

Circular No. 897/17/2009-CX

F.No.267/83/2009-CX-8
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

New Delhi, dated the 3rd September, 2009.

To,

All Director Generals,
All Chief Commissioners of Central Excise (including LTU),
All Commissioners of Central Excise (including LTU).

Sir/ Madam,

Subject: Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization-reg.

Representation has been received from the field formation stating that the decision of Hon'ble High Court of P&H in the case of CCE, Delhi III V/s Maruti Udyog Ltd. [2007(214)ELT173(P&H)], has upheld the order of Tribunal wherein it was held that assessee is not liable to pay interest in the case where credit was only taken and not utilized. The SLP against this order has been dismissed by the Hon'ble Supreme Court. On the other hand, Rule 14 of The CENVAT Credit Rules, 2004, provides for recovery of credit taken or utilized wrongly with interest. In view of this conflict in legal provisions and the decision of Hon'ble Supreme Court, a clarification has been requested from the Board.

2. The matter has been examined. It is seen that the Tribunal decision and the High Court judgement referred to above, was delivered in the context of erstwhile Rule 57I of the Central Excise Rules, 1944 and that the Supreme Court order under reference is only a decision and not a judgement. Since, the Rule 14 of the CENVAT Credit Rules, 2004, is clear and unambiguous in the position that interest would be recoverable when CENVAT credit is taken **or** utilized wrongly, it is clarified that the interest shall be recoverable when credit has been wrongly taken, even if it has not been utilized, in terms of the wordings of the present Rule 14.

3. Trade & Industry as well as field formations may be suitably informed.

4. Receipt of this circular may kindly be acknowledged.

5. Hindi version will follow.

Yours faithfully,

(Amish Kumar Gupta)

OSD (CX-8)