

Central Excise Act, 1944

Section 11A - RECOVERY OF DUTIES NOT LEVIED OR NOT PAID OR SHORT LEVIED OR SHORT SHORT--PAID OR ERRONEOUSLY REFUNDED. 87

1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or 88 [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 89 [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 misstatement 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, by such person or his agent, the provisions of this sub-section shall have effect, 90 [as if, 91 [***]] for the words 92 [one year], the words "five years" were substituted 93 95 [****] 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 97 [one year] or five years, as the case may be. (2) The 98 [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. 99 [(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; and (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, may pay the amount of duty 94 [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. (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,- 100 [(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.] SECTION 11AA: INTEREST ON DELAYED PAYMENT OF DUTY 101 102 (1) 103 [Subject to the provisions contained in section 11AB- , where a person] chargeable with duty determined under sub-section (2) of section 11A- , fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest 104 [at such rate not below eighteen per cent and not exceeding 105 ["ten per cent"] per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette], on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty : Provided that where a person chargeable with duty determined under sub-section (2) of section 11A- before the date on which the Finance Bill, 1995 receives the assent of the President, fails to pay such duty within three months from such date, then, such person shall be liable to pay interest under this section from the date immediately after three months from such date, till the date of payment of such duty. Explanation 1. - Where the duty determined to be payable is reduced by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be the date on which an amount of duty is first determined to be payable. Explanation 2. - Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, the court, the date of such determination shall be, - (a) for the amount of duty first determined to be payable, the date on which the duty is so determined; (b) for the amount of increased duty, the date of order by which the increased amount of duty is first determined to be payable; (c) for the amount of further increase of duty, the date of order on which the duty is so further increased.] 106 [(2) The provisions of sub-section (1) shall not apply to cases where the duty becomes payable on and after the date on which the Finance Bill, 2001 receives the assent of the President.]. SECTION 11AB: INTEREST ON DELAYED PAYMENT OF DUTY - 107 108[(1) Where any duty of excise has not been levied or paid or has been short-levied or short- paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B), of section 11A- , shall, in addition to the duty, be liable to pay interest at such rate not below M9 ["ten per cent"]. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of section 11A- till the date of payment of such duty: Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B - , and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid.]. 109 [(2) The provisions of sub-section (1) shall not apply to cases 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.]. Explanation 1. - Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such reduced amount of duty. Explanation 2. - Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest shall be payable on such increased or further increased amount of duty.] SECTION 11AC: PENALTY FOR SHORT LEVY OR NON LEVY OF DUTY IN CERTAIN CASES - 110 Where any duty of excise has not been levied or paid or has been short- levied or short-paid or erroneously refunded by reasons 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, the person who is liable to pay duty as determined under sub-section (2) of section 11A - , shall also be liable to pay a penalty equal to the duty so determined : - 111 Provided that where such duty as determined under sub-section (2) of section 11A- , and the interest payable thereon under section 11AB- , is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso : Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account: Provided also that in case where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect. Explanation. - For the removal of doubts, it is hereby declared that - (1) the provisions of this section shall also apply to cases in which the order determining the duty under sub -section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President; (2) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

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