

Customs Act, 1969 and Rules

Significant amendments

Customs-station

Sections 2(k) & 2(m)

Section 9 describes the Board's powers to notify and declare customs-stations vis-à-vis airports, ports, dry ports, etc. However, the reference of Section 9 is missing in the definition of term 'customs-station' provided under Section 2(k).

The Bill seeks to clarify that the customs stations shall mean the notified customs destinations across Pakistan, as declared by the Board, in view of Section 9 read with various customs notifications issued from time to time. After above rectification, the definition of term 'land customs-station' as provided under Section 2(m) is proposed to be omitted.

Documents

Section 2(kka)

The term 'documents' is defined to include various customs documents, however, the documents like 'certificate of country of origin', Vessel Information Report (VIR) and Carrier Declaration Information (CDI) are not specifically mentioned. By virtue of proposed amendment, these documents have been included in the definition of 'documents'.

KIBOR

Sections

2(lc), 21A(2), 83(2), 86(1)(b) and 202A

The Bill seeks to insert definition of the term 'KIBOR', which means Karachi Inter Bank Offered Rate applicable on the first day of each quarter of the financial year. The proposed insertion is meant to apply rate of surcharge at KIBOR plus 3% per annum under the following sections of the statute:

Section	Existing rate of surcharge	Proposed rate of surcharge
21A	14% p.a.	KIBOR plus 3% per annum
83(2)	14% p.a.	--do--
86(1)(b)	1% per month	--do--
202A	1.5% per month	--do--

Smuggle

Section 2(s)(ii)

The Bill proposes to enhance the value of specified goods from Rs.50,000 to Rs.200,000 for the purpose of exclusion from the ambit of smuggling. These goods include gold, silver, platinum, palladium, radium, precious stones or any other goods notified by the Federal Government. The enhancement of threshold has

been proposed due to increase in prices of gold and other precious items.

Assistance to officers of customs

Section 7

Under Section 7, the specified officers, engaged in collection of land revenue, are empowered and required to assist the customs officers in discharge of their statutory duties. Reference to Central Excise is proposed to be substituted by 'Federal Excise' as the Central Excise Act, 1944 has been repealed.

Provision of accommodation at customs ports, etc.

Section 14-A

The Bill seeks to add the words "including any body corporate, any port trust or terminal operator" after the word 'person' as used in Section 14-A to clarify that management of any port, airport, customs station, terminal operator is bound by law to provide office accommodation to customs department.

Prohibitions

Section 15

Section 15 specifies the goods which cannot be imported or exported into/from Pakistan. It inter-alia includes goods involving

infringements of copyrights, trade marks and patents under the respective legislations.

The Bill seeks to insert a proviso to Section 15, empowering the customs officers to adjudicate on offences relating to goods imported or exported in violation of intellectual property rights, notwithstanding anything provided in any other law.

Power to determine the customs value

Section 25A(1)

The Director of Customs Valuation is authorized to determine the customs value of any goods imported into or exported out of Pakistan on the basis of reference made to him by any person. However, the Collector of Customs is authorized to do so even on his own motion. The Bill seeks to empower the Director Customs Valuation to determine the customs value of goods on his own motion to tackle the issues of under invoicing more effectively. Further, it is also proposed that the Director may also determine the value, if the reference is made by an officer of customs.

Review of the value determined

Section 25D

The value determined by the Collector of Customs or Director Valuation or any other customs

authority can be challenged, if the review application is filed with the Director General of Valuation. The Bill proposes to prescribe a time lime of 30 days for filing of this review application with DG Valuation.

Effective rate of duty

Section 31A(1)

The Bill proposes to insert references of Sections 18A, 18C and 18D in addition to Section 18 under Section 31A(1) to clarify the determination of effective rate of duty applicable on goods. Sections 18A, 18C and 18D are special charging provisions of law for determination of special customs duty, duties under trade agreement with other countries and levy of fee and services charges respectively.

Untrue statement, error, etc.

Section 32(1)(c)

Section 32(1) deals with the offence on account of untrue statement or false declaration, however, the provision does not cover the e-declarations filed with the customs. The Bill seeks to insert a new clause to cover the electronic declarations filed through automated clearance system (PACCS) regarding any customs matter. The proposed amendment is meant to curb the tendency of deliberate wrong self-assessment

involving loss of revenue to the exchequer.

Fiscal fraud

Section 32A (1)(c)

The Bill seeks to amend Section 32A(1)(c) to include any untrue information on account of any customs matter, including assessment and classification of goods within the ambit of fiscal fraud.

Refund to be claimed within one year

Proviso to Section 33(1)

Sales tax and Federal excise laws restrict issuance of refund where the incidence of tax / duty has been passed on to the buyer or consumer. However, the Customs law does not cover this aspect. Now, it is proposed by virtue of Proviso inserted in Section 33(1) that no refund shall be allowed if the sanctioning authority is satisfied that incidence of customs duty and other levies has been passed on to the buyer or consumer. The proposed insertion seems quite harsh as unlike sales tax and Federal Excise Duty, the customs duty is borne by the importer itself. Any erroneous / inadvertent excess payment of customs duty should not be linked with selling price of the imported goods or goods manufactured. This will deprive the refund claimants from their vested

rights, even in cases of genuine refunds.

Delivery of import manifest in respect of a conveyance other than a vessel

Section 44

This provision requires the person-in-charge of a conveyance, other than a vessel to deliver an import manifest to appropriate customs officer within 24 hours after arrival at a land customs station or customs airport. The Bill seeks to provide options to deliver the import manifest before arrival of conveyance and to file the manifest electronically also.

Declaration by passenger or crew of baggage

Second Proviso to Section 139

By virtue of the proposed insertion, the declaration made by the passenger availing green channel for clearance of baggage, shall be taken as a confirmation that no dutiable or contraband goods are contained in the baggage of such passenger.

Cancellation of registration of registered user

Proviso to Section 155F

Proviso to Section 155F is proposed to be amended to empower the Collector of Customs to immediately suspend Unique User Identifier (UUI) on information of misuse of the same or on receipt of any complaint or information on contravention of any provisions of law. However, by virtue of the proposed second proviso, the Collector would be required to pass the order on such suspension of UUI after giving an opportunity of hearing. These steps are being taken to curb the growing tendency of misuse of UUI on the part of importers under PACCS.

Power of adjudication

Section 179(1)& 179(3)

The Bill proposes to extend adjudication authority to Principal Appraisers and Superintendents of Customs in cases of confiscation of goods or imposition of penalty under the Customs laws, where the amount of customs duty and other taxes do not exceed Rs.50,000. This proposal may affect the quality of adjudication process, considering the ground reality that the Appraisers and Superintendent are not generally trained for adjudication.

Section 179(3) is also proposed to be amended by substitution of words 'issuance of show cause notice' in place of the words 'receipt of contravention report', so that the time limit of 120 days for finalization of adjudication proceedings shall commence from the date of issuance of show cause notice. This would synchronize the provision with the corresponding provision under Sales Tax Act, 1990. It is also proposed that the extension time to finalize adjudication beyond 120 days may also be curtailed from 90 days to 60 days.

However, by virtue of the proposed proviso to Section 179(3), the period of adjournments due to request of taxpayers or court proceedings, etc. shall be excluded from the allotted 120 days, extendable by another 60 days. This measure supports the revenue, so that any case may not be held barred by limitation where adjudication proceedings are adjourned. Similar amendments are also proposed under the provisions of Sales Tax and Federal Excise legislations.

Vesting of confiscated property in the Federal Government

Section 182

The Board is authorized to allow use of confiscated vehicles for operational purposes by itself or

may also approve their use for the subordinate offices. Now, it is proposed that the Board will also be able to approve use of confiscated vehicles by the Members of Appellate Tribunal constituted under the laws administered by the Board.

Procedure in appeal

Section 193-A(3)

The Bill seeks to enhance the time limit of 90 days to 120 days for passing of order-in-appeal by the Collector (Appeals), however extension may now be sought from the Board within 60 days, instead of 90 days. Further, a proviso is proposed to be inserted to exclude the periods of adjournments due to request of the appellants, etc.

Similar amendments have also been proposed under Sales Tax and Federal Excise laws to bring the provisions in harmony with each other, considering the fact that the Collector of Appeals singly conducts appeals on customs, excise and sales tax matters.

Orders of Appellate Tribunal

Proviso to Section 194-B(1)

Second proviso to Section 194-B(1) is proposed to be substituted as its content is merged in sub-section (1), whereas, the new proviso seeks to restrict the Appellate Tribunal to pass any order to

suspend recovery of duty and taxes without providing opportunity of being heard to the Respondents [in this particular situation refers to the Department's Representatives]. It is also proposed that Appellate Tribunal shall not grant stay against recovery proceedings beyond 180 days in aggregate.

The proposed amendments appear to favour the revenue and the appellant will be on the mercy of the Respondent, whether he appears at the time of hearing or otherwise. This implies that the Tribunals would not be able to grant stay in situations, where the Respondents fail to appear before the Bench.

Procedure of Appellate Tribunal

Section 194-C(3)

Under the existing provision, the Special Bench constituted by the Chairman of the Appellate Tribunal, can hear cases involving duty, tax, penalty or fine exceeding rupees five million and above. Now, the minimum threshold is proposed to be enhanced to rupees ten million and above.

The Bill also seeks to omit first and second provisos thereof to prescribe that Special Bench constituted for decision shall include at least one judicial member and one technical member.

Powers of Board or Collector to pass certain orders

Section 195(2)

The Bill seeks to amend Section 195(2) to enhance the period of reopening of cases from 2 to 3 years. However, as provided under Section 195(1), the Board and the Collector of Customs are empowered to re-examine the decided cases as adjudicated by the subordinate officers only. The proposed enhancement of time period seems a harsh measure.

Alternative Dispute resolution

Section 195-C(2),(3) (3A),(4) & (5)

The ADR forum principally executes out-of-court settlement of the disputes between the taxpayer and field formations. This mechanism was first introduced in Customs law vide Finance Act, 2004, however, it has undergone several changes thereafter. The Bill again seeks few changes in the relevant provisions of Section 195 in order to make it more productive and tax-payer friendly, as summarized below:

- Board will appoint the ADR Committee within 60 days of the receipt of application from the aggrieved person, instead of time limit of 30 days.

- The Committee will send its recommendations to the Board within 180 days of the date of constitution, instead of 60 days. Accordingly, the proviso under sub-section (3) relating to extension of time is proposed to be omitted.
- A new clause is inserted under Section 195-C(3A) empowering the Board to dissolve the Committee and constitute a new Committee in case the recommendations are not sent within stipulated time.

Reference to High Court

Section 196(1)

The proposed insertion of the words 'or the Director of Post Clearance Audit' would enable the said Directorate to prefer an application to the High Court, if aggrieved by the decision of the Appellate Tribunal. Presently, the Collector of Customs or Director of Intelligence and Investigation are empowered to prefer an application in prescribed form before the Honourable High Court, stating any question of law arising out of the order.

Recovery of Government Dues

Proviso Section 202(5)

The above proviso empowers the Board as well as customs officer not below the rank of Collector

authorized by the Board, to write off the arrears of duty, surcharge, fee, service charges, fine or penalty, already adjudged. However, the word 'tax' is not included in the said provision. The Bill seeks to insert the word 'tax' to eliminate an apparent anomaly and provide legal sanctity for writing off the entire outstanding irrecoverable duties and taxes.

Maintenance of records

Section 211(2)

The Bill seeks to amend Section 211(2) in order to prescribe that records shall be retained for a period not less than five years or till the finalization of proceedings before any legal fora, whichever is later.

Significant exemptions / reduction in rates of customs duty

First Schedule to the Customs Act, 1969 i.e. Pakistan Customs Tariff [PCT]

Policy measures

Tariff rationalization has continued with a view to provide incentives to specified industrial segments, boosting the export oriented sectors, and discouraging import of non-essential and luxury items.

Under the proposed amendments in PCT and allied customs notifications issued on 13 June 2009, the following significant reduction / enhancement of customs duties are noted:

Significant exemptions

- Pharmaceutical raw materials, life-saving drugs and cancer diagnostics;
- Inputs for manufacturing parts/components for engineering sector;
- Agricultural tractors;
- Fully dedicated CNG buses (CBU)
- Steel tubes for manufacture of CNG cylinders;
- Betain for poultry industry;
- Calf milk replacer;
- Premix of micro nutrients (cattle feed premix);
- Linear alkyl benzene;
- Colostomy bags
- Spin finish oil
- Solar equipments

Significant relief Measures

Reduced rate of customs duty has been proposed under PCT and concessionary customs notifications as per following table:

Description of goods	Proposed rate of customs duty
■ Silicon sealant	10%
■ Cellular mobile phones	Rs.250 / set
■ Motorcycles, etc. falling PCT Heading 87.11	65%
■ Non-localized components and sub-assemblies of motorcycles	15%
■ Pharmaceutical packing materials (specified)	Reduced by 5%
■ Raw materials for manufacturing pre-fabricated steel buildings	5%
■ Import of kits for 4-stroke auto-rickshaws	20%
■ CRC black plate for manufacture of tin plate	5%

Revenue Measures

The rates of customs duty are proposed to be enhanced on the following imported goods:

■ Residue oil	15%
■ Hydrogen per oxide	10%

■ Dinoseb (ISO) acetate	20%
■ Rolling Coating printing ink	15%
■ Pigment thickener	10%
■ Baths, shower-baths, sinks and wash-basins	25%
■ Lavatory seats and covers	25%
■ Welded stainless steel pipes	15%
■ Printed aluminium foil	15%
■ Wire condensers	10%
■ Sparking plugs	10%
■ Multimedia still camera	10%
■ Indicator panels incorporating LCD or LED	25%
■ Tufted carpets	15%
■ Electric conductors for a voltage exceeding 1,000V	25%
■ Cinematographic film	5% ad.val plus Rs.5 per meter
■ Additional duty on four localized parts of motorcycles	32.5%

Significant Customs notifications issued on 13 June 2009

Regulatory duty on luxury / non-essential goods

SRO.482(I)/2009

This notification supersedes earlier customs notification SRO.896(I)/2008, dated 27 August 2008, as amended from time to time. The rates of regulatory duty [RD] on various items range between 15% to 25% ad valorem. Tropical MPS multi system unit of 5 tonnes capacity and above is now subjected to RD at 15% ad-val., whereas RD on cellular mobile phone stands abolished. The immunity from levy of RD has now inter-alia been extended on imports by oil and gas exploration units under SRO.678(I)/2004, imports under Chapter 99 of PCT, imports under Baggage Rules, 2006, temporary imports of such luxury items, etc.

Exemption / concession of customs duty on import of non-survey based goods

SRO.483(I)/2009

Certain amendments have been made in parent notification SRO.567(I)/2006, dated 05 June 2006, which provides exemptions and duty concessions on non-

survey based imported goods. Table III of the parent SRO stands substituted to introduce reduced rate of customs duty on additional specified active pharmaceutical ingredients, chemicals, drugs, packing materials, and diagnostic kits.

Duty concessions and sales tax exemption on import of capital goods

SRO.484(I)/2009

Certain amendments have been made in parent notification SRO.575(I)/2006, dated 05 June 2006, which provides sales tax exemption and duty concessions on import of capital goods. Number of PCT Heading has been substituted with relation to the existing entries in the parent notification. Fish or shrimp farming and seafood processing machinery and equipment and geothermal energy equipments have additionally been covered for the benefits under said SRO.

Annexure C is introduced to specify the PCT headings of plant and machinery items on which the concession/exemption is available under Sr.No.23 of SRO.575.

Exemption / duty concession on import of industrial inputs

SRO.488(I)/2009

It amends the concessionary customs notification SRO.565(I)/2006, dated 5 June 2006, which provides reduced rates of customs duty or exemptions thereof on various raw materials, components, sub-components, etc., if these are imported by specified industrial segments. By virtue of amendments made in SRO.565, several entries have been changed to give more coverage to the inputs, as were missing in the relevant entries. The components and sub-components of water dispenser have been substituted. Further zero-percent rate of duty is provided for certain new entries including silicon sealant, cylinders for input goods required for manufacturing of compressed natural gas, LPT dispenser, linear alkyl benzene sulphonic acid, etc.

Reduced rate of customs duty on inputs used for manufacture of specified vehicles

SRO.490(I)/2009

It amends the concessionary customs notification SRO.656(I)/2006, dated 22 June 2006 and provides revised

structure of reduced rates of customs duty by substitution of the Table.

Temporary importation scheme

SRO.492(I)/2009

Exemption from customs duty has been provided on specified imported goods as are subsequently exported out of Pakistan vide SRO.1065(I)/2005, dated 20 October 2005, subject to fulfilment of specified conditions.

Apart from procedural changes, it may be noted that the benefit of duty concession has additionally been extended on following temporary imports:

- Materials for manufacture of decorative items, through the process of cutting, knotting or any other process, to be used in gift packs, toys and sweets/chocolate boxes, etc., for decoration purposes.
- Materials, sub-components and components for manufacture of stationery items like pencils, glue sticks, fibre tip pens and staples, etc.

The Export Oriented Units and Small and Medium Enterprises Rules, 2008

SRO.494(I)/2009

It amends the captioned Rules as applicable for units licensed as export oriented units which are registered as manufacturers-cum-exporters under the Sales Tax Act, 1990 and the rules made thereunder. Besides other amendments, slabs are provided which specifies the applicable duty and tax concessions on disposal of plant and machinery.

Amendment in Customs Rules, 2001

SRO.498(I)/2009

Chapter VIII of the Customs Rules, 2001, which prescribes procedures and eligibility of the Customs Agents, stands substituted vide captioned customs notification. Apart from stream-lining of certain procedures, the eligibility criteria for licensing as customs agents have also been revisited.