HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Central/excise Appeal No. 10/2023
CNR: RJHC020556052023 | URN: EXCIA / 16U / 2023

M/s Rajasthan Prime Steel Processing Centre Pvt Ltd, Situated At Spl-1 (A), Riico Industrial Area, Tapukara, Khushkhera, District -Alwar Rajasthan-301707 Through Authorised Signatory.

----Appellant

Versus

Commissioner Of Central Excise And CGST, Alwar Situated At Rajasthan -301001

----Respondent

For Appellant(s)	:	Mr. Puneet Bansal, Adv.
For Respondent(s)	:	Mr. Ajay Shukla, Adv. Mr. Raghav Sharma, Adv. Mr. Shivam Sharma, Adv.

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR
Order(Oral)

Reportable
06/08/2026

Per: Arun Monga, J.

1. The Appellant, *inter alia*, seeks quashing of the order dated 30.01.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, whereby the learned Tribunal upheld the invocation of the extended period of limitation and, consequently, the imposition of penalty in respect of the demand of central excise duty arising from the compensation received by the Appellant.

2. The Appellant-Company is engaged in the manufacture of auto parts classifiable under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985. Pursuant to an agreement dated 14.01.2009,

the Appellant supplied auto parts to Honda Siel Cars India Limited (now Honda Cars India Limited). During 2011 to 2012, owing to floods in Thailand and the consequent disruption of Honda's manufacturing operations there, the Appellant, at the request of Honda Cars, procured certain raw materials through air freight to meet urgent export requirements. Subsequently, Honda Cars discontinued its 2CV model. This resulted in non lifting of certain finished goods and underutilisation of raw materials. The parties thereafter agreed that Honda Cars would compensate the Appellant for the additional freight costs and losses suffered on account of the said circumstances. The Appellant accordingly raised debit notes during March 2012.

2.1 However, the department initiated an investigation and issued a show cause notice dated 29.03.2017, along with a corrigendum dated 07.11.2017, alleging that the amount received by the Appellant as compensation formed part of the transaction value of the goods. It was thus liable to central excise duty. The notice proposed recovery of duty amounting to ₹60,75,728/- under Section 11A(4) of the Central Excise Act by invoking the extended period of limitation, together with interest under Section 11AA and penalty under Section 11AC. The Appellant contested the proceedings.

2.2 The Adjudicating Authority, by Order-in-Original dated 29.12.2017, confirmed the demand of duty along with interest and imposed an equivalent penalty. The Commissioner (Appeals), by Order-in-Appeal dated 26.10.2018, upheld the order while extending the benefit of cum-duty valuation. The Appellant thereafter preferred an appeal before the CESTAT, which, by Final Order dated 13.10.2021, dismissed the appeal and affirmed the demand, interest and penalty.

The Appellant challenged the said order before the Hon'ble Supreme Court by way of Civil Appeal No. 467 of 2022.

2.3 By order dated 14.02.2022, the Hon'ble Supreme Court upheld the Tribunal's decision on the merits of the duty demand but granted liberty to the Appellant to approach the CESTAT on the limited issue of the invocation of the extended period of limitation and the consequential penalty. Pursuant thereto, the Appellant filed a Rectification of Mistake Application before the CESTAT. By Miscellaneous Order dated 30.01.2023, the Tribunal rejected the application and upheld the invocation of the extended period of limitation and the consequential penalty. It, inter alia, observed that the amount received from Honda Cars had not been disclosed in the ER-1 returns and that its disclosure in the balance sheet as "compensation from customers" did not negate suppression of facts.

2.4 Hence, the instant appeal.

3. Learned counsel for the Appellant argues that the Impugned Order is illegal, perverse and contrary to the record and law. He contends that the extended period of limitation under Section 11A(4) of the Excise Act was wrongly invoked, as there was no fraud, collusion, wilful misstatement or suppression with intent to evade duty. The compensation received from Honda Cars was duly reflected under "Other Income" in the Balance Sheet. The Appellant's books, balance-sheet and records were regularly audited by the department. He further submits that the ER-1 returns did not require separate disclosure of such compensation. Therefore, its non-disclosure therein did not amount to suppression.

3.1 Learned counsel further submits that the Appellant had acted bona fide and under a genuine belief regarding the taxability of the compensation. He contends that the CESTAT also erred in relying upon the extraneous finding that the buyers were not scrap dealers, although there was no such allegation in the SCN or the Original Order. Such finding, he submits, was beyond the limited scope of consideration pursuant to the directions of the Hon'ble Supreme Court.

3.2 Learned counsel further submits that the penalty under Section 11AC(1)(c) is unsustainable, as the ingredients necessary for invoking the extended period have not been established. He submits that the CESTAT failed to consider this statutory provision. The Impugned Order is, therefore, unsustainable for non application of mind.

4. On the other hand, learned counsel for the respondents would oppose the instant appeal and seek its dismissal. He argues on the lines of the reasoning assigned in the impugned final order passed by the learned Tribunal.

5. In the aforesaid backdrop, we have heard the rival contentions. We have also gone through the appeal paper book, especially the impugned order dated 30.01.2023 passed by the learned Tribunal.

6. Before we proceed, one caveat. In exercise of our appellate jurisdiction, we have to confine ourselves to the substantial questions of law involved. We cannot sit as a court of first appeal to reappraise the evidence or reverse the findings of fact rendered by the learned Tribunal. Interference is warranted only in a case of patent perversity, or where a finding is based on no evidence, or where there is a glaring violation of a statutory provision. Whether there was suppression of facts with intent to evade duty is essentially a question of fact. Once concurrent findings on that question stand recorded on the basis of material on record, this Court would be circumspect to disturb them.

7. The scope of the present appeal is further circumscribed by the order of the Hon'ble Supreme Court dated 14.02.2022. The merits of the duty demand stand concluded. The Appellant cannot, under the garb of assailing limitation, reopen findings on merits which have attained finality up to the Hon'ble Supreme Court. Only two issues survive, namely, the invocation of the extended period and the consequential penalty.

8. With this in mind, let us now examine the applicability of Section 11A(4), which the learned counsel for the Appellant has strenuously argued was misapplied. For ready reference, Section 11A(4) of the Central Excise Act, 1944 is reproduced hereinbelow:-

> *"11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*
>
> *x-x-x-x-x*
>
> *(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—*
> *(a) fraud; or*
> *(b) collusion; or*
> *(c) any wilful misstatement; 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 11-AA and a penalty equivalent to the duty specified in the notice.*
>
> *x-x-x-x-x"*

9. A bare reading of the aforesaid provision leaves no manner of doubt that, where a case of suppression of facts with intent to evade duty is made out, the assessee is not entitled to the benefit of the normal period of limitation. The period stands extended to five years from the relevant date. We are conscious of the position that mere omission or inaction does not amount to suppression. The suppression must be deliberate and coupled with an intent to evade payment of duty. However, whether such deliberate suppression existed is a

question of fact. In the present case, that question stands answered against the Appellant by concurrent findings.

9.1 The findings are based on relevant and its due appreciation. Pertinently, the agreement between the parties contained no clause for payment of compensation on non-lifting of goods. Yet compensation was paid. The goods were specifically manufactured for the 2CV model of Honda Cars. Yet they were sold as scrap. The sample invoices revealed that the buyers were not scrap dealers. The shortfall in value was made good by Honda Cars under the label of compensation. These findings, cumulatively read, disclose a designed business arrangement. Goods were sold at a depressed price by describing them as scrap, and the balance consideration was routed as so called compensation. The transaction value was thereby artificially suppressed. It, therefore, does not appear to be a case of innocent omission.

9.2 The argument founded on the audit of balance sheet by the department does not impress us either. The regime under the Excise Act is one of self assessment. The onus of making a true, full and correct disclosure in the statutory returns lies squarely on the assessee. The ER-1 return is the prescribed statutory medium of disclosure to the department. Admittedly, the amount received from Honda Cars was not reflected therein. A solitary and cryptic entry in the balance sheet, describing the receipt merely as "compensation from customers", discloses nothing about its nature, its source, or its nexus with the excisable goods. The department could not possibly have gathered from such an entry that the amount represented part of the consideration for goods camouflaged as scrap. Disclosure, to be meaningful, must be such as puts the Revenue in a position to know the true nature of the transaction. A vague entry in a financial statement is no substitute for statutory disclosure.

9.3 The plea that the department acquired knowledge during the audit of 2012 is equally without substance. What is material is disclosure by the assessee, not what the Revenue might have unearthed by its own diligence. Suppression cannot be condoned on the plea that the department could have discovered the truth earlier. Where the relevant facts are camouflaged in the records themselves, a routine audit cannot be treated as knowledge of the suppressed facts. In any event, whether the audit brought the true nature of the arrangement to the notice of the department is again a question of fact. No finding to that effect has been returned by any of the authorities below. We cannot record such a finding for the first time in this appeal.

9.4 The submission regarding the observation that the buyers were not scrap dealers is also unfounded. The said finding is not extraneous. It is rooted in the Order-in-Appeal of the Commissioner (Appeals), was noticed by the Tribunal in the earlier round, and stands affirmed by the Hon'ble Supreme Court. The Tribunal, while examining suppression, was entitled to rely upon the very findings which established the nature of the arrangement. Intent to evade cannot be examined in a vacuum, divorced from the arrangement itself. No question of travelling beyond the remand, therefore, arises.

10. To the above extent, the relevant part of the order dated 30.01.2023 passed by the learned Tribunal, being apposite is extracted hereinbelow:-

> *"16. It is clear from the order passed by the Commissioner (Appeals) that even though the agreement between the applicant and the Honda India did not have a condition for payment of compensation if the goods manufactured by the applicant were not received by the Honda India, yet the applicant paid compensation for non-lifting of*

such goods. The Commissioner (Appeais) also noted that the goods were specifically manufactured for Honda India for its 2CV Model, yet they were sold as scrap and that perusal of the sample invoices showed that the buyers of the goods were not scrap dealers. Thus, it was a business arrangement between the applicant, Honda India and the buyers to evade payment of excise duty. In other words, the arrangement between the appellant and Honda India was such that the goods would be sold at a lesser price by declaring them as scrap and the balance amount would be paid by Honda India by terming the amount as 'compensation'. Thus, the amount received towards so called 'compensation' was to be included in the transaction value. The Tribunal also recorded such a finding and the Supreme Court has confirmed this finding.

17. The arrangement referred to above between the applicant and Honda India leaves no manner of doubt that the intent clearly was to evade payment of excise duty. The amount received by the applicant from Honda India was not even shown in the ER-1 Returns filed by the applicant. Much emphasis has been placed by the learned counsel for the applicant on the balance sheet of the applicant for the financial year 2011-12. All that is recorded in the said balance sheet is "compensation from customers Rs.49,156,375/-". It cannot be gathered from this statement in the balance sheet that this amount was received by the applicant from Honda India towards compensation for the cancellation of the agreement to supply the spare parts which were ultimately sold as scrap. The submission would have carried some weight if the balance sheet specifically described the reason for receiving this compensation.

18. The finding of the Tribunal that it transpires from the business arrangement between the appellant, Honda India and the buyers of scrap that the appellant had received some amount from the buyers of scrap and some amount from Honda India for the value of the auto parts sold by the appellant has been confirmed by the Supreme Court in the judgment and order dated February 14, 2022. The extended period of limitation contemplated under section 11A (4) of the Excise Act was, therefore, correctly invoked in the facts and circumstances of the case."

11. We are in agreement with the view taken by the learned Tribunal. It is based on findings of fact returned on the material on record. No perversity has been demonstrated. All the findings are, accordingly, upheld. Once suppression with intent to evade stands established, the application of Section 11A(4) of the Central Excise Act, 1944 follows by operation of law.

12. As regards penalty, the challenge must meet the same fate. The ingredients for invoking the extended period under Section 11A(4) and for imposing penalty under Section 11AC(1)(c) are materially the same.

Once suppression with intent to evade duty stands affirmed, the penalty follows as a necessary consequence.

13. In view of the discussion recorded hereinabove, and as an upshot thereof, we are of the view that no substantial question of law arises. No ground is made out to interfere.

14. Accordingly, the appeal stands dismissed. Pending applications, if any, also stand disposed of. No order as to costs.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

26/ASHWANI-TANISHA