

STREAMLINING CUSTOMS: TIME LIMITS INTRODUCED FOR PROVISIONAL ASSESSMENTS

BUDGET BUZZ

Budget Proposal

In the Union Budget 2025, the Hon'ble Finance Minister has proposed an amendment to Section 18 of the Customs Act, 1962, introducing a definitive time frame for the finalization of provisional assessments. The new sub-sections mandate that provisional assessments must be finalized within two years from the date of provisional assessment.

The Principal Commissioner or Commissioner of Customs is empowered to extend this period by an additional year upon recording sufficient cause, in writing.

Specific exceptions are outlined where this time frame may be paused, when information is sought from foreign authorities, matters are pending legal appeals or directives from higher authorities. These changes will take effect upon the enactment of the Finance Bill, 2025.

Further, for any provisional assessment pending, till the Finance Bill, 2025 receives presidential assent, the two-year period will begin from the date the Bill receives assent.

Impact

The establishment of a statutory time limit for finalizing provisional assessments is a pivotal advancement in customs procedures. Importers and exporters, particularly those involved in related-party transactions subject to Special Valuation Branch (SVB) scrutiny, have regularly faced prolonged provisional assessments extending over a decade. These delays have resulted in substantial cumulative demands, accompanied by interest and penalties, and have imposed the onerous requirement of maintaining extensive documentation well beyond standard record-keeping stipulations.

The new amendment introduces a clear timeline mitigating prolonged uncertainties. It also mandates that any exceptions to this timeline be formally communicated to the importer, enhancing transparency and ensuring that businesses are informed of any deviations.

However, clarity is needed regarding the status of pending cases that are not finalized within the stipulated time period. It is essential to determine whether such cases will be deemed finalized to prevent potential disputes and ensure smooth implementation of the amendment.

Additionally, clear guidelines are needed to address the status of cases pending beyond the stipulated period. Providing such clarity will prevent potential disputes and

offer much-needed relief to businesses regularly subjected to prolonged provisional assessments.

ELP's Insights

The codification of time limits for provisional assessments addresses longstanding concerns about excessive delays. Historically, the absence of defined timelines led to assessments remaining provisional for extended periods, sometimes exceeding a decade, resulting in significant tax liabilities for businesses. Needless to say, once the underlying issue is finalized the procedural aspects of finalization of Bills of Entry takes a few years to complete.

Judicial precedent has underscored the necessity of adhering to prescribed timelines. The CBIC's Customs Manual recommends a six-month period for finalizing provisional assessments, while the Customs (Finalisation of Provisional Assessment) Regulations, 2018, prescribe a two-month timeframe. Courts have relied on these guidelines to invalidate demands arising from undue delays.

In **Bihar Foundry & Castings Ltd. vs. Union of India**, the Jharkhand High Court nullified demands due to delays of six to nine years in finalizing assessments, emphasizing that such time-barred assessments are legally untenable. The Supreme Court upheld this decision, reinforcing that assessments delayed beyond reasonable periods are void and unenforceable. Similarly, in **Vedanta Ltd. vs. Bhubaneswar-I**, the CESTAT ruled in favour of the exporter, clearly noting that excessive delays can compromise the accuracy of test results, thereby affecting the fairness of customs assessments.

While the introduction of a statutory timeframe is a commendable development, it is crucial to monitor its implementation. Customs authorities must adhere strictly to the prescribed timelines and extensions should be granted only in exceptional circumstances. Importers should be promptly notified if their cases fall under any exceptions, ensuring that businesses are not caught unawares, which could lead to litigation.

Lastly, it remains to be seen as to how the time limit will be handled in cases where valuation is pending before the SVB authorities or investigations are ongoing with bodies like the DRI or SIIB. It is unclear whether specific directions or orders shall be issued by the CBIC, to suspend time limit in these cases till closure of proceedings before the said authorities.