Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 01

Excise Appeal No. 297 of 2012

[Arising out of Order in Appeal CS-328-329-SURAT-JI-2011 dated 27/12/2011 passed by Commissioner (Appeals), Central Excise & Customs, Surat-II)

Sailesh Manilal Thakkar **.....Appellant**

Plot No. 1 and 12 to 16, Village-karanj,
Tal-mandvi, 459-394160 24

VERSUS

CGST & Central Excise Surat **.....Respondent**

New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat -395001

APPEARANCE:

Shri. S.Suriyanarayanan, Advocate appeared for the Appellant
Shri. Himanshu Nachane,, Superintendent, (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 10720/2026

DATE OF HEARING:27.08.2026
DATE OF DECISION:27.08.2026

SOMESH ARORA

In the instant case, the panchnama was drawn after searches of the premises of the appellant in which department noticed certain shortages of the raw-material as well as in other materials. Panchnama was drawn on 1st June to 2nd June, 2023, while suitable action was taken against the excess found on 28th November, 2023 and which was ultimately sustained also but in the case of shortages, department did not react despite knowledge coming to its notice vide aforesaid panchnama till issuance of show cause notice on 11th March, 2008.

2. Learned Counsel seeks to rely on the decision of Hon'ble Gujarat High Court as reported in 2015 SCC OnLine Guj 2856 in the matter of Commissioner of Central Excise and Customs appellant Vs. M/s Rivaa Textile Industries Limited, more particularly Para no. 8 to 12 reproduced below:

"8. Having heard learned counsel appearing for the parties, we are of the view that it is not disputed that the inspection was carried out by the Officers of the appellants on 16.91996. The first show-cause notice was issued on 14.3.1997 and the second show-cause notice was issued on 20.4.1998 and the third show-cause notice was issued on 27.3.2001. It is true that the show-cause notices were issued with regard to part of the transactions for different periods, but on the basis of the same inspection made on 16.9.1996. Once the earlier show-cause notices were issued with regard to the same inspection, then the averment of the department cannot be accepted that they have discovered suppression, fraud etc. subsequently. Everything was within the knowledge of the department from the date of inspection and from the Panchnama made by them on 16.9.1996. Therefore, in view of the peculiar facts and circumstances of the case, the extended period of five years was not available to the department.

9. The findings recorded by CESTAT in paragraphs 12 and 13 is extracted below:

> *"12. The earlier appeal filed by the appellants before Hon'ble CAGAT reported in Parag Industries P. Ltd. v. CCE, Surat-I-2000 (121) ELT 540 (T-WZB), Which has been decided in favour of the appellants also stands in the way of the Department invoking the extended period of limitation, particularly when the Department has not filed any appeal against the said order. Besides, the fact of the settlement in the KVSS, as per the certificate dated 23.3.1999 as at page No. 164 mentioned above, also stand in the way of Department to invoke the extended period. The learned counsel specifically drew our attention to para 28 of the impugned order wherein the Commissioner has recorded as under:-*
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> > *"On the basis of the details, the officers verified the lot register of Parag Industries Ltd. and on the comparison of the entries lot price wise with each other, it was noticed that most of the lot entries, the fabrics of which to have been shown as receipt at Parag House were found pending in the factory premises of PIL (processed house)."*
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> *13. We have carefully heard both the sides. Considering the submissions made by both the sides, perusal of the records and the case laws relled by the learned counsel, we find that when the Officers had visited the factory premises on 28.9.96 for follow-up action and have been drawn factual panchnama on 20-21.9.96, detained certain goods on 21.9.96 recorded the statement during the period 16-17/9.96 to 12.12.96, the show-cause notice dt.14.3.97 culminated in the order of the Tribunal reported in 2000 (121) ELT 540 (T) and the prosecution of the case was settled on 23.3.99 as at page 164 of show-cause notice on 27.3.2001 for the period in dispute (l.e. 24.6.1996 to 13.9.96) must be on the expire of six months; l.e. the show-cause notice should have been issued latest by 15.3.1997. Hence, the demand is hopelessly time barred.* Therefore, even without going into further merits of the case, we can hold that the demand is barred by limitation. However, it would be pertinent to mention that so far as undervaluation is concerned,

> It has already been mentioned that the duty was paid as per the Trade Notice Issued by the Surat Commissioner, which was based on the CBEC order dated 31.12.1993. The learned counsel has already submitted that imposition of penalty is totally illegal as no specific clause of Rule 173-Q (1) of CER of 1994 has been mentioned. We fully agree with the contention of the learned counsel that in the absence of the specific contravention, imposition of penalty is totally vague and not sustainable. We, therefore, set aside the impugned order and allow the appeals filed by the appellants."

10. Further, the Hon'ble Apex Court in Nizam Sugar Factory v. Collector of Central Excise, Andhra Pradesh, 2006 (197) E.L.T. 465 (S.C.) has held that where all relevant facts were not in the knowledge of the authorities when the first show-cause notice was issued, while issuing second and third show-cause notices to the assessee on the same and similar facts could not be taken as suppression of facts on the part of the assessee as the facts were already within the knowledge of the authorities. Therefore, we are unable to accept the submission of Mr. Gaurang Bhatt that the department had no knowledge about the suppression of facts on the part of assessee-respondent or when the first or second show-cause notice was issued by the_department. In all the three show-cause notices, the allegations are more or less same based on same factual aspects.

11. In view of the facts of this case, we answer the question No. 1 against the department and in favour of the assessee and held that the extended period of five years would not be available to the department under Section 11A(I) of the Central Excise Act in the facts of the case. So far as question No. 2 is concerned, since the entire proceedings is time barred, excise duty cannot be levied against the assessee. Therefore, penalty under Rule 173-Q could not be levied on the assessee on the ground that he has evaded central excise duty by suppression of facts and in contravention of Rules under the Central Excise Rules.

12. For the aforesaid reasons, both the questions are answered against the department and in favour of the assessee. The appeal is accordingly dismissed."

2.1 The Learned Advocate submits that not only prior show cause notice has been issued in the instant case for excesses found but considerable period has been taken despite knowledge of the department as is flowing from the panchnama, more so when first show cause notice relating to excess also alleged suppression etc.

3. Learned AR having gone through the decision of the Hon'ble Gujarat High Court reiterates the finding of the lower authority.

4. In peculiar facts of this case, this Court is of the view that simultaneous show cause notice both for excess as well as shortages should have been made within proper time, once the department had come to know not about the factum of shortages and excesses. In the instant case not having done so for almost four and half years of knowledge flowing to it in the light of decision of Hon’ble Gujarat High Court as cited above by the learned Advocate. This Court is of the view that benefit on limitation is allowable. Same is allowed with consequential benefit.

5. Appeal allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi