

CHAPTER IV 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. A few cases of non-levy/short levy of duty totalling Rs. 13.35 crore, noticed in test check, are described in the following paragraphs. These observations were communicated to the Ministry through ten draft audit paragraphs. The Ministry/department has accepted (till December 2009) the audit observations in seven draft audit paragraphs with a revenue implication of Rs. 7.72 crore of which Rs. 71.34 lakh has since been recovered.

4.1 Non-payment of duty on due date

Rule 8 of the Central Excise Rules, 2002 envisages that the duty on goods removed from factory or the warehouse during a month shall be paid by the 5th of the following month and for the month of March, by 31st of March. If the assessee defaults in payment of any one installment and the liability is discharged after thirty days from the due date, the assessee is required to pay duty for each consignment in cash and in the event of failure, such goods will be deemed to have been cleared without payment of duty and penalties as provided in the rules, will be applicable.

4.1.1 M/s L.R. Alloys Pvt. Ltd., in Chandigarh commissionerate, defaulted in payment of excise duty of Rs. 3.76 crore for the goods cleared in the month of July, September and October 2007 and it was paid beyond thirty days from the due date of payment of duty. Therefore, the facility to pay duty in monthly installment was required to be forfeited and duty from PLA was required to be paid for each consignment at the time of removal, without utilising the cenvat credit till the date of payment of outstanding amount of duty alongwith interest. However, the assessee paid duty by debiting cenvat credit account on monthly basis during the said period of default which was in contravention of the rule. No action was taken by the department to recover the duty in cash and to impose penalty. This resulted in financial accommodation to the assessee amounting to Rs. 3.76 crore. Interest and penalty was also leviable.

On the matter being pointed out (June 2008), the department stated (April 2009) that demand for Rs. 4.24 crore covering the period of default from 5 September 2007 to 8 April 2008 had been confirmed (February 2009) besides a penalty of Rs.10 lakh.

The reply of the Ministry has not been received (December 2009).

4.1.2 M/s Midco Ltd., in Ahmedabad I commissionerate, engaged in the manufacture of petroleum/diesel dispensing pumps and parts thereof, paid a duty of Rs. 5.75 lakh for the month of January 2007 on 22 June 2007 with a

delay of 137 days and a duty of Rs. 66.60 lakh for the month of October 2007 in three installments on 12, 15 and 20 December 2007 with delays ranging between 37 and 45 days. The assessee was, therefore, required to pay duty of Rs. 3.58 crore pertaining to the period from March to June 2007 and Rs. 60.06 lakh for the period from 6 to 20 December 2007 in cash for each consignment.

On the matter being pointed out (November 2008), the department confirmed (December 2008) demand of Rs. 60.06 lakh for the month of December 2007. However, the department stated (February 2009) that there was no default in payment of duty for the month of January 2007 as it related to inputs cleared for which reversal of cenvat credit was required, which was done in June 2007.

The reply of the department is not tenable for the reasons that the said rule 8 relates to the manner of payment of duty on removal of any goods from the factory and not merely manufactured goods. This has also been upheld by CESTAT, Chennai in the case of M/s KLR Textiles {2005 (188) ELT (169)}. Further, the assessee had availed of the facility of payment of duty on monthly basis under the provision of rule 8 in respect of removal of goods and accordingly all other provisions of the said rule shall apply to such removal of goods.

The reply of the Ministry has not been received (December 2009).

4.2 Short payment of differential duty

Duty short paid is recoverable alongwith interest at applicable rate under the sections 11AA and 11AB of the Central Excise Act.

M/s AVTEC Ltd. Pithampur, in Indore commissionerate, engaged in the manufacture of I.C. engine, transmission power unit and parts thereof paid differential duty amounting to Rs. 2.71 crore pertaining to the period from September 2003 to May 2006 by raising supplementary invoice to M/s General Motors India Pvt. Ltd., Halol (Gujarat) on account of price variation of raw material on 14 July 2006 but interest leviable thereon from 1 October 2003 to 14 July 2006 was not paid. Subsequent scrutiny of the statements of the differential duty paid, provided by the assessee indicated (June 2009) that actual differential duty recoverable was Rs. 3.49 crore and not Rs. 2.71 crore deposited by the assessee and interest payable thereon worked out to Rs. 45.99 lakh. This resulted in short payment of differential duty of Rs. 77.47 lakh and non-payment of interest of Rs. 45.99 lakh.

On the matter being pointed out (January 2007), the department stated (January 2008) that the differential duty of Rs. 2.71 crore had been deposited by the assessee at the instance of internal audit.

The reply is not relevant as the differential duty of Rs. 77.47 lakh is payable in addition to Rs. 2.71 crore already paid and which remains recoverable.

The reply of the Ministry has not been received (December 2009).

4.3 Duty not levied on goods consumed captively

Excisable goods manufactured in a factory and used within the factory of production for manufacture of final products are exempt from duty provided such final product is not exempt from duty or chargeable to 'nil' rate of duty.

4.3.1 Bodies (including cabs) for the motor vehicles of tariff headings 87.01 to 87.05 are classifiable under tariff heading 87.07. By virtue of a notification dated 1 March 2002 (serial no. 214), the rate of duty has been fixed at 16 per cent ad valorem in respect of the motor vehicles falling under headings 87.02 to 87.04 or 87.16 and manufactured by a manufacturer other than the manufacturer of the chassis.

The CESTAT, Bangalore, in the case of Kerala State Road Transport Corporation v/s CCE, Trivandrum {2007 (216) ELT 69 (Tri Bang)} decided (23 April 2007) that bodies built on duty paid chassis are classifiable under heading 87.07 of the Central Excise Tariff, attracting central excise duty and that exemption for the motor vehicles of tariff heading nos. 87.02, 87.03 and 87.04 is not applicable to bodies of tariff heading 87.07.

M/s Shri Krishna Urja Products Ltd., in Jaipur I commissionerate, engaged in the fabrication/manufacturing of steel structures and bus/motor/car carrier bodies as well as providing goods transportation services, manufactured car carrier bodies of sub heading 87164000 of the Central Excise Tariff valuing Rs. 4.59 crore during 2004-05 and 2006-07 which were cleared for their transportation business without payment of duty of Rs. 75.20 lakh. The duty was recoverable with interest.

On the matter being pointed out (December 2008), the Ministry while admitting the audit observation, stated (October 2009) that the matter had been under investigation since March 2008 and show cause notice for Rs. 1.81 crore had been issued in May 2009.

4.3.2 M/s Indian Oil Corporation Ltd. (Refinery Division) Haldia, in Haldia commissionerate, engaged in the manufacture of petroleum products, manufactured 1,567.97 kilo litre of furnace oil and consumed it as fuel for the setting up of a new plant within the refinery through the contractor M/s Punj & Lloyds without payment of excise duty. The constructed plant being fixed to the earth was not a marketable commodity and was accordingly not an excisable goods. Hence, the assessee was not entitled to the exemption from duty on captive consumption. This resulted in non-levy of duty of Rs. 43.95 lakh during the period from February 2004 to June 2006.

On the matter being pointed out (July 2006), the department accepted the audit observation and reported (December 2008) that show cause notice had been issued. Further scrutiny indicated that the case had been adjudicated with a confirmation of demand of duty of Rs. 43.95 lakh and penalty of Rs. 43.95 lakh.

The reply of the Ministry has not been received (December 2009).

4.4 Duty not paid on clearance of waste and scrap

Rule 3(5A) of the Cenvat Credit Rules, 2004 envisages that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

M/s Shri Ram Rayons Kota, in Jaipur I commissionerate, engaged in the manufacture of rayon tyre cord yarn and tyre cord fabric, cleared waste and scrap of capital goods during the period from June 2005 to November 2007 valuing Rs. 1.33 crore without payment of duty. Since cenvat credit on capital goods was availed, the assessee was liable to pay duty of Rs. 21.85 lakh on clearance of waste and scrap.

On the matter being pointed out (July 2008), the department intimated (February 2009) that show cause notice for Rs. 21.90 lakh for the period from 16 May 2005 to 12 December 2007 was being issued.

The reply of the Ministry has not been received (December 2009).

4.5 Short levy of duty due to probable suppression of production

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

M/s Indo Nissin Foods Ltd. Rewari, in Delhi III commissionerate, engaged in the manufacture of instant/cup noodles produced 4,304 tonne noodles (finished goods) by consuming 7,99,684 kilogram edible oil (major ingredient/input) during the year 2003-04. Audit observed that 5,012 tonne noodles were produced by consuming 9,56,972 kilogram refined oil during the year 2004-05. There was no change in the norms of production of noodles. Taking into consideration the input-output ratio of the previous year (2003-04), the production of noodles during the year 2004-05 should have been 5150.54 tonne. This indicated a probable short accounting of 138.54 tonne of noodles involving excise duty of Rs. 17.89 lakh. Besides, interest and penalty for suppression of production was also leviable.

On the observation being pointed out (November 2006), the department stated (February 2009) that the demand of Rs. 17.89 lakh for evasion of duty had been confirmed in March 2008. The party had appealed against the confirmed demand which had been rejected by the Commissioner (Appeals) in February 2009. Report on recovery has not been received (May 2009).

The reply of the Ministry has not been received (December 2009).

4.6 Other cases

In 96 other cases of non-levy/short levy of duty of Rs. 1.05 crore, the Ministry/department has accepted all the audit observations and has reported recovery of Rs. 71.34 lakh in 95 cases till December 2009.