CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41063 of 2018

(Arising out of Order-in-Appeal No.464/2017 (CXA-II) dated 29.12.2017 passed by Commissioner of Central Tax (Appeals-I), GST & Central Excise, Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna nagar, Chennai 600 040.

M. Kirupakaran, **Proprietor** **.... Appellant**
M/s.Jay Kay International,
F-41, SIPCOT Industrial Complex,
Gummidipoondi, Tiruvallur District,
Chennai 600 201.

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.

WITH

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APPEARANCE :

Shri N. Viswanathan, Advocate for the Appellant
Smt. G. Krupa, Authorized Representative for the Respondent

CORAM :

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

FINAL ORDER Nos.40655-40656/2026

DATE OF HEARING : 19.02.2026
DATE OF DECISION : 29.05.2026

Per: Shri P. Dinesha

This Appeal is filed against the impugned Order-in-Appeal No. 464/2017 (CXA-II) dated 29.12.2017 whereby the First Appellate Authority has rejected the Appeal of the Appellant and thus upheld the levy of penalties. A perusal at the SCN No.27/2016 dated 26.04.2016 *inter alia* reveals that the Appellant who was a manufacturer of pickles had cleared the same without payment of Central Excise Duty and without obtaining Registration under the Central Excise, which prompted the officers of Headquarters Preventive Unit of Chennai-II Commissionerate to visit the premises on 12.02.2013. It appears that during the visit the officers collected/seized documents and records of the Appellant and as a follow-up action, statement of Proprietor of the Appellant firm was recorded on 27.02.2013 and a further statement was also recorded on 24.06.2013.

2. *Per* para 6 of the SCN, it is the case of the Revenue that the turnover of the Appellant had crossed the threshold for a SSI unit since its sales turnover had crossed Rs.4,00,00,000/- and, hence, the Appellant was not eligible for SSI exemption limit of Rs.1,50,00,000/-. Further, it is also alleged in the SCN that the Appellant had contravened various provisions of Central Excise Rules, 2002; with an intention to evade payment of duty as they had cleared the excisable goods without payment of duty and without taking Central Exercise Registration as required and thus suppressed the facts from the Department. Based on the above, extended period of limitation under Section 11A (4) of Central Excise Act, 1944 was invoked. Further, the SCN also proposed to appropriate the amount paid towards the

proposed duty liability and interest there on, with a further proposal to charge interest under Section 11 AA *ibid* and levy penalty under Section 11 AC (c) *ibid*.

3. It appears that the Assessee filed its reply to the above SCN which was considered in adjudication and *vide* Order-in-Original No.11.2017 dated 15.02.2017 the Original Authority however, confirmed the demand, interest and penalty as proposed, apart from appropriating the duty amount deposited much prior to the SCN. Seriously aggrieved by the above demands, it appears that the Appellant preferred an Appeal before the First Appellate Authority and the First Appellate Authority also having confirmed/upheld the demands confirmed in the Order-in-Original, thereby rejecting their Appeal *vide* impugned Order-in-Appeal No. 464/2017 (CXA-II) dated 29.12.2017 the present Appeal has been filed before this forum.

4. When the Appeal was taken up for hearing, Shri N. Vishwanathan, learned Advocate appearing for the Appellant contended at the threshold that the cause of action if at all, had arisen when the officers of Headquarters, Preventive Unit visited the Appellant's premises on 12.02.2013 during which time the officers pressurized the

Appellant to pay the duty by obtaining appropriate Registration under Central Excise Act, 1944, the SCN which having been issued only in 2016, i.e. after more than three years from the above cause of action, the invocation of extended period of limitation is, therefore, unjustified. He would also argue on merits and request for setting aside the impugned Order-in-Appeal.

5. *Per contra*, Smt. G. Krupa, ld. Departmental Representative defended the impugned order and requested for dismissal of the Appeal.

6. We find from the impugned order that the same is very cryptic and a non-speaking order, though there is no proposal in the SCN to levy penalty under Rule 26 of the Central Excise Rules, yet the Commissioner (Appeals), who is a *quasi-judicial* Authority, has blindly confirmed the said penalty without bothering to give justifiable reasons. This apart, there is also nothing brought out on record in the impugned order by the said *quasi-judicial* Authority to the effect as to for what reasons the Revenue was justified invoking the extended period of limitation, though it is a matter of record that soon after the visit by the officers, the Appellant got itself registered and soon thereafter also

remitted the differential duty as indicated by the said officers, and these events are clearly much before, at least three years before SCN that came to be issued. Apart from these, the only proposal in the SCN is the demand and the appropriation towards the said demand the amount that was already paid by the Appellant along with interest. Hence, to our mind, the only proposal that stands out is the levy of penalty and it is the settled position of as held by various higher judicial fora that when the duty along with interest is paid much before SCN, no interest/penalty could be lived. In view of the above discussions, we are of the clear view that the revenue has seriously erred in passing the Order-in-Original, which came to be upheld.

7. We also find merit in the contentions of the ld. Advocate that the extended period of limitation is invoked without any justification. A perusal of SCN clearly reveals that the officers of Headquarters Preventive Unit visited the Appellant's premises on 12.02.2013 itself. Para 1.11 of the Order-in-Original records the dates of deposit of amounts as 07.03.2013 & 13.05.2013, which were appropriated in the Order-in-Original. It is clear from the above that the Department was very much aware, if not from their date of

visit but at least from the date of deposit i.e. 07.03.2013 but, however, the SCN came to be issued only on 26.04.2016 which is clearly beyond the period of limitation. Moreover, the only reason attributed in the Order-in-Original for invoking the extended period of limitation under Section 11A (4) *ibid* is that the Appellant had cleared the excisable goods without payment of duty, without taking Central Excise Registration and had suppressed the facts with an intention to evade payment of duty. We fail to understand the logic behind this allegation since the period of dispute is 01.04.2011 to 31.03.2013, the Appellant undisputedly enjoyed the benefit extended by virtue being a SSI unit. Further, at para-4.8, the Adjudicating Authority has recorded as under :

> *"I find that though the assessee has claimed the classification under heading 2001 9000 as erroneous, he has classified the pickles in his periodical returns only under that heading and is accordingly paying central excise duty which appears a tacit admission of the tariff heading being correct. ……..'*

It is clear from the above that the Appellant was indeed paying Central Excise Duty and hence, the suppression with intent to evade duty cannot be alleged. Hence, we are satisfied that the Revenue has not been able to clearly defend the invocation of extended period of limitation, as in this case, the SCN has been issued after a period of 3 years. In view of the above, we are of the view that the Appellant should succeed on limitation itself. Therefore, we set aside the impugned order and allow the Appeal as indicated above.

8. We also find that despite no proposal in the SCN to levy penalty under Rule 26, the same has been upheld, mechanically. The impugned order, therefore cannot sustain, for which reason we set aside the same forthwith and allow the Appeal with consequential benefits, if any, as per Law.

(Order pronounced in open court on 29.05.2026)

sd/- sd/-

(VASA SESHAGIRI RAO) **(P. DINESHA)**
Member (Technical) Member (Judicial)

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