

Finance Act, 2012, (Central)

Section 129 - Amendment of Section 4

In the Central Excise Act, 1944(1 of 1944) (hereinafter referred to as the Central Excise Act), in section 4, in sub-section (3), in clause (b), in the Explanation, for clause (i), the following clause shall be substituted, namely:--

'(i) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manners, namely:--

(A) if one owns or controls the other;

(B) where the undertakings are owned by firms, if such firms have one or more common partners;

(C) where the undertakings are owned by bodies corporate,--

(I) if one body corporate manages the other body corporate; or

(II) if one body corporate is a subsidiary of the other body corporate; or

(III) if the bodies corporate are under the same management; or

(IV) if one body corporate exercises control over the other body corporate in any other manner;

(D) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,--

(I) hold, directly or indirectly, not less than fifty per cent. of the shares, whether preference or equity, of the body corporate; or

(II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;

(E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;

(F) if the undertakings are owned or controlled by the same person or by the same group;

(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses.

Explanation I.--For the purposes of this clause, two bodies corporate shall be deemed to be under the same management,--

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than one-fourth of the total membership of the Board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or employees of the first mentioned body corporate) one-fourth of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether

independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.--If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of, or controlled by, the group shall be deemed to be under the same management.

Explanation III.--If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV.--In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

Illustration

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

Explanation V.--For the purposes of this clause, "group" means a group of--

(i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or

(ii) associated persons.

Explanation VI.--For the purposes of this clause,--

(I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(II) "associated persons"--

(a) in relation to a director of a body corporate, means--

(i) a relative of such director, and includes a firm in which such director or his relative is a partner;

(ii) any trust of which any such director or his relative is a trustee;

(iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;

(iv) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the

director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;'.
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