

CHAPTER V NON-LEVY OF INTEREST

Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty as determined under section 11A of the Central Excise Act, 1944, is in addition to the duty, liable to pay interest at the rate of 20 per cent per annum till 11 May 2000, 24 per cent with effect from 12 May 2000, 15 per cent with effect from 13 May 2002 and 13 per cent from 12 September 2003 under the relevant sections of the Act. A few illustrative cases of non-levy of interest involving revenue of ₹ 3.08 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through six draft audit paragraphs. The department had accepted (till December 2010) the audit observations in two draft audit paragraphs involving revenue of ₹ 1.57 crore.

5.1 Non-recovery of interest under cenvat credit rules

Rule 14 of the Cenvat Credit Rules, 2004, provides that where cenvat credit on any input services has been taken or utilised wrongly by a service provider, the same along with interest shall be recovered from such provider of output service and the provisions of sections 73 and 75 of Finance Act, 1994, shall apply mutatis mutandis for effecting such recoveries. Further Rule 6 of the Cenvat Credit Rules, 2004, stipulates that where a manufacturer avails of cenvat credit in respect of input goods or input service and manufactures such final products which are chargeable to duty as well as exempted goods, then the manufacturer shall maintain separate accounts for receipts, consumption and inventory of input goods and input services used in the manufacture of dutiable and exempted goods.

M/s. Hindustan Paper Corporation Ltd., in Shillong commissionerate, engaged in the manufacture of paper and paper board under Chapter 48 cleared 53783.020 tonne of paper valuing ₹ 174.11 crore during the period between May 2006 and February 2008 to various State Board Publication, Corporation for printing of educational text books without payment of duty. During the period between May 2006 and February 2008 the assessee took credit on various input services without maintaining separate account for receipt, consumption and inventory of input services for the use in the manufacture of dutiable and exempted goods or services. As the assessee failed to maintain the aforesaid separate account, the department asked the assessee to pay 10 per cent of the price of the goods i.e. ₹ 17.41 crore (10 per cent of ₹ 174.11 crore). But before the issue of any show cause notice (SCN) in this regard, the assessee reversed the proportionate credit of ₹ 90.95 lakh on 10 October 2008 for input services attributable to paper cleared under exemption during the period between May 2006 and April 2008. Interest was not paid for the late reversal.

When we pointed this out (December 2009), the department referred (March 2010) the Judgement of Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. [as reported in {1996 (81) ELT 3 (SC)}] where it was held that plain reversal is enough. Similar judgement was also given by Punjab

and Haryana High Court in the case of M/s Maruti Udyog Ltd. reported in {2007 (21-A) ELT 173 (P&H)} in which it was held that if cenvat credit was not utilised by the assessee he was not liable to pay interest on unutilised cenvat credit. The decision of the Punjab and Haryana High Court was also upheld by Supreme Court. However, Board in its circular dated 3 September 2009 has stated that the said ruling was rendered under erstwhile Central Excise Rules, 1944 and not under Cenvat Credit Rules, 2004 and hence the decision of the same is not applicable now. As per this circular, interest is payable on cenvat credit wrongly taken even if such credit has not been utilised. However, the Punjab and Haryana High Court has recently held that interest is not payable if credit wrongly taken is not utilised in the case of Ind Swift Laboratories Ltd. {2009 (240) ELT 328 (P&H)}.

The reply of the Ministry had not been received (December 2010).

We have observed that many commissionerates are not applying rule 14 of the Cenvat Credit Rules 2004 for wrong availing of cenvat credit, citing the multiple judicial pronouncements. Many such cases have been pointed out by us in earlier reports. However, some commissionerates are charging interest based on the Board's circular and have also issued show cause notices based on our audit observations. In view of the differing interpretations, it is recommended that the issue may be examined and clarified by the Board so that uniform action may be taken by all commissioners in cases of incorrect availing of credit.

5.2 Non-recovery of interest on adjudication of show cause notice

Section 11AA of the Central Excise Act, 1944, inserted with effect from 26 May 1995, envisages that, where a person fails to pay duty as determined on adjudication of show cause cum demand notice within three months from the date of such determination, he shall pay in addition to duty, interest at the specified rate on such duty from the date immediately after the expiry of three months till the date of payment of such duty. The explanation 1 below the said section clarifies that if the duty determined to be payable is reduced by the higher authorities or as the case may be, the date of such determination shall be the date on which duty was first determined to be payable.

M/s Texmaco Ltd., Agarpara Works, in Kolkata III commissionerate, engaged in the manufacture of bogies, wagons etc. did not pay a demand of ₹ 1.92 crore raised for undervaluation of goods, as confirmed on 3 July 1995. The issue went through different stages of appeal and finally the assessee paid the duty as reduced in appeal, during April 1998, September 2004 and February 2008. The interest of ₹ 1.18 crore accrued for the period from October 1995 to February 2008 on such demand was however, neither demanded by the department nor paid by the assessee.

The department admitted the audit observation and intimated (July 2009) that action was being initiated to recover the interest.

The reply of the Ministry had not been received (December 2010).

5.3 Non-recovery of interest on differential duty

Where any duty of excise has not been levied or paid or has been short levied or short paid, interest is leviable from the first day of the month succeeding the month in which the duty ought to have been paid till the payment of duty.

The Ministry clarified on 28 July 2003 that interest under section 11AB is leviable even in cases where duty is paid by an assessee before serving of the notice by the department. The Ministry further clarified on 14 March 2006, that interest under section 11AB is chargeable from the date of original clearance in cases wherein supplementary invoices are raised due to upward revision of the price of the goods and differential duty is paid/payable.

5.3.1 M/s Jindal Stainless Ltd., in Bhubaneswar I commissionerate, engaged in the manufacture of high carbon ferro chrome and alloys, cleared its products to sister units on payment of duty on lower assessable value. Later on, it determined the assessable value of these goods on the basis of cost audit report and paid differential duty of ₹ 5.40 crore between March 2008 and December 2008 for the excisable goods cleared between April 2006 and November 2007. However, interest of ₹ 1.03 crore leviable thereon for the period from 6 May 2006 to 6 December 2008 was not paid by the assessee. The department also did not take any action to recover it from the assessee.

When we pointed this out (December 2008) the department stated (May 2009) that action for recovery of interest was being taken.

The reply of the Ministry had not been received (December 2010).

5.3.2 M/s Jai Balaji Industries Ltd., Unit I, Burdwan in Bolpur commissionerate, engaged in the manufacture of sponge iron, pig iron, ferro manganese etc., cleared goods on payment of duty to different customers. The assessee paid the differential duty of ₹ 215.11 lakh during March to May 2008, relating to the clearance made during the year 2006-07. However, the applicable interest of ₹ 39.07 lakh leviable for the delayed payment of differential duty was not paid.

When we pointed this out (June 2009), the department admitted (March 2010) the audit observation and stated that show cause notice was under issue.

The reply of the Ministry had not been received (December 2010).

5.3.3 M/s S.R. Fragrances, in Chandigarh I commissionerate, deposited differential duty amounting ₹ 47.79 lakh during January 2002 to April 2002 for the supplies made during December 2000 to September 2001. Similarly M/s Pearl Industries Barotiwala in the same commissionerate, deposited differential duty of ₹ 1.17 crore in August 2001 in respect of goods cleared between March 2001 and July 2001. However, the assessee did not pay interest on delayed payment of duty. The omission resulted in non-realisation of interest of ₹ 19.30 lakh from both the assesseees.

When we pointed this out (May 2003 and March 2008), the department stated (December 2003) that the differential duty had been paid by the assesseees without prejudice to their legal rights in the matter as differential amount of duty.

The reply of the department was not acceptable since the assessee paid differential duty, interest was payable regardless of the conditions under which the differential duty had been paid.

The reply of the Ministry had not been received (December 2010).

5.3.4 M/s Indian Oil Corporation Ltd., Barauni, in Patna commissionerate, engaged in the manufacture of petroleum products, deposited duty of ₹ 264.91 crore by challans for internet banking on 9 July 2007 in respect of excisable goods cleared during the month of June 2007. We observed that the due date for payment of duty was 6 July 2007 but duty was paid through GAR 7 challans bearing Nos.608 to 613 all dated 9 July 2007 implying delay of three days. Therefore, interest of ₹ 28.31 lakh was payable.

When we pointed this out (April 2009), the department stated (January 2010) that the assessee had made e-payment on 7 July 2007. Therefore, the delay was for one day and interest of ₹ 9.44 lakh had been paid by the assessee in January 2010.

The issue was not clear as challans stamped by the bank were dated 9 July 2007 where as e-receipt was dated 7 July 2007. The department stated (April 2010) that it had asked the concerned bank to intimate the actual date of payment of duty. Further reply was awaited.

The reply of the Ministry had not been received (December 2010).