

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70480 of 2024

(Arising out of Order-in-Appeal No.780/ST/Alld/2022 dated 15/03/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Civil Associates,
(860, Badi Kothi Daraganj, Allahabad-211006)

.....Appellant

VERSUS

Commissioner of Central Excise, AllahabadRespondent
(38, M.G. Marg, Civil Lines, Allahabad)

APPEARANCE:

Shri Sanjay Kumar, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70850/2025

DATE OF HEARING : 16 September, 2025
DATE OF PRONOUNCEMENT : 05 December, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. 780/ST/Alld/2022 dated 15.03.2023 of the Commissioner (Appeal) Custom, Central Goods and Service tax and Central Excise, Allahabad. By the impugned order, Order-in-Original No. ST-16/2020/ADC-II/ 10 of 2022-23 dated 12.09.2022 of the Additional Commissioner, CGST & Central Excise, Allahabad holding as follows has been upheld:

"ORDER

- (i) *I confirm the demand of Rs.10,85,542 /- (Rupees Ten Lakhs Eighty Five Thousand Five Hundred and Forty Two only) including Education Cess, Secondary*

&, Higher Education Cess under proviso to Section 73(1) of the Finance Act, 1994 as amended and read with Section 142, Section 173 and Section 174 of CGST Act, 2017 and order for recovery of the same. I drop the demand the Service Tax including Cess amounting to Rs. 1,10,59,914/- (Rupees One Crore Ten Lacs Fifty Nine Thousands Nine Hundred and Fourteen Only) in view of the discussion made here in above.

- (ii) I confirm the demand the interest on said amount of Service Tax from them and order for recover under Section 75 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017.*
- (iii) I impose a penalty of Rs. 10,85,542 /- (Rupees Ten Lakhs Eighty Five Thousand Five Hundred and Forty Two only) upon them under Section 78 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act 2017.*
- (iv) I drop the charge of service tax so collected from the customers and not deposited with the government exchequer under Section 73A of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017*
- (v) I drop the demand of interest under Section 73B of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017*
- (vi) I impose a penalty of Rs. 10000 (Rupees Ten Thousand only) upon them under Section 77(1)(b) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of CGST Act, 2017 as discussed above.*
- (vii) I impose a penalty of Rs. 10000 (Rupees Ten Thousand only) upon them under Section 77(1)(c) of the Finance Act, 1994 read with Section 142, Section*

173 and Section 174 of CGST Act, 2017 as discussed above."

2.1 The appellant is registered with the Department under Service Tax Code No. AAIFC7043FSD002 for providing services under the category of "Manpower Recruitment/Supply Agency Service and work Contract Service"

2.2 During the course of audit of the documents of M/s Executive Engineer, Electricity Urban Construction Division-2, Allahabad 14/12A, Amarnath Jha Road, George Town, Allahabad-211002, it was observed that they had awarded works contract to various contractors for laying/ fixing cable, hoisting of cable with GI Pipe on single pole support, fixing of heat shrink cable, erection of supports including grouting with cement, sand and brick ballast, poll fitting with guarding angle/channels, erection of double pole support, as per term and condition of the contract, material required for laying were to be supplied by the contractor except cable, in case of hoisting of cable with G.I. pipe on pole support. GI Pipes were to be supplied by the Electricity Department. The Electricity Department paid service tax under reverse charge mechanism after availing abatement of 60% on the contract value without including fair market value of material supplied free of cost to their contractors while execution of works contract in their gross amount while discharging service tax liability.

2.3 It was observed that the appellant, also provided works contract service to the M/s Purvanchal Vidvut Vitran Nigam Limited M/s PVVNL) during the period from financial year 2014-15 to 2017-18 (upto June, 2017). In order to ascertain the service tax liability and service tax paid, the appellant was requested to provide the documents mentioned therein but the appellant did not provide any documents. However, the appellant submitted the copy of ITR along with Balance sheet and Profit and Loss Accounts, ST-3 returns and 26AS for the period from financial year 2014-15 to 2017-18 on 10-12-2020. They did not submit any other documents such as work order, tax invoices etc.

2.4 Further, on perusal of the data form 26AS and ST-3 returns along with Balance Sheet and Profit and Loss Account for the period from October-2014 to June-2017, it was noticed that during the period from financial year 2014-15 (October, 2014) to 2017-18 (upto June, 2017), appellant received huge consideration from the M/s Purvanchal Vidyut Vitran Nigam Limited (M/s PVVNL as well as many other service recipients. On comparing the same with the ST-3 returns filed by the appellant, it has been noticed that the appellant has not shown the actual amount of consideration received from the service receiver in their ST-3 with intent to evade payment of service tax.

2.5 In spite of several letters and summons the appellant did not provide the details of material supplied free of cost by the Electricity Department.

2.6 As per Rule 2A Service Tax(Determination of Value) Rules, 2006, the Electricity Department was not entitled to claim abatement of 60% on the gross amount if fair market value of the material supplied free of cost as cable. GI pipe etc. was not included in the total amount charged for the work contract. Further, as per Entry No. 9 of the table annexed with the Notification No 30/2012-ST dated 20-06-2012 provided that in respect of services provided or agreed to be provided in service portion in execution of works contract percentage of service tax payable by the person providing service is 50% and percentage of service tax payable by any person liable for paying service tax other than the service provider is 50%. Thus, the abatement to service provider was liable to be disallowed.

2.7 After taking note of the service tax paid by the appellant during the period from 2014-15 (Oct-14) to 2017-18 (June-2017), it was observed that the appellant has short paid the service tax to the tune of Rs. 1,21,45,456/-.

2.8 A Show Cause Notice dated 30.12.2020 was issued to the appellant, asking them to show cause as to why:

- (i) *Service Tax amounting to Rs. 1,21,45,456/- including Education Cess, Secondary & Higher Education Cess*

should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994.

- (ii) Due interest on the amount of Service Tax mentioned at (i) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994.*
- (iii) Penalty should not be imposed upon them under Section 78 of the Finance Act 1994 for failure to pay service tax & suppressing the facts and value of taxable service with intent to evade payment of service tax.*
- (iv) The service tax so collected from the customers and not deposited with the Government Exchequer, if any, should not be demanded and recovered from them under Section 73A of the Finance Act, 1994.*
- (v) The interest due thereon on the amount of service tax collected and non deposited by the party to the credit of Central Government, if any, should not be demanded and recovered from then under Section 73B of the Finance Act, 1994.*
- (vi) Penalty should not be imposed upon them under Section 77(b) of the Finance Act, 1994 as amended for non-maintenance of books of accounts, and other documents, as required in accordance with the provisions of the Finance Act, 1994.*
- (vii) Penalty should not be imposed upon them under Section 77(1)(c) of the Finance Act, 1994, for non-submission of the required documents and not complying to the summons issued to them.*

2.9 The show cause notice has been adjudicated as per the impugned order referred bin para 1 above.

2.10 Aggrieved appellant filed an appeal before the Commissioner (Appeal) which has been disposed off as per the impugned order.

2.11 Hence this appeal.

3.1 I have heard Shri Sanjay Kumar, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submitted that:

- Erroneously the benefit of exemption in respect of construction of check dams for UP Project Corporation Ltd has been denied.
- Erroneously the benefit of exemption in respect of electrification and high mast light works executed for Krishi Utpadan Mandi Parishad (KUMP) has been denied.
- Erroneous confirmation of demand on supply of material to Indian Railways.
- Non grant of credit of Service Tax already deposited while confirming the demand that against the appellant.
- Penalties imposed are unsustainable in law.

3.3 Authorized representative re-iterated the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows:

"4.3 The impugned order has been issued confirming demand of service tax of Rs.10,85,842/- against the appellant on the providing of taxable services of construction of check dam for M/s U.P Project Corporation Ltd., Construction and Repair of High Mask Light and Electrification works for Mandi Parishad during 2014-15 , 2015-16 and 2016-17 and arrears of payment during the period 2015-16.

4.4 The appellant has contested in the instant appeal that they have rendered services of construction of check dam to M/s U.P. Project Corporation Ltd. during the period 2014-15 and 2016-17 and have claimed that these services are exempted services in terms of S. No.12 of Notification No.25/2012-ST dated 20.06.2012, but the same has been held taxable in the impugned order.

4.4.1 Whereas adjudicating authority has observed that the details of the documents furnished by the appellant do not reveal whether the check dam is for purpose of conservation of water or supply of water and exemption is applicable only for water supply in the S. No.12 of Notification No.25/2012-ST dated 20.06.2012.

4.4.2 So main question to decide before me is that whether the exemption under Notification No.25/2012-St dated 20.06.2012 is available for the work done by the appellant or not. In order to ascertain the taxability of services in the instant case against the appellant, it is necessary to examine the provisions of the S. No.12 of Notification No.25/2012-ST dated 20.06.2012, which is mentioned as under:

"S. No. 12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (a) ***
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) *****
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (i) water treatment, or (i) sewerage treatment or disposal; or
- (f) *****"

It is seen that S. No.12(d) of the Notification provides exemption to construction of dam. The observation of the adjudicating authority that it is not clear whether the dam is for purpose of conservation of water or water supply do

not appear to be in consonance with the S. No.12(d) as the said condition is linked to S. No. 12(e) of the Notification.

4.4.3 The provisions of the notification provides for exemption to specified services if the same have been provided by the Government, a local authority or a governmental authority. Therefore the status of service recipient whether the Government, a local authority or a governmental authority is required in the instant case. On going through the statutory definitions of the Government, a local authority or a governmental authority, it is found as under:

SECTION B (26A) "Government" means the Departments of the Central Government, a State Government and its Departments and a Union. territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder;

Section 65 (31) "local authority" means -

- (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution: b)*
- (b) a Municipality as referred to in clause (e) of article 243P of the Constitution*
- (c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund*
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (4] of 2006);*
- (e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;*
- (f) a development board constituted under article 371 of the Constitution; or g a regional council constituted under article 371A of the Constitution;*

"Governmental Authority" in clause (s) of Notification No.25/2012-ST dated 20.06.2012 has been provided as an authority or a board or any other body;

*(i) set up by an Act of Parliament or a State Legislature;
or*

(ii) established by Government, with 90% or more participation by way of equity or control,

to carry out any function entrusted to a municipality under article 243W of the Constitution;.

4.4.4 It is observed that in the instant case, services of construction of check dam has been provided by the appellant to M/s U.P Project Corporation Ltd. Thus it is necessary to confirm whether M/s U.P Project Corporation Ltd., qualify to be the Government, a local authority or a governmental authority as the status of the service recipient is pre-requisition for eligibility for exemption under S. No.12 of Notification No.25/2012-ST dated 20.06.2012. On going through the constitution of M/s U.P Project Corporation Ltd., it is seen that it is a U.P. Government undertaking entrusted with construction of Infrastructure Project and is a company registered under Companies Act and holder of CIN U15209UP19765C004285. It appears that M/s U.P Project Corporation Ltd. is a registered company and do not fall under purview of the Government, a local authority or a governmental authority. Therefore exemption for the works of construction of check dam is not applicable in the instant case and they are not eligible for exemption under S. No.12 of Notification No.25/2012-ST dated 20.06.2012. Therefore it is found that the appellant has been rightly held liable for payment of service tax on receipt of Rs.94500/- for the said work during 2014-15 and Rs.180670/- during 2015-16.

4.5 It has been further contested by the appellant that they have rendered services of electrification and High

Mask Light to M/s Krishi Utpadan Mandi Parishad which is exempted in terms of exemption provided at S. No,12, 13 and 14 of the Notification No.25/2012-ST dated 20.06.2012 claiming that M/s Krishi Utpadan Mandi Parishad to be governmental authority as the same is statutory authority created under U.P. Krishi Mandi Adhiniyam, 1964.

4.5.1 In the impugned order, it has been held that exemption is not allowed as these services have not been provided to any local authority of governmental authority.

4.5.2 In order to ascertain the eligibility of exemptions under S. No. 12, 13 and 14 of the Notification No.25/2012-ST dated 20.06.2012, it is necessary to go through the provisions of S. No.12, 13 and 14 of the Notification No.25/2012-ST dated 20.06.2012 under which the appellant has sought exemption. The relevant provisions are as under:

S.No. 12.

S. No."12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
- (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*
- (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;*

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;"

S. No.13. Services provided by way of construction, erection, commissioning installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation;

(b) a civil structure or any other original works pertaining to a scheme..

(ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation

(bb) a civil structure or any other original works

(c) a building owned by an entity registered under section 12 AA;

(d) a pollution control or effluent treatment plant,

(e) a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) railways, excluding monorail and metro;

(b) a single residential unit otherwise.....;

(c) low- cost houses up to a carpet area.....;

"(ca) Low cost houses up to a of 60 square.....;

(ii) any housing scheme of a State Government."

(d) post- harvest storage infrastructure for agricultural produce..... ;or

(e) mechanised food grain handling system,.

4.5.3 In order to ascertain the eligibility of exemption sought by the appellant, it is now required to examine the

documents as to whether work done by them falls under purview of exempted works or not. It is seen from the work order dated 04.09.2015 that it is in respect of Navin Mandi Sthal Shahganj(Jaunpur) for the work of Electrification of office building and repair of sodium vapour lamp whereas the BOQ alongwith the work order provides name of work as extension of L.T Line and Lighting arrangement at NMY, Bindki. Similarly work order dated 30.03.2016 is for repair of internal and repair of sodium lamp but BOQ details provides name of work as Internal electrification in 'C' Type shop 3 No.'s, service connection work, construction of L.T. Line and lighting arrangement and Internal electrification 'C' Type shops. It is seen that details of name of work orders are mismatching and the work details do not reveal the exact nature of the work

4.5.4 It is seen that appellant has not provided any agreement/ contract document with complete details to show that the services provided by them to M/s Krishi Utpadan Mandi Parishad pertains to a civil structure or any other original work meant predominantly for use other than for commerce, industry, or any other business. Since the exemption laid down in the S. No.12A of the Notification No.25/2012-ST dated 20.06.2012 is for specified works with the condition of use other than for commerce, industry or any other business or profession, it is seen that the appellant has failed to show that services provided by them are related to a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business and therefore the services provided to M/s Krishi Utpadan Mandi Parishad by them do not appear to be eligible for exemption sought vide S.No.12, 12A, 13 and 14 of the Notification No.25/2012-ST dated 20.06.2012 and it is held that they are liable for payment of service tax on the

receipts from M/s Krishi Utpadan Mandi Parishad during the period 2015-16, 2016-17 and 2017-18(upto June'17)

4.6 Further the appellant has submitted that the service tax liability has been arrived after adjustment of already paid service tax amounting to Rs.8,05,248/- in the impugned order. The appellant has submitted that the reconciliation of all the amount of service tax deposited by them for the period 2014-15(Oct'14) to 2017- 18(upto June'17) comes out Rs.11,46,459/- instead of Rs.8,05,248/- as found in the impugned order and excess amount of Rs.3,40,211/- needs to be adjusted from their liability.

4.6.1 It is found that challan amounts provided by the appellant shows total amount Rs.11,46,459/-. In order to ascertain the genuineness of the claim of deposit of Rs.11,46,459/-, copies of challans were sought from the appellant but the same were not made available by them therefore the genuineness of the claim of deposit of Rs.11,46,459/- could not be ascertained. It is further observed that such deposit of Rs.11,46,459/- was not brought into the notice of adjudicating authority whereas the deposit of Rs.8,05,248/- has been found in the impugned order towards already deposited amount. The adjustment of deposit of Rs.8,05,248/- appears to have been based on documentary evidence at the end of adjudicating authority whereas the appellant failed to provide any documentary evidence showing deposit Rs.11,46,459/- for their liabilities in the ST-3 returns pertaining to the period 2014-15(Oct` 14) to 2017-18(upto June17). In absence of any documentary evidence the plea of the appellant do not appear to be proper and sustainable.

4.7 It is observed that under the self-assessment procedure specified in the statute, appellant was required to assess & pay their Service Tax liability correctly on their own. The appellant has suppressed the correct receipt of

payment for taxable services by not furnishing the correct amount in the statutory returns. The short payment of Service Tax could be detected only during the course of enquiry conducted by the Department. Thus, it is a clear case of suppression of facts and contravention of the statutory provisions, with intent to evade payment of Service Tax. Thus, I find that extended period of limitation has been rightly invoked in this case for confirming the demand along with the interest and penalty under Section 78 of the Act.

4.8 I further hold that contravention of section 66, 66B, 67, 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 is apparent as per details /documents available and therefore, penalties under Section 77(1)(b) and 77(1)(c) of the Act have been rightly imposed in the impugned order.

4.3 I find that the issue in very narrow compass, and the issue that need to be first determined is in respect of invocation of extended period of limitation for making this demand. From the perusal of the impugned order it is evident that the entire issues for which the demand has been confirmed is in respect of the interpretation of the entries 12, 12A, 13 & 14 in the Notification No 25/2012-ST. Appellant has claimed on the basis of the interpretation placed by them on these entries that the services provided by them to M/s UPPCL and M/s Krishi Utpadan Mandi Samiti are exempt from payment of service tax whereas the impugned order after considering the entries have concluded that these entries will not be applicable to the case of the appellant. The issue being interpretational in nature the invocation of extended period of limitation for making the demand cannot be justified. Hon'ble Supreme Court has in the case of International Merchandise [2022 (67) G.S.T.L. 129 (S.C.)] held as follows:

24. *We are of the considered view that the Tribunal having come to the conclusion that the issue turned upon an interpretation of the provisions of Section 65(68) and Section 65(86b) of the Finance Act, 1994, there was no*

warrant to allow the invocation of the extended period of limitation and to direct the determination of the penalty following the re-quantification of the demand. The extended period of limitation would clearly not stand attracted in respect of the first show cause notice dated 20 October, 2009. The show cause notice shall hence have to be confined to the normal period of limitation excluding the extended period.

25.*As far as the penalty is concerned, we are of the considered view that there was no warrant for the imposition of the penalty as the dispute in the present case essentially turned on the interpretation of the statutory provisions and their inter-play with the circular issued by the CBEC.”*

In case of Burn Standard Co. Ltd. [2011 (267) E.L.T. 193 (Tri. – Kolkata)], Kolkata Bench held as follows:

9.4 *..... We also notice that the dispute involved in these appeals involved fine interpretation of Provisions of Notification 67/95 read with Rule 6 of the CENVAT Credit Rules, 2001. In the facts and circumstances of the case, we are not inclined to agree with the submission that the appellants have deliberately suppressed any information which they were legally required to submit. In view of the above, we hold that raising of demand invoking extended period of limitation is not justified., The Ld. Advocate submits that the appellants being a public sector undertaking cannot be alleged to have any intention to evade payment of duty. We are not in a position to accept such blanket submissions. However as already mentioned, in the facts and circumstances of this case, we do not find that there was any suppression of relevant facts and therefore extended period of limitation cannot be invoked. For the same reasons we also hold that the appellants are not liable to any penalty.”*

Hon'ble Kerala High Court has in case of Cochin Minerals & Rutiles Ltd. [2010 (259) E.L.T. 182 (Ker.)] observed as follows:

10. The learned counsel for the appellant therefore very strenuously argued that the Tribunal erred in allowing the appeal of the respondent herein. The learned counsel placed reliance on the following judgments of the Supreme Court. In Continental Foundation Jt. Venture v. Commr. of C.Ex., Chandigarh-I - 2007 (216) E.L.T. 177 (S.C.) at paragraph 10, the Supreme Court considered the meaning of the expression 'suppression' occurring under the proviso to Section 11A(1) of the Central Excise Act and held as follows :

"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."

Similarly, in Nestle India Ltd. v. Commissioner of Central Excise, Chandigarh [2009 (235) E.L.T. 577 (S.C.)], at paragraph 17, the Supreme Court considered the question as to when the extended period of limitation is invocable and held as follows :

"17. On the question as to whether the Department was entitled to invoke the extended period of limitation, we are in agreement with the view expressed by the Tribunal that the extended period of limitation was not invocable in this case for two reasons. Firstly, the assessee has been clearing the said intermixture of vitamins for last more than twenty years prior to the issuance of show cause notice. In fact, during adjudication, the assessee offered demonstration to the Department. The Department did not avail of that opportunity to find out whether there is manufacture in the first instance, conceptually. Secondly, as held in the judgment of this Court in the case of *Padmini Products v. Collector of C.Ex.*, reported in 1989 (43) E.L.T. 195, as well as in the case of *Collector of Central Excise v. Chemphar Drugs & Liniments*, reported in 1989 (40) E.L.T. 276, extended period of limitation is applicable only when there is some positive act other than mere inaction or failure on the part of the manufacturer. There must be conscious or deliberate withholding of information by the manufacturer to invoke larger period of limitation. In view of the aforesaid two decisions, we see no infirmity in the decision rendered by the Tribunal on the question of extended period of limitation."

Coming to the third judgment, i.e. *Union of India v. Rajasthan Spinning & Weaving Mills* [2009 (238) E.L.T. 3 (S.C.)], at paragraph 11, the Supreme Court held as follows :

"In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and

by adopting any means as indicated in the proviso then the period of notice and a priori the period for which duty can be demanded gets extended to five years."

11. *An examination of the above three judgments makes it abundantly clear that it is not in every case where there is short levy or short payment or non levy, etc. that the extended period of limitation is made available to the department for recovery of the amount of tax which escaped assessment. It is only in those cases where there is wilful and deliberate suppression of the fact, such extended period of limitation is available to the department. An 'element of deception or malpractice' is a necessary concomitant of wilful and deliberate suppression of fact. The Supreme Court also opined that in order to invoke the extended period of limitation under the proviso to Section 11A(1) of the Act, there must be some positive act other than mere inaction or failure on the part of the manufacturer.*

4.4 Thus I find that the demand made in respect of receipts from M/s UPPCL and M/s Krishi Utpadan Mandi Samiti are barred by limitation, as extended period of limitation as per proviso to Section 73 (1) could not have been invoked for making these demands.

4.5 From the impugned order it do not transpire that appellant has ever challenged the demand of Rs 24, 528/- for the period 2014-15 made towards **"Material Cost for provisions of Taxable Services (Amount claimed as supply of goods without any evidence.)"** before the first appellate authority. As I do not find even whisper about the same in the impugned order, in my view appellant cannot challenge the said demand in this appeal. In the case of M/s JSL Ltd. 2011 (272) ELT 120 (Tri.-Del) following has been observed:-

"12. *The Bombay High Court in the case of Smithkline Beecham (supra) while dealing with the scope of Order II*

Rule 1 and 2 along with Section 11 of CPC has observed thus :

"It is clear from the provisions of Order II, Rule 1 of the Civil Procedure Code that it obliges a plaintiff to frame his suit in such a manner that a final decision can be rendered by the Court in that suit on the subject in dispute. It goes without saying that if a particular ground is not within the knowledge of the plaintiff, though it is on the same subject, when the suit is filed, no fault can be found with the plaintiff, therefore, phrase 'as far as practicable' has been used by Order II, Rule 1 of the Civil Procedure Code. But it can definitely be said that, the provisions of Order II, Rule 1 of the Civil Procedure Code oblige a plaintiff to raise in his suit all the grounds available to him, on the subject in dispute, which he was capable of raising when the suit was filed. It is further clear from the provisions of Order II, Rule 1 of the Civil Procedure Code that this duty has been cast on the plaintiff to prevent further litigation on that subject, between the parties. In my opinion, with the same object the provisions of Section 11, explanation IV of the Civil Procedure Code have been enacted. Therefore, in my opinion, the provisions of Section 11, Explanation IV and Order II, Rule 1 are in furtherance of the same scheme i.e. to prevent repeated litigation between the same parties on the same subject. It is further to be noted here that Rule 1 of Order II uses the phrase 'subject in dispute' and not the phrase 'cause of action' which is used in Rule 2 of Order II of the Civil Procedure Code, similarly Section 11 of the Civil Procedure Code uses the phrase 'matter which might or ought to have been a ground of attack'. It thus appears that, though there are several causes of action available to a plaintiff, if all the cause of action are relating to the subject in

dispute, then Order II, Rule 1 obliges the plaintiff to include all those causes of action in one suit, if it is practicable for the plaintiff to do so. Now, if a plaintiff disregards the mandate of Order II, Rule 1 and institutes a suit leaving out some grounds available to him on the subject in dispute and subsequently institutes a suit on the grounds which were left out from the earlier suit, then in case the earlier suit has already been finally decided then Section 11 of the Civil Procedure Code will bar the subsequently instituted suit, but in case the previously instituted suit is still pending then, in my opinion, the provisions of Section 9 of the Civil Procedure Code would bar such a suit. Institution of a suit contrary to the scheme of the Civil Procedure Code, in my opinion, has to be said to be barred by necessary implication. In my opinion, it cannot be said that the Civil Courts have the jurisdiction to try the suits, institution of which is contrary to the scheme of the Civil Procedure Code, which discourages repeated litigation on the same subject, between the same parties."

13. *The Apex Court in Nawab Hussain case while dealing with the scope of principles of constructive res judicata observed thus :-*

".....The question which specifically arose for consideration was whether the principle of constructive res judicata was applicable to writ petitions of that kind. While observing, that the rule of constructive res judicata was 'in a sense a somewhat technical or artificial rule prescribed by the CPC', this Court declared the law in the following terms. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take

that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is consistent with considerations of public policy to which we have just referred.”

Further, the Apex Court reiterated its earlier decision in the Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara reported in AIR 1964 SC 1013 while observing thus :-

“As a result of the above discussion, we are of opinion that the provisions of Section 11, C.P.C. are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter. The nature of the former proceeding is immaterial.”

14. *Taking into consideration, the above rulings and the facts and circumstances of the case in hand and the order passed by the Hon'ble Punjab & Haryana High Court, the respondents are justified in contending that it is not open for the appellants to challenge the final finding by way of appeal and only remedy available at this stage to the*

appellants is to approach Designated Authority in review proceedings under Rule 23 of Anti-Dumping Rules in terms of the order of the Hon'ble High Court."

In the case of CCE Vs M/s Haryana Steel & Alloys Ltd. 2011 (271) ELT 108 (Tri.-Del.) this Tribunal has held as follows:-

"7.As far as the appeal by the assessee is concerned, the question of Tribunal going into the merits of the case at the instance of the assessee does not arise at all. The liability arising on merits as confirmed by the adjudicating authority was accepted by the assessee and though initially sought to be challenged it was specifically given up in the course of hearing of the appeal before the lower appellate authority and the same has been clearly recorded by the Commissioner (Appeals) in the impugned order. Being so, it is too late for the assessee to make any grievance about confirmation of demand by the adjudicating authority. Besides, once it is clear that the subject matter of dispute before the Commissioner (Appeals) was confined to the issue of penalty only, it is not permissible to raise new issue relating to merits of the case in the appeal arising from the order passed by the Commissioner (Appeals) confining the adjudication to the issue of penalty only. The order passed by the adjudicating authority attained finality once the challenge to the same was specifically given up by the assessee. Hence the appeal by the assessee is liable to be dismissed in limine and is accordingly hereby dismissed."

4.6 Now the only demand which needs to be examined is in respect of certain short payments made by the appellant during 2015-16 in respect of the admitted liability as per the ST-3 return. As per the order in original, an amount of Rs 4,31,646/- has been short paid by the appellant during the period 2015-16 in comparison to their admitted liability as per ST-3 return. Appellant has submitted that lower authorities have failed to grant them the credit of Service Tax already deposited by them

to the extent of Rs 4,89,669/- during 2017-18. Impugned order rejects the submissions made by the appellant stating that they have failed to provide the copies of challans for verification. I find myself not in position to reconcile with both the arguments. The short payment vis a vis admitted liability as per ST-3 is for the period 2015-16 appellant has claimed that revenue has failed to give them the credit of the amount of Rs 4,89,669/- deposited by them during the period 2017-18. They have also furnished the details of challan along with challans. However the availability of challan only is an evidence of payment made to exchequer. Without proper reconciliation of the challans with the ST-3 returns there cannot be any merits in the submissions. Payment made during 2017-18 be appropriated to the short payments made during the period 2015-16 only after due verification of the challans and there reconciliation with ST-3 returns for the corresponding period. In my view end of justice will be met if matter is remanded to the original authority for reconciliation of the challans with the ST-3 returns for the corresponding period. If on such reconciliation it is still found that appellant has short paid the admitted service tax liability as per their ST-3 returns, the amount short paid need to be recovered from them along with the interest for the delay in payment from the due date. Penalty to the extent of un-reconciled amount under Section 78 of Finance Act, 1994 is also upheld.

4.7 Penalties under Section 77 (1) (b) and 77 (1) (c) are also set aside.

4.8 Summarizing-

- Demand made in respect of the receipts from M/s UPPCL and M/s Krishi Utpadan Mandi Samiti is barred by limitation.
- Demand of Rs.24,528/- for the period 2014-15 made towards "Material Cost for provisions of Taxable Services (Amount claimed as supply of goods without any evidence) is upheld.

- Demand of service tax short paid vis-a-vis admitted liability as per ST-3 return during the period 2015-16 along with the interest is upheld, but the same need to be adjusted against the payments claimed to be made by the appellants against challans to be submitted by them to adjudicating authority. For proper verification of challans and their reconciliation with the ST-3 returns of the appellant matter is remanded back to the Original Authority.
- Penalty to the extent of un-reconciled amount under Section 78 of Finance Act, 1994 is also upheld.
- Penalties under Section 77 (1) (b) and 77 (1) (c) are set aside.

5.1 Appeal is partially allowed as indicated in para 4.8 above and matter remanded to original authority.

5.2 As matter is quite old to be decided by the original authority in remand proceedings within three months of the date of receipt of this order.

(Order pronounced in open court on- 05 December, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp