

## Notifications, Departmental Clarifications and Trade Notices

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### Question 1

*Write a note on the power of the Central Government to grant exemption from duty under section 5A of Central Excise Act, 1944.*

### Answer

**Section 5A (1)** of the Central Excise Act, 1944 authorises Central Government to exempt the excisable goods either absolutely or subject to such conditions (to be fulfilled before or after removal) from whole or any part of excise duty leviable. Such exemption should be in public interest and it should be by way of notification published in official gazette. The **proviso to section 5A(1)** provides that the exemption notifications issued under section 5A of Central Excise Act are not applicable in respect of DTA clearances by EOU, FTZ and SEZ Unit, unless specifically provided in the relevant notification.

According to **section 5A(2)**, the Central Government can exempt excisable goods from the payment of duty by a special order if it is satisfied that it is necessary in the public interest to do so under **circumstances of exceptional nature** which are to be stated in such order. Further, according to section 5A(2A), the Central Government is empowered to insert an explanation in such notification or order by issuing a notification in the official gazette at any time within one year of issue of the notification issued under section 5A(1) or (2) for the purpose of **clarifying the scope or applicability of such notification**. This enables the Central Government to issue clarifications retrospectively.

In **Kasinka Trading v U.O.I. 1994 (74) E.L.T. 782**, the Hon'ble Supreme Court held that the power to exempt includes the power to modify or withdraw in terms of section 21 of the General clauses Act, 1897. In addition, it was held in **Orient Traders Vs CTO 2009 (237) E.L.T. 447(S.C)** that the exemption notifications are to be construed strictly. If the intention of the legislature is clear and unambiguous, then it is not open to the courts to add words in the exemption notification to extend the benefit to other items which do not find mention in the notification.

The date of effect of the notification is the date of its issue. It is the responsibility of the Department to publish and sell the notifications to the public on or before the date on which the notification will be effective.

### Question 2

*Explain the emergency power of the Central Government under Central Excise Tariff Act, 1985 to increase the duty.*

### Answer

Generally, the Government increases the duty only through the Finance Bill. However, as per section 3 of the Central Excise Tariff Act, 1985 the Government also has emergency powers to increase the duty by amending the rates in the First and Second Schedules, subject to certain conditions. This is only an emergency power and is rarely used. Section 3 of the Central Excise Tariff Act, 1985 provides that:

Where in respect of any goods, the Central Government is satisfied that the duty leviable thereon under section 3 of the Central Excise Act, 1944 should be increased and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the First Schedule and the Second Schedule to be made so as to substitute for the rate of duty specified in the First Schedule and the Second Schedule in respect of such goods:-

- (i) in a case where the rate of duty as specified in the First Schedule and the Second Schedule as in force immediately before the issue of such notification is nil, a rate of duty not exceeding 50% ad valorem expressed in any form or method;
- (ii) in any other case, a rate of duty which shall not be more than twice the rate of duty specified in respect of such goods in the First Schedule and the Second Schedule as in force immediately before the issue of the said notification.

However, the Central Government shall not issue any notification for substituting the rate of duty in respect of any goods as specified by an earlier notification issued under these provisions by the Government before such earlier notification has been approved with or without modifications.

Every notification under the above provisions shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification. However, if the Parliament is not sitting the notification shall be placed within seven days of its re-assembly. The Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People. However, if the Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

It has been clarified that any notification issued under the above provisions including any such notification approved or modified may be rescinded by the Central Government at any time by notification in the Official Gazette.

**Question 3**

*Briefly explain the binding nature of Board Circulars.*

**Answer**

It is well settled that the Board Circulars are not binding on the Supreme Court, High Courts or the Tribunals. Departmental Circulars are also not binding on the assessee. These judicial bodies as well as the assessee can take a view different from that taken in the Board Circular. Since Board Circulars are for the purpose of administration, it cannot be binding on an officer who is exercising quasi-judicial function as is seen from proviso to Section 37B as also the decision of the Supreme Court in ***Orient Paper Mills Ltd. V U.O.I. 1978(2) E.L.T. J 345 (S.C.)***

From the recent Supreme Court decisions, it appears that the Department officers can not take a stand contrary to beneficial Board circulars. In ***Ranadey Micronutrients V CCE 1996 (87) E.L.T. 19*** the Supreme Court held that even if it be contended that a circular is not issued under section 37B, circulars issued have to be treated as if issued that section and the Department will be estopped from arguing that the circular is not valid. The Supreme Court also held that such circulars are not advisory in character but binding on Central Excise Officers.

Similarly in ***Zenith Rubber Ltd. V CCE 2007 (220) E.L.T. 973 (Tri-Delhi)*** it has been held that Circulars issued by the Department are binding on the Department and they can not argue against those circulars.

## Exercise

1. *Briefly describe whether Central Government can delegate its power to the excise authorities.*
2. *Briefly describe the effect of amendments etc. of rules, notifications or orders.*
3. *Enumerate the matters in respect of which the Central Government can make rules.*