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PUNISHMENT FOR NON PAYMENT OF DUTY WITHIN DUE DATE – LEGALITY THEREOF

Author: G. Natarajan, S. Jaikumar

As against the earlier concept of payment of duty upon each removal of goods, facility of fortnightly payment of duty was introduced, which was replaced by a further liberalized concept of monthly payment of duty. When the facility of fortnightly payment of duty was in vogue, any specified default thereof would entail punishment in the form of withdrawal of the facility for two months. This has given way for lot of controversies, viz., whether cenvat credit can be used during the forfeiture period or not, whether show cause notice has to be issued before forfeiting the facility or not, whether the forfeiture period of two months is mandatory or discretionary, etc. In a further measure of simplification, when monthly payment facility was introduced with effect from 01.04.2003, the penal provisions for any defaults thereof, have also been enacted. As such, any failure to pay the duty on monthly basis, as specified in the Rules, will invite interest at the rate of two percent per month or Rs.1000 per day, whichever is higher, for the period starting from the first day after the due date till the date of actual payment of duty amount, subject to a condition that this penal amount shall not exceed the duty amount involved. Though the avowed objective of this simplification has to be welcomed, the legality of this penal provision is highly doubtful.

Central Excise Rules 2002 has been enacted by the government, by virtue of the powers granted under section 37 of the Central Excise Act, 1944, which gives rule making power to the executive. This Section details the matters, in respect of which the central government can enact rules. Power to make rules with regard to interest is contained only in clause (ibb) and clause (xvic) of sub-section 2 of Section 37, which deals with payment of interest in cases of finalisation of provisional assessment and in respect of variance of credit, respectively. Nowhere in this section, the government is granted the power to charge any interest from the assesses. With regard to the penal provisions, the provisions are contained in subsections (3), (4) and (5) of the said section. Invoking these powers, Rule 27, 25 and 26 of the Central Excise Rules, 2002 have been enacted, respectively.

The provisions relating to charging of interest are contained in 11 AA and 11 AB and no interest can be demanded over and above what has been prescribed for therein.

From the above it could be observed that the interest and penal provisions contained in Rule 8 of the Central Excise Rules, 2002 is without the authority of law.

Another round of litigations and another retrospective amendment is in the offing?
