CHAPTER VI
NON-LEVY/SHORT LEVY OF DUTY

Rule 4 of the Central Excise Rules, 2002 prescribes that goods attracting excise duty shall not be removed from the place of manufacture or warehouse, unless excise duty leviable thereon has been paid in the manner prescribed in rule 8. If a manufacturer, producer or registered person of a warehouse, violates the rules or does not account for the goods, then besides such goods becoming liable for confiscation, penalty not exceeding the duty on such excisable goods or ten thousand rupees, whichever is greater, is leviable under rule 25. Some cases of non-levy/short levy of duty totalling ₹ 1.04 crore, noticed in test check, are described in the following paragraphs. These observations were communicated to the Ministry through three draft audit paragraphs.

6.1 Non-payment of duty

Rule 4 of the Central Excise Rules, 2002 stipulates that no excisable goods, on which any duty is payable, shall be removed without levy of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided in the Act/Rules.

Aluminium dross and skimming are by-products of manufacture of aluminium rolled products and is sold extensively in India and the recovery of aluminium from aluminium dross ranges up to 84 per cent. For want of appropriate and distinct entry of aluminium dross in the tariff, this commodity was not subject to duty of excise till 28 February 2005. On 28 February 2005, the Government inserted a separate and distinct entry of 'aluminium dross' under tariff item 262040.10 in chapter 26, subjecting it to excise duty from that date.

M/s Hindalco Industries Ltd., in Nagpur commissionerate, engaged in the manufacture of flat aluminium rolled products, obtained aluminium dross during manufacturing process and cleared it at different prices to various buyers. However, excise duty of ₹ 30.98 lakh leviable on aluminium dross was not paid from 28 February 2005.

When we pointed this out (June 2009), the department stated (February 2010) that in terms of the Supreme Court decision in the case of M/s Indian Aluminium Co. Ltd. {2006 (205) ELT 3 (SC)} for levying excise duty on a commodity, it should be manufactured and marketable whereas dross was neither manufactured by the assessee nor was it excisable. It further stated that CESTAT Mumbai had also held that the dross is not excisable vide order No.A/353/09/C-1 dated 26 March 2008.

The reply of the department is at variance with the Board which clarified and directed the field formations on 28 October 2009 for recovery of excise duty on aluminium dross.

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

It is recommended that the Board should examine the issue in view of the judicial pronouncements and issue a suitable clarification for the treatment of aluminium dross.

6.2 Delayed payment of duty on due dates

Rule 8 of the Central Excise Rules, 2002 envisages that the duty on the goods removed from the factory during a month shall be paid by the 5th day of the following month and for the month of March by 31st day of March. If an assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount alongwith interest.

Further, sub-rule (3A) of rule 8, provides that if the assessee defaults in payment of duty beyond thirty days from the due date, the assessee shall pay excise duty for each consignment at the time of removal, without utilising the cenvat credit till the date the assessee pays the outstanding amount including interest thereon. Rule also provides that in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

M/s MRK Pipes Ltd., in Jaipur I commissionerate, engaged in the manufacture of ACP pipes, paid duty of ₹ 3.34 lakh on 11 December 2006 in respect of goods cleared in September 2006. Similarly, the assessee paid duty of ₹ 3.29 lakh on 1 February 2007 in respect of goods cleared in November and December 2006. The delay in all the occasions was beyond thirty days from the due dates. Therefore, the assessee was required to pay duty in cash on each consignment during the period from November 2006 to January 2007. However, the assessee made payment of ₹ 19.07 lakh from cenvat account during the period of default which was recoverable alongwith interest.

When we pointed this out (June 2009), the department stated (March 2010) that the amount in question had already been deposited by the assessee from cenvat credit account and in terms of CESTAT decision in the case of M/s SCT Ltd. {2006 (202) ELT 814 (Tri-Del)} the payment of duty in cash and credit of cenvat account (reversing of the incorrect utilisation) would be unnecessary duplication.

The decision quoted by the department had been given prior to 1 June 2006. Rule 8 of Central Excise Rules 2002, was amended from 1 June 2006 and as per amended sub rule 3A of Rule 8, the outstanding amount along with interest thereon was recoverable.

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

6.3 Duty not paid on goods cleared for remaking

Rule 16 of the Central Excise Rules, 2002 envisages that where any goods on which duty had been paid at the time of removal are brought to any factory for being remade, refined, reconditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit. If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an

amount equal to the cenvat credit taken, other wise the duty as applicable, is payable at the time of removal of goods.

M/s ILJIN Electronics (India) Pvt. Ltd., in Noida commissionerate, engaged in the manufacture of printed circuit boards, availed cenvat credit of ₹ 45.46 lakh during the period from October 2008 to February 2009 on final goods which were cleared earlier and were received back from the buyers as rejected goods. These goods were issued to workshop for further processing. According to evidence on record, these goods were neither received back in the factory after re-making nor were they re-cleared on payment of duty. Since, the assessee could not locate the whereabouts of returned goods, the credit of ₹ 45.46 lakh availed was inadmissible because it was not followed by the next step of remake/recondition and clearance with payment of duty. Since the final duty had not been paid, the credit had to be recovered with interest.

We pointed this out to the department/Ministry in October 2009/September 2010; their reply had not been received (December 2010).