CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 41124 of 2015

(Arising out of Order-in-Original No. 12/2014(C.Ex.-Commr.) dated 26.12.2014 passed by Commissioner of Central Excise, No. 1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Pallipalayam Spinners Private Ltd. **...Appellant**
Nilavarapatti Vilage,
Trich Main Road,
Salem – 636 201.

Versus

Commissioner of GST and Central Excise **...Respondent**
Salem Commissionerate,
No. 1, Foulks Compound,
Anai Road,
Salem – 636 001.

APPEARANCE:

For the Appellant : Mr. M.N. Bharathi, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 41119 / 2025

DATE OF HEARING : 09.04.2025
DATE OF DECISION : 07.10.2025

Per Mr. VASA SESHAGIRI RAO

This Central Excise Appeal No. E/41124/2015 has been filed by M/s. Pallipalayam Spinners Private Limited (hereinafter referred to as 'Appellant') assailing the Order-in-Original No. 12/2014 dated 26.12.2014 passed by Commissioner of Central and Service Tax, Salem.

2. Briefly stated the facts are: -

i. That Appellants are manufacturers of various counts of Yarn of Viscose, Polyester, Viscose/ Polyester, Poly/Cotton, Viscose Flax, etc., falling under Chapter 55.

ii. The Show Cause Notice bearing Sl.No. 17/2014 (C.Ex.) (Commr.) was issued to them alleging contravention of the provisions of Rules 4, 6, 8, 10 and 12 of the Central Excise Rules 2002, Rule 5 of the Central Excise (Removal of Goods at Concessional Rate of duty for manufacture of Excisable Goods) Rules, 2001 and also provisions of Notification No. 29/2004-CE dt. 9.7.2004, 30/2004-CE, dt. 9.7.2004 & 43/2001- CE(NT) dt. 26.6.2001 (Annexure Procedure).

iii. M/s. PSPL are availing CENVAT credit on a portion of the Viscose Staple Fibre and clear Man Made Fibre yarn on payment of duty as per Notification No. 29/2004-CE dt. 09.07.2004 as amended, to (1) local market, (2) for Export under claim for Rebate and (3) clear yarn without payment of duty for Export under Bond. For the remaining portion of the raw materials, they do not avail CENVAT credit, but clear the yarn without payment of duty by availing exemption under Notification No.30/2004-CE dt. 1.3.2004 as amended.

iv. Since January 2011, they had procured VSF fibre under Annexure without payment of duty (Notification No.43/2001-CE (NT) dt.26-06- 2001) and exported the yarn.

v. In their Form IV Register they are maintaining separate stock account for each fibre under three categories, *viz*.

   a) "LOCAL": with reference to home clearance without payment of duty under Notifn.No.30/2004-CE, dated 9.7.2004.

   b) "EXPORT": with reference to Exports under Bond without payment of duty & Exports under Rebate claim and home clearance on payment of duty and

   c) "ANNEXURE": with reference to purchase of Viscose Staple Fibre without payment of duty under Annexure procedure for export clearance.

vi. During the course of audit of M/s. PSPL, the Internal Audit Group, Hqrs. Office, Salem, scrutinized the above Form IV Registers along with the Sales invoices and other records of the assessee for the period from April 2010 to August 2011, which revealed the following facts -

   a) As per Form IV "Local Account", 9,29,344.870 Kgs. of VSF fibre have been issued for the manufacture of yarn intended to be cleared without payment of duty. However as seen from the sales invoices, 29,51,495.500 kgs of yarn and waste containing 14,30,586 kgs of VSF fibre have been cleared locally without payment of duty. Taking into account the Opening Balance of yarn stock, the excess VSF fibre content works out to 4,78,637.126 Kgs.

b) As per Form- IV-"Export Account", 30,24,658.030 Kgs of VSF fibre have been issued for the manufacture of yarn intended to be cleared for Export under Bond, Export under claim for Rebate and home clearance on payment of duty. However, as seen from the Sales invoices, content of VSF fibre was 26,83,785.022 Kgs. Taking into account the Opening Balance of yarn stock, shortage of VSF fibre content works out to 4,18,368.988 kgs.

3. Consequent to the Audit, the Show Cause Notice No. 17/2014 (CEX) (COMMR) dated 17.04.2014 was issued by the Commissioner of Central Excise, Salem alleging: -

i. That the appellant have diverted duty paid VSF fibre and used it in the manufacture and clearance of yarn containing VSF fibre without payment of duty as discussed above with an intention to evade payment of duty. As such, they are also liable for penal action under Rule 25 of Central Excise Rules, 2002 read with

Section 11AC of the Central Excise Act, 1944, *ibid* for contravention of Rule 4, 6, 8, 10 and 12 of the Central Excise Rules, 2002 and Rule 5 of the Central Excise (Removal of Goods at Concessional Rate of duty for manufacture of Excisable Goods) Rules, 2001.

ii. That as to why the extended period under erstwhile proviso to Section 11A should not be invoked for demanding duty beyond the normal period a duty of Rs. 1,06,18,580/- as detailed above as quantified in as detailed in the notice should not be demanded from them under erstwhile Section 11A(1), Section 11A(4), of the Central Excise Act 1944 read with the relevant rules of the Central Excise Rules.

iii. That appropriate interest should not be demanded under Section 11AA of the Central Excise Act and,

iv. That penalty under Rule 25 of Central Excise Rules and Section 11AC of the Central Excise Act should not be imposed for contravention of the various rules indicated earlier.

4. The Appellant *vide* their reply dated 15.12.2014 refuted the above allegations on the following grounds: -

i. That the shortage arrived by the Department at 4,78,637.126 Kgs (4,18,368.988 Kgs + 60,268.138 Kgs) is an assumed figure and department had failed to consider work in process stock while arriving at the final stock.

ii. That Department failed to consider usable waste stock in process which was issued for production purposes.

iii. That Department while issuing the notice in Para 4(ii) had mentioned that presumably a quantity of 60268.13 kgs has been diverted for local sale without payment of duty. The Department cannot issue notice based on assumptions and presumptions. In support of their contention, reliance was placed on the following judgments: -

    a) *VST Industries vs. Commissioner of C. Ex Hyderabad [2001 (138) ELT 549 Tri CESTAT Chennai]*

    b) *Punjab Fibres Limited vs. Commissioner of Central Excise [2002 (141) ELT 819 (CESTAT Delhi)]*

iv. That the Appellant admitted the usage of usable waste of 4,55,653.80 kgs for the manufacture of exempted goods and informed that they remitted the applicable excise duty of Rs.6,75,825 towards the same.

v. That the Department's presumption of diversion of 60263.13 kgs is not correct.

vi. That demand was hit by time bar and extended period cannot be invoked in the present situation.

vii. That the unit was financially sick and is unable to perform functions further.

5. The Commissioner of Central Excise and Service Tax after perusing the records, confirmed the demand *inter-alia* on the following grounds: -

i. That the fact of in-process stock related information was not provided during the time of reply nor at the time of personal hearing. Even assuming that in-process stock is considered, the shortage of fibre still comes to 4,04,931 kgs. However, no corroborative evidence has been shown to substantiate the same.

ii. Regarding utilization of usable waste, the details given are not authenticated by a responsible person and no evidence has been produced to substantiate the generation of usable waste. Further, for the subsequent period there is no difference in the stock register which goes on to prove that useable waste theory provided by Appellant is not evidence worthy.

iii. That the audit Department had clearly pulled out the details with respect to shortfall on quantity basis after thorough scrutiny of records and the contention that audit has worked out the duty liability based on assumptions and presumption is devoid of any merit.

iv. That but for the audit, this diversion would not have surfaced, and hence extended period of limitation is correctly invoked.

v. Since the Appellant have deliberately diverted the goods in contravention of the provisions of the Act, Rules and Notifications made thereunder, they are liable to pay penalty both under Section 11AC of Central Excise Act, 1944 and Rule 25 of Central Excise Rules, 2002.

6. Aggrieved by the aforesaid impugned order dated 26.12.2014, the Appellant has filed this appeal before this Tribunal.

7. The Ld. Advocate Mr. M.N. Bharati have argued for the Appellant and submitted as follows: -

i. That demand is based on presumptions and assumptions.
ii. That Appellant explained to audit officials about usage of usable waste which will be mixed with original fibre for manufacture of domestic yarn as requirement of less quality yarn in the domestic market is much higher and usage of usable fibre will be cost effective,
iii. That the wastage of 455,653.80 kgs of VSF is an inherent and unavoidable outcome of the yarn manufacturing process which is subsequently used for production of domestic yarns. Such utilization is an acceptable industry practice.

iv. That shortage of 4,78,637.126 kgs mentioned in show cause notice is based on assumption and does not account for opening stock, work in process stock and usable wastage.

v. That the entire demand is barred by limitation as there was no suppression of facts, willful misstatement or intent to evade duty. In support of this, reliance was placed on the following judicial precedents:

a) *Cosmic Dye Chemical vs Collector of Central Excise [1995 (75) ELT 721 (SC)]*

b) *Orissa Bridge & Construction Corp Ltd vs CCE Bhubaneshwar [2011 (264) ELT 14 (SC)]*

c) *Xomox Sanmar Ltd vs the Commissioner of GST & Central Excise, Trichy [2025 (1) TMI 1318-CESTAT Chennai]*

d) *RR Polymers vs the Commissioner of GST & Central Excise, Madurai [2025 (1) TMI 1375-CESTAT Chennai]*

e) *M/s. P& C Constructions (P) Ltd vs Commissioner of GST and Central Excise, Salem [2025 (1) TMI 1321 CESTAT Chennai]*

f) *Galaxy Indo-Fab limited vs Commissioner of C.Ex Allahabad [2004 (176) ELT 218 (Tri- Del)]*

g) *Tony Electonics Limited vs Commissioner of Central Excise [2004 (176) ELT 398 (Tri-Del)]*

h) *Commissioner of Central Goods and service Tax, Customs and Central Excise Alwar vs M/s. Kesri Steels limited [2024 (6) TMI 492 CESTAT New Delhi]*

8. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram for the Department re-iterated the findings in the impugned order and prayed that the Appeal be dismissed.

9. Heard both sides and considered the rival submissions including the evidence available on appeal records and the case laws relied upon.

10. The issues that arises for consideration are: -

i. Whether the invocation of extended period is sustainable when the audit of the appellants unit took place in September 2011 and Show cause has been issued on 17.04.2014.

ii. Whether stock on which credit has been taken and which are meant for purpose of export have been diverted to domestic market under Notification No.30/2004 dt.09.07.2004.

11. On the issue of invoking extended period, it is not disputed that the shortage was quantified on the basis of stock challenge and based on the stock registers maintained by the Appellant during the Audit. We have to observe that duty demand was quantified on the basis of alleged shortages and investigation has not unearthed evidence of clearance of the dutiable goods. Further, it is a settled proposition of law that when facts are culled out from the assessee's own statutory records and returns, which were

duly maintained and produced before the Department, there can be no allegation of suppression or intent to evade duty.

12. Here, the entire basis of the demand emanates from the records and returns filed by the Appellant. It is not the Department's case that the Appellant failed to file returns. In the present case, the Appellant has regularly filed its returns with the department. The fact that the Department could not detect the alleged short payment until audit only reflects an omission on the part of the Department in timely scrutinizing returns and not suppression by the assessee.

13. In this regard, we find that the Appellant on 07.11.2011, itself, has replied to an Audit Observation establishing that these facts were within the knowledge of the Department. Whereas the show cause notice in the present case has been issued only on 17.04.2014, beyond the normal period of limitation. Therefore, when these facts were clearly within the knowledge of the Department there cannot be any scope for the department to plead that the assessee is guilty of wilful misstatement or suppression of facts with an intent to evade payment of duty.

14. In this connection, it would be appropriate to refer to the decision of the Principal Bench of this Tribunal in the case of *Maruti Udyog Ltd. v. CCE* reported in *2002 (147) ELT 881 (Tri-Del),* wherein the Tribunal followed the decision of the Hon'ble Supreme Court in the case of *ITO v. Lakhmani Mewal Das* reported in *1996 (103) ITR 437*, wherein it was held as under: -

> *"The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the Income-tax officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income-tax Officer with regard to the inference which he should draw from the primary facts."*

15. The scrutiny of returns is not an empty formality; it is a statutory duty of the proper officer to verify returns and seek clarifications if necessary. Having failed to discharge this responsibility, the Department cannot now turn around and allege suppression to invoke extended period.

16. We have consistently expressed such a view in *Final Order No.41524/2024 dated 28-11-2024 in the case of M/s. Xomox Sanmar Ltd, Unit II v. Commissioner of CGST & Central Excise, Trichy, Final Order No.40567/2025 dated 30.05.2025* in the case of *M/s. Nobel King Purchase Solutions Pvt Ltd v Commissioner of GST and Central Excise,*

Chennai and in *Final Order No.40664/2025 dated 26-06-2025 in the case of M/s. Exide Industries Ltd v Commissioner of GST and Central Excise, Salem*. We also note that in the decision reported in *Uniworth Textiles v CCE, Nagpur, 2013 (288) ELT 161 (SC),* relied upon by the appellant, while considering the ingredients required to invoke the extended period of limitation, the Supreme Court observed that it is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. We also note that a similar view has also been taken by this Tribunal in the case of *Aarya Construction Vs. Commissioner of GST and Central Excise [Appeal No. 40999/2019 dated 09.07.2025]*

17. Accordingly, in the present case, the allegation of suppression with intent to evade duty is wholly unsustainable. Since the demand is founded exclusively on audit verification of disclosed records, invocation of the extended period under Section 11A(4) is barred in law.

18. In continuation to the above, where the Returns have been regularly filed, extended period of limitation is not invokable as per the ratio of the Hon'ble Allahabad High Court in the case *of CCE, Noida v. Accurate Chemicals*

Industries [2014 (310) ELT 441 (All.)], wherein it has been held as under:

> *"6. Having considered the judgment of the Tribunal, we see no reason to interfere with the finding of fact that if a scrutiny had been made by the Range Officer of the ER-1 returns, that would have revealed that the assessee had cleared its MS tanks and radiators to the owning company for the manufacture of transformers. This indicated that there was no fraud, collusion, misstatement or suppression of facts. Besides, since the situation was revenue neutral, no intent to evade the payment of duty could be ascribed to the assessee. Once, there was no intent to evade the payment of duty, the Tribunal was justified in coming to the conclusion that the extended period of limitation under the proviso to Section 11A(1) of the Act, would not be attracted. Hence, no substantial question of law arises in the appeal. It is, accordingly, dismissed."*

19. Additionally, the law on invocation of extended period of limitation for the purpose of recovery of tax dues is settled. The Hon'ble Supreme Court in the case of *Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay [1995 (78) E.L.T. 401 (SC)*], held as under: -

> *"2. ……The Department invoked extended period of limitation of five years as according to it the duty was short levied due to suppression of the fact that if the turnover was clubbed then it exceeded Rupees Five lakhs.*
> *…..*
> *…..*
> *4. A perusal of the proviso indicates that it has been used in words company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

20. In view of the above, the alleged suppression of facts should be deliberate. The above ratio had subsequently come to be followed by the Hon'ble Supreme Court in the case of *Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut [(2005) 7 SCC 749)],* wherein it was held as under: -

> *"27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceuticals Co. v. CCE we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts."*

21. Furthermore, there are other catena of judgments wherein various High Courts as well as this Tribunal has consistently held that when the assessee is registered and filing returns regularly, the range officer has a duty to scrutinize returns, detect irregularity, and to raise pertinent queries in this regard and that in light of any negligence or failure to do so, the allegation of suppression by the assessee cannot be sustained.

22. In view of the above facts, since audit was conducted in August, 2011 and the Appellant has replied to the same on 07.11.2011, itself, it is clear the facts of the same were within the knowledge of the Department. This being the case, there is no reason as to why the show cause notice issued for the period from April, 2010 to August, 2011 was issued only in the year 2014 (17.04.2014) i.e., beyond the normal period of limitation, thereby the Show Cause Notice issued is barred by limitation.

23. In this context, we find that the Hon'ble Allahabad High Court in the case of *CCE v. Monsanto Manufacturer Pvt. Ltd. 2014 (35) STR 177 (All.)* had held as follows: -

> *"Once that be the position and the Tribunal having came to the conclusion that the extended period of limitation could not have been validly applied, the Tribunal, in our view, acted outside its jurisdiction in entering upon the merits of the dispute on whether the demand for duty should be confirmed. Once it is held that the demand is time barred, there would be no occasion for the Tribunal to enquire into the merits of the issues raised by the Revenue."*

24. Following the above decision this Tribunal in the case of *M/s. AAM India Manufacturing Corporation Pvt. Ltd. V. Commissioner of GST & Central Excise* reported in *2025 (8) TMI 1655 CESTAT CHENNAI,* held that the demand was wholly barred by limitation and accordingly, we had refrained from delving into the merits of the issue in detail. Following

the same principle in the instant case, we hold that the demand is barred by limitation and therefore refrain from going into the merits of the matter. Accordingly, the entire demand, interest and penalty is set aside.

25. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 07.10.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK