

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

REGIONAL BENCH - COURT No. III

Excise Appeal No. 42349 of 2017

(Arising out of Order-in-Appeal No.55/2017 (CTA-II) dated 30.06.2017 passed by Commissioner of Central Tax (Appeals-II), CGST & Central Excise, Newry Towers, 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040)

M/s.Modine Thermal Systems Pvt. Ltd. Appellant

K-7, SIPCOT Industrial Park,
Mambakkam Village, Sunguvarchatram,
Kancheepuram District
Pincode : 602 106.

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 S. Viswanathan, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative
for the Respondent

CORAM :

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER No.41497/2025

DATE OF HEARING : 16.09.2025

DATE OF DECISION : 18.12.2025

Per: Shri P. Dinesha

This Appeal is filed by tax payer against the Order-in-Appeal No.55/2017 (CTA-II) dated 30.06.2017 passed by Commissioner (Appeals-II), Chennai, the brief and relevant facts as could be gathered from the impugned order as well as the Order-in-Original are that the Appellant is engaged in the manufacture of Charge Air Cooler Radiator Assembly & Cooling Module and is availing cenvat credit on inputs and capital goods. It appears that during the verification of records by the officers of Internal Audit and officers of Preventive Group, Chennai-IV Commissionerate, it revealed that Appellant was procuring tools and fixtures from various suppliers on behalf of their customers and using the same for making the desired goods for their customers; they would raise invoices to the customer without paying Excise Duty and as the said tools were not cleared to their customers and not included the value of such tools in the transaction value, it was assumed that the Appellant has contravened the provisions of Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2. It appears that upon being pointed out as to the above deficiency by the Audit, the Appellant immediately paid the differential duty in their cenvat account which is also shown in the E.R1 return and balance duty amount was paid in their cenvat credit account which is duly reflected in the E.R1 return in the month of July 2013 along with interest vide challan dt. 03.12.2013. It appears that the Revenue having noticed while stock-taking a difference in recorded stock *vis-à-vis* the physical stock during the years 2009-10, 2010-11 and 2011-12 for which the allegation was that the Appellant had not reversed the cenvat credit availed on the inputs which were not held in their physical stock as per the books, a Show Cause Notice dt. 03.09.2015 was issued proposing *inter alia*, to demand Central Excise duty and interest apart from appropriation of the amounts paid in their cenvat credit account vide debits towards duty liability. It was also proposed to levy penalty under Section 11AC of the Central Excise Act, 1944.

3. It appears that Appellant filed its reply by claiming that the deficiencies pointed out have been made good immediately along with interest and therefore, the Appellant had acted in good faith towards discharge of duties without even questioning the correctness or otherwise of the same.

The Appellant also claimed that the SCN having been issued by invoking the extended period of limitation is bad and unsustainable since the period of dispute is from 2009-10 to 2011-12 for which the SCN had been issued on 03.09.2015 which is beyond the prescribed period under Section 11A *ibid*. The Original Authority having considered the explanation however, *vide* Order-in-Original No.44/2016 dated 30.09.2016 confirmed the proposals made in the SCN, appropriated the amounts as proposed and also levied a penalty of Rs.3,99,493/- under Section 11AC *ibid* and Rs.2,69,130/- under Section 11AC *ibid* read with Rule 15 (2) of the CCR 2004. Aggrieved by the same, it appears that Appellant preferred an Appeal before the Commissioner (Appeals-II), Chennai who also having rejected their Appeal, the present Appeal has been filed before us.

4. Heard Shri S. Viswanathan, Ld. Advocate for the Appellant and Shri N. Satyanarayana, Ld. Assistant Commissioner for the Respondent.

5. We have heard the rival contentions and perused the documents placed on record; after hearing both the sides, the only issue that arises for our consideration is, "whether the penalties levied on the Appellant are

sustainable in law ?". The facts are not disputed, upon being pointed out, the Appellant did pay in cash or made cenvat credit debits along with interest also and the very fact that the payment thus made stood appropriated in the Order-in-Original itself shows that Appellant made payment at the conclusion of adjudication proceedings itself. The only amount that remained unpaid was penalties as levied vide the Order-in-Original (*supra*). Moreover, it is also not in dispute that the so-called deficiencies though not challenged by the Appellant, were picked up from the Appellant's records and hence, there was nothing to suggest 'suppression' with an intent to evade duty. In fact, the Hon'ble Supreme Court in the cases of **Pushpam Pharmacuetical Company Vs CCE Bombay** - 1995 (78) ELT 401 (SC), **Anand Nishikawa Company Ltd. Vs CCE Meerut** - 2005 (188) ELT 149 (SC); **Uniworth Textile Ltd. Vs CCE Raipur** - 2013 (288) ELT 161 (SC) and **Contintnetal Foundation Joint Venture Holding Vs CCE Chandigarh** - 2007 (216) ELT 177 (SC) has time and again reiterated that *".....the expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and, therefore, has to be construed strictly. Mere omission to give correct*

information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty.When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct".

6. The above view was also followed by the Hon'ble Delhi High Court in the case of **Bharat Hotels Ltd. Vs CCE (Adjudication)** - 2018 (12) G.S.T.L. 368 (Del.). What transpires from the aforesaid decisions is that mere suppression of facts is not enough and there must be a deliberate and willful attempt on the part of the Assessee to evade payment of duty. Thus, mere non-disclosure would not *ipso facto* mean that there was an intent to evade payment of duty. Moreover, when an Audit is conducted the officers of the Audit Team scrutinize the records and, therefore, notice should be issued within the stipulated time from the date the Audit was conducted. Even otherwise, merely because facts came to light only during the Audit

does not prove that there is an intent on the part of the Assessee to evade payment of duty.

7. The above discussions viewed in the context of the factual matrices of the present case would only point out that the Revenue has not been able to make out a case for invoking the larger period of limitation, it is a different matter that the Appellant has not challenged the duty liability itself and hence, suffice it to say that mere admission or remittance of duty would not invite the levy of penalty automatically. In view of the above, we are of the view that the penalties are imposed on the Appellant in a mechanical manner and hence, cannot sustain.

8. In the result, the impugned order is set aside and the Appeal stands allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 18.12.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)