PRINCIPLES OF NATURAL JUSTIC IS FOLLOWED IN SECTION 11A+28+73

EX- Excise, ST- Service Tax, cus-CUSTOMS

Sec 11A-EX **Sec 73(1)-ST**	Recovery of duties or service tax **not levied** or **not paid** or **short-levied** or **short-paid** or **erroneously refunded**
sec 28-cus	Cases other than collusion, willful-misstatement etc
11A(1)(a)	**SCN in any reason(called type -1)** other than **fraud+collusion+any willful mistatement+suppression of facts**+contravention of any of the provisions of this act or the rules made thereunder with the intent to evade the payment of the duty. — Issuance of SCN within **ONE** year(11A(1)(a)) (**18 M in case service tax-73(1))** +28(1)(a)
Excise **Customs** **ST**	**Period of stay to be excluded** **11A(8)** service of the notice is stayed by an order of a court or tribunal **28(7)** (shall be excluded) **73(1) Exp**
in cus	**No SCN if amount involved <100**
11A(1)(b) **28(b)(1)** **73(3)+exp-2**	Voluntary payment of duty or ST and interest **before** issue of SCN amount of duty / ST **+** interest payable thereon under section 11AA/28AA/75

Note : - 11AA speaks about interest on delayed payment of duty
Note : - 28AA speaks about interest on delayed payment of duty in special cases
Note:- 75 Speaks about interest on delayed payment of service tax

Then after payment of that duty what assessee shall do?
assessee should intimate the CEO in writing about such payment

11A(2)/ 28(2)-cus / 73(3)-ST	**then what is the duty of the CEO/proper officer upon receipt of such intimation?** No SCN would be issued if amount paid in full.
11A(3)/ 28(3)-cus/73(3) proviso -ST	**Then what about if amount paid short can CEO/proper officer issue SCN ?** Yes.! then from what date the period of ONE year is counted ? the period is counted from **receipt of intimation(as said in above)**

11A(4) **Reason:-(called type-2)**
73(1)-proviso fraud
collusion
any wilful mis-statement
suppression of facts
contravention of any of the provisions(with intent to evade payment of duty or ST)

Issuance of show cause notice within **FIVE** years

Period of stay to be excluded
11A(8)/28(7)+73(1)-explantion) same as above

amount specified in the notice
+
interest payable thereon under section 11AA
+
penalty(u/s 11AC) equivalent to the duty specified in the notice(**only w.r.t type-2**)
(can this penalty be reduced ? Yes see below)

11AC(1)(a):- 100% of the duty evaded

Imposition of reduced penalty

11A(5) **<u>50% penalty of duty :-(11AC(1)(b))</u>** When ? duty - common
Interest- common
Penalty - 50% of such duty

condition :-1 Reason type-2 (study)

condition :-2 Default found out where ?
during the course of any audit, investigation or verification

Condition:-3 Is Transactions available in specified records ?
Yes

Note:- all the following conditions should be satisifed .
Then how the details are known to the assessee? - dept will serve notice.

11A(6) **<u>25% penalty of duty:-(11AC(1)(`c))</u>** **when ?** **FOR S.tax 73(4A)-TYPE-1 REASON BUT NOT TYPE-2 REASON**
Conditions 2+3 applicable to S.TAX

Any person chargeable with duty under section **11A(5)**
before service of SCN
pay the duty in full or in part
+
interest payable thereon under section 11AA/75
+
reduced penalty

duty and the interest is paid within 30 days of the duty determination order along with the penalty

What is reduced penalty ?

1% P.M of such duty/S.TAX
month means - take the following month of such duty/ST payable.
or
25% of the amount of excise duty/ST

which ever is less

28(4)-cus **Reason- type-2**
collusion
any wilful mis-statement
suppression of facts

w.r.t duty		w.r.t interest
has not been levied	**or**	has not been paid
has been short-levied		has been part-paid
has been erroneously refunded		has been erroneously refunded

by whom ?
importer + exporter + agent or employee of the importer or exporter

SCN - SAME AS EXCISE

28(5)-CUS **<u>Penalty reduced to 25%:-</u>**

TO person whom u/s 28(4) SCN issued pays the duty in full or in part and the applicable interest u/s 28AA
< 30 days of the notice and inform such payment to proper officer in writing then the penalty would be reduced to 25% of the duty specified in notice
condition :- such reduced penalty is also paid by him along with the duty
+ interest

Written Intimation to the CEO is required ?
Yes.

then CEO/proper officer should check is amount of duty+int+reduced penalty paid in full . If yes ? Then don't issue SCN on the assessee

28(6)(i) cus Conclude the proceedings if amount paid in full with out prejudice to the provisions of sec 135+135A+140 (notice u/s 28(1) + 28(4) of customs)

otherwise ?

11A(7) SCN may be issued for recovery if amount is short paid

Peiod to counted - from the date of receipt of intimation

11A(7A) Deemed Notice

73(1A)-ST

Where >1 SCN is issued then service of a statement containing details of
non/short payment
short/non levy
erroneous refund of duty
etc.
would be deemed to be a service of SCN
provided the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice(s)

Then what about period of limitation shall be computed ?
computed from the date of service of such statement
(i.e ONE year or FIVE years)

11A(9) where
any appellate authority or
tribunal or
court or

concludes	that the notice issued under section 11A(4)

is not sustainable for the reason(type-2) has not been established

against the person to whom the notice was issued

Then what shall CEO do ?
determine the duty of excise payable by such person for the period of **one** year deeming as if the notice were issued under section 11A(1)(a)

11A(10)
28(8)-cus Determination of amount of excise duty after giving an opportunity of being heard to the concerned person by the CEO/proper officer

11A(11)
28(9)-cus Time-limit for determination of amount of excise duty(U/S 11A(10))
in case of service tax section **73(4B)**

cases under section 11A(4) or (5) / 28(4)	1 year	**from the date of notice**
cases under section 11A(1) / 28(1)(a)	6 months	

11A(12) **Is the amount of duty determined by CEO shall be modified by tribunal or court then should CEO need to be taken into account?**
yes this is called modification of duty + interest + penalty

11A(13) **Suppose modification by court or tribunal leads to > the duty determined by the CEO then interest or penalty shall be counted from which date ?**

counted from the date of the order of the appellate authority or tribunal or court in respect of **such increased amount**

11A(14)
28(10) **Payment of interest mandatory even if not specified in the order determining duty**

We are talking about since from first page interest specified under section 11AA , should this be specified in notice - the answer is **NO.**

11A(15) Provisions of section (1) to (14) shall apply mutatis mundis to the recovery of interest where interest payable
has not been paid or
part paid or
erroneously refunded

important points :- For (11A or 11AC) +(28 + 28AA) **+ 73**

1 "refund" includes rebate of duty of excise
2 Meaning of relevant date (excise+customs+service tax)

4 events(for both excise + customs)

event-1 -> Non-levy/non-payment or short levy/short payment of **excise duty/service tax**
(for excise/service tax it is only event-1 (a) + (b))

(a)	Where prescribed return has not been filed	**Last date on which such return is required to be filed**

(b)	Where return has been filed on due date	**Date on which such return has been filed.**

ONLY FOR CUSTOMS

(`c)	Non-levy of duty or non-charging of interest	**Date on which the proper officer makes an order for the clearance of goods**

event -2	Provisional assessment of excise duty (Rule 7 of CER 2002) / U/S 18 of customs/service tax Rule6(4)+(5)+(6) of STR 1994	**Date of adjustment of the excise duty after the final assessment thereof**
	for customs add	**Re assessment also**

event-3	Erroneous refund of excise duty / service tax/ (customs duty +interest)	Date of such refund

event-4 Any other case Any other case Date on which excise duty is required to be paid

3 "specified records" means records including computerised records

4 demands confirmed under section 11A can be paid by utilising cenvat credit?
NO - circular no 962/05/2012 dt 28.03.2012)

11D
28B Obligations of persons who have **collected** excise duty from buyers

- > credit of the Central Government(1)
-> Even if excess collected also (1A)
-> serve notice by CEO if not deposited (2)
-> consider representation and collect the duty by determing (3)

logic of section 11D and rule 6 of CCR 2004
11D - talks about duty So 11D will not apply to Rule 6 of CCR 2004
Rule-6 talks about Amount

11DD Interest on the amounts collected in excess of the duty (shall be paid by the person who have collected the duty)

11DDA
28BA-cus
s.tax 73C

Provisional attachment of property pending adjudication

		excise	s.tax	customs	
pendency of the following proceedings	U/S	11A	73(1)	28	by CEO /Proper officer
		11D	73A(3)	28AAA	up on approval of PC/C
				28B	by order in writing.

Such an attachment can be done for a period ?
6 months
Is this period can be extended ?
yes but total should not exceed 2 years.

Rule 25
CER 2002

Penalty on manufacturer/producer etc. for violation of Rules

WHY?
any of the specified contravention have been committed

Penalty	Duty or 2000	**which ever is greater**

what are specified contraventions?

a Removal of any excisable goods in contravention (rules+act)
b Non-accountal of any excisable goods(produced+manufactured+stored)
c Manufacture, production or storage (with out registration)
d ntent to evade payment of duty(in contravention of act+rules+notification)

Simultaneous penalty under rule 25 and section 11AC cannot be imposed?
NO
IF 11AC then no RULE 25 CER 2002

RULE 26 Penalty on persons knowingly dealing in goods liable to confiscation (notice is required to be issued)
any person who acquires possession of, or is in any way concerned in

transporting removing depositing keeping concealing selling or purchasing in any other manner deals with	any excisable goods which he knows or has reason to believe are liable to confiscation	**penalty:-** duty or 2000	which ever is greater

RULE 27 General penalty (max 5000 - where no specific penalty)

RULE 28 Confiscated property to vest in Central Government

RULE 29 Disposal of confiscated goods

option of paying a fine in lieu of confiscation has not been exercised	shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct

RULE 30 Storage charges in respect of goods confiscated and redeemed

owner of the goods	pay fine in lieu of confiscation	such storage charges	determined by the adjudicating officer