

MINISTRY OF INDUSTRY

(Department of industrial Policy and promotion)

ORDER

New Delhi, the 10th December, 1997

S.O.857(E).- Whereas the central Government considers it necessary with a view to ascertain which ancillary and small scale industrial undertakings need supportive measures, exemption or other favourable treatment under the Industries (Development and Regulation) Act, 1951 (65 of 1951) herein after referred to as the said Act) to enable them to maintain their viability and strength so as to be effective in –

- a. promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and
- b. securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

And whereas the draft notification was laid before each House of Parliament for a period of thirty days as required under sub-section (3) of section 11B of the said Act:

And whereas no modification in the proposed notification has been suggested by both the Houses of Parliament;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11B and sub-section (1) of section 29B of the said Act, and in supersession of the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) number S.O.232(E), dated the 2nd April, 1991, the Central Government hereby specifies the following factors on the basis of which an industrial undertaking shall be regarded as a small scale or as an ancillary industrial undertaking for the purposes of the said Act:-

1. **Small scale industrial undertaking:** An industrial undertaking in which the investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees three crores;
2. **Ancillary industrial undertaking:** An industrial undertaking which is engaged or is proposed to be engaged in the manufacturing or production of parts components, sub-assemblies, tooling or intermediates, or the rendering of services, and undertaking supplies or proposes or supply or renders not more than fifty per cent of its production or services, as the case may be, to one or more other industrial undertakings and whose investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees three cores.

Note 1 No small scale or ancillary industrial undertaking referred to above shall be subsidiary of, - or owned or controlled by any other industrial undertaking.

Explanation – For the purposes of this note,-

- A. "owned" shall have the meaning as derived from the definition of the expression "owner" specified in clause (1) of section 3 of the said Act;

- B. "subsidiary" shall have the same meaning as in clause (47) of section 2. read with section 4, of the Companies Act, 1956 (1 of 1956),
- C. the expression "controlled by any other industrial undertaking" means as under:-
- i. where two or more industrial undertakings are set up by the same person as a proprietor, each of such industrial undertakings shall be considered to be controlled by the other industrial undertaking or undertakings,
 - ii. where two or more industrial undertakings are set up as partnership firms under the Indian Partnership Act, 1932 (1 of 1932) and one or more partners are common partner or partners in such firms, each such undertaking shall be considered to be controlled by the other undertaking or undertakings,
 - iii. where industrial undertakings are set up by companies under the Companies Act, 1956 (1 of 1956), an industrial undertaking shall be considered to be controlled by other industrial undertaking if,-
 - a. the equity holding by other industrial undertaking in it exceeds twenty four per cent of its total equity; or
 - b. the management control of an undertaking is passed on to the other industrial undertaking by way of the Managing Director of the first mentioned undertaking being also the Managing Director or Director in the other industrial undertaking or the majority of Directors on the Board of the first mentioned undertaking being the equity holders in the other industrial undertaking in terms of the provisions of the following items(a) and (b) of sub-clause (iv);
 - iv. the extent of equity participation by other industrial undertaking or undertakings in the undertaking as per sub-clause (iii) above shall be worked out as follows:-
 - a. the equity participation by other industrial undertaking shall include both foreign and domestic equity;
 - b. equity participation by other industrial undertaking shall mean total equity held in an industrial undertaking by other industrial undertaking or undertakings, whether small scale or otherwise, put together as well as the equity held by persons who are Directors in any other industrial undertaking or undertakings even if the person concerned is a Director in other in other Industrial Undertaking or Undertakings;
 - c. equity held by a person, having special technical qualification and experience, appointed as a Director in a small scale industrial undertaking, to the extent of qualification shares, if so provided in the Articles of Association, shall not be counted in computing the equity held by other industrial undertaking or undertakings even if the person concerned is a Director in other industrial undertaking or undertakings;
 - v. where an industrial undertaking is a subsidiary of, or is owned or controlled by, any other industrial undertaking or undertakings in terms of sub-clauses (i); (ii) and if the total investment in fixed assets in plant and machinery of the first mentioned industrial undertaking and the other industrial undertaking or undertakings clubbed together exceeds the limit of investment specified in paragraphs (1) or (2) of this notification as the case may be, none of these industrial undertakings shall be considered to be a small scale or ancillary industrial undertaking.

Note 2-

- a. In calculating the value of plant and machinery for the purposes of paragraphs (1) and (2) of this notification, the original price thereof, irrespective of whether the plant and machinery are new or second hand, shall be taken into account.
- b. In calculating the value of plant and machinery, the following shall be excluded, namely:-
 - i. the cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
 - ii. the cost of installation of plant and machinery;
 - iii. the cost of research and development equipment and pollution control equipment;
 - iv. the cost of generation sets and extra transformer installed by the undertaking as per the regulations of the State Electricity Board;
 - v. the bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;
 - vi. the cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted on individual machines), oil circuit breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the plant and machinery or for safety measures;
 - vii. the cost of gas producer plants;
 - viii. transportation charges (excluding of sales-tax and excise) for indigenous machinery from the place of manufacturing to the site of the factory;
 - ix. charges paid for technical know-how for erection of plant and machinery;
 - x. cost of such storage tanks which store raw materials, finished products only and are not linked with the manufacturing process; and
 - xi. cost of fire fighting equipments.
- c. In the case of imported machinery, the following shall be included in calculating the value, namely:-
 - i. import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory, demurrage paid at the port);
 - ii. the shipping charges;
 - iii. customs clearance charges; and
 - iv. sales tax.

Every industrial undertaking which has been issued a certificate of registration under section 10 of the said Act or a license under sections 11, 11A and 13 of the said Act by the Central Government and are covered by the provisions of paragraphs (1) and (2) above relating to the ancillary or small scale industrial undertaking, may be registered, at the discretion of the owner, as such, within a period of one hundred and eighty days from the date of publication of this notification in the Official Gazette.

This notification shall come into force from the date of its publication in the Official Gazette

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ASHOK KUMAR. Jt. Secy.