

Interest payable on differential Excise Duty under supplementary invoices: SC

Supreme Court has overruled the decision of High Court in case of Commissioner of Central Excise, Aurangabad vs. M/s Rucha Engineering Pvt. Ltd **AIT-2007-461-HC** and has ruled in case of Commissioner of Central Excise Pune Versus SKF India Ltd **AIT-2009-268-SC** that the payment of differential duty thus clearly came under sub-section (2B) of section 11A and attracted levy of interest under section 11AB of the Act.

SC was called upon to consider the conditions that would attract the levy of interest on excise duty not levied or short levied, not paid or short paid or erroneously refunded as provided under sections 11A, 11AA and 11AB of the Act.

Following the revision the assessee demanded from its customers the balance of the higher prices and issued to them supplementary invoices. At the same time it also paid the differential duty on the goods sold earlier.

SC ruled that the payment of differential duty by the assessee at the time of issuance of supplementary invoices to the customers demanding the balance of the revised prices clearly falls under the provision of sub-section (2B) of section 11A of the Act.

SC was unable to subscribe to the view taken by the High Court. SC held that it is to be noted that the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty. The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc.