

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

1. EXCISE APPEAL No.41384 of 2016

(Arising out of Order-in-Original No. LTUC/168/2016-C, dated 31.03.2016 passed by the Commissioner of Central Excise, LTU, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 001).

M/s. Schwing Stetter India Pvt Ltd.

... Appellant

D-6, F-71, G-12 and G-12-A,
Sipcot Industrial Park, Irungattukottai
Sriperumbudur
Chennai 602 105

Versus

The Commissioner of GST & Central Excise, ...Respondent

Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road, Anna Nagar,
Chennai 600 040.

2. EXCISE APPEAL No.41283 of 2017

(Arising out of Order-in-Original No. LTUC/157/2017-C, dated 28.02.2017 passed by the Commissioner of Central Excise, LTU, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 001).

M/s. Schwing Stetter India Pvt Ltd.

... Appellant

F-71, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur
Chennai 602 117

Versus

The Commissioner of GST & Central Excise, ...Respondent

Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road, Anna Nagar,
Chennai 600 040.

3. EXCISE APPEAL No.40624 of 2019

(Arising out of Order-in-Appeal No. 601/2018 (CTA-II) dated 28.02.2018 passed by the Commissioner of Central Excise, Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040).

M/s. Schwing Stetter India Pvt Ltd.

... Appellant

D-6, F-71, G-12 and G-12-A,
Sipcot Industrial Park, Irungattukottai
Sriperumbudur
Chennai 602 105

Versus

The Commissioner of GST & Central Excise, ...Respondent

Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate
For the Appellant

Shri. Rudra Pratap Singh, Additional Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing :20.09.2023

Date of Decision:11.12.2023

FINAL ORDER Nos.41095-41097/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

1. Brief facts are that the appellant, viz; M/s. Schwing Stetter India Pvt Ltd. are engaged in manufacture of Concrete Boom

Pumps and Concrete Mixers falling under Tariff Sub Heading 84134000 and 87743110 respectively of the First Schedule of the Central Excise Tariff Act 1985.

2. During the course of audit of accounts, conducted by the Internal Audit Group of the Large Tax Payer Unit, Chennai, it was noted that the concrete pumps and concrete mixers manufactured by the appellant cannot be used as it is, and have to be necessarily mounted on the chassis of trucks. After such mounting, the end product becomes classifiable as "Special Purpose Vehicles" under chapter sub-heading No.87059000 and 87054000 respectively.

3. Notification No.12/2012-CE dated 17.03.2012 vide SI No. 283 exempts "Special Purpose Vehicles" [SPV] falling under chapter 8705 of the Central Excise Tariff, on the condition that the same is manufactured out of duty paid chassis and equipment. In the instant case, the appellant pays duty on the Concrete Pumps / Mixers, and mount the same on chassis supplied by their customers, which have also suffered duty. As the conditions in the said exemption notification are satisfied, the appellant clears SPVs without payment of duty by raising invoices showing 'nil' value for these clearances. However, the details of manufacture and clearance of these SPVs were not furnished / shown in the mandatory ER 1 returns filed by the Taxpayer.

4. Further it was noticed by Audit that the appellant was importing spares for the special purpose vehicles in bulk, packed in

wooden cartons. These imported spares are bought by the appellant on payment of appropriate duty. The spares are received in wooden cartons in bulk as the unit packing is not done by the supplier. After import and receipt of the spares inside the factory, the bulk packages are opened and spares are taken out and placed unit wise in respective bins. At the time of sale of these goods (Spares), they are re-packed into individual polythene covers carton box / wooden case packing as per requirement, after marking the part number, description and labelling on them. These spares are then removed under the cover of an invoice/ packing list, but no central excise duty is paid on these clearances.

5. As per Section 2 (f) (iii) of the Central Excise Act, 1944, manufacture includes "any process which in relation to the goods specified in the Third Schedule, involving packing or re-packing of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer".

5.1. Further Sl.No. 100 of the table annexed to the Third Schedule, which was inserted with effect from 27.02.2010, covers parts/components/ assemblies of vehicles falling under Chapter 87 (excluding vehicles TSHs 8712, 8713, 8715 and 8716).

6. Hence, as per Section 2 (f) (iii) of the Central Excise Act, 1944, read with S.No. 100 of the table annexed to the Third Schedule, it appeared that the activity of packing / repacking / labelling of the 'Spare Parts', which are ultimately used in SPVs falling under TSH 87 05, by the Taxpayer, amounts to manufacture and consequently attracts levy of Central Excise Duty.

7. It therefore appeared to the department that appellant is liable to pay duty on the spare parts of Concrete Boom Pumps placed on truck – 8705.90.00, Transit Mixers – 8705.49.00 and line pump with truck - 8705.40.00 which are cleared after repacking and labelling from 27.2.2010 onwards.

8. As per Sl. No.108 of the table to Notification No.49/2008 CE (NT) dated 24.12.2008 which was substituted vide Notification no. 9/2010-CE (NT) dated 27.02.2010, spares of vehicles falling under Chapter subheading Nos.8705.40 and 8705.90 are chargeable to duty on MRP basis under Section 4A of the Central Excise Act, 1944.

9. The appellant was requested to furnish sale details of spares and the same was furnished. However, the MRP (Maximum Retail Price) for the spares was not furnished. The appellant vide letter dated 17.6.2014 stated that they do not maintain MRP and they only indicate the list price to their sales personnel for making quotations and that they are not in a position to furnish MRP.

10. Statement of Shri K. Sethuraman, General Manager, Finance and Accounts of the appellant company was recorded. He stated *interalia*, that they normally remove concrete mixers in open trucks and only when customers want them to be mounted on the chassis supplied by them, they mount them on the duty paid chassis and issue invoices availing exemption (8705) under Notification 12/2012-CE. They import components for production as well as for spares. They maintain separate accounts for both. The trading location has separate premises and has a separate accounting system compared to manufacturing location. The re-labelling and packing of spares was done for the purpose of identification and transportation. They have list price and do not affix MRP on the spares sold by them. It was stated that they do not pay excise duty on the spares as these are meant for trading. The appellant does not avail any input credit. The appellant submitted that they do not manufacture vehicle parts / spares and do not charge duty on MRP basis.

11. However, it appeared to the department that the packing / repacking / labelling of parts and components of SPVs amounts to manufacture and appellant is liable to pay excise duty on spares / parts cleared from 27.02.2010 onwards, as per Section 4A of the Central Excise Act, 1944.

12. Again, as per Rule 3 of Legal Metrology Rules 2011, the provisions of the said chapter does not apply to packaged commodities meant for industrial consumers or institutional

consumers. It was noted by the department that the SPVs mounted with concrete Mixers / Pumps are purchased by construction companies / firm like L&T, Gammon India, HCC, Soma etc. for direct use in their projects. The clearances having been made by appellant to industrial consumers, it is not required to declare the MRP on the packages of spares / parts of SPVs. In such cases CBEC in para 6.2 of chapter 3 of the Manual of supplementary Instructions has clarified that the valuation has to be done under section 4 of Central Excise Act, 1944.

13. Accordingly, it appeared that the valuation of the spares/parts sold by appellants has to be done under Section 4 i.e.; on the basis of transaction value. The appellant had imported spares / parts in bulk and cleared after packing / re-packing / labelling under the cover of invoices without payment of excise duty from 27.2.2010 to 31.12.2014. The appellant had also not declared the clearances of spares / parts in their ER – 1 returns and thus suppressed facts with intend to evade payment of duty. Show Cause Notices were issued to the appellant proposing to demand the excise duty on the spares / parts along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. Aggrieved the appellant is now before the Tribunal.

14. On behalf of the appellant, the learned counsel Shri Raghavan Ramabhadran appeared and argued the matter. The arguments are summarized as under:

14.1. The Appellant is engaged in the manufacture of the concrete handling equipment by assembly of various parts at the Appellant's factory. The final products are cleared on payment of appropriate excise duty by classifying under Tariff Entry No: 8474 31 10 of the Central Excise Tariff.

14.2. The concrete handling equipment manufactured by the Appellant are purchased by industrial customers such as construction companies and entities engaged in the infrastructure and construction sector.

14.3. The products impugned in the present appeal are concrete mixers, concrete pumps (Line/Stationary Pumps & Boom Pumps). These are used in the construction sector for taking and pumping liquid concrete at desired spots at construction sites.

14.4. The equipments are manufactured by the Appellant and removed as such after manufacture, by covering it with plastic sheets. The equipment is placed on a trailer platform tied with ropes and hauled outside the factory.

14.5. In rare instances (Less than 5%) where the buyer drives-in his chassis to the Appellant's premises, the concrete mixer alone is kept on the chassis with temporary 'U'-Bolt. In case of concrete pumps such as Line pumps and Boom pumps temporary U-Bolt is not required at all. It is to be noted that what is manufactured and cleared are only the equipment.

14.6. The Appellant purchases parts and components separately for manufacture of equipment and trading of spares. For this purpose, the Appellant imports the parts as well procures the

parts locally/indigenously as well. The parts are classified as parts of the concrete handling equipment under Tariff Entry No: 8474 31 10 of the Central Excise Tariff. On import of such parts, the Bill of Entry also adopts the said classification.

14.7. The Appellant is a reseller or trader of the parts of this concrete handling equipment. These parts are sold to the customers on payment of Value Added Tax/Central Sales Tax, as the case may be. The trading of parts is undertaken from separate premises with separate accounting systems for catering to the after sales market.

14.8. Since the Appellant undertakes trading activity, Appellant has duly complied with reversal of Common CENVAT credit under Rule 6(3) of the CENVAT Credit Rules, 2004 ('CCR').

14.9. The spare parts are procured in bulk and are opened and stored in bins. As per the specific requirement of each of the customers and based on prior orders, the requisite quantity is put in polythene cover and a carton box after it is already sold and identified to each of those customers. This is an admitted fact as per the Department (Verification Report dated 05.01.2017 at para (a) therein).

14.10. No unit packing is made and no MRP is affixed, and no detailed label is made. There is no standard packing with a definite quantity; each pack is for the ordered quantity by the respective customer.

14.11. In other words, the spare parts are cleared by the Appellant from its premises based on the size of the order placed

by its customers. Depending on the orders placed, the spare parts will be packed in all sizes varying from polythene bags to big containers.

14.12. The present issue relates only to the spare parts of the concrete handling equipment.

14.13. The case of the department is that the clearance of the spare parts by the Appellant amounts to manufacture under Section 2 (f) (iii) of Central Excise Act, 1944 ('CEA, 1944') read with Sl. No. 100 of Third Schedule to CEA, 1944 and consequently attracts excise duty. Such excise duty has to be paid based on the transaction value in terms of Section 4 of the CEA, 1944.

15. The learned counsel for appellant adverted to relevant additional findings in Impugned Order. Tabulated for each of the Appeal(s) as under:

Appeal and Period Involved	Finding in Impugned Order
E/41384/2016 27.02.2010 to 31.12.2014	- Concrete pumps and concrete mixers have to be necessarily mounted on any vehicle for transportation and accordingly the spares are used in the vehicle they fall under the Third Schedule and are liable for payment of duty. [Para 23 & Para 25] - No finding on 'Unit Container' - Extended period invoked.
E/41283/2017; 01.01.2015 to 30.11.2015	- Admits that the appellant is only packing quantities (one/two/a set in each pack) in each polythene bag according to specific requirements and then affixed label. [Para 21(iii)] - The spares cleared by the taxpayer are used in the special purpose vehicle and fall under

	the Third Schedule of the CEA, 1944 and are liable to duty. [Para 23(iv)] • Parts of stationary pump will not fall under parts, components and assemblies of automobiles under Sl. No. 100 of the Third Schedule of Central Act, 1944. [Para 24(iii)] • Cum duty benefit granted [Para 27] • Reversal under Rule 6 appropriated towards the demand. [Para 28] • Liable to pay interest and penalty [Para 29 and Para 30]
E/40624/2019; 01.12.2015 to 30.06.2017	• Spares for these MPVs are also classified under Chapter 87. As long as the spares have been used only for such MPVs, it is immaterial where the chassis were mounted. [Para 9] • Appellant is entitled to CENVAT credit. Credit cannot be denied to the Appellant on the inputs [Para 11]

16. The learned counsel appearing for appellant explained that the Appellant manufactures concrete handling equipment classifiable under Chapter 84. The spare parts supplied for these equipments are not covered under the ambit of Section 2(f)(iii) of CEA, 1944, read with Sl. No. 100 of the Third Schedule of CEA, 1944.

A.1 The Appellant manufactures concrete handling equipment and clears the same as such. This equipment is not necessarily required to be mounted on vehicles and can be used by the industrial customers without mounting as well.

A.2 This equipment can be mounted on a vehicle, wagon or fixed to the ground based on the use of the customer. The said concrete handling equipment can be mounted on Stationery Platform as well to be operated at site. The Appellant submits that the Stationary Pumps/Line Pumps are never mounted on the chassis either by the Appellant or by the customers.

A.3 The equipment cleared by the Appellant can be used independently by the customers even without mounting on any vehicle.

A.4 Hence, the averments made in Para 2 of the SCN dated 27.02.2014 that Concrete Mixers and Concrete Pumps cannot be used as such and the finding in Para 25 of OIO dated 31.03.2016, that concrete pumps and concrete mixers have to be necessarily mounted on any vehicle is incorrect.

A.5 When the concrete handling equipment can be used independently without mounting on any vehicle, the spare parts of such concrete handling equipment cannot become parts of the vehicle on which such concrete handling equipment may be mounted or is never mounted, as the case may be.

A.6 Therefore, the spare parts sold by the Appellant to its customers will qualify as part of the concrete equipment and would not qualify as parts of the vehicle on which the equipment may or may not be mounted and the demand in the Impugned Order fails on this ground alone.

A.7 The spare parts traded by the Appellant are not known as 'parts of vehicles' either in common parlance or in trade parlance.

A.8 In this regard, Appellant places reliance on *CBEC Circular No. 167/38/2008-CX 4, dated 16.12.2008* wherein the department clarified the scope of the phrase 'Parts, components and assemblies of automobiles' as was present under SI. No. 97 of Notification No. 2/2006-CE (NT). As per the Circular, only those parts which are commonly known and sold in the trade as parts of automobiles will be covered under the entry.

A.9 Drawing an analogy, in the present case, the spare parts traded by the appellant are always referred to as parts of the equipment and are never known and sold in the trade as parts of automobiles.

A.10 The Appellant also places reliance on the decision of the Larger Bench in **M/s Action Construction Equipment Ltd (Spare Part Division) v. Commissioner, Central Excise & Customs, Delhi-IV 2023-VIL-514-CESTAT-MUM-CE**, wherein in the context of interpretation of the term 'automobiles' in the Third Schedule to CEA, 1944 it has been held that the word 'automobile' has not been defined in the Central Excise Act, the Central Excise Tariff Act or the Notifications issued by the Central Government, it would be permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance

and it will not be appropriate to refer to the definition of the word 'automobile' occurring in the Air (Prevention and Control of Pollution) Act, 1981 or the Motor Vehicles Act, 1988.

A.11 It is well-settled in classification disputes as to how a good is known in the trade and treated in the trade literature is relevant and significant and often decisive factor. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in **Collector of Customs v. Bhor Industries Ltd. 1988 (35) E.L.T. 346 (S.C.)**

A.12 Reliance is also placed on the decision of the Hon'ble Supreme Court in **MSCO Pvt Ltd v. Union of India and Others, 1985 (19) E.L.T. 15 (S.C.)**, wherein it has been held that when the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its commercial sense.

A.13 Therefore, in such a case, the term 'parts' in Sl.No. 100 of Third Schedule to the CEA, 1944 should be given ordinary meaning and by applying the test of trade parlance, the spare parts of the concrete handling equipment cannot be termed as spare parts of the SPVs. It can only apply to parts of the vehicles (including chassis fitted with engines) falling under Chapter 87.

A.14 Hence, the department's stand that the spare parts of the concrete handling equipment pertain to the 'Special

Purpose Vehicle' (SPVs) is incorrect and on such score, the Impugned Order(s) merits to be set aside.

A.15 In the present case, the Department has not discharged its onus to prove beyond doubt that the spare sparts sold by the Appellant qualifies as manufacture under Section 2(f)(iii) read with Sl. No. 100 of the Third Schedule of the CEA. Reliance in this regard is placed on **Union of India v. Ahmedabad Electricity Co. Ltd. [2003 (158) E.L.T. 3 (SC)]** and **Commissioner Of Cus. (Import), Mumbai V. Dilip Kumar & Company [2018 (361) E.L.T. 577 (SC)]**.

B. The appellant does not re-pack the spares in any pre-determined unit container or label the product and hence the provisions of Section 2(f)(iii) of CEA, 1944 are not attracted.

B.1 The Appellant submits that the spare parts (i.e., goods) sold by the Appellant are not repacked or labelled in a 'unit container'.

B.2 The Appellant submits that the spare parts which are kept in bins after procurement. The spare parts are packed after the same is sold to the customers, as per customer's requirement and put in plastic bags or containers for the purpose of transportation.

B.3 In the present case, the package in which the goods are re-packed is not designed to hold pre-determined quantity of goods. The Appellant submits that the term

'designed to hold pre-determined quantity' means that the container must contain, exactly that much quantity of goods for which it is designed. In this regard reliance is placed on the following decisions,

- **Nestle (India) Ltd. V. Commr. of C. Ex., Chandigarh, 2003 (155) E.L.T. 107 (Tri. - Del.)**
- **Commissioner Of C. Ex., Mumbai V. Shalimar Super Foods 2007 (210) E.L.T. 695 (Tri. - Mumbai)**

B.4 The Appellant also refers to the Chapter Note 5 to Chapter 4 of the Central Excise Tariff Act, 1985, defines the term 'unit container to mean a container whether large or small designed to hold a pre-determined quantity or number.

B.5 The same size package may contain any number of units. For e.g., same size package may contain 5 units in respect of one customer and 10 in case of another customer.

B.6 The Appellant further submits that as per the explanatory notes to Budget 2003-04, order to qualify as 'manufacture' the activity of packing, re-packing or labelling, re-labelling should be undertaken on a 'unit container'. In the present case, no such packing is done in a unit container and hence the activity undertaken by the Appellant does not amount to manufacture under Section 2(f)(iii) of CEA, 1944.

B.7 The Appellant further submits that Appellant does not label any unit containers and hence the sale of spare parts by the Appellant does not qualify as manufacture under Section 2(f)(iii) of CEA, 1944.

B.8 The Appellant further submits that the term 'container; in the second part of Section 2(f)(iii) of CEA, 1944 should also be read as 'unit container' in order to read it contextually and cannot be read as 'any container'.

B.9 The Appellant submits that mentioning certain details on the packaging would not amount to labelling as the label affixed by the Appellant does not give any new information to the customer.

B.10 The Appellant further submits that the information mentioned only helps for identification purposes in as much as the parts are sold on the basis of purchase orders agreed between the parties. Therefore, the stickers affixed by the Appellant does not qualify to be 'label' and such information is not on any 'unit containers' but only on the bag or carton, depending on the type of package to be delivered to the customer.

B.11 The Appellant submits that the activity of the appellant in placing the goods in plastic bags or container, after the goods are already sold, does not in any way render the goods marketable any more than what it was before. In this regard, reliance is placed on the following decisions,

- *Lakme Lever v. CCE* (2001) 127 ELT 790 (Tri-Mum)
- *Lupin Laboratories Pvt. Ltd. v. Commissioner* (2002) 139 ELT 366 (Tri-Mum)- SLP dismissed by Hon'ble SC - *Commissioner v. Lupin Laboratories Pvt. Ltd. - 2004 (166) E.L.T A116 (S.C.)*]
- *Adi Enterprises* (2002) 144 ELT 379 (Tri-Mum)

B.12 Hence, it is submitted that the Appellant is not repacking the spare parts/goods in unit containers and hence the sale of spare parts by the Appellant does not qualify as manufacture under Section 2(f)(iii) of CEA, 1944.

B.13 Therefore, the finding in the impugned Order(s) that the appellant has performed the activities of packing and labelling and such activities amount to manufacture as per Section 2(f)(iii) is incorrect and the Impugned Order(s) are liable to be set aside.

B. Without prejudice, the Department having accepted that the spare parts are traded cannot

now allege that the activity of sale of spare parts is manufacture and not trading.

C.1 The Appellant submits that the Appellant is liable to reverse proportional Cenvat credit in terms of Rule 6(3)(i) of CCR in terms of Order in Appeal No. 106/2014 dated 04.08.2014.

C.2 The Appellant submits that the Appellant is liable to reverse proportional Cenvat credit in terms of Rule 6(3)(i) of CCR in terms of Order in Appeal No. 106/2014 dated 04.08.2014 in Appeal No. 22/2013(P).

C.3 The Appellant submits that the Department cannot blow hot and cold while alleging the activity as trading in the Show Cause Notice No. LTUC/378/2012-ADC dated 31.10.2012 and at the same time alleging that the activity amounts to manufacture.

C.4 Per contra, the Appellant submits that it has maintained the activity undertaken to be trading and was opting for reversal under Rule 6(3A) of CCR.

C.5 Hence, on this ground alone the Impugned Order(s) demanding excise duty on the sale of spare parts are liable to be set aside.

C. Without prejudice, assuming that the Appellant is liable to pay duty on clearance of spare parts, Appellant is eligible to avail CENVAT credit on such payment of duty.

D.1. Without prejudice to the above submissions, the Appellant submits that Appellant did not avail credit of CVD/excise duty as the activity undertaken by the Appellant did not amount manufacture.

D.2. The Appellant submits that if the activity undertaken by the Appellant amounts to deemed manufacture, then the Appellant is eligible for Cenvat credit on the CVD paid on import and excise duty paid on indigenous purchase of the spare parts. In this regard reliance is placed on the decision of Johnson & Johnson Ltd. v. CCE [2003 (154) ELT 729 (Tri-Mum)].

D. Extended Period cannot be invoked. Interest and Penalty cannot be imposed.

E.1 The Appellant submits that Extended Period of Limitation has been invoked in Impugned Order in Appeal No. E/41384/2016 for the period 27.02.2010 to 31.12.2014. The Appellant submits that the question involves issue of classification and interpretation, and hence suppression cannot be alleged. In this regard, reliance is placed on the decision of **Chamundi Diecast Private Ltd vs. CCE 2007 215 ELT 169** wherein it has been held that if there is bona fide belief, extended period of demand cannot be invoked.

E.2 Hence the Impugned Order invoking extended period of limitation to be set aside on this ground alone. The Appellant submits that as the main demand cannot be sustained, the Appellant is not liable to pay any interest.

E.3 The Appellant submits that no penalty can be imposed as the Appellant is of the bona fide belief that the activity undertaken does not amount to manufacture and since it is an issue of interpretation, no penalty can be imposed. In this regard, reliance is placed on the decision in **Hindustan Steel Ltd. v The State of Orissa reported AIR 1970 (SC) 253**, wherein it was held that when there was no intention on the part of the Appellant to evade payment of duty the imposition of penalty cannot be justified.

E.4 Hence, the Impugned order imposing interest and penalty is to be set aside. It is humbly prayed that the appeal be allowed.

17. The learned AR Shri. Rudra Pratap Singh appeared and argued for the department. The learned AR submitted that the argument of the appellant that they are clearing the concrete mixers, pumps as such and not fitted to chassis cannot be accepted. When fitted to chassis, these fall under the category of Special Purpose Vehicles (SPV). The appellant has admittedly cleared SPVs. The details of concrete pumps mounted on chassis and cleared by appellant for the period 27.2.2010 to 31.12.2014 is furnished in page 15 of the impugned order.

17.1 The appellant has imported spares of these SPVs in bulk and then repacked them into unit containers. Such unit containers are then labelled. These activities amount to deemed manufacture as

per 2 f (iii) of the definition of manufacture as per Central Excise Act, 1944.

17.2. The learned AR adverted to the discussions in para 21 and 22 of the impugned order and submitted that the parts and components of vehicles falling under Chapter 87 come under Sl.No.100 of the Third Schedule to Central Excise Act, 1944. Therefore, the activity of packing / repacking / labelling done by the appellant of such spares and parts of SPVs falling under Sl.No.100 of the Third Schedule amounts to manufacture and not trading as contended by the appellant. The appellant is liable to discharge excise duty on the spares cleared by them after repacking and labelling.

17.3. The Board vide Circular dated 16.12.2008 has clarified the meaning of automobiles. As the concrete pumps and concrete mixers are mounted on chassis and cleared by adopting classification under CTH 8708 availing the benefit of notification, 12/2012 – CE dated 17.03.2012, the clarification issued by the Board would apply and the parts are to be considered as parts of automobiles. They are then to be classified under Chapter 87 as parts of automobiles. The demand of duty, interest and penalties imposed are legal and proper.

17.4. The learned AR submitted that the evasion of duty would not have come to light, if the audit team had not scrutinized the files. The returns filed by the appellant did not show the manufacture and clearance of parts of automobiles. Hence, the Show Cause

Notice issued invoking the extended period is legal and proper. The learned AR prayed that the appeal may be dismissed.

18. Heard both sides and perused records carefully.

19. The issues that arise for consideration are:

(i) Whether the activity undertaken by the appellant of repacking of the spares from the bulk to small packets and labelling amounts to manufacture as under Section 2 f (iii) of the Central Excise Act 1944 ?

(ii) Whether the extended period is invokable or not ?

(iii) Whether the confirmation of demand of duty, interest and penalties are sustainable or not ?

19.1. The duty demand is on the spares sold by appellant. The case of the department is firstly, that these are spares of SPVs classifiable under Chapter 87 and these spares fall under Sl.100 of the Third Schedule to Central Excise Act, attracting the mischief of deemed manufacture as per Section 2 (f) (iii) of the definition of manufacture. Secondly, it is alleged that the concrete mixers and pumps cannot be sold as such and has to be fixed to chassis before being sold and therefore appellant is engaged in manufacture of SPVs. Thirdly, that the activity of repacking from bulk to small packets and labelling amounts to manufacture attracting central excise duty.

19.2. The appellant has countered the allegations in the Show Cause Notice by submitting that they engage in manufacture of

concrete pumps and concrete mixtures and clear them as such. That only in limited cases, when customer supplies the chassis, they mount the concrete pumps / mixers on the chassis free of cost and clear them by availing the exemption as per notification no.12/2012 – Central Excise dated 17.03.2012. It is categorically asserted by the appellant that they do not manufacture any chassis.

19.3. The whole case of the department is founded on the allegation that the concrete mixers and concrete pumps cannot be sold as such and that these have to be fitted on chassis which makes these products SPVs and therefore the spares sold by appellant are nothing but spares of SPVs.

19.4. The allegation in para 2 of the Show Cause Notice dated 27.2.2015 reads as under:

2. As the 'Trading activity' has become an exempted service from 1.04.2011 as per Explanation to Rule 2 of CCR, 2004 inserted by the Notification No.3/2011 CE (NT) dated 1.3.2011, the taxpayer filed the option to follow the Rule 6 (3A) of CENVAT Credit Rules, 2004 as amended for computing the reversal of CENVAT Credit utilized for taxable and exempted services from 1.4.2011 on 24.05.2011 for sale of spares (trading activity).

19.5. The appellant has asserted that they clear concrete pumps and concrete mixers as such and these are to be classified under 84134000 and 84743110 respectively. The learned counsel for appellant has furnished images of the impugned product sold as such (then fitted to ground or any other surface) and also the

images of the impugned product fitted on chassis. For ease of understanding the images are reproduced as under:

Image 1: Concrete Mixer with slave engine



Image 2: Concrete Mixer without slave engine







19.6 It is very much clear from the above images that concrete pumps / mixers can be sold / cleared without being fitted to vehicle chassis. In some case, these are used on static platforms, rigs etc and put into use at the site. The allegation in the Show Cause Notice that the concrete pumps / mixers cannot be used as it is

and have to be necessarily mounted on the chassis of truck is factually incorrect.

19.7. In para 19 of the impugned order the adjudicating authority has furnished the details of the clearances made by appellant as to the number of concrete mixers sold without mounting on chassis and the number of concrete mixers sold after mounting on chassis. This itself shows that the appellant has been clearing the impugned products as it is, without being mounted on chassis. This table shows that the clearances of concrete mixers sold after mounting on chassis of vehicle on customer's request is very much low, when compared to the concrete mixers cleared as it is without mounting to chassis. For eg. During the period 27.2.2010 to 31.3.2010, the appellant sold 242 numbers of concrete mixers as it is and 10 numbers of concrete mixtures fitted to chassis. For the period from 1.4.2010 to 31.3.2011, the appellant has sold 2918 numbers of concrete mixers as it is, and 67 numbers of concrete mixers fitted to chassis. These details recorded in para 19 of the impugned order has been brushed aside by the adjudicating authority without recording any reasons.

19.8. The learned counsel for appellant has drawn our attention to invoices raised in regard to concrete mixers fitted to chassis as well as invoices raised when concrete mixers are sold as it is. The invoice no.81009872 dated 17.01.2014 is an invoice raised in the name of 'Piyush Infratech Pvt. Ltd'. The description of the goods is 'concrete mixer'. The appellant has paid excise duty on the value

of the concrete mixer. This invoice establishes that appellant sells concrete mixer as it is. The invoice no.10403545 dated 31.3.2011 is an invoice raised to 'Man Force Trucks Ltd.' The description of the goods is 'Transit mixer on Trucks'. The quantity is mentioned as one and the amount collected by appellant is shown as 0.01 paise which would prove that appellant has not collected charges for fitting the concrete mixer on the truck. The heading of the invoice mentions as 'Free of Cost Invoice'. Along with this document, an invoice for the concrete mixer is raised separately showing the value of concrete mixer only. The appellant has collected the value of concrete mixer only and discharged excise duty on this amount. The chassis having been supplied by the customer, the appellant has not collected any amount towards value of chassis. The appellant has not collected even charges for fitting the concrete mixer to chassis. It is explained by the learned counsel that the fitting is done by a simple mechanisms of 'U' bolt fitting and the mixer can be removed from chassis and used. We have perused many other invoices. All these documents establish that the appellant has cleared the impugned products as it is without being fitted to chassis and has not collected any value towards chassis or fitting of the concrete mixer on chassis. The documents establish that the concrete mixtures / pumps can be used as it is and need not be necessarily fitted to chassis as alleged by department.

19.9. We have to say, that the transportation of the impugned products may be by trucks. But whether the goods are transported by trucks or other means is not the test to decide whether the impugned products are SPVs or not. The test is whether the impugned products can be solely and principally used only by mounting on a truck. The evidence placed before us establish that the impugned products, namely, concrete mixers and pumps cleared by appellant can be used without being fitted to chassis / trucks. We then have to find the allegation raised in the Show Cause Notice that appellant is manufacturing SPVs to be factually incorrect.

19.10. Though the appellant has cleared some items after fitting on chassis, the documents show that in these situations the chassis was supplied by customer and the appellant has not collected charges for fitting the mixers / pumps to the chassis. There is no allegation that appellant manufactured chassis.

20. The adjudicating authority has relied upon the Board Circular F.No. 167 / 38 / 2008 dated 16.12.2008 to hold that these spares are automobile parts and therefore would fall under Sl.No. 100 of Third Schedule of Central Excise Act, 1944. The Sl. No. 100 is reproduced as under:

“A.3. Sl.No. 100 of the Third Schedule covers parts, components and assemblies of vehicles falling under Chapter 87. Sl. No. 100 reads as under:

100	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under headings 8712, 8713, 8715 and 8716
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20.1. On perusal of the Board Circular para 3.1 and 3.2 reads as under:

“3.1 Another issue that has arisen is the scope of the term 'parts' as used in the aforementioned entry. Chapter 87 of the Central Excise Tariff covers parts of different vehicles. Further, Section Note 2 of the Section XVI also defines the scope of parts of goods falling in said section. Doubts have arisen as to whether parts classified in Chapter 87 shall only be covered under the said entry or all parts irrespective of their classification should be covered

3.2 The issue has been examined. The said entry provides that parts, components and assemblies' falling in any heading in the Tariff are covered. Therefore, it is logical that all parts, components and assemblies irrespective of their classification shall be covered. It is also important to note that there is no specific entry for components' or 'assemblies of automobiles in the Tariff, therefore, this also supports the view that at goods which are commonly known and sold in the trade as 'parts, components and assemblies' are covered by said entry, irrespective of their clarification in the Tariff.

Hence, the term "parts, components and assemblies' of automobiles includes items like batteries, brake assembly, tyres tubes and flaps, IC engines, ball bearing, etc.”

20.2. The clarification issued by Board is that those parts / components sold in the market as automobile parts would fall within Sl. No. 100. In the present case, these items are not sold as parts of automobiles. These are sold as spares / parts of concrete mixers and pumps. The Board Circular is not applicable to the facts.

20.3. The demand of duty is on the spares sold by appellant on the basis that the concrete mixers / pumps can be used only with chassis and that these are spares of SPVs. As we have already

found the allegation that impugned products can be used only mounted on chassis to be incorrect, the discussions on the issue as to whether the activity of repacking from bulk to small packets and labelling amounts to manufacture may be a futile exercise. However, for completeness we proceed to examine this issue also.

20.4. Section 2 (f) reads as under:

“SECTION 2. Definitions. — In this Act, unless there is anything repugnant in the subject or context, -

[(f) “manufacture” includes any process, -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Fourth Schedule as amounting to manufacture; or

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;”

20.5. In the present case, even as per the allegation in the Show Cause Notice or the impugned order, the department does not allege that the appellant is repacking in ‘unit containers’. The relevant para in SCN is as under:

“5. As per Section 2 (f) (iii) of the Central Excise Act, 1944, manufacture includes "any process which in relation to the goods specified in the Third Schedule, involving packing or re-packing of such goods in a unit container

or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.”

Further SI.No. 100 of the table annexed to the Third Schedule, which was inserted with effect from 27.02.2010, covers parts/components/ assemblies of vehicles falling under 87 (excluding vehicles TSHS 8712, 8713, 8715 and 8716).

Hence, As per Section 2 (f) (iii) of the Central Excise Act, 1944, read with SI.No. 100 of the table annexed to the Third Schedule, it appears that the activity of packing / repacking / labelling of the 'Spare Parts', which are ultimately used in SPVs falling under TSH 87 05, by the Taxpayer, amounts to manufacture and consequently attracts levy of Central Excise Duty.”

21. The learned counsel asserted that the spares are already marketable items and the activity of repacking and labelling does not have any impact of its marketable nature. The appellant submits that on request made by customers they put the parts as required in polythene bags and paste the label of the part name / code. That this is after the sale of the spares and the activity of packing or labelling is only for transportation and identification. The learned AR has countered this submission by stating that the label mentions the logo of the appellant company and therefore the activity renders the spares marketable. We have perused the images of labels and we find that there is no commonality, except for the logo. The label on each packet mentions different numbers of the spares. On perusal of Invoice no.85157799 dated 31.12.2023 issued to M/s. Axon Constructions (P) Ltd, there are 4 items of spares supplied. These are valve cartridge press relief

valve 2 nos., O Ring 14 x 2 5 nos., Ring D14 x 2.5 x 2.3 5 numbers, spring cover 2 nos. These are packed and consigned to the customer. The order is not placed unit wise or 'packet wise'. The learned counsel for appellant has stressed on the word 'unit container' used in Section 2 f (iii). It is argued by the counsel that 'unit container' means container with predetermined quantity. The polythene bags used by appellant to repack are not designed to carry predetermined quantity. After goods are sold, it is packed in polythene bags and a label is fixed for identification.

21.1. In the case of *Lakme Lever Limited Vs CCE, Mumbai 2001 (127) E.L.T.790 (Tri. – Mum.)* it was held that if the product is marketable any amount of treatment to enhance its marketability would not amount to manufacture as per the definition. The relevant para reads as under.

“5. Against this background it will be clear that the 'treatment' (that describes the activities undertaken by the appellant) in question did not render the product marketable and that they were in fact marketed to the vast majority of the customers prior to such treatment. Repacking therefore either did not confer on them or attribute any marketability except possibly to one particular customer. The process undertaken by the appellant therefore did not render them marketable. Further, the activities undertaken by the appellant also did not involve any treatment of the goods, or of an individual retail pack. It merely consists of transferring them from one kind of retail pack to another.”

21.2. The Tribunal in the case of *Lupin Laboratories Ltd. Vs. CC, and CE, Aurangabad 2002 (139) E.L.T. 366 (Tri. – Mum)* has taken similar view wherein the Tribunal held that since each product was marketable on its own, putting them all together did not confer

them any attribute of marketability that the goods did not possess earlier. The relevant para reads as under:

“6. It is also relevant to note that these four or three tablets were initially packed, after their manufacture into this combination packing. It is not as if they were first packed into separate packing and thereafter drawn from this packing and put into the packing presently under consideration. If the Commissioner (Appeals)’s logic is to be adopted, it would mean that every manufacturer of pharmaceutical products or cosmetic products has to pay duty twice on any one product first when it comes off the production line and the second when it is packed. This, surely, is not the intention of the law makers. The intention which appears to us is to ensure that the value addition, which is sometimes substantiated, which results as a consequence of packing the product into a retail pack is levied to duty. Each of the processes referred to in these notes, conversion of powder into tablets; labelling or relabelling of containers intended for a consumer; repacking from bulk pack to retail pack obviously results in or facilitates sale of the product to the retail consumer. The adoption of any other treatment referred to in each of these notes would be such treatment that would render the product marketable to a consumer. It is therefore not possible for us to uphold the finding of the Commissioner (Appeals) that a new product has emerged which was not entitled to benefit of either of the notification.”

21.3. The above decision of the Tribunal has been maintained by the Hon’ble Apex Court as reported in *Commissioner Vs. Lupin Laboratories (P) Ltd. 2004 (164) E.L.T. A 116 (S.C.)*

21.4. The Tribunal in the case of *Taxchem Vs CCE, Mumbai* considered the issue whether painting on the drums / container, the name of the goods, the name of the consigner and consignee would amount to labelling / relabeling. It was held that labelling requires furnishing information as to the name of the product, its ingredients, its price etc. Mere putting, name, address and such details does not amount to labelling as per Section 2 f (iii). This decision was maintained by Hon’ble Apex Court as reported in 2006 (202) E.L.T. A 21 (S.C).

21.5. In the case of *Adi Enterprises Vs CCE, Mumbai 2002 (144) E.L.T. 379 (Tri - Mum)* the Tribunal observed that the act of putting several items into a box, would not render any marketability to products which are already, marketable.

21.6. The meaning of the word 'unit container' was examined in the case of *CCE, Chandigarh Vs Himachal Pradesh Horticulture Produce Marketing & Processing Corp. Ltd. 1988 (34) E.L.T. 160 (Tri-)*. The relevant para is as under:

“13. So far as the meaning of the wording “Prepared or Preserved Foods put up in unit containers and ordinarily intended for sale” figuring in the relevant tariff item are concerned, we may turn to the instructions issued by the Ministry, dated 3-4-1969. These instructions are reproduced below :

“Meaning of Unit Containers. The expression ‘unit container’ used in Tariff Item 1B means a container in which prepared or preserved food is intended to be sold by the manufacturer. It may be a small container like tin, can, box, jar, bottle or bag in which the product is sold by retail, or it may be a large container like drum, barrel or cannister in which the product is packed for sale to other manufacturers or dealers. In short ‘unit container’ means a container, whether large or small, designed to hold a pre-determined quantity or number which the manufacturer wishes to sell whether to a wholesale or retail dealer or to another manufacturer.”

... ..

42. The respondents have argued that the concentrate sold in the carboys was not “put up in unit containers”. The reasons given are briefly that -

- (a) they did not contain a predetermined quantity;
- (b) they were not labelled as required under the Fruit Products Order; and
- (c) the containers were not sold alongwith the goods but were durable and returnable.

43. As against these arguments it has been argued on behalf of the Revenue that it is not necessary for the purposes of Item 1B that the container must be sold alongwith the goods.. It has also been

argued that the use of the expression “unit container” does not require that the containers should be full, or (what comes to the same thing) that the contents should be uniform.

44. The expression “unit containers” has been used with reference to prepared or preserved foods ordinarily intended for sale. As seen from the notification issued under this item, it is intended to cover articles such as sausages, meat extracts and meat juices, prepared or preserved fish, soups and brothes, bottled or canned fruits and vegetables, sauces, jams, fruit syrups and juices, corn flakes, dehydrated peas and dehydrated vegetables, skimmed milk powder, condensed milk, preparations with a basis of flour, starch, or malt extract, and milk foods. It is a matter of everyday experience that these are the kinds of goods which are sold in provision stores, chemists’ shops, general stores, departmental stores and so on. They are literally sold “off the shelf”. Normally the customer knows the article that he wants: and often he has a preference for a particular brand. Normally also the goods are in standard packs (it may be bottles, cans, cardboard cartons etc.), and are prominently labelled to show the nature of the contents, the quantity, the date of manufacture and date of expiry (where applicable), the maker’s name, the recommended maximum retail price, and so on. There are often two or three different sizes of packs for the same product. For instance, in the case of instant coffee it could be 50 gms, 200 gms and 500 gms. The standardised nature of the packing greatly facilitates and speeds up the choice and purchase of the products by the ordinary customer. He may be guided by his previous experience, or by the advice of the shopkeeper, or even by his inspection of the goods. But usually he has little difficulty in making up his mind as to what product to buy. As regards the size of the pack also, depending on his needs and the nature of the product, it is easy for him to decide whether he needs a 50 gms pack or a 100 gms pack or a 500 gms pack. Once having decided, the further advantage of the “unit container” comes in. He does not have to wait while the product is laboriously (and perhaps incorrectly) weighed out and packed. Nor does he have to worry whether this is done in a hygienic manner; nor yet whether the contents will get damaged by moisture, ants etc., if he keeps in on his own shelf for a few days or for a few weeks. The method of retail packing and marketing adopted in respect of the vast majority of consumer products (not only food products but also toiletries preparations, medicines etc.) carries the immense advantages of immediate identification, easy choice, convenience of transport and preservation.

45. At the basis of this entire system of marketing and consumer satisfaction is the method of packing in “unit containers”. In most cases (if not all) the container is not returnable; in many cases it is not durable, particularly if it is of cardboard or aluminium foil. For obvious reasons the container has to be just large enough to hold the predetermined quantity of the contents. To pack half a litre of fruit syrup in a bottle which can hold one litre would not only be wasteful but would also subject the contents unnecessary

movement, perhaps with a loss of quality. Further, it would arouse doubts in the customer that he is being cheated. It can therefore be very well understood that no intelligent manufacturer would pack prepared or preserved foods (or indeed any similar product of common consumer use) in a container which is not full or practically so. Nor would a prudent customer readily buy a product in a container which does not appear to be full.

46. The above observations on the methods of marketing of common consumer products, do not require any special knowledge because they are a matter of common experience. The tariff item and the Finance Ministry's instructions are consistent with the general experience and practice as mentioned above. General experience would certainly show that prepared and preserved foods and the like, as they are ordinarily sold in the market, are packed in containers which contain a specific and clearly marked quantity of the goods. The quantity may vary according to the product and the manufacturer, but even then there are many standard quantities common to different manufacturers, such as 100 gms, 500 gms, 1 kg, 100 ml, 200 ml and 500 ml. Such products are sold in what may appropriately be called "unit containers" which can conveniently contain that particular quantity. It is also a matter of common knowledge and experience that in such cases the container is normally not returnable, and in many cases not durable.

47. In the light of the above discussion, it would be clear that the apple juice concentrate sold by the respondents in carboys containing varying quantities as required by the buyers in each particular case cannot be considered as "prepared or preserved foods put up in unit containers" within the meaning of Tariff Item IB. They would therefore fall under Item 68.

21.7. From the above, discussions we have to hold that given by the facts of this case, the activity undertaken by the appellant of repacking from bulk into small packets in polythene bags and putting labels does not amount to manufacture as under Section 2 f (iii) of Central Excise Act, 1944.

21.8. Again, the learned counsel has furnished the copy of the SCN dated 16.03.2012 issued by department to their other unit, alleging that the appellant is engaged in manufacture of concrete

mixer / pumps etc., and also sale of spares (trading activity). The said Show Cause Notice is issued alleging that the appellant has to reverse the credit availed on common input services used for manufacture and trading (exempted service). The said notice covers the period involved in these appeals also (1.4.2011 to 24.5.2011). Subsequent Show Cause Notices have also been issued alleging wrong availment of credit on trading. Thus, the department itself has accepted that the activity of sale of spares is trading and not manufacture. The relevant part of Show Cause Notice dated 16.3.2012 is as under:

“M/s Schwing Stetter India Pvt. Ltd. Unit-1, F71, SIPCOT Industrial Park, Irungattukottai, Sriperumbudur, Chennai-602105, (hereinafter referred to as the taxpayer) are holders of Central Excise Registration Certificate No AAC5069DXM001 and are engaged in the manufacture of Concrete mixer, Pumps and Concrete plant falling under sub tariff item No. 84743110 and 84138190 respectively of the First Schedule to the Central Excise Tariff Act, 1985. They are also availing CENVAT credit on inputs, capital goods and input services under the CENVAT Credit Rules, 2004

2 As the Trading activity has become an exempted service from 1.04.2011 as per Explanation to Rule 2 of CCR, 2004 inserted by the Notification No.3/2011 CE(NT) dated 13.2.2011, the taxpayer filed the option to follow the Rule 6(3A) of Cenvat Credit Rules, 2004 as amended for computing the reversal of cenvat credit utilized for taxable and exempted services from 1.4.2011 on 24.05.2011 for sale of spares (trading activity).”

5. As per Explanation I (c) under Rule 6 of CCR, 2004, value for the purpose of sub-rules (3) and (3A) in the case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten percent of the cost of goods sold, whichever is more. Hence, as per the details obtained from the taxpayer, it appears that the value to be adopted for

the purposes of Service Tax is Rs.8,16,93,379/-. Accordingly, it appears that an amount of Rs. 40,84,669/- the amount equal to 5% of the value of exempted services rendered [detailed below) is hable to be recovered along with interest in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Sections 73 and 75 respectively of the Finance Act, 1994.

Branch (1)	Value for the purpose of Rule 6 (3) of CCR 2004 Rs. (2)	Amount to be paid as per Rule 6 (3) of CCR 2004 viz 5% of Col (2) Rs. (3)
Ahmedabad	8989417	449471
Bangalore	4064719	203236
Chennai	24627267	1231363
Cochin	2187395	109370
Delhi	12747259	637363
Hyderabad	4854255	242713
Kolkatta	12824997	641250
Mumbai	7616142	380807
Pune	3781929	189096
Grand Total	81693379	4084669

22. From the foregoing, we find that the department has failed to establish the allegations raised in the Show Cause Notice that the appellant has to discharge excise duty on the spares sold by the appellant. The issue on merits is answered in favor of appellant and against the department.

23. The learned counsel has put forward arguments on the ground of limitation also. The entire issue is interpretational in nature. Further the appellant has filed ER – 1 returns clearly stating the description of goods manufactured by them. There is no positive act of suppression established against the appellant indicating intent to evade payment of excise duty. We find that

there are no grounds for invocation of extended period. The issue on limitation is answered in favor of the appellant.

24. In the result, we find that the demand of duty interest and penalties imposed cannot sustain. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.

(Pronounced in court on 11.12.2023)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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