

Pan Masala Packing Machines (Capacity Determination And Collection Of Duty) Rules, 2008

CONTENTS

1. Short title and commencement
2. Definitions
3. Application
4. Factor relevant to production
5. Quantity deemed to be produced
6. Declaration to be filed by the manufacturer
7. Duty payable to be calculated
8. Alteration in number of operating packing machines
9. Manner of payment of duty and interest
10. Abatement in case of non-production of goods
11. Retail sale price to be declared on the package
12. Determination of retail sale price in case of non-declaration, obliteration, tampering, etc
13. Addition or removal of packing machines and other restrictions
14. Rebate of duty
- 14A. Export without payment of duty
15. Cenvat credit not admissible
16. Factories ceasing to work
17. Penalty for contraventions, etc
18. Provisions to apply mutatis mutandis

Pan Masala Packing Machines (Capacity Determination And Collection Of Duty) Rules, 2008

1. Short title and commencement :-

- (1) These rules may be called the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008
- (2) They shall come into force on the 27th February, 2010.

2. Definitions :-

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Central Excise Act, 1944 (1 of 1944);
- (b) "notified goods" means goods specified by the Central Government by Notification No. 29/2008-C.E.(N.T.), dated the 1st July 2008 under sub-section (1) of section 3A of the Act;
- (c) "packing machine" includes all types of Form, Fill and Seal (FFS)

Machines and Profile Pouch Making Machines, by whatever name called, whether vertical or horizontal, with or without collar, single track or multi-track, and any other type of packing machine used for packing of pouches of notified goods;

(d) "pan masala" means excisable goods falling under tariff item 2106 90 20 of the First Schedule to the Tariff Act;

(e) "pan masala containing tobacco" means excisable goods defined in Note 4 of Chapter 24 of the First Schedule to the Tariff Act and falling under tariff item 2403 99 90 of the same Schedule;

(f) "retail sale price" means retail sale price as specified by the Central Government, in Explanation 3 to the opening paragraph in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.42/2008-CE, dated the 1st July, 2008;

(g) "Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);

(h) the words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Application :-

These rules shall apply to pan masala and pan masala containing tobacco, commonly known as gutkha, notified under sub-section (1) of section 3A of the Act by the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.29/2008-CE (N.T.), dated the 1st July, 2008.

4. Factor relevant to production :-

The factor relevant to the production of notified goods shall be the number of packing machines in the factory of the manufacturer.

5. Quantity deemed to be produced :-

The quantity of notified goods, having retail sale price as specified in column (2) of the Table below, deemed to be produced by use of one operating packing machine per month shall be as is equal to the corresponding entry specified in column(3) of the said Table :

Table

Sl. No.	Retail sale price (per pouch)	Number of pouches per operating packing machine per month
(1)	(2)	(3)

1.	Up to Rs. 1.00	37,44,000
2.	From Rs. 1.01 to Rs. 1.50	37,44,000
3.	From Rs. 1.51 to Rs. 2.00	35,56,800
4.	From Rs. 2.01 to Rs. 3.00	35,56,800
5.	From Rs. 3.01 to Rs. 4.00	34,44,480
6.	From Rs. 4.01 to Rs. 5.00	34,44,480
7.	From Rs. 5.01 to Rs. 6.00	34,44,480
8.	Above Rs.6.00	33,69,600

Explanation . - For the purposes of this rule, if there are multiple track or multiple line packing machine which besides packing the notified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc., two such tracks or lines shall be deemed to be one individual packing machine for the purposes of calculation of the number of pouches per operating packing machine per month.

Provided that in case of multiple track or multiple line packing machine which are incapable of performing such additional processes, one such track or line shall be deemed to be one individual packing machine for the purposes of calculation of the number of pouches per operating packing machine per month.

6. Declaration to be filed by the manufacturer :-

(1) A manufacturer of notified goods shall, immediately on coming into force of these rules, and, in any case, not later than ten days, declare, in Form 1, -

(i) the number of single track packing machines available in his factory;

(ii) the number of packing machines out of (i), which are installed in his factory;

(iii) the number of packing machines out of (ii), which he intends to operate in his factory for production of notified goods;

(iv) the number of multiple track or multiple line packing machine, which besides packing the notified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc;

(iv)(a) the number of multiple track or multiple line packing machine, which are incapable of performing additional processes specified in (iv);

(v) the number of multiple track or multiple line packing machines out of (iv) and (iva), which are installed in his factory;

(vi) the number of multiple track or multiple line packing machines out of (v), which he intends to operate in his factory for production of notified goods;

(vii) the name of the manufacturer of each of the packing machine, its identification number, date of its purchase and the maximum packing speed at which they can be operated for packing of notified goods of various retail sale prices;

(viii) description of goods to be manufactured including whether pan masala or gutkha or both are to be manufactured, their brand names, etc;

(ix) retail sale prices of the pouches to be manufactured during the financial year;

(x) the plan and details of the part or section of the factory premises intended to be used by him for manufacture of notified goods of different retail sale prices and the number of machines intended to be used by him in each of such part or section, to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise:

Provided that a new manufacturer shall file such declaration at least seven days prior to the commencement of commercial production of notified goods in his factory.

(2) On receipt of the declaration referred to in sub-rule (1), the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, shall, after making such inquiry as may be necessary including physical verification, approve the declaration and determine and pass order concerning the annual capacity of production of the factory within three working days in accordance with the provisions of these rules:

Provided that the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, may direct for modifications in the plan or details of the part or section of the factory premises intended to be used by the manufacturer for manufacture of notified goods of different retail sale prices, as he thinks proper, for effective segregation of the parts or sections of the premises and the machines to be used in such parts or sections before granting the approval:

Provided further that if the manufacturer does not receive the approval in respect of his declaration within the said period of five working days, the approval shall be deemed to have been granted subject to the modifications, if any, which the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, may communicate later on but not later than thirty days of filing of the declaration.

(3) The annual capacity of production shall be calculated by

application of the appropriate quantity that is deemed to be produced by use of one operating packing machine as specified in rule 5 to the number of operating packing machines in the factory during the month beginning which the capacity is being determined:

Provided that in case a new manufacturer commences production of notified goods, his annual capacity of production shall be calculated pro-rata on the basis of the total number of days in that year and the number of days remaining in that year starting from the date of commencement of the production of such notified goods.

(4) The number of operating packing machines during any month shall be equal to the number of packing machines installed in the factory during that month.

(5) The machines which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision:

Provided that in case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated.

(6) In case a manufacturer wishes to make any subsequent changes with respect to any of the parameters which has been declared by him and approved by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in terms of sub-rule (2), such as changes relating to addition or removal of packing machines in the factory or making alterations in any part or section of the approved premises or in the number of machines to be used in such part or section or commencing manufacture of goods of a new retail sale price or discontinuation of manufacturing of goods of existing retail sale price, etc., he shall file a fresh declaration to this effect at least three working days in advance to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, who shall approve such fresh declaration and re-determine the annual capacity of production following the procedure specified in sub-rule (2).

7. Duty payable to be calculated :-

The duty payable for a particular month shall be calculated by

application of the appropriate rate of duty specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.42/ 2008-CE, dated the 1st July, 2008 to the number of operating packing machines in the factory during the month.

8. Alteration in number of operating packing machines :-

In case of addition or installation or removal or uninstallation of a packing machine in the factory during the month, the number of operating packing machine for the month shall be taken as the maximum number of packing machines installed on any day during the month:

Provided that in case a manufacturer commences manufacturing of goods of a new retail sale price during the month on an existing machine, it shall be deemed to be an addition in the number of operating packing machine for the month:

Provided further that in case of non-working of any installed packing machine during the month, for any reason whatsoever, the same shall be deemed to be operating packing machine for the month

9. Manner of payment of duty and interest :-

The monthly duty payable on notified goods shall be paid by the 5th day of same month and an intimation in Form - 2 shall be filed with the Jurisdictional Superintendent of Central Excise before the 10th day of the same month:

Provided that monthly duty payable for the month of July, 2008 shall be paid on or before 15th day of July, 2008:

Provided further that if the manufacturer fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with the interest at the rate specified by the Central Government vide notification under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount:

Provided also that in case of increase in the number of operating packing machines in the factory during the month on account of addition or installation of packing machines, the differential duty amount, if any, shall be paid by the 5th day of the following month:

Provided also that in case a manufacturer permanently discontinues

manufacturing of goods of existing retail sale price or commences manufacturing of goods of a new retail sale price during the month, the monthly duty payable shall be recalculated pro-rata on the basis of the total number of days in that month and the number of days remaining in that month counting from the date of such discontinuation or commencement and the duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month:

Provided also that if there is revision in the rate of duty, the monthly duty payable shall be recalculated pro-rata on the basis of the total number of days in that month and the number of days remaining in that month counting from the date of such revision and the duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month:

Provided also that in case it is found that a manufacturer has manufactured goods of those retail sale prices, which have not been declared by him in accordance with provisions of these rules or has manufactured goods in contravention of his declaration regarding the plan or details of the part or section of the factory premises intended to be used by him for manufacture of notified goods of different retail sale prices and the number of machines intended to be used by him in each of such part or section, the rate of duty applicable to goods of highest retail sale price so manufactured by him shall be payable in respect of all the packing machines operated by him for the period during which such manufacturing took place:

Provided also that in case a manufacturer does not pay the duty payable by the due date, and continues to operate any packing machine, then till the time such non-payment continues, he shall be liable to pay the monthly duty based on the number of operating packing machines declared in the month for which duty was last paid by him or the total number of packing machines found available in

his premises at any time thereafter, whichever is higher:

Provided also that in case a new manufacturer commences production of notified goods in a particular month, his monthly duty

payable for that month shall be calculated pro-rata on the basis of the total number of days in the month and the number of days remaining in that month starting from the date of commencement of the production of such notified goods and shall be paid within five days of such commencement.

10. Abatement in case of non-production of goods :-

In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, at least three working days prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that these cannot be operated during the said period:

Provided that during such period, no manufacturing activity, whatsoever, in respect of notified goods shall be undertaken and no removal of notified goods shall be effected by the manufacturer except that notified goods already produced before the commencement of said period may be removed within first two days of the said period:

Provided further that when the manufacturer intends to restart his production of notified goods, he shall inform to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, of the date from which he would restart production, whereupon the seal fixed on packing machines would be opened under the physical supervision of Superintendent of Central Excise.

11. Retail sale price to be declared on the package :-

Every manufacturer shall declare the retail sale price of the notified goods on the package of such goods:

Provided that if the manufacturer fails to declare the retail sale price before removing the goods from the place of manufacture or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of these rules or tampers with, obliterates or alters the retail sale price declared on

the package of such goods after their removal from the place of manufacture, then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the manner specified in these rules and such price shall be deemed to be the retail sale price for the purposes of these rules.

12. Determination of retail sale price in case of non-declaration, obliteration, tampering, etc :-

Where a manufacturer removes the notified goods in the manner and circumstances specified in proviso to rule 11, then, the retail sale price of such goods shall be ascertained by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in the following manner, namely:-

(i) if the manufacturer has manufactured and removed identical goods, within a period of one month, before or after removal of such goods, by declaring the retail sale price, then, the said declared retail sale price shall be taken as the retail sale price of such goods.

(ii) if the retail sale price cannot be ascertained in terms of (i), the retail sale price of such goods shall be ascertained by conducting the enquiries in the retail market where such goods have normally been sold at or about the same time of the removal of such goods from the place of manufacture:

Provided that if more than one retail sale price is ascertained under (i) or (ii), then, the highest of the retail sale price, so ascertained, shall be taken as the retail sale price of all such goods.

Explanation.- For the purposes of this rule, when retail sale price is required to be ascertained based on market inquiries, the said inquiries shall be carried out on sample basis.

(iii) Where a manufacturer alters or tampers the retail sale price declared on the package of goods after their removal from the place of manufacture, resulting into increase in the retail sale price, then such increased retail sale price shall be taken as the retail sale price of all goods removed during a period of one month before and after the date of removal of such goods:

Provided that where the manufacturer alters or tampers the declared retail sale price resulting into more than one retail sale price available on such goods, then, the highest of such retail sale price shall be taken as the retail sale price of all such goods.

(iv) If the retail sale price of goods cannot be ascertained under (i)

to (iii), the retail sale price shall be ascertained in accordance with the principles of this rule.

13. Addition or removal of packing machines and other restrictions :-

(1) In case a manufacturer does not intend to further operate a packing machine, he shall intimate the same to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, at least three working days in advance, whereupon the same shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision:

Provided that in case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated.

(2) In case a manufacturer wants to add or install a packing machine in his premises, he shall give a notice to this effect at least three working days in advance to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, who shall allow the addition or installation, as the case may be, under the physical supervision of Superintendent of Central Excise.

(3) No manufacturer shall be allowed to keep in his factory any stock of packing material for goods of those retail sale prices which have not been declared by him in accordance with provisions of these rules.

(4) No manufacturer shall be allowed to trade in notified goods of retail sale prices not declared by him in accordance with provisions of these rules, from his factory premises.

(5) In case a manufacturer permanently discontinues manufacture of goods of existing retail sale prices, he shall declare the balance stock of notified goods of existing retail sale prices and their packing material on the day he discontinues manufacturing of goods of existing retail sale prices.

14. Rebate of duty :-

Except in accordance with such terms and conditions as the Central Government may by notification specify in this behalf, no rebate of excise duty shall be granted under rule 18 of the Central Excise Rules, 2002, in respect of notified goods on which duty has been

paid under notification of the Government of India in the Ministry of Finance (Department of Revenue), No.42/2008-CE, dated the 1st July, 2008 and exported out of India.

14A. Export without payment of duty :-

Notwithstanding anything contained in these rules or in the Central Excise Rules, 2002 -

(i) no notified goods shall be exported without payment of duty; and

(ii) no material shall be removed without payment of duty from a factory or warehouse or any other premises for use in the manufacture or processing of notified goods which are exported out of India.

15. Cenvat credit not admissible :-

Notwithstanding anything contained in these rules, no CENVAT credit of duty paid on any input, capital goods or input services used in or in relation to manufacture of the notified goods shall be taken under the CENVAT Credit Rules, 2004 and the full amount of duty payable would be paid in cash only.

16. Factories ceasing to work :-

Notwithstanding anything contained in these rules, where a manufacturer permanently ceases to work in respect of all the machines installed in the factory and who has filed an intimation for surrender of registration with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, for this purpose, the duty payable by him for the month shall be calculated pro rata on the basis of the total number of days in the said month and total number of days before the date of receipt of said intimation with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, and the duty paid for the month in accordance with the notification shall be adjusted towards the duty so calculated and on such adjustment, if there is any excess payment, it shall be refunded to the manufacturer by the 20th day of the following month and deficiency, if any, shall be payable by him by the 5th day of the following month.

Explanation.- For the purposes of this rule, "ceases to work" shall

not include a manufacturer who ceases to operate his factory for one or two shifts only.

17. Penalty for contraventions, etc :-

(1) Subject to the provisions of section 11AC of the Act, if any manufacturer produces or removes notified goods in contravention of any provision of these rules, then all such goods shall be liable to confiscation, and the manufacturer shall be liable to a penalty not exceeding the duty leviable on the notified goods in respect of which aforesaid contravention has been committed.

(2) If it is found that goods have been manufactured in or cleared from a unit which is not registered with the jurisdictional Central Excise Office, then the duty liability of such unit shall be determined on the basis of number of packing machines found available in the premises of the unit and the retail sale price of the pouches manufactured with the aid of such packing machines and unless evidence to the contrary is provided to the satisfaction of the Central Excise Officer, such machines shall be deemed to have been in operation since the first day of April of the financial year in which the unit was found to be not registered and shall be construed as operating packing machines for the purposes of Rule 7 and dealt with accordingly.

18. Provisions to apply mutatis mutandis :-

Except as herein provided, all provisions of the Act and the Central Excise Rules, 2002, including those relating to maintenance of daily stock account, removal of goods on invoice, filing of returns and recovery of dues shall apply mutatis mutandis.

Explanation.- Unless otherwise specified in these rules, for the purposes of these rules, the goods shall be deemed to have been manufactured or produced with the aid of a packing machine, if they are cleared from a factory where a packing machine is installed, irrespective of whether it is in use or not, or is in working condition or not.