

Excise

Amendment of
section 4.

129. In the Central Excise Act, 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:—

1 of 1944.

'(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,—

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(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,—

5 (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;

10 (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.

15 *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

20 (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

25 (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

30 (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

35 (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

40 (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

45 (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.

50 *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 5 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 10 (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, 15 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 20 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 25 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; 30

(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;'. 30

Amendment of section 9. **130.** In section 9 of the Central Excise Act, in sub-section (1), in clause (i), for the words "one lakh", the words "thirty lakh" shall be substituted.

Amendment of section 9A. **131.** In section 9A of the Central Excise Act, for sub-section (1), the following sub-section shall be 35 substituted, namely:—

"(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences 2 of 1974. under this Act (except an offence punishable for a term of imprisonment of three years or more under section 9) shall be non-cognizable."

Amendment of section 11A. **132.** In section 11A of the Central Excise Act,— 40

(a) in sub-section (5), for the words "has not been levied or paid or", the words "has not been levied or paid or has been" shall be substituted;

(b) for sub-section (8), the following sub-section shall be substituted, namely:—

"(8) Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of one year referred to in clause (a) of sub-section 45 (1) or five years referred to in sub-section (4) or sub-section (5), as the case may be."

Amendment of section 11AC. **133.** In section 11AC of the Central Excise Act, in sub-section (1),—

(i) in clauses (a) and (b), for the words "has not been levied or paid or", the words "has not been levied or paid or has been" shall respectively be substituted;

(ii) in clause (c), for the words "duty so determined", the words "duty so determined only in a case where the penalty is paid within the period so specified" shall be substituted.

134. In section 12F of the Central Excise Act, for sub-section (2), the following sub-section shall be substituted, namely:—

2 of 1974.	5	'(2) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Commissioner of Central Excise" were substituted.'	Amendment of section 12F.
		135. For section 13 of the Central Excise Act, the following sections shall be substituted, namely:—	Substitution of new section for section 13.
	10	"13. (1) If an officer of Central Excise empowered in this behalf by general or special order of the Commissioner of Central Excise has reason to believe that any person has committed an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.	Power to arrest.
	15	(2) Every person arrested under sub-section (1) for an offence shall, without unnecessary delay, be taken to a Magistrate.	
2 of 1974.	20	(3) Where an officer of Central Excise has arrested any person under sub-section (1), for any offence (other than an offence punishable for a term of imprisonment of three years or more under section 9), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the Code of Criminal Procedure, 1973.	
2 of 1974.		(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act (except an offence punishable for a term of imprisonment of three years or more under section 9) shall be bailable.	
2 of 1974.	25	(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable for a term of imprisonment of three years or more under section 9 shall be cognizable.	
2 of 1974.		13A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of three years or more under section 9 shall be released on bail or on his own bond unless—	Bail for offence punishable for a term of imprisonment of three years or more under section 9 not to be granted without hearing public prosecutor.
	30	(i) the public prosecutor has been given an opportunity to oppose the application for such release; and	
		(ii) where the public prosecutor opposes the application, the Magistrate is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:	
	35	Provided that a person who is under the age of eighteen years or is a woman or is sick or infirm, may be released on bail if the Magistrate so directs.	
2 of 1974.		(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer shall, save as otherwise provided under this Act, investigate into an offence under this Act unless specifically authorised by the Central Government by a general or special order, and subject to such conditions as may be specified in the order."	
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		136. For section 18 of the Central Excise Act, the following section shall be substituted, namely:—	Substitution of new section for section 18. Searches and arrests how to be made.
2 of 1974.	45	"18. All searches under this Act or the rules made thereunder and all arrests under this Act shall, save as otherwise provided under this Act, be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating respectively to searches and arrests under that Code."	
		137. Section 19 of the Central Excise Act shall be omitted.	Omission of section 19.
		138. In section 20 of the Central Excise Act,—	Amendment of section 20.
		(a) the words and figures "under section 19" shall be omitted;	

(b) after the words "such Magistrate", the words "in accordance with the provisions of this Act" shall be inserted.

Amendment of notification issued under section 5A of Central Excise Act.

139. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 62 (E), dated the 6th February, 2010 (hereinafter referred to as the said notification), issued under sub-section (1) of section 5A of the Central Excise Act, 1944, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Fifth Schedule, on and from the corresponding date specified in column (3) of that Schedule, against the said notification specified in column (1) of that Schedule. 5 1 of 1944.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the said notification with retrospective effect as if the Central Government had the power to amend the said notification under sub-section (1) of section 5A of the Central Excise Act, 1944, retrospectively, at all material times. 10 1 of 1944.

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 had the said notification not been amended retrospectively. 15

Amendment of Third Schedule.

140. The Third Schedule to the Central Excise Act shall be amended in the manner specified in the Sixth Schedule.

Central Excise Tariff

Amendment of First Schedule.

141. In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act), the First Schedule shall be amended in the manner specified in the Seventh Schedule. 5 of 1986. 20

Amendment of Chapter Notes to Chapter 54 of First Schedule.

142. (1) In the First Schedule to the Central Excise Tariff Act, in Chapter 54, after Note 1, the following Note shall be inserted and shall be deemed to have been inserted with effect from the 29th day of June, 2010, namely:—

"1A. Notwithstanding anything contained in Note 1, man-made fibre such as polyester staple fibre and polyester filament yarn manufactured from plastic and plastic waste including waste polyethylene terephthalate bottles shall be classified as textile material under Chapter 54 or Chapter 55, as the case may be." 25

(2) Any action taken or anything done or purported to have been taken or done for recovery of duty of excise at any time during the period commencing on and from the 29th day of June, 2010 and ending with the date on which the Finance Bill, 2012 receives the assent of the President (hereafter in this section referred to as the "specified period"), shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the amendment made by sub-section (1) had been in force at all material times and, accordingly, notwithstanding any judgment, decree or order of any court, tribunal or other authority— 30

(a) all duties of excise levied, assessed or collected during the specified period on such goods shall be deemed to be and always to have been, as validly levied, assessed or collected as if the amendment made by sub-section (1) had been in force at all material times; 35

(b) recovery shall be made of all the duties which have not been paid, but would have been paid had the amendments made by sub-section (1) been in force, within a period of thirty days from the date on which the Finance Bill, 2012 receives the assent of the President and in the event of non-payment of such duties of excise within the said period, interest at the rate of twenty-four per cent. per annum on the amount of such duties in addition to the amount of duties to be recovered, shall be payable from the date immediately after the expiry of the said period of thirty days till the date of its payment; 40

(c) while computing the amount of duty to be recovered under clause (b), the assessee shall be entitled to take into account the CENVAT credit of duty paid on inputs, input services and capital goods, if any, under the CENVAT Credit Rules, 2004 which has not been availed by him for reason of such goods being treated as non-excisable or exempted goods. 45

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 had this section not come into force." 50