

## Chapter II

### Non-Compliance with Rules and Regulations

**2.1** We examined the records maintained by the assesseees in relation to the payment of Central Excise duty and checked the correctness of duty payment and availing of cenvat credit. We noticed cases of irregular availing and utilisation of cenvat credit, non/short payment of Central Excise duty involving revenue of ₹ 66.76 crore. We communicated these observations to the Ministry through 54 draft audit paragraphs. The Ministry/Commissionerate accepted (March 2014) the audit observations in 49 draft audit paragraphs and initiated/completed corrective action in all these cases involving revenue of ₹ 62.98 crore. We have furnished the details of these paragraphs in Appendix III.

#### **2.2 Non-payment/Short payment of Central Excise duty**

##### **2.2.1 Non-payment of Central Excise duty**

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 5<sup>th</sup> day of the following month and for the month of March by 31<sup>st</sup> 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 along with interest. Further, sub-rule 3 (A) of rule 8, as amended by Notification dated 1 June 2006 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 and 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 Sree Metaliks Ltd., Angul in Bhubaneswar-I Commissionerate defaulted in payment of duty during January 2011 to March 2011. As per the provisions cited above, the assessee was liable to follow consignment-wise clearance from March 2011 by debiting duty in PLA and without utilizing cenvat credit. However, it was noticed that assessee took the credit in PLA before actual deposit of the amount in bank and debited the duty consignment wise for subsequent clearances which was not in order. Hence, the clearance made from March 2011 to August 2011 involving duty of ₹ 91.57 lakh was irregular which needed to be recovered along with interest and penalty.

When we pointed this out (March 2013), the Ministry replied (February 2014) that ₹ 91.57 lakh need not be recovered from the assessee as it already stood

paid though belatedly. Only interest and penalty for delayed payment of duty may be recoverable. SCN for recovery of duty, interest and penalty had been issued.

However, the Ministry did not provide any comments regarding the duty of ₹ 56.42 lakh for January 2011 to March 2011 which was yet to be paid.

### **2.2.2 Short payment of central excise duty due to under valuation**

As per rule 8 of Central Excise (Valuation) Rules 2000, where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the valuation shall be one hundred and ten per cent of the cost of production or manufacture of such goods. Section 11AB of the Central Excise Act 1944 envisages that where any duty of excise has not been levied, the person, in addition to the duty, is liable to pay interest from the first day of the month succeeding the month in which the duty ought to have been paid.

M/s Jindal India Ltd in Kolkata II Commissionerate, cleared MS/ERW tubes & Pipes of Steel (Black) on stock transfer basis to their sister unit at Ghusuri during the period 2010-11 on payment of duty on lower assessable value than the value as determined and certified by Chartered Accountant. This resulted in short payment of duty of ₹ 27.65 lakh besides interest as applicable.

When we pointed this out (September 2011), the Commissionerate while not admitting the objection (October 2011) stated that the assessee followed the practice of paying duty on the basis of CAS-4 certificate prepared and certified by Chartered Accountant for a month on goods cleared prospectively for the period from 11<sup>th</sup> of the next month to the 10<sup>th</sup> of the month succeeding the next month. The Commissionerate further added that on some occasions, the assessee had also paid higher duty due to adoption of such practice.

The contention of the Commissionerate is not tenable since duty on goods cleared to sister unit for a period should have been paid on the value determined as per CAS-4 for the said period. As assessee paid duty on a lesser value than the value applicable as per CAS-4 for the said period, differential duty on the basis of CAS-4 along with interest was required to be paid irrespective of the fact of paying higher duty by assessee for earlier occasions for which refund provisions were applicable.

The Commissionerate intimated (September 2012 & October 2012) issuance of SCN for an amount of ₹ 87.68 lakh along with interest and penalty.

Ministry stated (September 2013) that the cost of production for the goods consumed captively is determined on the basis of actual cost incurred in the previous month by the assessee and any difference or short payment seems allowable as it is a continuous process.

The reply of the Ministry is not tenable as duty on the goods cleared to a sister unit for a particular period should be paid on the value determined as per CAS-4 certificate for the said period only. Therefore, the assessee was liable to pay differential duty.

### **2.2.3 Undervaluation of goods cleared to related party.**

Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of excisable Goods) Rules, 2000, stipulates that where excisable goods are not sold by the assessee but are consumed by the assessee or on behalf of the assessee by a related person for manufacture of other articles, the assessable value of such goods shall be 110 per cent of the cost of production or manufacture of such goods. Further, the Board had clarified (13<sup>th</sup> February 2003) that the value of goods consumed captively should be determined in accordance with the Cost Accounting Standards (CAS-4) method only. Further, section 11AB of Central Excise Act 1944, requires payment of interest on delayed payment of duty.

M/s Hindustan Polyamides and Fibres Ltd under Pune III Commissionerate cleared compressed hydrogen gas to its other unit located at Koregaon Bhima for captive consumption during the period April 2008 to March 2011. However, the assessee did not prepare CAS-4 for arriving at the assessable value for such clearances as per the provisions mentioned above. This resulted in undervaluation of goods cleared for captive consumption and short payment of duty of ₹ 10.63 lakh which was recoverable with interest.

When we pointed this out (July 2011), the assessee paid duty of ₹ 10.63 lakh in July 2011. Ministry confirmed the recovery of amount with interest (February 2014); however, it did not admit the objection and stated that in the era of self assessment the irregularity could have come to fore only at the time of internal audit. The reply was not relevant to the audit objection and the Ministry was requested (March 2014) to clarify whether it was of the view that the assessee, by not preparing the CAS-4 certificate followed the correct practice.

## **2.3 Cenvat credit**

### **2.3.1 Irregular availing of cenvat credit on ineligible inputs/input services**

As per Rule 2(k) of Cenvat Credit Rules 2004, input means all goods used in the factory by the manufacturer of the final product but excludes any goods

which have no relationship whatsoever with the manufacture of a final product.

M/s Grasim Industries Ltd under Commissionerate of Central Excise in Indore availed cenvat credit of duty paid on angle, nut, bolt, channel, electrode, plates, sheets, etc. to the tune of ₹ 34.64 lakh during 2011-12. As these items cannot be considered as inputs, availing of cenvat credit on these items was incorrect and was recoverable along with interest.

When we pointed this out (December 2012), the Ministry accepted the objection and intimated (November 2013) that an SCN for ₹ 1.16 crore was being issued for wrongly availed cenvat credit with interest and penalty.

### **2.3.2 Incorrect availing of cenvat credit for duty paid on exempted goods**

CBEC clarified on 4 January 1991 that in the event of manufacturer availing cenvat credit and paying duty on exempted/nil rate of duty final products on his volition, the payment would not be in the nature of duty and were to be treated as deposits and hence credit of duty paid on such inputs was not admissible. Further, as per notification No. 6/2002-CE dated 1 March 2002 as amended vide notification No.4/2006-CE dated 1 March 2006, Iron ore is chargeable to nil rate of duty.

M/s Tata Sponge Iron Ltd in Bhubaneswar-II Commissionerate, engaged in manufacture of sponge iron, availed cenvat credit of ₹ 2.11 crore on iron ore concentrate purchased during April 2008 to March 2009. Since the iron ore concentrate was exempt from duty, availing cenvat credit on the concentrate by the assessee was irregular. The cenvat credit availed irregularly i.e. ₹ 2.11 crore was to be reversed along with interest and penalty.

When we pointed this out (July 2009), the Commissionerate intimated (March 2012) that SCN for ₹ 3.31 crore was issued in June 2010 covering the period from June 2009 to April 2010.

Ministry did not admit the audit objection and stated (August 2013) that the decision of CESTAT in the case of M/s SAIL cited in {2003 (154) ELT 65 (Tri-Kolkata)} that iron ore fines and sized iron ore not liable to duty was not accepted by the Board and an appeal was pending in the Supreme Court.

The reply of the Ministry is not tenable as the said appeal had already been decided by the Supreme Court in {2012(283) ELT A112 (SC)} rejecting the appeal of the revenue thereby holding that no duty was liable on iron ore concentrate. Therefore, in view of the Board circular cited supra, credit was not admissible on duty paid on iron ore concentrate.