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

REGIONAL BENCH-COURT NO. 2

EXCISE APPEAL NO. 11149 of 2018-DB

(Arising out of OIA-AHM-EXCUS-001-APP-303-2017-18 Dated 08/02/2018 passed by Commissioner (Appeals), Central Excise & CGST- Ahmedabad)

Neel Agrotech Pvt Ltd **........Appellant**
S/3, Navrang, Swastik Cross Road,
Navrangpura, Ahmedabad,
Gujarat-380009

VERSUS

Commissioner of CGST & Central Excise
- Ahmedabad South **.......Respondent**
7th Floor, Central GST Bhawan,
Nr. Polytechnic, Ambawadi,
Ahmedabad-380015

APPEARANCE:
Shri Nirav Shah, Advocate for the Appellant
Shri R K Agarwal, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10753/2026

DATE OF HEARING: 27.03.2026
DATE OF DECISION: 24.09.2026

SATENDRA VIKRAM SINGH

M/s Neel Agrotech Pvt Ltd, Ahmedabad (Appellant) are manufacturing customised Greenhouses and classifying the same under CTH 8419 and 9406 of the First Schedule to the Central Excise Tariff Act 1985. It was observed during scrutiny of monthly ER-1 returns for the period from March 2014 to December 2014, that the appellant had cleared "Greenhouse" under CTH 84198960 and paid duty @10% by availing benefit of Notification No. 04/2014 dated 17.02.2014. The Range officer made correspondence with the appellant regarding misclassification of the product and wrong availment of benefit of above notification. Feeling dissatisfied with the reply of the party, Revenue issued a show cause notice dated 26.07.2016 to the appellant proposing classification of "greenhouses" under CTH 9406 0011 instead of 8419 8960 and demanding the differential Central Excise Duty of Rs. 2,67,667/- under Section 11 A(4) along with interest under Section 11AA of the Central Excise Act, 1944 and penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC(1)(c) of the Central Excise Act, 1944.

1.1 The Assistant Commissioner vide order-in-original dated 18.05.2017 held classification of goods under CTH 94060011, confirmed the differential duty of Rs. 2,67,667/- along with interest and imposed equal penalty on the appellant. Aggrieved with this order, appellant filed appeal before the Commissioner (Appeals) challenging mainly classification of their product under CTH 9406 0011 and invocation of extended period in the matter. After considering the submissions of the appellant, the Commissioner (Appeals) vide impugned order dated 8th February, 2018 upheld the findings of the Assistant Commissioner and rejected their appeal. Hence, the present appeal.

2. In the present appeal, the appellant took the following grounds and prayed to set aside the impugned order and allow the appeal:-

- They procure GI pipes in their factory and undertake cutting, drilling, bending and welding in their factory which is merely 20-25% of construction of green house. Aforesaid GI pipes are transported to project site where fabricated GI pipes are further fixed on civil foundation work. They install aluminium profiles on the structure and also plastic sheets/nets. Irrigation network like drip, sprinklers, fogging system etc is installed in greenhouse as per the requirement of the customer. They install fans, cooling pads, pumps etc. for proper climate control, within the green house. They also install fertigation system for fertigation in the greenhouse and also automation controls for controlling humidity, temperature and light sensitivity within greenhouse. In view of above activities, their product is correctly classifiable under CTH 8419 and they had correctly paid the duty.
- Greenhouses manufactured by the appellant are not classifiable under CTH 9406 which covers pre-fabricated buildings. The green house is never fully assembled in their factory and not even cleared in unassembled form from the factory. They only clear GI pipes duly worked from their premises which

cannot even be considered as incomplete greenhouse structure having the essential character of pre-fabricated buildings. The skeleton of greenhouses which is constructed at the site, can be classified under CTH 9406. Since they never cleared skeleton of greenhouse from their factory, such goods cannot be classified under 9406 and are appropriately classifiable under CTH 8419.

- The activity of construction and installation of greenhouse does not attract any Central Excise duty as after installation, these are attached to the earth by way of civil foundation and thus, greenhouses become immovable property.
- They sought clarification from the Ministry regarding any specific exemption to manufacturers of greenhouses as they were the only manufacturer who were paying excise duty. However, no reply came from the department and they, continued to pay the Excise duty.
- The impugned order is non-speaking as they had specifically pleaded the issue of limitation, which has not been properly addressed.
- The goods were cleared on valid duty paying invoices indicating classification under CTH 8419. Monthly returns were filed in time. Since entire facts including classification of goods were in the knowledge of the department, invocation of extended period is not justified and the demands which are barred by limitation, are liable to be quashed and set aside.
- Penalty is wrongly imposed on them in the facts of the case. It is settled law that when issue is pertaining to classification of a product, no penalty can be imposed.

3. During arguments, learned Advocate Shri Nirav Shah mentioned that the appellant sent several letters to the departmental authorities on 05.04.2013, 29.10.2013, 10.05.2013 & 28.05.2013 seeking classification on dutiability of Greenhouse, but no reply was received. He placed reliance on the decision of CESTAT in the case of M/s Pranav Vikas (India) Ltd. Vs.

Commissioner of C. Ex., New Delhi reported at 2002 (148) E.L.T. 963 (Tri. - Del.) and M/s Hindustan Lever Ltd. Vs. Commissioner of C. Ex., Mumbai reported at 1999 (106) E.L.T. 501 (Tribunal). Learned Advocate also relied on two decisions of CESTAT in the case of M/s Sriroz Consultants Pvt Ltd reported at 2012 (27) STR 277 and 2018 (8) GSTL 276 to plead that excise duty is not payable on greenhouse and only service tax is payable on erection, installation & commissioning service.

3.1 Placing reliance on various ER-1 returns filed by them with the department, Learned Advocate argued that classification of greenhouse was disclosed to the department in their ER-1 returns, which were also scrutinized by the departmental officers, as evident from queries raised by the jurisdictional central excise officers, to which they responded. Thus, the issue was fully in the knowledge of the department, still the department proceeded to issue show cause notice by invoking extended period. He relied on the decision in the case of Kolety Gum Industries reported at 2016 (335) ELT 581 (SC) wherein it was held that in the disputes pertaining to classification of goods, extended period is not invokable and penalty is not impossible. On amendment to Section 11A of the Central Excise Act, 1944 providing for issue of show cause notice in normal cases within 2 years from the relevant date, Shri Shah relied on the decision of Hon'ble Gujarat Hight Court in an Income Tax matter in the case of TATA Tele Services Vs. Union of India reported at 2016 (66) Taxman.com 157 (Guj.). He pleaded that amendment would not apply retrospectively to cases where the limitation had already expired under the unamended Section.

4. Learned AR countered the argument of learned Advocate, mentioning that the show cause notice in this case was issued on 26.07.2016 and by that time, Section 11A was amended vide Finance Act, 2016 where normal time period of 1 year to issue show cause notice was substituted with 2 years. The new time limit so substituted, is effective from retrospective date as held by

Hon'ble Supreme Court in the case of GOI Vs. Indian Tobacco Association reported at 2005 (187) ELT 162 (SC). He also argues that with new time limit for issue of show cause notice, substantial portion of duty demand will still survive. On classification, he mentions that Chapter heading 9406 0011 specifically covers greenhouses in ready to assemble sets. From the activities elaborated, it is clear that the appellant was clearing fabricated structures from their factory and only assembly of greenhouse was done at the site. Therefore, classification of greenhouses under specific CTH 9406 0011 is proper and correct. He relies on the decision in the case of Jain Irrigation Systems Ltd Vs. Commr. of C. Ex. & ST, Alwar reported at 2018 (14) GSTL 286 (Tri.-Delhi) to plead his case. He prays that the impugned order be upheld by setting aside the above appeal of the party.

5. We have heard both sides. We find that in ER-1 returns for the disputed period, appellant has mentioned description of goods as "green", classified them under CTH 84198960 and availed concessional rate of duty under Notification No. 4/2014-CE.

5.1 In this case, appellant has classified goods under CTH 8419 8960 which covers "*Plant growth chambers and rooms and tissue culture chambers and rooms having temperature, humidity or light control.*" Revenue on the other hand claims it's classification under CTH 9406 0011. The heading CTH 9406 is reproduced as under :-

Tariff Item	**Description of goods**	**unit**	**Rate of duty**
(1)	(2)	(3)	(4)
9406	**Prefabricated Buildings**		
9406 00	- *Prefabricated Buildings*		
	--- *Green houses*:		
9406 00 11	---- Green house- in ready to assemble sets	u	8%
9406 00 19	---- other	u	8%
	--- other:		

9406 00 91	---- Prefabricated housing material	u	8%
9406 00 92	---- prefabricated construction for cold storage	u	8%
9406 00 93	---- Silos for storing ensilage	u	8%
9406 00 99	---- other	u	8%

5.2 From above, it is clear that one single dash (-) against heading 9406 00 covering "prefabricated buildings", has been subdivided in two three dashes (---), the first one covers "**greenhouse**" whereas second one covers "**other**". The three dash (---) covering "**greenhouses**" has further been subdivided in two four dashes (----) headings i.e. one for "**greenhouse in ready to assemble sets**" falling under CTH 9406 00 11 and the other four dash (----) for "other" falling CTH 9406 00 19 covering greenhouses, other than in ready to assemble sets. From the manufacturing process as described, it emerges that the appellant was processing various raw materials in the factory and clearing Greenhouse in ready to assembled condition. Since their transportation in assembled condition would have been difficult due to bulky size, complete installation was thereafter done at the site.

5.3 We find that the product manufactured by the appellant is clearly identifiable and specifically covered under CTH 9406 0011 as greenhouses in ready to assemble sets which is to be preferred as compared to a general description given under CTH 8419 8960 view of Rule 3(a) of the General Rules for the interpretation of Central Excise Tariff. This Rule is reproduced as under:-

> *"3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
>
> > *(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in*

relation to those goods, even if one of them gives a more complete or precise description of the goods."

5.4 We also find that the issue of classification of pre-fabricated parts of greenhouse whether under CTH 8424 or under 9406, came up for decision before CESTAT New Delhi in the case of Jain Irrigation Systems Limited Vs. Commissioner of C. Ex. & S.T., Alwar reported 2018 (14) GSTL 286 (Tri.- Del.), which held that the product is classifiable under CTH 9406 0011. The relevant para of the said decision is reproduced below:-

> ***"12.*** *The tariff entry 9406 00 11 covers the green houses in ready to assemble sets. It stands established that the supply which has been made is for green houses in ready to assemble condition. Such goods are specifically covered under the above tariff heading.*
>
> ***13.*** *After careful examination of the entire case, we are convinced that the goods cleared by the appellant are classifiable under TI 9406 00 11 as green houses in ready to assemble sets and liable for payment of excise duty during the period under dispute. Such Central Excise duty is required to be paid on the entire value of the green houses i.e. including the value of both the components fabricated in the factory as well as those procured from outside. However, the appellant will be entitled to the benefit of Cenvat credit on goods procured from outside subject to verification of such entitlement on the basis of documents to be produced by the appellant. The Adjudicating Authority will allow such Cenvat credit after verification of documents which will be produced by the appellant, as per law."*

Accordingly, we are of the view that the appellant's claim to classify greenhouse manufactured by them under CTH 8419 8960 is not legally correct. The classification of these goods under CTH 9406 0011 as held by the Commissioner (Appeals) in impugned order is upheld.

5.5 On appellant's contention on extended period, Learned AR has argued that Section 11A of the Central Excise Act, 1944 was amended vide Finance Act, 2016 which substituted the time period of one year available to issue show cause notice under Section 11A(1)(a) with 2 years. Therefore, the demand is within the normal period. We observe that the decision of Hon'ble Apex Court in the case of Indian Tobacco Association, cited supra by the Learned AR, involved interpretation of the expression "substitute" in DEPB scheme made on or about 27.11.1997. In these facts, Hon'ble Court held that where it was the intention of the Government to extend a benefit, and the word 'substitution' is used in a notification, the effect of the amended provision is from the retrospective date. In para 29, Hon'ble Court held as under :-

> *"**29.** The question has furthermore to be considered having regard to the language and object discernible from the statute read as a whole. The Respondents were not ineligible from obtaining the benefit. Once they are held to be eligible for obtaining the benefit, the amended notification being an exemption notification should receive the beneficent construction."*

On other hand, we find that the appellant has relied on the decision of Hon'ble Gujarat High Court in the case of TATA Tele Services Vs. Union of India reported at 2016 (66) Taxman.com 157 (Guj.) to plead that the above amendment in Section 11A will not be available to the department from retrospective date. As per facts in TATA Tele Services case, it emerges that prior to Section 201 came to be amended by Finance Act (No. 2) of 2009, there was no time limit prescribed for passing an order under Section 201 (1) of the Income Tax Act holding a person to be assessee in default. W.e.f. 01.04.2010, vide Finance Act, 2009, Subsection (3) and (4) came to be introduced to provide that an order under Section 201 (1) shall be passed within 2 years from the end of the financial year in which statement of tax deducted is filed. Section 201 (3) was further amended on 28.08.2012 where a common period of 7 years was prescribed irrespective of whether or not above statement of tax deducted was filed. In 2014, Section 201 (3) of the Act was amended w.e.f. 01.10.2014 by which, time limit provided under section 201(3)(ii) of the Act for passing order under section 201(1) of the Act came to be extended by one year and it also provides that no orders shall be made under sub-section (1) holding a person to be in default for failure to deduct whole or part of the tax from a person resident in India at any time after expiry of seven years from the end of the financial year in which payment is made or credit is given. In this backdrop, Hon'ble High Court observed that whenever this section has been amended, date was specified to make the provisions of the Section effective. For example, when amendment was made on 28.05.2012, it was specifically made applicable w.e.f. 01.04.2010. Since in the amendment made in 2014 no such date of effectiveness has been mentioned, so the amended provisions will take only prospective effect.

5.6 We further find that Cestat Hyderabad has dealt with similar issue in a customs matter where also, normal period of issuing demand was increased to two years by Finance Act, 2016. The Bench in the case of Aveco Technologies Pvt Ltd Vs. CC, Hyderabad reported at 2018 (362) ELT 624 involving similar issue held that increased time limit of two years provided vide Finance Act, 2016 (w.e.f. 14.05.2016) is not applicable from retrospective period. The demands which have already become dead by limitation, could not be revived by the said amendment. The Above decision of the division Bench was affirmed by Hon'ble Supreme Court as reported vide 2018 (362) ELT A164 (SC) by dismissing the appeal filed by Revenue. Relevant para 15 of the above decision is reproduced as under:-

> ***"15.*** *We also find that a part of the demand raised in the Notice is barred by limitation. The Commissioner has held in the order that the larger period of limitation available under the proviso to Section 28 is not invocable in the present case as there was no deliberate suppression or misstatement. He has therefore confined the demand for a period of the normal period of limitation. He has however applied two years to be the normal period of limitation and, since the show cause notice was issued on 8-11-2014, all imports made after 8-11-2014 have been held to be falling within the normal period of limitation. The appellant has contested this approach by pointing out that demands for the period from 8-11-2014 till 13-5-2016 was time-barred and therefore could not have been the subject matter of the recovery proceedings. It was pointed out that the normal period of limitation was enhanced from one year to two years with effect from 14-5-2016. This was done by an amendment made to the Customs Act by Finance Act, 2016. The position thus was that as on 13-5-2016 i.e. prior to the Finance Act, 2016 coming into force, demand for the period prior to 13-5-2015 had already become barred by limitation. This amendment made was not professedly a retrospective one and thus demands which had already become barred by limitation could not get revived by the amendment. Thus, demands for the period 8-11-2014 till 13-5-2015 which had already become time-barred could not have been confirmed by the Commissioner by applying*

the amended period of two years. The fact that the Notice had been issued on 8-11-2016, by which time the limitation period had increased to two years, could not give the Revenue an authority to revive and resurrect demands which had already become dead before the amendment. To do so, would be to give the amended provision a retrospective effect which the Legislature did not do while bringing in the amendment. It is a settled law that any statutory amendment is prospective in its operation unless it is specifically declared to have retrospective operation. The Finance Act, 2016 does not contain any provision according to a retrospective operation to the said Act. As such, demands which had already become irrecoverable as on 13-5-2015 could not, by virtue of the amendment with effect from 14-5-2016 get resurrected or revived."

5.7 Relying on the above decisions, we hold that the show cause notice issued to appellant on 26.07.2016 for demand of central excise duty for the period from March 2014 to December 2014 is time barred as time period to issue the show cause notice within one year, had already expired prior to this amendment on 14.05.2016. Accordingly, while agreeing with classification confirmed by the lower authorities under CTH 9406 0011, we allow the appeal filed by the party on limitation. The duty demand, interest and penalty is set aside.

6. The appeal is allowed.

(pronounced in the open court on <u>24.09.2026</u>)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha