

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Rectification of Mistake Application No. 50154 of 2022
(on behalf of the appellant)

In

Excise Appeal No. 50371 of 2019

(Arising out of Order-in-Appeal No. 446-447(SM)/CE/JPR/2018 dated 26.10.2018
passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

**M/s. Rajasthan Prime Steel
Processing Center Pvt Ltd**

...Appellant

VERSUS

**Commissioner of Central Excise
And Central Goods & Service Tax,
Commissionerate, Alwar**

...Respondent

APPEARANCE:

Shri Puneet Bansal & Shri Saurav, Advocates for the Appellant
Shri Sanjay Kumar Singh, Authorized Representative of the Department

CORAM:

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

**Date of Hearing: 20.12.2022
Date of Decision: 30.01.2023**

MISCELLANEOUS ORDER NO. 50037/2023

JUSTICE DILIP GUPTA

The appellant, which is engaged in the manufacture of auto parts, entered into a contract dated January 14, 2009 with Honda Siel Car India Ltd¹ for supply of auto parts and other products used in the manufacture of motor vehicles. Honda India, however, cancelled the order and did not take delivery of the parts. According to the

1. Honda India

appellant, this resulted in accumulation of the finished goods which were sold as scrap, resulting in loss to the appellant. The appellant raised two debit notes, each dated March 31, 2012, for Rs. 1,96,59,271/- and Rs. 2,94,97,104/- on Honda India to cover the loss suffered by the appellant due to cancellation of the order. This amount was not included by the appellant in the transaction value of the scrap that was sold and excise duty was not paid.

2. A show cause notice dated March 29, 2017, was issued to the appellant proposing to demand central excise duty amounting to Rs. 60,75,728/-, alleging that the consideration received by the appellant from Honda India under the guise of compensation was liable to be included in the transaction value of goods. The extended period of limitation under section 11A(4) of the Central Excise Act, 1944² was also invoked. The Additional Commissioner, by order dated December 29, 2017, confirmed the demand with interest and also imposed equal penalty upon the appellant. This order was challenged by the appellant before the Commissioner (Appeals) who, by order dated October 26, 2018, confirmed the proposed demand but extended the benefit of cum-duty price.

3. Both the adjudicating authority and the Commissioner (Appeals) recorded a categorical finding that the amount received by the appellant from Honda India should be included in the transaction value since the amount received was for those very auto parts which were to be sold to Honda India but were ultimately sold by the appellant to buyers of scrap since the contract was cancelled. The Commissioner (Appeals) also observed that this was actually a

2. the Excise Act

business arrangement between the appellant, Honda India and the buyers of scrap to evade payment of excise duty on the amount called as 'compensation' and infact Honda India actually paid some amount to the appellant and some amount was received by the appellant from the buyers of scrap. Thus, the amount received by the appellant from Honda India, which the appellant termed as compensation, was liable to be included in the value of the scrap.

4. The Tribunal, by decision dated October 13, 2021, dismissed the appeal finding that there was no error in the order passed by Commissioner (Appeals). The Tribunal also recorded a finding that it clearly transpired from the business arrangement between the appellant, Honda India and the buyers of scrap that the appellant received some amount from the buyers of scrap and some amount from Honda India for the value of the auto parts and there was no good reason as to why this amount received by the appellant from Honda India should not be included in the transaction value of the goods.

5. Against the decision of the Tribunal, the appellant filed Civil Appeal No. 467 of 2022³ before the Supreme Court. The Supreme Court dismissed the Civil Appeal holding that the Tribunal was justified in coming to the conclusion that the amount of compensation received by the appellant from Honda India should be included in the transaction value of the scrap, but relegated the appellant to file a review application before the Tribunal so far as the invocation of the extended period of limitation is concerned. The order of the Supreme Court is reproduced below:

3. Rajasthan Prime Steel Processing Center Pvt. Ltd. vs. Commissioner Central Excise and CGST decided on February 14, 2022

“We are in complete agreement with the view taken by the Tribunal so far as the main issue is concerned, whether the amount of compensation received by the appellant can be included for the purpose of valuation.

Shri V.Sridharan, learned senior counsel appearing on behalf of the appellant has submitted that one another issue with respect to extended period of limitation and the consequential penalty was raised before the Tribunal which has not been dealt with by the Tribunal. **For the aforesaid issue, namely, whether the extended period of limitation could have been invoked or not and the consequential penalty, in the peculiar facts and circumstances of the case, we relegate the appellant to file a review application before the Tribunal and if such a review application is filed within a period of four weeks from today, the same be entertained and the learned Tribunal to take appropriate decision on the same in accordance with law and on its own merits.**

With this, the Civil Appeal stands dismissed/disposed of.”

(emphasis supplied)

6. Thus, though the Supreme Court was in complete agreement with the view taken by the Tribunal that the amount of compensation received by the appellant should be included for the purpose of valuation, the limited issue on which the matter has been remanded to the Tribunal is whether the extended period of limitation could be invoked and the consequential penalty could be confirmed.

7. The appellant has, accordingly filed this application claiming that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act, 1944⁴ could not have been invoked for confirming the demand of excise duty and that penalty under

4. **the Excise Act**

section 11AC (1) (c) of the Excise Act could also not have been imposed.

8. Shri Puneet Bansal, learned counsel for the appellant assisted by Shri Saurav submitted that the extended period of limitation contemplated under section 11A(4) could have been invoked while raising the demand for the period from March 2012 to April 2012 on the ground of suppression. In this connection, learned counsel pointed out that the appellant was under a bonafide belief that 'compensation' received by it from Honda India was not exigible to excise duty because the said amount was not an additional consideration nor such amount was given by the buyers of goods. Learned counsel pointed that transaction of receipt of compensation was recorded in the balance sheet under the head "other income-compensation from customers" and, therefore, there was no suppression as the balance sheet is a public document available to the revenue at all points of time. Learned counsel also pointed out that the appellant was subjected to audit for the period October 2011 to September 2012 in November 2012 and for the period October 2012 to May 2014 in August 2014 and on the asking of the Audit Officers, audited financial statement for the financial year 2011-2012 was produced in which these transactions were recorded. Learned counsel, therefore, submitted that the show cause notice issued in March 2014 raising a demand of excise duty for the period March 2012 to April 2012 could not have invoked the extended period of limitation as these transactions were declared in the balance sheet for the financial year 2011-2012. Learned counsel also submitted that the ingredients for imposition of penalty under section 11AC of the

Excise Act are identical to those that are necessary for invocation of the extended period of limitation and as the extended period of limitation could not have been invoked, penalty cannot be imposed under section 11AC of the Excise Act.

9. Shri Sanjay Kumar Singh, learned authorized representative appearing for the department, however, submitted that the extended period of limitation under section 11A(4) of the Excise Act was rightly invoked in the facts and circumstances of the case and as the ingredients for imposition of penalty under section 11AC of the Excise Act are the same as for invocation of the extended period of limitation, the Commissioner (Appeals) committed no illegality in confirming the imposition of penalty.

10. The submissions advanced by the learned counsel for the applicant and the learned authorized representative for the department have been considered.

11. In order to appreciate the submissions advanced by the counsel for the applicant and the learned authorized representative appearing for the department, it would be appropriate to reproduce the relevant portions of sub-sections (1) and (4) of section 11A of the Excise Act and they are as follows:

"Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.- (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 misstatement 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,-

(a) the Central Excise Officer shall, within two years 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;

(b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-

- (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.

(2) xxxxxxxxx

(3) xxxxxxxxx

(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 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."

12. The relevant portion of section 11AC of the Excise Act is also reproduced:-

"Section 11AC. Penalty for short-levy or non-levy of duty in certain cases.- (1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:-

- (a) xxxx xxxx

(b) xxxx xxxx

(c) 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 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, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined:

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined."

13. In the instant case, the show cause notice dated March 29, 2017 that was issued to the applicant mentioned that the applicant had evaded payment of central excise duty of Rs.60,75,728/- on the additional consideration received by it in the form of compensation from Honda India. It also mentioned that it was only after scrutiny of records of the applicant that it came to the notice of the department that the applicant had received Rs.1,96,59,271/- and Rs.2,94,97,104/- on March 31, 2012 through the two debit notes given by Honda India. Paragraphs 5 and 8 of the show cause notice are reproduced below:

"5. **And whereas, the consideration under the guise of compensation is includible in the transaction value under Section 4(3)(d) of the Central Excise Act. 1944, and assessee is liable to pay Central Excise Duty on this additional consideration by including it in the assessable value. The assessee appears to have suppressed the Transaction Value of the goods with intent to**

evade payment of duty as they have never informed the department about the additional consideration in form of compensation collected from the buyers and retained by them. If the Officers of the Anti-evasion of the Central Excise Division-II Bhiwadi had not detected the said compensation being received in form of additional consideration by the assessee and not paid central Excise Duty on the same, through detailed scrutiny of their records and information gathered from the other sources, **the same would have remained undetected.** Therefore, extended period of limitation appears to be invocable against the assessee. Therefore, the duty short paid/not paid is recoverable from the assessee under Section 11A(4) of the Central Excise Act, 1944 along with interest under Section 11AA of the Act *ibid*. The assessee also appears to be liable for penal action under section 11 AC(1) c) of the Central Excise Act, 1944 for contravening the provisions above.

xxxx xxxx

8. And whereas it appears that the assessee has not disclosed the above mentioned facts to the department and have suppressed the same with an Intention to evade payment of prescribed amount on the consideration of such Sales. If the Officers of the Anti-Evasion Team of the Central Excise Division-U, Bhiwadi had not detected the said sales through detailed scrutiny of their records and information gathered from the other sources, the same would have remained undetected. **Therefore, extended period of limitation appears to be invocable against the assessee.**

9. xxxxxx **The assessee also appears to be liable for penal action under Rule 15(2) of the CCR, 2004 read with section 11AC(1)(c) of the Central Excise Act, 1944 for contravening the provisions above."**

(emphasis supplied)

14. The Additional Commissioner, in the order dated December 29, 2017 noted the following facts in regard to the invocation of the extended period of limitation:

"5.4. xxxxxxx I am of the firm view that had the SHIL lifted the auto parts, the assessee would have got the cost of the raw material, cost of production and certain percentage of business income over investment. Thus, the assessee and ASCIL agreed upon for the compensation to the tune of actual losses as beneficial to both of them to stay in the market. I find that the assessee issued two Debit Notes No.RPSC-DN-2011-12/90 dated 31.03.2012 and No.RPSC-DN-2011-12/91 dated 31.03.2012 for Rs.1,96,59,271/- & Rs.2,94,97,104/- respectively to HSCIL, meaning thereby adjustment of book entry. Hence, the said additional amount Rs.4,91,56,375/- (Rs. 1,96,59,271/- & Rs.2,94,97,104/-) collected by the assessee is nothing but form part of total sale value to arrive at the actual transaction value of the said goods and the assessee is liable to pay differential Central Excise Duty amounting to Rs.60,75,728/-, equivalent to duty chargeable on the additional consideration of Rs.4,97,56,75/-received by the assessee. **I, accordingly, hold that the assessee had suppressed the taxable value with intent to evade the payment of Central Excise Duty and had contravened the provisions of Section 4(3)(d) of the Central Excise Act, 1944** (hereinafter referred to as "the Act" also) read with Rules 6, 8, 11 of the Central Excise Rules, 2002 and is recoverable from them along with interest under section 11A(4) and 11AA respectively of the Central Excise Act, 1944.

xxxx xxxx

5.7. As regards the allegation of suppression of facts, I find that there has been a deliberate act by the assessee to suppress the information about the receiving of compensation from HSCIL in as much as they mis-declared the transaction value by not including the compensation amount in contravention of the provisions of the section

4(3)(d) of the Central Excise Act, 1944 read with Rules 6,8,11 of the Central Excise duty. **It was incumbent upon the assessee to declare the true transaction value and pay Central Excise Duty on self-assessment.**

xxxx xxxx

5.7.3. The assessee suppressed the fact of receipt of additional consideration as compensation with intent to evade duty and **such facts came to the notice of the department on detailed scrutiny by the officers of Anti-Evasion of the Commissionerate.** Thus, the extended period of limitation under provision of section 11A(4) of the Central Excise Act, 1944 was rightly invoked. The act of not disclosing the vital information before the jurisdictional Central Excise authorities was conscious and purposeful acts on the part of assessee. These acts show the contumacious conduct on the part of their part. The penal consequences, accordingly, must follow and I hold accordingly."

(emphasis supplied)

15. The Commissioner (Appeals) noticed that duty was payable on the amount of compensation received by the applicant. The relevant portion of the order is reproduced below:

"8. **It is observed that the appellant has stated that HSCIL did not lift the goods manufactured by the appellant under an agreement for 2CV model and accordingly, they had to sell the goods manufactured for 2CV model to other customers as scarp. HSCIL paid the compensation for non-lifting of such material, which was mutually decided between them. In this regard it is observed that the agreement between the appellant and HSCIL do not bear any condition for payment of compensation for non-lifting of goods manufactured by the appellant for 2CV model.** It is difficult to digest that when the appellant made goods for HSCIL for 2CV model i.e. the goods manufactured were tailor made, how it can be used by other persons and where such goods can be used except 2CV model.

It has also not been brought on records as to who gave direction / permission (on behalf of HSCIL) to sell the goods tailor made for their 2CV model to the persons to whom the appellant has sold the goods. **The appellant has contested that they had to sell goods as scrap, but from perusal of sample invoices it is observed that the buyers are not scrap dealers. It has not been brought on record that in what manner compensation was decided.** The debit note submitted by the appellant do not reveal the manner in which compensation was calculated. In this case goods are manufactured as per the requirement of HSCIL for use in 2CV model and as per submissions of the appellant this model was discontinued in 2012. **Since the said model was discontinued, it is not understood what the buyer will do with the tailor made parts. It appears to be business arrangement between the appellant, HSCIL and the buyer of goods to evade payment of excise duty on the so called amount of compensation, that is why goods were sold to these buyers and HSCIL has paid the amount to HSCIL in the name of compensation to the appellant.**

8.1. It is further observed that CE duty is chargeable on the manufacturing activity but duty liability is deferred till the time of clearance and duty is charged on the transaction value. In the case goods were manufactured and the appellant received part amount from the buyer of goods and part amount in the name of compensation from HSCIL against the goods manufactured by it for HSCIL, therefore, the amount received against the goods manufactured was sum total of the amount received as sale of goods and amount received in the name of compensation. **In other words the appellant received amount in respect very same manufactured goods from the buyer (under an invoice) as well as from HSCIL in the name of compensation. Accordingly, CE duty is chargeable on the compensation amount in addition to the amount charged by the appellant for selling impugned goods.**

(emphasis supplied)

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 (Appeals) 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-I 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.

19. The imposition of penalty under section 11AC(1) (c) would, therefore, also be justified as the same parameters as for invocation of the extended period of limitation apply.

20. The application filed by the appellant is, therefore, liable to be rejected and is rejected.

(Order pronounced in the open court on **30.01.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Rectification of Mistake Application No. 50154 of 2022
(on behalf of the appellant)

In

Excise Appeal No. 50371 of 2019

(Arising out of Order-in-Appeal No. 446-447(SM)/CE/JPR/2018 dated 26.10.2018
passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

**M/s. Rajasthan Prime Steel
Processing Center Pvt Ltd**

...Appellant

VERSUS

**Commissioner of Central Excise
And Central Goods & Service Tax,
Commissionerate, Alwar**

...Respondent

APPEARANCE:

Shri Puneet Bansal & Shri Saurav, Advocates for the Appellant
Shri Sanjay Kumar Singh, Authorized Representative of the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R PRIYA, MEMBER (TECHNICAL)**

Date of Hearing: 20.01.2022

Order pronounced on **30.01.2023**.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)**