

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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 54206 of 2015

[Arising out of Order-in-Original No. DLI-EXCUS-004/10/2015 dated 10.08.2015
passed by the Commissioner of Central Excise, Faridabad]

M/s Vee Gee Industrial Enterprises Pvt. Ltd.Appellant

31B, Industrial Area, Faridabad, Haryana-121001

VERSUS

Commissioner of Central Excise, Faridabad-IRespondent

Block D, New CGO Complex, NH-IV, NIT Faridabad,
Haryana-121001

APPEARANCE:

Shri A.K. Prasad, Advocate for the Appellant

Shri Anurag Kumar and Shri S.K. Meena, Authorized Representatives
for the Respondent

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

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

FINAL ORDER NO.61768/2025

DATE OF HEARING: 11.12.2025

DATE OF DECISION: 18.12.2025

P. ANJANI KUMAR:

The appellants, M/s Vee Gee Industrial Enterprises Pvt. Ltd.,
are engaged in the manufacture of sheet metal components and
electrical parts for automobiles; they are registered with Central
Excise and were availing CENVAT credit; on many occasions, the

appellants have sold CR/HR sheets as it is without subjecting to any process of manufacture; while clearing the CR/HR sheets, the appellants were paying duty on the transaction value. Revenue, however, was of the opinion that as the raw material was not subjected to any process and was cleared as such, the appellants were required to reverse CENVAT credit availed on such inputs. Revenue further entertained an opinion that when the appellants cleared inputs as such a higher price, paying duty in cash or through CENVAT credit, they were passing on excess paid duty, i.e. difference between CENVAT credit reversible under Rule 3(5) of CCR, 2004 and the duty paid on the transaction value, to their customers and were recovering the excess duty from their customers and thus, contravened the provisions of Law; in terms of Section 11D of Central Excise Act, 1944, the appellants were required to pay duty of Rs.56,78,642/-. Revenue was also of the opinion that in cases where the appellants paid duty on transaction value which was lesser than the purchase price, they have paid duty less than what was reversible under Rule 3(5) and therefore, such short-paid duty was recoverable in terms of Section 11A; a show cause notice dated 07.01.2014 was issued to the appellants, covering the period 2008-09 to 2012-13, demanding an amount of Rs.56,78,642/- under Section 11D of Central Excise Act, 1944 and demanding duty of Rs.7,14,560/- under Section 11AA. The impugned order confirmed the duty demanded along with equal interest under Section 11AC and penalty of Rs.5000/- under Rule 15A. Hence, this appeal.

2. Shri A.K. Prasad, learned Counsel for the appellants submits that the Department is of the opinion that CENVAT credit availed was required to be reversed in such cases where inputs, on which credit has been availed are removed as such. On the other hand, Revenue is demanding duty under Section 11A and Section 11D of Central Excise Act, 1944. He submits that both Section 11A and Section 11D are invoked in respect of the excisable goods manufactured by the assessee and not the CENVAT credit reversed or reversible in terms of Rule 3(5) of CCR, 2004. He further submits that the quantification arrived at by the Department was also incorrect as the same is calculated on the basis of average prices of purchases and sales whereas in terms of Rule 3(5), exact amount of CENVAT credit availed has to be reversed on each of such clearances; Revenue has not even followed the First-in-First-Out Principle. The show cause notice itself accepts that there was excess payment than the CENVAT credit reversible in some cases; therefore, it is clear that the appellants have paid more duty of Rs.49,64,082/-.

3. Learned Counsel further submits that the appellants were under a bona fide belief that the processes undertaken by them in cutting/ shearing the sheets amounted to manufacture; as stated by Shri K.P. Tiwari, the Authorized Representative of the appellants till 02.03.2005, it was understood that cutting/ shearing amounted to manufacture; Board's Circular No. 811/8/2005-CX dated 02.03.2005 clarified that it does not amount to manufacture; the appellant were not aware of the change in the assessment and therefore continued

to discharge duty on the transaction-value basis; there was intent to evade payment of duty; the appellants have been regularly filing their ER-1 Returns giving details about the goods cleared under Rule 3(5); regular audit was conducted and the issue was never agitated by the Department; therefore, extended period cannot be invoked; show cause notice dated 07.01.2014 issued covering the period 2008-09 to 2012-13 (i.e. up to December 2013) is clearly time barred.

4. Shri Anurag Kumar, learned Counsel for the appellant, reiterates the findings of the impugned order.

5. Heard both sides and perused the records of the case. We would like to address the issue of extended period to begin with. We find that the show cause notice merely alleges that the appellant suppressed the fact that they were charging excess excise duty on the sales of inputs removed as such and thus, mis-appropriated the amount which was due to the Government; the appellants did not disclose the facts of the case to the Department in their ER-1 Returns and thus have suppressed material facts which came to light only on the conduct of audit in January/ February 2013. We find that other than the bland averment as above, Revenue did not produce any evidence to substantiate the allegation of intent to evade payment of duty. In the facts and circumstances of the case where the appellant has been alleged to have paid excess duty in some cases and pocketed the same by passing on the same to the customers and paid less duty in some cases, intent to evade payment of duty is not established. In fact, the appellants claim that

they have effectively paid more duty to the tune of Rs.49,64,082/- stands as an impregnable defense to the claim of absence of *mens rea*. Moreover, it is not the case of the Department that the appellants have not been filing ER-1 Returns. When the appellants were filing the ER-1 Returns, it is not open for the Revenue to choose not to scrutinize the Returns and to invoke extended period to demand the duty alleged to have been evaded for the reason that audit was conducted in January/ February 2013. It was held in a plethora of cases that extended period cannot be invoked in a casual manner and thereto on the basis of an audit report, more so, on the basis of the audit.

6. We find that Principal Bench of the Tribunal in the case of Sunshine Steel Industries – (2023) 8 Centax 209 (Tri. Del.) held that:

19. With the assistance of the learned authorized representative appearing for the Department Form ER-I that has to be submitted online has been perused. There is no space designated for the assessee to disclose that it is a related party and indeed the learned authorized representative appearing for the Department has not been able to point out any space where this information was required to be disclosed by the appellant. What has been alleged in the show cause notice is that the appellant had suppressed this information in the ER-I Form. As the said form does not require an assessee to disclose this information, it is not open to the Department to contend that the assessee had suppressed any information.

20. The Department cannot be permitted to invoke the period of limitation by merely stating that it is a case of self-assessment as even in a case of self-assessment, the Department can always call upon an assessee and seek information. It is under sub-rule (1) of rule 6 of the Central Excise Rules, 2002 (the Rules) that the assessee is expected to self-assess the duty and sub-rule (3) of rule 12 of the Rules provides that

the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.

21. Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns. The instructions issued by the Central Board of Excise & Customs (CBEC) on December 24, 2008 deal with "duties, functions and responsibilities of Range Officers and Sector Officers". It has a table enumerating the duties, functions and responsibilities and the relevant portion of the table is reproduced below:

*"LIST OF DUTIES, FUNCTIONS AND RESPONSIBILITIES OF RANGE OFFICER AND SECTOR OFFICER
SCRUTINY OF RETURNS*

<i>Sl. No.</i>	<i>Subject</i>	<i>Sector officer's duties</i>	<i>Range officer's duties</i>
2.1	Scrutiny of ER-1/ER-2/ER-3 Returns	To ensure that these returns are entered in database. To carry out preliminary scrutiny of ER-1/ER-2/ER-3 Returns within a fortnight of receipt & submit the same to the Range officer along with his observations. The preliminary scrutiny is to be carried out on the basis of guidelines/instructions contained in Return of Scrutiny Manual	To ensure data entry of returns and preliminary scrutiny of returns by the SO as per the guidelines/instructions contained in the Return of Scrutiny Manual. He should also take necessary action for recommendation of units for detailed scrutiny and to carry out detailed scrutiny as per guidelines/instru

ctions contained
in Return
Scrutiny Manual.

- 2.2 Cases of default in duty and payment discovered through ER-1/ ER-2/ER-3 Returns. To enter the details of default in the register and submit report to the Range Officer. To verify the default cases, as reported by the Sector Officer, and initiate recovery proceedings. He will also furnish the report of defaulters to AC/DC. Further, in case of default for more than 30 days, the RO has to enforce the provisions contained in sub-rule 3(A) to Rule 8 of CER, 2002.
- 2.3 Completion of scrutiny of returns. Each Return, selected for detailed scrutiny, to be endorsed that the completion of same has been subjected to scrutiny on all returns. To record the facts of completion of scrutiny on all copies of the return and also Shortcomings, if any, details of action be specified alongwith initiated for action initiated. shortcomings noticed.

* **24.** The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to SCRUTINY OF ASSESSMENT. Paragraphs 2.2,2.3 and 2.4 of this Part are reproduced below:

"2.2 The Superintendent of Central Excise in-charge of the Range Office, with assistance of the Inspectors in-charge of the factory of an assessee, will scrutinize all the returns. They shall in selected cases, call all connecting documents including invoices and the records and scrutinize the correctness of assessment.

2.3. The Deputy/Assistant Commissioner of Central Excise will scrutinize the returns of the units, which pay duty exceeding rupees one crore but less than Rs. 5 crores from PLA per annum every six months. They shall requisition all connected documents including invoices and the records and scrutinise the correctness of assessment.

2.4 The Additional/Joint Commissioner of Central Excise will scrutinize the returns of the units which pay duty of Rs. 5 crores or more from PLA per annum every six months. They shall requisition all connected documents including invoices and the records and scrutinize the correctness of assessment."

(emphasis supplied)

25. It is thus evident that not only do the Rules mandate officers to scrutinize the Returns to verify the correctness of self-assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.

26. If the scrutiny by officers reveals short payment or non-payment of duty, a demand can be raised under section 11A. As per section 11A of the Excise Act, the relevant date prescribed for reckoning the time limit is „the date of filing of the return? and if no return is filed, „the last date on which the return should have been filed?. This is the date on which the officer acquires knowledge of the activities of the assessee in the form of the Return, if it is filed. The Officer can scrutinize and call for documents and records which he considers necessary. The Officer has a period of one year within which to issue the show cause notice under section 11A of the Excise Act. If no Return is filed by the due date, the officer can initiate appropriate action. The Audit examined the returns and because of the objections raised, the show cause notice was issued. The Officers of the Department could also have scrutinized the returns and raised a demand within the normal period of limitation. The assessee cannot be blamed by merely stating that it was only when the Audit pointed out that suppression was noted or by stating that it was a case of self assessment.

7. In view of the above and in view of the various cases cited by the appellants, we are of the considered opinion that the Revenue has not made out any case to extend the period of limitation. Therefore, we find that the impugned show cause notice and the impugned order are not sustainable and are liable to be set aside. As we find that the impugned order is not maintainable on limitation

itself, we do not find any reason as to why we should go into the merits of the case.

8. Accordingly, we allow the appeal on limitation.

(Order pronounced in the open court on 18/12/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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