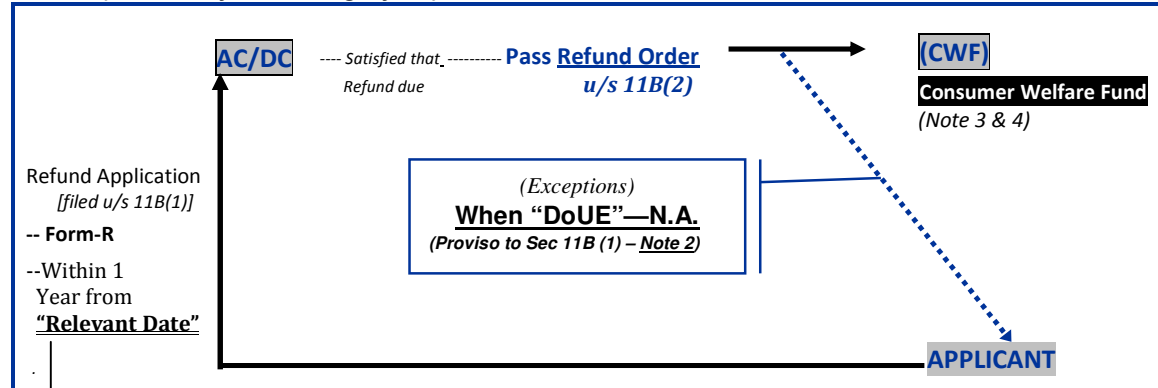


SHORT REVISIONARY KONCEPTS

REFUND OF EXCISE DUTY

Sec 11B: (Procedure for obtaining refund)



"RELEVANT DATE"

	SITUATIONS	"RELEVANT DATE" SHALL MEAN:
1.	<u>Refund arising on account of "Rebate Claim" by assessee on export of FP (Rule 18 Rebate --- Rebate of ED paid on FP and/or Rebate of ED paid on Inputs)</u>	<u>Date of Export</u> - Export by sea/air --- Date on which ship/aircraft leave India - Export by land --- Date on which goods pass the frontier - Export by post --- Date of dispatch of such goods by post office
2.	<u>Assessee availing CLS</u> –ED paid in advance at notified rate --- <u>subsequent Reduction in rate by CG</u> before expiry of the period for which it has been paid	<u>Date of such reduction by CG</u>
3.	<u>Refund arising on account of issuance of Exemption Order</u> (u/s 5A(2) – to individual assessee – who has already paid duty prior to issuance of such order)	<u>Date of Issuance of such order</u>
4.	<u>Refund arising on account of Finalization of Provisional Assessment</u>	<u>Date of Adj. of duty at the time of Final Assessment</u>
5.	<u>In Any other Case</u>	<u>Date of Payment of duty</u>
	<u>But in case of Refund Claim by Buyer</u> (person other than the manufacturer)	<u>Date of Purchase of goods</u>

Sec 11BB: Interest on Delayed Refund

Refund order passed u/s 11-B(2) – after 3 Mths of Receipt of Refund Application: --- Interest @ 6% p.a. shall be paid [Period: (from: After expiry of 3 months from date of application) (to: date of refund)]

Note 1:

"DoUE" (Doctrine Of Unjust Enrichment): no person can seek to collect duty from both ends ---that is he can't collect the duty from the purchaser on one hand and also collect it from the State by way of refund alleging that the duty had been collected by him contrary to the law. (Simple Words – Refund can't be given to assessee applicant if he had passed on duty incidence to other person) --- Sec 11B incorporates this doctrine in Excise

General Presumption (Sec 12B) --- It shall be presumed that payer of ED has passed on FULL incidence of ED to buyer of goods.

Note 2:

"DoUE:--- Where Inapplicable (Proviso to Sec11B(2))

- Unspent advance deposit lying in the balance in PLA;
- Refund of Cenvat Credit;
- Rebate of ED paid on Inputs / FP on export u/ Rule 18 of CER, 2002
- ED paid & borne by the manufacturer;
- ED paid & borne by the buyer;
- ED borne by other notified class of person.

Note 3: CONSUMER WELFARE FUND

Sec 12C: CWF is established by CG under this section.

Sources of Income

Excise Refunds	Customs Refunds	ST Refunds
Investment income of fund		
Other monies received from CG		

Utilization of CWF [Sec 12D]

- ⇒ For welfare of Consumers (As per Rules made by CG)
- ⇒ Accounts of utilization shall be maintained (in such form as CG prescribe in consultation with CAG(Comptroller & Auditor General))

SHORT REVISIONARY KONCEPTS

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Some other Points:

□ DUTY PAID UNDER PROTEST (M.imp)

Dispute regarding ED liability --- assessee needing immediate clearances which are not allowable before duty payment --- He can pay duty “under protest” -
-- For that, he has to lodge protest before the officer (i.e., file letter of protest) and obtain dated acknowledgment of the same + Mark all Invoices & Excise Returns indicating such payment ---- Later on, matter is finally settled by the Appellate Authority (*whose decision shall be binding on both --- Assessee & Dept*)
----- if Assessee wins --- Refund will arise

Issue 1: Whether Refund will be automatic or “Refund Application” required under this situation also?

→ Refund Application required

Issue 2: What shall be time limit of 1 year applicable for making such application”?

→ Yes --- though 1 year shall be counted from DATE OF APPEAL ORDER --- [Sec 11-B amended in year 2007]

Issue 3: Whether “Doctrine of Unjust Enrichment” applicable to such refunds?

→ Yes ALLIED PHOTOGRAPHICS LTD. – 2004- SC

□ Some case-Studies (Imp)

Applicability of “DoUE”

□ *Refund of ED relating to goods not sold to the buyer but consumed captively in production of excisable goods which were sold to the buyer*

Yes ----- burden is passed on INDIRECTLY

SOLAR PESTICIDES LTD – 2000-- SC

□ *Sec 35-F of CEA, 1944 --- ED demand by CEO --- Assessee filing Appeal ---- Sec 35-F requires deposit of demand before hearing granted for Appeal ---- Assessee winning the case ---- Refund arising*

No ---- Money Deposited = Amount (& not ED)]

SUVIDHE LTD. – 1999-SC

□ *Bank Gurantee furnished ----wrongly encashed ---- now, assessee fulfilled obligations ---- claiming refund of bank gurantee encashed*

No ---- Bank Gurantee furnished can’t be equated with payment -- so, return thereof can’t be called repayment/refund – therefore, DoUE is not applicable

OSWAL AGRO MILLS LTD. – 1994-SC