

## DEMI-DEMONS

by

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Section 11A of the Central Excise Act, is the demanding provision for any short-levy or non-levy, short payment / non-payment or recovery of erroneous refund. Hitherto, Section 11A has two limbs, whereby, the demand / recovery is either under normal period of limitation which is one year or under exceptional circumstances, whereby, the period of limitation is five years. While in normal circumstances, the demand / recovery is within one year from the date of 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 in terms of proviso to Section 11A of the Act, where the time limit is five years from the date of such non-payment / erroneous refund.

In this current Budget, vide Clause 6 of the Finance Bill, the age old Section 11A of the Central Excise Act has been proposed to be substituted by a new avatar, whereby, a new third limb has been attached, to make this Section, a trident.

By the present amendment, a new Section 11A (5) has been introduced, which reads as under:-

*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 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 percent of such duty.*

There is also an interesting sub section (6) to 11A in the proposed amendment, which reads as under:-

*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 percent 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 twenty-five percent of the duty and inform the Central Excise Officer of such payment in writing.*

The term "specified records" has also been explained under the proposed new Section 11A to mean records including computerized records maintained by the person chargeable with the duty in accordance with any law for the time being in force.

Welcoming the above amendment, I am left with the following probing questions;

- What is the sanctity to prescribe such a half-penalty for an evader who has evaded payment of central excise duty on account of fraud / collusion / willful misstatement / suppression of facts, just for the reason that he had maintained the so-called "specified records" *supra*.
- As the "specified records" include computerized records, will it not encourage generation of a computerized document, after being trapped, whereby a 50% reduction in mandatory penalty is given in a platter?
- What are the "specified records" which are meant in the said sub-section which are to be maintained "in accordance with any law for the time being in force?"

Last, but not the least, why at all there shall be any discrimination under Section 11A? In other words, why Section 11A should not have only a singular time-limit, be it either a one year or five years or any number of years, as the case may be, without any discrimination?

When we have a stringent mandatory penal provision under Section 11AC (along with a lethal interest provision, which is presently escalated to 18% from 13%) to deal with the evaders, why do we need more and more limbs to this Section, at the first place, that too, when we are moving towards GST.

### **Before Parting ...**

To me, the most interesting amendment proposed to Section 11A is sub-section (11) of Section 11A, whereby, the Central Excise Officer is required to adjudicate Show Cause Notices, within six months in respect of normal cases and within one year in respect of cases invoking larger period of limitation, from the date of the show cause notice. I am very sure that this amendment is going to make our Bapus to work for their meal!