

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

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20409 of 2020

[Arising out of Order-in-Original No. BLR-NORTH-COMM-07/2020-21 dated
07.08.2020 passed by the Commissioner of Central Tax, Bengaluru]

M/s MKS Systems

No. 33, 17th Cross, 12th Main
Malleswaram
Bengaluru – 560 055

.....**Appellant(s)**

VERSUS

**Commissioner of Central Tax
Bangalore North**

No. 59, HMT Bhawan
Ground Floor, Bellary Road
Bangalore – 560 032

.....**Respondent(s)**

Appearance:

Mr. M.S. Nagaraja, Advocate for the Appellant
Mr. Rajashekar B.N.N., Superintendent (AR) for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pallela Nageswara Rao, Member(Technical)

FINAL ORDER NO. 22132 /2026

Date of Hearing: 08.08.2025

Date of Decision: 03.02.2026

PER: P.A. AUGUSTIAN

This appeal is filed against Order-in-Original No. BLR-NORTH-COMM-07/2020-21 dated 30.07.2020 passed by the Commissioner of Central Tax, Bengaluru.

2. The issue involved in the present appeal is regarding undervaluation, classification of goods and short payment of excise duty.

3. The brief facts are the Appellant is a manufacturer of 'Micro Computer Line Fault Analysis' Equipment and also manufacturing various other testing items. The Appellant's firm is recognized as "In-house Research & Development Organization" by the Department of Scientific and Industrial Research, New Delhi. Alleging that the appellant had resorted to undervaluation while issuing their products to their sister concerns M/s. Taurus Powertronics Private Limited and M/s. Taurus Powertronics Systems and in turn they have sold the goods at higher value to their customers, proceedings were initiated and show-cause notice was issued alleging undervaluation, wrong classification and short payment of excise duty. Thereafter, adjudication authority as per the impugned order, confirmed the demand and also imposed penalty under Section 11AC(1)(c) of the Central Excise Act, 1944. Aggrieved by said order, present appeal is filed.

4. When the appeal came up for hearing, learned counsel for the appellant submits that the allegation regarding undervaluation is *prima facie* unsustainable since there is no finding regarding interconnectivity of the undertaking. As regards the allegation of related person, learned counsel draws our attention to the finding in the impugned order where it is held that:-

"The Show-cause notice alleged that the assessee, M/s. MKS Systems, a Proprietary concern, and M/s. Taurus Powertronics Pvt. Limited, a body Corporate and M/s. Taurus Powertronics Systems, a Partnership Firm, are "Inter-connected Undertakings" in terms of Section 4(3)(b)(i). Further, Shri M.N. Ravinarayan and Smt. Gayathri Ravinarayan, Partners of M/s. Taurus Powertronics Pvt. Limited and Directors of M/s. Taurus Powertronics Systems respectively are brother-in-law and sister of Shri MK Srinivasan, Proprietor of M/s. MKS Systems and hence the seller and buyer are "relatives" as defined in Section 4(3)(b)(ii) of the Central Excise Act, 1944. The Show-Cause notice rejected the transaction value and adopted the price at which the buyer has sold the

goods to its clients in terms of Rule 9 read with Rule 10 of the Valuation Rules, 2000”.

5. As regards the finding in the impugned order on interconnected persons, Learned counsel draws our attention to the show-cause notice and submits that there is no specific clause referred under Section 4(3)(b) read with Section 2(g) of the MRTP Act, 1969 applicable in the present case and the adjudication authority as per the impugned order merely made certain observations that M/s. MKS System has sold the goods to M/s. Taurus Powertronics Pvt. Ltd. (TPPL) and M/s. Taurus Powertronics System (TPS), they have cleared the goods on payment of duty on the price shown in the invoices. The Directors / Partners of TPPL / TPS are “relatives” of Sri M.K. Srinivasan, Proprietor of the Appellant firm, sale transactions are in the nature of related party transactions etc. Though there is no allegation regarding involvement of financial transactions, it is held that they have mutuality of interest. Adjudication Authority has failed to appreciate the factual and legal position that the “proprietary concern” cannot be “inter-connected undertakings” with “partnership Firm” and “Body Corporate”. The concept of “Inter-connected Undertakings” is applicable to Body Corporates. Learned Counsel further submits that the appellant proprietary firm not being a Body Corporate do not come within the scope and meaning of “Inter-connected undertakings”. Therefore, such finding in the impugned order that the appellant firm and M/s. Taurus Powertronics Systems, a Partnership Firm, and M/s. Taurus Powertronics Pvt. Ltd., a body corporate, are “Inter-connected Undertakings” is contrary to law.

6. To substantiate the above submission, learned counsel draws our attention to Section 2(41) and Section 6 of the Companies Act, 1956 where the word ‘relative’ is defined as under:

“Section 2(41) – relative means, with reference to any person, anyone who is related to such person in any of the ways specified in Section 6, and no others;

Section 6 – A person shall be deemed to be a relative of another if, and only if,

- (a) they are members of a HUF; or*
- (b) they are husband and wife; or*
- (c) the one is related to the other in the manner indicated in Schedule 1A*

Schedule 1A includes sister and sister's husband in Sl. No. 21 and 22."

7. Learned counsel also draws our attention to the judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Jullundur Vegetables Syndicate-(1966) AIR 1295** wherein the Hon'ble Supreme Court has examined the issue whether a Firm is a separate assessable entity for the purposes of levy of tax under the East Punjab General Sales Tax Act, 1948. The decision of the Hon'ble Supreme Court is extracted hereunder:

"The first question is whether a Firm is a separate assessable entity for the purposes of the Act or whether it is only a compendious term used to denote a group of Partners. The definition of "dealer" takes in three categories of assessable Units, namely, person, firm or a HUF. The substantive and the procedural provisions of the Act prescribe the mode of assessment and realization of the tax assessed on such a dealer. If we read the expression "Firm" in substitution of the word "dealer", it will be apparent that a Firm is an independent assessable Unit for the purposes of the Act. Indeed, a Firm has been given the same status under the Act as is given to it under the Income Tax Act. Under Section 3 of the Income Tax Act also a "Firm" is treated as a Unit of assessment and a distinct assessable entity. Though under the Partnership Law a Firm is not a legal entity but only consists of individual partners for the time being, for tax law, Income Tax as well as Sales Tax, it is a legal entity....."

8. Learned counsel further submits that the show cause notice (SCN) relies on the statements of Shri. M.N. Ravinarayan, Managing Director of M/s. Taurus Powertronics Pvt. Limited and Partner of Taurus Powertronics Systems. However, the Adjudication Authority has completely ignored the statements of the buyer. Shri Ravinarayan in his statement recorded on 20.03.2014 has stated that he, his wife Smt. Gayathri Ravinarayan and Sri. Dhar are the Directors of the Company; the Company was incorporated during 2007-08; there was also a Partnership Firm under the name of M/s. Taurus Powertronics Systems with himself and his wife, Smt. Gayathri Ravinarayan as Partners; both M/s. Taurus Powertronics Pvt. Ltd. and M/s. Taurus Powertronics Systems were independently engaged in trading / business activities till 2013; from 01.04.2013 the business activities of M/s. Taurus Powertronics Systems were taken over by the Company and the Partnership Firm was under closure. Sri M.N. Ravinarayan has stated that they were procuring items like Pelican Box, Foam padded cloth cover with required specifications to suit the system and Laptops. The Laptops were required for monitoring various parameters in the equipment and they were of special specifications like required speed, compatible ports, software as per the design.

9. Further, Shri M.N. Ravinarayan, Managing Director in his statement recorded on 25.09.2017 has stated that they were purchasing Microprocessor from M/s. MKS System and other ancillary items like hook rods, Pelican cases, Packing materials, wires, etc. from other suppliers, integrated with microprocessor and supplied to their customers; that they have outsourced certain activity such as manpower supply for installation, integration, demonstration, warranty support, service calls, stores follow up, etc., for completion of the contract; that they have entered into agreements with sub-contractors for carrying out installation, demonstration, warranty support, service calls, stores follow up, etc, the difference between the purchase price and selling price is on account of huge selling cost and the differential amount is justified, the sub-contractors submit their Bills and are paid by Taurus after completion of warranty period etc. Thus, it is clear that

the buyers TTPL and TPS, have not sold the goods purchased by them "as such" or "as it is", but have supplied them along with accessories, Laptops essential for monitoring various parameters, undertaken marketing, advertisement, erection, installation, commissioning, demonstration, training, after sales service during warranty, etc. Therefore, the price / amount charged by TPPL/TPS to their customers is not merely for sale / supply of the goods purchased from the Appellant, but includes price of other goods and services of advertisement, marketing, erection, commissioning, integration with the plant and machinery of the customers, warranty services, demonstration, training, etc. Therefore, the price at which the appellant has sold the goods to the buyer and the composite price at which the buyer has further sold the goods and provided various services as narrated above are not even remotely comparable.

10. Learned counsel further submits that the Adjudication Authority has failed to appreciate the principle behind the valuation mechanism and held that 'mutuality of interest' is not required to be proved in the case of 'related party transactions'. The appellant submits that when there is no flow back of additional consideration from the alleged related party buyer to the manufacturer seller, a natural corollary would be that the 'profit' of the manufacturer would be less whereas that of the buyer would be more (due to sale at higher prices). Whereas, as submitted in appellant's case, the profit percentage of the appellant was 22.24% whereas that of the buyer (alleged related party) was only 5.01%. Therefore, the finding that the 'buyer' has sold the goods at higher prices stands completely defeated. Thus, there is no undervaluation since the price shown in invoices are on principal-to-principal basis. Further, there is no allegation and finding that between the seller and buyer there is mutuality of interest in the business of each other or that the relationship has influenced the price or the appellant has received any additional consideration over and above the transaction value declared in the excise invoices. Thus, Rule 9 of the Valuation Rules, 2000 has no application in the facts of the present case. Learned counsel further draws our attention to the CBEC Circular No.

354/81/2000-TRU dated 30.06.2000 where a meaning of 'inter-connected undertakings' is explained as below:

"24. Thus the term inter-connected undertakings covers large categories of legal entities/undertakings to whom goods are sold by the assessee which may be held as "related person" under the new definition. It may be noted that under the erstwhile provisions under Section 4, except for the specifically named categories, namely, holding company, subsidiary company, a relative and a distributor of the assessee and any sub-distributor of such distributor, buyer was held to be related to selling assessee only if they were so associated that they have interest directly or indirectly in the business of each other. In contrast no such general condition/restriction applies for inter-connected undertakings to be "related" under new Section 4. However, a provision has been made in the new valuation rules that even if the assessee and the buyer are inter-connected undertakings, the transaction value will be "rejected" only when they are "related" in the sense of any of Clauses (ii), (iii) or (iv) of sub-section 4(3)(b) or the buyer is a holding company or a subsidiary company of the assessee. In other words, while dealing with transactions between inter-connected undertakings, if the relationship as described in Clauses (ii), (iii) or (iv) does not exist and the buyer is also not a holding company or a subsidiary company, then for assessment purposes, they will not be considered related. "Transaction value" could then form the basis of valuation provided other two conditions, namely, price is for delivery at the time and place of removal and the price is the sole consideration for sale are satisfied. If any of the two aforesaid conditions are not satisfied then, quite obviously, value in such cases will be determined under the relevant rule.

25. In essence, notwithstanding the change in definition of "related" person in the new Section 4, for practical applications, its scope has been restricted and but for small variation it would

not be much different from that covered under the old Section 4 definition. The Commissioners may, however, examine carefully whether any other situation described in the definition of inter-connected undertakings need to be excluded for satisfying the qualification of mutuality of interest. The actual revenue potential in such situations may be estimated and a report sent in due course”.

11. Learned counsel further submits that the issue regarding mutuality of interest has been considered by the Tribunal in the matter of ***Kanchan Industries Vs. Commissioner of Customs – 2005 (186) E.L.T. 302 (Tri.-Mum.)*** where it is held that mutuality of interest cannot be established by merely showing that they have business dealings between them. The said finding was maintained by Supreme Court in -[***2006 (195) E.L.T. A91 (S.C.)***]. Learned counsel also draws our attention to the decision of the Hon Tribunal in the case of ***CCE, Raipur Vs. Akash Ispat Ltd. – [2016 (337) E.L.T. 295 (Tri.-Del.)]*** where the Tribunal considered the issue whether the Firms could be considered as “Inter-connected Undertakings” under the MRTTP Act and whether a juristic person can be said to be “relative” in terms of Section 2 (41) of the Companies Act, 1956. The Tribunal has held as under:

“6. Further, we find that the Revenue’s assertion that a jurisdic person also can have a “relative” in terms of Section 2(41) of the Companies Act is totally untenable. The “relative” as defined under Section 2(41) should be in such way as specified in Section 6 of the Companies Act. In terms of Section 6, a person shall be deemed to be a relative of other, if, and only if, they are members of a HUF or husband and wife or one is related to other, in a manner like father, mother, daughter, brother, etc. A corporate entity, the respondent being a Public Limited Company, cannot fit into being called a “relative” in this context. It is apparent that the understanding by Revenue is due to mixing up of “related” person with “relative”. Further, the submission that

the profit accruing from sale through related persons goes to same family or relative is without any factual support and in any case the respondent being Public Limited Company the profit, if any, should flow to all the shareholders."

12. As regards the admissibility of the statements, learned counsel submits that over a period of time from 20.03.2014 to 18.03.2018, five statements of the proprietor were recorded and two statements were recorded from the supplier of raw-materials. The statements were contradictory and the entire case of undervaluation of goods and classification was made on the basis of such statements which is *prima facie* unsustainable.

13. As regards alleged short payment of duty for the period from March 2012 to March 2013, during audit said observations are made and appellant paid entire amount with interest as applicable. Learned Counsel also draws our attention to copies of challan from 16.05.2014 onwards and the letter dated 27.03.2015 intimating the details of payment and TR-6 challan. However, said amount was not deducted by Adjudication Authority on the ground that the appellant has not produced any documentary evidence to support their claim.

14. As regards proposed classification, the appellant had made classification of goods under CETH 2471 but the Adjudication Authority as per the impugned order re-classified the goods under CETH 90318000 of the Central Excise Tariff Act, 1985. In this regard, Learned Counsel drew our attention to the features of their products TAURAUS MAX-3 and SIGMAX and submits that it is used for detecting faults in the EHV transmission line. Data handling and processing components which includes processors, RAM, ROM, serial interface, parallel interface, etc. The line data is received and processed by series of digital processing iterations by the equipment. Also, the firmware loaded on the system is proprietary developed. The data is processed to remove noise, and is interpreted in suitable form. The result is the characteristics of the line in digital format and is displayed on the laptop computer.

15. Learned Counsel further explained that the usage of multiple modes of data processing is to analysis of the received data. The display of the data in appellant copyrighted software "TADMA" on a laptop computer, indicates that it is a digital processing unit. The Processing of the data and generating the digital characteristic nature of the line, on the laptop does not come under the category of a testing or measurement equipment. The output of the equipment is not a measured value, but is a digitized readable result by the digital processing unit.

16. As regards the product **TAURUS OHMEGA INSULATION TESTER**, it is a high-end insulation analyser and is specifically designed to operate in a highly induced power station. This equipment processes the incoming data from the test specimen, analyses and processes the data received so that the user can understand the results. The software is also proprietary developed. In addition to that the processed values of various indices and ratios (of the test specimen) is computed by the equipment, the diagnostic processes is carried out by the equipment, the features of memory and serial interface of data is transferred to the laptop. All the above features highlight the fact that it is a Digital Processing Unit.

17. As regarding the product **TAURUS DIGITRACE DC 361P**, it simplifies the tackling of ground faults on floating DC Systems in power stations. DC 361P does not measure any parameter, neither it performs any test to obtain results. It digitally processes the input data which it takes from the feeders, converts it into a form understandable by the user and displays it. The of multiple microcontrollers, processing units, data interface, digital integrated circuits highlights that it is a Digital Processing Unit.

18. As regarding the product **TAURUS PREZIOHM TFR AND PREZIOHM ET The PREZIOHM TFR and ET**, Learned Counsel submits that it is a microcontroller based digital data processing equipment which processes and calculates the resistance and inductance of a transmission tower or earth pit. There is no direct measurement of any

of the electrical parameters. It is a data processing equipment. The received data from the tower is analysed and processed to give the data in the form of resistance and inductance via either a display or printer or a serial computer interface.

19. Thus, the products manufactured by the appellant comprise of a micro-computer, mother board unit with built-in microprocessor, storage unit and with keyboard interface which is an input device and printer port and a display which forms the output device. It is evident from the parts and contents of the products that they consist of the parts / elements which are required in a product classifiable under CETH 8471. Note 5 (C) of Chapter 84 of the CETA, 1985 prescribes the conditions / elements to classify any product under chapter 2471, which is extracted below:

"(C) Subject to paragraph (D) and (E), a unit is to be regarded as being a part of an automatic data processing system if it meets all of the following conditions:

- (i) it is of a kind solely or principally used in an automatic data processing system;
- (ii) it is connectable to the central processing unit either directly or through one or more other units; and
- (iii) it is able to accept or deliver data in a form (codes or signals) which can be used by the system. Separately presented units of an automatic data processing machine are to be classified in heading 8471.

However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of (ii) and (ii) above, are in all cases to be classified as units of heading 8471.

20. The Appellants further submits that the micro-processor-based systems manufactured by the Appellants satisfy all the conditions mentioned in Note 5 (C) of Chapter 24 of the CETA, 1985. Further, the equipment receives digital data from the electric line, analyse such data with the microprocessor and provide the relevant data to the output devices such as display, printer and laptop computer which form part of

the equipment. Hence the equipment are more appropriately classifiable under CETH 2471.

21. Learned Counsel further submits that the issue regarding classification of Microprocessor was considered by this Tribunal in the matter of **Cascade Systems Vs. CC, Bangalore – 2006 (199) ELT 382 (Tri. – Bang.)** and held that :-

"7. From the above it is very clear that the term Integrated Circuit is a very general term, which actually represents a complicated electronic circuit etched in a single piece of semiconductor. Then what is a Microprocessor? A Microprocessor is also an Integrated Circuit. However, to be more accurate, it is a single silicon chip on which the arithmetic and logic functions of a computer are placed. To put it differently, a Microprocessor contains all the functions of the Central Processing Unit of a Computer. Hence, it is very clear that Microprocessor is also an Integrated Circuit but all Integrated Circuits need not be Microprocessors. The Microprocessor is specially meant for Computer. In the present case, in the Bill of Entry, it is clearly mentioned in the description of the goods that the item is a Processor. The term Processor and Microprocessor are used synonymously. Moreover, it is on record that the impugned items are actually Pentium-II/Celeron Microprocessor. In these circumstances, it is very clear that the impugned items are actually parts of Computer classifiable under 8473.30. It is also seen that in the existing Tariff, Microprocessors are mentioned in 8473.30.10. Hence, we do not find any merit in the appeal. The impugned order is legal and proper." Thus the classification of the subject goods under CSH 8471 is correct and the re-classification under CSH 9031 8000 in the impugned order is contrary to law and hence untenable".

22. As regarding short payment of excise duty during March 2017 amounting to Rs.1,34,325/-, Learned Counsel submits that as per the impugned order, Adjudication Authority confirmed the demand of differential duty of Rs. 1,34,325/- for the Month of March 2017 on the

ground that there was difference between the transaction value of the goods cleared during March 2017 and the value declared in ER-1 Return for March 2017. In this regard, while submitting reply to show cause notice, appellant had submitted that the value considered for the month of March 2017 includes an invoice raised in February 2017 on which duty had been paid in February, itself. The Appellant also drew our attention to the copies of ER-1 for February and March 2017 and on reconciliation of the value of the goods and payment of duties, it is evident that there was no short payment of duty for March 2017.

23. As regards invoking the extended period of limitation, Learned Counsel submits that the demand is made for the goods cleared from Jan 2013 to June 2017 and the show cause notice (SCN) was issued on 07.04.2018. In this regard, Learned Counsel submits that the entire documents were audited for the period from Nov 2003 to October 2006 and also drew our attention to the record of Audit and the communication issued by Audit team. Thereafter, CERA had audited the records from the appellant on April 2014 and draws our attention to Audit Enquiry No. 3 dated 10.04.2014. In the said audit, so called short payment of duty paid @10.3% instead of 12.36% was informed and appellant paid the said amount. Further submits that the statement of the proprietor was recorded over a period for the year from 20.03.2014 to 08.03.2018. Fact being so, the respondent was aware about the entire transactions and as held by the Hon'ble Supreme Court in the matter of **CCE, Bangalore Vs. Pragathi Concrete Products (P) Ltd. – 2015 (322) ELT 819 (SC)**, there cannot be any allegation regarding suppression of fact. Learned Counsel also relied on the following decisions:-

- i. CC Vs. Magus Metals Pvt. Ltd. – 2017 (355) ELT 323 (SC)**
- ii. Blue Star Ltd. Vs. UOI – 2015 (322) ELT 820 (SC)**
- iii. CCE, Mumbai III Vs. Essel Propack Ltd. – 2015 (323) ELT 248 (SC)**
- iv. Uniworth textiles Ltd. Vs. CCE, Raipur – 2013 (288) ELT 161 (SC)**

24. Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order and submits that the finding given by the Adjudication Authority regarding under valuation and classification are sustainable.

25. Heard both sides and perused the records.

26. We find that the crux of the issue in the present appeal is based on the finding of the Adjudication Authority that the appellant and buyers of the product M/s. Taurus Powertronics Pvt. Ltd. (TPPL) and M/s. Taurus Powertronics System (TPS), are related to appellant. In this regard, we find that there is no specific clause referred under Section 4(3)(b) read with Section 2(g) of the MRTP Act, 1969 applicable in the present case and the adjudication authority as per the impugned order merely made certain observations that M/s. MKS System has sold the goods to M/s. Taurus Powertronics Pvt. Ltd. (TPPL) and M/s. Taurus Powertronics System (TPS). Though there is no allegation regarding involvement of financial transactions, it is held that they have mutuality of interest. However, Adjudication Authority has failed to appreciate the factual and legal position that the "proprietary concern" cannot be "inter-connected undertakings" with "partnership Firm" and "Body Corporate". The concept of "Inter-connected Undertakings" is applicable to Body Corporates. The principle behind the valuation mechanism has to be considered based on the mutuality of interest. There is no allegation regarding flow back of additional consideration from the related party buyer to the manufacturer seller.

27. As regards reliance of the statement recorded from the Managing Director of M/s. Taurus Powertronics Pvt Ltd., Shri M.N. Ravinarayan, we find that in his statement recorded on 25.09.2017 he has given detailed statement regarding procurement of the goods from other sources than the appellant like hook rods, Pelican cases, Packing materials, Wires, etc., from other suppliers, integrated with microprocessor and supplied to their customers. It is also stated that they have outsourced certain activity such as manpower supply for installation, integration, etc. Thus the difference between the purchase

price and selling price is on account of huge selling cost and the differential amount is justified since the buyer, TTPL / TPS, have not sold the goods purchased by them "as such" or "as it is", but have supplied them along with accessories, Laptops essential for monitoring various parameters, undertaken marketing, advertisement, erection, installation, commissioning, demonstration, training, after sales service during warranty, etc. Therefore, the price / amount charged by TPPL / TPS to their customers is not merely for sale / supply of the goods purchased from the Appellant, but includes price of other goods and services of advertisement, marketing, erection, commissioning, integration with the plant and machinery of the customers, warranty services, demonstration, training, etc. Therefore, the price at which the appellant has sold the goods to the buyer and the composite price at which the buyer has further sold the goods and provided various services as narrated above are not comparable. Further, as per the ratio of the profit, the manufacturer should have been gaining less profit than the buyer. However, we find that the profit percentage of the appellant was 22.24%, whereas the buyers alleged as related party was only 5.01%. Therefore, the finding that the appellant and M/s. Taurus Powertronics Pvt. Ltd. (TPPL) and M/s. Taurus Powertronics System (TPS) are interconnected undertaking and relative to invoke Rule 9 and Rule 10 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 and Section 11 A (4) / 11A (10) of the CEA, 1944 is unsustainable.

28. As regards classification, we find that as per the details furnished by the appellant and following the decision of this Tribunal in the matter of **Cascade Systems (supra)**, the equipment manufactured by the appellant are classifiable under CETH 8471. Thus, the finding given the Adjudication Authority regarding classification of goods under CETH 90318220 of the CETA, 1985 is also unsustainable.

29. As regards short payment of excise duty during March 2017 amounting to Rs.1,34,325/-, on verification of the value declared in ER-1 Return for March 2017, it is evident that the value considered for

the month of March 2017 includes an invoice raised in February 2017 on which duty had been paid in February, itself. Thus, there was no short payment of duty for March 2017 as held by Adjudication Authority.

30. As regards invoking the extended period of limitation, demand is made for the goods cleared from Jan 2013 to June 2017 and the show cause notice (SCN) was issued on 07.04.2018. We find that as per the evidence produced by the appellant, entire documents were audited for the period from Nov 2003 to October 2006 and CERA had audited the records of the appellant on April 2014 and as per Audit Enquiry No. 3 dated 10.04.2014 in the said audit, short payment of duty paid @10.3% instead of 12.36% was informed and appellant paid the said amount. Moreover, the statement of the proprietor was recorded over a period for years from 20.03.2014 to 08.03.2018. Fact being so, the respondent was aware about the entire transactions and following the ratio of the judgments of the Hon'ble Supreme Court in the matter of **Pragathi Concrete Products (P) Ltd. – [2015 (322) ELT 819 (SC)]**, there cannot be any allegation regarding suppression of fact to confirm the demand by invoking the extended period of limitation.

31. In view of the above discussion we find that the impugned order is unsustainable and liable to be set aside.

32. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 03.02.2026)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)