

**TN – 11/2008**

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE  
NO.1, WILLIAMS ROAD, CANTONMENT, TRICHY-1.

TRADE NOTICE: 11/2008

DATED : 08.07.2008.

Sub: Communication of Ministry's Circular No. 874/12/2008-CX dated 30.06.2008 issued in F.No.201/51/2004-CX.6 regarding Instructions regarding Section 11 DDA of the Central Excise Act 1944 & Tax Research Unit letter F.No. 341/49/2008-TRU dated 01.07.2008 regarding Notifying Pan masala, whether or not containing tobacco, when manufactured with the aid of packing machines and put up in pouches under mandatory scheme of payment of excise duty on basis of compounded levy, specifying the rate of duty applicable to such goods and the rules for capacity determination – Reg.

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2. The contents of the Trade Notice may be brought to the knowledge of all constituent members of Trade Associations / Chambers of Commerce

**(Issued from file C.No.IV/16/4/2008 – C.Ex.Pol.)**

Sd/-  
(VASA SESHAGIRI RAO)  
ADDITIONAL COMMISSIONER

To  
As per mailing list II / III

**Copy of Ministry's Circular No. 874/12/2008-CX dated 30.06.2008 issued in  
F.No.201/51/2004-CX.6**

**Subject: - Instructions regarding Section 11 DDA of the Central Excise Act, 1944.**

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I am directed to refer to the Section 11DDA of the Central Excise Act, 1944 (hereinafter referred to as "the Act") inserted by the Taxation Laws (Amendment) Act, 2006, with effect from 13.7.2006. This section provides for provisional attachment of property for the purpose of protecting the interests of revenue during the pendency of any proceedings under Section 11A or Section 11D of the Act.

2. In this connection, the Law Ministry has advised that suitable guidelines should be issued to implement Section 11DDA of the Act. The following guidelines are, therefore, issued to maintain uniformity in its implementation by field formations:

- (i) The proceedings for provisional attachment can be initiated only after issue of Show Cause Notice (SCN) under Section 11A or 11D of the Act.

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- (ii) During the pendency of the proceedings under Section 11A or 11D of the Act, if the Central Excise Officer is of the opinion that, in order to protect the interests of revenue, it is necessary to attach the property of the noticee, he shall prepare a proposal in the format prescribed in the Annexure hereto, and forward the same to the jurisdictional Commissioner of Central Excise for his approval, except in cases where the proceedings under Section 11A or 11D of the Act are pending before such Commissioner of Central Excise, in which case he shall himself make the order of attachment, in accordance with the procedure set out in sub-para (iv) below.
- (iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue. The remedy of attachment being, by its very nature, extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution. The grounds on which the Central Excise Officer entertains the reasonable belief that the noticee would dispose of, or remove, the property and the source of his information, if any, should be clearly stated while seeking the previous approval of the Commissioner of Central Excise. Normally, the proposal to be made to the Commissioner of Central Excise should be forwarded within one month's period of the issue of SCN. It may also be noted that appropriate disciplinary action shall be initiated against the officers who may be found to exercise the powers of provisional attachment of property frivolously and without sound reasons. [Recommendation of the Standing Committee on Finance (Fourteenth Lok Sabha) in its 27th Report.]
- (iv) The Commissioner of Central Excise, on receipt of proposal, or on his own, if he is satisfied that circumstances of the case justify provisional attachment, may serve a notice for provisional attachment on the person on whom notice is served under Section 11A or 11D of the Act, requiring such person to make submissions, in writing or in person or both, within fifteen days of serving of the notice as to why should the property belonging to such person, and as may be specified in the notice, be not provisionally attached. The said notice should also specify the condition that the noticee should not sell, transfer, mortgage, charge, lease or otherwise alienate or encumber the property specified in the notice, till the decision of the said notice is communicated to him by serving of an order. In case of proposal for provisional attachment of immovable property, the notice should also be sent to the concerned registration authorities with a direction not to allow any sale, transfer, mortgage etc., of the property.
- (v) After due consideration of the materials before him, and after hearing the person, if such person so desires, the Commissioner of Central Excise may grant approval to the provisional attachment of the property and the Central Excise Officer before whom the proceedings under Section 11A or 11D are pending, may, by order in writing, attach the said property. The Commissioner shall grant such approval, or where proceedings under Sections 11A or 11D of the Act are pending before him, order the attachment of the property within 15 days of holding the personal hearing. A copy of the order of provisional attachment should be served by the Central Excise Officer in the same manner as prescribed under Section 37 C of the Central Excise Act, 1944.
- (vi) The following types of offences committed by a manufacturer or an exporter may be considered for provisional attachment of property:-
- (a) Removal of goods without the cover of an invoice and without payment of duty;
  - (b) Removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
  - (c) Taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;
  - (d) Taking of CENVAT Credit on invoices or other documents which a person has reason to believe as not genuine;
  - (e) Issue of excise duty invoice without delivery of goods specified in the said invoice;
  - (f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.
- (vii) The provisional attachment of property shall be resorted to only in a case where the duty or CENVAT Credit alleged to be involved in the above specified offences is more than Rs.25 lakhs (Rs. Twenty five lakhs).
- (viii) Period of Attachment :
- (a) The order of provisional attachment of property shall be operational for a period of six months from the date on which the order is served on the noticee. However, the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.
  - (b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

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- (ix) **Types of property which can be attached :**
- (a) Personal property of a sole proprietor or of partners of a firm shall not be attached. Personal property means any movable or immovable property which is in the personal use of the sole proprietor or partner. However, immovable property/ properties which is / are used for any commercial purpose may be provisionally attached.
- (b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal manufacturing activities of the assessee. This would mean that raw materials and inputs required for production or finished goods should not be attached by the Department.

- (x) **Attachment not to be excessive:** Provisional attachment by arrest or distraint of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under Section 11A or Section 11D of the Act.
- (xi) **Attachment between Sunrise and Sunset:** The provisional attachment of the property of the concerned person by arrest or distraint shall be made after sunrise and before sunset and not otherwise.
- (xii) **Inventory:** After provisional attachment of the property, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.
- (xiii) **Private alienation to be void in certain cases:** (i) where a notice has been served on a person for provisional attachment, the said person or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner of Central Excise.
- (ii) Where a provisional attachment has been made, any private transfer or delivery of the property attached or of any debt, dividend or other moneys, contrary to such provisional attachment, shall be void as against all claims enforceable under the provisional attachment.
- (xiv) **Share in property:** Where the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.
- (xv) **Property exempt from attachment:** (i) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment.
- (ii) The decision of the Commissioner of Central Excise as to what property is so entitled to exemption shall be final.

3. Trade & field formations may please be informed suitably.

4. Hindi version will follow.

Yours faithfully,

(Rahul Nangare)  
Under Secretary to the Government of India

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Annexure

**Proforma for forwarding the proposal for provisional attachment of property to the Commissioner of**

**Central Excise:**

1. Name and address of the assessee/person:
2. Division and Commissionerate:
3. Central Excise Registration No.(if any):
4. Constitution of assessee:

[Proprietorship/partnership/Private Ltd /Public Ltd/ Other (specify)]

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5. Details of Show Cause Notice:
  - (i) SCN No. & date, Issuing authority
  - (ii) Brief facts of the case
  - (iii) Duty demanded in the SCN
6. Details of the offence cases in last five years for Central Excise, Customs and Service Tax:
7. Details of arrears of duties/ taxes pending realisation for Central Excise, Customs and Service Tax:
8. Reasons for provisional attachment of property:
9. Full details of property proposed to be provisionally attached:
10. Value of property proposed to be provisionally attached:
11. Comments, if any:

( )

Signature &amp; Name of AC/DC

Date:

Copy of Tax Research Unit letter F.No.341/49/2008-TRU dated 01.07.2008.

**Sub.: Notifying Pan masala, whether or not containing tobacco, when manufactured with the aid of packing machines and put up in pouches under mandatory scheme of payment of excise duty on basis of compounded levy, specifying the rate of duty applicable to such goods and the rules for capacity determination- Reg.**

**Subject: Notifying pan masala, whether or not containing tobacco, when manufactured with the aid of packing machines and put up in pouches under mandatory scheme of payment of excise duty on basis of compounded levy, specifying the rate of duty applicable to such goods and the rules for capacity determination -reg:**

The Central Excise Act, 1944 has been amended w.e.f 10<sup>th</sup> May, 2008 introducing section 3A which empowers the Central Government to specify goods so as to levy and collect excise duty in respect of notified goods on the basis of capacity of production.

2. The following notifications have been issued under section 3A for payment of excise duty on the basis of compounded levy scheme:

- (i) Notification No.29/2008-CE (N.T.) dated 01.07.08 notifying pan masala falling under tariff item No. 2106 90 20 and pan masala containing tobacco, commonly known as gutkha, falling under tariff item No. 2403 99 90 of the First Schedule to the Central Excise Tariff Act, 1985 when manufactured with the aid of packing machine and put up in pouches w.e.f 01.07.2008.
- (ii) Notification No.42/2008-CE dated 01.7.2008 specifying the rate of central excise duty applicable to such goods.
- (iii) Notification No.30 /2008-CE (N.T) dated 01.07.08 prescribing the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 which provide for the manner of determination of capacity of production, calculation of duty and manner of payment of duty, etc.

1. Levy under section 3A is not applicable to:-

- (i) pan masala, not containing tobacco, with betel nut content not exceeding 15%
- (ii) pan masala containing tobacco or gutkha, packed manually or put up in a form of packing other than pouches such as, tin packs.

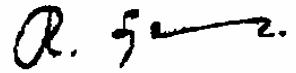
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4. Existing optional scheme of payment of excise duty on the basis of compounded levy on pan masala, whether or not containing tobacco, which was introduced on 19.12.2007 is not applicable to goods specified under notification No. 29/2008- CE (N.T) dated 01.07.2008.

5. As per the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, every manufacturer of pan masala specified under notification No. 29/2008- CE (N.T) dated 01.07.2008 is required to file a Declaration in Form -I giving details including number of machines installed, RSP of the pouches by 10<sup>th</sup> July, 2008 which the jurisdictional AC/DC is required to approve within five days after due verification so that excise duty for the month of July, 2008 is discharged by the 15<sup>th</sup> July, 2008. Detailed procedure for verification, calculation of duty and manner of payment of duty, etc. has been prescribed in the said rules.

6. It is requested that the above contents may be communicated to all officers in your charge, so that there is no difficulty in implementation of the scheme. Any issues relating to implementation of the scheme may be brought to the notice of Ms. Limatala Yadav, DS (TRU), Room No. 146 J, North Block, New Delhi. (Tel: 2309 2753 Fax 2309 3215).

Yours Sincerely,



(R. Schar)  
Joint Secretary (TRU)

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