

Amended to suit

Rep. by Act... 38 of 1978, S. 2 + Sch. I

**THE CENTRAL EXCISES AND SALT (AMENDMENT)
ACT, 1973**

NO. 22 OF 1973

[19th May, 1973]

An Act further to amend the Central Excises and Salt Act, 1944.

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

Short
title and
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ment.

1. (1) This Act may be called the Central Excises and Salt (Amendment) Act, 1973.

(2) Section 2 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and the remaining provisions of this Act shall come into force at once.

Substi-
tution of
new
section
for
section
4.

2. For section 4 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

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4-10-1975; - Vide Motif. No. G. S. R. 439 (E), dt. 8-8-1975.

4. (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be—

Valuation of excisable goods for purposes of charging of duty of excise.

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale;

Provided that—

(i) where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail;

(b) where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.

(3) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under subsection (2) of section 3.

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(4) For the purposes of this section,—

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) "place of removal" means—

(i) a factory or any other place or premises of production or manufacture of the excisable goods; or

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty,

from where such goods are removed;

(c) "related person" means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation.—In this clause "holding company", "subsidiary company" and "relative" have the same meanings as in the Companies Act, 1956;

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(d) "value", in relation to any excisable goods,—

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation.—In this sub-clause "packing" means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale;

(e) "wholesale trade" means sales to dealers, industrial consumers, Government, local authorities and other buyers, who or which purchase their requirements otherwise than in retail.

Amendment of section 37.

3. In sub-section (2) of section 37 of the principal Act, the existing clause (i) shall be re-lettered as clause (ib) thereof and before that clause as so re-lettered, the following clauses shall be inserted, namely:—

"(i) provide for determining under section 4 the nearest ascertainable equivalent of the normal price;

(ia) having regard to the normal practice of the wholesale trade, define or specify the kinds of trade discount to be excluded from the value under section 4 including the circumstances in which and the conditions subject to which such discount is to be so excluded;"

4. For section 38 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 38.

"38. (1) All rules made and notifications issued under this Act shall be published in the Official Gazette.

Publication of rules and notifications and laying of rules before Parliament.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

5. For section 40 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 40.

"40. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made thereunder.

Protection of action taken under the Act.

(2) No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause."