CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 53504 OF 2018

[Arising out of the Order-in-Appeal No. DDN/CE/000/APPL-DDN/HDR/141/2017-18 dated 06/06/2018 passed by Commissioner (Appeals – I), Customs, Central Excise & Service Tax, Dehradun.]

M/s Shape Engineering Co. (P) Ltd. **……Appellant**
C-21, Bahadrabad Industrial Area,
Haridwar.

Versus

Commissioner (Appeals – I), **….Respondent**
Customs, Central Excise & Service Tax,
E-157-158, Nehru Colony,
Haridwar Road, Dehradun.

APPEARANCE:

None for the appellant.
Shri Rakesh Agarwal, Authorized Representative for the Department

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50284/2025

DATE OF HEARING : 27.11.2024
DATE OF DECISION: 07.02.2025

P.V. SUBBA RAO

None appeared on behalf of the appellant and it is seen that nobody has been appearing on the last several dates when the matter was listed. We have heard Shri Rakesh Agarwal, learned authorized representative for the department and perused the records.

2. M/s Shape Engineering Co. (P) Ltd.[1] filed this appeal to assail the Order-in-Appeal dated 06.06.2018[2] passed by the Commissioner (Appeals), Dehradun whereby he allowed the appeal filed by the department and set aside the order-in-original dated 31.03.2016 passed by the Assistant Commissioner.

3. The appellant is registered with the central excise department and manufactured and supplied parts of Turbine falling under Central Excise Tariff Item 8503 00 10 as a sub-contractor of the main contractor M/s BHEL. It availed benefit of exemption Notification No. 6/2006-CE dated 01.03.2006 (Sl. No. 91) which was available for supplies to mega power projects against International Competitive Bidding.

4. During the internal audit of the records, the audit team came to the conclusion that the appellant was not entitled to the benefit of the exemption notification and accordingly a show cause notice[3] dated 01.04.2015 was issued by the Assistant Commissioner covering the period June 2010 to October 2010 invoking extended period of limitation. It was proposed in the SCN to deny the benefit of the exemption notification and recover central excise duty amounting to Rs. 4,84,272/- along with interest and also to impose an equal amount as penalty.

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1. appellant
2. impugned order
3. SCN

5. The Assistant Commissioner, relying on this Tribunal's Final order No. A/51682 of 2015 – EX (DB) dated 06.05.2015 in the case of M/s BHEL Ranipur Haridwar in which the exemption was allowed, dropped the proceedings in pursuance to the SCN.

6. On appeal, the Commissioner (Appeals) reversed the decision of the Assistant Commissioner holding that the CESTAT's order was on the issue of reversal of Cenvat credit, whereas in this case the issue related to alleged non-payment of duty on the goods.

7. Before considering the merits of the case, we find it necessary to examine the grounds on which extended period of limitation was invoked. Paragraph 5 of show cause notice reads as follows :-

> "5. On going through the submissions of the party, it appears that the party has not fulfilled the provisions of condition No. 19 for availing exemption from payment of central excise duty attached with Sl. No. 91 of Notification No. 6/2006-CE dated 01.03.2006 and have not paid central excise duty amounting to Rs. 4,84,272/- on clearance of goods worth Rs. 47,01,690/- which the party was required to pay under Rule 4, 6 and 8 of Central Excise Rules, 2002. **Since the said amount of duty amounting to Rs. 4,84,272/- further appears not to be paid by the party by way of willful mis-statement and wrong availment of the said notification by way of mis-representation of facts, (which have come into the knowledge only during the course of audit) therefore the said amount of duty is recoverable from the party along with interest under**

> **section 11A of Central Excise Act, 1944** read with erstwhile section 11AB of Central Excise Act, 1944 respectively. Further from their aforesaid act of willful mis-representation of fact and evasion of duty by way of suppression of facts, it further appears that the party has rendered themselves liable for penal action under section 11AC of Central Excise Act, 1944".

8. The Assistant Commissioner had not examined the question of limitation because he found in favour of the appellant on merits. The Commissioner (Appeals) did not record any findings on the question of limitation.

9. From the SCN, we find that extended period of limitation was invoked only on the ground that the appellant, by way of willful mis-statement and wrong availment of the said notification by way of mis-representation of facts, which came to the knowledge only during the audit, invoked extended period of limitation. It is a well-settled principal that extended period of limitation cannot be invoked unless one of the five elements necessary to invoke it viz., fraud or collusion or willful mis-statement or suppression of facts or violation of Act or Rules with an intent to evade payment of duty is established. In this case there are no details, let alone evidence in the SCN, of either willful mis-statement or mis-representation of facts. Therefore, we find that there was no ground to invoke extended period of limitation. The entire period of demand from June 2010 to October 2010 was beyond the normal period of limitation and was time-barred.

Therefore, it is not necessary for us to examine the merits of the case.

10. In view of the above, the impugned order cannot be sustained and needs to be set aside.

11. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced in open court on 07/02/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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