

## CHAPTER IV MISCELLANEOUS ISSUES

We communicated to the Ministry five cases of non-recovery of interest and cess not levied or demanded involving revenue of ₹ 2.54 crore as mentioned in the following paragraphs. The Ministry had accepted (December 2011) the audit observation in one draft audit paragraph involving revenue of ₹ 66.32 lakh.

### 4.1 Non-recovery of interest under cenvat credit rules

As per Rule 14 of the Cenvat Credit Rules, 2004, where the cenvat credit has been taken or utilised wrongly, the same alongwith interest shall be recovered from the manufacturer or the provider of the output service under the provisions of sections 11 A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, 1994.

Board in its circular dated 3 September 2009, has clarified that interest shall be recoverable when credit has been wrongly availed, even if it has not been utilised. This view of the Board has also been endorsed by the Apex Court in the case of Ind-Swift Laboratories Ltd. {2011 (265) ELT 3 (SC)} which was reiterated in circular dated 14 March 2011.

**4.1.1** M/s Vardhman Fabrics (a unit of Vardhman Textile Ltd.), in Bhopal Commissionerate, availed wrong/excess credit of ₹ 9.60 crore on capital goods/service tax. Although the assessee paid back the wrong/excess credit availed during the period from 30 September 2007 to 31 August 2009, it did not pay applicable interest amounting to ₹ 1.06 crore.

When we pointed this out (September 2010), the Commissionerate intimated (June 2011) that a show cause notice for recovery of interest against cenvat credit wrongly taken was under process.

The reply of the Ministry had not been received (December 2011).

**4.1.2** M/s Alok Industries Ltd., in Vapi Commissionerate, availed excess cenvat credit of service tax of ₹ 5.10 crore during October 2007 to March 2008. The assessee subsequently reversed the excess credit. However, it did not pay the interest of ₹ 66.32 lakh on the wrongly availed credit.

When we pointed this out (August 2010), the Ministry accepted our observation and intimated (September 2011) that issue of show cause notice was under process.

## 4.2 Non-levy of cess on textiles and textile machinery

As per section 5(A)(1) of the Textile Committee Act, 1963, read with the Ministry of Commerce notification dated 1 June 1977, cess on textiles and textile machinery manufactured in India is leviable at the rate of 0.05 per cent ad valorem. The authority to collect such cess is vested with the 'Textile Committee' constituted under section 3 of the afore mentioned Act.

**4.2.1** Test check of records of three assesseees engaged in the manufacture of textile material/machinery in the Union Territory of Dadra and Nagar Haveli, in Ahmedabad I commissionerate, indicated that they did not pay applicable cess of ₹ 46.50 lakh on processed fabrics and textile machinery valued at ₹ 929.90 crore and cleared between April 2004 and May 2007. The Textile Committee also did not take any action to collect the applicable cess.

The matter was brought to the notice of Textile Committee between February and November 2010 and their reply was awaited (December 2011).

The reply of the Ministry of Textiles had not been received (December 2011).

**4.2.2** M/s Dicitex Décor and M/s Manohar Processors in Thane-II commissionerate, manufactured manmade fabrics, embroidery fabrics, chenille fabrics etc. valuing ₹ 376.94 crore during the period from 2004 -05 to 2006-07 but did not pay the applicable cess amounting to ₹ 18.84 lakh leviable thereon.

When we pointed this out (July 2009), the Textile Committee intimated (April 2011) issue of show cause notice to both the assesseees.

The reply of the Ministry of Textiles had not been received (December 2011).

## 4.3 Non-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 15<sup>th</sup> of the following month.

Eight manufacturers of cement in Shillong and Guwahati commissionerates, cleared 22.19 tonne of cement manufactured in their factories during the period from 2007-08 to 2009-10 without payment of cess. The installed capacity of these factories, based on rotary kilns, was in excess of 99,000 tonne per annum and cess was payable as per provisions cited *ibid*. The total cess not paid by these eight assesseees amounted to ₹ 16.65 lakh.

When we pointed this out (April 2011), the Ministry of Commerce & Industry intimated (October 2011) that they had requested the assesseees to remit the unpaid cess amount as pointed out by us.

**New Delhi**  
**Dated :**

**(SUBIR MALLICK)**  
**Principal Director**  
**(Central Excise and Service Tax)**

**Countersigned**

**New Delhi**  
**Dated :**

**(VINOD RAI)**  
**Comptroller and Auditor General of India**