated the 9th May, 2005 from Shri P. Chidambaram, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Taxation Laws (Amendment) Bill, 2005 recommends under Article 117(1) and (3) and 274(1) of the Constitution of India, introduction and consideration of the above Bill by the Lok Sabha.

Notes on clauses

Income-tax

Clause 2 of the Bill seeks to amend section 2 of the Income-tax Act relating to definitions.

The existing provisions contained in clause (44) of the said section provides that "Tax Recovery Officer" means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer.

It is proposed to amend the said clause so as to provide that the Tax Recovery Officer may also exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under the Income-tax Act and which may be prescribed.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 3 seeks to amend section 10 of the Income tax Act relating to incomes which shall not be included in total income.

Under the existing provision contained in section 10 of the Income-tax Act, any income falling within the various clauses of that section shall not be included in computing the total income of a previous year of any person.

It is proposed to insert a new clause (23BBE) in section 10 so as to provide that any income of the North-Eastern Development Finance Corporation Limited, a company formed and registered under the Companies Act, 1956, shall not be included in computing its total income. It is further provided that the income of the North-Eastern Development Finance Limited shall be included in the total income to the extent of the percentage of its total income specified in the proposed clause (23BBE).

Under the existing provisions contained in the eighth proviso to clause (23C) of section 10, any notification issued by the Central Government under sub-clause (iv) or sub-clause (v) of the said clause (23C), shall, at any one time, have effect for any assessment year or

years not exceeding three assessment years including an assessment year or years commencing before the date on which such notification is issued.

It is proposed to amend the eighth proviso to clause (23C) of the said section so as to provide that where the notification is issued under sub-clause (iv) or sub-clause (v) of said clause (23C) before the Taxation Laws (Amendment) Bill, 2005 receives the assent of the President, such notification shall continue to be effective for a period of three assessment years including an assessment year or years not exceeding three assessment years including an assessment year or years not exceeding three assessment years commencing before the date on which such notification is issued.

Under the existing provisions contained in the first proviso to clause (23C) of section 10, 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) of said clause (23C) shall make an application in the prescribed form and in the manner to the prescribed authority for the purpose of grant of exemption under those sub-clauses. However, no time limit has been provided for grant of approval or issue of notification under the said sub-clauses.

It is proposed to insert ninth proviso after the eighth proviso so as to provide that where any application for issue of notification or grant of approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) is filed on or after the date on which this Bill receives the assent of the President, every such notification shall be issued or order granting approval or order rejecting the application shall be passed before the expiry of twelve months from the end of the month in which the application was received.

Under the existing provisions contained in second proviso of clause (23C), the Central Government or the prescribed authority before notifying or approving the entities referred to in sub-clause (iv) or sub-clause (v) or sub-clause (via) may call for such documents including audited annual accounts. However, there is no stipulation for getting their accounts audited by an accountant or furnishing the audit report along with the return of income.

It is further proposed to insert tenth proviso after the ninth proviso as so inserted so as to provide 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 of clause (23C), exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or university or other educational institution or hospital or other medical institution shall get its accounts audited 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 audited accounts and 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.

These amendments will take effect from 1st day of April, 2006 and will, accordingly, apply to assessment year 2006-2007 and subsequent years.

Clause 4 seeks to amend section 12A of the Income-tax Act relating to conditions as to registration of trusts, etc.

Under the existing provisions contained in section 12A of the Income-tax Act, where the total income of the trust or institution as computed under that Act without giving effect to the provisions of sections 11 and 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year shall be audited and such audit report shall be furnished along with the return of income.

It is proposed to amend the said section so as to provide that the accounts of the trust or institution for that year shall be audited and such audit report shall be furnished along with the return of income if the total income of such trust or institution exceeds the maximum amount which is not chargeable to income-tax in any previous year.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 5 seeks to amend section 35 of the Income-tax Act relating to expenditure on scientific research.

Under the existing provisions contained in the proviso to clause (ii) and the proviso to clause (iii) of sub-section (1) of section 35 of the Income-tax Act, the Central Government grants the approval to an association, university, college or other institution. These provisions do not provide for the manner, guidelines and the conditions subject to which approval is required to be granted.

It is proposed to amend the proviso to clause (ii) and the proviso to clause (iii) of sub-section (1) of section 35 so as to empower the Central Board of Direct Taxes to lay down, by rules, the manner in which an association, university, college or other institution is to be granted approval and the guidelines and conditions to be fulfilled for grant of such approval by the Central Government.

Under the second proviso to the aforesaid sub-section (1), the Central Government before granting approval may call for any documents or information and may also make such inquiries as it may deem necessary. Under the third proviso to the aforesaid sub-section (1), the approval granted at any one time has effect for three assessment years.

It is proposed to amend the second proviso to the said sub-section (1) so as to provide that the Central Government may make such inquiries as it may deem necessary. It is further proposed to amend the third proviso to the said sub-section (1) so as to provide that there would be no requirement for renewal of the approval where the approval is granted before the date on which the Bill receives assent of the President, such approval granted before that date shall remain effective for the period for which the approval was granted. It is also proposed to provide for disposing the application for approval within twelve months of receipt of the same.

This amendment will take effect from the 1st day of April, 2006 and will, accordingly apply in relation to the assessment year 2006-07 and subsequent years.

Clause 6 seeks to amend section 40 of the Income-tax Act relating to amounts not deductible.

Under the existing provisions contained in sub-clause (ia) of clause (a) of section 40, non-deduction of tax on payment of interest, commission or brokerage, fees for professional services or fees for technical services, or amounts payable to a contractor or sub-contractor, results in the disallowance of the sum, in the computation of income of the payer, on which tax is required to be deducted under Chapter XVII-B.

It is proposed to amend sub-clause (ia) of clause (a) of section 40 so as to extend the provisions thereof to payments of royalty and rent. It is also proposed to provide for the definition of the terms "royalty" and "rent" in the explanation to the sub-clause.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 7 seeks to amend section 40A of the Income-tax Act relating to expenses or payments not deductible in certain circumstances.

Under the existing provisions contained in sub-section (3) and sub-section (4) of section 40A, it is provided that any payment exceeding twenty thousand rupees not made by way of a crossed cheque or crossed bank draft shall attract a disallowance to the extent of twenty per cent of such sum, in the computation of income of the payer.

It is proposed to amend sub-section (3) and sub-section (4) so as to provide that a disallowance to the extent of twenty per cent of the sum of payment shall be made where any payment exceeding the limit of twenty thousand rupees is made otherwise than by an account payee cheque or account payee bank draft.

These amendments will take effect form the date on which the Bill receives assent of the President.

Clause 8 seeks to amend section 56 of the Income-tax Act relating to income from other sources.

Under the existing provision contained in clause (v) of sub-section (2) of section 56 of the Income-tax Act, where any sum of money exceeding twenty five thousand rupees is received by an individual or a Hindu undivided family without consideration from any person on or after the 1st of September, 2004, the whole of such sum is included in the total income in the hands of the recipient. As per the proviso to the said clause, this clause shall not apply to any sum of money received form any relative or on the occasion of the marriage of the individual or under a will or by way of inheritance or in contemplation of the death of the payer.

It is proposed to amend the proviso to clause (v) of sub-section (2) of section 56 so as to provide that this clause shall not apply to any sum of money received from any local authority as defined in the *Explanation* to clause (20) of section 10 or 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 from any trust or institution registered under section 12AA.

This amendment will take effect retrospectively from the 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years.

It is further proposed to amend clause (v) of sub-section (2) of section 56 so as to provide that the said clause shall be applicable to any sum of money exceeding twenty five thousand rupees received by an individual or Hindu undivided family without consideration from any person before the 1st day of April, 2006.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

It is also proposed to insert a new clause (vi) after clause (v) of sub-section (2) of section 56 so as to provide that 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 shall be included in the total income.

This amendment will take effect from 1st day of April, 2007 and will, accordingly, apply to assessment years 2007-2008 and subsequent years.

Clause 9 seeks to amend section 139 of the Income-tax Act relating to return of income.

Under the existing provisions contained in sub-clause (e) of clause (4C) of section 139 of the Income-tax Act, every fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) shall furnish their return of income if the total income without giving effect to the provisions of section 10 exceeds the maximum amount which is not chargeable to tax.

It is proposed to amend the said sub-clause (e) of clause (4C) of section 139 so as to provide that any university or other educational institution referred to in sub-clause (iiiad) or any hospital or other medical institution referred to in sub-clause (iiiae) of clause (23C) of section 10 shall furnish their return of income if their total income without giving effect to the provisions of section 10 exceeds the maximum amount which is not chargeable to tax.

This amendment will take effect from 1st day of April, 2006 and will, accordingly, apply in relation tot he assessment year 2006-2007 and subsequent assessment years.

Sub-clause (b) of the said clause seeks to insert sub-section (4D) requiring a university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 to furnish return of income.

This amendment will take effect from the 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 10 seeks to amend section 143 of the Income-tax Act relating to assessment.

It is proposed to insert a proviso after the first proviso in sub-section (3) of section 143 to provide that during the course of assessment proceedings the assessing officer should satisfy himself regarding the activities of the university, college or other institution whether these are being carried out in accordance with all or any of the guidelines and conditions subject to which approval was granted and may recommend to the Central Government to withdraw the approval.

This amendment will take effect from the 1st day of April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years.

Clause 11 seeks to amend section 155 of the Income-tax Act relating to other amendments.

The existing provisions of section 155, *inter alia,* provide for rectification of an assessment order wherein in deduction under section 80HHC, 80HHD, 80HHE, etc., has not been allowed on the ground that export income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee before completion of assessment and such income is subsequently brought into India with the approval of the Reserve Bank of India or such other competent authority within the prescribed time.

It is proposed to insert a new sub-section (11A) in the said section so as to provide that the Assessing Officer shall amend the order of assessment to allow deduction under section 10A or section 10B or section 10BA, as the case may be, in respect of export income or part thereof, which is received in, or brought into, India with the approval of the Reserve Bank of India or such other competent authority within the prescribed time. It is also proposed that the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years for rectification of assessment shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 12 seeks to amend section 194-I of the Income-tax Act relating to tax deduction at source on rent.

Under the existing provisions contained in section 194-I, tax is required to be deducted at source on payment of rent. The term "rent" has been defined in the *Explanation* to the said section to, *inter alia,* mean payment for use of any building (including factory building) together with furniture, fittings and the land appurtenant thereto whether or not such building is owned by the payee.

It is proposed to amend the definition of "rent" in the *Explanation* to section 194-I so as to provide that the provisions of the said section are applicable whether the items are rented separately or together. It is also proposed to expand the list of items by including machinery, plant and equipment. This section is proposed to be made applicable whether or not nay or all of the items are owned by the payee.

This amendment will take effect from the date on which the Bill receives assent of the President.

Clause 13 seeks to amend section 194J of the Income-tax Act relating to fees for professional or technical services.

Under the existing provisions contained in sub-section (1), tax is required to be deducted at source on any payment of a sum to a resident exceeding twenty thousand rupees by way of fees for professional services or fees for technical services at the rate of five per cent of such sum.

It is proposed to amend sub-section (1) of section 194J so as to include "royalty" and "any sum referred to in clause (va) of section 28" for applicability of the provisions of the said sub-section. The term "royalty" is proposed to be defined in the explanation to the section.

These amendments will take effect from the date on which the Bill receives assent of the President.

Clause 14 seeks to amend section 246A of the Income-tax Act relating to appealable orders before Commissioner (Appeals).

The existing provision of sub-section (1) of said section provides a list of orders against which an appeal may be filed to the Commissioner (Appeals) by an assessee who is aggrieved by any of the orders mentioned therein.

It is proposed to amend the said sub-section so as to provide that an appeal to the Commissioner (Appeals) may also be filed against an order imposing or enhancing penalty under sub-section (1A) of section 275.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 15 seeks to amend section 275 of the Income-tax Act relating to bar of limitation for imposing penalties.

Under the existing provisions contained in the proviso to the clause (a) of sub-section (1) of said section, in a case where the relevant assessment or other order is the subject matter of an appeal to the Commissioner (Appeals), and he passes the order on or after 1st June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings in the course of which action for imposition of penalty has been initiated, are completed or within one year from the end of the financial year in which order of Commissioner (Appeals) is received. Further, under the existing provisions contained in clause (b) of sub-section (1) of said section, in a case where the relevant assessment or other order is the subject matter of revision under section 263 or section 264, the penalty order shall be passed before the expiry of six months from the end of the month in which such order of revision is passed.

It is proposed to amend the said section so as to provide that in a case where the relevant assessment or other 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. It is further proposed to provide that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed after the expirty 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.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 16 seeks to amend section 288B of the Income-tax Act relating to rounding off of tax, etc.

The existing provisions of the said section provides that the amount of tax (including tax deductible at source or payable in advance), interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of the Income-tax Act shall be rounded off to the nearest rupee.

It is proposed to substitute the said section by a new section so as to provide that 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 rupees consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, 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 of ten and if the last figure is less than five the amount shall be reduced to the next lower amount which is a multiple of ten.

This amendment will take effect from the date on which the Bill receives the assent of the President.

Customs

Clause 17 seeks to insert sub-section (5) in section 17 of the Customs Act, 1962 to provide for a speaking order within fifteen days from the date of assessment of a bill of entry or a shipping bill in the event the assessing officer is of a view contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification under the Act.

Clause 18 seeks to insert sub-section (3), sub-section (4) and sub-section (5) to section 18 of the Customs Act, 1962 to provide for a mechanism to regularize the payments of duty short levied and interest thereon and duties that are to be refunded on finalisation of a provisional assessment.

Clause 19 seeks to—

(i) insert sub-section (1A) and provisos to sub-section (2) in section 28 of the Customs Act, 1962 so as to provide an option for voluntary payment within thirty days of receipt of a notice by an importer or exporter or any other person who has been issued with the show cause notice for evasion of duty on suppression of facts and wilful mis-statement or for by reason of collusion under the proviso to sub-section (1).

(ii) envisage a reduced amount of penalty at the rate of twenty-five per cent of the duty specified in the notice, to avail, the option, such person may pay the duty specified in the said notice either in full along with interest and penalty at the rate of twenty-five per cent, of the duty paid or a part thereof along with interest and penalty at the rate of twenty-five per cent, of the duty so accepted and paid.

(iii) The scheme also envisages termination of proceedings against the co-noticee if any, to the proceeding in the event of payment of duty in full along with interest and twenty five per cent of duty is paid as penalty within thirty days of receipt of the notice.

Clause 20 seeks to insert a new section 28BA in the Customs Act, 1962 to provide for provisional attachment of property belonging to a person to whom a notice is served under sub-section (1) of section 28 or sub-section (2) of section 28BA to protect the interest of revenue in certain cases.

Clause 21 seeks to amend section 104 of the Customs Act, 1962 to include within its ambit the power to arrest a person who has committed an offence punishable under section 132 or 133 or 135A or 136.

Clause 22 seeks to substitute sub-section (1) of section 108 of the Customs Act, 1962 to empower the Central Government to designate a gazetted officer of Customs to be empowered under the Act for the purpose of summoning any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry under the Act.

Clause 23 seeks to insert a new section 110A in the Customs Act, 1962 to facilitate provisional release of goods, documents and things seized pending adjudication.

Clause 24 seeks to insert a new section 114AA in the Customs Act, 1962 to provide for penalty for use of false and incorrect material, declaration, statement, etc., in the transaction of any business for the purpose of the Act.

Clause 25 seeks to amend section 124 of the Customs Act, 1962 to provide for prior approval of the officer of a rank not below that of a Deputy Commissioner of Customs before issuing a show cause notice proposing for confiscation of seized goods under the Act.

Clause 26 proposes to amend sub-section (2) of section 129D of the Customs Act to facilitate an officer other than the adjudicating authority to file an appeal before the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

Clause 27 proposes to amend section 132 of the Customs Act, 1962 to enhance the maximum punishment from six months to two years in cases, where a declaration, document, statement, etc., containing false and incorrect information material particular is produced in the transaction of business under the Act.

Clause 28 seeks to amend section 133 of the Customs Act to enhance the maximum punishment of imprisonment from six months to two years in cases of obstruction to the customs officers while performing their duties.

Clause 29 of the Customs Act, 1962 seeks to amend sub-section (1) of section 137 to provide for prior sanction for prosecution of offences under section 135A in relation to preparations.

Clause 30 seeks to insert a new section 154B in the Customs Act, which empowers the Central Government to publish the names and other particular information relating to any proceedings or prosecutions under the Act in respect of any person as the Central Government may think fit. Sub-section (2) provides that no publication shall be made in relation to any penalty imposed under the Act if the time of presenting an appeal before the Commissioner (Appeals) or the Tribunal has expired without an appeal having been presented or has been disposed of. It is also provided to publish the names of directors, managing agents, secretaries, treasurers or managers of the company or the partners of a firm.

Customs Tariff

Clause 31 seeks to amend the first proviso to sub-section (1) of section 8B of the Customs Tariff Act, 1975 to remove the ambiguity concerning exemption from an application of safeguard duty for developing countries with a view to align with corresponding provision under Article 9.1 of WTO Agreement of Safeguard.

Excise

Clause 32 seeks to—

(i) insert sub-section (1A) and provisos to sub-section (2) in section 11A of the Central Excise Act, so as to provide an option for voluntary payment within thirty days of receipt of a notice by a producer, manufacturer or any other person who has been issued with the show cause notice for evasion of duty on account of fraud, suppression of facts and wilful misstatement or for erroneous refund under the proviso to sub-section (1).

(ii) envisage a reduced amount of penalty at twenty-five per cent. of the duty specified in the notice. To avail the option such person may pay the duty specified in the said notice either in full along with interest and penalty at the rate of twenty-five per cent., of the duty paid or a part thereof along with interest and penalty at twenty five-per cent, of the duty so accepted and paid. The scheme also envisages termination of proceedings against the co-noticee if any, to the proceeding in the event of payment of duty in full alongwith interest and twenty-five per cent. of duty is paid as penalty within thirty days of receipt of the notice.

Clause 33 seeks to insert a new section 11DDA in the Central Excise Act, 1944 to provide for provisional attachment of property belonging to a person to whom a notice is served under sub-section (1) of 11A or sub-section (2) of 11D to protect revenue in certain cases.

Clause 34 seeks to amend sub-section (2) of section 35E of the Central Excise Act, 1944 to facilitate an officer other than the adjudicating authority to file an appeal before the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

Clause 35 seeks to insert a new section 37E in the Central Excise Act to provide for publication of information relating to any proceedings or prosecutions under the Act in respect of such person as the Central Government may think fit. Sub-section (2) categorically prescribes that no publication shall be made in relation to any penalty imposed under the act until the time of presenting an appeal, before the Commissioner (Appeals) or the Tribunal, has been expired without an appeal having been presented or has been disposed of. It is also provided to publish the names of directors, managing agents, secretaries, treasurers or managers of the company or the partners of a firm.

Clause 36 seeks insert two provisos in sub-rule (3) of rule 16 of the Central Excise Rules, 2002 retrospectively for the period from 29th day of May 2003 and ending with 8th day of July, 2004 to declare independent wire drawing units as "assessee" to resolve multiple proceedings and also to redress the grievances of discrimination against wire drawing units. The process of "wire drawing" from "wire rods" has been held as not amounting to manufacture by the Supreme Court. Therefore, the benefit of credit of duty availed by the manufacturers was withdrawn on 29.5.2003 by a circular issued by the Board. However, certain manufacturers continued to pay duty and to pass on

the credit to the ultimate buyer for further manufacture. By an amendment *vide* section 89 of the Finance (No. 2) Act, 2004, note 10 was inserted in Section XV of the Central Excise Tariff Act, 1985 to declare the said process as 'manufacture'.

Miscellaneous

Clause 37 seeks to amend section 25 of the Central Sales Tax Act, 1956 to provide for transfer of proceedings relating to inter-State disputes falling under section 6A read with section 9 of the said Act pending before an appellate authority of a State or the Union territory to the Authority notified under section, sub-section (j) of section 24 of the said Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to amend section 2 of the Income-tax Act so as to provide that the Tax Recovery Officer may also exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer. The proposed amendment empowers the Central baord of Direct Taxes to Prescribe, by rules, such powers and functions to be exercised by the Tax Recovery Officer.

2. Item (ii) of sub-clause (b) of clause 3 of the Bill seeks to insert two new provisos after the eighth proviso in clause (23C) of section 10 of the Income-tax Act relating to incomes not included in the total income. In the tenth proviso as so inserted after the ninth proviso, it is proposed 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 tot he provisions of the said sub-clauses of clause (23C) of section 10, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or university or other educational institution or hospital or other medical institution shall get its accounts audited 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 audited accounts and the report of such audit in the prescribed form. This proviso confers power upon the Central Board of Direct Taxes to notify, by rules made by it, the form in which such report of audit is to be furnished along with the return of income and the particulars which such report shall contain.

3. Sub-clause (a) of clause 5 seeks to empower the Central Board of Direct Taxes to prescribe the guidelines, the manner and the conditions subject to which approval is to be granted to an association university, college or other institution under clause (ii) of sub-section (1) of section 35 of the Income-tax Act. Sub-clause (b) of clause 5 seeks to empower the Central Board of Direct Taxes to prescribe the guidelines, the manner and the conditions subject to which approval is to be granted to a university, college or other institution under clause (iii) of sub-section (1) of section 35 of the Income-tax Act.

4. The matters in respect of which rules may be made in accordance with the aforesaid provisions of the Bill are matters of procedure or detail and it is not practical to provide for them in the Bill itself.

5. The delegation of legislative powers is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE INCOME-TAX ACT, 1961

(43 OF 1961)

* * * * *

2. In this Act, unless the context otherwise requires,— Definitions.

* * * * *

(44) "Tax Recovery Officer" means any Income-tax Officer who may be authorised by the Chief Commissioner or Commission, by general or special order in writing, to exercise the powers of a Tax Recovery Officer;

* * * * *

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included— Income not included in total income.

* * * * *

(23C) any income received by any person on behalf of—

(i) the Prime Minister's National relief Fund; or

(ii) the Prime Minister's Fund (Promotion of Folk Art); or

(iii) the Prime Minister's Aid to Students Fund; or

(iiia) the National Foundation for Communal Harmony; or

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiac) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed the Government; or

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

(iiiae) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or

(iv) any other fund or institution established for charitable purposes which may be notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes of wholly for public religious and charitable purposes, which may be notified by the Central Government in Official Gazette, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority:

Provided that 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) shall* make an application in the prescribed form and manner to the prescribed authority for the purposes of grant of the exemption, or continuance thereof, under sub-clause *(iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via):*

Provided further that the Central Government, before notifying the fund or trust or institution, or the prescribed authority, before approving any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the Central Government or the prescribed authority, as the case may be, may also make such inquiries as it deems necessary in this behalf:

Provided also that 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)—

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is establishment and in a case where more than fifteen per cent. of its income is accumulated on or after the 1st day of April, 2003, the period of the accumulation of the amount exceeding fifteen per cent. of its income shall in no case exceed five years; and

(b) does not invest or deposit its fund, other than—

(i) any assets held by the funds, trust or institution or any university or other educational institution or any

hospital or other medical institution where such assets form part of the corpus of the fund, trust or institution or any university or other educational institution or any hospital or other medical institutions as on the 1st day of June, 1973;

(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) and sub-clause (ia), by way of bonus shares allotted to the fund, trust or institution or any university or other educational institution or any hospital or other medical institution;

(iv) voluntary contribution received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in the sub-section (5) of section 11:

Provided also that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993:

Provided also that the exemption under sub-clause (vi) or sub-clause (via) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001:

Provided also that the exemption under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub-clause, subject tot he condition that such voluntary contribution is not held by the trust or institution or any university or other educational institution or any hospital or other medical institution, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:

Provided also that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business,

unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Provided also that any 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 of years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued as may be specified in the notification:

Provided also that any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilized for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly by charged to tax:

Provided also that where 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) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any 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) shall not

be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established:

Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the

proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer;

Conditions as to registration of trusts, etc.

12A. The provisions of section 11 and section 12 shall not apply in relations to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the person in receipt of the income furnishes 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.

* * * * *

Expenditure on scientific research.

35. (i) In respect of expenditure on scientific research, the following deductions shall be allowed—

* * * * *

(ii) an amount equal to one and one-fourth times of any sum paid a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research:

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the Central Government by notification in the Official Gazette;

(iii) an amount equal to one and one-forth times of any sum paid to a university, college or other institution to be used for research in special science or statistical research:

Provided that such university, college or institution is for the time being approved for the purposes of this clause by the Central Government by notification in the Official gazette;

(iv) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2):

Provided that the scientific research association, university, college or other institution referred to in clause (ii) or clause (iii) shall make an application in the prescribed form and manner to the Central Government for the purpose of grant of approval, or continuance thereof, under clause (ii) or, as the case may be, clause (iii):

Provided further that the Central Government may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual accounts) or information from the scientific research association, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the scientific research association, university, college or other institution and that authority may also

make such inquiries as it may deem necessary in this behalf:

Provided that any 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 (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification.

* * * * *

Amounts not deductible.

40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession"—

(a) in the case of any assessee—

* * * * *

(ia) any interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under chapter XVII-B and such texts has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of

section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Explanation.—For the purposes of this sub-clause,—

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the *Explanation* to section 194H;

(ii) "fees for technical services" shall have the same meaning as in *Explanation* 2 to clause (vii) of sub-section (1) of section 9;

(iii) "professional services" shall have the same meaning as in clause (a) of the *Explanation* to section 194J;

(iv) "work" shall have the same meaning as in *Explanation* III to section 194C;

* * * * *

Expenses or payments not deductible in certain circumstances.

40A. (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

(2) (a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure in excessive or unreasonable having regard to the fair market value of the goods, services of facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered

by him to be excessive or unreasonable shall not be allowed as a deduction.

(b) The persons referred to in clause (a) are the following, namely:—

(i) where the assessee is an individual	any relative of the assessee;
(ii) where the assessee is a company, firm, association of persons or Hindu undivided family	any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(iii) any individual who has substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee, or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession,—

(A) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that persons; or

(B) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

Explanation—For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,—

(a) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(b) in any other case, such person is, at any time during the previous year beneficially entitled to not less than twenty per cent of the profits of such business or profession.

(3) Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March, 1969) and may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding twenty thousand rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, twenty per cent of such expenditure shall not be allowed as a deduction:

Provided that where an allowance has been made in the assessment for any year not being an assessment year commencing prior to the 1st day of April, 1969, in respect of any liability

incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes any payment in respect thereof in a sum exceeding twenty thousand rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, the allowance originally made shall be deemed to have been wrongly made and the Assessing Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment, and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made:

Provided further that no disallowance under this sub-section shall be made where any payment in a sum exceeding twenty thousand rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any payment in respect of any expenditure has to be made by a crossed cheque drawn on a bank or by a crossed bank draft in order that such expenditure may not be disallowed as a deduction under sub-section (3), then the payment may be made by such cheque or draft, and where the payment is so made or tendered, no person shall be allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.

* * * * *

(7) (a) Subject to the provisions of clause (b), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

(b) Nothing in clause (a) shall apply in relation to any provision made by the assessee for the purposes of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year.

Explanation.—For the removal of doubts, it is hereby declared that where any provision made by the assessee for the payment of gratuity to his employees on their retirement or termination of their employment for any reason has been allowed as a deduction in computing the income of the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way of gratuity to any employee shall not be allowed as a deduction in computing the income of the assessee of the previous year in which the sum is so paid.

* * * * *

(9) No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (iv) or clause (v) of sub-section (1) of section 36, or as required by or under any other law for the time being in force. 21 of 1860.

(10) Notwithstanding anything contained in sub-section (9), where the Assessing Officer is satisfied that the fund, trust, company, association of persons, body of individuals, society or other institution referred to in that sub-section has, before the 1st day of March, 1984, *bona fide* laid out or expended any expenditure (not being in the nature of capital expenditure) wholly and exclusively for the welfare of the employees of the assessee referred to in sub-section (9) out of the sum referred to in that sub-section, the amount of such expenditure shall, in case no deduction has been allowed to the assessee in respect of such sum and subject to the other provisions of this Act, be deducted in computing the income referred to in section 28 of the assessee of the previous year in which such expenditure is so laid out or expended, as if such expenditure had been laid out or expended by the assessee.

(11) Where the assessee has, before the 1st day of March, 1984, paid any sum to any fund, trust, company, association of persons, body of individuals, society or other institution referred to in sub-section (9), then, notwithstanding anything contained in any other law or in any instrument, he shall be entitled—

(i) to claim that so much of the amount paid by him as has not been laid out or expended by such fund, trust, company, association of persons, body of individuals, society or other institution (such amount being hereinafter referred to as the unutilized amount) be repaid to him, and where any claim is so made, the unutilized amount shall be repaid, as soon as may be, to him;

(ii) to claim that any asset, being land, building, machinery, plant or furniture acquired or constructed by the fund, trust, company, association of persons, body of individuals, society or other institution out of the sum paid

by the assessee, be transferred to him, and where any claim is so made, such asset shall be transferred, as soon as may be, to him.

* * * * *

Income from other sources.

56. (1) * * * * *

(2) in particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:—

(i) dividends;

(ia) income referred to in sub-clause (viii) of clause (24) of section 2;

(ib) income referred to in sub-clause (ix) of clause (24) of section 2;

(ic) income referred to in sub-clause (x) of clause (24) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(id) income by way of interest on securities, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(ii) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(iii) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession";

(iv) income referred to in sub-clause (xi) of clause (24) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession" or under the head "Salaries".

(v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, the whole 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.

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 persons referred to in clause (ii) to (vi).

* * * * *

Chapter XIV

Procedure for Assessment

Return of income.

139. (1) * * * * *

(4C) Every—

(a) scientific research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10;

(f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10,

shall, if the total income in respect of which such scientific research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed 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).

* * * * *

143. (1) * * * * * Assessment.

(3) On the day specified in the notice,—

(i) issued under clause (i) of sub-section (2), or as soon afterwards as may be, after hearing such evidence and after taking into account such particulars as the assessee may produce, the Assessing Officer shall, by an order in writing, allow or reject the claim or claims specified in such notice and make an assessment determining the total income or loss accordingly, and determine the sum payable by the assessee on the basis of such assessment;

(ii) issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:

Provided that in the case of a—

(a) scientific research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (23B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10,

which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing officer, without giving effect to the provisions of section 10, unless—

(i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, by such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

(ii) the approval granted to such scientific research association or other association or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded.

* * * * *

Rent.

194I. Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of—

(a) fifteen per cent, if the payee is an individual or a Hindu undivided family; and

(b) twenty per cent in other case:

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed one hundred and twenty thousand rupees:

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.

Explanation.—For the purposes of this section—

(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 any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;

(ii) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credited of such income to the account of the payee and the provisions of this section shall apply accordingly.

Fees for professional or technical services.

194J. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—

(a) fees for professional services, or

(b) fees for technical services,

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to five per cent. of such sum as income-tax on income comprised therein:

Provided that no deduction shall be made under this section—

(A) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(i) twenty thousand rupees, if the case of fees for professional services referred to in clause (a), or

(ii) twenty thousand rupees, in the case of fees for technical services referred to in clause (b):

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section:

Provided also that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

Explanation.—For the purposes of this section,—

(a) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural procession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;

(b) "fees for technical services" shall have the same meaning as in *Explanation* 2 to clause (vii) of sub-section (1) of section 9;

(c) where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

Rounding off of tax, etc.

288B. The amount of tax (including tax deductible at source or payable in advance), interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contained a part of a rupee consisting of *paise* then, if such part is fifty *paise* or more, it shall be increased to one rupee and if such part is less than fifty *paise* it shall be ignored.

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EXTRACTS FROM THE CUSTOMS ACT, 1962

(52 OF 1962)

* * * * *

Notice for payment of duties, interest, etc.

28. (1) * * * * *

(2) The proper officer, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), shall determine the amount of duty or interest due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

* * * * *

Power to arrest.

104. (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 been guilty of an offence punishable under section 135, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

* * * * *

Power to summons persons to give evidence and produce documents.

108. (1) Any gazetted officer of customs shall have power to summons 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 in connection with the smuggling of any goods.

* * * * *

Issue of show cause notice before confiscation of goods, etc.

124. No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

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Powers of Board or Commissioner of Customs to pass certain orders.

129D. (1) * * * * *

(2) The Commissioner of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.

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CHAPTER XVI

OFFENCES AND PROSECUTIONS

False declaration, false documents, etc.

132. Whoever makes signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Obstruction of officer of customs.

133. If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

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Cognizance of offences.

137. (1) No court shall take cognizance of any offence under section 132, section 133, section 134 or section 135, except with the previous sanction of the commissioner of Customs.

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EXTRACTS FROM THE CUSTOMS TARIFF ACT, 1975

(51 OF 1975)

* * * * *

Power of Central Government to impose safeguard duty.

8B. (1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article:

Provided that no such duty shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three percent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine per cent of the total imports of that article into India:

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected:

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall

not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation.—For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in *Explanation* 2 to sub-section (1) of section 3 of Central Excise Act, 1944. 1 of 1944.

(3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(4) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition:

Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

(5) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(6) For the purposes of this section,—

(a) "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section;

(b) "domestic industry" means the producers—

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) 'threat of serious injury" means a clear and imminent danger of serious injury.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

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EXTRACT FROM THE CENTRAL EXCISE ACT, 1944

(1 OF 1944)

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11A (1) * * * * * Recovery of duties not levied or not paid or short levied or short-paid or erroneously refunded.

(2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise due from such person (not being in

excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

* * * * *

Powers of Board or commission of Central Excise to pass certain orders.

35E. (1)* * * * *

(2) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Commissioner (appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

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EXTRACT FROM THE CENTRAL SALES TAX ACT, 1956

(74 OF 1956)

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Transfer of pending proceedings.

25. On and from the date when the Authority is constituted under section 19, every appeal arising out of the provisions contained in this Chapter—

(i) which is pending immediately before the constitution of such Authority before the appellate authority constituted under the general sales tax law of a State or of the Union territory, as the case may be; or

(ii) which would have been required to be taken before such Appellate Authority, shall stand transferred to such authority on the date on which it is established.

* * * * *

LOK SABHA

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BILL

further to amend the Income tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956

(Shri P. Chidambaram, Minister of Finance)