

Excise duty blow to firms selling goods below cost

Companies selling products below manufacturing cost to enhance market penetration will now have to pay excise duty on the normal price (production cost plus profit). The finance ministry decision follows the Supreme Court (SC) ruling of last year that upheld excise demand on sales of carmaker Fiat's discounted Uno brand.

This could be a twin blow for companies in sectors like automobiles, oil marketing, fast-moving consumer goods (FMCG), consumer durables, information technology (IT) hardware, fertiliser & chemicals — some of those already selling products at a loss to penetrate a fiercely competitive market. These companies might soon get notices from the excise department. The Central Board of Excise & Customs (CBEC), however, is finalising safeguards so that there is no blanket application of the SC judgment on all companies. It will clarify that the excise duty would be levied at discounted prices when a product is sold below cost due to a sudden increase in raw material cost or increase in interest rates, or under some government mandate.

The Society of Indian Automobile Manufacturers (SIAM) and some industry bodies have provided CBEC with details of situations other than market penetration when products are sold below cost. They have suggested the ruling should not apply retrospectively and senior officials of a company should not be summoned by revenue authorities. SIAM Director-General Vishnu Mathur said the ministry had been urged to provide relief to companies that had built up huge inventory due to difficult market conditions — as is the case at present — and were having to sell at discounted prices.

“We have looked into industry's request. There will be no change in law. So, Fiat and identical cases will not get any relief,” said a finance ministry official, adding: “Right now, the Supreme Court judgment is open for interpretation. We can clarify to the field formations the scope of the judgment, so that it's not extended to the areas where it should not apply.” Experts said, in the absence of a clarification, field officers might start applying the judgment to other situations to boost the government's revenue collections. “Showcause notices so far are primarily being issued to auto sector companies. But this can go to other sectors like FMCG, too,” said Saloni Roy, senior director, Deloitte.

Pratik Jain, partner, KPMG, agreed FMCG could be the next target and cautioned amendment to the law was the only long-term solution, as all large companies dealing with multiple products would have a situation where a few products are sold at a loss. At present, field officers are asking auto companies for details of situations when goods are sold below cost. Notices have been sent to many auto firms, seeking information on their cost structure. But the industry is apprehensive about sharing such 'sensitive' data on business strategy.

In its representation to Revenue Secretary Sumit Bose recently, the industry sought a relief from the SC ruling. CBEC, however, has made it clear that it is not possible to do so without an amendment to the Central Excise Act.

It has ruled out amending the law, justifying the SC ruling and, instead, suggested the industry consider changing its processes.

“We will issue guiding principles on how to apply the Fiat judgment. Will specify situations where facts and circumstances of this case cannot be applied,” confirmed another official. He added levying tax at selling price would be ultra vires (beyond the powers of the Centre), as the duty, under the Central Excise Act, is levied at the manufacturing stage, whereas states levy value-added tax at the point of sale.

In August 2012, the apex court had asked Fiat to pay excise duty of about Rs 400 crore on its Fiat Uno models sold between 1996 and 2001. Fiat was importing CKD kits for its Uno cars and selling those below cost price.

The excise department had levied excise duty on cost of manufacturing, but the company contested and said the duty should be on the selling price, which was lower than the manufacturing cost.

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