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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 2nd May, 1973:—

BILL NO. 37 OF 1973

A Bill 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:—

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

Short title and commencement.

(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.

1 of 1944. 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:—

Substitution of new section for section 4.

Valuation
of excis-
able
goods
for pur-
poses of
charging
of duty
of excise.

‘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—

(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 assessee and the buyer have no interest, directly or indirectly, in the business of each other 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.

(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;

1 of 1956.

(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.’

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:—

Amendment of section 37.

“(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;”.

Substitution of new section for section 38.

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

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

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

(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.”

Substitution of new section for section 40.

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

Protection of action taken under the Act.

“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.

(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.”

STATEMENT OF OBJECTS AND REASONS

Section 4 of the Central Excises and Salt Act, 1944, provides for the determination of value for the purposes of charging the duty of excise under the Act. With the increase in the *ad valorem* levies in the Central Excise Tariff, the operation of that section has presented certain practical difficulties some of which got highlighted in the recent judgment of the Supreme Court (A. K. Roy and another Vs. Voltas Limited) in a case where a manufacturer was selling a small percentage of his production through a distributor and the rest directly to the consumers from his branch offices at a much higher price. The Court held that the sale to the distributor constituted transactions in the wholesale market, and, therefore, the entire production should be assessed under clause (a) of that section and not clause (b) thereof, i.e., on the basis of the price charged to the distributor. The Court has also made an observation that under the law, as it stands at present, the valuation for purposes of excise levy would include only manufacturing cost plus the manufacturer's profits. In order to overcome the various difficulties experienced in the working of the section it is proposed to suitably revise the valuation provision contained in section 4 of the Act, providing, as far as practicable, for assessment of excisable goods at the transaction value, except in areas where there may be scope for manipulation (such as sales to or through related persons) and making specific stipulations with respect to situations frequently encountered in the sphere of valuation.

Section 40 of the Act seeks to bar suits, prosecutions and other legal proceedings for any act done in good faith under the Act and provides that no legal proceeding shall be instituted after the expiration of six months from the accrual of the cause of action. Sub-section (2) of that section has been recently interpreted by the Supreme Court to mean that the protection envisaged therein is not confined to Government or Government servants and applies to prosecutions of all individuals, with the result that no prosecution or other proceeding can be initiated even against an offender after the expiry of six months from the date of commission of the offence. This was not intended. It is proposed to suitably substitute the section to make the intention clear, on the lines of the corresponding provision contained in the Customs Act, 1962.

It is also proposed to make certain consequential amendments in sub-section (2) of section 37 of the Act which provides for the making of rules.

The Bill is mainly intended to achieve the above objectives.

NEW DELHI;

K. R. GANESH.

The 26th April, 1973.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 312/3/73-CX-10, dated the 27th April, 1973 from Shri K. R. Ganesh, Minister of State in the Ministry of Finance, to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the Central Excises and Salt (Amendment) Bill, 1973, has recommended, under clause (1) and clause (3) of article 117 and clause (1) of article 274 of the Constitution the introduction in, and consideration by, the Lok Sabha of the said Bill.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to substitute a new section for section 4 of the Central Excises and Salt Act, 1944. Though the staff required for the enforcement and administration of the Act is already in position, the proposed provision when brought into operation may require some marginal augmentation of staff with a view to strengthening the valuation machinery in the Central Excise Collectorates and intensified training programme will have to be arranged for the staff with a view to making the valuation processes more effective. This augmentation of staff will entail a recurring annual expenditure estimated at about Rs. 1 lakh.

Towards the expenses for the purchase of furniture, etc., for such additional staff and the expenses for organising the training, there would be a non-recurring expenditure estimated at about Rs. 24,000/- during the current financial year.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to insert two new clauses in sub-section (2) of section 37 of the Act which provides for the making of rules. Under the new clauses, the Central Government is being empowered to make rules for determining under section 4 the nearest ascertainable equivalent of the normal price and for defining or specifying (having regard to the normal practice of the wholesale trade) the kinds of trade discount to be excluded for the purpose of determining the value under section 4 including the circumstances in which and the conditions subject to which such discount is to be so excluded.

The manner in which the nearest ascertainable equivalent of the normal price may be determined is a matter of detail and can hardly be provided in the Bill itself. Similarly, what kinds of trade discount may be excluded for the purpose of determining the value under section 4 is also a matter of detail.

The delegation of legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary.