

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

REGIONAL BENCH - COURT No.II
(E-Hearing)

Service Tax Appeal No.70827 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-000-APP-132-24-25 dated 16/07/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Orane Consulting Pvt. Ltd., **....Appellant**

(C-56, A/5, 2nd Floor, Sector-62, Noida-201306)

VERSUS

Commissioner of Central Excise &

CGST, Noida

....Respondent

(C-232-A/2, GST Bhawan, Sector-48, Noida)

APPEARANCE:

Shri Abhinav Kalra, Chartered Accountant for the Appellant

Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70060/2025

DATE OF HEARING : 19 February, 2026
DATE OF PRONOUNCEMENT : 25 February, 2026

SANJIV SRIVASTAVA:

This appeal is directed against NOI-EXCUS-000-APP-132-24-25 dated 16/07/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"ORDER

In the light of above discussions and findings, the Appeal No. 379/ST/Noida/Apl/NOI/2023-24 dated 15.03.2024 filed by M/s Orane Consulting Pvt. Ltd. C-56, A/5, 2nd Floor, Sector-62, Noida (U.P.) 201306 partially succeeds and the Order-In-original No. 40/ADC/ST/CGST/NOIDA/2023-24 Dated 22.12.2023 passed by the Additional

Commissioner, CGST Commissionerate Noida is partially modified to the extent that the confirmed amount of tax, Interest and penalty is reduced to Rs.21,81,352/- along with applicable interest u/s 75 of the Act and equal penalty u/s 78 of the Act. However, I set aside the penalty u/s 77(1)(d) of the Act."

1.2 By the Order-in-Original dated 22.12.2023 following has been held:-

"ORDER

- i. I confirm the demand of Service Tax amounting to Rs. 32,84,675/- (inclusive all cess) (Rupees Thirty two lakh eighty four thousand six hundred seventy five only) on M/s Orane Consulting Pvt. Ltd., Noida under sub-Section (2) of Section 73 of Chapter V of the Finance Act, 1994, on the taxable value of services provided by the noticee during the financial year 2016-17.I however drop the balance demand of Rs. 30,36,750/- as the same was not found sustainable in law, as discussed above.*
- ii. I order that the noticee shall pay interest, under section 75 of Chapter V of the Finance Act, 1994, on the above said service tax amount of Service Tax Rs. 32,84,675/- from the next day of due date for monthly payment of tax till the date of payment of the tax amount.*
- iii. I impose a penalty equal to the tax amount of Rs. 32,84,675/- under sub-section (1) of section 78 of Chapter V of the Finance Act, 1994, upon the noticee for non-payment of the said tax amount by reason of suppression of facts and contravention of provisions of the Finance Act, 1994. However, an option is given to noticee under 2nd proviso to Sub Section (1) of Section 78 of the Finance Act, 1994 that if the Service Tax along with Interest is deposited within thirty days of communication of this order, the amount of penalty liable to be paid by the party shall be twenty five percent of the Service Tax so determined in the order, provided that the benefit of reduced penalty under the second proviso shall be*

available only if the amount of such reduced penalty is also paid within such period.

- iv. I impose the penalty of 10,000/- (Ten thousand only) upon M/s. Orane Consulting Pvt. Ltd., Noida under Section 77(1)(d) of the Finance Act, 1994 for their failure to pay the Service Tax electronically.*

The dues adjudged above shall be paid forthwith."

2.1 Appellant was registered with the Service Tax Department vide Registration No.AABCO2224JSD001 and was engaged in providing the taxable services i.e. domestic sales and export of services namely SAP, Software development and its consultancy and maintenance and was liable to pay service tax on the same in terms of Section 69 of the Finance Act, 1994 (hereinafter referred to as 'The Act') read with Rule 6(1) of the Service Tax Rules, 1994.

2.2 As the information was received from the Income Tax Department that appellant has received a substantial amount towards provisions of services. On verification of the figures with STR it was observed that total value of the services provided was NIL, infact appellant has not filed any service tax return for the relevant period.

2.3 On the basis of above, enquires were initiated and appellant vide letter dated 29.07.2021 and reminder mail dated 18.09.2021 was asked to furnish details of payment of service tax along with the copies of ST-3 returns, if any filed by them and reason of difference off value as shown in STR and ITR.

2.4 Appellant did not respond to the above communication made. In absence of any submission on behalf of the appellant it was not possible to determine the exact nature/classification of services provided by the appellant and hence benefit of abatement/exemption could not be extended to the appellant.

2.5 On the basis of information received from the Income Tax Department, it was observed that appellant has short paid service tax as detailed in table below by suppressing the relevant

facts from the department with intent to evade payment of service tax:-

Financial Year	Gross Reciepts			Higher of 2-4 and 3-4	Service Tax	
	ITR	26AS	ST-3		@%	Payable
1	2	3	4	5	6	7
2016-17	42142833	37216263	0	42142833	15	6321425

2.6 Show cause notice dated 07.10.2021 alleging suppression with intent to evade payment of service tax and invoking extended period of limitation was issued to the appellant asking them to show cause as to why:-

- "(i) The Service Tax amounting to Rs. 63,21,425/-/- (Rupees Sixty Three Lakh Twenty One Thousand Four Hundred Twenty 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."

2.7 Appellant filed reply on 05.10.2021, 03.03.2023, 10.03.2023, 14.03.2023 and additional submissions on 17.11.2023 and 12.12.2023. The personal hearing was also attended by the appellant.

2.8 After considering the written submissions made and also the submissions during the course of personal hearing, the said show cause notice was adjudicated as per the Order-in-Original dated 22.12.2023 referred in para 1.2 above.

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

2.10 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Abhinav Kalra, Chartered Accountant appearing for the appellant and Smt Chitra Srivastava Authorized Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Relying on the following decisions the demand made by invoking extended period of limitation is bad in law:
 - Gammon India Ltd. v CCE, Goa 2002 (146) ELT 173 (Tri. Mumbai) wherein it was held that delay in issuing show cause notice is fatal to the arguments that there was suppression. After hearing the matter, the revenue Appeal against the Tribunal decision was dismissed by the Supreme Court - Commissioner v Gammon India Ltd. 2002 (146) ELT A313 (SC).
 - Mohan Bakers Pvt. Ltd. v. Commissioner of C. EX. Kolkata-IV - 2008(221) E.L.T. 308(Tri.- Kolkata) wherein it was held that initiation of proceedings after two years held to be belated action and demand suffers from legal infirmity, on the basis of Gammon India case, the revenue Appeal against the Tribunal decision was dismissed by the High Court - Commissioner v. Mohan Bakers Pvt. Ltd.- 2009 (241) E.L.T. A23(Cal.).
 - Studioline Interior Systems Pvt. Ltd. v CCE, Bangalore-I 2006 (201) ELT 250 (Tri.-Bang.) it was held that when the assessee is registered with the department, it cannot be said that the department was not aware of the activity of the assessee and when the show cause notice is issued after a lapse of one year from the date of visit of Officers in the premises of the assessee, the demand is time barred and extended period of 5 years cannot be invoked.

- Aban Lyod Chiles Offshore Ltd. v CC, Maharashtra 2006 (200) ELT 370 (SC), it was held that department was aware of the general nature of the activity of the assessee. Therefore, the assessee cannot be accused of willful suppression of facts when all facts were in the knowledge of the department. Hence, there is no justification in invoking the extended period of limitation.
- CCE, Vadodara v Pioneer Scientific Glass Works 2006 (197) ELT 308 (SC) relying upon the decision in the case of M/s Pushpam Pharmaceuticals v Collector 1995 (78) ELT 401 (SC), the Supreme Court held that omission by one party to do what he might have done and not that he must done does not render it to the suppression of fact. The act has to be deliberate and not merely an omission to allege suppression on the part of the assessee. The Court also held that the act of withholding by the assessee to be positive and deliberate to withhold the information to escape from payment of duty before it is saddled with any liability for the extended period.
- Jaiprakash Industries Ltd. v CCE, Chandigarh, 2002 (146) ELT 481 (SC) held that it cannot be said that merely because the Appellant did not take out a licence and did not pay the duty, the extended period of limitation is invokable unless there is evidence or proof that licence was not taken or duty was not paid because of fraud, collusion, willful misstatement or suppression of facts.
- Anand Nishikawa Co. Ltd. v CCE, Meerut 2005 (188) ELT 149 (SC), the Supreme Court has observed that "...we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not

that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of the assessee to find wilful suppression

- He further submitted that the benefit of Cenvat credit should be allowed in respect of the demands that are being confirmed.

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

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

4.2 Impugned order records as follows:-

"10. I find the issues for determination before me is Whether demand and recovery of non-payment of service tax amounting to Rs.32,84,675/- along with interest and penalty against the services rendered by the appellant during the F.Y. 2016-17, justifiable or not, under proviso to Section 73(1), under Section 75, under Section 78, under Section 77(1)(d) respectively of the Act.

11.1 I find that the appellant has submitted that they have actually provided the services to SEZ units amounting to Rs.2,21,95,253/-but the adjudicating authority has held that they have supplied the services of Rs.1,48,39,770/- only to the SEZ units. In effect the appellant has submitted that the adjudicating authority has not considered the fact that they have also supplied the services worth Rs.73,55,483/- and has submitted that since they have produced the A1 and A2 certificate therefore they are eligible to avail exemption from payment of Service tax on the services supplied to the SEZ units.

In above context I find that the provisions of Notification No. 40/2012-S.T., dated 20-6-2012 as were in operation upto 01.07.2013, read as under :-

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance (No. 2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007(22 of 2007) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 668 of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification"

12.2 The above Notification was rescinded vide Notification No.12/2013-Service tax dated 01.07.2013 and the relevant part of the same read as under :-

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section (3) of section 95 of Finance (No. 2), Act, 2004 (23 of 2004) and sub-section (3) of section 140 of the Finance Act, 2007 (22 of 2007)

the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 668 of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner:

(1) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The ab initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (1);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the Jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, In Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, It shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder."

13. A plain perusal of the above statutory provisions reveals that the Information technology services provided to the to a unit situated in SEZ unit are exempt from payment of Service tax on fulfillment of certain conditions.

14. Juxtaposition to the statutory provisions supra, the appellant has submitted that they have provided the said Services to the SEZ units and are eligible for exemption in view of the said Exemption Notifications. In their support the appellant has submitted a chart showing details of the such supplies along with the followings :-

S. No.	Name of SEZ unit	Date of Issuance of A1/A2 certificate	Details of services to be supplied to the SEZ units	Details of the Customs authority Issuing the A1/A2 certificate
1.	M/s Danta Technologies Pvt. Ltd., Plot no.07, Sector 144, Noida	11.04.2016	Information Technology Software services	Assistant Commissioner, Customs, Central Excise & Service tax, Division Sinner
2.	Seal Infotech Pvt. Ltd., Plot no. 42A, Cochin SEZ, Kalkhand, Cochin-682037	05.04.2016		
3.	Meterner Limted, Knowledge Park-V, Greater Noida, Distt. G.B.Nagar, UP	05.04.2016		
4.	M/s Motherson Sumi Infotech & Designs Limited, Plot no.202, Sector KP, Greater Noida	04.04.2016		
5.	M/s NTT Data Global Services Pvt. Ltd., 47A & B(Phase-2) NOIDA-201305	04.04.2016		
6.	Nucleus Software Export Limited, Plot No. TZ 04, Noida, Distt. Gautam Buddha Nagar	01.04.2016		
7.	Rattanindia Nasik Power Limited, SEZ Co-developer, Plot No. A1, Village Musalgaon & Gulvanch, Additional MIDC, Sinner, Nashik	24.06.2016		

I find that the appellant has also submitted a detailed chart showing invoices wise details of the supply of the services made to the above stated SEZ units along with a copy of some of the invoices on sample basis, and the

same reveals that during the relevant time the appellant has received the following considerations against the supplies made to the following SEZ units :-

<i>S No</i>	<i>Name of SEZ unit</i>	<i>Consideration received against such supply of services in Rs,</i>
1	<i>M/s Danta Technologies Pvt. Ltd., Plot no.07, Sector 144, Noida</i>	<i>2,72,500</i>
2	<i>Seal Infotech Pvt. Ltd., Plot no. 42A, Cochin SEZ, Kalkhand, Cochin-682037</i>	<i>7,06,090</i>
3	<i>Meterner Limited, Knowledge Park-V, Greater Noida, Distt. G.B.Nagar, UP</i>	<i>8,62,500</i>
4	<i>M/s Motherson Sumi Infotech & Designs Limited, Plot no.202, Sector KP, Greater Noida</i>	<i>1,35,667</i>
5	<i>M/s NTT Data Global Services Pvt. Ltd., 47A & B(Phase-2) NOIDA-201305</i>	<i>4,80,000</i>
6	<i>Nucleus Software Export Limited, Plot No. TZ 04, Noida, Distt. Gautam Buddha Nagar</i>	<i>22,88,000</i>
7	<i>Rattanindia Nasik Power Limited, SEZ Co-developer, Plot No. A1, Village Musalgaon & Gulvanch, Additional MIDC, Sinner, Nashik</i>	<i>26,10,726</i>
<i>Total</i>		<i>73,55,483</i>

In view of the above I hold that the Service tax on the above consideration of Rs.73,55,483/- against supply to the SEZ units; amounting to Rs. 11,03,322/-; is not liable to be paid and is exempt from payment of Service tax.

However, as regards the remaining amount of Service tax of Rs.21,81,352/- the same has correctly been confirmed by the adjudicating authority along with applicable interest u/s 75 of the Act and equal penalty u/s 78 of the Act. However, I set aside the penalty u/s 77(1)(d) of the Act."

4.3 Order-in-Original records as follows:-

"4.1 Earlier, opportunity of personal hearing was given to the noticee to appear before adjudicating authority on 15.12.2022 & 17.02.2023.

4.2 Further, due to change in adjudicating authority, the personal hearing in the case was again fixed on 29.08.2023 but the noticee vide their letter dated 30.08.2023 had requested for adjournment till

15.09.2023. Accordingly, the adjudicating authority has granted next date 18.09.2023 for personal hearing but the authorised person of the noticee vide his letter dated 18.09.2023 had requested to change in the date from 18.09.2023 to 19.09.2023, due to some personal reason. Sh. Arif Ahmed Khan, Advocated, an authorized representative of the noticee appeared for the said personal hearing on 19.09.2023 and he reiterated that the facts which had already been submitted in their written reply dated 03.03.2023, 10.03.2023 & 14.03.2023 to this office. They said that they have nothing to say other than written submission, the case may be decided on the basis of written reply. Further, they vide their letter dated 26.10.2023, 06.11.2023 and 17.11.2023 have sought the time for additional submission in the case.

5. Discussion and Findings:-

5.1. I have carefully examined the impugned Show Cause Notice Issued to the noticee, record of personal hearing held on 19.09.2023, written submissions made by the noticee vide their letter dated 05.10.2021, 03.03.2023, 10.03.2023, 14.03.2023, 17.11.2023 and 12.12.2023 and other records submitted by the noticee during the said personal hearings and submitted thereafter.

5.2. I notice that the issue involved in this case is that there was a difference of Rs. 4,21,42,833/- between the Sale of services as per the ITR return and value of services as shown in the ST-3 returns filed by them for the financial year 2016-17. The department issued Show cause notice to the noticee demanding service tax amounting to Rs. 63,21,425/- on said entire differential amount of Rs. 4,21,42,833/-, earned by the noticee during the financial year 2016-17. On the other hand, the noticee has submitted that (1) out of the total turnover of Rs. 4,21,42,832/- for the financial year 2016-17, there was non-taxable turnover of Rs. 2,02,44,996/- (Rs. 54,05,226/- on account of export of services and Rs.

1,48,39,770/- on account of services provided to SEZ units), (ii) they had provided taxable services of 2,18,97,836/- only during the said financial year whereon the Service Tax liability was. 32,72,492/-, (iii) they are liable to pay Rs. 26,46,677/- in cash after adjusting available Cenvat credit of Rs. 6,25,819/- on the said taxable value of Rs. 2,18,97,836/-.

5.3. The case records show that M/s. Orane Consulting Pvt. Ltd. having Service Tax Registration No. AABCO2224JSD001 is engaged in the domestic sales and export of services namely SAP software development and its consultancy and maintenance. I have perused the documents furnished by the noticee. As per copy of 26AS for FY 2016-17, the value of services on which TDS under provisions of Income Tax Act had been made during the said financial year, is R. 3,72,16,263/-, whereas the value of services shown in the Income tax returns for the corresponding period is R. 4,21,42,833. The noticee has provided the break-up of revenue from operations as per their Profit & Loss account of FY 2016-17 as under-

Financial Year	Revenue from operation In Profit & Loss account of F.Y. 2016-17		
	Sale of Service		
	Domestic Sale	Export Sales	Total
1	2	3	4=2+3
2016-17	3,67,37,606	54,05,227	4,21,42,833

The above value tallies with the value of services for FY 2016-17 alleged in the Show Cause Notice. Further, the noticee has provided break-up of the above 'Sales turnover' as under:

Sr. No.	Description		Amount in Rs.
1	Total turnover		4,21,42,833
2	Non-Taxable Turnover	Export sales	54,05,226
		SEZ sales	1,48,39,770
	Taxable Turnover		2,02,44,996
3	Total Non-taxable		2,18,97,837

Thus, the noticee has claimed that out of the total turnover of 4,21,42,832/- in FY 2016-17, there is non-taxable

turnover 2,02,44,996/- comprising 54,05,226/- on account of export of services and. 1,48,39,770/- on account of services provided to SEZ units.

6. Export of services claimed as exempt:- In support of value of services of Rs. 54,05,226/- on account of export of services during 2016-17, the noticee has provided month wise details of services provided to their foreign clients along with the invoices raised for the same, as under-

Month	Customer name	Address	Invoice No.	currency	Amount in FC	amount in rs.
Jun,16	Sameer Agriculture & Livestock Ltd.	PO Box 102-00507, Olesol Road Off-Lunga road, Industrial Area Nalrobi, Kenya	4	USD	6,500	4,37,037
	Slerra Solutions Pte. Ltd.	11 Bhishan street 21 #04-02, Bosch south east Asla RHO singapore 573943	7	SGD	15,360	7,62,359
Jul.16	Sameer Agriculture & Livestock Ltd.	PO Box 102-00507, Olesol Road Off-Lunga road, Industrial Area Nalrobi, Kenya	15	USD	6,500	4,37,255
	Slerra Solutions Pte. Ltd.	11 Bhishan street 21 #04-02, Bosch south east Asla RHO singapore 573943	13	SGD	18,480	9,11,737
Aug, 16	Slerra Solutions Pte. Ltd.	11 Bhishan street 21 #04-02, Bosch south east Asla RHO singapore 573943	16	SGD	15,000	7,30,780
Sep, 16	Slerra Solutions Pte. Ltd.	11 Bhishan street 21 #04-02, Bosch south east Asla RHO singapore 573943	18	SGD	6,120	2,90,861
Oct,16	Sameer Agriculture & Livestock Ltd.	PO Box 102-00507, Olesol Road Off-Lunga road, industrial Area Nairobi,	22	USD	5,200	3,45,696

		Kenya				
Mar, 17	ITGEST Software E Sisemas	RUA TOMAS RIBEIRO, 625 LOJA 8 R/c 4450-298, Matosinhos Portugal	23	EURO	4,497	3,10,264
	ITGEST Software E Sisemas	RUA TOMAS RIBEIRO, 625 LOJA 8 R/c 4450-298, Matosinhos Portugal	24	EURO	17,09 0	11,79,238
TOTAL 2016-17						54,05,227

6.1 The noticee in the above regard has claimed the export was in respect of software services to their various foreign customers against which payment was received in foreign currency and, accordingly, it has been claimed that such services were exempt from payment of Service Tax being export of services. From the perusal of relevant Invoices, I observe that the currency mentioned therein is Euro, USD & SGD.

6.2 Before proceeding further, it is imperative to discuss the relevant provisions pertaining to Export of services as laid down under Rule 6A of Service Tax Rules, 1994 which reads as under:

"Rule 6A Export of Services. (1) The provision of any service provided or agreed to be provided shall be treated as export of service when, -

(a) The provider of service is located in the taxable territory,

(b) The recipient of the service is located outside India,

(c) The service is not a service specified in the section 66D of the Act,

(d) The place of provision of the service is outside India,

(e) The payment for such services has been received by the provider of service in convertible foreign exchange, and

The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 658 of the Act.

6.3 Thus, in order to constitute export of services, the above six conditions are required to be fulfilled. On examination of the financial records i.e. copy of contracts orders, Invoices, Bank Statement, reconciliation charts as provided by the noticee along with their defense reply, I find that the noticee had raised the Invoices, during the period in question, from their place of business premises which is situated at Noida in India which satisfy the condition as laid down under clause (a) of the Rule supra. In respect of clause No. (b) of the said rule, I find that the noticee raised invoices to their different clients i.e. Service Recipients who are located outside India as evident from addresses mentioned in the invoices, and hence condition under clause (b) stands satisfied. In reference to the clause (c) and (d) of the said Rule supra, I find that the noticee had raised invoices to their clients for their SAP software related Maintenance & Development and consultancy services rendered by them under different nomenclature. These services are of the nature of IT/IT enabled Services. Thus, the services rendered by noticee were not covered under the negative list of services as enumerated under Section 66D of the Finance Act, 1994.

6.4 The noticee has submitted copy of bank statements and copy of foreign currency remittance advices. On perusal thereof along with the reconciliation charts in reference to their transactions receipt in foreign currency, I find that the noticee had received the payments in convertible foreign exchange. Thus, the condition under clause (e) of Rule supra is also satisfied.

6.5 Further, from the sample copies of invoices furnished by the noticee, I observe that recipient of service are independent entities and not merely an establishment of a

distinct person in accordance with Item (b) of Explanation 3 of clause (44) of section 658 of the Act. Thus, the last condition as laid down under the clause (f) Rule supra is also fulfilled.

6.7 Thus, I find that the criteria for Export of Services as laid down in the Rule 6A, ibid, is complied with by the noticee and therefore, the services of Rs. 54,05,226/- provided by them appropriately fall under the category of Export of Services for the financial year 2016-17, and were therefore exempt from payment of service tax.

7. Services provided to SEZ Units: Now I proceed to examine the taxability of ₹ 1,48,39,770/-on account of services which are claimed to have been provided to SEZ units. On perusal of the Invoices and copy of form 26AS submitted by the noticee, I observe that they have provided services of SAP Consultancy to M/s IGT Solutions Pvt. Ltd., SEZ Infospace buliding No. 1, Tower-B, Sector-21, Dundahera, Gurgaon; M/s Interglobe Technologies International Pvt. Ltd., SEZ Infospace Building No. 1, Tower-B, Sector-21, Dundahera, Gurgaon; M/s Metso Outotec India Pvt. Ltd., DLF SEZ, 12th Floor, Tower C, SEZ, DLF Cyber City, DLF Phase 3, Gurugram, Haryana, M/s Interglobe Technologies Pvt. Ltd., SEZ Infospace Building No. 1, Tower-B, Sector-21, Dundahera, Gurgaon and M/s Ratanindia Nasik Power Ltd., Plot no. A1, Multi product SEZ, Additional Sinnar, MIDC, Musalgaon & Gulvanch, Sinnar, Nashik, Maharashtra.

7.1 I further observe that exemption in respect of services provided to SEZ authorised operations is provided under Notification No. 12/2013-ST, dated 01.07.13 as amended by Notification No. 07/2014-ST, dated 11.07.2014. In case the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ob-initio, subject to the conditions and procedure mentioned in the notification.

The relevant portion of the Notification is reproduced below-

Notification No. 12/2013-Service Tax New Delhi, the 1st July, 2013 G.S.R 448(E). In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 40/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), vide number G.S.R. 482 (E), dated the 20th June, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 668 of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations: Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio,

subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner:

(1) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The ab-Initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (1);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of sold authorisation to the provider of specified services. On the basis of the sold authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, In Form A-3, furnishing the

details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, It shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made there under.

(iii).....

.....

7.2 Perusal of invoices issued by the noticee reveals that they had provided "SAP Consulting Fee (Type of service-Information Technology Software Service)" and such invoices have remarks "Service Tax Exempted against Form A-1 (Notification No. 12/2013 dt. 01.07.2013)". Further, the noticee had not charged any service tax on such Invoices. The noticee has also submitted copies of Form A-1 & A-2 for receipt of 'Information Technology software Services' by the SEZ Unit for authorised operations. Perusal of copies of said A-1/A-2 forms reveals that in column of details of service provider M/s Orane Consulting Pvt. Ltd., C-56 A/5, 2nd Floor, Sector-62, Noida, Gautam Buddh Nagar, U.P.-201306 is mentioned to established their claim of exemption in respect of the following SEZ developers-

i. M/s IGT Solutions Pvt. Ltd. DLF SEZ, DLF Cyber City, Phase-3, Gurugram, Haryana-122002.

II. M/s IntreGlobe Technologies International Private Limited, SEZ Infospace Building No. 1, Tower-B, Sector-21, Daruhera, Gurugram

ili. M/s Mestro India private Limited, DLF SEZ, 12th Floor, Tower C, SEZ, DLF Cyber City, Phase-3, Gurugram, Haryana-122002.

Iv. M/s Ratanindia Nasik Power Ltd., Plot no. A1, Multiproduct SEZ, Additional MIDC Sinnar, Nashik (MH).

v. M/s. InterGlobe Technologies Pvt. Ltd., SEZ Infospace Building No. 1, Tower-B, Sector-21, Dundaheera, Gurugram

7.3 Thus, I find that for the specified services of 'Information Technology software Services' provided by the noticee to said SEZ Units for use in authorised operations, the noticee was eligible for exemption from payment of Service Tax in terms of Notification No. 12/2013-ST, dated 01.07.13, as amended, read with the provisions of SEZ Act, 2005 and SEZ Rules, 2006. Thus, in respect of the amount of . 1,48,39,770/- pertaining to the aforesaid services rendered to SEZ Units during 2015-17, the contention of the noticee is sustainable, and no service tax was leviable thereon during the said period.

8. In view of above discussion and findings, I derive that out of the total turnover of . 4,21,42,832/-, the services valuing. 2,02,44,996/- were exempted from payment of Service Tax under the provisions of Finance Act, 1994 on account of export of services or services provided to SEZ units. For the remaining amount of. 2,18,97,836/-, the noticee has admitted their liability by submitting that services against the said amount were provided to the customers/companies in the domestic area other than export/SEZ units. Perusal of the copies of Invoices in respect of such taxable services provided by the noticee, I observe that the noticee has charged service tax @14%, SBC @ 0.5% and KKC @0.5% e.g. as per INV No. OC-1/1617/074 dated 01.09.2016, the noticee has charged service tax -Rs. 30,800/-, SBC- Rs.1100/-and KKC-

Rs.1100/-.It thus follows that the noticee had charged the due service tax from their customer but had not paid the same to the government exchequer. It is observed that as per Section 73A of CGST Act, 2017, the Service tax collected from any person is to be deposited with Central Government. Therefore, I find it appropriate to demand service tax on the taxable value of Rs. 2,18,97,836/- which was the consideration received by the noticee towards provision of taxable services in the financial year 2016-17.

8.1. From the findings recorded hereinbefore, it is apparent that during the financial year 2016-17, the noticee was liable to pay service tax on the provision of SAP software development and consultancy services valued at Rs. 2,18,97,836/-. Based on financial records and Tax Invoices produced before me by the noticee, the service tax liability of the noticee for the financial year 2016-17 on the taxable value of services provided is computed as under

(Amount in.)

<i>financial year</i>	<i>Total Turnover</i>	<i>Export of Services</i>	<i>Services to SEZ units</i>	<i>Taxable value</i>	<i>Rate of Tax (Service Tax @ 14.00%, and cess SBC @0.5% and KKC @ 0,5%)</i>	<i>Service Tax Payable (Inclusive all cess)</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5=2-(3+4)</i>	<i>6</i>	<i>7=5x6</i>
<i>2016-17</i>	<i>42142833</i>	<i>5405227</i>	<i>14839770</i>	<i>2,18,97,836</i>	<i>15.00%</i>	<i>32,84,675</i>

8.2 It is clear from the above calculated liability that during the financial year 2016-17, the noticee was liable to pay service tax amounting to Rs. 32,84,675/- (inclusive all cess). The noticee has also claimed benefit of adjustment of CENVAT credit for the said period. It is observed that firstly they have not furnished any duty paying documents to establish that such CENVAT Credit was admissible to them during the relevant period. Secondly, the noticee has

not furnished any evidence regarding maintenance of any records for receipt and consumption of such services as required under Cenvat Credit Rules, 2004 and have not claimed such services tax CENVAT credit in the ST-3 returns for the period 2016-17. Therefore, in absence of any CENVAT documents and relevant record, benefit of CENVAT Credit claimed by the noticee cannot be extended to them under CENVAT Credit Rules, 2004.

9. As per sub-section (1) of section 68 of Chapter V of the Finance Act, 1994, every person providing taxable service to any person was liable to pay service tax in such manner and within such period as was prescribed. As per clause (1) and second proviso to sub-rule (1) of rule 6 of the Service Tax Rules, 1994, the service tax was liable to be paid to the credit of the Central Government-

- for the months of April to February of a financial year, by the 6th day of the month immediately following the month in which service was deemed to be provided, and*
- for the service deemed to be provided in the month of March, by the 31 day of the said March.*

Therefore, the noticee was liable to pay the due Service Tax liability of the financial year 2016-17 on monthly basis within the period so prescribed.

10. As discussed in the preceding paragraphs, the noticee had not filed any ST-3 returns for the financial year 2016-17. On the basis of documents available on record, I am of the view that the noticee was very well aware about its above said tax liability. In spite of being aware about its tax liability, the noticee neither credited its above said tax liability to the Government exchequer nor had it assessed its above said tax liability in the ST-3 returns to be filed under section 70 of the Act Ibid. The noticee had, thus, not submitted any information to the department about the provision of taxable services and its above said pending

tax liability. It was, therefore, a conscious and deliberate act by the noticee not to disclose the information, not to credit its pending tax liability, and not to assess its tax liability by filing due ST-3 return for the F.Y. 2016-17. Had the details of the party's turnover obtained from Income Tax department not been taken up for verification by the department, the non-payment of service tax would not have come to light.

10.1. The proviso to Section 73(1) of the Finance Act, 1994 requires the Show cause notice to be issued within five years from the relevant date. As discussed above, the noticee had declared nil value of export in their Service Tax returns, however later, on being issued the Show cause notice, they have claimed the export of services as being exempt. I observe that the show cause notice under proviso to section 73(1) can be issued by Invoking extended period of limitation for the following five reasons:

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,*

10.2. Contrary to the submission of the noticee, I observe that during the course of inquiry, despite several requests & efforts, the noticee had not provided any information or any books of account as sought by the department, which clearly tantamount to suppression under proviso to section 73(1)(d), hence any non-compliance on their part cannot be made basis of escaping from tax. Had they provided the required Information to the department, and in case the department issued Show cause notice without consideration of the records submitted by the noticee, would have made their case. Hence, I hold that the noticee

had not-paid the service tax amounting to Rs.32,84,675/- (inclusive all cess) for the financial year 2016-17, by reason of suppression of material facts from the department with an Intent to evade payment of service tax, liability of which has also been admitted by them, and thus the same is recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994, by invoking the extended period of limitation.

11. Penalty under Section 78 of the Act ibid:- Coming to the question of penalty, I observe that as I have already arrived at the conclusion that the assessee had suppressed material facts from the Department, contravened the provisions of the Act with intent to evade payment of service tax and therefore, I find that it is a fit case for Imposition of penalty under Section 78 of the Finance Act. 1994. In support, I rely on the case law in the matter of Union of India Vs. Dharamendra Textile Processors 2008-TIOL-192-SC-LB. (2008 (231) E.L.T. 3 (S. C.)), wherein while holding that mensrea is not an essential element for imposing penalty for breach of civil obligations. the Apex Court observed that "It is delinquency of the defaulter itself which establishes his blameworthy conduct without any further proof of the existence of mensred". I further rely on the ratio of Hon'ble CESTAT decision in the case of DASWANI CLASSES LTD. Versus COMMISSIONER OF CENTRAL EXCISE, JAIPUR-1 (2017 (52) S.T.R. 264 (Tri. - Del.)) where in a similar case, It has been held that-

Demand - Limitation Extended period, invocation of Commercial Coaching or Training service - Assessee claiming bona fide belief for exclusion of cost of goods supplied - HELD: Original authority recorded reasons for extended period and for imposition of penalty under Section 78 of Finance Act, 1994-Non-disclosure of full taxable value in periodical statutory returns filed by assessee, recorded by original authority - Although assessee registered with

Department and discharging Service Tax, assessee chose to pay Service Tax only on part of value received Claim for bona fide belief not tenable No merits in plea of assessee Section 73 of Finance Act, 1994. [para 13]

In view of above, I find that penalty under the provisions of Section 78 of the Act Ibid is rightly Imposable upon the party."

4.4 In the appeal following prayer has been made by the appellant:-

"a) Modify the Order-in-Appeal No. NOI-EXCUS-001-APP-132-24-25 dated 16.07.2024 passed by the Ld. Commissioner (Appeals), Central Goods & Services Tax, Noida so as to allow Cenvat credit of Rs. 6,25,819/- to be adjusted towards demand of service tax of Rs. 21,81,352/- with consequential reliefs;

b) Pass such other order or orders as deemed fit and proper in the circumstances of the matter."

4.5 On perusal of the above Order-in-Original and Order-in-Appeal, it is quite evident that appellant was providing taxable services during the period of dispute which has not been questioned by the appellant at any point of time before the lower authorities. The issue in dispute was in respect of quantum of services provided in taxable territory. Appellant had provided documents towards provisions of services for export and for SEZ sales. To the extent they were able to establish, the relief was granted by the Original Authority and Appellate Authority to the appellant. In para 3.4 of the Order-in-Original following has been recorded:-

"3.4 Further, during the personal hearing held before the earlier Adjudication authority on 15.12.2022, Sh. Manuj Gupta, CEO of the company pleaded their case and reiterated on the submission made by them vide their defense reply dated 05.10.2021, which was submitted before the issuance of Show Cause notice wherein it was

contended that they were not able to file Service Tax return and pay service tax dues for the F.Y. 2016-17 due to unavoidable reasons, however, the service tax liability was calculated and accounted by them in their books of accounts; that out of the total turnover of Rs. 4,21,42,832/- there was non-taxable turnover of Rs. 2,02,44,996/- for the F.Y. 2016-17 (Rs. 54,05,226/- on account of export of services and Rs. 1,48,39,770/- on account of services provided to SEZ units); that their net Service Tax liability was Rs. 26,46,677/- (after adjusting Cenvat credit of Rs. 6,25,819/-) on the taxable value of Rs. 2,18,97,836/-. He was asked to submit the defense in respect of the non-taxable services as shown in their letter."

4.6 On perusal of the above para, it is quite evident that none other than the CEO of the company has admitted that they were liable to pay service tax of Rs.26,46,677/-, after adjusting for Cenvat credit of Rs.6,25,819/-. I also observed that the demands against the appellant has been confirmed after taking into the account. The details provided by them during the course of adjudication before the Adjudicating Authority. Appellant has not provided any further documents or any other information to establish that the remaining amount which is now confirmed against the appellant was in respect of exempted services. On contrary it is the submission of the appellant that they were required to pay service tax in respect of these services. Any submission made contrary to the submissions made by the CEO of the appellant before the lower authorities will be barred by the principle of estoppel. Estoppel by representation is a shield against inconsistency, ensuring that the truth prevails where reliance has been placed on a representation. The doctrine of estoppel is rooted in three fundamental maxims as follows that guide its application in legal contexts:

- "allegans contraria non est audiendus" translates to "one who alleges contradictory statements should not be heard". This principle underscores that a party cannot

make contradictory claims or assertions in legal proceedings. Once a person has made a definitive statement or taken a particular stance that another party has relied upon, they are precluded from later contradicting that stance to the detriment of the relying party.

- "argumentum ad hominem" i.e. "argument against the person". It highlights that estoppel applies in a manner that directly addresses the integrity and consistency of a party's statements or actions. Thus it serves to prevent a party from arguing against their own previously established statements or actions, ensuring consistency and reliability in legal matters.
- "juries est de jure" implying "estoppel is of right". This maxim states that estoppel is a legal right enforced by the court to uphold fairness and justice.

Hon'ble Supreme Court has in the case of Bains Prasad (D) through LRs Vs Durga Devi [(2023) 6 SCC 708] observed as follow:

"12.1 In the decision in R.S. Madanappa v. Chandramma [AIR 1965 SC 1812] , this court considered the object of estoppel. It was held that its object is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. It was therefore, further held that when one party makes a representation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation.

12.2 In the decision in Pratima Chowdhury v. Kalpana Mukherjee [AIR 2014 SC 1304] , while considering Section 115 of the Evidence Act, this Court held that four salient conditions are to be satisfied before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid

factual representation, the second party should alter his position. Fourthly, the instant altering a position, should be such, that it would be iniquitous to require him to revert back to the original position. After holding so, it was further held that the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.

12.3 In the decision in B.L. Shreedhar v. K.M. Munnireddy [AIR 2003 SC 578] , this Court held that when rights are invoked estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. The appellant relies on this decision, more particularly paragraph 30 of the said decision and it reads thus :-

"30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct."

It is to be noted that in the said decision this Court clarified that a legal status expressly denied by a statute could not be conferred on the basis of estoppel.

13. The appellant has also relied on the decision of this Court in Chairman, State Bank of India & Anr. v. M.J. James [(2022) 2 SCC 301] , more particularly, paragraph 39 which read thus:-

"39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable

doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.”

The position expounded as above certainly request consideration with reference to the facts of this case. In that regard we will have to consider whether there was acquiescence on part of the respondent and if so, whether lapse of time, if any, is of no importance or consequence, with reference to the factual position, in view of the exposition thereunder ‘that acquiescence would not apply if lapse of time is of no importance or consequence’.

14. What is crystal clear from the enunciation of law in catena of cases is that the equity will follow the law and it would tilt in favour of law and further that to claim equity the party must explain previous conduct.”

4.7 It is also observed that appellant was collecting service tax from its service recipient to whom services were provided in the GTA. Reference is made to para-8 of the Order-in-Original (reproduced earlier in para 4.3 above) wherein specific invoice

has been referred on which appellant has charged service tax @14%, SBC @0.5% and KKC @0.5%. It is clearly establishes that appellant was illegally and deliberately collecting the service tax in respect of services provided within the taxable territory.

4.8 In view of the specific observations made, I find that appellant has suppressed the relevant facts of collection of service tax from the department. He did not file any ST-3 return in respect of the services provided by them though he was fully aware and was collecting service tax from the service recipients. It is not a case where appellant entertained a belief/bonafide belief that no service tax was payable. The decision relied upon by the Counsel of the appellant do not support the case of the appellant, none of the judgments considers the situation where the tax was being collected by the appellant and not paid to the exchequer and NIL service tax returns was filed. The act of the appellant in collection of service tax and not depositing the same with exchequer clearly establishes the intention to evade payment of service tax by suppressing the facts/ documents. I do not find any merits in the reliance placed by the appellant in any of the judgment.

4.9 As observed earlier adjustment of Cenvat amount was already claimed and allowed in respect of demand made. Further, I find that such adjustment should not be allowed. I find that appellant by not filing the service tax return claiming Cenvat credit within the period as prescribed he claimed their claim to their Cenvat credit. Hon'ble Allahabad High Court has in case of Rathi Ispat Ltd. [2010 (251) ELT 199 (All)] referred by the Authorized Representative observed as follows:-

7. Considered the respective submissions of the learned counsel for the parties and perused the record. Before proceeding further, it would be appropriate to have a glance on Rule 57G(5) of the Central Excise Rules, 1944 as on the date on which the Modvat credit of Rs. 1,15,405/- was taken, which reads as follows :-

"(5) Credit shall also not be taken by the manufacturer after six months of the date of issue of any document specified in sub-rule (3) and where the intermediate products manufactured by the user of inputs specified under Rule 57J are received by the manufacturer, after nine months."

8. The above rule came up for consideration and interpretation before the Apex Court in the case of *Osram Surya (P) Ltd. (supra)*. The validity of the said provision was not under challenge therein. The only controversy raised before the Apex Court was that the rule in question is not applicable in regard to the credits acquired by a manufacturer prior to coming into force of the rule. Disagreeing with the said proposition, the Apex Court observed that a plain reading of the said sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the rule and to cases where the manufacturer is seeking to do so after a period of six months from the date when the manufacturer received the inputs. It was held that the said sub-rule operates prospectively in regard to those manufacturers who seek to take credit after coming into force of the rule. Agreeing with the Tribunal, the Apex Court has observed as follows :-

"Therefore, in our opinion, the Tribunal was justified in holding that the rule in question only restricts a right of manufacturer to take the credit beyond the stipulated period of six months under the rule."

9. The ratio of the above judgment is that the said sub-rule is in the nature of period of limitation restricting the right of manufacturer to take the credit within the specified period of limitation and beyond the period of limitation, the benefit of said rule cannot be availed of by the manufacturer.

10. Having said as above, we may consider certain salutary principles regarding the principle of limitation, to test the argument of the applicants.

11. *The law of limitation is based on delay and laches. It does not bar the right but the remedy. One of the most important and universal rules (which is not, however, without exception in English law) is that time, when it has once commenced to run in any case will not cease to do so by reason of any subsequent event which may be within the saving of the statute. Of this there is a well-known instance drawn from the time of the English civil wars. In answer to a plea of the statute, the plaintiff replied that a civil war had broken out, and the Government was usurped by certain traitors and rebels, which hindered the course of justice, and by which the courts were shut upon and that within six years after the war ended he commenced his action and yet his replication was held to be bad.*

12. *The law of limitation is not one of substance but of procedure. The object of prescribing limitation is to put an end to litigation, or to state it in other words, litigation may attain a finality.*

13. *The other principle of interpretation while dealing with the provisions of a fiscal statute is that a fiscal statute should be read as it is without adding or subtracting any word. There is no equity about the tax and equitable considerations are not relevant in interpreting the provisions of taxing statute. But the tax laws are to be interpreted reasonably and in consonance with justice. It is said that equity and taxation are often strangers, attempts should be made that these do not remain always so and if construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. [(See CIT v. J.H. Gotla (1985) 156 ITR 323 (S.C.)]*

14. *Keeping the above principles of interpretation of law, on a plain reading of relevant sub-rule (5) of Rule 57G would show that it admits no exception whatsoever for consideration of any claim of Modvat credit after the expiry of period of six months from the date of the commencement of the period of limitation.*

15. *Apart from the above, keeping in view the salutary principle applicable to the provisions dealing with the limitation that once the period of limitation has begun, no subsequent event can stop it, the argument of the applicant is liable to be rejected.*

16. *Though in a slightly different context the Apex Court while interpreting Section 11A of Central Excise and Salt Act has observed that:-*

"Limitation period should not be stretched more than the elasticity supplied in the Section itself. So, the eventuality envisaged in S. 11A for the further lengthening of the limitation period must be strictly construed."

17. *In Gurusahai Saigal v. Commissioner of Income Tax, Punjab, AIR 1963 SC 1062, a case under the Income-tax Act, the Apex Court while construing the relevant provision of the Act has held that the proper way to deal with such a provision is to give it an interpretation which, to use the words of the Privy Council in Mahaliram Ramjidas's case, AIR 1940 PC 124, "makes the machinery workable, ut res valeat potius quam pereat."*

18. *Reference was made by the learned counsel for the applicant to the case of Commissioner of C.EX., Jaipur v. Parasrampuriah Synthetics Ltd., 2000 (116) E.L.T. 581 (Tribunal) wherein it has been held that the bar created by the amended rule would have no application when the initial credit was taken within the prescribed period and the additional or the differential credit being taken after the prescribed period of six months. The said judgment of the Tribunal is of no avail to the applicant for the reasons more than one. Firstly, no principle of law has been discussed therein and secondly, the Tribunal had not the advantage of the authoritative pronouncement of the Apex Court in the case of Osram Surya (P) Ltd. (supra) which came into existence subsequently.*

4.9 In case of Kusum Ingots [2000 (120) E.L.T. 214 (Tribunal - LB)] a larger bench of tribunal observed as follows:

9. Opposing the arguments on behalf of the appellants, the contention of the Revenue is that amendment to Rule 57G of Central Excise Rules clearly provides that manufacturer shall not take credit after six months of the date of issue of any document. The contention of the Revenue is that the vested right for Modvat credit crystallise in favour of the manufacturer only when he takes the credit in his RG 23A Part-II Account and produces the documents for defacement in terms of Rule 57G of the Central Excise Rules. The contention of the Revenue is that if it is accepted that credit crystallised in favour of the manufacturer as soon as he receives the inputs, it will run contrary to the language of Rule 57G and Rule 57-I of the Central Excise Rules. There can be no assessment prior to the stage of presentation for assessment which stage would have commenced only after the credit was taken in RG-23A Part II Account. Revenue supported the view taken in the case of *Osram Surya Pvt. Ltd. v. Commissioner of Central Excise, Indore*, reported in 1999 (106) E.L.T. 3 (S.C.) = 1998 (29) RLT 684 (CEGAT).

10. The Notification No. 28/95-C.E.(N.T.), dated 25-6-1995 came into force from 25-6-1995 and provides that credit should be taken within six months from the issue of duty paying documents. The following new proviso has been incorporated in Rule 57G (2) :

"Provided further that the manufacturer shall not take credit after six months from the date of issue of any of the documents specified in the First proviso to this Sub-Rule."

11. The contention of the appellant is that some reasonable period should have been given to the manufacturer who were having duty paying documents which were more than six months old on the date of amendment and no credit was taken on them, to take credit on such documents, the appellant replied upon the Hon'ble Supreme Court case *Union of India v. Harnam*

Singh (Supra). We find that Hon'ble Supreme Court in the case of *Miles India Limited v. Assistant Collector of Customs*, reported in 1987 (30) E.L.T. 641 (S.C.) and in the case of *Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills*, reported in 1988 (37) E.L.T. 478 (S.C.) held that authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation, prescribed in the Act will prevail. We find no such provisions under the Central Excise Act or under the Rules where the Tribunal can issue such directions as given by the Hon'ble Supreme Court in the case of *Union of India v. Harnam Singh (Supra)*. Therefore there is no merit in this plea of the appellants. The appellants also relied upon the decision of the Hon'ble Supreme Court in the case of *Eicher Motors Ltd. v. Union of India*, reported in 1999 (106) E.L.T. 3 (S.C.) = 1999 (30) RLT 829 (S.C.) to say that Section 37 of Central Excise Act does not empower the Revenue to make such rule, as the Clause XVI (a) of Sub-Section 2 of Section 37, only enable the Government to make rules which provides for credit of duty paid on the goods in or in relation to the Excise Rules.

12. We find that after the decision of the Hon'ble Supreme Court in the case of *Eicher Motors Ltd. v. Union of India (Supra)*, Sub-Section XXVIII is introduced in Section 37 to provide for Rules which empower the Government to make rules for not allowing credit to be utilised for payment of duty on excisable goods, by Section 131 of Finance Act, 1999. Therefore, after this amendment reliance by the appellants on the decision in the case of *Eicher Motors Ltd. v. Union of India* will not help them. If a manufacturer wants to avail the benefit of Modvat credit in respect of inputs used in or in relation to the manufacture of final product on payment of duty on such final products under Rule 57A of the Central Excise Rules, he should

follow the procedure laid down under the Modvat Scheme. The contention of the appellants is that if on the inputs the manufacturer had already paid the duty on the basis that when the goods are utilised in the manufacture of final product then tax on these goods are to be adjusted and this right accrued to the manufacturer on the date when they paid the tax on the inputs. The right will continue till the facility is available. A manufacturer who is working under the Modvat Scheme can certainly utilise the credit of the duty paid on the inputs used in or in relation to the manufacture of final product for payment of duty on such final product; but he has to take credit on such inputs within six months from the date of issue of the duty paying documents. After the amendment credit cannot be taken on duty paying documents which are more than 6 months old.

13. In view of the above discussions, we answer the question referred to Larger Bench in the favour of Revenue. Therefore, the view taken in case of Osram Surya Pvt. Ltd. v. Commissioner of Central Excise, Indore, reported in 1998 (29) RLT 684 is the correct view and the contrary view taken in correct.

4.10 Apart from the above I find that appellant had not been filing the ST-3 return and was evading the payment of service tax. The conduct of appellant itself establishes that appellant has no claim in equity also for the reason that they are not making this claim with clean hands. It is also settled principle in law that fraud vitiates all. Thus the claim of the appellant to CENVAT Credit cannot be considered and allowed at this stage.

4.11 In view of the findings as above, I do not find any merits in the submissions made by the appellant, I also observe that as the appellant was collected the service tax and not deposited with the Government the interest @24% on the amount so collected and not deposited as required to be made in terms of Notification No.13/2016 dated 01.03.2016.

4.12 As I uphold the demand made by invocation of extended period of limitation as per proviso to Section 73(1) of the Finance Act, 1994, I uphold the penalties imposed on the appellant under Section 78 and other provision of the Act.

5.1 Appeal is dismissed.

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

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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