

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 263 CUTTACK, MONDAY, FEBRUARY 14, 2005/MAGHA 25, 1926

LAW DEPARTMENT

NOTIFICATION

The 10th February 2005

No. 2089-I-Legis.-7/2004-L.—The following Ordinance promulgated by the President and published by the Government of India, Ministry of Law and Justice (Legislative Department) in the Gazette of India, Extraordinary, Part-II, Section I, dated the 25th January 2005, is hereby republished for general information :—

By order of the Governor
D. K. SAHU
Secretary to Government

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, 25th January, 2005/Magha 5, 1926 (Saka)

THE CENTRAL EXCISE LAWS (AMENDMENT AND VALIDATION)

ORDINANCE, 2005

(No. 1 OF 2005)

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance further to amend the Central Excise Act, 1944, rules made thereunder, certain notifications relating to exemption from duties of excise during a past period and to validate the actions taken under such notifications during such period ;

WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. (1) This Ordinance may be called the Central Excise Laws (Amendment and Validation) Ordinance, 2005.

(2) It shall come into force at once.

Amendment of Section 37 of Act 1 of 1944.

2. For the period commencing on and from the 1st day of March, 1983 and ending with the 28th day of February, 1987, sub-section (1) of Section 37 of the Central Excise Act, 1944 shall stand substituted and shall be deemed to have effect as if for the said sub-section, the following sub-section had been so substituted, namely:—

“(1) The Central Government may make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.”.

Amendment of rule 8 of the Central Excise Rules, 1944.

3. For the period commencing on and from the 1st day of March, 1983 and ending with the 28th day of February, 1987, after sub-rule (1) of rule 8 of the Central Excise Rules, 1944, as it stood before its omission by the Central Excise (Third Amendment) Rules, 1988, the following sub-rule (1-A) shall stand inserted and shall be deemed to have effect as if the said sub-rule had been so inserted, namely:—

“(1-A) The power to issue notification as conferred by sub-rule (1) shall include the power to give retrospective effect to such notification.”.

Amendment of notifications issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944.

4. (1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue),—

(i) No. G. S. R. 120 (E), dated the 1st March, 1983 as superseded by notification No. G. S. R. 607 (E), dated the 4th August, 1983 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G. S. R. 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) No. G. S. R. 298 (E), dated the 25th March, 1985 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment)

Rules, 1988 vide notification No. G. S. R. 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub-clause (4) of clause 47 of the Finance Bill, 1985 which clause had force of law by virtue of the declaration made in the said Bill under the Provisional Collection of Taxes Act, 1931;

(iii) No. G. S. R. 431 (E), dated the 24th May, 1985, issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G. S. R. 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub-section (4) of Section 47 of the Finance Act, 1985; and

(iv) No. G. S. R. 701 (E), dated the 2nd September, 1985, as amended by notification No. G. S. R. 747 (E), dated the 20th September 1985 issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 as amended by the Central Excise (Third Amendment) Rules, 1988 vide notification No. G. S. R. 768 (E), dated the 1st July, 1988 and superseded by the Central Excise Rules, 2000, read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957,

by the Central Government shall stand amended and shall be deemed to have been so amended retrospectively, in the manner as specified in column (3) of the Schedule on and from the corresponding dates as specified in column (4) of the said Schedule till the date of those notifications were superseded or rescinded, as the case may be.

(2) Notwithstanding anything contained in Section 11-A of the Central Excise Act, 1944, recovery shall be made of all amounts of duty or interest or other charges which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, which would have not been refunded if the provisions of this Section had been in force at all material times, within a period of thirty days from the date of commencement of this Ordinance, and in the event of non-payment of duty or interest or other charges so recoverable, interest at the rate of fifteen per cent per annum shall be payable from the date immediately after the expiry of the said period of thirty days till the date of payment.

Explanation—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the notifications referred to in sub-section (1) had not been amended retrospectively by that sub-section.

Validation of notifications issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944.

5. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

- (a) all things done or actions taken by the Central Government under the notifications referred to in clauses (i) to (iv) of sub-section (1) of Section 4 as they stood before the commencement of this Ordinance shall be deemed to be and to have always been done or taken in accordance with the provisions of the said notifications;
- (b) no suit or other proceeding shall be instituted, maintained or continued in any court, tribunal or other authority for the refund of any duty levied under the notifications referred to in clause (a);
- (c) no court shall enforce any decree or order directing the refund of any such duties levied under the notifications referred to in clause (a);
- (d) no claim or challenge shall be made in, or entertained by, any court, tribunal or other authority on the ground only that the Central Government did not have, at the material times, the power to amend retrospectively the notifications issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944.

Application of Section 4.

6. For the removal of doubts, it is hereby declared that the amendment made to sub-section (1) of Section 37 of the Central Excise Act, 1944 by Section 2 and the amendment made to rule 8 of the Central Excise Rules, 1944 by Section 3 shall be in addition to, ^{1 of 1944} and not in derogation of, the provisions of Section 4.

THE SCHEDULE
(See Section 4)

Sl. No.	Notification No. and date	Amendment	Date of effect of amendment
(1)	(2)	(3)	(4)
1	G. S. R. 120 (E), dated the 1st March 1983 (36/1983-Central Excise, dated, the 1st March 1983).	<p>In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely :—</p> <p>“(3) “sale price”, in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail :</p> <p>Provided that,—</p> <p>(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;</p> <p>(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.’.</p>	31st day of March, 1983 to 3rd day of August, 1983 (both days inclusive).
2	G. S. R. 607 (E), dated the 4th August, 1983 (211/1983-Central Excise, dated the 4th August, 1983).	<p>In the said notification, in the Explanation, for clause (3), the following clause shall be substituted , namely :—</p> <p>‘(3) “sale price”, in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail :</p> <p>Provided that,—</p> <p>(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;</p> <p>(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.’.</p>	4th day of August, 1983 to 24th day of March, 1985 (both days inclusive).

- | (1) | (2) | (3) | (4) |
|-----|---|--|--|
| 3 | G. S. R. 298 (E), dated the 25th March, 1985 (100/1985-Central Excise, dated the 25th March, 1985). | In the said notification, in the Explanation, for clause (3), the following clause shall be substituted, namely :—

“(3) “sale price”, in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail :

Provided that,—

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.’. | 25th day of March, 1985 to 23rd day of May, 1985 (both days inclusive). |
| 4 | G. S. R. 431 (E), dated the 24th May 1985 (134/1985-Central Excise, dated the 24th May 1985). | In the said notification, in the Explanation, for clause (3), the following clause shall be substituted , namely :—

‘(3) “sale price”, in relation to the declaration on a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such package may be sold in retail :

Provided that,—

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.’. | 24th day of May, 1985 to 1st day of September, 1985 (both days inclusive). |

(1)

(2)

(3)

(4)

- 5 G. S. R. 701 (E), In the said notification, in the Explanation, for 2nd day of
dated the 2nd clause (3), the following clause shall be substituted, September, 1985
September, 1985 namely :— to 19th day of
(201/1985-Central “(3) “sale price”, in relation to the declaration on a September, 1985
Excise, dated the package of cigarettes, means the maximum price (both days
2nd September, 1985). (exclusive of local taxes only) at which such package inclusive).

Provided that,—

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.’

- 6 G. S. R. 747 (E), In the said notification, for clause (4), as 20th day of
dated the 20th substituted by item (ii), the following clause shall be September, 1985
September, 1985 substituted , namely :— to 28th day of
(210/1985-Central ‘(4) “sale price”, in relation to the declaration on a February, 1987
Excise, dated the a package of cigarettes, means the maximum price (both days
20th September, 1985). (exclusive of local taxes only) at which such package inclusive).

Provided that,—

(a) where the sale price is more than the sale price declared on the package of cigarettes, the maximum of such sale price shall be deemed to be the sale price;

(b) where different sale prices are declared on different packages for the sale of such package of cigarettes in packed form in different areas, each such sale price shall be the sale price for the purposes of valuation of the cigarettes intended to be sold in the area to which such sale price relates.’

A. P. J. ABDUL KALAM,
President