KANORIA ENERGY & INFRASTRUCTURE LIMITED

(Formerly known as **A INFRASTRUCTURE LIMITED)**
Regd. Office & Works: Hamirgarh - 311 025, Distt. Bhilwara (Rajasthan) Phone: 01482-286102, FAX: 01482-286104
Website: www.ainfrastructure.com, Email: cs@kanoria.org, CIN: L25191RJ1980PLC002077

Ref No.: KEIL/2024-25 Date: 29.08.2024

To
The Manager (Listing & Corporate Services)
Bombay Stock Exchange Ltd.
Ground Floor, Phiroze Jeejeebhoy Towers,
Dalal Street, Fort, Mumbai
Maharashtra -400001

BSE Code: 539620

Sub: Intimation of order of CESTAT, New Delhi dated 28.08.2024

Dear Sir,

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, ('SEBI Listing Regulations'), we wish to inform you that Hon'ble CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI vide order dated 28.08.2024 allowed an appeal filed by the company against order of Commissioner of Central Excise, Udaipur dated 31.03.2021 and set aside demand of Central Excise duty amounting to Rs. 11,02,12,141/-.

Copy of order Hon'ble CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI is enclosed.

Kindly take the same on record.

Thanking You.

Yours faithfully,

For **KANORIA ENERGY & INFRASTRUCTURE LIMITED**
(Formerly known as **A INFRASTRUCTURE LIMITED)**

Lokesh Mundra

(Lokesh Mundra)
Company Secretary

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

EXCISE APPEAL No. 50983 OF 2021

(Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-093/2020-21 dated 31.03.2021 passed by the Commissioner, CGST & Central Excise, Udaipur, Rajasthan)

Kanoria Energy & Infrastructure Ltd. **...Appellant**
(Formerly Known as M/s. A. Infrastructure Ltd.)
Hamirgarh, Bhilwara

versus

Commissioner, CGST & Central Excise, **...Respondent**
142-B, Hiran Migri, Sector-11,
Udaipur, Rajasthan

WITH

E/51686/2021	**E/51707/2021**	**E/51708/2021**
E/51770/2021	**AND**	**E/51771/2021**

APPEARANCE:

Ms. Reena Khair and Shri Shubham Jaiswal, Advocates for the Appellant
Shri Bhagwat Dayal, Authorised Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 02.08.2024
Date of Decision: 28.08.2024

FINAL ORDER NO'S. 58092-58097/2024

JUSTICE DILIP GUPTA:

Excise Appeal No. 50983 of 2021 has been filed by Kanoria Energy & Infrastructure Ltd.[1] (formerly known as M/s. A. Infrastructure Ltd.) to assail the order dated 31.03.2021 passed by the Commissioner in so far as it is against the appellant.

2. The operative part of the order dated 31.03.2021 is reproduced

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1. **the appellant**

below:

"69. In view of the above discussion I pass the following order:

ORDER

(i) **I disallow the benefit of exemption notification** No. 06/2002-CE dated 01.03.2002 as amended **in respect of the clearances of excisable goods during the period December, 2003 to March, 2006.**

(ii) **I confirm the demand of Central Excise duty** amounting to Rs. 11,02,12,141/- (Rupees eleven crores two lakhs twelve thousand one hundred and forty one only) **not paid by the assessee** for the clearance of excisable goods in the guise of exempted goods during the period December, 2003 to March, 2006 **in terms of the provision to Sub-section (1) of section 11A of the Central Excise Act, 1944.**

(iii) **I impose penalty of Rs. 11,02,12,141/-** (Rupees eleven crores two lakhs twelve thousand one hundred and forty one only) **on the assessee under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.**

(iv) **I order for recovery of interest under the provisions of Section 11AB of the Central Excise Act, 1944** on the amount of duty demanded.

(v) **I impose penalty of Rs. 10,00,000/-** (Rs. Ten Lacs Only) on **Shri Sanjay Kanoria Managing Director/vice Chairman** of M/s. A. Infrastructure Ltd. Hamirghrh, Bhilwara Rajasthan under Rule 26 of the Central Excise Rules, 2002.

(vi) **I impose penalty of Rs. 10,00,000/-** (Rs. Ten Lacs Only) on **Shri V. K. Gupta, Chief General Manager** of M/s. A. Infrastructure Ltd. Hamirghrh, Bhilwara Rajasthan under Rule 26 of the Central Excise Rules, 2002.

(vii) **I impose penalty of Rs. 5,00,000/-** (Rs. Five Lacs Only) on **Shri Darpan Jain, Proprietor, M/s. Kaka Roadlines, Kota, Rajasthan** under Rule 26 of the Central Excise Rules, 2002.

(viii) **I impose penalty of Rs. 5,00,000/-** (Rs. Five Lacs Only) on **Shri Parasmal Mehta Prop Proprietor, of M/s. Robin Roadways, Bhilwara, Rajasthan** under Rule 26 of the Central Excise Rules, 2002.

(ix) **I impose penalty of Rs. 5,00,000/-** (Rs. Five Lacs Only) on **Shri Jai Kumar Singhvi, Proprietor, of M/s. Sanghvi Transport, Nimbahera, Rajasthan** under Rule 26 of the Central Excise Rules, 2002."

(emphasis supplied)

3. **Excise Appeal No. 51686 of 2021** has been filed by Darpan Jain, Proprietor of M/s. Kaka Roadlines, Kota for quashing the order dated 31.03.2021 in so far as it imposes penalty of Rs. 5,00,000/- on him under Rule 26 of the Central Excise Rules, 2002[2].

4. **Excise Appeal No. 51707 of 2021** has been filed by Parasmal Mehta, Proprietor of M/s. Robin Roadways for quashing the order dated 31.03.2021 in so far as it imposes penalty of Rs. 5,00,000/- on him under Rule 26 of the Central Excise Rules.

5. **Excise Appeal No. 51708 of 2021** has been filed by Jai Kumar Singhvi, Proprietor of M/s. Sanghvi Transport for quashing the order dated 31.03.2021 in so far as it imposes penalty of Rs. 5,00,000/- on him under Rule 26 of the Central Excise Rules.

6. **Excise Appeal No. 51770 of 2021** has been filed by V. K. Gupta, Chief General Manager of the appellant for quashing the order dated 31.03.2021 in so far as it imposes penalty of Rs. 10,00,000/- on him under Rule 26 of the Central Excise Rules.

7. **Excise Appeal No. 51771 of 2021** has been filed by Sanjay Kanoria, Managing Director/Vice Chairman of the appellant for quashing the order dated 31.03.2021 in so far as it imposes penalty

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2. the Central Excise Rules

of Rs. 10,00,000/- on him under Rule 26 of the Central Excise Rules.

8. The appellant is engaged in the manufacture of Asbestos Cement Pressure Pipes & Couplings[3]. AC Pressure Pipes are manufactured by employing two processes namely 'Mazza Process' and 'Magnani Process'. Asbestos fibre, cement, and fly-ash are the three basic raw materials required for the manufacture of AC Pressure Pipes & Couplings. Of the said three raw materials, the appellant claims that fly ash is available free of cost, but the other two materials namely asbestos fibre and cement are purchased for a price from the market. Asbestos fibre is usually imported and costs around Rs. 45,000/- per metric ton, while the cost of cement is around Rs. 4,000/- per metric ton.

9. During the period from 2003-04 to 2005-06, fly ash was procured by the appellant free of cost from Kota Super Thermal Power Station[4] at Kota and Suratgarh Thermal Power Station[5] at Suratgarh, both in the State of Rajasthan, through contractors. The details of the fly-ash procured, as given by the appellant, are as follows:

Details of Fly Ash Procured from KSTPS and STPS

Year	Qty procured from **KSTPS (MT)**	Qty procured from **STPS (MT)**	Total Qty procured (MT)
2003-04	9,758	-	9,758
2004-05	14,980 (wrongly shown in SCN as 9,758)	-	14,980
2005-06	10,803	7,616	18,419

10. The appellant contends that:

(i) Contracts for supply of fly ash were given to the

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3. AC Pressure Pipes
4. KSTPS
5. STPS

transporters, but no contract was entered into with the thermal power stations, as the fly ash was available free of cost;

(ii) Fly ash was lifted from the thermal power stations by the transporters/truck drivers and supplied to the appellant;

(iii) However, incoming fly ash transported by transporters was not weighed till April 2005 and the quantity was taken in stock on the basis of number of trucks that arrived and their standard carrying capacity, i.e., 14 MT; and

(iv) It is only with effect from April 2005 that the appellant started weighing the incoming fly ash at a nearby Dharamkanta, namely, M/s. Shreeenath Computerized Dharamkanta, Hamirgarh.

11. The appellant has been supplying AC Pressure Pipes to various State Governments, Semi-Government Organizations, as well as to the Private Sector for supply of drinking water since 1985. Details of sales made to Public Health Engineering Departments of the State Governments during the relevant period 2003-04 to 2005-06, as stated by the appellant, are given below:

Details of Supply of AC Pressure Pipes and Couplings to PHED/Govt.

Year	Qty procured from KSTPS (MT)	Qty procured from STPS (MT)	Total Qty procured (MT)
2003-04	42,283	56,234	75.19%
2004-05	23,478	56,023	41.91%
2005-06	20,372	53,264	38.26%

12. AC Pressure Pipes containing not less than 25% of fly-ash or

phosphogypsum by weight were exempted from payment of the whole of the duty of excise in terms of a notification dated 01.03.2002. The relevant portion of the said exemption notification is reproduced below:

> "**Notification No. 6/2002-Central Excise dated 01.03.2002**
>
> **In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944** (1 of 1944), **the Central Government**, being satisfied that it is necessary in the public interest so to do, **hereby exempts excisable goods of the description specified in column (3) of the Table below** or specified in column (3) of the said Table read with the concerned List appended hereto, as the case may be, and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table, -
>
> (a) **from so much of the duty of excise specified thereon under the First Schedule** (hereinafter referred to as the First Schedule) **to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table; and**
>
> (b) from so much of the Special duty of excise leviable thereon under the Second Schedule (hereinafter referred to as the Second Schedule) to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to the relevant conditions specified in the Annexure to this notification, and referred to in the corresponding entry in column (6) of the said Table:
>
> **Provided** xxxxxxxxxx
>
> **Provided** xxxxxxxxxx

Explanation:- For the purposes of this notification, the rates specified in columns (4) and (5) of the said Table are ad valorem rates, unless otherwise specified:-

S. No.	Chapter or heading No. or sub-heading	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition
(1)	(2)	(3)	(4)	(5)	(6)
158	68	Goods, in which not less than 25% by weight of fly-ash or phosphogypsum or both have been used	Nil	-	36

Condition No. 36: If the manufacturer maintains proper account in such form and in such manner as the Commissioner of Central Excise having jurisdiction may specify in this behalf, for receipt and use of fly-ash or phosphogypsum or both, in the manufacture of all goods falling under Chapter 68 of the First Schedule and files a monthly return in the form and manner, as may be specified by such Commissioner of Central Excise, with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction."

13. As per Trade Notice dated 16.05.1997, manufacturers using fly-ash or phosphogypsum in the manufacture of asbestos cement products are required to maintain and submit certain returns, irrespective of fly-ash percentage used in the manufacture of the products. The appellant claims that it maintained and submitted the following records:

(i) **Form A**- Daily account for the receipt and issue of raw materials for the manufacture of excisable goods and the quantity of excisable goods manufactured out of the same in the prescribed format.

(ii) **Form B**- Segment wise and Batch wise raw materials consumed in the manufacture of excisable goods and quantity of excisable goods manufactured

in the prescribed format.

(iii) **Form C-** Monthly return in the prescribed format in respect of the raw material used and the excisable goods manufactured.

14. The appellant also claims to have filed intimation of receipts of fly ash in Form D-3 to the jurisdictional division and range offices and followed the procedure prescribed under the aforesaid Trade Notice dated 16.05.1997. The appellant also claims to have maintained a register for fly-ash stock on monthly basis for use of fly-ash above 25%.

15. The fact that the appellant maintained all the required records and filed all the required returns, as stipulated in the exemption notification, with the Excise Officers has not been found to be incorrect in the impugned order passed by the Commissioner.

16. The factory of the appellant at Bhilwara was audited on regular occasions by the Office of the Commissioner, Central Excise, Jaipur - II and also by the Office of the Accountant General, Rajasthan. It has been asserted by the appellant that allegations relating to non-utilization of fly ash were never raised in any of these audits conducted for the period from December 2003 to March 2006.

17. The Office of the Central Excise Commissionerate, Jaipur II also conducted an audit of the records of the appellant between 27.01.2005 to 31.01.2005 pertaining to the period from April 2003 to April 2004. The appellant asserts that the Office of the Central Excise Commissionerate also did not raise any objection about the non-utilization of fly-ash.

18. The Office of the Accountant General, Rajasthan also conducted

an audit of the central excise records of the appellant at the factory premises in Bhilwara during the period from 21.11.2005 to 25.11.2005, but the Office of the Accountant General, Rajasthan did not raise any objection regarding non-utilization of fly-ash.

19. Based on an intelligence, the Officers of DGCEI in association with the officers of the Central Excise Commissionerate, Jaipur-II, searched the factory premises of the appellant on 09.03.2006. The office premises of the appellant at D-83, Gulmohar Park, New Delhi were also searched on 10.03.2006.

20. A show cause notice dated 31.12.2008 was issued based primarily on the statements of the dharamkanta owner, truck drivers and officials of KSTPS, who denied that fly ash was supplied or transported to the factory. The show cause notice called upon the noticees to show cause why:-

(i) benefit of exemption notification dated 01.03.2002, as amended, should not be denied for the period December 2003 to March 2006;

(ii) central excise duty amounting to Rs. 11,02,12,141/- should not be demanded and recovered in terms of the proviso to sub-section (1) of section 11A of the Central Excise Act, 1944;

(iii) interest as determined under the provisions of section 11AB of the Finance Act should not be recovered; and

(iv) penalty should not be imposed under section 11AC of the Finance Act read with rule 25 of the Central Excise Rules.

21. The allegations made in the show cause notice are:

(1) The appellant was engaged in the manufacture as asbestos, cements pipes and coupling. It availed benefit of exemption notification dated 01.03.2002 as amended and was clearing asbestos cement pipes

manufactured with the use of fly ash by showing quantity of fly ash not less than 25%.

(2) Investigations revealed that the appellant fabricated its record of fly ash which was submitted to the department. The record seized from M/s Shreenath Computerized Dharamkanta and the statement of employees showing fictitious nature of weighment slips and GRs established fraudulent activity on the part of the appellant to show receipt of fly ash over and above the actual receipt.

(3) Statement of transporters corroborating the statements of Shri Lila Ram Sabnani, owner of M/s. Shreenath Dharamkanta and his two employees clearly indicate fraudulent means adopted by the appellant.

(4) The appellant violated the conditions of Circular dated 10.08.99 of the Board, wherein method of calculation of fly ash has been prescribed by not taking actual weight of the asbestos cement product but taking standard weight fixed.

22. The appellant filed a written reply to the show cause notice by letters dated 18.01.2010, 16.02.2010 and 14.03.2012 and denied the allegations. The appellant also urged that the extended period of limitation could not have been invoked in the facts and circumstances of the case as there was no suppression of facts on the part of the appellant and the allegations were based only on presumptions. In support of this contention, the appellant referred to various decisions of the Supreme Court, the High Court and the Tribunal.

23. The show cause notice was adjudicated upon by the Commissioner by order dated 30.03.2021. The benefit of exemption under the notification dated 01.03.2002 was denied and demand of duty of excise amounting to Rs. 11,02,12,141/- was confirmed with interest and penalty of Rs. 11,02,12,141/-.

24. It is against this order that the appellant had earlier filed an appeal before the Tribunal. The Tribunal, by order dated 03.10.2019, set aside the order of the Commissioner and remanded the matter to the Commissioner with the following directions:

> "13. As it can been seen from the discussion above **that the entire case of the Department is made on the basis of statements of the various persons, who have not been examined by the adjudicating authority while adjudicating the case and also the Appellants were not permitted to cross examine these witnesses and thus the impugned order suffers from the inherent infirmity.** In this regard we place reliance on the decision of G. Tech Industries (supra) and Swadeshi Polytex Ltd. (supra) wherein it is held that it is mandatory on the part of the adjudicating authority to examine the witnesses whose statements have been relied upon and thereafter these witnesses are required to be subjected to cross examination by the Appellant. Accordingly, the impugned order is not legal and proper. However, we find that the Department's case is also not without basis as enough evidence has been collected against the Appellant which needs to be verified by the adjudicating authority before fastening the Central Excise duty of that magnitude and also imposition of penalty on the other appellants. This has not been followed.
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> 14. **In view of above, we are of the opinion that the case needs to be remitted back to the adjudicating authority so as to follow mandatory conditions prescribed under Section 9D of the Act.** Accordingly, we remand the matter to the adjudicating authority by setting aside the impugned order. **It is also pertinent to examine the various records and returns and D-3 intimations as prescribed by the Trade Notice by the Commissionerate in order to invoke extended period of limitation as per Section 11A of the Act.** Needless to say, the procedure prescribed under Section 9D of the Act shall be followed in letter and spirit, by the adjudicating authority. With these directions we allow the Appeal by

> way of remand. It is also expected that the remand proceedings will be completed by the adjudicating authority within three months from the receipt of this order and the Appellant will be afforded an opportunity of being heard".”
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> **(emphasis supplied)**

25. Pursuant to the aforesaid order of the Tribunal, the Commissioner passed a fresh order dated 31.03.2021. This order has been assailed in this appeal.

26. Ms. Reena Khair, learned counsel for the appellant assisted by Shri Shubham Jaiswal made submissions both on the merits of the matter as also on the invocation of the extended period of limitation. Learned counsel contended that the extended period of the limitation under the proviso to section 11A(1) of the Central Excise Act could not have been invoked.

27. Shri Bhagwat Dayal, learned authorised representative appearing for the department, however, supported the impugned order and submitted that the extended period of limitation was correctly invoked.

28. It would be appropriate to examine this issue relating to invocation of the extended period of limitation first because if this issue is decided in favour of the appellant, it may not be necessary to examine the other issues raised on merit as the entire demand falls within the extended period of limitation.

29. Section 11A(1) of the Central Excise Act, as it stood at the relevant time, is reproduced below:

> "**Section 11A(1) When any duty of excise has not been** levied or **paid** or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or

> erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, **a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been** levied or **paid** or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:
>
> **Provided that where any 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 willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,** by such person or his agent, **the provisions of this sub-section shall have effect, for the words one year, the words "five years" were substituted".**"
>
> **(emphasis supplied)**

30. It would be seen from a perusal of sub-section (1) of section 11A(1) of the Central Excise Act that where any duty of excise has not been levied or paid, the Central Excise Officer may, within one year from the relevant date, serve a notice on the person chargeable with the duty which has not been levied or paid, requiring him to show cause why he should not pay the amount specified in the notice.

31. The proviso to section 11A(1) of the Central Excise Act stipulates that where any duty of excise has not been levied or paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or the Rules made there under with intent to evade payment of duty, by the person chargeable with duty, the provisions of the said section shall

have effect as if, for the word 'one year', the word 'five years' has been substituted.

32. It is not in dispute that the entire demand that has been confirmed under the impugned order is for the extended period of limitation.

33. To appreciate the contention advanced by the learned counsel for the appellant that the extended period of limitation could not have been invoked, it would be appropriate to first reproduce the allegations made in the show cause notice dated 31.12.2008 relating to invocation of the extended period of limitation under the proviso to section 11 A (1) of the Central Excise Act, 1944[6] and they are as follows:

> "34. M/s A Infrastructure Ltd is classifying the said product viz. Asbestos Cement Pipes under CHSH No. 6804 and have cleared the same at NIL rate of duty by availing the benefit of Notification no 6/2002- CE dated 1.3.2002 as amended. As per the Sr. No 158 of the said Notification, only the products falling under CHSH No. 6804 are exempted from the payment of Central Excise duty, in which not less than 25% by weight of fly ash or Phosphor Gypsum or both have been used. **However, M/s A Infrastructure Ltd., is using only Fly Ash in the manufacturing of its product viz. Asbestos Cement Pipes and though the content of Fly Ash is less than 25%, they are manipulating their records and showing the content of fly ash as 50% or more and are thus wrongly availed the benefit of Notification No. 6/2002 CE dated 1.3.2002, by violating the conditions laid down under the said Notification.**

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6. the Central Excise Act

> 35. **Thus, it appears from the above evidence that AIL have suppressed the facts by giving wrong information in the statutory returns about the production and clearance and utilization of fly ash with an intent to evade Central Excise Duty. AIL have intentionally fabricated their statutory documents suppressing the actual receipt of fly ash from the Department and thus the extended period as laid down in proviso to Section 11A (1) of Central Excise Act, 1944 appears to be invocable against them.** Accordingly they also appear to be liable for imposition of penalty and interest under Section 11AC read with rule 25 of Central Excise Rules 2002 and Section 11AB of the Central Excise Act, 1944 respectively."
>
> **(emphasis supplied)**

34. In regard to the invocation of the extended period of limitation, the Commissioner made the following observations in the impugned order dated 31.03.2021:

> "66. **Moreover, in the era of self assessment, the assessee himself required to maintain correct obligatory record and fulfill all the conditions prescribed under law.** In the case of Union of India Vs Rajasthan Spinning & Weaving Mills {2009(238)ELT/3(S.C.)}, the Hon'ble Supreme Court has observed that in case the non-payment of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years. I also rely on the decision of the Hon'ble Tribunal in the case of Magnum International (2008(11) STR176) in which it was held that non-filing of correct return itself is sufficient ground for invoking the extended period under section 73 of the Act as they have, willfully with a malafide intention to evade the duty, filed wrong information to the department. **Suppression means failure to disclose full information with the intent to evade payment of**

> **duty** as held by Hon'ble Supreme Court in case of Continental Foundation Jt. Venture Vs CCE, Chandigarh-I reported at 2007(216)ELT 177(S.C). In view of the above extended period is invokable and therefore, the proviso to Section 11A(1) of the Central Excise Act, 1944 is applicable for recovery of duty so evaded. Cases relied upon by the assessee in this **regard are not applicable in the present case in view of the above reasons that the suppression of facts is established and that the facts and circumstances of the judgments/ case laws cited by the appellant are different from the instant case, therefore the same are not relevant in this case. I therefore hold the demand of Central Excise duty amounting to Rs. 11,02,12,141/- is recoverable along with interest from the assessee under proviso to Sub-section (1) of Section 11 A of the Central Excise Act, 1944 and Section 11AB ibid**."
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> **(emphasis supplied)**

35. It would the appropriate to briefly state facts that have been stated by the appellant to substantiate that it had not suppressed any facts from the department.

(i) The AC Pressure Pipes are mainly sold through competitive bidding to State Government, Semi-Government Organizations and to private sector buyers. The tenders issued by the Government and Public Companies were for AC Pipes containing fly-ash of more than 25%. The tenders also clearly a mentioned that the excise duty on fly ash pipes would be nil;

(ii) State Government issue tenders for purchase of AC Pressure Pipes through the Public Health Engineering

Department[7] and Urban Development Departments, specifying the required percentages of cement, asbestos fibre, and fly ash in the pipes. There is also a stipulation for pre-delivery inspection by external agencies such as RITES/ D.G.S. & D or other nominated agencies. The AC Pipes were found to be in accordance with the tender conditions;

(iii) The appellant had been maintaining all the required records, and had filed the required returns and intimations, as provided for in Trade Notice dated 16.05.1997 issued by Commissioner of Central Excise, Jaipur, including Form A, Form B, Form C (monthly return), and Form D (D3 Intimations);

(iv) The factory of the appellant was audited on regular basis by the Officers of the Commissioner, Central Excise, Jaipur and Accountant General Rajasthan but allegations relating to non-utilization of fly-ash were never raised in any of the audits conducted for the period from December 2003 to March 2006;

(v) The Central Excise Commissionerate also conducted an audit between 27.01.2005 to 31.01.2005 pertaining to the period from April 2003 to April 2004 but no objection was raised regarding non-utilization of fly-ash; and

(vi) The Accountant General, Rajasthan also conducted an audit of the central excise records during the period from 21.11.2005 to 25.11.2005, but no objection was raised regarding non-utilization of fly-ash.

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36. It is in the light of the aforesaid facts that the allegations made in the show cause notice dated 31.12.2008 regarding invocation of the extended period of limitation has to be examined. The show cause notice alleges that the appellant claimed the benefit of exemption notification dated 01.03.2002 and cleared asbestos cement pipes manufactured by it with the use of fly ash by showing quantity of fly ash as not less than 25% by weight, but investigations revealed that the appellant had fabricated the records and thus suppressed facts by giving wrong information in the statutory returns about the production and utilization of fly ash with an intent to evade payment of central excise duty.

37. The Commissioner, in regard to the invocation of the extended period of limitation, observed that in the era of self assessment an assessee is required to maintain correct records and fulfill the conditions and since **"**suppression means failure to disclose full information with the intent to evade payment of duty**"**, the extended period of limitation contemplated under the proviso to section 11A(1) of the Central Excise Act would be invocable.

38. The issue, therefore, that arises for consideration is whether the appellant had suppressed facts from the department with an intent to evade payment of central excise duty.

39. In the present case fly-ash was procured by the appellant from KSTPS and STPS situated in the State of Rajasthan through contractors. This fly-ash is used in the manufacture of AC Pressure Pipes. The appellant claims that AC Pressure Pipes were provided to various State Governments, Semi-Government Organizations and details of the supplies made have also been provided by the

appellant. The appellant also claims the tenders that were issued by the government and semi-government companies specifically required AC Pressure Pipes that contained fly-ash of more than 25% by weight. Under the notification dated 01.03.2012, AC Pressure Pipes containing not less than 25% of fly-ash by weight are exempted from payment of the whole of duty of excise. The tender notice also provides for pre-delivery inspection by external agencies and only when the conditions are satisfied that the material is procured by the government. It is, therefore, the contention of the appellant that there can be no doubts that the AC Pressure Pipes contained fly-ash of more than 25% by weight. The appellant also contends that it had been maintaining all the requisite records as contemplated in the Trade Notice dated 16.05.1997. These include Form A, Form B, Form C. They also include Form D-3 intimations which contain receipts of fly-ash and these were submitted to the jurisdictional division and range offices. The appellant also claims to have maintained a register for fly-ash stock on monthly basis for use of fly-ash above 25% in the manufacture of AC Pressure Pipes.

40. When the records were duly maintained by the appellant and intimation was also given in form D-3 to the jurisdictional division and range offices, it was for the Officers to put the appellant to notice if there was any discrepancy in the information contained in these forms. There is, however, nothing on the record to indicate that the appellant was ever put to notice about any discrepancy. This apart, audits were regularly conducted for the period from December 2003 to March 2006 and April 2003 to April 2004, but no discrepancy was noticed by the officers conducting the audit. The appellant had also

maintained a register for fly-ash stock on monthly basis for use of fly-ash above 25% by weight and the appellant had claimed exemption from payment of central excise duty under the notification dated 01.03.2002 since fly-ash of over 25% by weight was used in the manufacture of AC Pressure Pipes.

41. It is only on 31.12.2008 that a show cause notice was issued to the appellant proposing to deny benefit of the exemption notification dated 01.03.2002 for the period from December 2003 to March 2006 based primarily on the statements of the dharamkanta owner, truck drivers and officials of KSTPS. According to the allegations made in the show cause notice, the appellant had manipulated the records to show receipts of fly-ash over and above the actual receipts.

42. The Commissioner has held in the impugned order that D-3 intimations were not required to be filed and they were submitted only to **"**save its skin**"**, in case of detection, and, therefore, do not warrant consideration. It is not understood as to why D-3 intimations were not required to be filed when the Commissioner had prescribed such a procedure. In any case, the intimation provided ample opportunity to the department to verify physical receipts of the fly ash. The submission of D-3 Forms by the appellant cannot be ignored as complete information about receipt of fly-ash was provided by the appellant.

43. The aforesaid facts lead to the inevitable conclusion that the appellant had not suppressed facts relating to use of fly-ash by more than 25% by weight in the manufacture of AC Pressure Pipes. This is for the reason that information as contemplated under the Trade Notice was provided by the appellant to the department, and most

importantly information contained in Form D-3 relating to receipt of fly-ash. The show cause notice nor the impugned order have denied the providing of such information by the appellant to the department. The show cause notice merely alleges that subsequent investigation revealed that the appellant had manipulated the records regarding the actual receipts of fly-ash. Only a general statement has been made that the appellant had suppressed facts with an intent to evade payment of central excise duty. There is no reason given in the show cause notice to conclude that the appellant had suppressed facts with an intent to evade payment of central excise duty nor the impugned order passed by the Commissioner gives any reason as to why the appellant had suppressed facts with an intent to evade payment of central excise duty. In fact, the order passed by the Commissioner states that suppression means failure to disclose full information with intent to evade payment of duty. It is not so. The department has to establish that not only the assessee suppressed facts but also that such suppression was with an intent to evade payment of duty.

44. It needs to be remembered that mere suppression of facts is not enough. There has to be a deliberate attempt to evade payment of excise duty. The show cause notice must specifically deal with this aspect and the adjudicating authority is also obliged to examine this aspect in the light of the facts stated by the assessee in reply to the show cause notice.

45. The provisions of section 11A (4) of the Central Excise Act, which are as similar to the provisions of section 11A(1) of the Central Excise Act, came up for interpretation before the Supreme Court in **Pushpam Pharmaceuticals Company** vs. **Collector of Central**

Excise, Bombay[8]. The Supreme Court observed that section 11A(4) empowers the Department to reopen the proceedings if levy has been short levied or not levied within six months from the relevant date but the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. It is in this context that the Supreme Court observed that the act must be deliberate to escape payment of duty. The relevant observations are:

> "2. ***** The Department invoked extended period of limitation of five years as according to it the duty was shortlevied due to suppression of the fact that if the turnover was clubbed then it exceeded Rupees Five lakhs.
>
> *****
>
> 4. A perusal of the proviso indicates that it has been used in company of such strong works as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. **It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."
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> **(emphasis supplied)**

46. This decision of the Supreme Court in **Pushpam Pharmaceuticals** was followed by the Supreme Court in **Anand**

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8. 1995 (78) E.L.T. 401 (S.C.)

Nishikawa Co. Ltd. vs. **Commissioner of Central Excise, Meerut**[9]

and the relevant paragraph is as follows:

> "27. Relying on the aforesaid observations of this Court in the case of **Pushpam Pharmaceuticals Co. v. CCE we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty.** When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. **There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act.** We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was 7 (2005) 7 SCC 749 11 E/52953/2018 not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts."
>
> **(emphasis supplied)**

47. In **Easland Combines, Coimbatore** vs. **Collector of Central Excise, Coimbatore**[10] the Supreme Court observed that for invoking the extended period of limitation, duty should not have been paid because of fraud, collusion, wilful statement, suppression of fact or contravention of any provision. These ingredients postulate a positive act and, therefore, mere failure to pay duty which is not due to fraud,

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9. (2005) 7 SCC 749
10. (2003) 3 SCC 410

collusion or wilful misstatement or suppression of facts is not sufficient to attract the extended period of limitation.

48. The aforesaid decisions of the Supreme Court were relied upon by the Supreme Court in **Uniworth Textiles Ltd.** vs. **Commissioner of Central Excise, Raipur**[11] and the relevant portion of the judgment is reproduced below:

> "12. We have heard both sides, Mr. R.P. Batt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. **The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable.** If that were to be true, we fail to understand which form of nonpayment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. **In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.**"
>
> **(emphasis supplied)**

49. The Supreme Court in **Continental Foundation Joint Venture** vs. **Commissioner of Central Excise, Chandigarh**[12] also observed, in connection with section 11A(4) of the Excise Act, that suppression means failure to disclose full information with intention to evade payment of duty and the observations are as follows:

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11. 2013 (288) E.L.T. 161 (S.C.)
12. 2007 (216) E.L.T. 177 (S.C.)

> "10. **The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.** Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with knowledge that the statement was not correct."
>
> **(emphasis supplied)**

50. It is, therefore, clear that the suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct information was not disclosed deliberately to escape payment of duty.

51. The Delhi High Court in **Bharat Hotels Limited** vs. **Commissioner of Central Excise (Adjudication)**[13] also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Finance Act, 1994[14] and held as follows:

> "27. Therefore, it is evident that failure to pay tax is not a justification for imposition of penalty. Also, the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uniworth (supra),

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13. 2018 (12) GSTL 368 (Del.)
14. the Finance Act

> "misstatement or suppression of facts" does not mean any omission. It must be deliberate. **In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty.**
>
> *****
>
> **Thus, invocation of the extended limitation period under the proviso to Section 73(1) does not refer to a scenario where there is a mere omission or mere failure to pay duty or take out a license without the presence of such intention."**
>
> *****
>
> **The Revenue has not been able to prove an intention on the part of the Appellant to avoid tax by suppression of mention facts. In fact it is clear that the Appellant did not have any such intention and was acting under a bonafide belief."**
>
> **(emphasis supplied)**

52. The Delhi High Court in **Mahanagar Telephone Nigam Ltd.** vs. **Union of India and others**[15], also observed as follows:

> "28. In terms of the proviso to Section 73(1) of the Act, the extended period of limitation is applicable only in cases where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, or collusion, or wilful misstatement, or suppression of facts, or contravention of any provisions of the Act or the Rules made thereunder with an intent to evade payment of service tax. However, the impugned show cause notice does not contain any allegation of fraud, collusion, or wilful misstatement on the part of MTNL. **The impugned show cause notice alleges that the extended period of limitation is applicable as MTNL had suppressed the material facts and had contravened the provisions of the Act with an intent to evade service tax.** Thus, the main question to be addressed is whether the allegation that MTNL

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15. W.P. (C) 7542 of 2018 decided on 06.04.2023

had suppressed material facts for evading its tax liability, is sustainable.

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41. **In the facts of this case, the impugned show cause notice does not disclose any material that could suggest that MTNL had knowingly and with a deliberate intent to evade the service tax, which it was aware would be leviable, suppressed the fact of receipt of consideration for rendering any taxable service.** On the contrary, the statements of the officials of MTNL, relied upon by the respondents, clearly indicate that they were under the belief that the receipt of compensation/financial support from the Government of India was not taxable. **Absent any intention to evade tax, which may be evident from any material on record or from the conduct of an assessee, the extended period of limitation under the proviso to Section 73(1) of the Act is not applicable.** The facts of the present case indicate that MTNL had made the receipt of compensation public by reflecting it in its final accounts as income. **As stated above, merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had willfully suppressed any material fact.** MTNL"s contention that the receipt is not taxable under the Act is a substantial one. **No intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return.**"

(emphasis supplied)

53. In **M/s. Raydean Industries** vs. **Commissioner CGST, Jaipur**[16], the Tribunal in connection with the extended period of limitation, observed that even in the case of self assessment, the department can always call upon an assessee and seek information and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted

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16. Excise Appeal No. 52480 of 2019 decided on 19.12.2022

that departmental instructions issued to officers also emphasise that it is the duty of the officers to scrutinize the returns. The relevant portion of the decision of the Tribunal is reproduced below:

> "24. **It would be seen that the ER-III/ER-I returns filed by the applicant clearly show that the applicant had categorically declared that it had cleared the final products by availing the exemption under the notification dated 17.03.2012. The applicant had furnished the returns on the basis of self assessment. Even in a case of self assessment, the Department can always call upon an assessee and seek information.** It is under sub-rule (1) of rule 6 of the Central Excise Rules, 2002 that the assessee is expected to self assess the duty and sub-rule (3) of rule 12 of the 2002 Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**
>
> 25. **Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns.** The instructions issued by the Central Board of Excise & Customs on December 24, 2008 deal with "duties, functions and responsibilities of Range Officers and Sector Officers". It has a table enumerating

> the duties, functions and responsibilities and the relevant portion of the table is reproduced below:
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> *****
>
> 26. The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to SCRUTINY OF ASSESSMENT.
>
> *****
>
> 27. **It is thus evident that not only do the 2002 Rules mandate officers to scrutinise the Returns to verify the correctness of self assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.**"
>
> **(emphasis supplied)**

54. This issue was also examined at length by a Division Bench of the Tribunal in **M/s G.D. Goenka Private Limited** vs. **The Commissioner of Central Goods and Service Tax, Delhi South**[17]. After referring to the provisions of section 73 of the Finance Act, the Bench observed:

> "13. There is no other ground on which the extended period of limitation can be invoked. Evidently, fraud, collusion, wilful misstatement and violation of Act or Rules with an intent all have the mens rea built into them and without the mens rea, they cannot be invoked. **Suppression of facts has also been held through a series of judicial pronouncements to mean not mere omission but an act of suppression with an intent. In other words, without an intent being established, extended period of limitation cannot be invoked.**
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> *****
>
> 14. In this appeal, the case of the Revenue is that the appellant had wilfully and deliberately suppressed the fact that it had availed ineligible CENVAT credit on

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17. Service Tax Appeal No. 51787 of 2022 dated 21.08.2023

> input services. The position of the appellant was at the time of self-assessment and, during the adjudication proceedings and is before us that it is entitled to the CENVAT credit. **Thus, we find that it is a case of difference of opinion between the appellant and the Revenue. The appellant held a different view about the eligibility of CENVAT credit than the Revenue. Naturally, the appellant self-assessed duty and paid service tax as per its view. Such a self-assessment, cannot, by any stretch of imagination, be termed deliberate and wilful suppression of facts.**
>
> **16. Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns.** If some tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect self-assessment itself is held to establish wilful suppression with an intent to evade. **To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.**"
>
> **(emphasis supplied)**

55. The Tribunal in **M/s. Kalya Constructions Private Limited** vs. **The Commissioner, Central Excise Commissionerate, Udaipur**[18] observed as follows:

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18. Service Tax Appeal No. 54385 of 2015 decided on 15.11.2023

"11. **Both the SCNs further state that had the audit not conducted scrutiny of the records, the short paying the service tax would not have come to notice. It is a matter of fact that all the details were available in the records of the appellant. The appellant was required to furnish returns under section 70 with the Superintendent of Central Excise which it did. It is for the Superintendent to scrutinize the returns and ascertain if the service tax had been paid correctly or not. If the assessee either does not make the returns under section 70 or having made a return, fails to assess the tax in accordance with the provisions of Chapter or Rules made thereunder, the Superintendent of Central Excise can make the best judgment assessment under section 72. For this purpose, he may require the assessee to produce such accounts, documents or other evidence, as he may deem necessary.** Such being the legal position, if some tax has escaped assessment which came to light later during audit, all it shows is that the Superintendent of Central Excise with whom the returns were filed had either not scrutinized the returns or having scrutinized then found no error in self-assessment but the audit found so much later. Had the Superintendent scrutinized the returns calling for whatever accounts or records were required, a demand could have been raised within the normal period of limitation. **The fact that the alleged short payment came to light only during audit does not prove the intent to evade payment of service tax by the appellant, but it only proves that the Range Superintendent had not done his job properly. For these reasons, we find that the demand for the extended period of limitation cannot be sustained.**"

(emphasis supplied)

56. The Tribunal in **Sunshine Steel Industries** vs. **Commissioner of CGST, Customs & Central Excise, Jodhpur**[19] also observed as follows:

> "20. **The Department cannot be permitted to invoke the period of limitation by merely stating that it is a case of self-assessment as even in a case of self-assessment, the Department can always call upon an assessee and seek information.** It is under sub-rule (1) of rule 6 of the Central Excise Rules, 2002 that the assessee is expected to self-assess the duty and sub-rule (3) of rule 12 of the Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**"
>
> **(emphasis supplied)**

57. **Civil Appeal No. 4246 of 2023** (Commissioner of CGST, Customs and Central Excise vs. Sunshine Steel Industries) filed by the department to assail the aforesaid decision of the Tribunal in **Sunshine Steel Industries** was dismissed by the Supreme Court on 06.07.2023 and the judgment is reproduced below:

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19. (2023) 8 Centax 209 (Tri.-Del.)

"Delay condoned.

2. Heard learned counsel for the appellant.

3. This Court is not inclined to interfere with the impugned order of the High Court (Sic).

4. The appeal is dismissed.

5. Pending applications, if any, are disposed of."

58. In **Commissioner of C. Ex. & Customs** vs. **Reliance Industries Ltd.**[20], the Supreme Court held that if an assessee bona-fide believes that it was correctly discharging duty, then merely because the belief is ultimately found to be wrong by a judgment would not render such a belief of the assessee to be malafide. If a dispute relates to interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation. The Supreme Court further held that in any scheme of self-assessment, it is the responsibility of the assessee to determine the liability correctly and this determination is required to be made on the basis of his own judgment and in a bona-fide manner. The relevant portion of the judgment of the Supreme Court is reproduced below:

"23. **We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division Bench of Tribunal. We note that the issue of valuation involved in this particular matter is indeed one were two plausible views could co-exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation by considering the assessee's view to be lacking bona**

20. 2023 (385) E.L.T. 481 (S.C.)

> **fides. In any scheme of self-assessment it becomes the responsibility of the assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona fide manner.**
>
> 24. **The extent of disclosure that an assessee makes is also linked to his belief as to the requirements of law.** **********. On the question of disclosure of facts, as we have already noticed above the assessee had disclosed to the department its pricing policy by giving separate letters. It is also not disputed that the returns which were required to be filed were indeed filed. In these returns, as we noticed earlier there was no separate column for disclosing details of the deemed export clearances. Separate disclosures were required to be made only for exports under bond and not for deemed exports, which are a class of domestic clearances, entitled to certain benefits available otherwise on exports. **There was therefore nothing wrong with the assessee's action of including the value of deemed exports within the value of domestic clearances.**"
>
> **(emphasis supplied)**

59. What, therefore, transpires from the aforesaid decisions is that there can be a difference of opinion between the department and an assessee. An assessee may genuinely believe that duty is not leviable, while the department may believe that duty is leviable. The assessee may, therefore, not pay duty in the self-assessment carried out by the assessee, but this would not mean that the assessee has wilfully suppressed facts. To invoke the extended period of limitation, atleast one of the five necessary elements must be established and their existence cannot be presumed merely because the assessee is operating under self assessment. If some duty escapes assessment, the officers of the department can always call upon the assessee to submit further documents and he may also conduct an enquiry. In

fact when an audit is conducted, the officers of the audit team scrutinize the records and, therefore, notice should be issued within the stipulated time from the date the audit was conducted. Even otherwise, merely because facts came to light only during the audit does not prove that there is an intent on the part of the assessee to evade payment of duty.

60. In the present case, as noticed above, the appellant had not suppressed any facts from the department, much less with an intent to evade payment of central excise duty. The extended period of limitation could not, in view of the aforesaid decisions, have been invoked in the present case even if the returns were self assessed.

61. Thus, as the extended period of limitation contemplated under the proviso to section 11A(1) of the Central Excise Act could not have been invoked, the impugned order dated 31.03.2021 passed by the Commissioner deserves to be set aside as the entire demand is covered under the extended period of limitation.

62. The impugned order dated 31.03.2021 passed by the Commissioner is, accordingly, set aside. Excise Appeal No. 50983 of 2021, Excise Appeal No. 51686 of 2021, Excise Appeal No. 51707 of 2021, Excise Appeal No. 51708 of 2021, Excise Appeal No. 51770 of 2021 and Excise Appeal No. 51771 of 2021 are allowed.

(Order Pronounced on **28.08.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Jyoti, Kritika