

Bill No. 44 of 2011

THE CUSTOMS (AMENDMENT AND VALIDATION) BILL, 2011

A

BILL

further to amend the Customs Act, 1962.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. This Act may be called the Customs (Amendment and Validation) Act, 2011.

Short title.

2. In section 28 of the Customs Act, 1962, after sub-section (10), the following sub-section shall be inserted, namely:—

Amendment of section 28 of Act 52 of 1962.

“(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.”.

STATEMENT OF OBJECTS AND REASONS

The Customs Act, 1962 consolidates and amends the law relating to customs. Clause (34) of section 2 of the said Act defines the expression “proper officer” in relation to the functions under the said Act to mean the officer of customs who is assigned those functions by the Central Board of Excise and Customs or the Commissioner of Customs. Recently, a question has arisen as to whether the Commissioner of Customs (Preventive) is competent to exercise and discharge the powers of a proper officer for issue of a notice for the demand of duty. The Hon’ble Supreme Court of India in **Commissioner of Customs versus Sayed Ali and Anr.** (Civil Appeal Nos. 4294-4295 of 2002) held that only a customs officer who has been specifically assigned the duties of assessment and re-assessment in the jurisdiction area is competent to issue a notice for the demand of duty as a proper officer. As such the Commissioner of Customs (Preventive) who has not been assigned the function of a “proper officer” for the purposes of assessment or re-assessment of duty and issue of show cause Notice to demand Customs duty under Section 17 read with Section 28 of the Act in respect of goods entered for home consumption is not competent to function as a proper officer which has not been the legislative intent.

2. In view of the above the Show Cause Notices issued over the time by the Customs officers such as those of the Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence and others, who were not specifically assigned the functions of assessment and re-assessment of customs duty may be construed as invalid. The result would be huge loss of revenue to the exchequer and disruption in the revenue already mobilized in cases already adjudicated. However, having regard to the urgency of the matter, the Government issued notification on 6th July, 2011 specifically declaring certain officers as proper officers for the aforesaid purposes.

3. In the circumstances, it has become necessary to clarify the true legislative intent that Show Cause Notices issued by Customs officers, *i.e.*, officers of the Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates for demanding customs duty not levied or short levied or erroneously refunded in respect of goods imported are valid, irrespective of the fact that any specific assignment as proper officer was issued or not. It is, therefore, purposed to amend the Customs Act, 1962 retrospectively and to validate anything done or any action taken under the said Act in pursuance of the provisions of the said Act at all material times irrespective of issuance of any specific assignment on 6th July, 2011.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

PRANAB MUKHERJEE.

The 2nd August, 2011.

PRESIDENT’S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

**[Copy of letter No. 437/143/2009-Cus.IV, dated 2.8.2011 from Shri Pranab Mukherjee,
Minister of Finance to the Secretary-General, Lok Sabha]**

The President, having been informed of the subject matter of the proposed Bill, recommends, under clause (1) of Article 117 of the Validation) Bill, 2011 in Lok Sabha.

LOK SABHA

A
BILL
further to amend the Customs Act, 1962.

(Shri Pranab Mukherjee, Minister of Finance)