

# The Medicinal and Toilet Preparation (Excise Duties) Act, 1955

February 21, 2013

## PREAMBLE

(16 OF 1955)

[27th April, 1955]

An Act to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:

## 1. SHORT TITLE, EXTENT AND COMMENCEMENT.

(16 OF 1955)

[27th April, 1955]

An Act to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows :

- (1) This Act may be called the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date 2, as the Central Government may, by notification in the official Gazette, appoint.

## 2. DEFINITIONS.

In this Act unless the context otherwise requires, –

(a) "alcohol" means ethyl alcohol of any strength and purity having chemical compositions  $C_2H_5OH$ ;

(aa) "Coca derivative" means –

(i) crude cocaine that is any extract of coca leaf which can be used directly or indirectly, for the manufacture of cocaine;

(ii) ecgonine, that is laevo-ecgonine having the chemical formula,  $C_9H_{15}NO_3H_2O$ , and all the derivatives of laevo-ecgonine from which it can be recovered, and

(iii) cocaine, that is, methyl-benzoyl-aevo-ecgonine having the chemical formula,  $C_{17}H_{21}NO_4$  and its salts;

(ab) "coca-leaf" means –

(i) the leaf and young twigs of any coca plant, that is, of the *Erythroxylon coca* (Lamk.) and the *Erythroxylon novo-granatense* (Hiern.) and their varieties, and of any other species of this genus which the Central Government may, by notification in the official Gazette, declare to be coca plants for the purposes of this Act, and

(ii) any mixture thereof, with or without neutral materials;

(bb) derivative of opium, means –

(i) medicinal opium, that is, opium which has undergone the processes necessary to adopt it for medicinal use;

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked ;

(iii) morphine, that is, the principal alkaloid of opium having the chemical formula  $C_{17}H_{19}NO_8$ , and its salts, and its derivatives;

(b) "collecting Government" means the Central Government or, as the case may be, the State Government which is entitled to collect the duties levied under this Act;

(c) "dutiable goods" means the medicinal and toilet preparations specified in the schedule as being subject to the duties of excise levied under this Act;

(d) "excise officer" means an officer of the Excise Department of any State and includes any person empowered by the collecting Government to exercise all or any of the powers of an excise officer under this Act;

(e) "Indian hemp" means –

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis-sativa* L), including all forms known as bhang, sidhi or ganja;

(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;

(iii) any mixture, with or without neutral materials, of any of the above forms of Indian hemp or any drink prepared there from; and

(iv) any extract or tincture of the above forms of Indian hemp;

(f) "manufacture" includes any process incidental or ancillary to the completion of the manufacture of any dutiable goods;

(g) "medicinal preparation" includes all drugs which are a remedy or "prescription" prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals;

(h) "narcotic drug" or "narcotic" means a substance which is coca leaf, or coca derivative, or opium or derivative of opium, or Indian hemp and shall include any other substance, capable of causing or producing in human beings dependence, tolerance and withdrawal syndromes and which the Central Government may, by notification in the official Gazette, declare to be a narcotic drug or narcotic;

(i) "opium" means –

(1) the capsules of the poppy (*Palaver somniferous* L), whether in their original form or cut, crushed or powdered and whether or not juice has been extracted there from,

(2) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

(3) any mixture, with or without neutral materials of any of the above forms of opium, and includes and derivative of opium;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "toilet preparation" means any preparation which is intended for use in the toilet of the human body or in perfuming apparel of any description, or any substance intended to cleanse, improve or alter the complexion, skin, hair or teeth, and includes deodorants and perfumes.

### 3. DUTIES OF EXCISE TO BE LEVIED AND COLLECTED ON CERTAIN GOODS.

(1) There shall be levied duties of excise, at the rates specified in the schedule, on all dutiable goods manufactured in India.

(2) The duties aforesaid shall be leviable –

(a) where the dutiable goods are manufactured in bond, in the State in which such goods are released from a bonded warehouse for home consumption, whether such State is the State of manufacture or not;

(b) where dutiable goods are not manufactured in bond, in the State in which such goods are manufactured.

(3) Subject to the other provisions contained in this Act, the duties aforesaid shall be collected in such manner as may be prescribed.

Explanation:

Dutiable goods said to be manufactured in bond within the meaning of this section if they are allowed to be manufactured without payment of any duty of excise leviable under any law for the time being in force in respect of alcohol, opium, Indian hemp or other narcotic drug or narcotic which is to be used as an ingredient in the manufacture of such goods.

## 4. REBATE OF DUTY ON ALCOHOL, ETC. SUPPLIED FOR MANUFACTURE OF DUTIABLE GOODS.

Where alcohol opium, Indian hemp or other narcotic drug or narcotic had been supplied to a manufacturer or any dutiable goods for use as an ingredient of such goods by, or under the authority of, the collecting Government and a duty or excise on the goods so supplied had already been recovered by such Government under any law for the time being in force, the collecting Government shall, on an application being made to it in this behalf, grant in respect of the duty of excise leviable under this Act, a rebate to such manufacturer of the excess, if any, of the duty so recovered over the duty leviable under this Act.

## 5. RECOVERY OF SUMS DUE TO GOVERNMENT.

In respect of the duty of excise and any other sums of any kind payable to the collecting Government under any of the provisions of this Act or of the rules made there under, the Excise Officer empowered by the said rules to levy such duty or require the payment of such sums, may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due, which may be in his hands or under his disposal or control or may recover the amount by attachment and sale of dutiable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the sum and sent to it the Collector of the district in which such person resides or conducts his business, and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified therein in the same manner as an arrear of land revenue.

## 6. CERTAIN OPERATIONS TO BE SUBJECT TO LICENCES.

(1) The Central Government may, by notification in the official Gazette, provide that from such date as may be specified in the notification, no person shall engage in the production or manufacture of any dutiable goods or of any specified component parts or ingredients of such goods or of specified container of such goods or of labels of such containers except under the authority and in accordance with the terms and conditions of a licence granted under this Act.

(2) Every licence under sub-section (1) shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars as may be prescribed.

## 7. OFFENCES AND PENALTIES.

If any person –

- (a) contravenes any of the provisions of a notification issued under Sec. 6; or
- (b) evades the payment of any duty of excise payable under this Act; or
- (c) fails to supply any information which he is required by rules made under this Act to supply or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (d) attempts to commit or abets the commission of any offence mentioned in Cl. (a) or Cl. (b).

He shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

## 8. POWER OF COURTS TO ORDER FORFEITURE.

Any Court trying any offence under Sec. 7 may order the forfeiture to the collecting Government of any dutiable goods in respect of which the Court is satisfied that an offence under this Act has been committed, and may also order the forfeiture of any alcohol, drugs or materials by means of which the offence has been committed and of any receptacles, packages or coverings in which any such goods or articles are contained and the animals, vehicles, vessels or other conveyances used in carrying such goods or articles, and any implements or machinery used in the manufacture of such goods.

## 9. POWER TO ARREST.

(1) Any excise officer duly empowered by rules made in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made there under, who, on demand of any excise officer duly empowered by rules made under this Act, refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false may be arrested by such officer in order that his name and residence may be ascertained.

## 10. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS IN INQUIRIES UNDER THIS ACT.

(1) Any excise officer duly empowered by rules made in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purpose of this Act.

(2) A summons to produce documents or other things under sub-section (1) may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person concerned.

(3) All persons so summoned shall be bound to attend either in person or by an authorized agent as such officer may direct and all persons so summoned shall be bound to state the truth on any subject respecting which he is examined or make statements and produce such documents and other things as may be required:

Provided that the exemption under Sec. 132 and Sec. 133 of the Code of Civil Procedure, 1908 (5 of 1908), shall apply to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Sec. 193 and Sec. 228 of the Indian Penal Code (45 of 1860).

## **11. OFFICERS REQUIRED TO ASSIST EXCISE OFFICERS.**

All officers of Customs and Central Excise, and such other officers of the Central Government as may be specified in this behalf, and all police officers and all officers engaged in the collection of land revenue are hereby empowered and required to assist excise officers in the execution of this Act.

## **12. OWNERS OR OCCUPIERS OF LAND TO REPORT MANUFACTURE OF CONTRABAND DUTIABLE GOODS.**

Every owner or occupier of land and the agent of any such owner or occupier in charge of the management of that land, if dutiable goods are manufactured thereon in contravention of the provisions of this Act or the rules made thereunder, shall, in the absence of reasonable excuse, be bound to give notice of such manufacture to a Magistrate or to an officer of the Excise, Customs, Police or Land Revenue Department immediately the fact comes to his notice.

## **13. PUNISHMENT FOR CONNIVANCE AT OFFENCES.**

Any owner or occupier of land or any agent of such owner or occupier in charge of the management of the land, who willfully connives at any offence against the provisions of this Act or any rules made there under shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

## **14. SEARCHES AND ARRESTS HOW TO BE MADE.**

All arrests and searches made under this Act or under any rules made there under shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) 6 , relating respectively to searches and arrests under the Code.

## **15. DISPOSAL OF PERSONS ARRESTED.**

(1) Every person arrested under this Act shall be forwarded without delay to the nearest Excise Officer empowered to send persons so arrested to a Magistrate or if there is no such excise officer within a reasonable distance to the officer-in-charge of the nearest police station.

(2) The officer-in-charge of a police station to whom any person is forwarded under sub-section (1) shall either admit him to bail to appear before a Magistrate having jurisdiction or in default of bail forward him without delay in custody to such Magistrate.

## 16. INQUIRY HOW TO BE MADE BY EXCISE OFFICERS AGAINST ARRESTED PERSONS FORWARDED TO THEM.

(1) When any person is forwarded under Sec. 15 to an excise officer empowered to send persons so arrested to a Magistrate, the Excise Officer shall proceed to inquire into the charge against him.

(2) For the purpose of sub-section (1), the Excise Officer may exercise the same powers, and shall be subject to the same provisions, as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case :

Provided that –

(a) if the Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person he shall either admit him to bail to appear before Magistrate having jurisdiction in the case, or forward him in custody without delay to such Magistrate;

(b) if it appears to the Excise Officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond with or without sureties as the Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction and shall make a full report of all the particulars of the case to his official superior.

(3) All officers exercising any powers under Sec. 15 or this section shall so exercise their powers as to ensure that every person who is arrested and detained in custody is produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate.

## 17. VEXATIOUS SEARCH, SEIZURE, ETC. BY EXCISE OFFICER.

(1) Any officer exercising powers under this Act or under the rules made there under who –

(a) without reasonable ground of suspicion searches or causes to be searched any place, conveyance or vessel;

(b) vexatiously and unnecessarily detains, searches or arrests any person;

(c) vexatiously and unnecessarily seizes the moveable property of any person on pretence of seizing or searching for any article liable to confiscation under this Act;

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

Shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

(2) Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

## 18. FAILURE OF EXCISE OFFICERS ON DUTY.

Any Excise Officer who ceases or refuses to perform, or withdraws himself from the duties of his office, unless he had obtained the express written permission of his superior officer or has given such superior officer two month's notice in writing of his intention or has other lawful excuse, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

## 19. POWER TO MAKE RULES.

(1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may –

(i) provide for the assessment and collection of duties levied under this Act, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable and the recovery of the duty not paid;

(ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government may think fit, the manufacture, or any process of the manufacture, or dutiable goods or of any component parts or ingredients or containers thereof, except of land or premises approved for the purpose;

(iii) regulate the removal of dutiable goods from the place where they are stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market;

(iv) regulate the production or manufacture or any process of production or manufacture, the possession and storage of dutiable goods or of any component parts or ingredients or containers thereof so far as such regulation is essential for the proper levy and collection of duties levied under this Act;

(v) provide for the employment of excise officers to supervise the carrying out of any rules made under this Act;

(vi) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for Excise Officers employed to supervise the carrying out of rules made under this Act and prescribe the scale of such accommodation;

(vii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering dutiable goods into a clearing goods from such warehouses or in the movement of dutiable goods from one bonded warehouse to another;

(viii) provide for the distinguishing of excisable goods which have been manufactured under licence, or materials which have been imported under licence and of goods on which duty has been paid or which are exempt from duty under this Act;

(ix) impose on persons engaged in the manufacture, storage or sale (whether on their own account or as brokers or commission agents) so far as such imposition is essential for the proper levy and collection of the duties levied under this Act, the duty of furnishing information, keeping records and making returns and prescribe the nature of such information and form of such records and returns the particulars to be contained therein and the manner in which they shall be verified.



(x) require that dutiable goods shall not be sold or offered or kept for sale except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xi) provide for the issue of licences and transport permits and the fees, if any, to be charged therefor;

(xii) provide for the detention of dutiable goods, plant, machinery or material for the purpose of exacting the duty;

(xiii) provide for the confiscation of dutiable goods in respect of which a breach of any rule made under this Act has been committed, and also for the confiscation of any alcohol, drugs or materials by means of which the breach has been committed and of any receptacle, packages or coverings in which goods or article are contained, and the animals, vehicles, vessels, or other conveyances used in carrying such goods or articles and any implements or machinery used in the manufacture of such goods;

(xiv) provide for the levy of a penalty not exceeding two thousand rupees for a breach of any rule made under this Act;

(xv) provide for the procedure in connection with such confiscation and the imposition of such penalty, the maximum limits up to which particular classes of excise officers may adjudge such confiscation or penalty, appeals from orders of such officers and revision of such orders by some higher authority, the time-limit for such appeals and revisions and the disposal of goods and articles confiscated;

(xvi) authorize and regulate the compounding of offences against, or liabilities incurred under, this Act or the rules made thereunder;

(xvii) authorize and regulate the inspection of factories and provide for the taking of samples or for the making of tests of any substance produced therein and for the inspection or search of any place, conveyance or vessel used for the production, storage, sale or transport of dutiable goods in so far as such inspection or search is essential for the proper levy and collection of the duties levied under this Act;

(xviii) provide for the grant of a rebate of the duty paid on dutiable goods which are exported out of India or shipped for consumption on a voyage to any port outside India;

(xix) exempt any dutiable goods from the whole or any part of the duty levied under this Act where in the opinion of the Central Government, it is necessary to grant such exemption in the interest of the trade or in the public interest;

(xx) notify in the official Gazette lists of the names and descriptions of preparations which would fall for assessment under any particular item or the schedule or for regulating their manufacture, transport and distribution;

(xxi) authorize particular classes of excise officers to provide by written instructions for supplemental matters arising out of any rule made by the Central Government under this section.

(3) Where any confiscation or penalty has been adjudged in respect of a breach of any rule under this Act, which is also an offence under Sec. 7 the person concerned shall not be prosecuted under that section.

(4) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

## 20. BAR OF SUITS AND LIMITATION OF SUITS AND OTHER LEGAL PROCEEDINGS.

(1) No suit or other legal proceeding shall lie against the collecting Government or against any officer in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted against the collecting Government or against any officer for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

## 21. REPEALS AND SAVINGS.

If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed :

Provided that all rules made, notifications issued, licences or permits granted, powers conferred under any law hereby repealed shall, so far as they are not inconsistent with this Act, have the same force and effect as if they had been respectively made, issued, granted or conferred under this Act and by the authority empowered hereby in that behalf.

## THE SCHEDULE.

(See Sec. 3)

### Medicinal Preparations

#### 1. Allopathic Medicinal Preparations

(i) Medicinal preparations containing alcohol which are not capable of being consumed as ordinary alcoholic beverages –

(a) Patent or proprietary Twenty per cent. ad medicines. valorem or rupees ten per litre of pure alcohol content, whichever is higher.

(b) Others. Rupees ten per litre of pure alcohol content.

(ii) Medicinal preparations containing alcohol which are capable of being consumed as ordinary alcoholic beverages –

(a) Medicinal preparations which contain Twenty per cent. ad known active ingredients in therapeutic valorem or rupees quantities. twenty per litre of pure alcohol content, whichever is higher.

(b) Others. Twenty per cent. ad valorem or rupees eighty per litre of pure alcohol content, whichever is higher.

(iii) Medicinal preparations not containing alcohol but containing narcotic ad valorem. drug or narcotic.

## 2. Medicinal preparations in Ayurvedic, Unani or other indigenous systems of medicine –

(i) Medicinal preparations containing Nil self-generated alcohol which are not capable of being consumed as ordinary alcoholic beverages.

(ii) Medicinal preparations containing Rupees two and self-generated alcohol which are capable of being consumed as ordinary alcoholic beverage. alcohol content.

(iii) All other containing alcohol Rupees eighty per litre of which are prepared by distillation of pure or to which alcohol has been added. alcohol content.

(iv) Medicinal preparations not containing alcohol but containing narcotic drug or narcotic.

3. Homoeopathic preparations Rupees twenty per litre of pure alcohol content.

## TOILET PREPARATIONS

4. Toilet preparations containing One hundred per cent. ad valorem or rupees twenty per litre of pure alcohol content whichever is higher.

### Explanation I :

“Patent or proprietary medicines” means any medicinal preparation which bears either on itself or on its container or both, a name which is not specified in a monograph in a pharmacopoeia, formulary or other publications notified in this behalf by the Central Government in the official Gazettee, or which is a brand name, that is, a name or a registered trade-mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicinal preparation for the purpose of indicating or so as to indicate a connection in the course of trade between the preparation and some person having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person.

### Explanation II :

Where any article is chargeable with duty at a rate dependent on the value of the article such value shall be deemed to be the value as determined in accordance with the provisions of Sec. 4 of the Central Excises and Salt Act, 1944 (1 of 1944).

### Explanation III :

For the purposes of this schedule, “pure alcohol content”, in relation to a preparation, means the ethyl alcohol content in the preparation expressed as ethyl alcohol of 100 per cent. by volume at 150 Degree C.
