

INDIRECT TAXES UPDATE -24

SERVICE TAX

Interest payable on CENVAT credit wrongly taken even without being utilized

The Board has clarified that interest would be recoverable under Rule 14 of the CENVAT Credit Rules, 2004 when credit has been wrongly “taken”, even if it has not been utilized.

The clarification has been issued pursuant to the Supreme Court’s judgment dated 21.02.11 in Civil Appeal No. 1976 of 2011 wherein the Apex Court has ruled that “If the aforesaid provision is read as a whole we find no reason to read the word “OR” in between the expressions ‘taken or utilized wrongly or has been erroneously refunded’ as the word “AND”. On the happening of any of the three circumstances such credit becomes recoverable along with interest.”

Earlier, the Board vide its *Circular No. 897/17/2009-CX dated 03.09.09* had clarified that interest would be recoverable under Rule 14 of the CENVAT Credit Rules, 2004 when credit has been wrongly “taken”, even if it has not been utilized. However, the P &H High Court in the case of *Ind-Swift Labs V/s UOI [2009(240)ELT328(P&H)]* held that under provisions of Rule 14 of CENVAT Credit Rules, 2004, interest cannot be claimed from the date of wrong availment of credit and it is required to be paid only from the date it is wrongly utilized. The Department appealed against the said order in the Supreme Court and the matter has been settled by the Apex Court in the favor of the revenue.

In effect, therefore, the view taken by the Board in circular dated 03.09.09 has now been endorsed by the Apex Court.

[Circular No. 942/03/2011 CX dated 14.03.2011]

The complete text of the above circular is available at www.cbec.gov.in.

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welcome your feedback on the Update and its contents.

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