

## Excise (Special Provision)(Amendment)

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: "

[27<sup>th</sup> April  
, 1994 ]

Short title. 1. This Act may be cited as the Excise (Special Provisions) (Amendment) Act, No. 8 of 1994.

Replacement of section 2 of Act No.13 of 1989. 2. Section 2 of the Excise (Special Provisions) Act, No. 13 of 1989 (hereinafter referred to as the " principal enactment ") is hereby repealed and the following new section substituted therefor :

'Appointment2.  
of Director-  
General of  
Excise  
(Special  
Provisions) .

(1) There may be appointed by name or by office, for the purpose of this Act"

(a) a Director-General of Excise (Special Provisions) (hereinafter referred to as the " Director-General") who shall be in charge of the administration at this Act ;

(b) such number of Directors of Excise, Deputy Directors of Excise, Assistant Directors of Excise, and such other officers, as may be necessary for the implementation of the provisions of this Act; and

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

(2) The Director of Excise, a Deputy Director of Excise, an Assistant Director of Excise, may, subject to the general direction and control of the Director-General, exercise, perform or discharge all or any of the powers, duties or functions conferred or imposed on, or assigned to the Director-General by or under this Act.

(3) Unless there is express provision to the contrary, every excise officer below the rank of an Assistant Director of Excise may, subject to the general direction and control of the Director-General, exercise, perform or discharge, all or any of the powers, duties or functions conferred or imposed on, or assigned to, the Director-General by or under this Act, other than any power, function or duty referred to in sections 5A,8A, 10,12,13,14,16,18, and 27.'

Insertion of new section 2A in the principal enactment. 3. The following new section is hereby inserted immediately after section 2 and shall have effect as section 2A, of the principal enactment :

"Official 2A.  
secrecy.

(1) Except in the performance or his duties under this Act, every person appointed under this Act, shall preserve and aid in, preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Act, and shall not communicate any such matter to any person other than the person to whom such matter relates or his authorized representative or to the Minister or the Secretary to the Ministry of the Minister or suffer or permit any person to have access to any records in the possession custody or control of the Director-General.

(2) Every person appointed under this Act shall before acting under this Act, and the Minister and the Secretary to the Ministry of the Minister may before acting under this Act, take and subscribe before a Justice of the Peace an oath of secrecy in the prescribed form.

(3) No person appointed under this Act shall be required to produce in any court any return, document or notice or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Act, except as may be necessary for the purpose of giving effect to the provisions of this Act or any other written law administered by the Director-General.

(4) Notwithstanding anything contained in this section, any person appointed under this Act may communicate any matter which comes to his knowledge in the performance of his duties under this Act or under any other written law administered by the Director-General to any other person appointed under this Act; if the communication of such matter is necessary for the performance of any duty under this Act or under any such other written law and the Director-General may, produce or cause to be produced in any court, in any proceedings under this Act, a copy of any particulars contained in any return or document furnished to him under this Act or other written law or otherwise in his possession certified by him or on his behalf to be a correct copy of such particulars and such copy shall notwithstanding anything in the Evidence Ordinance relating to the proof of documents, be admissible in evidence :

Provided that the Director-General may produce or cause to be produced the original of any such return or document in any case where it is necessary to prove the handwriting or the signature of the person who wrote, made, signed or furnished such return or document, but only for the purpose of such proof:

Provided further that the Director-General shall not in any case be compelled to produce, in any court either the original of such return or document or copy of any particulars contained in such return or document.

(5) Notwithstanding anything contained in this section, the Director-General shall permit the Auditor-General or any officer of the Department of the Auditor-General duly authorized by him in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor-General or any officer authorized by him under this subsection shall for the purpose of subsection (2) be deemed to be a person appointed under this Act

(6) Notwithstanding anything in the preceding provisions of this section, the Director-General or any person authorized in that behalf by the Director-General may, having regard to the need to ensure the equitable administration of this Act, cause to be published in such manner as the Director-General may consider expedient in respect of any area, a list containing,"

(a) the names and addresses of all the manufacturers and importers in that area registered under this Act; and

(b) a description of the excisable articles, manufactured or imported by such manufacturers or importers during any given period and the wholesale price declared by them for each such article."

Insertion of  
new section  
3C in the  
principal  
enactment.

4. The following any new section is hereby inserted immediately after section 3B, and shall have effect as section 3C of the principal enactment:

Exemption 3C.  
of certain  
articles  
from  
payment of  
excise  
duty.

(1) The Minister may, having regard to the economic development of the country by Order published in the Gazette, exempt from the payment of the excise duty payable under this Act, any such excisable articles or any such class or description of excisable articles as are or is specified in such Order subject to such condition as may be specified in the Order

(2) Every Order made by the Minister under subsection (1) shall come into force on the date of such Order. Every such Order shall be published in the Gazette and shall as soon as may be after its publication in the Gazette, be tabled in Parliament. Parliament may by resolution revoke any Order made by the Minister under this section within six months of the publication of such Order in the Gazette. and in the computation of such period of six months no account shall be taken of any period during which Parliament stands prorogued or dissolved. Where any such Order is so revoked, the excise duty payable on the exempted articles shall be paid by the manufacturer, producer importer or consignee of such article, to the Director- General, and such excise duty may be recovered under the provisions of this Act.

(3) Where any articles specified in an Order made under subsection (1) are subsequently sold or disposed of contrary to the conditions specified in such Order, such articles shall be liable to the same excise duty as was payable under this Act on like articles which are subject to excise duty and the manufacturer, producer, importer or consignee or such articles shall prior to such sale or disposal obtain the permission of the Director-General and pay the excise duty sale or disposal."

Amendment 5. Section 5 of the principal enactment is hereby amended as follows:-  
of section 5 of  
the principal  
enactment.

(1) by the repeal of paragraph (b) of subsection (1) of that section and the substitution therefor, of the following paragraph:-

"(b) in any case where such excisable articles was imported into Sri Lanka, be paid by the importer of such excisable article in the prescribed manner before its removal from the customs warehouse or other place where such excisable article was stored immediately after its importation into Sri Lanka".

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

“(2)

(a) 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, 3B and 3C) shall pay to the Director-General of Customs, excise duty, in respect of such excisable article, 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.

(b) Where excise duty is levied on any excisable article which is imported; with reference to the value of such article, then notwithstanding anything in section 7 or any other provision of this Act, the value of such article shall be deemed to be the aggregate of –

(i) an amount equal to the value of the cost, insurance and freight of such excisable article;

(ii) an amount equal to five per centum of the amount referred to in sub-paragraph (i), to defray banking and other charges;

(iii) an amount equal to the total of all taxes, cesses and levies payable in respect of the import of such article, under any written law.  
“; and

(3) by the repeal of the proviso to subsection (3) of that section and the substitution therefor, of the following proviso :-

“Provided that”

(i) 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 ; and

(ii) an excisable article imported for the purpose of being used as raw material in the manufacture of articles for export by exporters, shall not be liable for the payment of excise duty if sufficient proof is furnished to the satisfaction of the Director-General that such manufactured article was manufactured for export. “.

Amendment 6. Section 7 of the principal enactment is hereby amended in of section 7 of subsection (1) of that section by the substitution for the words ‘ any the principal excisable article, with reference to “, of the words “any excisable enactment. article, not being an excisable article imported into Sri Lanka, with reference to “.

Replacement of section 7A of the principal enactment. 7. Section 7A of the principal enactment is hereby repealed and the following new section substituted therefor:-

“Power of Director-General to call for samples, books of account, registers, records or other document

(1) The Director-General or any excise officer not below the rank of an Assistant Director of Excise authorized by the Director General in writing may-

(a) by notice in writing require any person who in the opinion of the Director-General or such excise officer is a person liable to registration under section 14, to register under that section and require such person to furnish within such time as may be specified in such notice, such returns containing such particulars, as are required to be furnished by a person registered under section 14;

(b) by order in writing require any person to give information, or produce for examination, any books 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 the Director-General or such excise officer to examine, and take copies, or make extracts from, any such books of accounts, register, record or other document, for the purpose of ascertaining the value of any excisable article or verifying any matter relative to the recovery of excise duty under this Act.

(c) give notice in writing to any person chargeable with excise duty, requiring him to attend in person or by an authorized representative at such place and on such date and at such time as may be specified in the notice, for the purpose of being examined regarding the excise duty payable by such person.

(2) A Deputy Director of Excise or an excise officer not below the rank of Assistant Director of Excise authorized by a Deputy Director of Excise in writing may retain his custody as long as such retention is necessary for the purposes of this Act, any books of account, register, record or other document which has been produced for examination in compliance with a requirement imposed under subsection (1).”.

Amendment of section 9 of the principal enactment. 8. Section 9 of the principal enactment is hereby amended in subsection (1) of that section as follows :

(1) by the substitution for the words ” a period of one year”, of the words “a period of five years” ; and

(2) by the substitution in the proviso to that subsection for the words ” five years “, of the words ten years “.

Amendment of section 10 : 9. Section 10 of the principal enactment is hereby amended as follows

of the  
principal  
enactment.

(1) by the repeal of subsection (2) of that section and the substitution therefor, of the following subsections:-

" (2) Every appeal under subsection (1) shall be preferred by a petition in writing addressed to the Director-General and shall state precisely the grounds of such appeal.

(3) Where the determination appealed against has been, made in the absence of a return under section 14 in respect of the period to which the determination relates, the petition of appeal shall be sent together with a return duly made. sent together with a return duly made.

(4) An appeal preferred under subsection (1) shall be rejected by the Director-General if it does not conform to the provisions of subsections (1), (2) and (3).":

(2) by the re-numbering of subsections (3), (4), (5) and (6) of that section as subsections (5), (6), (7) and (8) respectively thereof; and

(3) in the re-numbered subsection (6) of that section, by the substitution for the words " such appeal was made", of the words " such appeal was made and shall give notice in writing to the appellant of his decision on appeal" ;

(4) in the renumbered subsection (8) of that section by the substitution for the words and figures "subsections (3), (4) and (5) of section 31D", of the words and figures "subsections (8) and (9) of section 31D ".

Insertion of new section 10A in the principal enactment. 10. The following new section is, hereby inserted immediately after section 10A and shall have effect as section

"Service of 10A.  
notice.

(1) Every notice or notification to be given by the Director-General, a Director of Excise, Deputy Director of Excise or any excise or notification shall be the name of the Director-General, of Excise, Deputy Director of Excise or such excise officer is duly printed or thereon.

(2) Every notice or notification given under this Act may be served on person either personally or by being delivered at or sent by post to, his last known place of abode or any place at which he is, or was during the period to which the notice relates.

(3) Every notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course of post.

(4) In proving service by post it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.

(5) Every name printed or signed on any notice or notification or signed on any certificate given or issued for the purposes of this Act, which purports to be the name of the officer authorized to give or issue the same. shall be judicially noticed,

(6) No notice, notification, certificate or other document purporting to be given, or issued in accordance with the provisions of this Act shall be quashed or deemed to be void or voidable, for want of form or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with, or according to, the intent and meaning of the provisions of this Act, and if the person, to whom such notice, notification, certificate or document relates or is affected thereby is designated therein according to common intent and understanding. “,

Insertion of  
new sections  
11A and 11B  
in the  
principal  
enactment.

11. The following new sections are hereby inserted immediately after section 11 and shall have effect as sections 11A and 11B of the principal enactment: “

“Excise  
duty to be  
a charge  
on assets  
of  
defaulter.

11A. Any excise duty in default shall be a charge upon all the assets of the defaulter :

Provided that –

(i) such charge shall not extend to or affect any assets sold by the defaulter to a bona fide purchaser for value prior to the seizure of the same under section 11B ;

(ii) as regards immovable property, the charge shall not rank in priority to any lease or encumbrance created bona fide for value and registered prior to the date of the seizure of such property under section 11B ; and

(iii) as regards movable property, the charge shall rank in priority to any lien or encumbrance created bona fide for value prior to the date of default.



Recovery 11B.

of excise  
duty by  
seizure  
and sale.

(1) There may be appointed persons be appointed persons to be tax collectors for the purposes of this Act.

(2)

(a) Where any excise duty is in default, the Director-General may issue a certificate to a Divisional Secretary or tax collector containing particulars of such excise duty and the name of the defaulter, and the officer to whom such certificate is issued shall be empowered and is hereby required to cause the excise duty to be recovered from the defaulter named in the certificate by seizure and sale of his movable property.

(b) The said seizure shall be effected in such manner as the said officer shall deem: most expedient in that behalf and any property so seized shall be kept for five days at the costs and charges of the defaulter. If the defaulter does not pay the excise duty in default together with the costs and charges within the said five days, the Divisional Secretary or tax collector shall cause the said property to be sold by public auction.

(c) The sum realized by the sale shall be applied"

(i) firstly, in payment of the costs and charges of seizing, keeping and selling the property ; and

(ii) secondly, in satisfaction of the excise duty in default

and any balance shall be paid to the owner of the property seized.

(3) Where any excise duty is in default, and the Director-General is of opinion that recovery by the means provided in subsection (2) is impracticable or inexpedient, he may issue a certificate to a District Court having jurisdiction in any district where the defaulter resides or in which any property movable or immovable owned by the defaulter is situate, containing particulars of such excise duty and the name or names of the person or persons by whom the excise duty is payable, and the court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell or any of the property, movable and immovable of the defaulter or such part thereof as he may deem necessary for the recovery of the excise duty and the provisions of sections 226 and 297 of the civil Procedure Code shall, mutatis mutandis, apply to such seizure and sale.

(4) Whenever the director-General issues a certificate under this section, he shall at the same time issue to the defaulter a notification thereof by personal service or by registered letter send by post; but the non-receipt of such notification by the defaulter shall not invalidate proceedings under this section."

Amendment of section 12A of the principal enactment. **12** Section 12A of the principal enactment is hereby amended in subsection "

(1) by the substitution section for the words "two per centum", of the words "three per centum" ;

(2) by the substitution in the proviso to that subsection for the words " fifty per centum of the duty in default", of the words " the amount in default ".

Amendment of section 13 of the principal enactment. **13.** Section 13 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words "from the relevant date" of the words "from the date of payment."

Amendment of section 20 of the principal enactment. **14.** Section 20 of the principal enactment is hereby amended in subsection (2) of that section as follows:-

(a) by the repeal of sub-paragraph (i) of that subsection ; and

(b) by the renumbering of sub-paragraphs (ii) and (iii) of that subsection as sub-paragraph (i) and (ii) respectively thereof.

Amendment of section 23 of the principal enactment. **15.** Section 23 of the principal enactment is hereby amended by the substitution for the words and figures ' [No] 15 of 1979 " of the word and figures " No. 15 of 1979 ".

Amendment of section 24 of the principal enactment. **16.** Section 24 of the principal enactment is hereby amended by the addition, at the end of that section, of the following subsections :

" (7) Any person-

(a) who being a person required to take an oath of secrecy under section 2A (2). acts under this Act, without taking such oath; or

(b) who acts in contravention of section 2A (1) or an oath taken under section 2A (2).

shall be guilty of an offence under this Act and shall on after summary trial before a Magistrate , be liable imprisonment for a one year or to a fine not exceeding one hundred thousand rupees ,or to both such imprisonment and fine.

(8) Any person who , being the manufacturer,, producer, importer or consignee of an article specified in any Order made under section 3C, sells or disposes of such article, without the prior permission of the Director-General or in contravention of any condition specified in such Order shall be guilty of an offence Act and shall on conviction before a Magistrate, be liable to a fine

(9)Any person who, being a person on whom on notice or order under section 7A has been served wilfully fails to comply with the requirement of such notice or order 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 hundred thousand rupees"

Amendment of section 32 of the principal enactment is hereby amended as follows:-

of the  
principal  
enactment.

(1) by the insertion immediately after the definition of "agent" of the following new definitions : "

" authorized person", means any individual who is authorized in writing by a manufacturer, producer or importer registered under this Act. to act on his behalf for the purposes of this Act ;' ;

" excise duty" means any sum payable by any manufacturer, producer or importer of an excisable article under this Act and includes any added by reason of default under section 12A to any duty;' ;

(2) the substitution for the definition of "manufacturer or producer" of the following definition:-

" manufacturer or producer "means any person who

(a) makes any article;

(b) adapts for sale any article;

(c) processes or assembles any article;' ;

(3) by the insertion immediately after the definition;' ;  
"quarter" of the following new definition:-

" refund " includes rebate of excise duty on excisable articles exported from Sri Lanka;' ;

Sinhala text to prevail in case of inconsistency. 18. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail,