

**:केंद्रीय उत्पाद तथा सीमा शुल्क के आयुक्त का कार्यालय:
:टाऊन सेंटर : सिडको : औरंगाबाद 431 030:**

**व्यापार सूचना नं. 10/2009
(अ.क.08/GEN./2009 दिनांक 18.11.2009)**

**विषय : Benefit of reduced penalty under provisos to Section 11AC -
whether also available at appeal stage - reg.**

उपरोक्त विषय पर भारत सरकार के वित्त मंत्रालय राजस्व विभाग नई दिल्ली द्वारा दिनांक 15.09.2009 की फा.सं.4/2/2009-CX.1 के तहत जारी परिपत्र सं. 898/18/09-CX dated 15.09.2009 की प्रतिलिपि सूचना, मार्गदर्शन एवं कार्यवाही के लिये प्राप्त करें /

सभी संबंधित संगठनों से अनुरोध है कि वे इस परिपत्र/पत्र की जानकारी अपने सभी सदस्य निर्माताओं और व्यापारियों को दें /

(अरूण साहु)
आयुक्त

फा.सं. VGN(30) 55/TC /2009
औरंगाबाद, दिनांक 18.11.2009

प्रतिलिपि प्रेषितः डाक सूची के अनुसार

- §उप/सहायक आयुक्त सभी मंडल प्रभासी तथा आय.सी.डी.
- §सभी अनुभाग प्रमुख मुख्यालय
- §मुख्य आयुक्त केंद्रीय उत्पाद तथा सीमा शुल्क नागपुर
- §आयुक्त के उत्पाद तथा सी.शुल्क (अपील), औरंगाबाद

Circular No. 898/18/09-CX

F. No. 4/2/2009-CX.1
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi dated the 15th September, 2009

To,
Director General (All)
Chief Commissioners of Central Excise including LTU (All)
Commissioners of Central Excise (All)

Sir/Madam

Sub.- Benefit of reduced penalty under provisos to Section 11AC- whether also available at appeal stage- reg.

A case has been brought to the notice of the Board wherein a Commissioner (Appeals) had allowed the benefit of proviso to Section 11AC of the Central Excise Act, 1944 to pay penalty at the reduced rate of 25% within 30 days of the communication of the Order in Appeal. Commissioner (Appeals) has read Section 11AC and Section 35 F together to arrive at the aforesaid decision.

2. The matter has been examined. The provisions relating to reduction of penalty to 25% are contained in proviso (1) to (4) of Section 11AC. In terms of proviso (1) and (2), a penalty imposed under Section 11AC can be reduced to 25% on fulfillment of following conditions.

- i. Duty determined under Section 11A(2) and interest payable thereon has been paid within 30 days.
- ii. The said period of 30 days is calculated from the date of communication of the order passed by a Central Excise Officer determining the duty.
- iii. The reduced 25% penalty is also paid within 30 days of the date of communication of the order passed by the Central Excise Officer.

3. From the above it is clear that in order to avail the benefit of 25% penalty, the duty, interest and penalty are required to be paid within 30 days of communication of the order passed by the adjudicating authority. Further, the reading of proviso (4) would also support this interpretation because the said proviso stipulate that wherever duty amount is increased at any appellate stage, in that case in order to avail the benefit of 25 % penalty, the assessee is required to pay differential amount within 30 days of the passing of the order by the appellate authority. A combined reading of all the 4 proviso would, therefore, make it clear that the benefit of 25% penalty is applicable only when the assessee has paid duty, interest and the reduced penalty within 30 days of communication of the order passed by the adjudicating authority. However, if the penalty amount is increased at the appellate stage, in that case the 25% of differential amount of penalty can be paid within 30 days of communication of said appellate order. Therefore, the view taken by the Commissioner (Appeal) is not as per the provision of law.

4. Trade and Industry may be informed.
5. Receipt of this circular may be acknowledged
6. Hindi version would follow.

Yours faithfully,

(MADAN MOHAN)
Under Secretary to the Govt. of India