INTEREST UNDER SECTION 11 AB - GOOD, BAD AND THE UGLY
(By S. Jaikumar and G. Natarajan, Advovates, swamy associates, chennai)

Provisions with regard to charging of interest was introduced in Central Excise Act, 1994, by way of Section 11 AB of the Act, with effect from 28.09.1996. Prior to this, interest provisions were contained only in Section 11 AA of the Act, under which interest is payable only after three months from the date of passing of an order, confirming duty. The main idea behind Section 11 AB is to provide a deterrent effect. Under this section, as it stood at the time of its insertion, interest was payable only in those cases, where the duty of excise has not been levied or paid, or has been short-levied or short-paid or erroneously refunded, **by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act, or the rules made thereunder with intent to evade payment of duty.** No doubt, evasion of duty by indulging in fraud, collusion wilful mis-statement, etc. is a heinous crime and apart from various other penal provisions, since the delinquent assessee had enjoyed financial accommodation at the cost of exchequer, he has to be penalised by way of interest too. So far so **Good.**

The provisions of Section 11 AB have undergone serious changes with effect from 11th May 2001. Interest, which was hitherto chargeable only in certain heinous occasions, has now been made universal with effect from 11th May 2001. It is not that in all cases the short levy or short payment of duty was with a mala-fide intention. On many occasions, duty was short paid, by genuine reasons like, different interpretation, human errors, etc. On many occasions the department was also guilty of contributory negligence, in not pointing out the mistake, which they are supposed to, in time. By charging interest even for such cases, the provisions of Section 11 AB has started becoming **BAD.**

But, the provisions of interest under Section 11 AB have now attained its **UGLY** form, and its tentacles have spread to varied cases, where its application can be described as nothing but ugly.

The Board has recently issued a letter **F.No.574/CE/5/Misc/2003 Dated 28.07.2003** (Reported in 2003 (156) ELT T29). It is observed in the said letter that interest under section 11 AB shall be charged even for the cases where the assessees have effected upward price revision subsequent to removal of goods and raised a supplementary invoice for the differential price and differential duty.

Price is always market driven. The present day economic dimensions have ushered in a buyers' market. It is a common practice in many of the industries that the price negotiations will be going on for some time on a continuous basis and the agreed price would be made effective from an agreed date. As the clearances cannot wait till the negotiations are complete, goods will be cleared under the old price or at a mutually agreed price. At a later time, the negotiated price may turn out to be either lower or higher than the one, at which the goods were invoiced and duty was paid. A credit note or a supplementary invoice would be issued by the assessee, for the downward revision and upward revision of price, respectively. Now, the Board's above mentioned letter has observed that interest is chargeable from the assessee, from the date of original clearance of goods, as per the provisions of section 11 AB (that is from the first day of the month succeeding the month in which the duty ought to have been paid to the date of its payment), in respect of the

upward price revision, for which supplementary invoices are issued. What is more bothering is the example given in the Board's letter, which gives an impression that the existence of the government here is not as a societal guardian but to pawnbroke with its citizens. It is unfathomable to think that just for the purpose of delaying payment of 16 % amount (duty), an assessee would like to postpone his collection of price, which is 100 %. No prudent and genuine manufacturer would resort to subsequent upward revision of price, only for the purpose of delaying the payment of duty.

Another area where the application of Section 11 AB appears to be cruel is the cases where some amount was wrongly availed as Cenvat credit and reversed voluntarily by the assessee, even before utilising such wrong credit for payment of duty. To err is human. But nobody expects the government to be divine and forgive such errors and there is no grouse for reversal of such credit. In many cases, such mistakes are detected and rectified on the own volition of the assessee and the department comes to know of it only when the return filed by them is scrutinized by them. As per Rule 12 of Cenvat Credit Rules, wherein the provisions of Section 11 AB have been made applicable, interest is payable on such cases of wrong availments also. The defence that such wrong credit remained only in the books and has not been utilised for payment of duty, would be impotent.

So, interest under Section 11 AB, in its evolution over a period of time, has gone through the phases of **good**, **bad** and is now showing off its **ugly** face.