Excise Amendment by Finance Act 2011
Central Excise Act 1944

<u>Recovery of Duties - Section 11A</u>

<u>Time for service of SCN</u>

❖ In case any ED has
→ not levied / short-levied
→ not paid / short-paid
→ erroneously refunded

- CEO may serve a SCN
- Within ***ONE year****. ***(Sec 11A(1)(a))***
- From the ***relevant date***⁺
- To show cause that why he should not pay the **ED.**

Note 1: If service of SCN is stayed by any order of court, the **period of stay** shall be excluded while computing the period of ONE year. ***(Sec 11A (8))***

Note 2: SCN can be served within 5 years in case of F / C / W / S / C ***(Sec 11A (4))***

Note 3: In case of FCWSC, ED + Interest + 100% Penalty shall be levied.

Note 4: Relevant Date means

1	If ER is filed	The date on which ER is filed.
2	If ER not filed	The last date of filing ER
3	In other cases	The date on which ED is paid
4	In case of ED erroneously Refunded	The date of Refund
5	In case of Provisional Assessment of ED	The date of final Adjustment of ED

<u>Waiver of SCN</u> . ***(Sec 11A (1) (b))***

If the assessee pay the ED + Interest before service of SCN on him
→ On the basis of his own ascertainment **or**
→ On the basis of duty ascertained by CEO

AND

→ Inform the CEO of such payment in writing

THEN

→ No SCN would be issued if amount paid in full ***(Sec 11A (2))***
→ SCN may be issued if amount is short paid. ***(Sec 11A (3))***

Note 1: Period of ONE year shall be computed from the date of receipt of Information of payment

Imposition of reduced Penalty (Sec 11A (5))

In case of FCWSC, penalty may be reduced from **100% to 50%,** if the following conditions are satisfied.

- → The FCWSC is found during the course of any Audit, Investigation or Verification
- → Details relating to the transactions are available in the **specified record.**

Note: Specified Records include Computerized Records.

In above case, penalty may be reduced from **50% to 25%,** if the following conditions are satisfied. ***(Sec 11A (6))***

- → The assessee paid the ED Fully or Partly
- → Along with Interest
- → And Reduced Penalty*
- → before service of SCN on him

Amount of Penalty

Which Ever is lower

(1) 1% of ED p.m. or

(2) 25% of ED

- → The assessee shall inform the CEO of such payment in writing. . ***(Sec 11A (7))***
- → No SCN issued and Proceeding deemed to be concluded if amount paid in full.
- → SCN issued if amount is short paid.

(Sec 11A (9))

In case the charges of FCWSC are not proved, then duty to be determined for ONE year.

(Sec 11A (10))

The CEO shall determine the ED not exceeding the amount specified in SCN after giving an OBH to the assessee.

(Sec 11A (11))

Time limit for determination of amount of ED.

In respect of cases falling under	Time Limit
Sec 11A (4) & (5)	One Year
Sec 11A (1)	Six Months

(Sec 11A (12))

In case of ED (determined by CEO) is modified by court then Penalty and Interest to be modified accordingly.

(Sec 11A (13))

In above case, if the modified amount is >the duty determined by CEO, then the time within which the interest or penalty is payable shall be counted from the date of the order of the court i.r.o. increased amount.

(Sec 11A (14))

Payment of Interest is mandatory even if not specified in the order passed by CEO determining duty.

(Sec 11A (15))

The Provisions of Sec 11A (1) to (14) shall apply, mutatis mutandis, to the recovery of Interest where the interest payable has

Not paid

Partly Paid

erroneously refunded

Note: Refund includes rebate of ED on Exported Goods or
Rebate of ED on Excisable Materials used in the mfg of Export Goods.

Section 11AA Interest on Delayed Payment

Sec 11AA (1) Interest Payable in Delayed Payment

(a) Notwithstanding anything contained in any judgment of court, or provision of this Act or rules, the assessee shall in addition to ED, be liable to pay Interest

- → whether payment is made voluntarily or
- → duty as determined u/s 11A

Sec 11AA (2) Rate and Time Period for computation of Interest

<u>Rate of Interest</u>

- → CG may by NOG fix the ROI ranging b/w 10% to 36% p.a.
- → w.e.f. 01.04.2011, ROI is 18% p.a. notified.

<u>Time Period</u>

Interest shall be calculated

- → From the date on which ED become due
- → Upto the date of actual payment

No Interest payable subject to certain condition

- → The ED is payable after issue of direction by CBEC
- → Full amount of ED is paid voluntarily within 45days from the date of issue of such direction
- → No right to appeal against such payment at any subsequent stage is reserved.

Section 11AC Penalty for short-levy or non-levy of duty

- In case any ED has
  - → not levied / short-levied
  - → not paid / short-paid
  - → erroneously refunded
    - o By reason of FCWSC
    - o Then the assessee in addition to ED, shall also be liable to pay a penalty.

Quantum of Penalty

100%

Reduced Penalty

From 100% to 50%

Where the details of any transaction available in the specified records, reveal that

- Any ED has

not levied / short-levied

not paid / short-paid

erroneously refunded

Further Reduced

From 50% to 25%

If ED and Interest paid within 30 days of date communication of order of CEO.

- In case of ED (determined by CEO) is modified by court then Penalty and Interest to be modified accordingly.

- In above case, if the modified amount is >the duty determined by CEO, then the time within which the interest or penalty is payable shall be counted from the date of the order of the court i.r.o. increased amount.

Section 11E Liability under Central Excise Act to be first charge.

This section creates a first charge on the property of a defaulter for recovery of the Central Excise due, subject to the Provision of

- → Companies Act
- → Recovery of Debt due to Bank & FI Act and
- → SARFAESI Act

Section 4A

w.e.f. 01.08.2011, substitution of SWAMA 1976 with Legal Metrology Act 2009

Section 12

Prior to Amendment

CG empowered to apply the provisions of Custom Act to the ED imposed u/s 3 CEA

After Amendment

CG empowered to apply the provisions of Custom Act to the ED imposed u/s 3 & 3A

Provisions of Custom Act .	Shall apply to like matter covered by Sec 3A.
→ Offences and Penalties	w.e.f. 08.04.2011
→ Levy of CD → Exemption of CD → Duty Drawback → Warehousing → Confiscation → Procedure relating to offences and appeals	w.e.f. 10.05.2008

Section 12F Search and Seizure

- → Where JC / Addl Comm has reason to believe that
- → any goods liable to confiscation or
- → any document or books or things are secreted in any place ,
- → He / CEO authorized by him, may search and seize such documents or books or things.

Note: Provisions of CCP 1973 relating to search and seizure shall apply to this section.

Section 35R Non filing of Appeal in certain cases

→ The CBEC may issue directions fixing such monetary limits for the purposes of filing of appeal, application, revision or reference (AARR) by CEO
→ However, CEO not to be precluded from filing any AARR in any other case involving the issue / questions of law on which he has earlier not filed such appeal, application etc.
→ Non-filing of AARR by CEO cannot be considered to be his acquiescence (consent) in the decision on disputed issue.
→ The AT / Court hearing such AARR shall have regard to the circumstances under which AARR was not filed by the CEO in pursuance of directions of CBEC
→ Every directions issued by CBEC b/w 20.10.2010 & 08.04.2011 fixing monetary limits for filing of AARR shall be deemed to have been issued u/s 35R

Case Study: Sec 35R overrides the SC decision of CCE v. Bal Pharma Ltd (2010)
SC held that since an earlier decision of the Tribunal on the similar issue was not challenged by the Revenue, it can be permitted to take a different position in any other case involving similar issues only if it is able to demonstrate the distinguishing features of the case.

Section 38(2) Notifications issued u/s 5B also to be laid before Parliament

→ Every rule made under CEA 1944,
→ Every Notification issued u/s
  - 3A : Duty Based on Production Capacity
  - 4A : Retail Sale Price
  - 5A(1) : Power to grant exemption from ED
  - ***5B : Non reversal of Cenvat Credit***
  - 11C :

→ Every order made u/s 5A(2)

Must be laid before parliament for 30 days when Parliament is in session.

Cenvat Credit Rules, 2004

Rule: 3
w.e.f. 18.04.2006, A manufacturer or service provider shall be allowed to take credit of the ST leviable u/s 66A of Finance Act, 1944