



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

EXCISE (SPECIAL PROVISIONS)
(AMENDMENT)

ACT, No. 40 OF 1990

[Certified on 20th November, 1990]

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Excise (Special Provisions) (Amendment)
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L.D.—O. 22/90

AN ACT TO AMEND THE EXCISE (SPECIAL PROVISIONS)
ACT, No. 13 OF 1989

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Excise (Special Provisions) (Amendment) Act, No. 40 of 1990.

Short title.

2. Section 2 of the Excise (Special Provisions) Act, No. 13 of 1989 (hereinafter referred to as “the principal enactment”) is hereby amended by the repeal of paragraphs (b) and (c) of subsection (1) of that section and the substitution of the following paragraphs therefor:—

Amendment of section 2 of Act, No. 13 of 1989.

“ (b) a Director of Excise and such number of Deputy Directors, Assistant Directors, Superintendents, Chief Inspectors, Inspectors and Sub-Inspectors who shall be excise officers, as may be necessary for the implementation of the provisions of this Act; and

(c) such number of administrative, accounting, technical and clerical officers and minor staff as may be necessary to assist the aforesaid officers.”

3. The following new sections are hereby inserted immediately after section 3 of the principal enactment, and shall have effect as sections 3A and 3B, of that enactment:—

Insertion of new sections 3A and 3B in the principal enactment.

“Exemption of any representative &c., in Sri Lanka of the Government of any foreign country from payment of excise duty.

3A (1) The Minister may from time to time, by Order published in the *Gazette* exempt the representative in Sri Lanka (by whatsoever name, title or designation called) of the Government of any foreign state or the Trade Commissioner in Sri Lanka of any such Government and the persons on the staff of any such representative or Commissioner of the United Nations, its affiliated Organizations, Institutions or bodies, or the representatives of International Organizations, Institutions or bodies, named in such Order from payment of excise duty on excisable articles consigned to, or imported or cleared out of Customs bond by or for the use of such representative, Commissioner or persons, of foreign States.

(2) The Minister may, in his discretion by such Order—

(a) prescribe the conditions, if any, subject to which the exemption is allowed;

(b) extend such exemption to excisable articles consigned to, or imported by or for the use of, the families and suites of such representatives, Commissioners or persons of foreign States:

(c) limit the exemption to representatives, Commissioners or persons of any specified country, grade or class or to excisable articles of any specified description.

(3) The Minister may at his discretion, by Order published in the *Gazette*, withdraw or modify any exemption granted under this section, or vary the conditions subject to which the exemption is allowed.

(4) Every Order made by the Minister under subsection (1) shall come into force on the date of its publication in the *Gazette* or on such later date as may be specified in such Order and shall be brought before Parliament within a period of three months from the date of its publication in the *Gazette* or, if no meeting of Parliament is held within such period, at the first meeting of Parliament held after the expiry of such period, by a motion that such Order be approved.

(5) Any Order which Parliament refuses to approve shall, with effect from the date of such refusal be deemed to be revoked but without prejudice to the validity of any thing done thereunder, and the notification of the date on which such Order is deemed to be revoked shall be published in the *Gazette*.

(6) Notwithstanding anything in any Order under the preceding provisions of this section no excisable article to which such Order applies may be sold or otherwise disposed of, without the prior permission of

the Director-General and unless the excise duty payable on such excisable article at the time of such sale or disposal is paid to the Director-General. Any excisable article sold or disposed of in contravention of the preceding provisions of this subsection shall be liable to be forfeited.

Exemption of certain articles from payment of excise duty.

3B. The following articles shall be exempted from the payment of excise duty :—

- (a) articles of every description, imported or cleared from customs bond for the official use of the President ; and
- (b) articles of every description purchased or procured from a Custom Duty Free Shop.”.

4. Section 4 of the principal enactment is hereby repealed and the following section substituted therefor :—

Replacement of section 4 of the principal enactment.

“Notification of removal.

4. (1) Where the manufacturer of any excisable articles removes or causes the removal of any quantity of such excisable articles from the factory or other place at which such excisable articles were produced or manufactured, he shall before the expiry of three months from the date of such removal, give notice thereof to the Director-General or an excise officer designated by the Director-General for that purpose.

(2) Where the importer of any excisable articles removes or causes the removal of any quantity of such excisable articles from the customs warehouse or such other place as is authorized by the Director-General of Customs at which such excisable articles were stored after their import, he shall before the expiry of three months from the date of such removal give notice thereof to the Director-General or an excise officer designated by the Director-General for the purpose.”.

4 *Excise (Special Provisions) (Amendment)*
Act, No. 40 of 1990

Amendment
of section
5 of the
principal
enactment.

5. Section 5 of the principal enactment is hereby amended as follows:—

(1) by the repeal of paragraphs (a) and (b) of subsection (1) of that section and the substitution thereof of the following paragraphs:—

“ (a) in any case where such excisable article has been produced or manufactured in Sri Lanka, be paid by the producer or manufacturer of that excisable article, in the prescribed manner, after its removal from the factory or other place in which such excisable article was produced or manufactured and such duty shall be paid within one calendar month from the last date of each quarter in the year in which such removal takes place; or

(b) in any case where such excisable article was imported into Sri Lanka, be paid by the importer of such excisable article in the prescribed manner after its removal from the Customs warehouse or other place at which such excisable article was stored immediately after its importation into Sri Lanka and such duty shall be paid within one calendar month from the last date of each quarter in the year in which such import takes place.”

(2) by the repeal of subsection (2) of that section, and the substitution of the following subsections thereof:—

“ (2) Notwithstanding anything in this Act, every person who imports any excisable article manufactured outside Sri Lanka (not being an exempted article within the meaning of sections 3A and 3B) shall pay to the Director-General of Customs, excise duty in part in respect of his import on the cost, insurance and freight value of such article determined under the Customs Ordinance, prior to its removal from the customs warehouse or such other place at which such excisable article is stored, at the rates of excise duty determined under section 3. The difference in excise duty due on such article after its removal from the customs warehouse or such other place where it is stored shall be payable in

the manner set out in section 5 (1) (b) and the total excise duty paid on such article shall be in accordance with the value ascertained under section 7.

(3) Where the excise duty payable on any excisable article is not paid in accordance with the provisions of subsection (1), such excise duty shall be deemed to be in default:

Provided that, an excisable article which has been produced or manufactured in Sri Lanka for the purpose of export, shall not be liable for the payment of excise duty if a bond is executed for the landing of such excisable article at the port of destination."

6. The following new section is hereby inserted immediately after section 5 of the principal enactment and shall have effect as section 5A of that enactment:—

Insertion
of new
section 5A
in the
principal
enactment.

"Power of
Director-
General to
estimate
sale price
of excisable
articles in
certain
circumstances

5A. Where any person who carries on the business of a manufacturer, producer or importer of any excisable article sells such excisable article for the purpose of distribution at a price which, in the view of the Director-General, reduces or would reduce the excise duty payable by him, then, for the purposes of this Act, such excisable article shall be deemed to have been sold at a price, which in the opinion of the Director-General, it would have fetched in the open market on the date of such sale and the excise duty leviable from such person shall be computed accordingly."

7. Section 6 of the principal enactment is hereby repealed.

Repeal of
section 6 of
the principal
enactment.

8. Section 7 of the principal enactment is hereby amended as follows:—

Amendment
of section 7 of
the principal
enactment.

(1) in subsection (1) of that section—

- (a) by the repeal of sub-paragraphs (ii) of paragraph (a) thereof;
- (b) by the renumbering of sub-paragraph (iii) of paragraph (a) as sub-paragraph (ii) thereof;

(c) by the addition at the end of that subsection of the following paragraph:—

“(c) the declared value of such excisable article for the purposes of the turnover tax determined in such manner as may be prescribed where, in relation to any excisable article, turnover tax is to be levied under the Turnover Tax Act, No. 69 of 1981.”;

(2) In subsection (2) of that section by the substitution for the words “thereof is determined with reference to the cost of transportation” of the words “thereof is determined with reference to the price for delivery at a place other than the place of removal the cost of transportation”;

(3) in subsection (3) of that section—

(a) by the substitution in sub-paragraph (ii) of paragraph (b) thereof, for the words “after importation thereof;” of the words “after importation thereof, and includes any other place registered with the Director-General for the storage of such excisable articles prior to sale;”;

“(aa) by the substitution, in paragraph (c) thereof, for the words “and distribution of the assessee” of the words “and distributor of the assessee”; and

(a) by the substitution in sub-paragraph (ii) of for all the words from “payable on such” to the end of that paragraph, of the words “payable on such packing material”.

Insertion of
new section
7A in the
principal
enactment.

9. The following new section is hereby inserted immediately after section 7, and shall have effect as section 7A of the principal enactment:—

“Power of
Director-
General to
call for
samples,
book of
account,
register,
record or
other
document.

7A. The Director-General or any excise officer not below the rank of Superintendent authorized in that behalf by the Director-General may, for the purpose of ascertaining the value or verifying any matter relative to the recovery of excise duty or with regard to any matter into which it is his duty to inquire under this Act, by order in

writing require any person to give information or produce for examination any book of account, register, record or other document relating to any excisable article or samples of any excisable article which are in such person's power to give or produce, at such place and within such period as may be specified in such order and to allow such excise officer to examine and take copies of or make extracts from any such book of account, register, record or other document."

10. Section 8 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution of the following subsection therefor:—

Amendment of section 8 of the principal enactment.

"(1) The Minister may, by regulation made under this Act, provide for the remission of excise duty leviable on any excisable articles which are found to be deficient in quality by reason of any natural cause or otherwise or which are unsold for a period of time and are determined as unsaleable, by reason of being outmoded or for any other reasonable cause, by a Board of Assessors consisting of at least two officers not below the rank of Superintendent appointed in that behalf by the Director-Genereal."

11. The following new section is hereby inserted immediately after section 8, and shall have effect as section 8A, of the principal enactment:—

Insertion of new section 8A in the principal enactment.

"Appeals against determination of Board of Assessors.

8A. (1) Any person may, if he is dissatisfied with any determination made by a Board of Assessors under section 8, appeal against such determination in writing to the Director-General before the expiry of fourteen days after the date on which such determination is communicated to him:

Provided that, the Director-General, upon being satisfied that owing to absence from Sri Lanka, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal.

(2) The Director-General may, upon any appeal made to him under subsection (1) affirm, vary or annul the determination against which such appeal was made.

(3) Any person aggrieved by the decision of the Director-General upon any appeal made to him under subsection (1), may appeal in writing to the Deputy Secretary to the Treasury before the expiry of ten days after the date on which such decision is communicated to him by the Director-General.

(4) The decision of the Deputy Secretary to the Treasury on any appeal preferred to him under subsection (3) shall be final."

Amendment
of section
9 of the
principal
enactment.

Section 9 of the principal enactment is hereby amended in the proviso to subsection (1) of that section by the substitution, for the words "ten years" of the words "five years".

Amendment
of section
10 of the
principal
enactment.

13. Section 10 of the principal enactment is hereby amended as follows:—

"(1) in subsection (1) of that section by the substitution for the words "payable on such determination:", of the words "payable on such determination unless the Director-General orders that the payment of excise duty or any part thereof be held over pending the determination of such appeal:"

(2) by the repeal of subsection (6) of that section and the substitution therefor of the following subsection:

"(6) Subsections (3), (4) and (5) of section 31D of the Industrial Disputes Act shall, *mutatis mutandis*, apply to appeals from a decision of the Director-General to the Court of Appeal."

Amendment
of section
12 of the
principal
enactment.

14. Section 12 of the principal enactment is hereby amended in subsection (4) of that section by the substitution for the words "where the defaulters" of the words "where the defaulter".

15. The following new section is hereby inserted immediately after section 12 of the principal enactment and shall have effect as section 12A of that enactment:—

Insertion
of new
section 12A
in the
principal
enactment.

“Penalty for
default.

12A. (1) Notwithstanding anything in this Act where any excise duty is in default the defaulter shall, in addition to such duty in default, pay as a penalty—

(a) a sum equivalent to ten *per centum* of the amount in default; and

(b) where any amount in default is not paid before the end of the month succeeding the month in which the duty is due, a further sum equivalent to two *per centum* of the amount in default in respect of each period ending on the last day of each succeeding month or part of such period during which it is in default:

Provided however, that the total amount payable as penalty under this subsection shall in no case exceed fifty *per centum* of the duty in default and any such amount may be waived or reduced if the Director-General is satisfied that by reason of any special circumstances in which the default occurred a waiver or reduction of such amount would be just and equitable.

(2) Where upon the final determination of an appeal under section 10 any duty in default to which any sum or sums under subsection (1) has or have been added is reduced then such sum or sums shall be calculated on the duty as so reduced.”

10 *Excise (Special Provisions) (Amendment)*
Act, No. 40 of 1990

Insertion
of new
section 13A
in the
principal
enactment.

16. The following new section is hereby inserted immediately after section 13 of the principal enactment and shall have effect as section 13A of the principal enactment:—

"Deduction by
manufacturers
registered
under this
Act.

13A. Where a manufacturer registered under this Act, has paid to another manufacturer registered under this Act, during any quarter any sum in respect of any transaction which includes excise duty, turnover tax or both excise duty and turnover tax on excisable articles used by the first-mentioned manufacturer in his business of manufacture of articles liable to excise duty, the excise duty and turnover tax so included shall be deducted from the excise duty payable by the first-mentioned manufacturer for that quarter :

Provided that no deduction shall be made for excise duty—

(a) in respect of any plant, machinery, fixtures, buildings, vehicles or other capital assets used in that business ;

(b) where deductions are permitted on the same inputs under the Turnover Tax Act, No. 69 of 1981, or any other law ;

(c) unless the other manufacturer has obtained from the first-mentioned manufacturer from whom such excisable articles were purchased, a voucher setting out—

(i) his name, postal address and his registered number ;

(ii) the name, postal address and the registered number, if any, of the buyer ;

(iii) the date on which each transaction was entered into ;

(iv) the nature of the transaction ;

(v) the quantity of excisable articles supplied and the amount of money received or receivable in respect of each transaction before any charge for excise duty and the turnover tax; and

(vi) the excise duty and the turnover tax attributable to each such transaction.”

17. Section 14 of the principal enactment is hereby amended as follows:—

Amendment
of section
14 of the
principal
enactment.

(1) in subsection (1) of that section—

(a) by the substitution for the words “shall engage in”; of the words “shall, unless registered for the purpose of this Act with the Director-General engage in”;

(b) by the repeal of paragraph (c) and the substitution of the following paragraph therefor:—

(c) the importation of any such excisable articles”; and

(2) by the repeal of paragraph (b) of subsection (2) of that section and the substitution of the following paragraph therefor:—

“(b) The Director-General shall issue to every person registered under this Act a certificate of registration in the prescribed form and assigning a registration number to every such person.”

18. Section 15 of the principal enactment is hereby repealed.

Repeal
of section
15 of the
principal
enactment

Amendment
of section
16 of the
principal
enactment.

19. Section 16 of the principal enactment is hereby amended as follows:—

(1) by the repeal of subsections (3) and (4) of that section, and the substitution of the following subsections therefor:—

“(3) Any person aggrieved by an order made in respect of him by the Director-General under subsection (1) may prefer an appeal in writing to the Board of Appeal referred to in subsection (6) before the expiry of ten days after the date on which such Order is communicated to him by the Director-General and the Board of Appeal may on such appeal preferred to the Board affirm, vary or amend the order against which the appeal has been preferred”.

(4) An order made under subsection (1) shall come into force after one month from the date on which such order is communicated to the person concerned by the Director-General unless an appeal has been preferred to the Board of Appeal against such order within the time specified in subsection (3).”;

(2) by the insertion of the following subsection at the end of that section:—

“(6) There shall be a Board of Appeal, for the purpose of this section consisting of the Deputy Secretary to the Treasury and two senior officers of the Ministry of Finance appointed by the Minister.”.

Replacement
of
section 19 of
the principal
enactment.

20. Section 19 of the principal enactment is hereby repealed and the following section substituted therefor:—

“Powers of
inspection
and of
search of
buildings
or places.

19. (1) Any excise officer specially authorized in that behalf by the Director-General in writing may, accompanied by a peace-officer, do all or any of the following acts:—

(a) enter and search any building or place where he has reason to believe that any books of account, registers, records or other documents which in his opinion will be useful for, or relevant to, any proceedings under this Act may be found, and examine them if found;

- (b) seize any such books of account, registers, records or other documents, or place marks of identification thereon or take extracts therefrom or make copies thereof;
- (c) make a note or an inventory of any other things found in the course of any search under this section **which in his opinion will be useful** for, or relevant to, any proceedings under this Act.

The provisions of the Code of Criminal Procedure Act, No. 15 of 1979, relating to searches shall apply so far as may be to searches under this section.

In this subsection, "peace officer" shall have the same meaning as in the Code of Criminal Procedure Act, No. 15 of 1979.

(2) Before authorizing any excise officer to exercise the powers under subsection (1), the Director-General shall record the circumstances which necessitate the exercise of these powers by that officer.

(3) Where any excise officer authorized by the Director-General under subsection (1) seizes any book of account, register, record or other document from any person, such excise officer shall issue to that person a memorandum specifying the book, register, record or other document he has seized.

(4) Any book of account, register, record or other document seized under subsection (1) by any excise officer may be retained in the possession of such excise officer as long as may be necessary for the scrutiny of such book, register, record or other document or for the institution of legal proceedings against the person to whom such book, register, record or other document belongs."

Amendment
of section
20 of the
principal
enactment.

21. Section 20 of the principal enactment is hereby amended by the repeal of subsection (2) of that section, and the substitution therefor of the following subsection:—

(2) In this section—

(i) "driver" includes the rider of a motor cycle or bicycle and the captain of a ship or air craft;

(ii) "vehicle" includes any carriage, car, motor car, motor cycle, omnibus, tractor, lorry, bicycle or other mechanically propelled vehicle; and

(iii) 'vessel' includes an aircraft.'

Amendment of
section 24
of the
principal
enactment.

22. Section 24 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and substitution therefor of the following subsection:—

"(1) Any person who contravenes the provisions of section 4 or section 5 or section 14 shall be guilty of an offence under this Act, and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one million rupees or to imprisonment of either description for a term not exceeding five years or to both such fine and imprisonment."

Replacment of
section 27
of the
principal
enactment.

23. Section 27 of the principal enactment is hereby repealed and the following section substituted therefor:—

"Compound-
ing of
offences.

27. The Director-General may compound any offence under section 4, 5 and 14 and may, before judgement stay or compound any proceeding thereunder. The Director-General may, as part of the compounding of any offence, order the release of any boat, vessel, vehicle or article seized under section 20 on payment of a sum of money not exceeding the aggregated of the estimated value of the boat, vessel, vehicle or article. All sums received by the Director-General for the composition of an offence shall be applied in the manner set out in section 28."

24. The following new section is hereby inserted immediately after section 28 and shall have effect as section 28A of the principal enactment:—

Insertion of new section 28A in the principal enactment.

“Payment to excise officers for special services and attendance.

28A. Where any person requires—

(a) any service which is determined by the Minister as a special service; or

(b) the attendance of any excise officer at an office or place other than his proper office or place of employment,

payment shall be made for such service or attendance, as the case may be, to the Director-General by such person at such rates as may be specified by the Director-General.”

25. Section 32 of the principal enactment is hereby amended as follows:—

Amendment of section 32 of the principal enactment.

(1) by the insertion, immediately before the definition of “export”, of the following new definitions:—

““agent” includes any person having the direction, control or management of any business on behalf of any other person;

“excise officer” means an officer appointed and invested with powers under this Act;

(2) by the insertion, immediately after the definition of “manufacture”, of the following new definition:—

“manufacturer or producer” means any person who—

(a) makes an article;

(b) adopts for sale any article;

(c) processes or assembles goods;”

(3) by the insertion, immediately after the definition of “prescribed” of the following new definition:—

““quarter” means the period of three months commencing on the first day of January, the first day of April, the first day of July, and the first day of October of each year.’

26. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala Text shall prevail.

Sinhala text to prevail in case of inconsistency.