CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70050 of 2021

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/115/2020-21 dated 11.08.2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut)

M/s Ravi Organics Ltd., **.....Appellant**
(Begrajpur Industrial Area, Muzaffarnagar)
VERSUS

Commissioner of Central Excise &

CGST, Meerut **....Respondent**

(Commissionerate, Meerut)

<u>APPEARANCE:</u>

Request for adjournment, for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70570/2025

DATE OF HEARING : 01 May, 2025
DATE OF PRONOUNCEMENT : 13 August, 2025

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/115/2020-21 dated 11.08.2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut. By the impugned order following has been held:-

> *"In the light of the above specific provisions, I find that the appellant was required to pay the due interest at applicable rate, on the delayed payment of duty assessed / declared in the impugned ER-1s under the provisions of Rule 8(4) above, and penalty as prescribed under Rule 8(5) above. It was not the case of the appellant that his liability to pay interest and penalty as per the Rules as*

above was not known to him. The provisions of Section 11 ibid empower the central excise officer to recover/ realise any such outstanding dues as arrears of revenue. There was nothing to be adjudicated upon for which a show cause notice was required to be issued as contended by the appellant. Therefore, the superintendent vides impugned letter had rightly asked the appellant to pay the amounts of interest and penalty as were determined and payable by him in terms of the express and unambiguous provisions of law as reproduced above. The case law of EMCO Ltd & Kailash Auto Builders (P) Limited cited by the appellant was distinguishable as in that case the issue involved was payment of interest on differential duty on account or price variation whereas in the present case the issue involved was delayed payment of duty assessed/ declared in the impugned ER1s but not paid in a manner prescribed under Rule 8 of the Rules."

2.1 Appellant is engaged in manufacture of pesticides and chemicals.

2.2 During the course of audit of the records of the appellant, it was observed that appellant had discharged the tax liability declared in ER-1 returns for the months of May-16, October-16, December-16, January-17, February-17, March-17, and April-17. Appellant was required to pay the said admitted liability as per ER-1 return alongwith applicable interest for the period of delay and penalty. They deposited defaulted duty on 22.03.2019 without interest and penalty.

2.3 On introduction of SVLDRS Scheme they filed seven SVLDRS-1 declarations under the category 'declared in return but not paid', for resolution of dispute in respect of interest and penalty, as was payable on the said default payment of duty. All the seven SVLDRS-1 declarations were rejected by the competent authority.

2.4 Superintendent vide letter dated 18.03.2020 directed the appellant to pay applicable interest amounting to Rs.2,57,755/-

@15% per annum and penalty of Rs.2,02,491/- @1% per month on delayed payment of duty.

2.5 Aggrieved by this communication appellant filed appeal before Commissioner (Appeals) which has been rejected as per the impugned order.

2.6 Aggrieved appellant have filed this appeal.

3.1 This matter was heard on 12.04.2024 and the order was reserved but no order was passed in the matter even after laps of six months. The said case was relisted as per the direction contained in letter dated 14.11.2024. Thereafter, matter has been listed for hearing on 08.04.2025 and 01.05.2025 but no one appears on behalf of appellant for hearing. I have heard Smt Chitra Srivastava learned Authorised Representative appearing for the revenue.

3.2 Appellant did not appear for hearing at any time. However, on going through the records, I find that appellant has filed a synopsis through his Counsel stating as follows-

- The department did not follow principles of natural justice while raising demand on account of interest and penalty. For demanding any amount from the appellant, the department was required to issue show cause notice within the time prescribed under the Central Excise Law. Even otherwise, the period for which duty was delay was from May 2016 to April 2017 whereas department for the first time vide letter dated 18.03.2020 asked the appellant to make payment on account of interest and penalty. Even if said letter is treated as show cause notice, still the same being issued after the normal period of limitation, the demand was not maintainable.

- The appellant relies upon the decision of Hon'ble Tribunal in the case of EMCO Ltd. vs. CCE, reported in 2011(172)ELT136(Tri. Mum.) which has been upheld by Hon'ble High Court as reported in 2015(325) ELT-A104(Bom.) and of Kailash Auto Builders P. Ltd. vs. CCE reported in 2017(357)ELT803(Tri. Del.)

- Therefore, on both counts i.e. natural justice in not issuing the show cause notice and raising the demand beyond the normal period of limitation, the demand is not sustainable.

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records as follows:-

"6. I have carefully gone through the facts and records of the case as well as the submissions made by the appellant. I find that the Government of India, Ministry of Law and Justice has issued an Ordinance No. 2 of 2020 dated 31.03.2020 under the Taxation and Other Law (Relaxation of Certain Provisions) Ordinance, 2020 wherein time limit for filing of appeal which fell during the period from 20.03.2020 to 29.06.2020 had been extended upto 30.06.2020 which had been further extended up to September- 2020 by Notification dated 27.06.2020. Considering the above, I find that the appeal filed by the appellant on 17.07.2020 against the impugned letter dated 18.03.2020, was filed in time.

I find that there was no dispute that the duty was self-assessed by the appellant in the impugned ER-1's but not paid by him in a manner prescribed under Rule 8 (1) of the Rules. I find that the assessed duty was paid by the appellant on 22.03.2019, much after the dates on which the same was payable I find that provision of CER/ CE Act as applicable in the present matter, at the relevant time, were as under-

Rule 8-Manner of payment. (1) *The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking* *and by the 5th day of the following month, in any other case:*

Provided that in case of goods removed during the month of March, the duty shall be paid by the 31st day of March.

Rule 8(4) *If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AA of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.*

Rule 8 (5) *If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty-not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.*

Rule 8(6) *- The provisions of section 11 of the Act shall be applicable for recovery of the duty as assessed under rule 6 and mentioned in the return filed under these rules, the interest under sub-rule (4) and the penalty under sub-rule (5) in the same manner as they are applicable for recovery of any duty or other sums payable to the Central Government.*

Further the provisions contained under Section 11 of the Act provides that -

Section 11. Recovery of sums due to Government. -

In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums (may *deduct or require any other Central Excise officer or a proper officer referred to in section 142 of the customs act, 1962 (52 of 1962) to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such other officer, or may recover the amount) by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducis his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue."*

4.3 I find that the present case is not a case for determination of anything in terms of Section 11A of the Central Excise Act. It is a case for recovery of government dues. The letter admitting liability of appellant has himself filed with the appeal papers which are reproduced below:-

25

Works :
G-11, 14 & K-46 to 55, Begrajpur Indl. Area,
MUZAFFARNAGAR-251203 (U.P.) INDIA
Phone : +91-01396-252931, 252932, 252344
+91-0131-3290415
Telefax : +91-01396-252328, 252997
E-mail : rolorg251001@gmail.com

RAVI ORGANICS LIMITED

Regd. Office : 11708/3, Sat Nagar, Karol Bagh, NEW DELHI-110005 INDIA

dt 01/01/2020

To
The Superintendent
Central Excise
Range- Khatauli
Muzaffarnagar -UP

Subject : SVLDRS Scheme – ARN No.LD3012190017677

In compliance to your verbal query on our above application, we are giving here under details of the liabilities/arrear pending for the respective month.

Application No.	LD3012190017677
Respective Month	May-2016
Reason of Filling	**Request for Waiver of Interest & Penalty**
Total Liability for the month	Rs. 3,66,203/-
Paid through CENVAT	Rs. 52,725/-
Paid through PLA/Cash	Rs. 3,13,478/-
Due date of payment	05-06-2016
Actual date of payment	22-03-2019
Delayed (in days)	1020 Days
Interest for delayed payment @15% PA	Rs. 1,31,403/-
Penalty for delayed payment @1% PM	Rs. 1,03,448/-

In addition to above, we have also submit that there is no column provided in application form for declaring pending arrear of interest/penalty of delayed payment of declared liabilities.

Kindly accept our application and waive off the liabilities as the total dues have already been paid by us.

Thanking You
Yours Faithfully
For Ravi Organics Limited

Auth Signatory.
Encl. Copy of ER-1 for respective month and copy of duty payment challan

For RAVI ORGANICS LIMITED
Director

(26)

RAVI ORGANICS LIMITED

Regd. Office : 11708/3, Sat Nagar, Karol Bagh, NEW DELHI-110005 INDIA

Work
G-11, 14 & K-46 to 55, Begrajpur Indl. Ar
MUZAFFARNAGAR-251203 (U.P.) INC
Phone : +91-01396-252931, 252932, 2523
+91-0131-32904
Telefax : +91-01396-252328, 2529
E-mail : rolorg251001@gmail.c

dt 4/01/2020

To
The Superintendent
Central Excise
Range- Khatauli
Muzaffarnagar -UP

Subject : SVLDRS Scheme – ARN No.LD3012190017690

In compliance to your verbal query on our above application, we are giving here under details of the liabilities/arrear pending for the respective month.

Application No.	LD3012190017690
Respective Month	Oct-2016
Reason of Filling	**Request for Waiver of Interest & Penalty**
Total Liability for the month	Rs. 1,38,138/-
Paid through CENVAT	Rs. 75,730/-
Paid through PLA/Cash	Rs. 62,408/-
Due date of payment	05-11-2016
Actual date of payment	22-03-2019
Delayed (in days)	867 Days
Interest for delayed payment @15% PA	Rs. 22,236/-
Penalty for delayed payment @1% PM	Rs. 17,478/-

In addition to above, we have also submit that there is no column provided in application form for declaring pending arrear of interest/penalty of delayed payment of declared liabilities.

Kindly accept our application and waive off the liabilities as the total dues have already been paid by us.

Thanking You
Yours Faithfully
For Ravi Organics Limited

Auth Signatory.
Encl. Copy of ER-1 for respective month and copy of duty payment challan

For RAVI ORGANICS LIMITED
Director

27

RAVI ORGANICS LIMITED

ORGANICS
001 COMPANY

Regd. Office : 11708/3, Sat Nagar, Karol Bagh, NEW DELHI-110005 INDIA

Works :
G-11, 14 & K-46 to 55, Begrajpur Indl. Area,
MUZAFFARNAGAR-251203 (U.P.) INDIA
Phone : +91-01396-252931, 252932, 252344
+91-0131-3290415
Telefax : +91-01396-252328, 252997
E-mail : rolorg251001@gmail.com

dt 01/01/2020

To
The Superintendent
Central Excise
Range- Khatauli
Muzaffarnagar -UP

Subject : SVLDRS Scheme – ARN No.LD3012190017703

In compliance to your verbal query on our above application, we are giving here under details of the liabilities/arrear pending for the respective month.

Application No.	LD3012190017703
Respective Month	Dec-2016
Reason of Filling	Request for Waiver of Interest & Penalty
Total Liability for the month	Rs. 2,22,158/-
Paid through CENVAT	Rs. 18,108/-
Paid through PLA/Cash	Rs. 2,04,050/-
Due date of payment	05-01-2017
Actual date of payment	22-03-2019
Delayed (in days)	806 Days
Interest for delayed payment @15% PA	Rs. 67,588/-
Penalty for delayed payment @1% PM	Rs. 53,053/-

In addition to above, we have also submit that there is no column provided in application form for declaring pending arrear of interest/penalty of delayed payment of declared liabilities.

Kindly accept our application and waive off the liabilities as the total dues have already been paid by us.

Thanking You
Yours Faithfully
For Ravi Organics Limited

Auth Signatory.
Encl. Copy of ER-1 for respective month and copy of duty payment challan

For RAVI ORGANICS LIMITED
Director

(28)

RAVI ORGANICS LIMITED

Regd. Office : 11708/3, Sat Nagar, Karol Bagh, NEW DELHI-110005 INDIA

Works :
G-11, 14 & K-46 to 55, Begrajpur Indl. Area,
MUZAFFARNAGAR-251203 (U.P.) INDIA
Phone : +91-01396-252931, 252932, 252344
+91-0131-3290415
Telefax : +91-01396-252328, 252997
E-mail : rolorg251001@gmail.com

dt 01/01/2020

To
The Superintendent
Central Excise
Range- Khatauli
Muzaffarnagar -UP

Subject : SVLDRS Scheme - ARN No.LD3012190017711

In compliance to your verbal query on our above application, we are giving here under details of the liabilities/arrear pending for the respective month.

Application No.	LD3012190017711
Respective Month	Jan-2017
Reason of Filling	Request for Waiver of Interest & Penalty
Total Liability for the month	Rs. 19,698/-
Paid through CENVAT	Nil
Paid through PLA/Cash	Rs. 19,698/-
Due date of payment	05-02-2017
Actual date of payment	22-03-2019
Delayed (in days)	775 Days
Interest for delayed payment @15% PA	Rs. 6,274/-
Penalty for delayed payment @1% PM	Rs. 4,925/-

In addition to above, we have also submit that there is no column provided in application form for declaring pending arrear of interest/penalty of delayed payment of declared liabilities.

Kindly accept our application and waive off the liabilities as the total dues have already been paid by us.

Thanking You
Yours Faithfully
For Ravi Organics Limited

Auth Signatory.
Encl. Copy of ER-1 for respective month and copy of duty payment challan

For RAVI ORGANICS LIMITED
Director

29

RAVI ORGANICS LIMITED

Regd. Office : 11708/3, Sat Nagar, Karol Bagh, NEW DELHI-110005 INDIA

Works :
G-11, 14 & K-46 to 55, Begrajpur Indl. Area,
MUZAFFARNAGAR-251203 (U.P.) INDIA
Phone : +91-01396-252931, 252932, 252344
+91-0131-3290415
Telefax : +91-01396-252328, 252997
E-mail : rolorg251001@gmail.com

dt 01/01/2020

To
The Superintendent
Central Excise
Range- Khatauli
Muzaffarnagar -UP

Subject : SVLDRS Scheme – ARN No.LD3012190017724

In compliance to your verbal query on our above application, we are giving here under details of the liabilities/arrear pending for the respective month.

Application No.	LD3012190017724
Respective Month	Feb-2017
Reason of Filling	Request for Waiver of Interest & Penalty
Total Liability for the month	Rs. 12,695/-
Paid through CENVAT	Nil
Paid through PLA/Cash	Rs. 12,695/-
Due date of payment	05-03-2017
Actual date of payment	22-03-2019
Delayed (in days)	747 Days
Interest for delayed payment @15% PA	Rs. 3,897/-
Penalty for delayed payment @1% PM	Rs. 3,047/-

In addition to above, we have also submit that there is no column provided in application form for declaring pending arrear of interest/penalty of delayed payment of declared liabilities.

Kindly accept our application and waive off the liabilities as the total dues have already been paid by us.

Thanking You
Yours Faithfully
For Ravi Organics Limited

Auth Signatory.
Encl. Copy of ER-1 for respective month and copy of duty payment challan

For RAVI ORGANICS LIMITED
Director

30

RGANICS
01 COMPANY

RAVI ORGANICS LIMITED

Regd. Office : 11708/3, Sat Nagar, Karol Bagh, NEW DELHI-110005 INDIA

Works :
G-11, 14 & K-46 to 55, Begrajpur Indl. Area,
MUZAFFARNAGAR-251203 (U.P.) INDIA
Phone : +91-01396-252931, 252932, 252344
+91-0131-3290415
Telefax : +91-01396-252328, 252997
E-mail : rolorg251001@gmail.com

dt 21/01/2020

To
The Superintendent
Central Excise
Range- Khatauli
Muzaffarnagar -UP

Subject : SVLDRS Scheme – ARN No.LD3012190017739

In compliance to your verbal query on our above application, we are giving here under details of the liabilities/arrear pending for the respective month.

Application No.	LD3012190017739
Respective Month	Mar-2017
Reason of Filling	Request for Waiver of Interest & Penalty
Total Liability for the month	Rs. 34,922/-
Paid through CENVAT	Rs. 15,360/-
Paid through PLA/Cash	Rs. 19,562/-
Due date of payment	31-03-2017
Actual date of payment	22-03-2019
Delayed (in days)	721 Days
Interest for delayed payment @15% PA	Rs. 5,796/-
Penalty for delayed payment @1% PM	Rs. 4,499/-

In addition to above, we have also submit that there is no column provided in application form for declaring pending arrear of interest/penalty of delayed payment of declared liabilities.

Kindly accept our application and waive off the liabilities as the total dues have already been paid by us.

Thanking You
Yours Faithfully
For Ravi Organics Limited

Auth Signatory.
Encl. Copy of ER-1 for respective month and copy of duty payment challan

For RAVI ORGANICS LIMITED
Director

4.4 When there is no dispute with regards to the liability for the amounts payable under Section 11A is not applicable and the recovery are to be made in terms of Rule 8 of the Central Excise Rules read with Section 11 of the Central Excise Act. Rule 8 has been reproduced in the impugned order alongwith Section 11 of the Act and in terms of Rule 8(6) it is provided that interest and penalties will also to be recovered under Section 11 of the Act in the same manner as is applicable to the duty for any other sum payable to the Central Government. The letter issued by the superintendent has been issued in terms of the said provisions of Section 11 of Central Excise Act. The said letter is reproduced below:-

DIN-20200354YB00002TFCF3 (17)

OFFICE OF THE SUPERINTENDENT
CENTRAL GOODS & SERVICE TAX RANGE-KHATAULI
D-134 & 135 AVAS VIKAS COLONY, KHATAULI

C No. 20-CGST/KHT/49/2019/ 69 Dated 18.03.2020

To,

M/s Ravi Organics Ltd.,
Begrajpur Indl. Area, Meerut Road,
Mansurpur Muzaffarnagar.

Dear Sir,

Sub:- **Deposit of Interest of Rs.2,57,755/- and Penalty of Rs.2,02,491/- reg.**

Please refer to the following 07 SVLDRS applications of M/s Ravi Organics Ltd., Begrajpur Indl. Area, Meerut Road, Mansurpur Muzaffarnagar whereby you have applied for waiver of Interest and penalty as table below:-

Table'A'

S. No.	For Month	ARN No.	Dated	ER-1 Month	Applied for an amount in SVLDRS' 2019	40% of the amount	Category	Sub Category
1	04-16	LD3012190017677	30.12.2019	May'16	1.00	0.40	Arrears	Declared in Return but not paid
2	09-16	LD3012190017690	30.12.2019	Oct'16	1.00	0.40	Arrears	Declared in Return but not paid
3	11-16	LD3012190017703	30.12.2019	Dec'16	1.00	0.40	Arrears	Declared in Return but not paid
4	12-16	LD3012190017711	30.12.2019	Jan'17	1.00	0.40	Arrears	Declared in Return but not paid
5	01-17	LD3012190017724	30.12.2019	Feb'17	1.00	0.40	Arrears	Declared in Return but not paid
6	02-17	LD3012190017739	30.12.2019	Mar'17	1.00	0.40	Arrears	Declared in Return but not paid
7	03-17	LD3012190017752	30.12.2019	Apr'17	1.00	0.40	Arrears	Declared in Return but not paid
				TOTAL	7.00	2.80		

In this connection, it is to inform you that the competent authority has rejected all the above 07 applications on the grounds that the same are not covered under the SVLDRS '2019. Since your 7 applications have been rejected, you are requested to deposit the applicable interest and penalty as per the table given below:-

Table'B' (Amount in Rs.)

S. No.	ER-1 Month	Total duty payable	Due date	PAID		Challan No.	Date	Delay in days	Intt. 15% P.A.	Penalty 1% P.M.
				PLA	CENVAT					
1	May'16	366203	05.06.16	313478	52725	50009	22.03.2019	1020	131403	103448
2	Oct'16	138138	05.11.16	62408	75730	50008	22.03.2019	867	22236	17474
3	Dec'16	222158	05.01.17	204050	18108	50007	22.03.2019	806	67588	53053
4	Jan'17	19698	05.02.17	19698	0	50006	22.03.2019	775	6274	4925
5	Feb'17	12695	05.03.17	12695	0	50005	22.03.2019	747	3897	3047
6	Mar'17	34922	31.03.17	19562	15360	50004	22.03.2019	721	5796	4499
7	Apr'17	157786	05.05.17	72932	84854	50003	22.03.2019	686	20561	16045
		Total							257755	202491

You are requested to deposit the **interest of Rs.2,57,755/- and penalty of Rs.2,02,491/-** immediately and submit the deposit particulars.

Yours Sincerely,

18/03/2020

Superintendent
Central Goods and Service Tax
Range-Khatauli

For RAVI ORGANICS LIMITED
Director

4.5 Section 11 of the Central Excise Act, 1944 is applicable for recovery of the admitted/confirmed amounts from the defaulting person. For application of said provisions, no principles of natural justice are required to be followed as the amount which are sought to be recoverable have been admitted by the appellant himself vide seven letters reproduced above.

4.6 In case of New Holland Fiat India Ltd [2018 (359) E.L.T. 183 (All.)], Hon'ble Allahabad High Court has held as follows:

> ***"6.*** *In this regard, Section 142(1)(a) of the Customs Act, 1962 is relevant. It reads as under : -*
>
> > *"**142.Recovery of sums due to Government.** Where any - (1) sum payable by any person under this Act including the amount required to be paid to the credit of the Central Government under Section 28B is not paid, -*
> >
> > *(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or"*
>
> ***7.*** *A reading of the aforesaid provision indicates that it is only where any sum payable by any person under the Act is not paid that the method of appropriation as contained in Clause (a) is to be adopted.*
>
> ***8.*** *It signifies the determination of the sum payable at earlier point of time. It is implicit that such determination or adjudication of the amount payable is possible only after due opportunity of hearing to the assessee.*
>
> ***9.****Thus, when the assessee is given opportunity of hearing in the determination of the amount and he is aware of the amount, which he has to pay under the Act but even then he fails to pay the same, no further notice is necessary and*

the said amount can always be appropriated from the amount, which is payable or due to him under the Act.

10. In these circumstances, it is not mandatory for the Department to issue any further notice before appropriating any amount under Section 142(1)(a) of the Act."

4.6 In the case of Emco Ltd. [2011 (272) E.L.T. 136 (Tri. - Mumbai)], Mumbai bench observed as follows:

*"**7.** As regards the contention of the appellant that a separate notice is required for demand of interest and principles of natural justice are violated if no such notice is issued, the same is devoid of merits. Interest liability arises whenever there is a delay in payment of duty and it is automatic and consequential, once there is a delay in payment of duty.*

***8.** As has been held by this Tribunal in the case of Dodsal Engineering & Construction P. Ltd. v. CCE, Bangalore and Commissioner of Service Tax v. Pepsicola India Marketing Co. (referred supra), no notice is required to be given separately for demand of interest and the Hon'ble Apex Court in the case of Kanhai Ram Thekedar referred to supra has also held a similar view. Similarly in the case of CCE v. SKF (I) Ltd., 2009 (239) E.L.T. 385, the Hon'ble Apex Court held that whenever the assessee recovered differential price by raising supplementary invoices and paid differential duty, it implies that there was a short payment of duty though completely unintended and without any element of deceit and such payment of differential duty clearly came under sub-section (2B) of the Section 11A of the Central Excise Act, 1944 and attracted levy of interest under Section 11AB of the Act. Further, in the case of CCE v. International Auto Ltd. [2010 (250) E.L.T. 3 (S.C.)], the Apex Court further clarified the position as follows in para 8 of the judgment :*

"8. Section 11A of the Act deals with recovery of duty not levied or not paid or short-levied or short-paid. The said section, which stood inserted by Act 25 of 1978, underwent a sea-change when Parliament inserted major changes In that section vide Act 14 of 2001 [with effect from 11th May, 2001] and Act 32 of 2003 [with effect from 14th May, 2003]. It needs to be mentioned that simultaneously Act 14 of 2001 also made changes to Section 11AB of the Act. In the case of SKF India Limited [supra], it has been, inter alia, held, as can be seen from the above-quoted paragraphs, that sub-section 2(B) of Section 11A provides that the assessee in default may make payment of the unpaid duty on the basis of his own ascertainment or as ascertained by a Central Excise Officer and, in that event, such assessee in default would not be served with the Demand Notice under Section 11A(l) of the Act. However, Explanation (2) to the sub-section makes it dear that such payment would not be exempt from interest chargeable under Section 11AB of the Act. What is stated in Explanation (2) to sub-section (2B) is reiterated in Section 11AB of the Act, which deals with interest on delayed payment of duty. From the Scheme of Section 11A(2B) and Section 11AB of the Act, it becomes clear that interest is levied for loss of revenue on any count. In the present case, one fact remains undisputed, namely, accrual of price differential. What does differential price signify? It signifies that value, which is the function of the price, on the date of removal/clearance of the goods was not correct. That, it was understated. Therefore, the price indicated by the supplementary invoice is directly relatable to the value of the goods on the date of clearance, hence, enhanced duty. This enhanced

duty is on the corrected value of the goods on the date of removal. When the differential duty is paid after the date of clearance, it indicates short-payment/short-levy on the date of removal, hence, interest which is for loss of revenue, becomes leviable under Section 11AB of the Act. In our view, with the entire change in the Scheme of recovery of duty under the Act, particularly after insertion of Act 14 of 2001 and Act 32 of 2003, the judgment of this Court in the case of M.R.F. Limited [supra] would not apply. That judgment was on interpretation of Section 11B of the Act, which concerns claim for refund of duty by the assessee. That judgment was in the context of the price list approved on 14th May, 1983. In that case, assessee had made a claim for refund of excise duty on the differential between the price on the date of removal and the reduced price at which tyres were sold. The price was approved by the Government. In that case, the assessee submitted that its price list was approved, by the Government on 14th May, 1983, but subsequent thereto, on account of consumer resistance, the Government of India directed the assessee to roll back the prices to pre-14th May, 1983 level and on that account, price differential arose on the basis of which the assessee claimed refund of excise duty which stood rejected by this Court on the ground that once the assessee had cleared the goods on classification, the assessee became liable to payment of duty on the date of removal and subsequent reduction in the prices for whatever reason cannot be made a matter of concern to the Department insofar as the liability to pay excise duty was concerned. In the present case, we are concerned with the imposition of interest which, as stated above, is charged to compensate the Department for *loss of revenue. Be that as it may, as stated above, the Scheme of Section 11A of the Act has since undergone substantial change and, in the circumstances, in our view, the judgment of this Court in the case of M.R.F. Limited [supra] has no application to the facts of this case. In our view, the judgment of this Court in the case of S.K.F India Limited [supra] is squarely applicable to the facts of this case."*

9. *From the judgment of the Apex Court cited above, it is absolutely clear that interest liability is a consequential liability whenever there is a delayed payment of duty and no separate notice is required for recovery of interest once the assessee has discharged the duty liability belatedly and such delayed payment of duty will come under the provisions of sub-section (2B) of Section 11A of the Central Excise Act and consequentially Section 11AB comes into play automatically and interest liability has to be discharged. Section 11AB does not specify any time limit for recovery of interest. In view of the clear exposition by the Hon'ble Apex court of the scope of Sections 11A and 11AB of the Central Excise Act, 1944, the reliance placed by the appellant on various judgments cited by them is of no avail as the Hon'ble Apex Court's decision prevail over all others. "*

4.8 In view of the above, I do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on- 13 August, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp