

DEMAND AND RECOVERY				BY CA MANOJ BATRA (FACULTY OF CA FINAL & IPC INDIRECT TAX				
Before SCN ↓		Assessee			Relevant date		(A) 11AA-Int 18% p.a	(A) PENALTY – 11AC OTHER THAN FRAUD-
		FURNISH RETURN ↓	Self assessed duty shown in Return, but not paid	Direct Recovery u/s 11	(1) Return Furnished- date of furnishing Return (2) Return not furnished- Last date of Return (3) Erroneous Refund- Date of Refund (4) Prov Assessment- Date of adjustment of duty after FA (5) Int. to be recovered- date of payment of duty to which int relates		After due date till date of payment No int.	(10% of Duty or 5000) w.i. Higher
Assessee		(A) CEO	→	SCN SERVE	→	NPL- 1yr	(i) Duty payable due to circular (ii) Full paid within 45 days of circular (iii) No appeal	No penalty if (Duty + int) Paid Before SCN or within 30 days of SCN
If full Paid + Inform CEO in writing No SCN, Penalty	If Part Paid + Inform CEO in writing SCN served within 1 yr from date of intimation		Duty Int Penalty	Mode- 37 C (i) Tendering (ii) Regd Post/speed Post/Courier (iii) Paste on Factory/Res./ Notice Board	Statement subsequent to SCN- Deemed as SCN	EPL – 5 yr from Relevant date	Fraud SCN served – not proved – Treated as NPL- 1 yr demand can be made.	If DO passed (duty + int + Penalty) Paid in 30 days of Receipt of order Pay 25% of Penalty imposed
				Demand order Passed – Fraud- 1 year, other- 6 m Appeal- duty modified- int, penalty also modified Int. not mentioned separately- even then pay				Fraud Penalty = 100% of duty Captured trans. Between 8-4-11 to 14-5-15 = 50% of duty
		CEO	→	SCN SERVE				Note- (Duty + int + Penalty) Paid Within 30 days of SCN
	(B) Amt above than duty- Sec 11 D							Penalty =15% of duty demanded
	(1) Mfrer/Dealer – Pay (2) Nil/ 100% Exempt goods- if recovered in name of duty- pay			Not pay, not filed Appeal			Sec 11E- Pref of Payment	Note- (Duty + int + Penalty) Paid Within 30 days of SCN
	(C) 11DDA – Prov. Attachment 6 month + 2 year Pending SCN u/s 11A or 11D – Attach Property (Fraud / other than fraud			(D) Sec- 11 Recovery (1) from Amt payable to assessee (Refund) (2) Attach Goods and sale (3) Certificate action Note- Recovery from Sucessor of business- if bus sold Note- Garnishee proceeding – recovery from 3 RD Person whom sum due to Assessee- e.g – Bank/ Post office, Insurance Co., Debtor		→	First charge (1) 529A (2) RDBFI (3) SARFAESI	Penalty =25% of duty determined

Recovery of duty/tax – not levieor paid , short levied or paid or erroneously refunded	11A SCN 1 year- other than fraud 5 year- Fraud Demand order 6 m- other than fraud 1 year- Fraud	73 SCN 18 month- other than fraud 5 year- Fraud Demand order 6 m- other than fraud 1 year- Fraud	28 SCN 1 year- other than fraud 5 year- Fraud Demand order 6 m- other than fraud 1 year- Fraud												
Manner of service of Notice/order	37C - Tendering - Registered Post - Speed post or approved courier - Affixing at place of Business/residence/ Notice Board of Dept	83 37 C applicable to STax	153 - Tendering - Registered Post - Speed post or - Affixing at Notice Board of Dept												
Interest on delayed payment of duty	11AA 18% p.a After due date Till date of Payment	75 <table><tr><td></td><td>other</td><td>Value of service ≤ 60 L</td></tr><tr><td>First 6 m</td><td>18%</td><td>15%</td></tr><tr><td>Next 6 m</td><td>24%</td><td>21%</td></tr><tr><td>After 1 year</td><td>30%</td><td>27%</td></tr></table> After due date Till date of Payment		other	Value of service ≤ 60 L	First 6 m	18%	15%	Next 6 m	24%	21%	After 1 year	30%	27%	28AA 18% p.a 1 st day of next month in which duty ought to have been paid Till date of payment
	other	Value of service ≤ 60 L													
First 6 m	18%	15%													
Next 6 m	24%	21%													
After 1 year	30%	27%													
Penalty	11AC	76- other than Fraud – 10% of ST 78- Fraud													
	PENALTY – 11AC <table><tr><td>OTHER THAN FRAUD</td><td>Fraud</td></tr><tr><td>(10% of Duty or 5000) w.i. Higher 11AC(1)(a)</td><td>11AC(1)(c) Penalty = 100% of duty Captured trans. Between 8-4-11 to 14-5-15</td></tr></table>		OTHER THAN FRAUD	Fraud	(10% of Duty or 5000) w.i. Higher 11AC(1)(a)	11AC(1)(c) Penalty = 100% of duty Captured trans. Between 8-4-11 to 14-5-15									
OTHER THAN FRAUD	Fraud														
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			Penalty = 50% of duty	
	<u>11AC(1)(a) Proviso</u> No penalty if (Duty + int) Paid ✓ Before SCN or ✓ After 30 days of SCN & Proceeding deemed to be concluded	<u>11AC(1)(b)</u> If DO passed (duty + int + Penalty) Paid in 30 days of Receipt of order Pay 25% of Penalty imposed	<u>11AC(1)(d)</u> (Duty + int + Penalty) Paid Within 30 days of SCN Penalty =15% of duty demanded	<u>11AC(1)(e)</u> (Duty + int + Penalty) Paid in 30 days of Receipt of order Penalty =25% of duty determined
Provisional attachment to protect Revenue in certain cases	11DDA	73C		28BA
Recovery of sum due to Govt	11	87		142
First charge on property	11E	88		142A
Duties collected from buyer to be deposited with the central Government	11D	28B		73A
Interest on the amounts collected in excess of duty	11DD 15% p.a	---		73B 18% 15%
Power not to recover duties not levied or short levied as a result of general practice	11C	28A		83
Claim for refund of duty	11B	27		83
Interest on delayed refund	11BB	27A		83
Price of goods to indicate the amount of duty paid thereon	12A	28C		83
Presumption that the incidence of duty has been passed on to the buyer	12B	28D		83
Consumer welfare fund	12C, 12D	---		83
Publication of information in respect of persons in certain cases	37E	154B		73D

DUTY DRAWBACK - SEC 74		SEC 75
(1) Goods imported into India & import duty paid thereon		Goods imported used in manufacture of goods which are exported.
(2) goods entered for export either on a shipping bill through sea /air or on a bill of export through land, or as baggage, or through post and the proper officer, after examination of the goods and after ensuring that there is no prohibition or restriction on their export, permitted clearance of such goods for export;		goods entered for export either on a shipping bill through sea /air or on a bill of export through land, or through post and the proper officer, after examination of the goods and after ensuring that there is no prohibition or restriction on their export, permitted clearance of such goods for export;
(3) the goods capable of being easily identified to the satisfaction of AC/DC as the goods, which were Originally imported, and		NO such condition
(4) goods entered for export within 2 years - which can be extended further by Board on sufficient cause being shown - from the date of payment of duty on the importation thereof.		No such condition of 2 years - NO DDB- if export value less than value of imported material or Export value not more than % of imported mat value notified by CG.
(5) Amount of DDB = If Export As it is - 98% of the import duty paid		DDB- as per All industry rate or Brand Rate or Special Brand Rate
If Export After use – (I) No draw back (a) Wearing apparel. (b) Tea chests (c) Exposed Cinematography films passed by Board of Film Censor in India (d) Unexposed Photographic Films, Paper and plates and X-ray Films. (II) Second notification In respect of motor Cars or goods imported by AN INDIVIDUAL for his personal and private use Drawback = import duty paid less 4%, 3%, 2-1/2 % and 2% for each quarter or part thereof During the period of 1 st , 2 nd , 3 rd and 4 th Year respectively		Sec 75A- Interest on delayed payment of drawback. Where any drawback payable to a claimant under section 74 or 75 is Not Paid Within A Period Of 1 Month From The Date Of Filing A Claim for payment of such drawback , INTEREST @ 6% P.A. SHALL BE PAID along with the amount of drawback. Period- from the date after the expiry of the said period of 1 month till the date of payment of such drawback [Section 75A(1)]. Where drawback paid to the claimant erroneously or otherwise recoverable , the claimant shall, within a period of 2 months from the date of demand, pay in addition to the said amount of drawback, interest @ 18% p.a for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback [Sec 75A(2)].
(III) All other goods -		Section 76- Prohibition And Regulation Of Drawback
Out of custom control Period	DDB %	(1) No drawback if, the market price of goods is less than the amount of drawback due thereon. This provision has been made to prohibit export of cheap goods at inflated price to get benefit of higher duty drawback.
Upto 3 months	95%	(2) No drawback if it is less than Rs 50.
More than 3 M but Not, more than 6 months	85%	(3) If CG is of the opinion that goods of any specified description are likely to be smuggled back into India, it may, not allow drawback in respect of such goods or alternatively allow the drawback subject to certain restrictions and conditions.
More than 6 M but not more than 9 months	75%	
More than 9 M but not more than 12 months	70%	
More than 12 M but not more than 15 months	65%	
More than 15 M but not more than 18 months	60%	
More than 18 months	Nil	

