

Shikha Singhania

## Excise Duty based on Production Capacity

### Introduction

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Section 3A of the Central Excise Act provides for payment of duty on the basis of production capacity, without any reference to the actual production, in other words, production capacity will be determined as per Rules laid down.

Pan masala and gutkha are covered under these provisions. The Government may notify the goods with 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.

The goods mentioned below are manufactured with the aid of packing machine and packed in pouches that have been notified for the purpose of section 3A.

### Valuation of Excisable Goods

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- Pan masala containing tobacco, commonly known as gutkha (tariff item 2403 99 90 of the First Schedule to Central Excise Tariff Act, 1985) manufactured with the aid of packing machine and packed in pouches.
- Unmanufactured tobacco bearing a brand name (tariff item heading 2401 of the said Tariff Act)
- Chewing tobacco (tariff item 2403 99 10 of the said Act)
- Jarda scented tobacco (tariff item 2403 99 30 of the said Act)

Besides, pan masala, tariff item 2106 90 20 of the First Schedule to the Central Excise Tariff Act, 1985 (except the pan masala containing not more than 15% betel nut)] has also been notified for the purpose of section 3A.

### Valuation Rules

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Where the goods are so notified, the Central Government may, by rules,—

- Provide the manner for determination of the annual capacity of production of the factory by an officer not below the rank of Assistant Commissioner of Central Excise. Such annual capacity shall be deemed to be the annual production of such goods by such factory; or
- Specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by the use of a unit of such factor; and provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory.
  - However, where a factory producing notified goods is in operation only during a part of the year, the annual production thereof shall be calculated proportionately the annual capacity of production.

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- Furthermore, in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis with regard to such alteration or modification.
- The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such a manner as may be prescribed.  
However, where a factory producing notified goods did not produce the notified goods during any continuous period of 15 days or more, the 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.
- The provisions of this section shall not apply to goods produced or manufactured, by a 100% export oriented undertaking and brought to any other place in India.

It has been clarified that for the purposes of section 3 of the Customs Tariff Act, 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 First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985, read with any notification in force, for the time being.

Currently, duty payment on the basis of production is levied on guthkas and pan masalas, where the annual production capacity is determined by the government and the assessee has to pay the duty accordingly, if the factory was not producing such goods or not in operation for 15 continuous day or more than the duty on proportionate basis calculated by the manufacturer.