

Bimal Jain

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Dear Professional Colleague,

Rate of interest on delayed payment of duty as applicable during the impugned period – Issues therein

We are sharing with you an important judgement of the Hon'ble CESTAT, Chennai in the case of *Jeevan Diesels & Electricals Ltd. Vs. Commissioner of Central Excise, Pondichery [2016 (68) taxmann.com 325 Chennai – CESTAT]* on the following issues:

Issues

1. Whether applicable rate of interest for delayed payment under Section 11AA of the Central Excise Act, 1944 (“**the Excise Act**”) is the one prevalent during period(s) of delay?
2. Whether it is justified to levy penalty under Section 11AC of the Excise Act, when the Returns filed by the Assessee clearly indicated the duty amount payable but not paid?

Facts & Background:

Jeevan Diesels & Electricals Ltd. (“**the Appellant**”), 100% EOU, cleared the goods to their DTA unit in the month of January, April, May and August, 2011, without payment of duty. Accordingly, a Show Cause Notice dated January 20, 2012, was issued to the Appellant demanding duty of Rs. 1,12,25,765/- along with interest and penalty under Section 11AC of the Excise Act read with Rule 25 of Central Excise Rules, 2002 (“**the Excise Rules**”). Entire amount of duty was paid on various dates and the last instalment was paid on April 15, 2012, i.e. before passing of the Adjudication Order. Thereafter, the Adjudicating Authority appropriated entire duty amount paid by the Appellant and adjusted towards the demand. Further, interest of Rs.17,35,425/- was demanded and an amount of Rs. 15,47,788/- paid by the Appellant was appropriated. Furthermore, equivalent penalty under Section 11AC of the Excise Act read with Rule 25 of the Excise Rules was confirmed.

Appellant's contention:

- Rate of interest was enhanced from 13% to 18% from April 1, 2011. Since duty pertained to January 2011, rate prevalent at that time, viz., 13% should be applied, even if delay extended beyond April 1, 2011.
- There is no suppression of fact for which penalty under Section 11AC of the Excise Act can be imposed as the Appellant has been regularly filling the ER -2 Return and properly mentioned the amount of duty payable. Further, that entire amount of duty was paid before passing of the Adjudication Order;

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Revenue's contention:

- As the Appellant did not pay the amount of duty before issuance of the SCN, therefore penalty has been rightly imposed on them;
- As rate of interest was increased from 13% to 18% from April, 2011, interest would be levied at 13% up to March 31, 2011 and at 18% thereafter.

Held:

The Hon'ble CESTAT, Chennai held as under:

- The Adjudicating Authority had rightly computed the interest amount from the due date till the date of payment in respect of demand for the month of January, 2011, by working out interest at 13% up to March 31, 2011 and thereafter, at increased rate of interest of 18%;
- The Appellant being an EOU regularly filed ER-2 returns and the Department came to know about non-payment of duty only from said ER-2 returns, as amount was indicated in column 'duty payable' but column 'duty paid' was left blank. Hence, there was no suppression/intention to evade/mensrea and, therefore, penalty under Section 11AC of the Excise Act was set aside. But, for belated payment of duty, penalty of Rs. 5 lakhs was imposed under Rule 25 of the Excise Rules.

Thus the Appeal was partly allowed in favour of the Appellant.

Our Comments:

It would not be out of place here to mention that the Union Budget, 2016 has rationalised interest rates on delayed payment of duty/taxes across all Indirect taxes viz. Service tax, Excise and Customs and made it uniform at 15% per annum, except in case of Service tax collected but not deposited with the Central Government, in which case, the rate of interest will be 24% per annum from the date on which the Service tax payment becomes due:

Tax/Duty	Rate of Interest on delayed payment (Per Annum)	Notification No.	Effective from

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Service tax (Section 75 of the Finance Act, 1994)	a. Any amount collected as Service tax but not deposited	24%	Notification No. 13/2016-ST dated March 1, 2016	Enactment of Finance Bill, 2016
	b. Others	15%		
Excise Duty (Section 11AA of the Excise Act)	15%		Notification No. 15/2016-CE(NT) dated March 1, 2016	April 1, 2016
Customs (Section 28AA of the Customs Act, 1962)	15%		Notification No. 33/2016-Cus(NT) dated March 1, 2016	April 1, 2016

Hence, inference of the above judgment can also be applied to compute rate of interest post revision made after enactment of the Finance Bill, 2016 for the Service tax purpose. In other words, applicable rate of interest for belated payment of duty is that prevalent during period(s) of delay irrespective of the period for which there has been delay in payment of duty. Thus, old rates would be applicable till March 31, 2016 under the Excise and Customs and prevalent rates under Service tax till enactment of the Finance Bill, 2016.

This concept has been discussed by Mr. Bimal Jain with specific example(s) for better clarity in his video presentation titled “Rate of interest on delayed payment & period of limitation for non-fraud cases under ST, Excise & Customs”. Apparently, the video also captures the issue of increase in period of limitation for non-fraud cases under Service Tax, Excise and Customs, with analyses of its applicability for issuing SCNs for cases relating to past period. Both the issues are generic yet crucial, and are likely to affect every realm of the Trade & Industry.

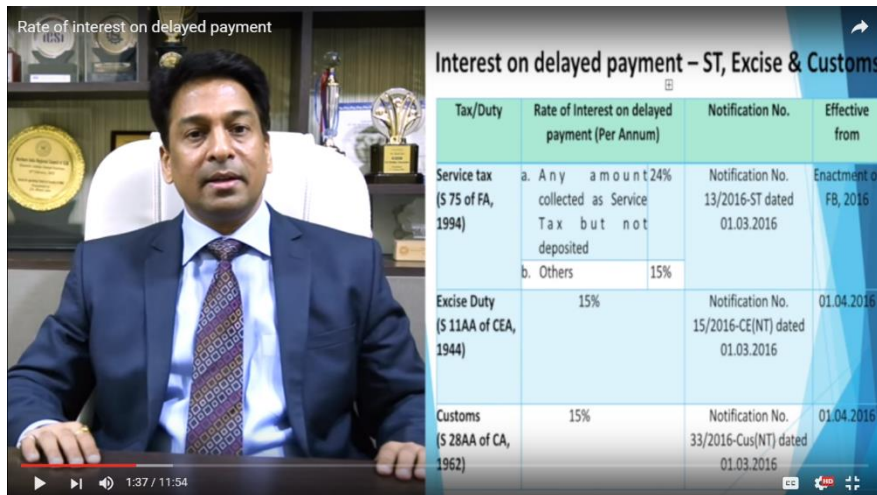
You may watch the video presentation by clicking on the link below:

<https://www.youtube.com/watch?v=pWBMo4v54cc>

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Tax/Duty	Rate of Interest on delayed payment (Per Annum)	Notification No.	Effective from
Service tax (\$ 75 of FA, 1994)	a. Any amount collected as Service Tax but not deposited	Notification No. 13/2016-ST dated 01.03.2016	Enactment of FB, 2016
	b. Others		
Excise Duty (\$ 11AA of CEA, 1944)	15%	Notification No. 15/2016-CE(NT) dated 01.03.2016	01.04.2016
Customs (\$ 28AA of CA, 1962)	15%	Notification No. 33/2016-Cus(NT) dated 01.03.2016	01.04.2016

Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards

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