Demand & Recovery.

Sec 11 - DDA

During the pendency of proceedings property can be attached if SCN is issued u/s 11A or u/s 11D. It can be issued by the CEO with the approval of Principal CCE/CCE. if it is in the Intt of Revenue. It can be done for 6 months which can be extended by Principal Chief CCE/Chief CCE for 2 years. It is done if amount involved is more than 25 lakhs. Attachment shall not be excessive than the amount specified in SCN. Movable attach if immovable is not sufficient.

Sec 11-A : Recovery of duty not levied Not paid, Short levied short paid or Erroneously Refunded

	Bonafide Case (11A (1))	Mala Fide Cases (11-A (4))
Reason of SCN :	All case except the cases in Mala fide	Fraud, Collusion, Wilful Misstatement, Suppression of Facts, Contravention of any of the provisions of this Act or rules made thereunder with intent to evade payment of duty.
Time Period :	~~1 Year~~ 1 Year from Relevant date	5 years from Relevant date.
What has to Pay :	Amount specified in the notice.	~~Duty~~ Amount specified in the notice + Intt u/s 11 AA + (Penalty = the Duty specified in the notice)
Demand order :	6 months from the date of notice.	1 yr from the date of notice.

Other Explanations : The person to whom SCN is serviced may before the issue of SCN to him shall pay on the basis of (i) his own ascertainment of duty (ii) Duty ascertain by CEO (like audit team) Duty + Intt u/s 11AA. and after payment shall inform the CEO of such payment in writing so that he will not serve any notice but if the duty paid is less than the duty assessed by CEO then he can serve the notice 1 yr from the date of receipt of such Information for the remaining duty. u/s (11(A)(3))

u/s 11A(1), 11A(3), 11A(4)

→ If a SCN is issued then in future if the same grounds are there then CEO can serve a statement instead of SCN again. Statement shall be deemed as SCN. ~~SCN which is issued should be~~

→ Time period of service of Notice exclude the stay order given by a Court or tribunal. (1 yr or 5 yr)

→ If the department is not able to prove the reasons of mala fide case then the SCN issued U/S 11 A (4) shall be valid for 1 year. It is assume that the SCN is served u/s 11 A (1)

→ After giving an opportunity of being heard Demand order is issued which is not more than the amount specified in the notice.

→ If there is any modification in the DO (Demand order) by the court or tribunal then intt and penalties shall also be modified accordingly.

→ If there is increase in the amount of duty of excise by the court or tribunal the time period of Intt and penalty payable shall be counted from the date of such order in respect of such increased amount.

→ It is not necessary that the amount of Intt is specified separately in the SCN.

→ Inserted by FA 2015.

- If Intt is not ~~payable~~ paid by the assessee the provision of sub-sections (1) to (14) of this Section shall apply mutatis mutandis. Relevant date for SCN is the date of payment of duty to which such intt related. Intt may be part paid or erroneously refunded.
- This section provisions will not apply to a case where assessee declares the duty payable but not paid by him or short paid by him in the periodic returns filed by him. In these case recovery can be made in the manner as prescribed.

★ Relevant Date (for the purpose of 11 AC & 11A)

→ Refund includes Rebate of ED on excisable goods exported out of India or on Excisable materials used in the manufacture of goods which are exported out of India.

→ Relevant date

- In the case of Excisable goods on which duty of Excise has ~~not~~ not been levied or paid or has been short levied or short paid
  - If No periodical Return has been filed : the last date on which such return is required to be filed.
  - the Return has been filed : the date on which such return is filed.
- In any other case : the date on which ~~duty~~ duty of Excise is required to be paid under this Act or the rules made thereunder
- In case of provisional duty Assessed : the date of adjustment of duty after the final assessments
- In case of Erroneous Refund : the date of such refund
- In the case where only Intt is to be recoved : the date of payment of duty to which such Intt relates.

Sec 11 AA : Interest on Delayed payment of Duty.

→ The person who is liable to pay duty shall be liable to pay Intt whether duty is payable voluntarily or after the Demand order is given. ~~So~~ Intt rate should be fixed between 10%, to 36% p.a. It is fixed by CG by notification in ~~OG~~ Official Gazette. Now effective Rate is 18% p.a.

→ Intt from the due date of payment to the actual payment date. Due date is excluded from the time period. Actual payment date is included.

→ When the assessee go in appeal against the order of CEO then if he win then no duty is payable means no Intt is payable but if he lost then duty & intt both are payable. Intt shall be payable from due date not from the date of order of ~~ct~~ court.

→ No Intt shall be payable if the duty becomes payable because of an issue of an order, Instruction or Direction by CBEC U/s 37 B & such duty is paid by assessee within 45 days of such issue & without reserving any right to appeal aganist it at any stage.

Sec 11AC : Penalty for short levy or non levy of duty.

Bonafide Case

→ Penalty not exceeding 10% of the duty or 5000 ₹ whichever is highest

→ Payment of duty & Intt before Issue of SCN or within 30 days of Issue of SCN
No Penalty.

→ Duty & Intt along with penalty paid within 30 days of DO
Penalty = 25% of the penalty Imposed.

Mala-fide Case

→ Penalty equal to duty

→ Duty demanded in SCN along with intt & penalty is paid within 30 days of communication of SCN
Penalty = 15% of the duty demanded

→ Duty + Intt + Penalty paid within 30 days of communication of order
Penalty = 25% of the duty.

[In both the cases penalty should also be paid within the stipulated time]

Appeal Modified/Increase

→ where any duty is modified in an appeal or Tribunal or court then the penalty shall also be modified accordingly

→ where the penalty is increased by the court or Tribunal then if the assessee paid that under conditions then reduced penalty shall be counted from the date of order of the appeal or tribunal or court.

Sec 11 Recovery of Sums due to Government

In respect of ED & Intt & penalty that is payable to CG in respect of this Act/Rules then the officer empowered by CBEC can

① Adjust the refund of ED.
② Adjust the pre-deposit Refund.
③ He can require PO (custom) & other CEO (Sr. Tax) to make similar deductions from perspective refund.
↓
Adjustment of Money owing to such person.

→ Attachment & Sale of Excisable Goods
→ Only Excisable Goods can be attached.

Certification Procedings
→ Under this certificate specifying the amount of arrear is prepared & sent to District collector. Recovery is then done by him. He can attach & auction things & recover the amount.

→ Succession in Business : If the predecessor aganist whom ED is recoverable at the time of succession then the duty can be recover from successor but only of the P&M & other things sold by him to the successor not the things which he himself purchased. It can be attach & sold with the prior approval of Principal CCE/CCE. Land & Buildings transfer cannot be attach. Succession of Business is different from purchase of asset.

Garnishee Proceedings.

→ The CEO may by a Notice in writing require any other person from whom money is due to such person or may become due to such person to pay to the credit of CG within the time Specified in the Notice. The amount should not be more then the amount due.

→ Every person to whom such notice is issued shall comply with the notice & if ~~such~~ person is Bank, Post office or an Insurer then he will not demand for the pass book or other books to be produce before payment is made.

→ If the person to whom notice is issued fails to do so then he shall be ~~deep~~ deemed to be ~~pe~~ the person against whom such amount specified in notice is due & will apply all the consequences of the Act.

Sec 11 : E : Liability under Act to be first charge.

Excise have the first charge notwithstanding ~~as~~ anything to the contrary contained in any Central or State Act any amount of Duty, penalty & Intt or any other sum. But before Excise these have to the charge then Excise have the charge.

1. Sec ~~529~~ 529A of the Companies Act, 1956
2. Recovery of Debts due to Banks & Financial Institution
3. Securitization & Reconstruction of Financial Assests & the Enforcement of Security Interest Act, 2002

Sec 11 D : Duties of Excise Collected from Buyer to be deposited with the CG.

→ Every person does not collect any amount in excess of what is ED statutory payable by him to CG

Every person does not collect any amount when ED is not payable by ~~to~~ him to CG [Nil Rated Goods or wholly exempt]

But if he collects then deposit it to the CG whether ED payable or not.

→ If the amount is not paid by him to CG then CEO may serve notice to the person and after considering representation pass DO.

→ From the money received from the person against the DO can be adjusted against the actual ED that is payable and the surplus ~~is~~ is to be refunded to the person who has borne the incidence or credited to Consumer Welfare Fund.

Refund Application within 6 months from the dt of Public Notice.

Sec 11 DD : Interest on the amount collected in Excess of duty.

Intt @ 15% p.a

Legal text of Sec 11 DA is ~~so~~ same as Sec 11 AA.

Sec 11 C : Power not to recover ED not levied or short Paid as a result of General Practice

→ Notwithstanding anything contained in this Act, if the CG is satisfied –
(a) that a practice is/was generally prevalent regarding levy of duty of excise on any goods when such goods were/are liable to
(a) Higher rate then now what is levied
(b) to a duty of Excise when not levied
then CG by notification direct that that amount shall not be required to be paid because of said practice.

→ Where any notification ~~u/s~~ is issued by CG then the persons who paid higher ED or paid ED when others don't get the refund in a accordance with the provisions of Sec 11 B
Provided that the persons claiming refund of duty shall make an application to the AC/DC within 6 months from the date of issue of said notification.

Sec 37-C Service of decisions, orders, summons etc.

★ Any decision or order passed or any summons or notices issued under this act or Rules shall be served

① by tendering (Hand delivery)
→ ~~by~~ sending it by
↳ Registered POST
↳ Speed Post
↳ by courier
Dt of Sr = dt when it is delivered
Dt of Sr = dt of Hand delivery.

② If it cannot be served acc: to ① then by affixing a copy to some conspicuous part of the factory or W/H or other place of business or place of residence.
→ Date of Service = Date of affixation

③ If it cannot be done by ① & ② then it can ~~be deemed to have been served on the date on which such notice etc to~~ done by affixing a copy on the notice board of the officer or authority who passed such notice or summon, decision, order.
→ Date of Sr = Dt of affixation

→ Any defect in service will render entire procedings defective & invalid.

Refund

Sec 11 B : Claim for Refund of Duty

→ Refund of ED & Intt if any paid on such duty.
- Claim by → Any Person through application Claim to → AC/DC
- Time → 1 yr from Relevant Date
- Form → Form R

→ Time limit will not be applicable in case of $\boxed{\text{duty paid under protest.}}$
↳ 1 yr from Relevant date wale

→ If AC/DC is satisfied that it is refundable then order can be make & the amount shall be credited to Consumer Welfare Fund (CWF)

→ It shall not be credited to CWF but given to applicant subject to Doctrine of Unjust Enrichment. Cases where Doctrine is inapplicable & Refund given to applicant
- Refund on A/c of
  - Excisable goods exported out of India OR
  - Excisable ~~goods~~ materials used in Mfr of goods which are exported.
- Refund of CCR
- PLA balance Refund
- Mfr – ED burden not pass on
- Buyer – ED burden not pass on
- Other Notified persons – ED burden not pass on.

→ Relevant date

Situation	R/D
• Rebate on Export	Dt of Export
• Mfr avail Compounded Levy Scheme	Dt of such Reduction
• Goods Exempted u/order 5A(2)	Dt of issue of such order
• Duty is provisionally paid	Dt of final Assessement
• In any other case	
→ In case of Mfr	Dt of Payment of duty
→ Other than Mfr	Dt of purchase of Goods by such person.
• Refund consequent to order/judgement	Dt of order/judgement

→ Refund includes Rebate of duty of Excise on Excisable Goods Exported out of India or on Excisable materials used in the Mfr of Goods exported out of India.

→ Cases of Unjust Enrichment
- Goods clear as sample — Duty burden not pass on.
- Goods sold but later on credit note issued — do

↳ Duty burden can be pass through indirect means like captive consumption of Goods ~~& capital Goods~~ & captive consumption of Capital Goods.

Sec 11-BB : Intt on Delayed Refund.

→ Intt shall be payable at notified rate [6% current] to the applicant to whom refund should be given within 3 months from the date of receipt of application.

→ It is from the date of expiry of 3 months to the date of refund of such duty.

→ Explanation:

where any order of refund is made by appeals, Tri, HC or SC against the order of AC/DC u/s 11-B(2), then the order by them shall be deemed to be an order passed u/s 11-B(2) for the purpose of this section.

→ No specific application or request is required for the Intt on delayed refund.

→ If there is inordinate delay in giving the Intt on delayed refund then assessee is entitle to Intt on Intt on delayed Refund.

Sec 12-A : Price of goods to indicate amt of Duty paid.

→ ED which is a part of sale price of goods shall be prominently indicated in all the documents relating to assessment, Sales Invoice & other like documents.

→ If ED is shown separtaly ~~...~~ it doesnot mean that ED burden has passed like in sample cases it is shown separtely on invoice but " " not "

Sec 12-B Presumption that incidence of duty has been passed on the buyer.

→ Every person who paid the duty deemed to have passed the burden to the buyer of the taxes ~~...~~

→ However such person can prove the contrary.

Sec 12-C Consumer Welfare fund.

→ Established by CG.

→ There shall be credited to the fund,

★ Refunds of — ED, Custom, ST

★ any Income from Investment of the amt Cr in the fund

★ any other monies received by the CG for the purpose of this Fund.

Sec 12-D Utilization of the Fund

→ Money credited to the fund shall be utilized by the CG for the welfare of the consumers in accordance with the rules.

→ Proper Records ~~...~~ & separate A/c should be maintain.

~~Concept of~~

"Concept of Duty Paid under Protest" Proviso to Sec 11-B

→ If there is a conflict b/w the deptt & the assessee regarding the rate or valuation of the final product then in order to save himself from further SCN ~~to complete to~~ assessee pay the duty acc to deptt. ~~but on the case only if a deptt wins in the appeal he~~ under the protest that he is not conformity with the rate or valuation of the Deptt but he is paying so much in order to save the customers.

Further in Appeals if,

Deptt wins : Protest comes to an end. No further duty is ~~payable~~ payable as duty already paid.

Assessee wins : Refund can be claim.
No time limitation for duty paid under protest.

→ Refund claim should be done by assessee.