

Central Excise Act, 1944

Section 11A - Recovery of Duties Not Levied or Not Paid or Short-levied or Short-paid or Erroneously Refunded

(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with an intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect as if, for the words "one year", the words "five years" were substituted :

¹ [***]

Explanation : Where the service of the notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

³ [(1A) When any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 11AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.]

(2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

³ [Provided that if such person has paid the duty in full together with, interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub-section (1) shall, without prejudice to the provisions of sections 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the Central Excise Officer, shall determine the amount of duty or interest not being in excess of the amount partly due from such person.]

(2A) Where any notice has been served on a person under sub-section (1), the Central Excise Officer,-

(a) in case any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, where it is possible to do so, shall determine the amount of such duty, within a period of one year;

(b) in any other case, where it is possible to do so, shall determine the amount of duty of excise which has not been levied or paid or has been short-levied or short-paid or erroneously refunded, within a period of six months,

from the date of service of the notice on the person under sub-section (1).

(2B) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person, chargeable with the duty, pay the amount of duty ² [on the basis of his own ascertainment of such duty or on the basis of duty ascertained by a Central Excise Officer] before service of notice on him under sub-section (1) in respect of the duty, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the duty so paid :

Provided that the Central Excise Officer may determine the amount of short payment of duty, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1.-Nothing contained in this sub-section shall apply in a case where the duty was not levied or was not paid or was short-levied or was short-paid or was erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.

Explanation 2.-For the removal of doubts, it is hereby declared that the interest under section 11AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the Central Excise Officer, but for this sub-section.

⁴[**Explanation 3.** For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made there under shall be imposed in respect of payment of duty under this sub-section and interest thereon.]

(2C) The provisions of sub-section (2B) shall not apply to any case where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.

(3) For the purposes of this section,-

(i) "refund", includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(ii) "relevant date" means,-

(a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid-

(A) where under the rules made under this Act a periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;

(B) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(C) in any other case, the date on which the duty is to be paid under this Act or the rules made thereunder;

(b) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

1. Omitted by the Finance Act, 2003 w.e.f. 14.05.2003. Prior to omission it read as under:

"Provided further that where the amount of duty which has not been levied or paid or has been short levied or short paid or erroneously refunded is one crore rupees or less a notice under this sub-section shall be served by the Commissioner of Central Excise or with his prior approval by any officer subordinate to him:

Provided also that where the amount of duty which has not been levied or paid or has been short levied or short paid or erroneously refunded is more than one crore rupees, no notice under this sub-section shall be served without the prior approval of the Chief Commissioner of Central Excise."

2. Inserted by the Finance Act, 2003 w.e.f. 14.05.2003.

3. Inserted by the Taxation Laws (Amendment) Act, 2006.

4. Inserted by the Finance Act, 2010.
