

CHAPTER VII MISCELLANEOUS TOPICS OF INTEREST

Apart from the cases reported in the foregoing chapters, some interesting cases noticed in audit and involving duty of ₹ 50.05 crore are illustrated in the following paragraphs. These observations were communicated to the Ministry through four draft audit paragraphs. The department had accepted (till December 2010) the audit observations contained in one draft audit paragraph with a financial implication of ₹ 11.66 lakh.

7.1 Incorrect determination of assessable value on petroleum products

The Board in its circular dated 22 April 2002 clarified that in the event of intermixing of superior kerosene oil (SKO) with MS/HSD (Motor Spirit/High Speed Diesel) during movement of petroleum products through pipeline, the duty payable on the intermixed part of SKO and duty payable on MS/HSD should be quantified and higher of the two paid.

M/s Indian Oil Corporation Ltd., (RD), Haldia in Haldia commissionerate, engaged in manufacture of petroleum products, used SKO as interface for clearance of MS/HSD through pipelines to different depots. The assessee determined the interface quantity of SKO with MS and calculated and paid duty on intermixed SKO without calculating the higher rate of duty payable on MS. The department was requested to quantify the actual duty payable on MS for the period from September 2004 to February 2008 and apply the higher duty and recover the difference.

When we pointed this out (September 2008), the department stated (April 2009) that as per circular dated 4 September 2004 of the Board, duty was payable on the petroleum products at the time of removal in the condition in which it was cleared from the refinery irrespective of any transformation/change likely to take place at the marketing installations.

The reply of the department was not acceptable as the assessee had not paid duty on clearance from the refinery. Therefore, the duty paid was not in conformity with either of the Board circulars dated 22 April 2002 and 4 September 2004.

The department intimated (May 2010) that, a protective show cause notice of ₹ 49.16 crore covering the period from September 2004 to August 2009, had been issued in October 2009.

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

7.2 Non-levy/payment of cess on cement

Section 9(1) of the Industries (Development and Regulation) Act, 1951 (read with Cement Cess Rules, 1993 made there under), stipulates that every manufacturer producing cement in cement plants of capacity not lower than 99,000 tonne per annum based on rotary kiln and 66,000 tonne per annum based on vertical shaft kiln, shall pay cess at the rate of Re. 0.75 per tonne of cement manufactured and removed from the factory. Rules 3 and 4 of the said Rules further stipulate that every manufacturer of cement who is liable to pay cess shall submit to the 'Development Commissioner' for cement industry, under the Ministry of Commerce and Industry, Government of India, a monthly return relating to stocks of cement produced and removed during the preceding month and shall remit the amount of cess to the said authority by 15th of the following month.

Ten manufacturers of cement in Guwahati, Guntur, Hyderabad IV and Shillong commissionerates, cleared 103.40 lakh tonne of cement manufactured in their factories during the period from April 2001 to March 2010 without payment of cess, notwithstanding the fact that the installed capacity of these factories, based on rotary kilns was in excess of 99,000 tonne per annum and cess was accordingly payable. The total cess not paid by the ten assesseees amounted to ₹ 77.54 lakh.

We pointed this out to the Development Commissioner of Ministry of Commerce and Industry (between June and August 2010); their reply had not been received (December 2010).

7.3 Demand not raised

The Supreme Court in the case of M/s Madhumilan Syntex Pvt. Ltd. {1988 (35) ELT 349 (SC)} held that unless a show cause notice was issued under section 11A of the Central Excise Act, 1944 the department was not entitled to recover any dues.

M/s Aster Tele Services Pvt. Ltd., in Hyderabad III commissionerate, engaged in the manufacture of M.S. galvanized towers and tower parts obtained waste products namely zinc dross, zinc scrap, zinc dust etc., during the process of galvanization. The assessee cleared these waste products without payment of duty during the period from 10 May 2008 to 31 January 2009. Duty of ₹ 11.66 lakh payable on the said waste products was not demanded. This was recoverable with interest.

When we pointed this out (April 2009), the department accepted the audit observation in principle (May 2009 and March 2010) but stated that the issue was already in their knowledge and the assessee was advised in February 2009 to pay duty.