

Sec 11AB: Interest on delayed payment of duty

Interest u/s 11AB =	Principal (Amount) *	Rate of Interest *	Period	
	↓	↓	From	Till
	Outstanding ED amount	13% p.a.	Ist day of the month succeeding the month in which duty ought to have been paid (or date of erroneous refund)	Date of actual payment of duty
	⋮			
	<i>If matter is taken in appeal, Then interest shall be calculated upon the Increased / Decreased amount of ED, as determined by the Appellate Authority (CCE (A), CESTAT, HC or SC)</i>		e.g., - O/s Duty of Jan Month - Ought to have been paid by 5 th / 15 th Feb - Interest will start from 1 st March	

Proviso: (How to save Interest)

CBEC Order/ Instruction / Direction (**popularly called "Circular"**) issued u/s 37B of CEA, 1944 --- consequent to which duty is becoming payable

Assessee does following 2 things:

- He pays such duty voluntarily the **whole (100%)** amount of such duty --- within 45 days of issuance of such Order/ Instruction / Direction
- He surrenders his right of appeal against any such payment

Then, upon such ED amount no interest is payable.

[Any other case --- Interest is payable (on whole of amount, including the amount already paid)]

Sec 11AC: Penalty in "Extended Period's Cases"

Penalty u/s 11AC = 100% of the ED involved

(Mandatory penalty --

- shall be levied by CEO --- can't be waived by CEO based upon his discretion)

(Benefit of reduction of penalty)

However, the above penalty will stand **reduced to 25% of ED amount** subject to fulfillment of following conditions:

- ED amount and Interest** (as payable u/s 11AB thereon) is **paid within 30 days** of service of demand order; and
- The 25% **penalty amount is also so paid** within the aforesaid 30 days.

If **matter is taken in appeal**,

Then Penalty shall be calculated upon the Increased / Decreased amount of ED, as determined by the Appellate Authority (CCE (A), CESTAT, HC or SC)

However, if ED increased in appeal, then **benefit of reduction of penalty** on account of timely payment of dues (i.e., within 30 days of service Appellate Authority's Order) **shall remain available to the assessee.**

Sec 11C: CG power --- Not to recover duties "Not-paid" or "Short- Paid" --- when such non-payment or short-payment is the result of "GENERAL PRACTICE prevailing in the industry"

GENERAL PRACTICE prevailing in the industry (i.e., practice followed by majority of manufacturers/persons in the Industry)		
Practice	Practice of considering goods as "Non-Excisable"	Practice of considering goods as "Excisable goods" --- but charging those to a rate of duty lower (say, 8%) than the rate of duty actually leviable thereon (say, 16%)

Result of following such practice over a period of time	Duty of excise was not levied on the goods	Duty of excise was levied (and paid) on the goods at a lower rate
CG has got special power u/s 11C	To direct that whole of such amount needn't be paid	To direct that the differential amount (i.e., ED amount as per actual applicable rate --- ED amount paid as per general practice) needn't be paid

*If such a direction is issued --- then the persons who have paid correct duty (not as per General Practice) --- then such persons shall be **entitled to the REFUND** of duty paid in excess by them*

Refund Application: -- Must **Time Limit:** 6 months from issuance of CG direction u/s 11C
(Refund will be subject to Doctrine of Unjust Enrichment)

Sec 11D: Recovery from Buyer of Excisable Goods --- of amount in excess of "statutory duty - as actually payable thereon"

ASSESSEE (person liable to pay ED) collecting from buyer duty in excess of actual duty payable thereon --- surplus amount being collected representing that as excise duty

He shall be under an obligation to deposit such surplus amount also with the CG. **[Sec 11D(1)]**

Default in self deposit

Assessee will be served with **SCN for recovery of such surplus amount [Sec 11D(2)]**

In such eventuality, upon adjudication of such SCN --- assessee shall be required to pay immediately the adjudicated amount **[Sec 11D(3)]**

Still Failure to pay: Case transferred to "Recovery Cell" -- Coercive methods of Sec 11 applicable]

Amount paid u/s 11D(1) : Voluntarily pymt of surplus amount

Amount paid u/s 11D(3) : Amount paid in pursuance of "adjudication order"

Shall be allowed to be adjusted against any subsequent duty demand upon the assessee which may arise upon him upon

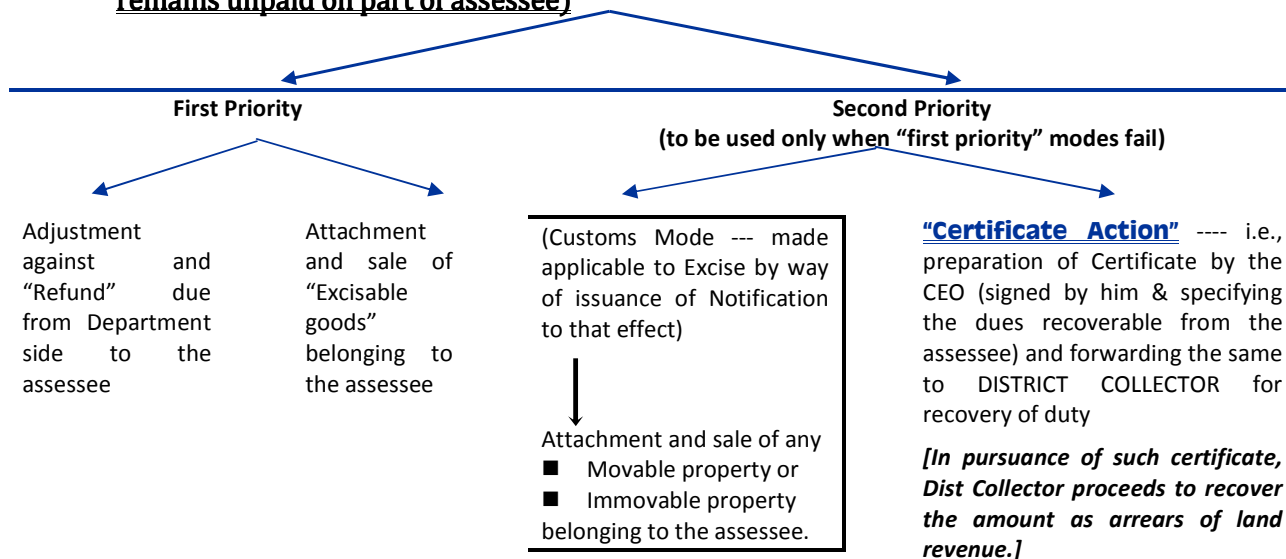
--- finalisation of assessment proceedings or
--- finalization of any other proceedings (such as appeal) **[Sec 11D(4)]**

However, if even after such adjustment, any surplus remain with the officer, then such surplus shall be dealt with in any of the following 2 ways: **[Sec 11D(5)]**

- CEO shall issue a PUBLIC NOTICE --- to the effect of inviting the ultimate buyer who has paid such excess amount to claim refund thereof **[Refund Application: Must Time Limit: 6 Months from date of issuance of Public Notice]**
- The amount shall be credited to CWF (where no one comes forward with refund claim)

Sec 11DD: Interest on delayed payment of Amount as adjudicated u/s 11D(3) **Interest @ 15% p.a.**

Sec 11: Modes of Recovery (Powers of CEO to give effect to recovery of adjudicated amount which remains unpaid on part of assessee)



Dues of predecessor – Recovery action against Successor

Recovery Action possible against successor

- **But prior approval of CCE is necessary for taking such action**
- Also, **only certain specified items can be attached and sold** in that recovery action

Sec 11-DDA: Provisional Attachment of Property (Movable/Immovable) for protection of Interest of Revenue

When: Proceedings initiated against assessee

- ❖ u/s 11-A (ED Demand Proceedings)
- ❖ u/s 11-D (Surplus Amount Recovery Proceedings)

How: PA Order shall be passed by CEO who has initiated the proceeding (*prior approval of CCE is necessary*)

Period of Validity of Order

[Initial 6 months + Extension upto 2 years (by Chief CCE)]

	<u>Sec 11</u>	<u>Sec 11-DDA</u>
1.	It covers ANY AMOUNT payable under CEA, 1944.	It covers only the following 2: i) ED; ii) Sec 11-D Surplus Amount (which has been collected representing it as an ED)
2.	Sec 11 provides for various modes of recovery which can be applied for recovery of adjudicated (assessed/determined) dues. (<i>i.e., it is applied after related proceedings have been concluded</i>). In other words, it is curative by nature.	Sec 11 provides for provisional attachment of property during the pendency of proceedings. In other words, it is preventive by nature..
3.	It is used by RECOVERY CELL (of Central Excise Dept) [No prior permission]	It is used by CEO who has initiated the proceedings. [Prior permission of CCE is necessary]