

Circular No. 942/03/2011-CX

**Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)**

New Delhi, dated the 14th March, 2011.

Subject: Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization-reg.

Attention is invited to the Board's Circular No. 897/17/2009-CX dated 03.09.09, wherein it was clarified that in light of clear and unambiguous provisions of Rule 14 of the CENVAT Credit Rules, 2004, the interest shall be recoverable when credit has been wrongly "taken", even if it has not been utilized.

2. References have been received to re-examine the issue in light of judgement of P&H High Court in the case of Ind-Swift Labs. V/s UOI [2009(240)ELT328(P&H)]. The said judgement of P&H High Court held that under provisions of Rule 14 of CENVAT Credit Rules, 2004, interest cannot be claimed from the date of wrong availment of credit. It is required to be paid from the date it is wrongly utilized.

3. The matter has been examined. It is observed that the issue has now been conclusively settled by the Apex Court in the departmental appeal against the above mentioned judgement of P&H High Court. The Apex Court vide its judgement dated 21.02.11 in Civil Appeal No. 1976 of 2011 has set aside the aforesaid order of Hon'ble High Court. The Apex Court has ruled that "If the aforesaid provision is read as a whole we find no reason to read the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances such credit becomes recoverable along with interest." In effect, therefore, the view taken by the Board in circular dated 03.09.09 has now been endorsed by the Apex Court.

4. Immediate action may be taken to safeguard revenue in light of the judgement of Apex Court.

5. Trade & Industry as well as field formations may be suitably informed.

6. Receipt of this circular may kindly be acknowledged.

7. Hindi version will follow.

F.No.267/83/2009-CX8 (Pt.I)

Yours faithfully,
(Amish Kumar Gupta)
OSD (CX-8)