

DEMAND, ADJUDICATION AND OFFENCES

Question 1

An assessee had cleared goods without payment of excise duty. However, on coming to know from his sources that a show cause notice demanding duty on such clearances is likely to be issued but before actual issue of such notice the assessee made full payment of excise duty with interest. A show cause notice was issued subsequently as to why the assessee should not be subject to mandatory penalty equal to the excise duty sought to be evaded under section 11 AC of the Central Excise Act, 1944. Briefly examine, whether the action taken by the Department is correct in law.

(5 Marks) (Nov 2010)

Answer

Section 11A has been amended by Finance Act 2011 to the effect that when excise duty and interest are paid before issue of showcause notice for reasons other than fraud, collusion, any willful mis-statement, suppression of facts and contravention of any of the provisions of this Act of the rules made thereunder with intent to evade payment of duty, Central Excise Officer would not issue any showcause notice and no penalty would be levied. Therefore in the present case, showcause notice itself is void abinitio and question of levy of penalty does not arise.

Question 2

M/s Evasions Unlimited, manufacturing excisable goods, paid the differential duty, suo motu, to the Department as the prices of the said goods were revised with retrospective effect. The Revenue took the view that the assessee was liable to pay interest on differential duty under section 11AA of the Central Excise Act, 1944 and penalty thereof. The assessee replied that there was no question of charging interest and penalty as the payment of differential duty was made by it at the time of issuing supplementary invoices to the customers.

Discuss, whether the view taken by the Revenue is justifiable.

(5 Marks) (May 2010)

Answer

As per section 11AC of Central Excise Act 1944, where the non-payment or short payment etc. of duty is by the reason of fraud, collusion, any wilful mis-statement, 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 would also be liable to pay a penalty. However as per the facts of the given case, the short payment is not intentional and hence, penalty cannot be levied in above case.

Further as per section 11AA, interest on delayed payment of duty is compulsorily levied whether such payment is made voluntarily or after determination by Central Excise Officer.

Hence M/S Evasion Unlimited is liable to pay interest, but not the penalty.

Question 3

M/s Om Processors, a job worker, was engaged in the processing of manmade fabrics received from the principal supplier. The job worker (assessee) had undertaken to discharge all the duty liabilities under the Central Excise Act, 1944. The assessee received manmade fabrics on declaration from the principal supplier that the said fabrics had polyester content below 70%. It processed the same and cleared the processed fabrics claiming the benefit of concessional rate of duty available to manmade fabrics containing polyester below 70%. On the basis of chemical examination by the Department, it was found that the fabrics contained polyester in excess of 70% and thus would attract higher rate of duty. A show cause notice was issued invoking the extended period of limitation under section 11A of the Central Excise Act, 1944 demanding differential duty and penalties on the ground of mis-declaration on the part of the assessee. Briefly discuss, with reference to decided case law, whether the stand taken by the Department is correct in law. (5 Marks) (Nov 2008)

Answer

According to Section 11A (4) of Central Excise Act, 1944 extended period of limitation can be invoked only where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-

- (a) fraud; or
- (b) collusion; or
- (c) any wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.

Similar view was expressed by the Apex Court in case of **Padmini Products v. CCE (1989) 43 ELT 195 (SC)**, wherein it was held that failure to pay duty might not necessarily be due to fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of the Act. If facts of the case revealed that the appellant had acted bona fide, such act would not attract the penal provisions under section 11A of the Act. If the facts were otherwise, then the penalty would be levied.

In the given case, there was no requirement for the assessee (processor) to verify the correctness of the declaration filed by the principal (suppliers). Further, there was no allegation that the assessee was a party to such mis-declaration by the principal supplier. Therefore, extended period of limitation could not be invoked against the assessee. Thus, the action taken by the Department is not valid in law.

Question 4

What is the period of provisional attachment of property during the pendency of any proceeding under section 11A or section 11D of the Central Excise Act, 1944?

(2 Marks) (Nov 2008)

Answer

Provisional attachment of property can be done for a **period of 6 months** [Section 11DDA (2)].

This period can be extended with written permission of Chief Commissioner of Central Excise. However, total period of extension cannot be more than two years [First proviso to section 11DDA(2)].

However, if the assessee has made an application to the Settlement Commission, that period will be excluded for the purpose of calculating the time limit of two years [Second proviso to section 11DDA(2)].

Question 5

Briefly discuss the residual penalty under Rule 27 of the Central Excise Rules, 2002.

(2 Marks) (Nov 2008)

Answer

Rule 27 of the Central Excise Rules, 2002 stipulates that where no other penalty is provided in the rules therein or in the Act, a breach of these rules shall be punishable with a **penalty which may extend to ₹ 5,000 and with confiscation of the goods** in respect of which the offence is committed.