

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 60237 of 2016**

[Arising out of Order-in-Appeal No. 57/CE/APPEAL-II/DELHI/2016 dated 13.04.2016 passed by the Commissioner (Appeals-II, Delhi), Central Excise, Gurgaon]

**Delphi Automotive Systems Pvt Ltd**

**.....Appellant**

Plot No. 240, Udyog Vihar, Phase I,  
Gurugram, Haryana 122002

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Gurugram**

**.....Respondent**

Plot No. 36-37, Sector 32,  
Gurugram, Haryana 122001

**WITH**

**Excise Appeal No. 60519 of 2016**

[Arising out of Order-in-Appeal No. 176-177/CE/APPEAL-II/DELHI/2016 dated 26.07.2016 passed by the Commissioner (Appeals-II, Delhi), Central Excise, Gurgaon]

**Delphi Automotive Systems Pvt Ltd**

**.....Appellant**

Plot No. 240, Udyog Vihar, Phase I,  
Gurugram, Haryana 122002

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Gurugram**

**.....Respondent**

Plot No. 36-37, Sector 32,  
Gurugram, Haryana 122001

**APPEARANCE:**

Ms. Krati Singh with Mr. Aman Singh and Mr. Monarch Mittal, Advocates for  
the Appellant

Mr. Shantanu Kumar Meena, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 61699-61700/2025**

DATE OF HEARING: 23.07.2025

DATE OF DECISION: 21.11.2025

**S. S. GARG :**

These two appeals are directed against two different impugned OIAs dated 13.04.2016 and 26.07.2016 respectively, passed by the Commissioner (Appeals);

- vide the first OIA dated 13.04.2016, the learned Commissioner (Appeals) has accepted the appeal of the department and imposed the penalty on the appellant.
- vide the second OIA dated 26.07.2016, the learned Commissioner (Appeals) decided the appeals of the appellant as well as of the department, whereby the learned Commissioner (Appeals) has confirmed the demand of excise duty along with interest against the appellant by rejecting their appeal, and has again accepted the appeal of the department and imposed the penalty on the appellant which had already been imposed vide the first OIA.

2. Briefly stated facts of the present case are that the Appellant is engaged in the manufacture of Catalytic Converter and Canisters falling under Chapter Heading No. 8421300 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant was clearing their final products after due payment of excise duty and was availing Cenvat credit of the duty paid inputs utilized in the manufacture of the final products. During the relevant period, the Appellant was availing the benefit of retention of 50% of the sales tax collected in

lieu of capital subsidy under the Rule 28C(5)(a) of the Haryana General Sales Tax Rules, 1975, up till 31.03.2003. Thereupon, with effect from 01.04.2003, the Appellant was entitled to a deferment scheme provided under the Rule 69 of the Haryana VAT Rules, 2003 ('HVAT Rules'). Under the said scheme, the Appellant was entitled to defer its liability of payment of Sales Tax/VAT for a period of 5 years or just pay 50% of the sales tax collected from their customers upfront along with the returns. The Appellant opted for the latter option during the relevant period. An audit was conducted and it was observed that the remaining 50% of the sales tax, that was collected by the Appellant from their customers but not paid to the government, was appearing under the head 'capital subsidy' in schedule 3 of the Balance Sheet of the Appellant for the FY 2005-06.

2.1 Accordingly, a SCN dated 31.12.2007 was issued to the Appellant on the ground that the amount of 50% of sales tax retained by the Appellant under the deferment scheme, actually forms part of the assessable value in terms of 'Transactional Value' provided under Section 4(3)(d) of the Act. Thus, the demand for central excise duty was proposed against the Appellant on the said retained amount under Section 11(a)(1) of the Central Excise Act, along with interest under Section 11AB and penalty under Section 11AC of the Act.

2.2 After following the due process, the Adjudicating Authority vide the OIO dated 03.03.2015, confirmed the duty demand, however, dropped the penalty on the ground that the issue involved in the present case is of interpretation of law. Being aggrieved by the said OIO, both the parties, department as well as Appellant, filed appeals

before the Commissioner (Appeals) to the extent the same was prejudicial to the interests of each.

2.3 The learned Commissioner (Appeals), vide the impugned OIA dated 13.04.2016, adjudicated the department's appeal and confirmed the imposition of penalty against the Appellant. Further, vide the impugned OIA dated 26.07.2016, the learned Commissioner (Appeals) adjudicated the Appellant's appeal as well as the department's appeal once again and by allowing the department's appeal and rejecting the Appellant's appeal, confirmed the entire demand of duty along with interest and penalty against the Appellant. Aggrieved by both the impugned OIAs, the Appellant has preferred the present appeals before us.

3. Heard both the sides and perused the material on records.

4. The learned Counsel for the Appellant submits that both the impugned OIAs are not sustainable in law and are liable to be set aside as the same have been passed without properly appreciating the facts and the law.

4.1 As regard the entire demand confirmed vide the impugned OIA dated 26.07.2016, the learned Counsel submits that the Commissioner (Appeals) has confirmed the demand of excise duty on the 50% of the sales tax retained by the Appellant under deferment scheme; it has been held by the Commissioner (Appeals) that the said retained amount is not permissible to be deducted from the transactional value for the purpose of payment of excise duty. She further submits that the Commissioner (Appeals) has held that since

the duty/tax actually paid or payable is only excluded from the definition of 'transactional value', the 50% sales tax retained under the deferment scheme is not actually payable by the Appellant to the government and therefore the said amount shall not be excluded. In this regard, she submits that the deferment scheme provided under Rule 69 of the HVAT Rules clearly states that an eligible industrial unit, instead of opting for deferment of payment of tax for 5 years, may opt for making 50% of the payment of the sales tax collected, and it shall be deemed to be the full payment. She further refers to Rule 69 of the HVAT Rules and submits that the payment of 50% the sales tax collected from the customers, shall be deemed to be full and final payment of the Appellant's complete tax liability. She further submits that for the period before 01.04.2003, since Rule 69 of the HVAT Rules was introduced for assessee's eligible for concession under the Rule 28C of the Sales Tax Rules, 1975 only, the said application of full payment of tax in respect of the 50% sales tax retained, shall be applicable for the relevant period before 01.04.2003 as well.

4.2 Further, arguing on the limitation, the learned Counsel submits that the entire demand in the present case is barred by limitation. The SCN was issued on 31.12.2007 for the period 01.04.2001 to 31.03.2005 by invoking extend period of limitation on the ground that the Appellant did not declare the fact of collection and retaining 50% of the sales tax in their ER-1 or any other Returns filed during the relevant period, with an intention to evade payment of duty by willful misstatement or suppression of facts. In order to counter this

allegation, the learned Counsel submits that various judicial forums have already held that in the issue pertaining to includability retained sales tax amount under state government scheme, the extended period of limitation is not invocable. For this, she places reliance on the following decisions:

- **CCE, Delhi-III vs. M/s. Maruti Suzuki India Ltd - 2014 (9) TMI 229 Supreme Court**
- **Johnson Matthey India Pvt Ltd vs. CCE, Delhi-III - 2025 (2) TMI 258 CESTAT Chandigarh**
- **M/s Honda Motorcycles & Scooters India Pvt Ltd vs. CCE, Delhi-III - 2016 (9) TMI 533 CESTAT Chandigarh**
- **Denso Haryana Pvt Ltd vs. CCE, Delhi - 2017 (10) TMI 1028 CESTAT Chandigarh**
- **M/s SRK Metals and Plastics Pvt Ltd vs. Commissioner of Central Tax, Guwahati - 2025 (4) TMI 1534 CESTAT Kolkata**

4.2.1 She also submits that the Appellant has been duly filing their Returns during the relevant period and there was no provision in the ER-1 Return or other Returns for the Appellant to disclose the retainment of sales tax under Rule 69 of the HVAT Rules and the same was clearly mentioned by the Appellant in their books and was readily provided by the Appellant to the Department during the audit conducted on 28.02.2007. She further submits that the Appellant had a *bona fide* belief that they are not liable to pay duty for the amount retained by them. She further submits that the burden to prove suppression is always on the department and in this case, the department has failed to do so. For this, she places reliance on the following decisions:

- **Suzuki Motorcycle India Private Limited vs. CCE, Delhi-III - 2024 (3) TMI 1135 CESTAT Chandigarh**

- **FMI Automotive Components Ltd vs. CCE, Delhi-III - 2025 (2) TMI 141 CESTAT Chandigarh**
- **Shree Arihant Tradelinks India Private Limited and Maha Shakti Coke vs. CCE, Kutch (Gandhidham) - 2021 (12) TMI 581 CESTAT Ahmedabad**

4.2.2 She further submits that it is a settled principle of law that extended period of limitation cannot be invoked when the demand proposed is arising out of the audit proceedings. For this, she places reliance on the following decisions:

- **FMI Automotive Components Ltd (supra)**
- **CCE, Rohtak vs. M/s S.G. Engineers - 2024 (8) TMI 199 CESTAT Chandigarh**
- **M/s BST Infratech Ltd vs. Commr of CGST & Excise, Bolpur - 2020 (12) TMI 875 CESTAT Kolkata**

4.2.3 She further submits that it has been consistently provided in various circulars, viz. Circular No. 378/11/98-CX dated 12.03.1998, Circular No. 354/81/00-TRU dated 30.06.2000, Circular No. 671/62/2002-CX dated 09.10.2002 issued by the Board from time to time, that transaction value does not include the sales tax amount actually payable on goods and it is a settled principle of law that extended period of limitation is not invocable in cases involving interpretation of law. For this, she places reliance on the following decisions:

- **Suzuki Motorcycle India Private Limited (supra)**
- **FMI Automotive Components Ltd (supra)**
- **Shree Arihant Tradelinks India Private Limited and Maha Shakti Coke (supra)**
- **M/s. Sree Gokulam Food and Beverages Pvt Ltd and Sri K. Sinosh, Executive Director vs. Commissioner of GST & Central Excise, Coimbatore - 2024 (3) TMI 490 CESTAT Chennai**

4.3 Regarding the imposition of penalty, the learned Counsel submits that there is duplication of demand of penalty on the Appellant in the present case because vide both the impugned OIAs, penalty has been imposed on the Appellant twice pertaining to the same issue, arising from the same SCN. She further submits that the Commissioner (Appeals) has mistakenly adjudicated the department's appeal twice as firstly, the Commissioner (Appeals) confirmed the penalty vide impugned OIA dated 13.04.2016 on the department's appeal and once again vide impugned OIA dated 26.07.2016, the Commissioner (Appeals) has allowed the department's appeal and imposed penalty on the Appellant, hence, the demand of penalty to this extent is anyway liable to be set aside in the first place.

4.3.1 Further, regarding the imposition of penalty confirmed vide the first OIA dated 13.04.2016, she submits that various judicial forums have already held that in the issue pertaining to includability retained sales tax amount under state government scheme, the demand for penalty cannot be imposed. For this, she places reliance on the following decisions:

- **CCE, Delhi-III vs. M/s. Maruti Suzuki India Ltd** (supra)
- **Johnson Matthey India Pvt Ltd** (supra)
- **Denso Haryana Pvt Ltd** (supra)
- **M/s SRK Metals and Plastics Pvt Ltd** (supra)

4.3.2 She also submits that since there was no suppression on part of the Appellant and all the conditions required to invoke extended period under Section 11A of the Act were not complied with by the department, therefore, penalty cannot be imposed on the Appellant

under Section 11AC of the Act. She also submits that the issue involved in the present case is of interpretational in nature and it is a settled law that no penalty is imposable in cases involving interpretation of statutory provisions. For this, reliance is placed on the following decisions:

- **Uniflex Cables Ltd vs. CCE, Surat-II - 2011 (271) ELT 161 (SC).**
- **Hindustan Coca Cola Beverages Pvt Ltd vs. CCE, Chennai - 2018 (1) TMI 761 CESTAT Chennai**
- **M/s. Sree Gokulam Food and Beverages Pvt Ltd and Sri K. Sinosh, Executive Director (supra)**

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned orders.

5.1 The learned Authorized Representative submits that retention of part collection of sales tax by the assessee under tax concession granted by the State and which was neither paid nor payable to exchequer of the State, was required to be included while calculating transaction value by the assessee under Section 4(3)(d) of the Central Excise Act, 1944, but in the present case, the Appellant neither intimated about the said practice nor paid the excise duty on such retained part. He further submits that this issue is no more *res integra* and has been decided in favour of the department in the following cases:

- **CCE, Delhi-III vs. M/s. Maruti Suzuki India Ltd - 2014 (307) ELT 625 (SC) = 2014 (9) TMI 229 SC**
- **CCE, Jaipur-II vs. Super Synotex (India) Ltd - 2014 (301) ELT 273 (SC)**
- **Bharat Roll Industry Pvt Ltd vs. CCE - 2015 (317) ELT A187 (SC)**

5.2 Further, the learned Authorized Representative justifies the invocation of extended period and submits that the Appellant has suppressed the material facts from the department with an intention to evade payment of duty and has not shown it in their Returns. For this, he relies on the following decisions:

- **Agrico Engg Works (India) Pvt Ltd vs. CCE, Meerut - 2000 (122) ELT 891 (Tri. Del.)**
- **Alaska Tyres Pvt Ltd vs. CCE, New Delhi - 2002 (145) ELT 329 (Tri. Del.)**

To justify the invocation of extended period, he also relies on the following decisions:

- **CCE, Jaipur vs. Shree Rajasthan Syntex Ltd - 2015 (318) ELT 626 (SC)**
- **Bharat Roll Industry Pvt Ltd (supra)**

6. We have considered the submissions made by both the parties and perused the material on record as well as the case-laws relied upon by both the parties.

7. We find that the identical issue, which is involved in the present case, has been decided by this Tribunal in the case of **Johnson Matthey India Pvt Ltd** (supra) wherein the Tribunal, on merits, has held against the assessee, but on limitation, has dropped the duty demand as well as penalty by relying upon the judgment of Hon'ble Apex Court in the case of **CCE, Delhi-III vs. Maruti Suzuki India Ltd** (supra). Here, it is pertinent to reproduce the relevant findings of the Tribunal in **Johnson Matthey India Pvt Ltd** (supra)'s case, which are as under:

"6. We have considered the submissions made by both the parties and perused of the material on record. We find that

the only issue involved in the present appeal is whether the amount of Rs.4,42,62,767/- which was paid to the appellant as sales tax by its customers but retained by the appellant on the strength of state government's deferment scheme, merits inclusion in the transaction value for computing central excise duty under Section 4 of the Central Excise Act, 1944 or not? We find that this issue is no more *res integra* as the Tribunal in the case of **Honda Motorcycles & Scooters India P Ltd** [2017 (357) ELT 828 (Tri. Chan.)] has considered the issue of retention of 50% of the amount under tax concession scheme allowed by the Haryana State Government and has held as under:

*"5. The main point of dispute is, whether or not the amounts collected by the appellants as Sales Tax from the customers but not paid to the State Sales Tax authorities should be included in the assessable value for the purpose of levy of Central Excise duty. The admitted facts of the case are that, the appellants have been issued with an Entitlement Certificate on 20-10-2003 by the Haryana VAT authorities. The appellants collected an amount of Rs. 73,12,73,423/- as VAT from their customers during the periods 2003-04 to 2008-09 and this amount has not been paid to the VAT authorities. The said amount has been retained by the appellants in terms of the applicable regulations of the VAT Rules. Section 61(2)(d) of Haryana Value Added Tax Act, 2003 stipulates that, tax concessions to the industrial units in terms of Haryana General Sales Tax Act, 1973 shall remain in force with certain modifications. Sub-clause (i) states that, an industrial unit availing the benefit of exemption from the payment of tax may, in the prescribed manner, change-over to deferment of payment of tax for the remaining period. Sub-clause (iii) stipulates that, an industrial unit availing benefit of deferment of payment of tax may, in lieu of making payment of the deferred tax after five years, pay half of the amount of the deferred tax upfront along with the returns and on making payment in this manner, the tax due, according to the returns, shall be deemed to have been paid in full. As stated earlier, the appellants chose to make half of the amount of deferred tax. While such payment will satisfy the full discharge of VAT in terms of deeming fiction as per Section 61 of the Haryana Value Added Tax Act,*

2003, the applicability of such deeming concept to the provisions of Section 4 of the Central Excise Act, 1944 is the point in dispute. In other words, in view of the deeming fiction payment of, say, Rs.50/- as VAT will be considered as full payment of Rs.100/-. The appellants' case is that Rs.100/- should be deducted to arrive at the value for Central Excise purpose. They are relying on the term 'Sales Tax Actually Payable' indicated in the definition of 'Transaction Value' under Section 4(2)(d). Rs.100/- is actually payable VAT and as such eligible for exclusion. The Department's case is that Rs.50/- is the amount actually paid and eligible for exclusion.

6. First of all, we note that in the present case the concession extended to the appellants by the State Sales Tax authorities is by way of an exemption. The said exemption was converted into the scheme of deferring payment of tax upon introduction of Haryana Value Added Tax Act, 2003. In fact, it is apparent that we are dealing with an exemption scheme where the mode of payment has been modified by the Act of 2003. This is relevant in view of the reliance placed by the appellants on the decision of the Tribunal in *Uttam Galva Steels Ltd (supra)*. There the Tribunal was dealing with a scheme under Maharashtra Value Added Tax Act, 2002. Section 94 of the said Act provides for deferred payment of Sales Tax. No reference has been made to any exemption of Sales Tax in the said provision. One of the points considered by the Tribunal in *Uttam Gaiva Steels Ltd (supra)* is that, as per the incentive scheme of the Maharashtra Government there is no 'exemption' from payment of Sales Tax, whereas in the present case we find that the exemption scheme of 1973 Act is continued in 2003 Act by the Haryana Government.

7. As correctly noted by the original authority, the implication of deeming provision in a VAT enactment for the purpose of Central Excise valuation has to be examined. The Hon'ble Supreme Court in *Meghraj Biscuits industries Ltd vs Commissioner of Central Excise, UP, 2007 (210) ELT 161 (SC)*, and *Commissioner of Central Excise, Bangalore vs Meyer Health Care Pvt. Ltd., 2011 (267) E.LT. 145 (S.C.)*, held that, deeming fiction of a particular Act cannot be extended to the excise law automatically. Further, the purpose and reason behind the legal fiction, when examining the context, will clearly show that such deeming fiction has limited application to the

*enactment which contains the same. In the present case, it is the appellants' plea that when they pay 50% of VAT (out of 100% collected from the clients) they have fulfilled their VAT liability in full. Hence, full VAT liability should be available for abatement for Central Excise. In this connection, we find that the Hon'ble Supreme Court examined the issue of retention of collected Sales Tax and its treatment in ascertaining the transaction value for excise purpose. In Commissioner of Central Excise, Delhi-III vs Maruti Suzuki India Ltd., 2014 (307) ELT 625 (S.C.), it has been clearly held that 50% of the Sales Tax collected was retained by the assessee and was not actually paid to the exchequer nor was it actually payable since the HPC permitted the assessee to retain the said amount. The Hon'ble Supreme Court observed, therefore, whichever way the issue is looked at, the fact remains that the assessee retained with it 50% of Sales Tax collected from its customers and it was neither actually paid to the exchequer nor was it actually payable to the exchequer. In such situation, the Hon'ble Supreme Court observed that, the amount retained by the assessee is required to be added in the transaction value.*

8. We also note that the Hon'ble Supreme Court in *Commissioner of Central Excise, Jaipur vs. Super Synotex (India) Ltd.* 2014 (301) E.L.T. 273 (SC), while dealing with a similar issue, held as below

"22. It is evincible from the language employed in the aforesaid circular that set off is to be taken into account for calculating the amount of sales tax permissible for arriving at the "transaction value" under Section 4 of the Act because the set off does not change the rate of sales tax payable/chargeable, but a lower amount is in fact paid due to set off of the sales tax paid on the input. Thus, if sales tax was not paid on the input, full amount is payable and has to be excluded for arriving at the "transaction value". That is not the factual matrix in the present case. The assessee in the present case has paid only 25% and retained 75% of the amount which was collected as sales tax. 75% of the amount collected was retained and became the profit or the effective cost paid to the assessee by the purchaser. The amount payable as sales tax was only 25% of the normal sales tax. Purpose and objective in defining "transaction value" or value in relation to excisable goods is obvious. The price or cost

*paid to the manufacturer constitutes the assessable value on which excise duty is payable. It is also obvious that the excise duty payable has to be excluded while calculating transaction value for levy of excise duty. Sales tax or VAT or turnover tax is payable or paid to the State Government on the transaction, which is regarded as sale, i.e., for transfer of title in the manufactured goods. The amount paid or payable to the State Government towards sales tax, VAT, etc is excluded because it is not an amount paid to the manufacturer towards the price, but an amount paid or payable to the State Government for the sale transaction, i.e., transfer of title from the manufacturer to a third party. Accordingly, the amount paid to the State Government is only excludible from the transaction value. What is not payable or to be paid as sales tax/VAT, should not be charged from the third party/customer, but if it charged and is not payable or paid, it is a part and should not be excluded from the transaction value. This is the position after the amendment, for as per the amended provision the words "transaction value" mean payment made on actual basis or actually paid by the assessee. The words that gain signification are "actually paid. The situation after 1-7-2000 does not cover a situation which was covered under the circular dated 17-3-1998. Be that as it may, the clear legislative intent, as it seems to us, is on "actually paid". The question of "actually payable does not arise in this case.*

*23. In view of the aforesaid legal position, unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value" under Section 4(4)(d), for it is not excludible. As is seen from the facts, 25% of the sales tax collected has been paid to the State exchequer by way of deposit. The rest of the amount has been retained by the assessee. That has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1-7-2000. Therefore, the assessee is bound to pay the excise duty on the said sum after the amended provision had brought on the statute book"*

*9. The learned counsel for the appellants attempted to distinguish the above decisions of the Hon'ble*

*Supreme Court by pleading that they are not applicable to the facts of the present case. He also relied on the decision of the Hon'ble Supreme Court in Purolator India Ltd (supra) to hold that the transaction value should be "for delivery at time and place of the removal". We find in that case the Hon'ble Supreme Court was dealing with the "cash discount" and not with deduction of Sales Tax/VAT from the price to arrive at the transaction value. It was observed in the said order that in Super Synotex (India) Ltd (supra), the Hon'ble Supreme Court was concerned with Sales Tax "not actually paid to the Government and hence held that 75% of Sales Tax retained by the assessee could not be deducted as only amounts payable to the State Government as Sales Tax can be deducted. We find that the Hon'ble Supreme Court again reiterated that the Sales Tax actually paid or payable to the State Government is only eligible for deduction. In the present case, admittedly, the Sales Tax/VAT payable/paid to the Haryana State Government is only 50% which was eligible for deduction. The remaining amount is legally allowed to be retained by the appellants and is not payable to the State exchequer. In such scenario, we find that the impugned order is correct in upholding the inclusion of that portion of Sales Tax/VAT in the assessable value collected by the appellants but not paid or payable to the State Government. The ratio followed is in conformity with the findings of the Hon'ble Supreme Court, as discussed above. The Hon'ble Supreme Court in CCE vs. National Engg. Industries 2015 (320) ELT 27 (SC.), again held that post 1-7-2000 in arriving 'transaction value' Sales Tax benefit which was retained by the assessee, would be included while fixing the 'transaction value'.*

*10. We find while the case on merit is against the appellants, their plea of time-bar of that portion of demand beyond normal period has merit. We have examined the impugned order with reference to reasons for upholding the extended period of demand. The original authority had very briefly dealt with the issue. No reasons for confirmation of demand for extended period has been recorded except quoting the Tribunal's order in Emsons Organics Pvt Ltd. 2011 (267) ELT 263 (Tri.-Del.). On perusal of the said order, we find that the same is passed while disposing a stay application and that is only an interim order. We find that there is nothing in the impugned order which examined the party's*

*submissions against longer period demand. We note that in the present case the correct valuation for Central Excise purpose is in dispute. The dispute is directly relatable to Sales Tax amount paid/payable by the appellants to the State authorities. The Sales Tax amounts collected were all reflected in the invoices issued to the clients. Out of this amount, the appellants retained 50% based on a scheme announced by the State Government. In this factual matrix, we find that the allegation of fraudulent intent or suppression of fact against the appellants is not sustainable. It is also a fact that the issue involved has been subject matter of various Circulars before/after the introduction of new provisions for valuation w. e. f. 1-7-2000 and also matter of decision by this Tribunal in various cases including Maruti Suzuki India Ltd. (supra). This last mentioned case was taken up on appeal by the Revenue and the Hon'ble Supreme Court set aside the order of the Tribunal. The Hon'ble Supreme Court also set aside the penalty on the respondents in the said case. In these circumstances, it is apparent that the issue involved is one of legal interpretation and without a positive evidence for deliberate suppression of fact with intent to evade payment of Central Excise duty invoking the extended period for demand, is not legally sustainable. Accordingly, we hold that the appellants will be liable to different duty of Central Excise during the normal period of demand as confirmed by the lower authority. The demand for extended period as well as penalties are set aside. The appellants pleaded that differential duty, if any, payable should be arrived at taking the additional consideration as inclusive of excise duty as they have not collected any excise duty on such value from the customers. We find that in view of the facts discussed in the order, the appellants are eligible for such calculation of duty liability. The appeal is disposed of in the above terms."*

**7.** Further, we note that the Tribunal in the case of **Denso Haryana Pvt Ltd** [2017 (10) TMI 1028] has again considered the same issue and has held as under:

*"6. Short issue involved in the matter is whether the appellant is liable to pay duty on the amount retained as Sales Tax collected from the customers as per the Entitlement Certificate issued by the Haryana Vat Department or not.*

7. We find that the issue came up before the Hon'ble Apex Court in the case of Maruti Suzuki India Limited (*supra*) wherein the Hon'ble Apex Court held that the amount retained on account of sales tax as per the Entitlement Certificate is to be added in the assessable value. Learned Counsel for the appellant has relied upon the decision of this Tribunal in the case of Uttam Galva Steels Ltd (*supra*) and Man Industries (India) Ltd (*supra*). We find that those decisions are not applicable to the facts of the present case as those decisions are related to Maharashtra Vat Act and Gujarat Vat Act, whereas in the case of Maruti Suzuki India Limited (*supra*), the Hon'ble Apex Court has examined the provisions of Haryana Vat Act, therefore, those decisions are not applicable to the facts of the present case as the appellant is located in the State of Haryana following the provisions of Haryana Vat Act.

8. -----

9. -----

10. -----

11. As we have already held that the show cause notice dated 4.5.2009 has been issued to the appellant by invoking the extended period of limitation, therefore, the demands for the extended period of limitation in the show cause notice dated 4.5.2009 are also set aside. Remaining demands as per show cause notice dated 4.5.2009 which are within the limitation and the demands as per show cause notice dated 7.5.2010 are confirmed. The appellant is liable to pay interest for the intervening period for these demands.

12. We further find that as the appellant has not collected any duty on the amount of sales tax retained by them, the appellant is entitled to cum-duty benefit.

13. As the extended period of limitation is not invocable as the issue was pending before the Apex Court and was settled in the case of Maruti Suzuki India Ltd (*supra*), therefore, no penalty is imposable on the appellant.

14. In view of above observations, the following order is passed:

(a) the demands as per show cause notice 3.4.2008 are dropped which have already been dropped by the Id. Commissioner,

*(b) the demands by invoking the extended period of limitation as per show cause notice dated 4.5.2009 are set aside,*

*(c) the demands within the normal period as per show cause notices dated 4.5.2009 and 7.5.2010 are confirmed,*

*(d) the appellant is entitled for cum-duty benefit,*

*(e) no penalty is imposable on the appellant”*

**8.** Further, we find that the learned Commissioner confirmed the demand by invoking the extended period, but the department had not established anything on record to show that the appellant has suppressed the material facts with intent to evade the payment of duty. Further, we find that the issue involved in the present appeal relates to interpretation of the law and the Rules and finally, the Hon'ble Apex Court in the case of **Commissioner vs. Maruti Suzuki India Ltd** (supra) has settled the position of law, therefore, invoking extended period is not justified in the present case.”

8. By following the ratio of the said decision, we hold that though on merits, the issue is against the Appellant, but on limitation, the Appellant is entitled to the benefits because the entire demand is barred by limitation as the SCN was issued on 31.12.2007 whereas the period of dispute is from 01.04.2001 to 31.03.2005. Moreover, the department has failed to bring on record any evidence to show that the Appellant had suppressed the material facts from the department with intent to evade payment of duty. We also find that the SCN was issued on the basis of audit and it is a settled principle of law that extended period of limitation cannot be invoked when the demand proposed is arising out of the audit proceedings. Further, the issue involved in the present case relates to interpretation of nature,

therefore, invoking extended period is not justified in the present case.

9. As regards the interest and penalty, we hold that when the demand itself is not sustainable as discussed above then question of interest and penalty does not arise. Moreover, there is duplication of demand of penalty on the Appellant because the learned Commissioner (Appeals) vide both the impugned OIAs, has imposed the penalty on the Appellant twice pertaining to the same issue, arising from the same SCN, by mistakenly allowing the department's appeal twice, firstly, vide impugned OIA dated 13.04.2016 and again vide impugned OIA dated 26.07.2016.

10. In view of our discussion above, we are of the considered opinion that the entire demand, including interest and penalty, is barred by limitation; consequently, appeals are allowed on limitation alone.

(Order pronounced in the open court on 21.11.2025)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**