CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Excise Appeal No. 51902 of 2021

(Arising out of Order-in-Original No. 09/COMMR./DDN/2021 dated 13.09.2021 passed by the Commissioner Central Goods & Service Tax, Commissionerate, Dehradun.)

M/s. Aglowmed Ltd. **...Appellant**
Plot No. 50 & 51, Raipur, Bhagwanpur,
Distt. Haridwar (Uttarakhand)

versus

Commissioner Central Goods and Service Tax, Dehradun **...Respondent**

APPEARANCE:

Ms. Priyanka Goel, Advocate for the Appellant
Shri Rakesh Agarwal, Authorised Representative of the Department

CORAM:

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

Date of Hearing: 11.12.2024
Date of Decision: 17.02.2025

FINAL ORDER NO. 50310/2025

JUSTICE DILIP GUPTA:

This appeal that has been filed by M/s. Aglowmed Ltd.[1] seeks the quashing of the order dated 13.09.2021 passed by the Commissioner, Central Goods and Service Tax Commissionerate, Dehradun[2] denying the benefit of central excise duty exemption under Notification No. 01/2011-CE dated 01.03.2011, as amended by Notification dated 17.03.2012[3] to the appellant and confirming the demand of central excise duty amounting to Rs. 7,50,33,780/- with interest and penalty.

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1. **the appellant**
2. **the Commissioner**
3. **the Exemption Notification**

2. The appellant is engaged in manufacture of allopathic medicines falling under Chapter 30 and food products falling under Chapter 21 of the Central Excise Tariff Act, 1985[4]. The appellant obtained the necessary licences to manufacture such medicines from the Drug Licence-cum- Controlling Authority (Manufacturing).

3. The appellant claims that it had been availing the benefit of Area Based Exemption granted under a Notification dated 10.06.2003 in respect of all the excisable goods manufactured in the factory with effect from 25.12.2004. Since the exemption from payment of excise duty was granted for a period of ten years, the appellant opted to pay excise duty on the goods manufactured by it with effect from 01.04.2014 and intimated this fact to the jurisdictional Assistant Commissioner of Central Excise by a letter dated 07.04.2014. The appellant also claims that the description of excisable goods manufactured remained the same during the period the appellant availed the benefit of the Notification dated 10.06.2003 and the period during which the appellant availed the benefit of Exemption Notification dated 01.03.2011.

4. An Excise Audit of the appellant was conducted by the officers of Central Excise in the month of March, 2016 covering period from April, 2011 to March, 2015. The appellant claims to have provided the following documents to the audit team:

01. Central Excise Registration Certificate

02. Service Tax Registration Certificate

03. Excise Returns

04. Income Tax Returns

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4. the Tariff Act

05. Balance Sheets, Directors reports, Profit & Loss Accounts and Annual return

06. Cost Audit Report

07. Detailed Product-wise list showing Assessable Value, Duty paid, CENVAT Credit availed and Rate of Duty against each product for Financial Years 2012-13, 2013-14 & 2014-15.

5. According to the appellant, the Auditors gave a Fair Audit Report to this audit, after examining the aforesaid documents and cross-checking it with the packed products.

6. Thereafter, CERA Audit of the appellant was conducted by the Office of Director of Audit (Central), Lucknow on 19.04.2018 to 08.05.2018 for the period from April 2014 to June 2017. The appellant claims that the following documents were provided to the Audit Team:

01. Central Excise Registration Certificate

02. Service Tax registration Certificate

03. Excise Returns

04. Income Tax returns

05. Balance Sheets, Directors reports, Profit & Loss Accounts and Annual return

06. Cost Audit Report

7. According to the appellant, a Fair Audit Report was given by the Audit Team to the appellant in respect of this audit.

8. Another Excise Audit of the appellant was conducted in November 2019 for the period from April 2015 to June 2017. The appellant claims

to have provided the following documents to the Audit team on 15.11.2019.

01. Copies of balance sheet	For F.Y".s 2015-2016, 2016-2017 and 2017-2018
02. Excise Return ER_1	From April 2015 to June 2017
03. Service Tax Return ST_3	From April 2015 to June 2017
04. Income Tax Return	For F.Y."s 2015-2016, 2016-2017 and 2017-2018
05. Annual Return MGT_07	For F.Y."s 2015-2016, 2016-2017 and 2017-2018
06. Financial Statement AOC_04	For F.Y."s 2015-2016, 2016-2017 and 2017-2018
07. Last audit report	UPTO 2014-2015
08. Authority Letter	Mr. Bhaskar Mishra
09. Duty Paid	More than Rs. 1 Cr. Per year.

9. This appeal arises out of the last Excise Audit conducted for the period from April, 2015 to June, 2017. It was observed by the Audit Team that the appellant was not eligible for availing the benefit of the Exemption Notification and so the appellant had short paid excise duty.

10. Thereafter, a show cause notice dated 26.06.2020 was issued to the appellant. The relevant portion of the show cause notice is reproduced below:

> "2. **Whereas, Audit of the records** of party was conducted by the officers of Central Goods & Service Tax Audit Commissionerate, Dehradun **for the period from 01.04.2015 to 30.06.2017.** During the course of audit, it has been observed that **during the audit period, the party was manufacturing and clearing various medicaments.** xxxxxxxxxxx **by availing the benefit of Notification No. 01/2011-CE dated 01.03.2011 as amended vide notification No. 16/2012-CE dated 17.03.2012 without availing CENVAT credit.**
>
> 7. **Whereas it appears that the intention of the party was to misuse the exemption under Notification** No. 01/2011-CE dated 01.03.2011 as amended **to avoid payment of higher rate of duty on medicaments falling under Chapter heading**

30.04 and food supplements falling under Sub heading No. 21069099 manufactured by them xxxxxx"

(emphasis supplied)

11. The show cause notice also invoked the extended period of limitation under section 11A(4) of the Central Excise Act, 1944[5] and the relevant portions of the show cause notice dealing with this issue are reproduced below:

"9.1 **Whereas, in the era of self-assessment and self-removal, the party was required to assess their duty liability correctly and to discharge the same in the prescribed manner. In the instant case, the party appears to have wrongly availed benefit of exemption** under Notification No. 01/2011-CE dated 01.03.2011 as amended **deliberately with the sole intent to evade payment of appropriate Central Excise duty willfully with mala-fide intent and clear their finished goods without payment of appropriate duty on the tariff rate by claiming exemption under the said notification which was otherwise not available to them.** Therefore, as the duty of excise has not been properly paid by the party by the reason of willful contravention of the Rule 4 and Rule 6 of the Central Excise Rules, 2002 and **wrong availment of Notification No. 01/2011-CE dated 01.03.2011 as amended with the intent to evade the payment of duty, the extended period under Section 11A(4) of the Act seems to be applicable for raising demand by invoking extended period of limitations.**

9.2 Whereas, Section 11A(4) of the Central Excise, 1944 provides the provisions of extended period of five years from the relevant date to issue a notice where any duty of excise has not been levied or paid or has been short-levied or shor-paid or erroneously refunded, by the reason of-

(a) fraud; or

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5. the Central Excise Act

(b) collusion; or

(c) any wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.

9.3 **In the instant case, it appears that the party has contravened the provisions of Notification No. 01/2011-CE dated 01.03.2011** as amended issued under Section 5A of the Central Excise Act, 1944 and Rule 4 and Rule 6 of the Central Excise Rules, 2002 **with sole intent to evade payment of Central Excise duty payable by them on their** finished goods namely Allopathic medicines falling under Chapter 30 and Food/Health Supplements falling under Sub heading No. 21069099, as discussed supra. **Therefore, Central Excise duty amounting to Rs. 7,50,33,780/-** (Rs. 4,99,02,990/- + Rs. 2,51,30,790/-) short paid by the party against the clearance of Allopathic medicines falling under Chapter 30 and Food/Health Supplements falling under Sub heading No. 21069099 **appears to be recoverable from them under the provisions of Section 11A(4) of the Central Excise Act, 1944 by invoking extended period of limitations along with interest under Section 11AA of the Act and a penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.**"

(emphasis supplied)

12. The show cause notice, therefore, called upon the appellant to show cause as to why:

"(i) The exemption under Notification No. 01/2011-CE dated 01.03.2011 as amended should not be denied to them on the goods manufactured and cleared during the period from 01.04.2015 to 30.06.2017.

(ii) The differential Central Excise duty amounting to Rs.7,50,33,780/- (Rupees Seven crore, Fifty lakhs, Thirty three thousand, Seven hundred and eighty only) should not be recovered from them under the

provisions of Section 11A(4) of the Central Excise Act, 1944 along with interest payable under Section 11AA of the Act ibid.

(iii) Penalty should not be imposed upon them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 for contravention of provisions of Notification No. 01/2011-CE dated 01.03.2011 as amended and Rule 4, 6 and 8 of the Central Excise Rules, 2002 with intent to evade the payment of duty."

13. The appellant filed a reply dated 11.08.2020 to the aforesaid show cause notice. Apart from contesting the demand on merits, the appellant also pointed out that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act could not have been invoked for the reason that not only three Audits had been conducted by the department in which all the required information was furnished to the Audit Team by the appellant, but also for the reason that the appellant had been regularly filing Returns in which the required information was provided. The appellant, therefore, contended that it could not be alleged by the department that the appellant had suppressed facts, much less with an intention to evade to avoid payment of service tax. The relevant portion of the reply furnished by the appellant in respect of the extended period of limitation is reproduced below:

"In keeping view of above facts it is clearly evident that there is no any Fraud, Collusions, any willful misstatement, suppression of facts and Contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty was involved at our end hence raised the demand u/s 11A(4) cannot be applicable as the Extended period is not applicable in our case.

Since 2004, we acted with Department in fair and transparent manner and applied Notification No. 01/2011 in bona fide and genuine belief and this view were substantiated from time to time by Department and it's officers as is visible from various actions, decisions and conclusions of the Department Officers as shown above hence Section 11A(4) can not be invoked in our case.

We were fully transparent with Excise Department as we never had a will or intention to conceal any information from Department and Department were informed of and well in possession of information about anything done in our Plant.

As we utilized this Notification No. 01/2011 in respect of our allopathic products and food products in bona fide genuine and honest belief without intention of evasion of duty and with consistent and transparent intimation to relevant Excise Officers, **invocation of Sec 11 A (4) is unjustified and against the basic intention of law (the Central Excise Act 1944) and So this SCN is Time Barred.**"

(emphasis supplied)

14. The Commissioner, however, did not accept the contentions advanced by the appellant, both on merits and on the extended period of limitation.

15. On merits, the Commissioner observed as follows:

"Supplements are not 'FOOD' as held above, although they are packaged and ready for consumption. Obviously, a tablet or syrup cannot be eaten in the sense of food being eaten. They are to be swallowed or gulped down the throat. The party has tried to extrapolate the simple literal wording of the notification to wrongfully claim the benefit of the Notification No. 01/2011- CE dated 01.03.2011, as amended.

23. In view of the above facts and discussion, I hold that the benefit of the Notification No. 01/2011- CE dated 01.03.2011, as amended, is not applicable and available on the 'Food/ Health Supplements' falling under Chapter

Sub Heading 21069099 of the First Schedule to the Central Excise Tariff Act, 1985, being manufactured and cleared by the party."

16. On the extended period of limitation, the Commissioner observed as follows:

"25. xxxxxxxxx.

The party has contended that on 25.04.2014 they had intimated the department about their intention of opting to avail the benefit of Notification No. 01/2011-CE dated 01.03.2011, consequent upon withdrawal of exemption Notification No. 49/2003-CE dated 01.03.2011 on 31.03.2014 and that they had been manufacturing same excisable goods i.e. prior to 31.03.2014 and after 01.04.2014. **They also contended that they had been audited (EA-2000) by the department for the period 04/2011 to 03/2015 and later on by the officers of C & AG (CERA) for the period 04/2014 to 06/2017, but no objection was raised by either of them although they had been manufacturing same products and benefits of the notification was being availed for the said period also. They also contended that their ER-1 contained name, description of the excisable goods cleared and chapter sub heading number, which were also scrutinized and accepted by the department and even the sample of packaging material was also submitted, when asked for by the department and in view of the same the party averred that extended period cannot be invoked for demanding the duty as the fact of availing of the benefits of the above_said notification was in the knowledge of the department.**

26. Thus, the main argument of the party has been that since it has been intimating the department from time to time about the fact of its availing the exemption notification, either through the periodic returns being filed or the fact that they were audited, therefore the extended period cannot be invoked, since as per them, the department was well aware of the fact that they are taking

exemption. **This argument is incorrect and misplaced, because a mere intimation in the form of the said information being incorporated in the period returns does not mean any kind of approval or validation by the department. In fact, the law is premised on trust in the trade that has been reposed by way of self-declaration mechanism on part of the party.** In this faith and trust based mechanism and corresponding legal provisions, the legislative intent clearly expects the trade to rightfully declare the relevant information and thereby, pay the taxes correctly themselves. **This is in contrast to the system of tax administration and corresponding legislative provisions that were in prevalence before in an era** which was also known as the era of physical control, wherein, before clearance of goods was undertaken, **there was a presence of tax inspectors at the factory premises checking and supervising the clearance of goods.** Likewise, when any new product was manufactured by a party, the party was supposed to file a classification list and also a valuation list before the departmental designated authority. Only after approval by the said authority, could the manufacturer clear the goods under that classification heading and with that valuation. Obviously, in this kind of a scenario if the department did not agree with the classification as proposed by the manufacturer or with the availment of the exemption notification as proposed by the manufacturer, it would have been incumbent and mandatory on part of the department to point out the error and if the said error or the correction would not be pointed out by the departmental authority, it would be logical for the party to argue that the said information was very well in the knowledge of the department and therefore, the extended period cannot be invoked. **Whereas, in the tax environment pertaining to the period in question, this system of physical control has long become obsolete and the current system is completely a trust driven tax collection mechanism.**"

(emphasis supplied)

17. The decisions relied upon by the appellant to contend that the extended period of limitation could not have been invoked were not accepted for the following reasons:

> "33. Thus, in all these case laws, the matter was not only already before the Department, but the same had been duly considered by the Department in some form or the other - either by way of a stipulated validation / approval required or by way of a previous notice that had been issued, which is not the case in the current proceedings. Further, I find that in all the case laws cited by the party, the question of mens rea was not before the Hon'ble Courts, as in the instant case it is proved beyond doubt that there was a deliberate intent to evade central excise duty by the party."

18. The Commissioner ultimately held:

> "41. **In the instant case, I find that the party was well aware that they did not fulfill the substantial condition mandated therein, but deliberately availed the benefits of the Notification No. 01/2011- CE dated 01.03.2011, as amended, fully knowing that the products manufactured by them are not the ones mentioned in the said notification and in the process, paid lower central excise duty with the intent to deny the legitimate right of the government to charge and collect its rightful duty. Thus, I find that the party's act of clearing products on reduced/lower rate of duty is intentional and not accidental.**
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> 42. **In view of the above facts, I am of the clear view that the party deliberately cleared their products** under Notification No. 01/2011- CE dated 01.03.2011, as amended knowing full well that the products manufactured by them are not covered under the ambit of the said notification and in the process, has contravened the provisions of the Central Excise Tariff Act, 1985, Central Excise Act, 1944 and the rules made there under, **with intent to evade payment of duty and all the ingredients present establish the mens rea of the party. Thus, the intent to evade payment of duty**

> **by the party is clearly established as a deliberate and apparent and hence I hold that the mens rea to evade central excise duty to deny the legitimate right of the government to charge and collect its rightful duty is proved and hence the extended period of limitation is invokable.**"
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> **(emphasis supplied)**

19. It is this order dated 13.09.2021 passed by the Commissioner that has been assailed in this appeal.

20. Ms. Priyanka Goel, learned counsel for the appellant submitted that the appellant was entitled to avail the benefit of the Exemption Notification and denial of the same by the impugned order is unjustified. Learned counsel also submitted that the entire period of dispute, which is from 01.04.2015 to 30.06.2017, covered by the show cause notice dated 26.06.2020 falls under the extended period of limitation provided for under section 11A(4) of the Central Excise Act, but in view of the facts and circumstances of the case the extended period of limitation could not have been invoked. In this connection, learned counsel placed reliance upon certain decisions to which reference shall be made at the appropriate stage.

21. Shri Rakesh Agarwal, learned authorized representative appearing for the department, however, submitted that the appellant was not entitled to claim the benefit of the Exemption Notification, and in any view of the matter, the Commissioner was justified in holding that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act was correctly invoked. In this connection, learned authorized representative also placed reliance upon certain decisions to which a reference shall also be made.

22. The submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

23. The issue as to whether the extended period of limitation could have been invoked in the present case needs to be first examined because if this issue is decided in favour of the appellant, it may not be necessary to examine whether the appellant was entitled to avail the benefit of the Exemption Notification.

24. The show cause notice was issued to the appellant on 26.06.2020 for the period from 01.04.2015 to 30.06.2017.

25. Section 11A(1) of the Central Excise Act deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. Sub-section (1) of section 11A is reproduced below:

> "**11A(1)** Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful 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,-
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> (a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so 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;
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> (b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-
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> (i) his own ascertainment of such duty; or

(ii) the duty ascertained by the Central Excise Officer,

the amount of duty along with interest payable thereon under section 11AA.

26. Section 11A(4) of the Central Excise Act deals with circumstances under which the extended period of limitation of five years can be invoked. It is reproduced below:

"**Section 11A(4)** Where any duty of excise has not been levied or paid or has been short-levied or shor-paid or erroneously refunded, by the reason of-

(a) fraud; or

(b) collusion; or

(c) any wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice."

27. It would be seen from a perusal of sub-section (1) of section 11A of the Central Excise Act that where any duty of excise has not been levied or paid, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act or the Rules made thereunder with intent to evade payment of duty, the Central Excise Officer, shall within one year from the relevant date, serve notice on the person chargeable with the duty which has not been paid. However, sub-section (4) of section 11A of the Central Excise Act

provides that where any duty of excise has not been levied by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act with intent to evade payment of duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on the person to show cause why he should not pay the amount specified in the notice.

28. The reasons broadly given in the show cause notice for invoking the extended period of limitation are:

(i) In the era of self-assessment an assessee is required to assess duty liability correctly and to discharge the same in the prescribed manner;

(ii) The assessee wrongly availed the benefit of Exemption Notification with the sole intent of evading payment of Central Excise duty willfully and with mala fide intent; and

(iii) The provisions of section 11A(4) of the Central Excise Act would, therefore, be clearly applicable for invoking the extended period of limitation.

29. The reasons given by the Commissioner for holding that the extended period of limitation was correctly invoked are:

(i) The contention of the assessee that it had provided information to the department from time to time through the periodic returns and when the audit was conducted is not correct because mere intimation does not mean "any kind of approval or validation by the department". Law is premised on trust in the

trade that has been reposed by way of self-declaration mechanism on the assessee;

(ii) The decisions relied upon by the assessee are not applicable as the question of mens rea was not in issue before the Courts;

(iii) The assessee was aware that it did not fulfill the substantial condition stipulated in the exemption notification and, therefore, the clearing of products on reduced lower rate of duty is intentional and not accidental; and

(iv) As assessee had a clear intent to evade payment of duty, the extended period of limitation was correctly invoked.

30. It has 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.

31. The relevant facts have to be examined for considering whether the provisions of section 11A(4) of the Central Excise Act dealing with the invocation of the extended period of limitation could have been invoked.

32. In the present case, as noticed above, all that has been stated in the show cause notice regarding invocation of the extended period of limitation is that the appellant wrongly availed the benefit of the Exemption Notification deliberately with the sole intent to evade

payment of central excise duty. The Commissioner also held that there was an intent to evade payment of central excise duty merely because the benefit of the Exemption Notification was wrongly availed.

33. Mere wrong availment of an Exemption Notification would not lead to a conclusion that it was with an intent to evade payment of central excise duty unless the department is able to not only allege but substantiate that the said suppression was deliberate with an intent to evade payment of central excise duty.

34. The provisions of section 11A of the Central Excise Act, as it then stood, came up for interpretation before the Supreme Court in **Pushpam Pharmaceuticals Company** vs. **Collector of Central Excise, Bombay**[6]. The Supreme Court observed that the proviso to section 11A 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 which is 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 of the Supreme Court 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.
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> 4. A perusal of the proviso indicates that it has been used in company of such strong works as fraud,

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6. 1995 (78) E.L.T. 401 (S.C.)

> 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)**

35. This decision of the Supreme Court in **Pushpam Pharmaceuticals** was followed by the Supreme Court in **Anand Nishikawa Co. Ltd.** vs. **Commissioner of Central Excise, Meerut**[7] 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

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7. (2005) 7 SCC 749

> to a conclusion that the appellant was guilty of "suppression of facts."
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> **(emphasis supplied)**

36. In **Easland Combines, Coimbatore** vs. **Collector of Central Excise, Coimbatore**[8] 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, collusion or wilful misstatement or suppression of facts is not sufficient to attract the extended period of limitation.

37. The aforesaid decisions of the Supreme Court were relied upon by the Supreme Court in **Uniworth Textiles Ltd.** vs. **Commissioner of Central Excise, Raipur**[9] 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**

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8. (2003) 3 SCC 410
9. 2013 (288) E.L.T. 161 (S.C.)

> **proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso."**
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> **(emphasis supplied)**

38. The Supreme Court in **Continental Foundation Joint Venture** vs. **Commissioner of Central Excise, Chandigarh**[10] also observed in connection with section 11A of the Central Excise Act, that suppression means failure to disclose full information with intention to evade payment of duty and the observations are as follows:-

> "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)**

39. The Delhi High Court in **Bharat Hotels Limited** vs. **Commissioner of Central Excise (Adjudication)**[11] also examined the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Finance Act, 1994[12] and held as follows:

> "27. Therefore, it is evident that failure to pay tax is not a justification for imposition of penalty. Also, the

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10. 2007 (216) E.L.T. 177 (S.C.)
11. 2018 (12) GSTL 368 (Del.)
12. the Finance Act

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), "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.**

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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."

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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)

40. The Delhi High Court in **Mahanagar Telephone Nigam Ltd.** vs. **Union of India and others**[13], 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**

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

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

41. 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**[14]. After referring to the provisions of section 73 of the Finance Act, the Bench observed:

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

> "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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> *****
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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 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.**"
>
> **(emphasis supplied)**

42. 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. The show cause notice issued to the appellant, however, merely mentions that the appellant wrongly availed the benefit of the Exemption Notification with intent to evade payment of central excise duty. It does not elaborate why the appellant intended to evade payment of duty. The Commissioner also held that since the

appellant did not fulfill the condition stipulated in the Exemption Notification, the clearing of products at a reduced rate of duty is intentional. The reply filed by the appellant has not been appreciated by the Commissioner in its correct perspective. Thus, in the absence of any intent by the appellant to evade payment of service, the extended period of limitation under section 11A(4) of the Central Excise Act could not have been invoked.

43. The contention of the appellant is also that it bona fide believed that it was entitled to avail the benefit of the Exemption Notification and it cannot be said that the belief of the appellant is mala fide merely because it may ultimately be held that the appellant is not entitled to the benefit of the Exemption Notification. This contention deserves to be accepted.

44. In this connection, it may be pertinent to refer to the decision of the Supreme Court in **Commissioner of C. Ex. & Customs** vs. **Reliance Industries Ltd.**[15]. The Supreme Court held that if an assessee bonafide 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 bonafide manner. The relevant portion of the judgment is reproduced below:

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15. 2023 (385) E.L.T. 481 (S.C.)

"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 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.** xxxxxxxxxxx. 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)

45. Learned authorized representation appearing for the department, however, placed reliance upon a decision of the Supreme Court in **Commissioner of Central Excise** vs. **Urmin Products Pvt. Ltd.**[16] and in particular to paragraph 42 to contend that the extended period of limitation was correctly invoked. The said paragraph is reproduced below:

> "42. **It is an admitted fact that till the filing of this letter, the assessee continued to classify the product as „zarda/jarda scented tobacco" falling under CET SH 2403 9930. It is for this precise reason, that the adjudicating authority has observed, and rightly so that the letter dated 30.03.2006 had been cleverly drafted and it does not mention in detail the product which they were manufacturing at that material time namely „zarda/jarda scented tobacco". Though the classification in the letter shows entry CET SH 2403 9910 („chewing tobacco"), it would depict a picture as though it is a new product.** A plain reading of the letter would not indicate that the author of the said letter intended to reveal any details about the product that is being manufactured. **However, the assessee cannot feign ignorance as to the necessity of furnishing such relevant details necessary for determination of payment of duty.** The assessee having been in this industry for a long period was well aware of this statutory requirement. Upon a deeper examination of the said letter, the suppression becomes more apparent, namely the nonmentioning of change of the name and classification of the goods which they were currently manufacturing and which they ought to have disclosed.
>
> It is this hiding of the fact and not specifying the details in their letter that led to the issuance of the show cause notice and invocation of Section 11A and Section 11 AC of the CE Act, by the Department. **It cannot be ignored that till filing of the letter dated**

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16. (2023) 11 Centax 270 (S.C.)

> **30.03.2006, the assessee itself was classifying the product as „zarda/jarda scented tobacco“ falling under CET SH 2403 9930 and being a large-scale manufacturer and paying large sums of amount as duty, to contend that it was unaware of the difference between these two products, or to contend that it had classified the product as „zarda/jarda scented tobacco“ by ignorance, is not a plausible justification on part of the assessee.** However, on the issuance of Notification No.2 of 2006 dated 01.03.2006 under which „zarda/jarda scented tobacco“ was excluded orin other words not included in the said notification, the assessee changed the description of its product from „zarda/jarda scented tobacco“ to „chewing tobacco“. The date of communication of the letter dated 30.03.2006 by the assessee also acquires significance in as much as the Notification No.2 of 2006 dated 01.03.2006 were to take effect from 01.04.2006 and just two days before the date of the said Notification No.2 of 2006 coming into effect, this communication dated 30.03.2006 has been forwarded to the Department by the assessee. **The intention of springing up such a letter is evident from the fact that intention was to evade payment of duty payable under Section 4 of CE Act; despite knowing the fact that its product was not covered under relevant notification which provides for valuation under Section 4A, yet the assessee did so, only to pay duty on lower value as per Section 4A of CE Act, by claiming the product manufactured by it as „chewing tobacco“ rather than „zarda/jarda scented tobacco“** to avail benefit of MRP-based assessment which was lower than the value as prescribed under Section 4 of the CE Act.”
>
> **(emphasis supplied)**

46. It is in view of the fact that the assessee had cleverly drafted the letter so as not to reveal the correct details of the product that was being manufactured that the Supreme Court held that the appellant suppressed the change of name and classification of the goods which it

was currently manufacturing. This decision would, therefore, not help the department as it is based on the peculiar facts of the case.

47. In **M/s. Patanjali Yogpeeth Trust** vs. **Commissioner of Central Excise, Meerut-I**[17], the Tribunal recorded a categorical finding that the appellant suppressed the fact that it had received consideration for the provision of services and on the other hand reflected the same as donation in the books of account. This decision also, therefore, would not come to the aid of the department.

48. The show cause notice also alleged that in an era of self-assessment in assessee in required to correctly discharge the duty liability but the appellant wrongly availed the benefit of the exemption notification with an intent to evade payment of duty. The Commissioner also held that mere intimation to the department in the periodic returns does not mean any kind of approval or validation by the department.

49. This approach of the Commissioner cannot be countenanced. It is the duty of the officers scrutinizing the returns to examine the information disclosed by an assessee and the department cannot be permitted to take a plea that it is the duty of the assessee to disclose correct information and it is not the duty of the officers to scrutinize the returns.

50. In this connection, reference can be made to the decision of the Tribunal in **M/s. Raydean Industries** vs. **Commissioner CGST, Jaipur**[18]. The Tribunal, in connection with the extended period of limitation, observed that even in a case of self assessment, the department can always call upon an assessee and seek information and

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17. Service Tax Appeal No. 55429 of 2013 decided on 05.10.2023
18. Excise Appeal No. 52480 of 2019 decided on 19.12.2022

it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted that departmental instructions issued to officers also emphasis 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, 20028 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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> xxxxxxxxx
>
> 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.
>
> xxxxxxxxxx
>
> 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)**

51. The view that has been taken by the Commissioner was also not accepted by the Tribunal in **G.D. Goenka** and the observations are as follows:

> **"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)**

52. It also needs to be noticed that in the present case three Audits had been conducted. The first Audit was conducted in March 2016 for the period from April 2011 to March 2015. All the relevant facts were disclosed by the appellant and even otherwise the Audit Team could have required the appellant to provide all the information. No infirmity was found by the Audit Team and the Audit Team gave a Fair Audit Report to the appellant. The second Audit was conducted in April/May 2018 for the period from April 2014 to June 2017. The appellant again submitted all the relevant documents. The Audit Team also gave a fair Audit Report to the appellant. The Department, therefore, cannot allege that the appellant had suppressed any facts. The show cause notice could have been issued within the normal period contemplated under section 11A(1) of the Central Excise Act but it was issued only on 26.06.2020.

53. In this connection, it may be pertinent to refer to the decision of the Tribunal in **M/s. India Glycols Limited** vs. **Commissioner of CGST & Central Excise**[19]. The Tribunal held:

> "39. What, therefore, transpires from the aforesaid decisions is that there can be a difference of opinion between the department and Revenue and an assessee may genuinely believe that it is not liable to pay duty. On the other hand, the department may have an opinion that the assessee is liable to pay duty. The assessee may, therefore, not pay duty in the self-

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19. Excise Appeal No. 52129 of 2019 decided on 20.08.2024

> 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, 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 the audit was conducted, the officers of the audit team would have scrutinized the records and, therefore, notice should have been 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 was an intent on the part of the assessee to evade payment of duty.**"
>
> **(emphasis supplied)**

54. Learned authorized representative appearing for the department has, however, referred to a decision of the Tribunal in **M/s. Godawari Power & Ispat Limited** vs. **Commissioner of Central Excise & Service Tax, Raipur[20],** and in particular to paragraph 20, to contend that the extended period of limitation was correctly invoked. The relevant observations of the Tribunal are:

> "20. The contention of the learned counsel of the appellant that they were subjected to the audits earlier may not immune them as they have not provided any evidence of the disclosures to the audits earlier which render them to prove that department ignored certain facts despite being bought to the notice. Audit is always a selective audit and non-pointing out of any lapse by audit depend upon the many factors like disclosure of the information to the audit, submission of the concerned record before the audit, thorough disclosure of the activity before the audit etc. Non pointing out

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20. 2024 (4) TMI 816 – CESTAT New Delhi

> during audit cannot be a ground to declare it to be non-suppression."

55. In the present case, as noticed above, detailed information was provided by the appellant to the Audit Team during the course of all the two earlier Audits. This decision of the Tribunal in **Godawari Power & Ispat** would, therefore, not come to the aid by the department.

56. The appellant had also been regularly filing the excise returns. The Commissioner observed that mere filing of the returns does not mean any kind of approval or validation by the department since in an era of self-assessment, the party has to correctly disclose the facts.

57. The Tribunal in **Sunshine Steel Industries** vs. **Commissioner of CGST, Customs & Central Excise, Jodhpur**[21] observed that the department cannot be permitted to invoke the extended period of limitation by merely stating that it is a case of self-assessment. The relevant observations are:

> "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**

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21. (2023) 8 Centax 209 (Tri.-Del.)

> **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)**

58. **Civil Appeal No. 4246 of 2023** (Commissioner of CGST, Customs and Central Excise vs. Sunshine Steel Industries) filed by the department before the Supreme Court 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:

> "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."

59. It would also be relevant to refer to the decision of the Tribunal in **M/s. Kalya Constructions Private Limited** vs. **The Commissioner, Central Excise Commissionerate, Udaipur**[22], wherein it was observed:

> "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**

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

> **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)**

60. The aforesaid discussion would, therefore, lead to the inevitable conclusion that the extended period of the limitation could not have been invoked in the facts and circumstances of the case. The entire period covered under the show cause notice is for the extended period of limitation. The impugned order would, therefore, have to be set aside for the sole reason that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act could not have been invoked.

61. It would, in such circumstances, not be necessary to examine the issue on merits.

62. The impugned order dated 30.09.2021 passed by the Commissioner is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **17.02.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Jyoti