

CHAPTER V

NON-LEVY OF INTEREST AND PENALTY

Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty as determined under section 11A of the Central Excise Act, 1944, is in addition to the duty, liable to pay interest at the rate of 20 per cent per annum till 11 May 2000, 24 per cent with effect from 12 May 2000, 15 per cent with effect from 13 May 2002 and 13 per cent from 12 September 2003 under the relevant sections of the foregoing Act. Where duty has not been paid or short paid with the intent to evade duty or in contravention of the provisions of the Act or Rules or notifications issued thereunder, penal provisions exist under section 11AC of the said Act and Rules 25 to 27 of the Central Excise Rules, 2002. A few illustrative cases of non-levy of interest and penalty involving revenue of Rs. 13.43 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through 15 draft audit paragraphs. The Ministry/department has accepted (till December 2009) the audit observations in 12 draft audit paragraphs with revenue implication of Rs. 6.81 crore of which Rs. 1.53 crore has since been recovered.

5.1 Non-recovery of interest on differential duty

Where any duty of excise has not been levied or paid or has been short levied or short paid, interest is leviable from the first day of the month succeeding the month in which the duty ought to have been paid till the payment of duty.

The Ministry clarified on 28 July 2003 that interest under section 11AB is leviable even in cases where duty is paid by an assessee before serving of the notice by the department. The Ministry further clarified on 14 March 2006, that interest under section 11AB is chargeable from the date of original clearance in cases wherein supplementary invoices are raised due to upward revision of the price of the goods and differential duty is paid/payable.

No time limit for payment of interest

5.1.1 M/s BHEL Bhopal, in Bhopal commissionerate, engaged in the manufacture of various excisable goods had paid differential duty in the month of March 2007 on account of price revisions for the supplies made between the years 2002-03 to 2006-07. It was, therefore, liable to pay interest on differential duty payment, which worked out to Rs. 4.24 crore as per provisions of the sections 11A(2B) and 11AB of the Central Excise Act. The department, however, did not take any action for recovery of interest.

On the matter being pointed out (February 2008), the department stated (May 2008) that the assessment was pending.

The reply is not tenable as the differential duty was paid in the month of March 2007 and non-payment of interest of Rs. 4.24 crore on the grounds that the assessment was provisional, has resulted in further financial accommodation to the assessee of Rs. 1.38 crore by way of interest from April 2007 to September 2009, as interest beyond the date of payment of duty (in this case March 2007) is not leviable under the existing Act.

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

Recommendation:

There is no time limit in the Act for recovery of interest on duty from the assesseees. Audit recommends that appropriate provision may be included prescribing a time limit for payment of interest and for charging of interest beyond this prescribed time limit, till the interest amount is finally paid.

5.1.2 M/s Kanyaka Parameshwari Engineering Pvt. Ltd., M/s Indian Hume Pipe Company Ltd., M/s Hi-power Electrical Industries and M/s Vijai Electricals Ltd., in Hyderabad I commissionerate, engaged in the manufacture of electric transformers, cylinders, PSC, BWSC and MS pipes etc., sold their final products on payment of duty on provisional assessable values. Later these assesseees collected additional amounts from their customers on account of price escalation, between April 2003 and November 2008. The assesseees also paid the applicable differential duty of Rs. 25.98 crore. However, interest liability of Rs. 1.07 crore on the differential duty paid was not discharged.

On the matter being pointed out (between March 2008 and December 2008), the Ministry accepted the audit observations and stated (November 2009) that show cause notices for Rs. 1.05 crore had been issued to three assesseees and show cause notice to M/s Indian Hume Pipe Company Ltd. was under issue.

5.1.3 M/s Hindustan Insecticides Ltd., in Raigad commissionerate, engaged in the manufacture of pesticides, cleared goods on payment of duty to a Government department. The assessee paid the differential duty of Rs. 4.05 crore relating to the years 2002-03, 2003-04 and 2004-05 in March 2005, August 2008 and March 2007 respectively. However, the applicable interest of Rs. 1.19 crore leviable for the delayed payment of differential duty was not paid. The department also did not demand it.

On the matter being pointed out (February 2008), the department issued a show cause notice for Rs. 1.19 crore in September 2008.

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

5.1.4 M/s Vapi Care Pharma Pvt. Ltd., Vapi in Daman commissionerate, engaged in the manufacture of medicaments, paid the differential duty of Rs. 49.03 lakh in January 2007 on physician's samples, cleared between April 2005 and December 2006, against Rs. 80.45 lakh demanded by the department. However, interest of Rs. 11.56 lakh payable on the differential duty of Rs. 49.03 lakh was neither paid by the assessee nor was it demanded by the department. The remaining differential duty of Rs. 31.42 lakh was also recoverable along with interest.

On the matter being pointed out (September 2007), the department accepted the audit observation and reported (January 2009) issue of show cause notice on 26 December 2008. It further stated (June 2009) that action for the recovery of differential duty and interest was in progress.

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

5.1.5 M/s Crompton Greaves Ltd. (Transformer Division), in Mumbai III commissionerate, engaged in the manufacture of machineries and parts thereof, paid differential duty of Rs. 12.40 crore between August 2005 and

December 2007 on the supplementary invoices raised due to revision of prices for the period from 1 June 2005 to 21 November 2007. However, interest payable at 13 per cent thereon was not paid by the assessee.

On the observation being pointed out (May 2006), the department intimated (August 2008) issue of two show cause notices for Rs. 38.36 lakh covering the period from June 2005 to December 2007. The department, however, subsequently stated (November 2008) that Bombay High Court in case of M/s Rucha Engineering Pvt. Ltd., had held that demand of interest and penalty was not sustainable on the differential duty paid on supplementary invoices which was stated to have been upheld by the Supreme Court.

The reply is not tenable as the Supreme Court has not decided the case on merits but set aside the order in the said case requiring the Tribunal to examine the case afresh (Civil Appeal No. 910 of 2008 - February 2008).

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

5.1.6 M/s Kothari Sugars and Chemicals Ltd., Kattur in Tiruchirapalli commissionerate, engaged in the manufacture of denatured ethyl alcohol (dutiable) and ethyl alcohol (exempted), availed of modvat credit against duty paid on common inputs such as hydrochloric acid, caustic soda lye, furnace oil etc. But the proportionate credit on the inputs used in the manufacture of the exempted products was not paid back by the assessee. The department confirmed (December 1997) the demand of Rs. 14.57 lakh for the period from September 1995 to March 1996 and the assessee paid the amount on 11 August 2003. The assessee, however, did not pay interest of Rs. 15.90 lakh for the delayed payment and the department also did not demand the same.

On the matter being pointed out (March and April 2005), the department initially contended (September and October 2005) that the assessee company being a sick company had represented to the Commissioner for the waiver of interest. Subsequently, the department admitted (February 2009) the audit observation that there was no statutory provision under the law for waiver of interest and issued show cause notice for recovery of interest.

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

5.2 Non-levy of penalty

Rule 8(3) of the Central Excise Rules, 2002, stipulates that if the assessee fails to pay duty by the due date, he is liable to pay the outstanding amount alongwith interest at the rate of 2 per cent per month or rupees one thousand per day, whichever is higher. The rule further provides that till such time the amount of duty outstanding and the interest payable thereon are not paid, the goods in question would be deemed to have been cleared without the payment of duty and where such duty and interest are not paid within a period of one month from the due date, the consequences and penalty as provided in the aforesaid rules shall follow. Penalty not exceeding the duty on excisable goods or Rs. ten thousand, whichever is greater, is leviable under rule 25 of the Central Excise Rules, 2002.

M/s Himachal Futuristic and Communication Ltd., Chambaghat, in Chandigarh I commissionerate, engaged in the manufacture of

telecommunication equipment, defaulted in paying duty aggregating Rs. 2.97 crore during the months of June 2003 (Rs. 202.57 lakh) and November 2003 (Rs. 94.18 lakh). The penalty of Rs. 2.97 crore for the clearances made in contravention of rules during these months was leviable.

On the matter being pointed out (September 2004 and April 2008), the department intimated (November 2008) that the show cause notice had been adjudicated (June 2007) and a penalty of Rs. 20 lakh for the default in payment of duty in June 2003 had been imposed. However, the assessee had filed an appeal in the Tribunal. The reply of the department in respect of action taken on the delayed payment of duty of Rs. 94.18 lakh for the month of November 2003 had not been received (October 2009).

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

5.3 Other cases

In 88 other cases of non-levy of interest and penalty with revenue implication of Rs. 2.18 crore, the Ministry/department had accepted all the audit observations and reported (till December 2009) recovery of Rs. 1.53 crore in 86 cases.