# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# ALLAHABAD

REGIONAL BENCH - COURT NO.II

## Service Tax Appeal No.70709 of 2024

(Arising out of Order-in-Appeal No.DDN/EXCUS/000/APPL-MRT/262/2023-24 dated 09/02/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Dehradun)

**M/s Om Electrical,** **.....Appellant**
(Bheekanpur Sarki, Tehsil Hasanpur,
Jyotiba Phule Nagar, U.P.)

*VERSUS*

**Commissioner of Central Excise &**

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

(Chandan Bhawan, Dayal Kunj,

Kiratpur Road, Bijnor-246701)

**APPEARANCE:**

Shri Nitin Kesharwani, Proxy Counsel for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

## FINAL ORDER NO.70882/2025

DATE OF HEARING : 28 October, 2025
DATE OF PRONOUNCEMENT : 18 December, 2025

**SANJIV SRIVASTAVA:**

This appeal is directed against Order- in- Appeal No.DDN/EXCUS/000/APPL-MRT/262/2023-24 dated 09.02.2024 of the Commissioner, CGST (Appeals), Dehradun. By the impugned order following has been held:

*"ORDER*

*5 On the value of services that have been provided to M/s UPPCL, I find that no Service tax is liable to be paid by the party, and accordingly demand to that extent is dropped along with consequent interest and penalty. However, I confirm the demand of Service tax of Rs*

*1,30,356/-, along with applicable interest, on the services provided to the two clients, M/s Ircon International Ld and M/S IL&FS Engineering & Construction Co. Ltd In terms of proviso to Section 73(1) and Section 75 of the Act respectively. Penalty equal to the tax confirmed above In terms of Section 78 of the Act is hereby confirmed. I do not interfere with the penalty of Rs 40,000/- Imposed in the order-in-original under section 70(1) of the Act ibid as well as penalty of Rs 10,000/- Imposed under section 77(1)(c )()of the Act ibid, as imposed by the adjudicating authority as the party did not file, Service tax returns on time and did not submit the requisite information to the department when asked for.*

2.1 Appellant is registered with the service tax department with registration No. BLOPS6705EST001, and are engaged in providing taxable services.

2.2 On the basis of information received from the income tax department it was observed that during the year 2016-17 appellant has received about Rs 1,61,00,138/- towards provision of services. However they had not paid any service tax during the corresponding period. They were asked by the jurisdictional officers vide letters dated 31.03.2021 & 07.06.2021 to provide proper reconciliation along with the following documents:

a. Copy of 26AS for the financial years 2016-17 & 2017-18;
b. Copies of Income Tax Returns for the financial years 2016-17 & 2017-18;
c. ST-3 Returns for the financial years 2016-17 & 2017-18;
d. Balance Sheet for the financial years 2016-17 & 2017-18;
e. Trial balance for the financial years 2016-17 & 2017-18;
f. Partnership Deed.

2.3 Appellant did not provide any information as called for, so on the basis of the information received from income tax authorities, service tax recoverable from the appellant for the period 2016-17 was computed as in the table below:

| Receipts towards Services | | | Service Tax (including Cess) | |
|---|---|---|---|---|
| ITR | ST-3 | Difference | Rate (%) | Payable |
| 16100138 | 0 | 16100138 | 15 | 2515021 |

2.4 Further appellant had not filed any ST-3 return for the period 2016-17 and also did not provide any information when called for, it was evident that appellant was trying to evade the payment of service tax by suppressing material facts from the department. Thus extended period of limitation as per proviso to Section 73 (1) was invokable. As appellant had not paid the due service tax by the due date interest as per Section 75 of the Finance Act, 1994 was also recoverable from the appellant. For various acts of omission and commission appellant was also liable for penalty under Section 77(1)(c) and Section 78 ibid. Late fees for not filing the ST-3 return by due date was also recoverable in terms of Section 70 read with Rule 7C of the Service Tax Rules, 1994.

2.5 A show cause notice dated 29.09.2021 was issued to the appellant asking them to show cause as to why:

*(i) Service Tax amounting to Rs. 25,15,021/- inclusive of, S.B Cess & KKC] for the financial years 2016-17 should not be demanded and recovered from them under Proviso to Section 73(1) of the Finance Act. 1994 read with Section 174 of the CGST Act, 2017.*

*(ii) Interest on the Service Tax demanded should not be recovered from them under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*

*(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*

*(iv) Penalty should not be imposed upon them, under Section 77(1)(c)(i)] of the Finance Act,1994, as they failed to furnish information called by the department.*

*(v) Party be not required to file periodical returns along with late fee for not filing ST-: Returns for the Financial Year 2016-17 under Section 70(1) of the Finance Act. 1994*

*read with Rule 7C of Service Tax Rules 1994 and Section 174 of the CGST Act, 2017.*

2.6 The show cause notice was adjudicated as per the order in original No 56/ST/AC/Bijnor/ 2022-23 dated 31.01.2023 holding as follows:

*"ORDER*

*(i) I confirm the demand of Rs, 25,15,021/- [inclusive of Cess] (Twenty Five Lacs Fifteen Thousand Twenty One only) under section 73(1) of the Act read with Section 174 of the Central GST Act, 2017 as discussed in above paras and order to recover from the Noticee.*

*(ii) I also confirm interest at appropriate rate on demand at (i) above under Section 75 of the Finance Act, 1994 read with Section 174 of the Central GST Act, 2017and order to recover from the Noticee.*

*(iii) I impose a penalty of Rs. 25,15,021 /-on the Noticee, under Section 78 of the Finance Act, 1994 read with Section 174 of the Central GST Act, 2017.*

*(iv) I order the Noticee to pay late fee of Rs.40,000/- under Section 70(1) of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 and also read with Section 174 of the Central GST Act, 2017and order to recover from the Noticee.*

*(v) I impose a penalty of Rs. 10,000/- on Noticee under Section 77(1)(c)(i)] of the Finance Act, 1994 read with Section 174 of the Central GST Act, 2017 for contravention of the Act.*

*4.11 The proceedings of Show Cause Notice No. C. No. V(30)Div.Bij/SCN/Om Datt/53/2021-22/413 dt. 29.09.2021is disposed off accordingly."*

2.7 Aggrieved appellant filed appeal before the Commissioner (Appeal) which has been disposed of by the impugned order referred in para 1 above.

2.8 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Nitin Kesharwani, Advocate (holding brief for Shri Nitin Sharma, Advocate on record) for the appellant and Ms Chitra Srivastava, Authorized Representative for the revenue.

3.2 Counsel for the appellant submits that the demand is time barred and placed reliance on the decision of the Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture [2007 (216) ELT 177 (SC)].

3.3 Authorized representative reiterated 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 arguments.

4.2 Impugned order records the finding as follows:

> *4.2 I find in this case, the order has been passed ex-party, and there were no submissions on record neither was the personal hearing attended by the party. In the appeal memo, as well as in a submission made today at the time of personal hearing, the party has mentioned that it has primarily done manpower supply for different formations of M/s UPPCL, Electricity Distribution Division. This has been done for different formations of his client such as, that in the cities of Amroha, Bijnor, Chandosi, Gajraula, Dhampur, and in Pashmanchal.*
>
> *4.3 Apart from M/s. UPPCL, the party is also provided services to two more clients, namely, M/s IL&FS Engineering & Construction Co. Ltd. and M/s IRCON International Ltd. The party has claimed that it has done manpower supply in respect of M/s UPPCL, and M/s IL&FS Engineering & Construction Co. Ltd, but it has mentioned that it has actually done works contract service in respect of M/s IRCON International Ltd and admits the liability to pay the tax accordingly.*
>
> *4.4 I find that as a part of the appeal. memo, the party has submitted five agreements with the formations of M/s UPPCL, Electricity Distribution in the cities of Amroha,*

*Bijnor and Chandaushi. Perusal of these reveals that they have supplied skilled/un-skilled manpower in connection with maintenance of 33 KE feeders and transformers. In their submission dated 06.02.2024, they have supplied 26 measurement books/bills primarily In respect of M/s UPPCL formations located in the cities of Gajroula, Dhampur, Pakshimanchal, Chandaushi. These are at pages number 12 to 66 of the submission dated 06.02.2024. Perusal of these reveals that they have supplied manpower, both skilled and un-skilled for the purposes of maintenance of electrical transformers/feeders.*

*4.5 Therefore, I find that in respect of the services rendered to different formations of M/s UPPCL, the party has, indeed done manpower supply on which service tax is payable on reverse charge basis by the client to full extent, as this pertains to financial year 2016-17. This is in accordance with notification number 30/2012-ST dated 20.06.2012, as amended from time to time.*

*4.6 I now come to second client M/s IL&FS in respect of which the party has produced the contracts. It has been placed on page 2 to 4 of submissions dated 06.02.2024. Perusal of these contracts reveals that the party has done the service of erection in Gangseshwari Block at Amroha District. Thus, I find that this work being the nature of a service is taxable. The party during the hearing as well as in the documents placed under page No.2, has mentioned that no material was supplied as a part of this job.*

*4.7 Therefore, I find that, in respect of this contract, Service tax is payable on the value of receipts of Rs 7,97,043/- at the applicable rate of Service tax. This is computed In the table as under: -*

| *Name of party* | *Amount of Services* | *Tax Liability @ 15%* |
|---|---|---|
| *IL & FS Engineering & Construction Co. Ltd.* | *Rs 7,97,043/-* | *Rs 1,19,556/-* |

*4.8 In respect of the third client, namely, M/s Ircon International Ltd, a body corporate, the party has produced a copy of the contract today which is at page number 6 to 10 of the submissions dated 06.02.2024. Perusal of the same reveals that this work involves erection, installation, testing, commissioning of new distribution transformers and that along with the work, there is supply of materials as well as per the bill of quantities annexed with the contract at page number 9 of the submission. As such, I find that, this is a-work contract service related to "original works" and therefore Service tax would be payable in terms of Rule 2A(II)(a) of Service Tax (Determination of value) Rules, 2006 at the rate of 40% of the value of contract. Further, in view of reverse charge mechanism, applicable on works contact service, Service tax would be payable by the appellant on 50% of the value in terms of notification number 30/2012 -ST dated 20.06.2012. Accordingly, the liability is computed as under: -*

| *Total Amount paid* | *Taxable value as per Rule 2A(40%)* | *Service Tax @15%* | *Liability of service tax on the appellant 50% under provisions of partial RCM* |
|---|---|---|---|
| *3,60,000* | *1,44,000* | *21,600* | *10,800* |

4.3 Though appellant has in his appeal challenged the impugned order on various grounds, including the limitation. Impugned order is totally silent on the issue of limitation. Order in original records the findings as follows on the issue of limitation though the said order admittedly was an ex-parte order:

*4.4. I find that Noticee have not filed the ST-3 returns for the period 2016-17. The Noticee have not submitted any defence reply regarding nonpayment of service tax, applicability or exemption of service tax if any. Further, neither they nor their representative had appeared for personal hearing. Since, the Noticee did not provide the copies of work orders, bills issued by them and any other information in respect of their payment, and details of Service Tax for service provided, therefore any abatement*

*and exemption on value of Rs. 1,61,00,138/- service provided cannot be provided to the Noticee.*

*4.5 In view of the above, I find that the Noticee had rendered taxable service provided under Section 65B (44) of the Finance Act, 1994 during the impugned period. Since, the Noticee have not submitted any documents/records or evidence to prove that they have not provided such taxable services or they were eligible for abatement if any thereof, and also not attended the personal hearing provided to them. Therefore, I hold that the Noticee have nothing to say in their defence. Thus, I find that tax demanded in the notice is correct and sustainable and according]y the Noticee is liable to pay the Service Tax amounting to Rs. 25,15,021/- (including cess) for providing of services during the period 2016- 17 under Section 73(1) of the Finance Act, 1994.*

*4.6. As regards recovery of interest, I find that the recovery of interest is corollary to the demand. Once demand is upheld, automatically the recovery of interest is to follow suit. Since the Noticee has short/not paid the Service Tax along with Cesses, as found recoverable from the Noticee, under Section 75 of the Finance Act, 1994 till the date of actual payment of dues.*

*4.7. I find that the Noticee did not submit the documents/ information sought by the department to ascertain the classification of service. The Noticee did not pay any heed to the correspondence made by the Central Excise Officer and have willfully suppressed the material facts form the department with deliberate intent to evade payment of Service Tax. .The Noticee did not file their ST-3 returns during the period 2016-17. If the information was not received from the income-tax as a third Noticee - information, the fact of providing the said service and the fact of receiving of the amount by the Noticee from their clients/ recipient of services would have remained unnoticed and the service tax evaded by the Noticee would*

*have remained unnoticed by the department. Therefore, the demand made is clearly within the period of five years of limitation as prescribed and the provisions of section 73(1) are rightly invoked in this case. Therefore, the proviso to the Section 73/1) of Chapter V of the Finance Act, 1994 is invokable in this case to demand service tax from the Noticee.*

*4.8 In the said Notice, late fee is also proposed under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. I find that as per Section 70, every person liable to pay the service tax shall himself access the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed. Further Rule 7C of the Service Tax Rules, 1994 as amended provided that - (1) Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of- (i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees; (ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and (i) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return. I find that that the Noticee have failed to file statutory ST-3 return within stipulated time for the period April 2016 to September 2016 & Octcber2016 to March 2017. Accordingly, I hold that the Noticee is liable to pay late fee of Rs. 40,000/- under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules. 1994*

*4.9. In the said Notice, a penalty is also proposed under Section 77 of the Act for contravention of Section 70 of Chapter V of the act. Therefore, I find that the penalty of Rs. 10,000/- is imposable upon the Noticee in terms of Section 77(1)(c)(i) of finance act 1994.*

4.4 From the facts as recorded above and which are not in dispute it is evident that the appellant was registered with the service tax department and was engaged in providing services as defined by Section 65 B (44) and which were taxable as per Section 66B of the Finance Act, 1994. Section 70 of the Finance Act, 1994 reads as follows:

***SECTION 68. Payment of service tax.***— *(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section[ 66B] in such manner and within such period as may be prescribed.*

*(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.*

***Provided*** *that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.*

***SECTION 70. Furnishing of returns.***—

*(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty*

*thousand rupees, for delayed furnishing of return, as may be prescribed.*

*(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.*

*Rule 7 of the Service Tax Rules, 1994 reads as follows:*

*7. Returns (1)Every assessee shall submit a half yearly return in From 'ST-3' or 'ST-3A'or ST3C,(Inserted vide Notification 48/2016 –Service tax) as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.*

*(2)Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.*

*Provided …..*

*Provided …..*

*(3)Every assessee shall submit the half-yearly return electronically.*

*(3A)…...*

*(3B)…….*

*(4)……..*

4.5 From the provisions as above it is evident that above provisions mandated mandatory filing of the return by the person who was providing the taxable services and was registered with the department. Admittedly and undisputedly appellant did not file any return as required under the statute. It is also evident when the department made enquiries from the appellant in respect of the receipts towards provision of services appellant again chose not to respond and provide the requisite information so that proper view could have been taken in respect of the receipts towards the provision of services which came to the knowledge of department only thorough the information provided by the income tax department. It is not the case that

no effort were made by the department to investigate the differences noticed in the figures of receipts towards provision of services, as provided by the income tax department and the figures available with the service tax department. As appellant did not respond to the repeated correspondences, the department was left with no option other than to proceed by making demand on the difference value. The conduct of the appellant in the proceedings clearly show that they had intentionally, knowingly and willfully refused to provide the desired information with intention to evade the payment of service tax due. The decision of Apex Court relied upon by the appellant will not support the case of the appellant, In that case Hon'ble Apex Court has observed as follows:

> *"9. We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence mens rea.*
>
> *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.*
>
> *11. Factual position goes to show the Revenue relied on the circular dated 23-5-1997 and dated 19-12-1997. The*

*circular dated 6-1-1998 is the one on which appellant places reliance. Undisputedly, CEGAT in Continental Foundation Joint Venture case (supra) was held to be not correct in a subsequent larger Bench judgment. It is, therefore, clear that there was scope for entertaining doubt about the view to be taken. The Tribunal apparently has not considered these aspects correctly. Contrary to the factual position, the CEGAT has held that no plea was taken about there being no intention to evade payment of duty as the same was to be reimbursed by the buyer. In fact such a plea was clearly taken. The factual scenario clearly goes to show that there was scope for entertaining doubt, and taking a particular stand which rules out application of Section 11A of the Act.*

*12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful."*

4.6 From the facts as brought out in this case it is evident that appellant by not filing the returns and not providing the information called for have willfully suppressed the relevant facts from the department to evade the payment of due service tax. Intention to evade payment of service tax is to be determined from the conduct of the appellant and the facts of case. This being a question of fact, cannot be determined on the basis of certain decisions. I find from the conduct of appellant, that he had suppressed the fact with intent to evade payment of service

tax and extended period of limitation has been rightly invoked for making the demand. In case of Security Electronics Pvt. Ltd [(2024) 24 Centax 280 (Tri.-Hyd] Hyderabad Bench held as follows:

> ***24.*** *On the issue of invocation of extended period, I find that in the facts of the case, it is obvious that the Appellants were following certain method of calculation for discharge of Service Tax which was not proper or in accordance with the applicable laws, Rules, etc. The whole discrepancy was noticed only on detailed verification and plausible submissions made by the Appellants. Some of the submissions like deduction of Service Tax paid to the vendors, though accepted by the Commissioner (Appeals), and not disputed by Revenue, are debatable on the fair reading of applicable legal provisions which require service provider to discharge Service Tax and the service recipient is required to pay the Service Tax. The recipient of service on which service tax has been paid is also entitled to take credit and utilize against his further liability subject to provisions of Cenvat Credit Rules. Therefore, the payments including Service Tax made to the sub-contractor cannot suo moto become eligible for deduction from the gross value of recipient, which is required to be taken as basis for discharge of Service Tax. Since the Commissioner (Appeals) has already given the benefit in this regard and this aspect is not being disputed by the Revenue, this issue is not being examined by me. However, the fact remains that though the Appellants have claimed bonafide belief of the practice that was being followed by them regarding deductions from the gross value, it could not be said that following wrong practice or inconsistent practice which is not permissible under the law, would tantamount to their disclosure of facts to the Department and in turn prevent the Department from invoking the extended period.*
>
> ***25.*** *I have perused the case laws relied upon by the learned Advocate. In the case of CCCE & ST-III v. Shriram*

*Chits Pvt Ltd (cited supra), the Hon'ble Supreme Court has dismissed the Civil Appeal in the case of Order of the Tribunal as reported at [2024 (127) G.S.T.R. 409]. In this case, the Tribunal, inter alia, examined the facts of the case and various case laws and held that material and relevant facts forming the basis of demand were already within the knowledge of the Revenue and in such event, the extended period cannot be invoked. Therefore, the issue is whether material facts were within the knowledge of Revenue or otherwise in the present case. Perusal of the SCN would indicate that the Department noticed certain discrepancies when they compared the P&L account as against turnover shown in the periodical returns and only when inquired further about the said discrepancy, the Appellant, vide their reply dt.27.05.2020, submitted certain documents and informed the reasons for difference in the turnover on account of certain facts. Therefore, based on the documents submitted by the Appellant on 27.05.2020, the discrepancies were noticed and were examined in the light of the legal provisions and thereafter, SCN dt.15.09.2020 was issued. Therefore, it is obvious that during the material time for which the demand has been made, no such documents or information were either available to Department or made available by Appellant and merely because ST3 returns were being filed, the Appellant can say that they had disclosed everything to the Department. Therefore, the judgment of the Tribunal cited, as confirmed by the Hon'ble Supreme Court, is distinguishable in the facts of the case.*

***26.*** *The case of Pragathi Concrete Products (P) Ltd (cited supra) of Hon'ble Supreme Court is also distinguishable in view of the facts of the case as the facts considered were that the Department had taken five years to serve the SCN and also in view of the unit of the Respondent being audited during the said period several times and there was*

*physical inspections by the Department as well. No such facts are on record in the present case.*

***27.*** *Similarly, in the case of Blue Star Ltd (cited supra), there was some bonafide belief as regards entry number of the product under erstwhile Item No. 29A(3) in view that facts were known to the Department as well as many High Courts have taken a view that tax on walk-in coolers will not be covered under Item No. 29A(3) and therefore, this case is also distinguishable in view of the facts that there was nothing on record to suggest that Appellants had any bonafide belief regarding method of calculation of gross value in view of any conflicting Court cases or directions of the Department regarding applicable method of valuation or claim of abatement in respect of their services etc.*

***28.*** *Similarly, in the case of Damnet Chemicals Pvt Ltd (cited supra), the Hon'ble Supreme Court, inter alia, held that non-mentioning of license agreement in the classification list would not lead to the conclusion that there has been willful suppression of facts with an intent to evade payment of duty. Therefore, this case is also distinguishable in the facts of the present case.*

***29.*** *Therefore, in the facts of the case, the grounds on which the Commissioner (Appeals) has upheld the decision of the Adjudicating Authority for invoking extended period are correct and therefore, there is no need to interfere with the findings of the Commissioner (Appeals) on this issue. In other words, the extended period will be applicable in the facts of the case.*

4.7 Hon’ble Supreme Court has in the case of Merino Panel Product Ltd [2023 (383) E.L.T. 129 (S.C.)] observed as follows:

***38.****The only remaining facet of the case is the extended period of limitation invoked against the respondent-assessee under the CEA. The justification of extending the period of limitation depends upon whether the respondent-assessee has suppressed facts and failed to provide*

*accurate information regarding its sales to the Revenue. To this extent, there is a finding of fact against the assessee.*

4.8 In the case of L R Brothers Indo Flora Ltd. [2020 (373) E.L.T. 721 (S.C)] Hon'ble Supreme Court observed as follows:

***33.*** *The next contention of the appellant is that Section 28 of the 1962 Act cannot be invoked to extend the limitation as there was no wilful mis-statement or suppression of facts on behalf of the appellant. The decision of this Court in Uniworth Textiles (supra), has been relied upon by the appellant. The same explains the situations in which Section 28 of the 1962 Act can be invoked. It had been held in the said decision that the extension of limitation for a period of five years can be done only in cases of deliberate default and not inadvertent non-payment. It was further held that the burden for proving mala fide conduct is on the revenue : and specific averments in that regard must find place in the show cause notice.*

***34.*** *In the fact situation of the present case, the appellant was issued a show cause notice mentioning that it had suppressed the DTA sales of cut flowers to evade payment of duty. Had the appellant in good faith believed that no duty was payable upon the DTA sales of cut flowers, it would have sought prior approval of the Development Commissioner, which it failed to do. Even in the letter seeking ex post facto approval, the appellant claimed that they had not used any imported input such as fertilizer, plant growth regulations, etc. in growing flowers sold in DTA, despite having imported green house equipment, raw materials like Live Rose Plants and consumables like planting materials and fertilizers. Therefore, it prima facie appeared that suppression by the appellant was "wilful". The burden of proving to the contrary rested upon the appellant, which the appellant failed to discharge by failing to establish that the imported inputs were not used in the production of the cut flowers sold in DTA. In view thereof,*

*the authorities below have rightly invoked Section 28 of the 1962 Act and allied provisions.*

4.9 Thus I do not find any merits in the submissions made by the appellant to effect that demand is hit by limitation and extended period could not have been invoked as per the proviso to Section 73 (1) of the Finance Act, 1994. As I uphold the invocation of extended period of limitation as per proviso to Section 73 (1), the penalty under section 78 follows as has been held by the Hon'ble Apex Court in case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)].

4.10 As I uphold the demand of Service Tax, the demand of interest under Section 75 of the Finance Act, 1994 is also upheld.

4.11 It is admitted and undisputed that the appellant had not filed the ST-3 returns for the period of dispute by the due date and hence the late fees imposed upon them in terms of Rule 7C of Service Tax Rules, 1994 which is in nature of civil liability for not performing the acts as per the provisions of the statute is also upheld.

4.12 As the appellant had deliberately not responded to the communications made by the department seeking information in respect of the services provided by them penalty imposed under Section 77 (1) (c) is also justified and is upheld.

4.13 Thus I do not find any merits in the appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-18 December, 2025)

**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

*akp*