

Section 11 A of the Central Excise Act, is a demanding provision for any short levy/non levy, short payment /non payment or recovery of erroneous refund. Section 11 A has two limbs, whereby, the demand/recovery is either under a normal period of limitation (1 year) or under an extended period of limitation (5 years). While in normal circumstances, the demand/recovery is within 1 year from the date the duty ought to have been paid/erroneously refunded, in exceptional circumstances where the duty is not paid/erroneously refunded on account of suppression of facts, willful misstatement, fraud or collusion, the demand is made under proviso to Section 11A of the Act, the time limit is extended up to five years from the date of such non payment/ erroneous refund. Further, when the demand is made and confirmed under proviso to Section 11 A of the Act, a mandatory penalty equal to the duty demanded is also imposed under Section 11 AC of the Act.

From the above, it could be seen that, the law provides for the recovery of duty under the extended time limit, if there is an element of *mens-rea*. While accepting the reason behind the imposition of a mandatory penalty equal to the duty under Section 11 AC of the Act, when there is an element of *mens rea*, namely, suppression of facts, willful misstatement, fraud or collusion, I am not able to subscribe as why such "*mens rea*" should be a factor in discriminating the demand of duty between one year and five years. In other words, the tax being an indirect tax, it is the same for a person who had not paid and collected it at the time of manufacture and clearance, notwithstanding his intentions. Be it with "*mens rea*" or ignorance, the incidence and the impact thereupon remains *status quo*.

To me this is a gross discrimination and Section 11 A should have only a singular (either one year or five years or any number of years) without discrimination. To deal with the evaders, there is a provision under Section 11 AC of the Act, which can be increased to five times (or as many times as it deems fit) of the duty evaded, but there shall not be any discrimination in the parent demanding provision. Hope better sense prevails in GST.