CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70740 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APPL-NOIDA-261-2024-25 dated 29/11/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Subodh Kumar Yadav, **.....Appellant**
(H.No.03, Near Light House,
Raoolpur, Nawada, Sector-62, Noida)

VERSUS

Commissioner of Central Excise &

CGST, Noida **....Respondent**

(Commissioner CGST, Noida)

APPEARANCE:

Request for virtual hearing, for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NO.70050/2026

DATE OF HEARING : 16 January, 2026
DATE OF PRONOUNCEMENT : 25 February, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APPL-NOIDA-261-2024-25 dated 29/11/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"ORDER

In view of the aforesaid discussion and findings, I hereby disallow the Appeal No. 297/ST/NOIDA/APPL/NOI/2023-24 dated 31.01.2024 filed by M/s Subodh Kumar Yadav, H. Na. 03, Near light House Village-Rasoolpur, Nawada, Sector-62, Noida and uphold the Order-in-Original No.

32/DC/D-II/Noida/2023-24 dated 29.09.2023 passed by the Deputy Commissioner, CGST Division-II, Noida."

1.2 By the Order-in-Original dated 29.09.2023 following has been held:-

"ORDER

i. I Confirm the demand of Service Tax amounting to Rs.16.21.145/-(Rupees Sixteen Lacs Twenty One Thousand One Hundred Forty Five Only) not paid short paid by the party, on the taxable value during the period of 2016-17 under the provisions of Section 73(1) of the Finance Act, 1994.

ii. I confirm the demand of interest on the party, at an applicable rates during the relevant period, on the amount of Service Tax demanded/confirmed at point (1) above, under the provisions of Section 75 of the Finance Act, 1994.

iii. I impose the penalty of Rs. 16.21,1457-(Rupees Sixteen Lacs Twenty One Thousand One Hundred Forty Five Only upon the party under Section 78 of the Finance Act, 1994. If the amount as determined under Section 73 above is paid within 30 days from the date of receipt of the order along with the interest payable thereon as per Section 75, penalty will be only 25% of the service tax determined under Section 73. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been paid within the period of 30 days from the receipt of the order.

iv. I impose penalty of Rs. 10,000/- under Section 77(1)(d) of Finance Act, 1994."

2.1 Appellant was registered with the Service Tax Department with Service Tax Registration No.AIEPY6070ASD001 for providing taxable services defined under Section 65B(44) of the Finance Act read with Section 66B of the Finance Act, 1994.

2.2 As per the information received from the Income Tax Department and on comprising the same with ST-3 return filed by the appellant following was observed:-

Financial Year	Value of Services as per ITR	Value of services declared in the ST-3 returns filed for the relevant time	Differential value of services as per ITR -STR	Service tax liability @ 15% on such differential value
1	2	3	4= (2-3)	5
2016-17	1,92,99,951/-	84,92,317/-	1,08,07,634/-	16,21,145/-

2.3 Inquires were made and letter dated 29.07.2021 was written to the appellant followed by e-mail reminder dated 25.09.2021 requesting appellant to furnish the details of service tax payment along with reconciliation etc. Appellant vide letter dated 28.09.2021 replied that serviced provided by them for which no service tax was paid is exempted from payment of service tax. No documentary evidence was submitted.

2.4 Show cause notice dated 08.10.2021 was issued to the appellant asking them to show cause as to why:-

> *"(i) The Service Tax amounting to Rs.16,21,145/-(Rupees Sixteen Lacs Twenty One Thousand One Hundred Forty Five Only) should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994.*
>
> *(ii) The 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) Penalty should not be imposed upon them under Section 77(1)(d) of the Finance Act, 1994 for failure to pay Service Tax electronically through net banking."*

2.5 Appellant replied to the show cause notice vide letter dated 17.11.2021 and 25.05.2023, they also attended the personal hearing fixed on 09.08.2023.

2.6 Taking note of the submissions, the said show cause notice was adjudicated as per the Order-in-Original dated 29.09.2023 referred in para 1.2 above.

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 When the matter was called, a letter, requesting for virtual hearing has been received. However, I find that the issue involved is a very narrow compass and can be considered even in absence of the Counsel.

3.2 I have heard Shri Manish Raj learned Authorized Representative appearing for the revenue, he 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 I observe that appellant has before the Commissioner (Appeals) and also before the Original Authority taken the grounds with regards to invocation of extended period of limitation for making this demand. The relevant grounds as recorded in the impugned order are reproduced below:-

> *"3.5 That extended period of limitation is not invokable.*
>
> *(i) The Learned Deputy Commissioner has confirmed the demand of service tax for the FY 2016-17, for which the Show Cause notice had been issued on 08.10.2021 by invoking extended period of limitation as per proviso to Section 73(1) of the Finance Act, 1994.*
>
> *(ii) It is submitted that the appellant bonafidely believed that they have correctly discharged their service tax liability.*
>
> *(iii) It is submitted that there is no suppression or fraud or intention to evade payment of service tax on the part of the appellant. It being dispute on interpretation of provision of law& thus extended period of limitation cannot be invoked.*

(iv) Reliance is placed on the following decisions of the following Courts:

- *CCE Vs. Chemphar Drugs & Liniments reported in 1989 (40) ELT 276 (SC).*
- *Continental Foundation JT Venture Vs CCE reported in 2007 (216) ELT 177 (SC).*
- *Associated Cement Co. Ltd. vs. Commr. of C. Ex., Mumbai reported at 2001 (138) ELT 911 (Tri.-Mumbai).*

(v) Further, it is submitted that extended period of limitation cannot be invoked in cases when demand is raised on the basis of difference between ST-3 returns and TDS Return/Form 26AS as there is neither suppression of facts nor intention to evade payment of tax.

(vi) in view of above, extended period of limitation is not invokable.

(vii) As per Section 73(1) of the Finance Act, 1994, normal period of demand till 13.05.2016 was 18 months and thereafter ie. w.e.f. 14.05.2016, it was 30 months.

(viii) In view of above, it is submitted that the entire demand of service tax pertains to FY 2016-17 i.e. period beyond normal period of demand therefore, entire demand of service tax is liable to be dropped on this ground alone."

4.3 Similarly, before the Adjudicating Authority, appellant has stated as follows:-

"(xxiii) It is submitted that extended period of limitation is not invokable in their case for the following reasons:-

- *It is a dispute on interpretation of provisions of service tax law for which extended period of limitation cannot be invoked.*
- *We bonafidely believed that we have correctly discharged our service tax liability.*
- *Reliance is placed on the following decisions of Supreme Court:*

  (i) CCE Vs Chemphar Drugs & Liniments reported in 1989 (40) ELT 276 (SC).

(ii) Continental Foundation JT Venture Vs CCE reported in 2007 (216) ELT 177 (SC).

(xxiv) Further, it is submitted that extended period of limitation cannot be invoked in cases when demand is raised on the basis of difference between ST-3 returns and Balance Sheets as there is neither suppression of facts nor intention to evade payment of tax.

(xxv) It is submitted that if the values are reflected in the Balance Sheet and since the balance sheet is a public document, any difference in values of Balance Sheet and ST-3 return cannot be said to be suppression on the part of assesses. Reliance in this connection can be placed on the decision of Honb'le Allahabad CESTAT in the matter of M/s Swarn Cars Pvt. Ltd. Vs. Commissioner of Central Excise, Kanpur reported at 2020-TIOL-229.

(xxvi) In view of above, it is submitted that the entire demand of service tax pertains to period beyond normal period of demand therefore, entire demand of service tax is liable to be dropped on this ground alone."

4.4 Impugned order records the following findings:-

"6.4 At the outset, it is stated that Show Cause Notice has been issued based on third party information supplied by the Income Tax Department. I observe that the appellant under the name & title of M/s Subodh Kumar Yadav was a proprietorship firm registered with the Department having Service Tax Registration No. AIEPY6070AS0001 for providing taxable services as defined under Section 668 of the Finance Act, 1994. 1 further observe that the adjudicating authority has confirmed the demand of Rs.16,21,145/-on differential value of Rs.1,08,07,634/- (ITR-STR-3) without considering the claim of the appellant that it is a provisional sales value against which they neither have provided any service nor received any amount. In this regard, I find the observation of the adjudicating authority in para 12.1 of the impugned order is that "For the differential value of Rs.1,08,07,634/- on

which demand of Rs. 16,21,145/-hos been raised in SCN dated 08.10.2021, the party has submitted that their actual sales for the FY 2016-17 was Rs.84,92,317/- only and not Rs. 1,92,99,951/ Further, they have mentioned in their reply dated 25.05.2023 that the ITR considered in the SCN is revised ITR filed on the basis of provisional value. They further stated that they had prepared their books of accounts after including un estimated figure as they were trying to obtain a tender from the Noida authority. However, they did not get the above tender from the Noida Authority. Further, I find that in the reply dated 17.11.2021, the noticee have mentioned that they were running an Educational Institution for Competition Preparation with various staff of Tutor through which the amount of Rs.1,08,07,634/-has got the revenue in the relevant year which was totally exempted from the Service Tax Liability vide Notification 25/2012-Service Tax doted 20.06.2012. For the sald contention, the party did not produce any supporting document viz. invoice, payment receipt details, Bank Statement, name of course affiliated to any Government recognised syllabus/course for which exemption is granted etc."

The Balance Sheet and Profit & Loss Account are the legal and statutory documents as per standard accounting practices & procedure. They show the receipts and expenses of the appellant, which has been declared and duly got audited by the Chartered Accountant as well as by the appellant itself. Deviation from it creates an ambiguous status in the case.

6.5 I don't see anywhere in the Balance Sheet, it is mentioned that the expense and Income figure are provisional. If they had not even got the tender, then on what basis any provisional figure could be reported in 2016-17 by the appellant & their chartered accountant. I don't see that they revised their finalized balance sheet of 2016-17 ever, where income figure of Rs. 1,92,99,951/is *reported. They themselves claimed that they were running an educational institution. From the perusal of the documents submitted on 19/10/24, it can be seen that there are more than one revenue stream. From the bank statements, it can be seen that there are more deposits than reported in the ST-3 and GST Returns. in view of the shifting claims made by the appellant, the certainty of facts & truthfulness of the data is not established.*

6.6 The law relating to the Burden of Proof and Its onus is given under the provisions of the Indian Evidence Act, 1872 in Chapter Vil, Part-III. Under the Indian Law, until and unless an exception is created by law, the burden of proof lies on the person making any claim or ascertaining any fact. In this context reliance is placed on the decision of Hon'ble Supreme Court of India in case of Ultratech Cement Ltd. vs. State of Rajasthan (MANU/SC/0530/2020) wherein it was held that:

"the burden of proving applicability would be on assessee to show that his case comes within the parameters of the exemption clause or exemption notification".

6.7 In view of above stated facts of the case, applicable legal provisions, discussions and findings above, I am inclined to agree with the findings of the Adjudicating Authority & do not find force in the appeal filed by the appellant. Therefore, I am inclined to uphold the Impugned Order to the extent demand amounting to Rs. 16,21,145/- against the appellant, along with interest & penalties thereupon."

4.5 Whereas impugned order is totally silent on the aspect of limitation. Order-in-Original records the findings as follows for invoking the extended period of limitation:-

"12.3 I find that the assessee have failed to properly assess the service tax liability and thereby failed to declare correct taxable value in statutory ST-3 returns. In the present regime of liberalization, self-assessment and filing of ST-3 returns online, no documents whatsoever are

submitted by the said assessee to the department and therefore the department would come to know about such not payment/short-payment of service tax only by third party source or during audit or preventive/other checks. Since no evidence is available for conducting of audit or any preventive check, only third party source information is available for consideration.

12.4 From the above facts, I observed that the said assessee lad knowingly contravened the provisions of the Finance Act. 1994 and the rules framed there under, with intent to evade payment of Service Tax as they have not assessed the proper service tax liability as per the provisions of Finance Act, 1994. Thus, I find that the deliberate short/non-payment of due & propes service tax by way of suppression of value of taxable service is in utter disregard to the requirements of law. This act and omission on the part of the assessee is a breach of trust deposed on them, and ure certainly not in tune with government's efforts in the direction to create a voluntary tax compliance regime. Despite the fact that the party has declared their income in ITIC but not declared the true & correct taxable value in ST-3 returns in tune with the value declared in 1TR to discharge the proper and due service tax liability. It shows that the party had deliberately suppressed the true and correct taxable value to escape from proper assessment and payment of due service tax. Therefore, I hold that the service tax of Rs. 1,35,424/-not paid/short paid for the period from 2015-16 is required to be recovered along with interest from them under the proviso to Section 73(1) of the Finance Act, 1994 read with Section 75 of Finance Act.1994 by invoking extended period of five years. The party's contention in this regards is not acceptable as is clearly evident that the party have deliberately suppressed the true and correct taxable value by not declaring the same in ST-3 returns and payment of due service tax thereon."

4.6 It is a fact on record that the appellant was filing ST-3 returns as required in law after making self assessment of the tax. They were also filing ITRs with the Income Tax Department. From form 26AS of the appellant it is also evident that the value of services against which TDS was deducted was about Rs.89,19,702/- against the value of Rs.84,92,317/- reflected in ST-3 return. I observe that the entire demand has been made by taking the deference of ITR and STR as their difference was higher without specifying the nature of services against which these demands are made.

4.7 The fact as evident that appellant self assessed the service tax payable by classifying the services provided by him under the category of exempted services have assessed the service tax on the none exempted services and paid them in respect of other exempted services. In the opinion of the appellant, no service tax was payable and hence was not paid. As the appellant was continuously during the period of dispute filing ST-3 return on the basis of bonafide belief held by him, I do not find any merits in invocation of extended period of limitation for making this demand.

4.8 Hon'ble Supreme Court in the case of Uniworth Textiles Ltd. [2013 (288) ELT 161 (SC)] has held as follows:-

> *"**21.** The Revenue contended that of the three categories, the conduct of the appellant falls under the case of "willful misstatement" and pointed to the use of the word "misutilizing" in the following statement found in the order of the Commissioner of Customs, Raipur in furtherance of its claim :*
>
> *"The noticee procured 742.51 kl of furnace oil valued at Rs. 54,57,357/- without payment of customs duty by misutilizing the facility available to them under Notification No. 53/97-Cus., dated 3-6-1997"*
>
> ***22.** We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or*

misstatement. The use of the word "willful" introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one's state of mind. Black's Law Dictionary, Sixth Edition (pp 1599) defines "willful" in the following manner :-

"Willful. Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass…

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done…"

23. *In the present case, from the evidence adduced by the appellant, one will draw an inference of bona fide conduct in favour of the appellant. The appellant laboured under the very doubt which forms the basis of the issue before us and hence, decided to address it to the concerned authority, the Development Commissioner, thus, in a sense offering its activities to assessment. The Development Commissioner answered in favour of the appellant and in its reply, even quoted a letter by the Ministry of Commerce in favour of an exemption the appellant was seeking, which anybody would have found satisfactory. Only on receiving this satisfactory reply did the appellant decide to claim exemption. Even if one were to accept the argument that the Development Commissioner was perhaps not the most suitable repository of the answers to the queries that the appellant laboured under, it does not take away from the bona fide conduct of the appellant. It still reflects the fact that the appellant made efforts in pursuit of adherence to the law rather than its breach.*

24. *Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in* *support of bona fide conduct, by observing that "the appellants had not brought anything on record" to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."*

25. *Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In Aban Loyd Chiles Offshore Limited and Ors. (supra), this Court made the following observations :*

"21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :

'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such

averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :

...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso...." *(Emphasis supplied)*

26. *Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful* *default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant."*

4.9 In the following decisions also it has been held that extended period of limitation could not have been invoked for making the demand when the person entertained a bonafide belief about non taxable nature or exempted nature of the services provided.

- Anand Nishikawa Co. Ltd. Vs CCE, Meerut 2025 (188) ELT 149;
- Infinity Infotech Parks Ltd. Vs UOI 2014 (36) STR 37;
- CCE, Chennai Vs Chennai Petroleum Corporation Ltd. 2007 (211) ELT 193;

4.10 I observe that Hon'ble Supreme Court has in the case of Stemcyte India Therapeutics Pvt. Ltd [Order dated 14.07.2025 Civil Appeal Nos. 3816-3817 of 2025] observed as follows:

"9. In the present case, the disputed period is from 01.07.2012 to 16.02.2014. However, the show cause notice was issued only on 28.07.2017, demanding a sum of Rs.2,07,29,576/- towards service tax, by invoking the extended period of limitation. Under section 73(1) of the Finance Act, 1994, a show cause notice must ordinarily be issued within one year from the relevant date. The proviso to section 73(1) allows an extended period of up to five years only where the nonpayment or short payment of service tax is due to fraud, collusion, wilful misstatement, suppression of facts, or contravention of the provisions of the Act or Rules, with an intent to evade payment of service tax.

9.1. It is evident from the communication dated 02.12.2013 issued by the Deputy Commissioner of Central Excise, Ahmedabad-III, directing the appellant to furnish the documents relating to their activities, that the department was already aware of the nature of the *appellant's operations as early as in 2013. Despite such awareness, the department issued the show cause notice after an inordinate delay, well beyond the ordinary period of limitation, and sought to justify it by invoking the extended period.*

9.2 ....

9.3. It is a settled principle of law that, for the department to invoke the extended period of limitation, there must be an active and deliberate act on the part of the assessee to evade payment of tax. Mere non-payment of tax, without any element of intent or suppression, is not sufficient to attract the extended limitation period. In this regard, reference may be made to the following judgments:

(i) Padmini Products v. CCE [(1989) 4 SCC 275]

> *"12. Shri V. Lakshmi Kumaran, learned counsel for the appellant drew our attention to the observations of this Court in CCE v. Chemphar Drugs and Liniments, Hyderabad [(1989) 2 SCC 127 : 1989 SCC (Tax) 245] where at p. 131 of the report, this Court observed that in order to sustain an order of the Tribunal beyond a period of six months and up to a period of five years in view of the proviso to sub-section (1) of Section 11-A of the Act, it had to be established that the duty of excise had not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. It was observed by this Court that something positive other than mere inaction or failure on the part of the manufacturer or producer of conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be established before it is saddled with any liability beyond the period of six months. Whether in*

a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal, however, had held contrary to the contention of the appellant. The Tribunal noted that dhoop sticks are different products from agarbatis even though they belonged to the same category and the Tribunal was of the view that these were to be treated differently. Therefore, the clarification given in the context of the agarbatis could not be applicable to dhoop sticks etc. and the Tribunal came to the conclusion that inasmuch as the appellant had manufactured the goods without informing the central excise authorities and had been removing these without payment of duty, these would have to be taken to attract the mischief of the provisions of Rule 9(2) and the longer period of limitation was available. But the Tribunal reduced the penalty. Counsel for the appellant contended before us that in view of the trade notices which were referred to by the Tribunal, there is scope for believing that agarbatis were entitled to exemption and if that is so, then there is enough scope for believing that there was no need of taking out a licence under Rule 174 of the said Rules and also that there was no need of paying duty at the time of removal of dhoop sticks, etc. Counsel further submitted that in any event apart from the fact that no licence had been taken and for which no licence was required because the whole duty was exempt in view of Notification No.111 of 1978, referred to hereinbefore, and in view of the fact that there was scope for believing that it was exempt under Schedule annexed to the first notification i.e. No.55 of 1975, being handicrafts, the appellant could *not be held to be guilty of the fact that excise duty had not been paid or short-levied or short-paid or erroneously refunded because of either any fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder. These ingredients postulate a positive act. Failure to pay duty or take out a licence is not necessarily due to fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act. Suppression of facts is not failure to disclose the legal consequences of a certain provision. Shri Ganguly, appearing for the Revenue, contended before us that the appellant should have taken out a licence under Rule 174 of the said Rules because all the goods were not handicrafts and as such were not exempted under Notification No. 55 of 1975 and therefore, the appellant were obliged to take out a licence. The failure to take out the licence and thereafter to take the goods out of the factory gate without payment of duty was itself sufficient, according to Shri Ganguly, to infer that the appellant came within the mischief of Section 11-A of the Act. We are unable to accept this position canvassed on behalf of the Revenue. As mentioned hereinbefore, mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not, would not attract Section 11-A of the Act. In the facts and circumstances of this case, there were materials, as indicated to suggest that there was scope for confusion and the appellant believing that the goods came within the purview of the concept of handicrafts and as such were exempt.*

If there was scope for such a belief or opinion, then failure either to take out a licence or to pay duty on that behalf, when there was no contrary evidence that the producer or the manufacturer knew these were excisable or required to be licensed, would not attract the penal provisions of Section 11-A of the Act. If the facts are otherwise, then the position would be different. It is true that the Tribunal has come to a conclusion that there was failure in terms of Section 11-A of the Act. Section 35-L of the Act, inter alia, provides that an appeal shall lie to this Court from any order passed by the appellate tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purpose of assessment. Therefore, in this appeal, we have to examine the correctness of the decision of the Tribunal. For the reasons indicated above, the Tribunal was in error in applying the provisions of Section 11-A of the Act. There were no materials from which it could be inferred or established that the duty of excise had not been levied or paid or short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or of the Rules made thereunder. The Tribunal in the appellate order has, however, reduced the penalty to Rs 5000 and had also upheld the order of the confiscation of the goods. In view of the fact that the claim of the Revenue is not sustainable beyond a period of six months on the ground that these dhoop sticks, etc. were not handicrafts entitled to exemption, we set aside the order of the Tribunal and remand the matter to the Tribunal to modify the demand by confining it to the period of six months prior to issue *of show-cause notice and pass consequential orders in the appeal on the question of penalty and confiscation. The appeal is allowed to the extent indicated above and the matter is, therefore, remanded to the Tribunal with the aforesaid directions. This appeal is disposed of accordingly."*

(ii) CCE v. Chemphar Drugs and Liniments [(1989) 2 SCC 127]

"7. The respondent filed an appeal before the Tribunal. The Tribunal considered the matter and noted that the appellant's case was that the demand for duty for the period beyond six months was time-barred; and the respondent's case was that the demand for the period beyond 6 months from the receipt of show-cause notice, was time-barred inasmuch as there was no suppression or misstatement of facts by the appellant with a view to evade payment of duty. In support of its claim the respondent produced classification list approved by the authorities during the period 1978-79, and also produced extracts from the survey register showing that the officers had been visiting its factory from time to time and also taking note of the previous goods manufactured by the respondent. The plea of the Revenue was that there was suppression and/or mis-declaration and/or wrong information furnished in the declaration itself. The Tribunal noted the facts as follows:

> *"We observe it is not denied by the Revenue that the appellants had been submitting their classification lists from time to time showing the various products manufactured by them including those falling under T.I. 14-E and 68 also these containing alcohol. The officers who visited the factory as seen from the survey register at the factory also took note of the*

various products being manufactured by the appellants. It cannot be said that the appellants had held back any information in regard to the range and the nature of the goods manufactured by them. The appellants have maintained that the value of the exempted goods under T.I. 68 and also value of medicines containing alcohol, according to their interpretation, were not required to be included for the purpose of reckoning of the total excisable goods cleared by them. There is nothing on record to show that the appellants non-bonafidely held back information about the total value of the goods cleared by them with a view to evade payment of duty. Their explanation that it was only on the basis of their interpretation that the value of the exempted goods were not required to be included that they did not include the value of the exempted goods which they manufactured at the relevant time and falling under T.I. 68 is acceptable in the facts of that case. The departmental authorities were in full knowledge of the facts about manufacture of all the goods manufactured by them when the declaration was filed by the appellants. That they did not include the value of the product other than those falling under T.I. 14-E manufactured by the appellants has to be taken to be within the knowledge of the authorities. They could have taken corrective action in time. We therefore find there was no warrant in invoking longer time-limit beyond six months available for raising the demand. So far as the demand for the period within six months reckoned from the date of receipt of

> *the show-cause notice is concerned, we observe that the appellants' case is that value of the goods under T.I. 68 was not required to be included but the Revenue's plea is that only value of the specified goods under Notifications Nos. 71/78 and 80/80 was not required to be excluded."*

8. On the aforesaid view the Tribunal came to the conclusion that the demand raised on this for a period beyond 6 months was not maintainable.

9. Aggrieved thereby, the Revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11-A of the Act, it has to be established that the duty of excise has not been levied or paid or shortlevied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee *declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that explanation was plausible, and also noted that the department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under T.I. 14-E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence."*

(iii) Pushpam Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462]

"4. Section 11-A empowers the Department to reopen proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. Infact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be

construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

(iv) CCE v. Punjab Laminates (P) Ltd. [(2006) 7 SCC 431]

"12. At no point of time, the Revenue doubted the correctness or otherwise of the manufacturing process or the ingredients disclosed by the respondent. The stand of the respondent that the industry as such had adopted the same manufacturing process and had been extended the benefit of the exemption notification of 1989 has not been called in question. If the stand of the manufacturer is correct, there was no reason as to why it should be singled out.

13. This Court decided Bakelite Hylam Ltd. [(1997) 10 SCC 350] on 10-3-1997. The impugned notice was issued only on 9-12-1997 evidently relying on or on the basis thereof.

14. It is not a case where the respondents had not disclosed the activities of manufacturing products carried out by them by declaration or otherwise. They responded to each and every query of the appellant, as and when called upon to do so. The authorities of the appellant must have verified the said disclosures. At least they are expected to do so. The disclosure made by the respondent was acceptable to them. Their bona fides were never questioned.

15. The applicability of the extended period of limitation is, therefore, required to be considered in the aforementioned context. The proviso, it is trite, *provides for an exception. It is not the rule. A case, therefore, has to be made out for attracting the same.*

16. In Primella Sanitary Products (P) Ltd. v. CCE [(2005) 10 SCC 644 : (2005) 184 ELT 117] a three-Judge Bench of this Court was dealing with a case where a concession was made by a counsel appearing on behalf of the Revenue. The Court opined that although the item was put under the right classification list but they had not been permitted to take a different stand stating: (SCC p. 648, para 13)

> *"As the matter of classification has proceeded on a matter of concession of facts we do not allow the appellants to withdraw from that concession. They are now not permitted to argue on the question of classification."*

17. In Pahwa Chemicals (P) Ltd. v. CCE [(2005) 189 ELT 257] this Court held:

"The appellants have all along claimed that merely because they were affixing the label of a foreign party, they did not lose the benefit of Notification No. 175/86-CE as amended by Notification No. 1/93-CE The view taken by the appellants had, in some cases, been approved by the Tribunal which had held that mere use of the name of a foreign party did not disentitle a party from getting benefit of the notifications. It is only after larger Bench held in Namtech Systems Ltd. v. CCE [(2000) 115 ELT 238 (cegat)] that the position has become clear. It is settled law that mere failure to declare does not amount to wilful misdeclaration or wilful suppression. There must be some positive act on the part of the party to establish either wilful mis-declaration or wilful suppression. When all facts are before the Department and a party in the belief that affixing of

a label makes no difference does not make a declaration, then there would be no wilful mis-declaration or wilful suppression. If the Department felt that the party was not entitled to the benefit of the notification, it was for the Department to immediately take up the contention that the benefit of the notification was lost."

18. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that it is not a fit case where this Court should interfere. The appeal is, therefore, dismissed. The parties shall, however, pay and bear their own costs."

9.4. Therefore, in the absence of fraud, collusion, wilful misstatement, or suppression of facts with an intent to evade payment of service tax, the invocation of the extended period of limitation under Section 73 of the Finance Act, 1994 is wholly unwarranted. Mere non-payment of service tax, by itself, does not justify the invocation of the extended limitation period. Accordingly, the show cause notice issued by the department is clearly time-barred. On this ground alone, the impugned order deserves to be set aside."

4.11 In view of the above, I find that demand made by invoking extended period cannot be upheld. Thus, I do not find any merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Order pronounced in open court on- 25 February, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp