

**CENTRAL EXCISE : SECTION 3A OF THE CENTRAL EXCISE ACT, 1944 - CHARGE/LEVY
- EXCISE DUTY BASED ON PRODUCTION CAPACITY - IN CASE OF DUTY BASED ON
CAPACITY OF PRODUCTION, ACTUAL SPEED OF MACHINES AND ACTUAL
PRODUCTION IS IRRELEVANT; DUTY IS PAYABLE BASED ON DEEMED PRODUCTION**

CIRCULAR NO.980/04/2014-CX [F.NO.354/120/2011-TRU], DATED 24-1-2014

Representations have been received from trade and industry that the field formations are following divergent practice of assessment with respect to compounded levy scheme applicable for various tobacco products. Certain field formations have also sought clarification on the excise duty leviable under the said compounded levy scheme.

2. Under the compounded levy scheme, excise duty is chargeable with respect to deemed production based on the number of packing machines in the factory of the manufacturer. The issue raised is whether excise duty can be re-determined based on the speed of the packing machine and actual production thereof, which may be higher than the deemed production.

3. Presently, the mandatory compounded levy scheme is applicable to Pan Masala, Gutkha and chewing tobacco manufactured with the aid of packing machine & packed in pouches. The factor relevant to the production on which excise duty is leviable has been notified to be the number of packing machines in the factory of the manufacturer under the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 read with section 3A(2) and (3) of the Central Excise Act, 1944. The monthly deemed production per operating machine per month is prescribed based on the average speed of packing machines and average working hours of a factory. Excise duty is chargeable at the rates notified on the basis of Retail Sale Price (RSP) slabs on per machine basis (Notification No. 42/2008-CE, dated 1-7-2008 and Notification No. 16/2010-CE, dated 27-2-2010 refer). In order to minimize the element of subjectivity and to ensure certainty and objectivity, the number of packing machines installed in the factory has been notified to be the only factor relevant to the production of the notified goods under the said rules.

5. Accordingly, it is clarified that the duty payable under Notification No. 42/2008-CE, dated 1-7-2008 and Notification No. 16/2010-CE, dated 27-2-2010 may be determined based on deemed production with respect to the number of operating packing machines in the factory during the month and the Retail Sale Price printed on the pouches and not on the basis of actual production by a unit.

6. Trade Notice/Public Notice may be issued to the field formations and taxpayers.

7. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board.

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