# Chapter IV

# Non-Compliance with Rules and Regulations

## 4.1 Introduction

We found from test check of records, 35 cases of incorrect availing/utilisation of CENVAT credit, non/short payment of Central Excise duty and non payment of interest, involving revenue of ₹ 73.99 crore. 6 cases are illustrated below and remaining 29 cases are listed in Appendix-II.

## 4.2 Non/Short payment of Central Excise Duty

We noticed 15 cases where duty was not paid/short paid. Ministry/department admitted observation in all cases and initiated/taken corrective action. 2 cases are illustrated below. Remaining 13 cases are detailed in Appendix-II.

### *4.2.1 Non-Payment of Central Excise Duty on Loss on Assets Sold/ Discarded/ Scrapped*

As per Rule 3(5A) of CENVAT Credit Rules, 2004 (CCR), if the capital goods, other than computers and computer peripherals on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods, reduced by the percentage points, calculated by straight line method, at the rate of 2.5 per cent for each quarter of a year or part thereof, from the date of taking the CENVAT credit. If the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value. Further, as per Rule 3 (5B) of CCR, if the value of any, input or capital goods before being put to use, on which CENVAT credit has been taken, is written off fully or partially or where any provision to write off fully or partially has been made, in the books of accounts then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

M/s Bajaj Auto Ltd. in LTU Mumbai Commissionerate, is a manufacturer of two and three wheelers falling under chapter heading 87 of Central Excise Tariff Act, 1985. Scrutiny of financial records revealed that during the period from 2010-11 to 2012-13, the assessee had debited its Profit and Loss Account with an amount of ₹ 20.12 crore, ₹ 7.49 crore and ₹ 7.04 crore respectively towards loss on assets sold, demolished, discarded and scrapped. However, no records were maintained to prove whether or not

the central excise duty, if any, involved on these assets had been paid by the assessee, in view of the aforesaid provisions.

When we pointed this out (July 2013), the department (December 2015 and March 2016) while admitting the objection, stated that SCN amounting to ₹ 47.24 lakh, covering the period 2010-11 to 2013-14 and periodical SCN amounting to ₹ 44.01 lakh, for the period 2014-15, had been issued to the assessee.

### *4.2.2 Short Payment of Duty on Goods Cleared to Sister Unit*

Rule 8 read with proviso to Rule 9 of the Central Excise Valuation (Determination of Price of excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the cost of production or manufacture of such goods. On belated payments if any, interest is payable as per section 11AA of Central Excise Act, 1944.

M/s Bharat Petroleum Corporation Ltd. Mahul Refinery in Central Excise Mumbai-I Commissionerate is engaged in the manufacture of goods falling under chapter 27 of the CETA 1985. Scrutiny of records during the period 2010-11 to 2012-13 revealed that the assessee had transferred base oil amounting to ₹ 2,640.32 crore to its sister unit i.e. Lube Plant at Wadibunder. However, no costing records to determine the cost of production had been maintained by the assessee. The assessee was required to determine the cost of production as per CAS-4 and pay differential duty accordingly. Thus, non-adoption of correct assessable value on the clearances made to its related unit, resulted in short payment of duty, which was recoverable alongwith interest.

When we pointed this out (December 2013), department intimated (March 2016) that SCN was issued, demanding duty of ₹ 20.16 crore alongwith interest of ₹ 5.07 crore for the period 2010-11 to 2014-15.

## 4.3 CENVAT credit

We noticed 17 cases of incorrect availing/utilization of CENVAT Credit by the assessees. 3 cases are illustrated in following paragraphs. Remaining 14 cases are detailed in Appendix-II.

### *4.3.1 Irregular Availing of CENVAT Credit on Exempted Inputs*

As per Tariff item 26.01 of Central Excise Tariff Act 1985, read with Notification no. 4/2006 CE dated March 2006 as amended, iron ore attracts nil rate of duty (effective rate of duty) and as per Notification no. 13/2001, iron ore and iron ore concentrates are the same for integrated steel plant. The

tribunal also held that the iron ore mining from mines and then subjecting it to the process of crushing, grinding etc. to remove foreign materials and to concentrates, does not result in the manufacture of any commercial commodity. Hence, no central excise duty is leviable on iron ore concentrates.

Further, as per circular No.940/01/2011 CEX dated 14 January 2011, the manufactures cannot opt to pay the duty in respect of unconditionally fully exempted goods and they cannot avail the CENVAT credit of the duty paid on inputs.

M/s Shah Sponge & Power Ltd and M/s Kohinoor Steel Private Ltd under Jamshedpur Commissionerate, availed and utilised CENVAT credit of ₹ 3.71 crore (₹ 42.84 lakh and ₹ 3.28 crore respectively) on iron ore pellets during 2011-12 and 2012-13. As no central excise duty was leviable on iron ore pellets, the utilization of CENVAT credit was irregular and was recoverable with interest and penalty from the assessee.

When we pointed this out (December 2013), the department accepted the audit observation and stated (November 2015) that SCN amounting to ₹ 11.15 crore, covering the period from April 2010 to January 2015, had been issued to M/s Kohinoor Steel Private Ltd., Jamshedpur while another SCN for issue to M/s Shah Sponge & Power Ltd., Jamshedpur was under process.

### *4.3.2 Irregular Utilization of CENVAT Credit of Cess*

Rule 3(7)(b) of CENVAT Credit Rules, 2004, as amended vide Notification No. 12/2015/Central Excise (N.T.) dated 30 April 2015, prescribes that the credit of Education Cess and Secondary and Higher Education Cess on inputs, capital goods or input services, received in the factory of manufacture of final product on or after 1st day of March 2015, can be utilised for payment of Central Excise Duty. The Notification did not permit utilization of such credit, availed prior to the said date and remaining unutilized in the CENVAT account on the said date.

M/s Bosch Automotive Electronics India Pvt. Ltd. Bengaluru in Bangalore-I Commissionerate, engaged in the manufacture of electronic and electrical equipments, falling under Chapters 85 and 90 of the First Schedule of Central Excise Tariff Act, 1985. The assessee had unutilized balance of ₹ 104.71 lakh of CENVAT credit of Education Cess and Secondary and Higher Secondary Cess as on 1 March 2015, which was availed prior to the said date. The assessee utilised the said credit for payment of Duty during the period from June 2015 to August 2015, in violation of the CENVAT Credit Rules.

When we pointed this out (December 2015), the Commissionerate stated (April 2016) that the assessee reversed CENVAT credit of ₹ 104.71 lakh and

paid (December 2015) interest of ₹ 6.49 lakh on the basis of the audit observation.

### *4.3.3 Non-Reversal of CENVAT Credit on Destroyed Inputs*

As per rule 2(k)(i) of CENVAT Credit Rules, 2004, inputs means all goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Further, as per rule 3(5B)(i) of the said rules, if the value of any inputs on which CENVAT credit has been taken, is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said inputs.

From the profit and loss account for the year 2014-15 of M/s Berry Alloys Ltd. Bobbili in Visakhapatnam Commissionerate, engaged in the manufacture of Silicon Manganese falling under Chapter 72 of CETA-1985, It was noticed that raw material/inputs worth ₹ 227.31 lakh were destroyed in cyclone. However, the assessee did not reverse CENVAT credit availed on these inputs even after receipt of insurance claim. As per the rules ibid, the assessee was required to reverse CENVAT credit of ₹ 28.10 lakh availed on inputs which were destroyed.

When we pointed this out (December 2015), the Commissionerate replied (April 2016) that the audit objection was accepted and required documents were called for, so as to arrive at the value of raw materials stated to have been destroyed.

## 4.4 Non/Short Payment of Interest

We noticed 3 cases of non-payment of interest by the assessees. One case is illustrated below. Remaining 2 cases are detailed in Appendix-II.

### *4.4.1 Non-Payment of Interest on Delayed Payment of Duty*

As per Rule 8 of Central Excise Rule 2002, duty on the goods removed from the factory during a month shall be paid by 6$^{th}$ of following month and in case of goods removed during March, the duty shall be paid on 31$^{st}$ day of March. Further, Rule 8A(3) of the Rule stipulates that if the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest, at the rate specified by the Central Government vide notification issued under Section 11AA of the Act on the outstanding amount, for the period starting with the first day, after due date, till the date actual payment of the outstanding amount.

M/s Rexam HTW Beverage Can (India) Ltd., in Belapur Commissionerate, disposed off and cleared the capital goods in the month of May 2014 on which central excise duty of ₹ 4.21 crore was payable. However, verification of records revealed that the assessee paid only ₹ 1.41 crore during the clearance of capital goods (May 2014) and debited the balance differential duty of ₹ 2.80 crore in CENVAT register (December 2014). This resulted in delayed payment of duty on which interest of ₹ 27.85 lakh was to be recovered.

When we pointed this out (March 2015), department admitted the para (June 2015) and stated that the assessee had paid interest of ₹ 27.85 lakh in March 2015.