

THE SMALL ENTERPRISES DEVELOPMENT BILL, 2002 (ASCI)

A bill to provide for development under the control of the Union, of small enterprises and for matters connected therewith and incidental thereto.

Be it enacted by Parliament in the Fifty-third year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement: -

- (1) This Act may be called the Small Enterprises Development Act, 2002.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision

2. Definitions: - In this Act, unless the context otherwise requires

- (a) “Board” means the National Small Enterprises Board as constituted by the Central Government under section 4 of this Act.
- (b) “Central Commissioner” means the Development Commissioner for Small Enterprises, appointed by the Central Government under section 5 of this Act.
- (c) “Financial institution” means and includes every banking company as defined in clause (a) of section 45A of the Reserve Bank of India Act, 1934, every Financial Corporation as defined in clause (b) of section 2 of The State Financial Corporations Act, 1951, the Small Industries Development Bank of India and every other organisation engaged in the financing of small enterprises as the Central Government may, by notification, include for the purposes of this Act.

- (d) “Reserve Bank” means the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934
- (e) “Small enterprise” means any undertaking, which satisfies such criteria and requirements as, may be notified by the Central Government under subsection (1) of section 3.
- (f) “State/UT Commissioner” means the Commissioner of Industries or the Director of Industries, by whatever name called, of a State/UT Government;
- (g) “State Purchaser” shall mean and include the Central Government or State/UT Government or local bodies.

CHAPTER II

SMALL ENTERPRISES DEVELOPMENT POLICY AND CLASSIFICATION

3. Small Enterprises Development Policy

- (1) The Central Government may by Order published in the Official Gazette, make provision for the development of small enterprises.
- (2) The National Small Enterprises Board shall advise the Central Government in the formulation of small enterprises development policy and shall be responsible for carrying out that policy.

4. Classification of Small Enterprises

- (1) The Central Government shall, by notification in the Official Gazette, specify any class or category of enterprises (whether proprietorship, Hindu Undivided Family, Association of Persons, co-operatives, partnerships, firms, companies or undertakings by whatever name called) as a small enterprise for the purposes of this Act on the basis of one or more of the following factors, namely: -
 - (a) the investment in any class or description of plant and machinery;
 - (b) the number of any class or description of employees;
 - (c) the nature of the ownership;
 - (d) the nature of the activity, product or service or the nature of their markets;
 - (e) the turnover of manufactured goods or services
 - (f) the gross value of sale of goods sold or services rendered;
 - (g) the nature of the technology involved.
- (2) The Central Government may, by notification in the Official Gazette, further categorise the small enterprises into any other different categories based on any relevant criteria for the purpose of this Act and for the purposes of extending differential concessions, incentives, protection, schemes or programmes to any of them.

CHAPTER III

NATIONAL SMALL ENTERPRISES BOARD

5. Establishment of the Board.

- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Act, a Board to be called the National Small Enterprises Board.
- (2) The head office of the Board shall be at Delhi.
- (3) The Board shall consist of the following members, namely:-
 - (a) the Minister in charge of the Ministry of the Central Government dealing with small scale industries, who shall ex-officio be the Chairperson of the Board;
 - (b) five members of Parliament, of whom three shall be elected by the House of the People and two by the Council of States;
 - (c) four members who are representatives of the Union Ministries of Industry, Commerce, Finance, and the Planning Commission
 - (d) five members to be appointed by the Central Government to represent respectively corporations, companies or institutions owned, established or controlled by that Government;
 - (e) not less than five members to be appointed by the Central Government to represent the States and the Union Territory Administrations in such manner as may be prescribed;
 - (f) five Members to be appointed by the Central Government to represent the banks and financial institutions;
 - (g) one member to be appointed by the Central Government to represent the Reserve Bank of India;
 - (h) not less than five from small enterprise associations/persons of repute;
 - (i) the Central Development Commissioner of Small Enterprises in Government of India - Member-Secretary (ex-officio).
- (4) The term of office of the members other than the ex officio Members and the manner of filling vacancies among, and the procedure to be followed in the discharge of their functions by, the members shall be such as may be prescribed.

- (5) The Board may associate with itself, in such manner and for such purposes as may be prescribed, any person whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated, but shall not have the right to vote.
- (6) No act or proceeding of the Board shall be invalidated merely by reason of –
 - (a) any vacancy in, or any defect in the constitution of, the Board or such committee; or
 - (b) any defect in the appointment of a person acting as a member of the Board or such committee; or
 - (c) any irregularity in the procedure of the Board or such committee not affecting the merits of the case.
- (7) It is hereby declared that the office of the Member of the Board shall not disqualify the holder for being chosen as or for being a Member of either House of Parliament.

6. Duties and Functions of the Board

- (1) It shall be the duty of the Board to promote by such measures as it thinks fit the development under the control of the Central Government of the small enterprises.
- (2) Without prejudice to the generality of the provisions of subsection (1), the measures referred to therein may provide for –
 - (a) adopting measures for development of small enterprises so that small business entrepreneurs may become participants in and beneficiaries of the development and growth of the national and global economy;
 - (b) recommending measures for improving the marketing of products and services of small enterprises in India and abroad;
 - (c) The Board shall aid and assist small business enterprises to increase their ability to compete in the international markets by –

- (i) enhancing their ability to export;
 - (ii) enhancing their ability to compete effectively and efficiently against imports;
 - (iii) ensuring that the interest of small business enterprises are adequately represented in bilateral and multilateral trade negotiations;
 - (iv) designing a comprehensive policy measures concerning small enterprises;
 - (v) devising policies necessary for strengthening a competitive power of the goods and services produced mainly by the small and medium entrepreneurs against imported goods on the same time and shall provide measures for adjustments of the customs rates and limitation of imports where necessary.
- (3) The Central Board shall by regulations regulate its own procedure.
- (4) All orders and decisions of the Board shall be authenticated by the Member-Secretary of the Board or any other officer of the Board duly authorised by the Member-Secretary on his behalf.
- (5) The Central Board shall meet as and when necessary as may be required, and it should have three meetings in a calendar year.

CHAPTER IV

SMALL ENTERPRISE DEVELOPMENT COMMISSIONERS

7. Functions and powers of the Development Commissioner

- (1) The Central Government shall appoint an officer of the Central Government not below the rank of an Additional Secretary to that Government as the Central Development Commissioner for Small Enterprises for the purposes of this Act.
- (2) The Central Development Commissioner shall be the principal officer responsible for: -
 - (a) the advocacy of the promotion, development, protection and growth of small enterprises;
 - (b) the performance of all such functions under the provisions of this Act as may be assigned to him by the Board or the Central Government.
- (3) For the proper performance of his functions under this Act, the Central Development Commissioner may require any person or authority within the territory of India to furnish any information, data, record or particulars as the Central Commissioner may, by order specifying the requirements in sufficient detail and the purpose for which it is required, direct;

8. Functions and powers of the State/UT Commissioner

- (1) Every State/UT Government shall appoint an officer of the State/UT Government as the State Small Enterprises Development Commissioner for the purpose of this Act.
- (2) The State/UT Commissioner shall be the principal officer responsible, in the State/UT, for the advocacy of the promotion, development, protection and growth of small enterprises within the state;
- (3) Without prejudice to the provisions of subsection (2) the State/UT Commissioner shall hear and dispose of appeals filed under subsection (1) of section 13.
- (4) The State/UT Commissioner may for the proper performance of the functions assigned to him under this Act, the State/UT Commissioner shall require any person or authority within the State/UT furnish any information, data, record or particulars as the State/UT Commissioner may, by order specify.

CHAPTER V

REGISTRATION OF SMALL ENTERPRISES

9. Appointment of Registering Authorities

The State/UT Government shall, by notification, designate one or more officers of the State/UT Government as the Registering Authority with such territorial jurisdiction as may specified in the said notification for the purposes of this Act.

10. Provisional registration.

- (1) Any person who intends to establish a small enterprise may make an application for provisional registration as a small enterprise to the Registering Authority having jurisdiction over the place where the small enterprise is proposed to be established in such manner as may be prescribed.
- (2) On receipt of an application under subsection (1) the Registering Authority shall, if it is satisfied that the applicant satisfies the conditions necessary to be classified as a small enterprise in accordance with the provisions of Chapter II, within fifteen working days, issue a provisional registration certificate in such form as may be prescribed:
- (3) Provided that if the Registering Authority is of the opinion that the applicant does not satisfy the requirements specified under Section 4 he shall, within the said period, for reasons to be recorded in writing reject the application:

Provided further that where the application is not disposed of within the said period of fifteen days, the applicant may file an application to the Director of Industries who shall grant provisional registration forthwith and shall be issued a certificate accordingly.

- (4) A provisional registration granted under subsection (3) shall have effect from the date of receipt of the application for provisional registration by the Registering Authority and shall be valid for a period of two years from the date of issue.
- (5) A provisional registration may be renewed by an endorsement of the Registering Authority, upon an application made in such manner as may be prescribed, for a further period of one year from the date of expiry of the original validity and any renewal shall be deemed to be effective from the date of expiry of the original validity.

Provided that if the Registering Authority is of the opinion that the applicant does not satisfy the requirements specified under Section 3 he shall, within the said period, for reasons to be recorded in writing reject the application:

Provided further that where the application is not disposed of within the said period of fifteen days the applicant shall make an application to the Director of Industries who shall extend the validity of the provisional registration for one year and shall endorse it in the certificate accordingly.

- (6) No provisional registration certificate shall be renewed, in respect of any small enterprise for a period exceeding two years from the date on which a provisional registration certificate was first issued in respect of that enterprise or after the enterprise has commenced operation:

Provided that nothing in this subsection shall affect the validity of a provisional registration for the mere reason that the small enterprise has since commenced operation.

- (7) Any person holding a permanent registration certificate in respect of a small enterprise may apply for and obtain a provisional registration certificate for any additional product or line of activity, which he intends to manufacture or undertake to provide.

11. Permanent Registration

- (1) Any small enterprise, which has commenced operation, whether or not it holds or had held a provisional registration certificate, may make an application for permanent registration as a small enterprise to the Registering Authority having jurisdiction over the place where the small enterprise is established.
- (2) Every application under subsection (1) shall be accompanied by
- (a) such fee as may be prescribed;
 - (b) an affidavit by the owner or any person authorised on his behalf mentioning the date on which the small enterprise has completed the installation of such machinery, plant, equipment or facilities as are necessary for the small enterprise to undertake the manufacture of any

product, provide any service or engage in the line of activity mentioned in the application.

Explanation: - For the purposes this subsection, a small enterprise shall be deemed to have commenced operation on the date mentioned in an affidavit as the date on which the small enterprise has completed installation of such machinery, plant, equipment or facilities as are necessary for the small enterprise to undertake the manufacture of any product, provide any service or engage in the line of activity mentioned in the application.

- (3) On receipt of an application under subsection (1), if the Registering Authority is satisfied that:
- (a) the applicant fulfils the conditions necessary to be classified as a small enterprise in accordance with the provisions of Chapter II;
 - (b) the small enterprise has commenced operation,

he shall within fifteen working days issue a permanent registration certificate in such form as may be prescribed:

Provided that if the Registering Authority is of the opinion that the applicant does not satisfy the requirements specified under Section 3 he shall, within the said period, for reasons to be recorded in writing reject the application:

Provided further that where the application is not disposed of within the said period of fifteen days the applicant shall be deemed to have been granted a permanent registration in accordance with the provisions of section and shall be issued a certificate accordingly.

- (4) A permanent registration granted subsection (3) shall have effect from the date of receipt of the application for permanent registration by the Registering Authority and shall be valid for a period of ten years from such date.
- (5) A permanent registration certificate shall be endorsed for additional locations or for additional products or lines of activity upon an application made by any small

enterprise and the provisions of subsections (1) and (2) shall apply to every such application.

12. Amendment and cancellation of Registration Certificate

- (1) The Registering Authority may cancel or amend any registration certificate if, upon receipt of any complaint from any person or other information and upon making such inquiry as may be necessary, the Registering Authority is satisfied that -
 - (a) the registration certificate is to be cancelled for the reason that registered small enterprise is no longer in existence or no longer qualifies as a small enterprise or that the registration certificate was obtained by fraud or by making any material false or incorrect statement; or
 - (b) the registration certificate is to be amended for the reason that :-
 - (i) the small enterprise does not manufacture the product or is not engaged in the line of activity mentioned in the registration certificate; or
 - (ii) the small enterprise is located at a location different than that mentioned in the registration certificate; or
 - (iii) any material particulars in the registration certificate needs to be amended to correspond with the true state of facts.
- (2) The Registering Authority shall, within fifteen working days of the receipt of an application for amendment of any registration certificate, endorse an amendment to any of the particulars contained therein unless the Registering Authority has, within the said period, communicated to the applicant a speaking order refusing amendment for sufficient cause.

Provided that if the Registering Authority has not, within the said fifteen working days, communicated an order refusing endorsement, the permanent registration applied for shall be granted by the State/UT Commissioner and the applicant shall be entitled to obtain a permanent registration certificate forthwith.

- (3) A small enterprise, which ceases to be a small enterprise for the purposes of this Act, shall forthwith surrender any registration certificate to the Registering Authority who shall cancel such registration certificate.
- (4) No order amending or cancelling any registration certificate shall be made under subsection (1), unless the Registering Authority has previously served a notice to the small enterprise in such form as may be prescribed setting out the grounds and materials which appear against it and a sufficient time, which shall not be less than fifteen days from the date of receipt of the notice, and sufficient opportunity of being heard has been given to the small enterprise.
- (5) The Registering Authority shall, in every case where any enquiry under subsection (1) has been made on any complaint or other information, make a speaking order setting out its findings, conclusions and reasons within ninety days of the commencement of inquiry and communicate such order forthwith to the small enterprise and, where the inquiry is made on any complaint, to the complainant.
- (6) Where the Registering Authority considers that any complaint is frivolous or vexatious or that the complaint does not make out any prima facie case warranting an inquiry, it may make an order to that effect within 30 days of the date of receipt of the complaint and shall communicate the same to the complainant and to the small enterprise; and in such a case, no enquiry shall be commenced in respect of any matter contained in such complaint.
- (7) Where a Registering Authority has not made an order under subsection (6) and fails or omits to commence an inquiry under subsection (1) within thirty days of receipt of a complaint, the complainant may make an application for directions to the State/UT Commissioner who may, unless he considers that the Registering Authority ought to have made an order under subsection (6) and dismisses the application, direct the Registering Authority to commence an inquiry under subsection (1) .

13. Application and Appeal

- (1) Any person aggrieved by any order of the Registering Authority may prefer an appeal to the State/UT Commissioner within sixty days of the receipt of the order.

Provided that the State/UT Commissioner may entertain an appeal beyond the period of 60 days if sufficient cause is shown for the delay in preferring an appeal.

- (2) An appeal against an order amending or cancelling a registration certificate under subsection (1) of Section 12 shall be heard and disposed off within 60 days of date of appeal.

14. Transitional provisions

- (1) Every provisional registration certificate issued by the District Industries Centre before the date of commencement of this Act shall be deemed to be a provisional registration certificate granted under this Act valid till the date of validity mentioned thereon or for a period of one year from the date of commencement of this Act, whichever is earlier.
- (2) Every permanent registration certificate issued by the District Industries Centre before the date of commencement of this Act shall be deemed to be a permanent registration certificate granted under this Act till the small enterprise has applied for and obtained a fresh permanent registration certificate under this Act in such manner as the Central Government may, by notification, prescribe.
- (3) Notwithstanding anything herein, no provisional or permanent registration certificate issued to any small enterprise before the commencement of this Act shall be construed or valid as a registration certificate under this Act on the expiry of twelve months from the date of commencement of this Act.

CHAPTER VI

MEASURES TO ENSURE ACCESS TO CREDIT

15. Guidelines for credit facilities

- (1) Within six months from the date of commencement of this Act, the Reserve Bank shall by notification issue guidelines for the extension of credit by a financial institution to different categories of small enterprises having regard to the objects and purposes of this Act in order to ensure to such small enterprises timely and smooth flow of credit according to their business needs.
- (2) The Reserve Bank shall also specify through such guidelines, norms regarding quantum, proportion, method of computation, completion of formalities, revival packages, margins, collateral security, timely disposal and any other aspects that will ensure expeditious and easy flow of credit, both long term and working capital, to the small enterprises

Provided that different norms may be established in respect of -

- (i) different categories of small enterprises differentiated on rational criteria; and
 - (ii) different categories of financial institutions; and
 - (iii) different categories of credit facilities such as term loans, working capital loans, etc.
- (3) The Reserve Bank of India may, from time to time, by notification, amend or rescind or modify the guidelines.

16. Binding on Financial Institutions.

The small enterprise credit guidelines shall be binding upon all the financial institutions.

17. Banking Ombudsman to hear grievances of Small Enterprises

- (1) The Reserve Bank of India shall, by notification, appoint such number of persons as Banking Ombudsman, from amongst persons having sufficient knowledge and experience in finance or banking,
- (2) The Reserve bank may also demarcate territorial jurisdiction of the Banking Ombudsmen in the said notification.

- (3) The Banking Ombudsman shall receive and hear grievances of small enterprises in respect of any action of a Bank or a financial institution with respect to the extension of credit facilities to small enterprises.

18. Appeals to Banking Ombudsman

- (1) Any small enterprise aggrieved by any action of any financial institution in the disposal of any application for credit facility, including any delay in taking action or lack of it or any delay or the refusal or rejection of an application for any credit facility, may apply to the Banking Ombudsman for redressal.
- (2) Upon receiving an application for redressal of any grievance in terms of subsection (1), the Banking Ombudsman shall, within thirty days of the date of receipt of the application on the basis of the small enterprise credit guidelines, the material on record and after hearing the small enterprise and the financial institution, pass such order as he considers fit.
- (3) Save as otherwise provided under section 17 the order of the Banking Ombudsman under subsection (2) shall be final and binding on the small enterprise and the financial institution.

19. Appeal to Reserve Bank

- (1) Any party aggrieved by the decision of the Banking Ombudsman under section 16 may prefer an appeal to the Reserve Bank within 30 days from the date of the Order in such manner as may be prescribed.
- (2) Every appeal under subsection (1) shall be accompanied by such fee as may be prescribed.
- (3) Every appeal under subsection (1) shall be disposed of by the Reserve Bank in such manner as may be prescribed.

20. Penalties

The Reserve Bank is of the opinion that in any appeal filed under section 17 that the financial institution while dealing with any application for grant of credit facility by any small enterprise has not followed the small enterprises financial credit facility guidelines and such failure was deliberate or wilful on the part of such financial institution, it may impose on such financial institution a penalty not exceeding five lakh rupees and, where the contravention or default is a continuing one, with a further penalty which may extend to ten thousand rupees for every day during which the contravention or default continues.

CHAPTER VII

MEASURES OF TRADE PROTECTION

21. Policy to be adopted by State Purchaser

- (1) The Central Government and the State/UT Governments shall, notify Central and State/UT Procurement Policy to be followed by the respective Governments in the purchase of goods or availing of services for their use and also notify the percentage or quantum which shall be reserved for the small enterprises.
- (2) In particular, the policy of every State Purchaser shall be such as to -
 - (a) provide a fair and equitable opportunity to every small enterprise to compete, and
 - (b) ensure that the limited economic or bargaining power or limited financial resources do not unduly disadvantage or impede small enterprise from competing equitably with larger enterprises, and
 - (c) ensure fair prices and remuneration and prompt payments for the goods and services provided by the small enterprise, and
 - (d) ensure fair and reasonable terms of contract.

22. Prohibition of unfair bundling of contracts

- (1) The State Purchaser shall not unfairly, unreasonably or unjustifiably bundle any contract requirements for the purchase of any goods or services in such a manner that precludes or unduly restricts effective government procurement policy and equitable participation or bidding by small enterprise.

Explanation: - the term “bundled contract” or “bundling of contracts” means, for the purpose of calling for offers for a single contract or award as single contract:-

- (a) The aggregation or consolidation of two or more procurement requirements for goods or services which are not, for any special or justifiable reason, capable of being procured separately under smaller separate contracts which can reasonably be undertaken by small enterprise as well; and / or

- (b) The aggregation of procurement requirements to such value as to impede small enterprise from competing effectively when there is no special or justifiable reason as to why the requirement cannot be procured by smaller contracts.

23. Procurement preferences

The State Purchaser shall purchase such percentage of their requirement as may be notified from small enterprises in every case where the small enterprises competing for the contract have established capacity to provide goods or services of the required quality and specifications.

24. Complaint to Commissioner

- (1) Any small enterprise may make a complaint to the Central Commissioner in the case of the Central Government and any State/UT Commissioner in the case of a State/UT Government, having jurisdiction over the place where a contract is to be made on the ground that any bundling of contract is not justified or where there is or any non-adherence to a statutory purchase policy by any State Purchaser.
- (2) On receipt of a complaint under subsection (1), the Central Commissioner or any State/UT Commissioner as the case may be, shall forthwith, if it is satisfied that a prima facie case has been made out in the complaint and that the complaint has been made without undue delay, make an ex-parte order restraining the State Purchaser or any other party from proceeding with the opening of bids, the award of any contract or the execution of any contract and issue notice to the State Purchaser and every other party likely to be affected thereby to show cause within fifteen days of receipt of the notice as to why the procurement action complained of should not be set aside.
- (3) On receipt of a complaint under subsection (1) that there is non-adherence to a statutory policy by any State Purchaser, the Central Commissioner or any State/UT Commissioner as the case may be, shall forthwith, if it is satisfied after hearing the State Purchaser of the correctness or non-adherence made out in the complaint, make an order requiring the State Purchaser to cease and desist from non-adherence to such statutory purchase policy as is complained of and levy such fine or fines on the State Purchaser concerned, such fine or fines being not less than rupees hundred thousand for each violation complained of.

- (4) The Central Commissioner or any State/UT Commissioner shall expeditiously adjudicate upon the complaint and, after hearing the parties affected, the Commissioner may make such order or give such directions, as it may consider just and necessary in the circumstances of the case.
- (5) An appeal against the order of the Commissioner shall lie before the Government.

CHAPTER VIII

AMENDMENT OF CERTAIN REGULATORY LAWS

25. Common Annual return and Simplification of Rules

- (1) Every small enterprise shall file a return in triplicate with such enclosures as may be prescribed, every year in the Forms specified in the First Schedule.
- (2) Notwithstanding anything contained in the enactments specified in the Second Schedule, every inspection under the provisions of those enactments referred thereto shall be conducted in the manner specified in the Third Schedule.
- (3) Notwithstanding anything contained in the enactments specified in column (2) of the Fourth Schedule, with effect from the commencement of this Act, the provisions of the said enactments shall apply as modified under Column (3) of the Fourth Schedule to small enterprises.

CHAPTER IX

RESERVATION OF CERTAIN ARTICLES/SERVICES

26. Reservation By Notified Order

In particular, and without prejudice to the generality of the provisions of any law in force the Central Government may, if it is satisfied, after considering the recommendations made to it by an Advisory Committee to be constituted by Government and including representatives of the Union Ministries of Industry, Finance, Commerce and the Central Commissioner together with representatives from State/UT governments, that it is necessary so to do for the development and expansion of small enterprise by notified order, direct that any article or class of articles specified by the Central Government under Section 4 (1) (d) of the Act shall, on and from such date as may be specified in the notified order (hereafter in this Chapter referred to as the “date of reservation” be reserved for exclusive production or provision by the small enterprises (hereinafter in this Chapter referred to as reserved article).

27. Recommendations of the Committee.

The Committee shall, after considering the following matters, communicate its recommendations to the Central Government, namely;

- (a) the nature of any article/service or class of articles/services or which may be produced or provided economically by small enterprises;
- (b) the level of employment likely to be generated by the production of such article/service or class of articles/services by the small enterprises;
- (c) the possibility of encouraging and diffusing entrepreneurship in industry;
- (d) the prevention of concentration of economic power to the common detriment;
and
- (e) such other matters as the Committee may think fit.

28. Reservation after Effective Production

The production of any reserved article/service or class of reserved articles/services of any enterprise (not being a small enterprise) which, on the date of reservation, is engaged in, or has taken effective steps for the production/provision of any reserved articles/services or class of reserved articles/services shall, after the commencement of the Industries (Development and Regulation) Amendment Act, 1984 (4 of 1984), or, as the case may be, the date of reservation, whichever is later, be subject to such conditions as the Central Government may, by notified order, specify.

29. Level of Production

While specifying any condition under Section 28, the Central Government may take into consideration the level of production of any reserved article/service or class of reserved articles/services achieved, immediately before the date of reservation, by the undertaking referred to in Section 28 and such other factors as may be relevant.

30. Validation of Earlier Licenses

Every person or authority, not being the Central Government, who or which is registered under Section 10 of the IDR Act or to whom, or to which, a licence has been issued or permission has been granted under Section 11 of the IDR Act for the production of any article/service or class of articles/services which has, or have, been subsequently reserved for the small enterprise shall produce, such registration certificate, licence or permission, as the case may be, within such period as the Central Government may, by notified order, specify in this behalf, and the Central Government may enter therein all or any of the conditions specified by it under Section 28 including the productive capacity of the industrial undertakings and other prescribed particulars.

31. Restriction of Reserved Articles in Production

The owner of every undertaking (not being small enterprise) which, immediately before the commencement of the Industries (Development and Regulation) Amendment Act, 1984 (4 of 1984), or the date of reservation, whichever is later –

- a) was engaged in the production of any article/service or class of articles/services which has, or have, been reserved for the small enterprises or

- b) had before such commencement or before the date of such reservation, as the case may be, taken effective steps for commencing the production of such reserved article/service or class of reserved articles/services.

without being registered under Section 10 of IDR Act or in respect of which a licence or permission has not been issued under Section 11 of IDR Act shall refrain from the production of such reserved article/service or class of reserved articles/services on and from the date of expiry of three months from such commencement or from the date of such reservation, whichever is later.

CHAPTER X

EXEMPTION OF TAXES & DUTIES

32. Disallowances in respect of amounts due and interest: -

- (1) Notwithstanding anything contained in the Excise Act for the time being in force the Government may by notification exempt any class or category of small enterprises towards the payment of Excise duty subject to such conditions as it may impose.
- (2) Notwithstanding anything contained in the Income Tax Act, 1961 and the Sale of Goods Act, 1930 for the time being in force –

The amount of interest payable or paid by any small enterprises under or in accordance with the provisions of this Act,

- (a) Shall not, for the purposes of computation of income under the Income Tax Act, 1961 be allowed as a deduction and
- (b) The amounts overdue to the small enterprises as remain unpaid as on the last day of the previous year of any assessment year

Shall not, for the purposes of computation of income under the Income Tax Act, 1961 be allowed as a deduction.

- (c) No buyer shall be entitled to or allowed any credit or set off of any tax or duty paid or deducted in respect of any goods supplied or services rendered unless and until the buyer has made payment in full to the supplier together with the interest thereon.
- (d) Notwithstanding anything contained in any agreement, contract, sanction or arrangement between any buyer and any financial institution, no financial institution shall extend any credit in respect of any goods supplied to the buyer by the supplier unless and until the buyer has made payment in full to the supplier together with the interest thereon.

33. Exemption to Small Industries:-

The Central Government may, by notification, exempt any class or category of small enterprises from all or any provisions of the Income Tax Act, 1961 and the Central Excise Act 1944 for the time being in force subject to such conditions as it may impose, if it is satisfied, upon consideration of any report or recommendation of the Central Commissioner or the Central Board, that it is necessary or expedient to do so.

CHAPTER XI

MISCELLANEOUS

34. Power to make rules

- (1) The Central Government may make rules, for carrying out the purposes of this Act, subject to the condition of previous publication.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) Extent to which officers or committees may perform any of the functions to be performed by the Central Board;
 - (b) The manner in which an application for provision of registration shall be made and the fee to be paid with such application in terms of subsection (1) of Section 10, the form of the provisional registration certificate in terms of subsection (2) of Section 10, the manner in which an application for permanent registration shall be made and the fee to be paid with such application in terms of subsection (1) of Section 11, the form of the permanent registration certificate in terms of subsection (2) of Section 11, the form and manner in which an application for an amendment of the registration certificate shall be made and the fee to be paid with such application in terms of subsection (2) of Section 12;
 - (c) The form of notice required under subsection (4) of Section 12 for the amendment or cancellation of any registration certificate;
 - (d) any other matter which is to be or may be prescribed under this Act.

35. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by notified order, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty. Provided no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

36. Deletion from the Industries (Development) and Regulation Act:-

In pursuance of Chapter IX of this Act, Sections 29B (2A to 2H) of the IDR Act, 1951 are hereby deleted from the IDR Act, 1951.

37. Relation to other enactments in force

Save as otherwise specifically provided the provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.

38. Laying of Notifications

Every rule and notification made under this Act shall be laid, as soon as it may 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 notification or both Houses agree that the notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

FIRST SCHEDULE (A) : FORM OF COMMON ANNUAL RETURN

This Common Annual Return shall be submitted in triplicate along with the necessary enclosures also in triplicate to the concerned Inspector exercising powers conferred on him by any of the enactments listed in the Second Schedule.

Sl. No	Item		Sl. No.	Item
1.	Name of the Industry		9	Date of Commencement of Production (dd /mm / yy)
2.	Address		10	Nature of Ownership
3.	City		11	ESI Code Number if Any
4.	State		12	Provident Fund Code if Any
5.	Pin		13	Total Number of Days worked in the Year
6.	Classification		14	Average Number of Persons Employed in the Last Month of the Year 1. Adult Men 2. Adult Women 3. Adoloscents
7.	Registration Number If Any			
8. If any Process Declared Dangerous Under Section 87 of the Factories Act, 1948 carried on If Yes, attach a list of such Processes	Yes/ No		15	Bonus Paid
			16	Number of Accidents In the Year

Date:

Signature of Occupier/Manager

Enclosures to accompany return:

1. A statement of the names and residential addresses of all the Directors/Partners
2. A list of the processes declared as dangerous under section 87 of the Factories Act, if any.

FIRST SCHEDULE (B): FORM OF WAGE SLIP

Sl. No	Name of the Employee & Name of Work Designation	Rate of Wages	No. of Days Worked	Wages earned during the month	O.T Wages earned	Gross Wages Payable	Total Deductions	Net Wages Paid	Signature or thumb impression of the employee

FIRST SCHEDULE (C): FORM OF MUSTER ROLL

Name of the Person Employed	Age & Sex	Working Hours			Dates/hours of worked on 1-31	Date on which O.T. Worked	Extent of overtime worked during the month	Leave Granted/Availed				
		From	To	Rest Interval				Sick	Casual	Ordinary/ Earned	Total	Remarks

THE SECOND SCHEDULE

1. The Factories Act, 1948
2. The Payment of Wages Act, 1936
3. The Maternity Benefit Act, 1961
4. The Payment of Gratuity Act, 1972
5. The Payment of Bonus Act, 1948
6. Employees Provident Fund and Miscellaneous Provisions Act, 1952
7. Employees State Insurance Act, 1948
8. The Employers Liability Act, 1938
9. The Weekly Holidays Act, 1942
10. The Industrial Employment (Standing Orders) Act, 1946
11. Collection of Statistics Act, 1953
12. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
13. Apprentices Act, 1961

THIRD SCHEDULE

GUIDELINES FOR INPESPECTION OF SMALL ENTRPRISES

Rule 1. Routine Inspection:-

- (1) The inspector may, after giving the owner, occupier or manager of any industrial establishment prior notice of not less than fifteen days of the date and time of inspection, carry out a routine inspection of the industrial establishment and its records.

Provided that in the case of an industrial establishment where the number of persons employed is fifty or less, no routine inspection shall be carried out more than once in five calendar years.

- (2) The duration of the routine inspection by the inspector shall be no more than is necessary having regard to the size of the establishment, the nature of the processes carried out therein and the past record of the establishment in compliance with the requirements of the Scheduled Acts and rules.
- (3) On completion of the routine inspection and before departing from the premises of the establishment, the inspector shall prepare and deliver at the establishment an inspection note giving a summary of his findings during the course of the inspection together with reasoned advice as to any substantial steps or measures, not of a trivial nature, that are to be taken by the establishment within such reasonable period not less than sixty days there from as may be specified by the Inspector.
- (4) No inspector shall seize or remove from the premises any records or property of the establishment.
- (5) If the owner, occupier or manager is aggrieved by any finding or advice given by the inspector under sub-rule 3, he may prefer an application to the Chief Inspector who shall, within thirty days of the date of receipt of the application and after giving the applicant a reasonable opportunity of being heard and carrying out such other enquiry as he may deem fit, pass a speaking order annulling, modifying or confirming the findings or advice of the Inspector.

Rule 2. Special Inspection:-

- (1) If the Chief Inspector has reason to believe that any industrial establishment has committed default of any provisions of the scheduled Acts or rules, and he considers it fit and expedient that an enquiry and inspection is necessary, he may, for reasons to be recorded in writing, carry out an inspection himself or direct that a special inspection be carried out by an Inspector with or without prior notice to the owner, occupier or manager.

Explanation:- For the purposes of this rule, the Chief Inspector shall be said to have reason to believe only if he has sufficient cause to so believe and not otherwise.

- (2) At any such special inspection, the enquiry shall be limited only to such matters as are relevant to the recorded reasons on the basis of which the inspection was ordered.
- (3) On completion of the special inspection and before departing from the premises of the establishment, the inspector shall prepare and deliver at the establishment an inspection note giving a summary of his findings during the course of the inspection together with a copy of the reasons recorded by the Chief Inspector.

Rule 3. Procedure on Complaint:-

- (1) No complaint shall be entertained by any inspector or Chief Inspector unless it is in writing and has been signed by the complainant or by a due representative from an association of small enterprises.
- (2) If the Chief Inspector is satisfied that the complaint is not frivolous or vexatious he shall send a copy of the complaint to the occupier, owner or manager of the industrial establishment directing them to state their case within thirty days or receipt of the copy of the complaint.
- (3) The Chief Inspector may thereafter, after making such other enquiry as he deems fit and after giving the establishment such further opportunity of being heard, proceed on the matter set out in the complaint according to law.
- (4) Power of Inspector:- The procedures and limitations set out in these rules shall be deemed to be procedures and limitations on the powers of the inspectors under the scheduled Acts and rules and no inspector or other authority shall carry out any other inspections except herein prescribed.

THE FOURTH SCHEDULE

S No.	Name of the Enactment	Modification to the Enactment in Column 2
1.	The Factories Act, 1948	<ul style="list-style-type: none"> • Powers of inspection under Section 9 of the Act shall be exercised as per guidelines in Third Schedule • Returns and records as required under Section 110 to be substituted by returns and records as per the First Schedule
2.	The Payment of Wages Act, 1936	<ul style="list-style-type: none"> • Section 13 A not to apply • Powers of inspection under Section 14 of the Act shall be exercised as per guidelines in Third Schedule
3.	The Maternity Benefit Act, 1961	<ul style="list-style-type: none"> • Section 20 not to apply. • Powers of inspection under Section 15 of the Act shall be exercised as per guidelines in Third Schedule
4.	The Payment of Gratuity Act, 1972	<ul style="list-style-type: none"> • The Act shall apply only to small enterprises employing hundred or more employees • Powers of inspection under Section 7-B of the Act shall be exercised as per guidelines in Third Schedule
5.	Payment of Bonus Act, 1965	<ul style="list-style-type: none"> • Returns and records as required under Section 26 to be substituted by returns and records as per the First Schedule • Powers of inspection under Section 27 of the Act shall be exercised as per guidelines in Third Schedule
6.	Employees Provident Fund and Miscellaneous Provisions Act, 1952	<ul style="list-style-type: none"> • Powers of inspection under Section 13 of the Act shall be exercised as per guidelines in Third Schedule • Small enterprises may be included in the class of establishments under Section 16
7.	Employees State Insurance Act, 1948	<ul style="list-style-type: none"> • Returns and records as required under Section 44 to be substituted by returns and records as per the First Schedule • Powers of inspection under Section 45 of the Act shall be exercised as per guidelines in Third Schedule

8.	The Employers Liability Act, 1938	• This Act not to apply to small enterprises
9.	The Weekly Holidays Act, 1942	• This Act not to apply to small enterprises
10.	The Industrial Employment (Standing Orders) Act, 1946	• This Act not to apply to small enterprises
11.	Collection of Statistics Act, 1953	• This Act not to apply to small enterprises
12.	The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959	• This Act not to apply to small enterprises
13	Apprentices Act, 1961	• This Act not to apply to small enterprises