

Finance Act, 1997

Section 81 - INSERTION OF NEW SECTION 3A -AfterSection 3 of the Central Excise Act, 1944

1 of 1944)-(hereinafter referred to as the 'Central Excise Act'), the following section shall be inserted, namely:- "3-A. Determination of annual capacity of production of the factory for levy of Excise duty.- (1) Notwithstanding anything contained inSection 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section. (2) Where a notification is issued under sub-section (1), the Central Government may, by rules, provide for determination of the annual capacity of production, or such factor or factors relevant to the annual capacity of production of the factory in which such goods are produced, by the Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory : Provided that where a factory producing notified goods is in operation only during a part of the year, the production thereof shall be calculated on proportionate basis of the annual capacity of production. (3) The duty of excise on notified goods shall be levied at such rate as the Central Government may by notification in the Official Gazette specify, and collected in such manner as may be prescribed : Provided that, where a factory producing notified goods did not produce the notified goods during any continuous period of not less than seven days, duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed. (4) Where an assessee claims that the actual production of notified goods in his factory is lower than the production determined under sub-section (2), the Commissioner of Central Excise shall, after giving an opportunity to the assessee to produce evidence in support of his claim, determine the actual production and redetermine the amount of duty payable by the assessee with reference to such actual production at the rate specified in sub-section (3). (5) Where the Commissioner of Central Excise determines the actual production under sub-section (4), the amount of duty already paid, if any, shall be adjusted against the duty so redetermined and if the duty already paid falls short of, or is in excess of, the duty so redetermined, the assessee shall pay the deficiency or be entitled to a refund, as the case may be. (6) The provisions of this section shall not apply to goods produced or manufactured,- (i) in a free-trade zone and brought to any other place in India; or (ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India. Explanation 1.-For the removal of doubts, it is hereby clarified that for the purposes of Section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), read with any notification for the time being in force. Explanation 2.-For the purposes of this section the expressions "free-trade zone" and "hundred per cent export-oriented undertaking" shall have the meanings assigned to them in Section 3."