

Excise

- 1 of 1944.
60 of 1976.
1 of 2010.
- 45 **59.** In section 4A of the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), in sub-section (1), for the words and figures "Standards of Weights and Measures Act, 1976", the words and figures "Legal Metrology Act, 2009" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of March, 2011.
- Amendment of section 4A.
- 60.** For section 11A of the Central Excise Act, the following section shall be substituted, namely:—
- Substitution of new section for section 11A.
- 50 '11A. (1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or 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,—
- Recovery of duties not paid or short-levied or short-paid or erroneously refunded.
- 55 (a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;
- (b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,—
- (i) his own ascertainment of such duty; or

(ii) duty ascertained by the Central Excise Officer,

the amount of duty along with interest payable thereon under section 11AA.

(2) The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable 5 under the provisions of this Act or the rules made thereunder.

(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year 10 shall be computed from the date of receipt of information under sub-section (2).

(4) 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

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(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,

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the 20 relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

(5) Where, during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or short-levied or short-paid or erroneously refunded for the reason 25 mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per 30 cent. of such duty.

(6) Any person chargeable with duty under sub-section (5), may, before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon under section 11AA and penalty equal to one per cent. of such duty per month to be calculated from the month following the month in which such duty was payable, but not exceeding a maximum of 35 twenty-five per cent. of the duty, and inform the Central Excise Officer of such payment in writing.

(7) The Central Excise Officer, on receipt of information under sub-section (6) shall—

(i) not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise Officer that the amount of duty, interest and penalty as provided under sub-section (6) has been fully paid; 40

(ii) proceed for recovery of such amount if found to be short-paid in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of such information.

(8) In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) or sub-section (5), the period during which there was any stay by an 45 order of the court or tribunal in respect of payment of such duty shall be excluded.

(9) Where any appellate authority or tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful mis-statement or 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 has not been established against the 50 person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (a) of sub-section (1).

(10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount 55

of duty of excise due from such person not being in excess of the amount specified in the notice.

(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)—

(a) within six months from the date of notice in respect of cases falling under sub-section (1);

5 (b) within one year from the date of notice in respect of cases falling under sub-section (4) or sub-section (5).

(12) Where the appellate authority modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified.

10 (13) Where the amount as modified by the appellate authority is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority in respect of such increased amount.

15 (14) Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

Explanation.— For the purposes of this section and section 11AC,—

(a) “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

20 (b) “relevant date” means,—

(i) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be filed under this Act and the rules made thereunder;

25 (ii) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed on due date, the date on which such return has been filed;

(iii) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;

30 (iv) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;

35 (c) “specified records” means records including computerised records maintained by the person chargeable with the duty in accordance with any law for the time being in force.’

61. For sections 11AA and 11AB of the Central Excise Act, the following section shall be substituted, namely:—

Substitution of new section for sections 11AA and 11AB.

40 “11AA. (1) Notwithstanding anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section (2), whether such payment is made voluntarily or after determination of the amount of duty under section 11A.

Interest on delayed payment of duty.

45 (2) Interest, at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid in terms of section 11A after the due date by the person liable to pay duty and such interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 37B; and

50 (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue

of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.”.

Substitution of new section for section 11AC. Penalty for short-levy or non-levy of duty in certain cases.

62. For section 11AC of the Central Excise Act, the following section shall be substituted, namely:—

“11AC. (1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows:— 5

(a) where any duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or 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 as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined; 10

(b) where details of any transaction available in the specified records, reveal that any duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded as referred to in sub-section (5) of section 11A, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent. of the duty so determined; 15

(c) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (b) is paid within thirty days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined; 20

(d) where the appellate authority modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of section 11A, then, the amount of penalties and interest payable shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay such amount of penalty or interest so modified. 25

Explanation.—For the removal of doubts, it is hereby declared that in a case where a notice has been served under sub-section (4) of section 11A and subsequent to issue of such notice, the Central Excise Officer is of the opinion that the transactions in respect of which notice was issued have been recorded in specified records and the case falls under sub-section (5), penalty equal to fifty per cent. of the duty shall be leviable. 30

(2) Where the amount as modified by the appellate authority is more than the amount determined under sub-section (10) of section 11A by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority in respect of such increased amount.”. 35

Insertion of new section 11E.

63. After section 11DDA of the Central Excise Act, the following section shall be inserted, namely:—

Liability under Act to be first charge.

“11E. Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.”. 40 1 of 1956. 51 of 1993. 54 of 2002.

Amendment of section 12.

64. In section 12 of the Central Excise Act, after the word and figure “section 3”, the words, figure and letter “and section 3A” shall be inserted and shall be deemed to have been inserted with effect from the 10th day of May, 2008: 45

Provided that the provisions of the Customs Act, 1962 relating to offences and penalties shall not apply for the matters covered by section 3A for the period beginning on the 10th day of May, 2008 and ending immediately before the day on which the Finance Bill, 2011 receives the assent of the President. 52 of 1962.

Insertion of new section 12F.

65. After section 12E of the Central Excise Act, the following section shall be inserted, namely:—

Power of search and seizure.

“12F. (1) Where the Joint Commissioner of Central Excise or Additional Commissioner of Central Excise has reasons to believe that any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any Central Excise Officer to search and seize or may himself search and seize such documents or books or things. 50

(2) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure, shall, so far as may be, apply to search and seizure under this section as they apply to search and seizure 55 2 of 1974.

under that Code.”.

66. After section 35Q of the Central Excise Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of October, 2010, namely:—

Insertion of new section 35R.

5 “35R. (1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.

Appeal not to be filed in certain cases.

10 (2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

15 (3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

20 (4) The Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

25 (5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.”.

67. In section 38 of the Central Excise Act, in sub-section (2), after the words, brackets, figures and letter “sub-section (1) of section 5A”, the word, figure and letter “, section 5B” shall be inserted.

Amendment of section 38.

1 of 1944. 30 **68.** (1) In the CENVAT Credit Rules, 2004, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944, as published in the Official Gazette *vide* notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 600(E), dated the 10th September, 2004, rule 3 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Eighth Schedule, on and from the date specified in column (3) of that Schedule, against the rule specified in column (1) of that Schedule.

Amendment of rule 3 of CENVAT Credit Rules, 2004.

40 (2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, on and from the 18th day of April, 2006, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendments made by sub-section (1) had been in force at all material times.

1 of 1944. (3) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944, retrospectively, at all material times.

45 **69.** (1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 679(E), dated the 25th August, 2003, number G.S.R. 60(E), dated the 21st January, 2004 and number G.S.R. 419(E), dated the 9th July, 2004 (hereinafter referred to as the said notifications), issued under sub-section (1) of section 5A of the Central Excise Act, 1944, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Ninth Schedule, on and from the corresponding date specified in column (4) of that Schedule, against each of the notifications specified in column (2) of that Schedule.

1 of 1944. Amendment of notifications issued under section 5A of Central Excise Act.

55 (2) Where a manufacturer avails the benefit of exemption provided under the said notifications as amended by sub-section (1), he shall, within a period of six months from the date on which the Finance Bill, 2011 receives the assent of the President, provide details relating to the investments made in terms of condition (B) specified in notifications number G.S.R. 679(E), dated the 25th August, 2003 and number G.S.R. 60(E), dated the 21st January, 2004, as subsequently amended by number G.S.R. 419(E), dated the 9th July, 2004, to the Investment Appraisal Committee.

(3) The Investment Appraisal Committee shall, on receipt of details under sub-section (2) and on being satisfied that the investment, as specified in condition (B) referred to in sub-section (2), has been made, issue the certificate in accordance with condition (E) specified in the said notifications as

soon as possible but not later than the 31st day of December, 2012.

(4) Any amount lying or remaining unutilised in the escrow account [referred to in notification number G.S.R.419(E), dated the 9th July, 2004] on or after the 31st day of December, 2012 shall stand forfeited and be appropriated to the account of the Central Government.

(5) Recovery of any duty along with applicable interest which has not been paid but was liable to be paid as if the benefits under the said notifications had not been made available on account of non-issue of certificate by the Investment Appraisal Committee or on any other account, shall be made within a period of one year from the 31st day of December, 2012 and the provisions of the Central Excise Act, 1944 shall apply for such recovery. 5
1 of 1944.

(6) No suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or any other authority for any action taken or anything done or omitted to be done, in respect of the said notifications and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the amendments made in the said notifications had been in force at all material times. 10

(7) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the said notifications with retrospective effect as if the Central Government had the power to amend the said notifications under sub-section (1) of section 5A of the Central Excise Act, 1944, retrospectively, at all material times. 15
1 of 1944.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the said notifications had not been amended retrospectively. 20

Central Excise Tariff

Amendment of First Schedule and Third Schedule.	70. In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act),—	5 of 1986.
	(a) the First Schedule shall,—	
	(i) be amended in the manner specified in the Tenth Schedule;	25
	(ii) also be amended in the manner specified in the Eleventh Schedule with effect from the 1st day of January, 2012;	
	(b) the Third Schedule shall be amended in the manner specified in the Twelfth Schedule.	