CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

E-HEARING

EXCISE APPEAL NO. 51679 OF 2019

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-19-18-19 dated 22.02.2019 passed by the Commissioner, CGST and Central Excise, Jaipur]

M/S SHARMA STEEL ROLLING MILLS **......APPELLANT**

127, Jhotwara Industrial Area,
Jaipur

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE-JAIPUR **.....RESPONDENT**

NCR Building, Statue Circle, Jaipur

WITH

EXCISE APPEAL NO. 51692 OF 2019

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-19-18-19 dated 22.02.2019 passed by the Commissioner, CGST and Central Excise, Jaipur]

M/S SHRAVAN KUMAR, PARTNER **......APPELLANT**

M/s Sharma Steel Rolling Mills,
127, Jhotwara Industrial Area,
Jaipur

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE-JAIPUR **.....RESPONDENT**

NCR Building, Statue Circle, Jaipur

Appearance:

Present for the Appellant : Shri Jatin Mahajan, Advocate
Present for the Respondent: Shri V.K. Jain, Authorised Representative

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

FINAL ORDER NO'S. 50378-50379 /2025

Date of Hearing : 27/02/2025
Date of Decision : 07/03/2025

P.V. SUBBA RAO

These two appeals assail the Order dated 22 April 2019[1] passed by Commissioner whereby he decided the proposals made in the Show Cause Notice dated 3.12.2009[2] and confirmed demand of Rs. 80,46,816/- under section 11A (1) of the Central Excise Act, 1944[3] but dropped demand of Rs. 32,38,51,321/-. He also ordered payment of interest on the confirmed demand under section 11AB of the Act and imposed penalty of Rs. 80,46,816/- under section 11AC of the Act on M/s. Sharma Steel Rolling Mills[4] and penalty of Rs. 80,46,816/- under Rule 26 of the Central Excise Rules, 2002[5] on Shri Shravan Kumar[6].

2. There is no appeal from the Revenue on the portion of the demand dropped by the Commissioner in the impugned order.

Submissions of the Appellant

3. Shri Jatin Mahajan, learned counsel for the appellants made the following submissions:

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1 **Impugned order**
2 **SCN**
3 **Act**
4 **Appellant**
5 **Rules**
6 **Shrawan**

(i) M/s Sharma Rolling Mills is a manufacturer of MS ingots/angles/rods/flats falling under chapter 72 of the first schedule to the Central Excise Tariff Act, 1985.

(ii) To manufacture bars, ingots are required, which the appellant purchases from various buyers central Excise invoices on which it takes CENVAT credit.

(iii) The anti evasion wing of the central excise visited the premises of one M/s. Shriram Steel Rolling Mills Private Ltd[7]and recovered some documents and recorded some statements.

(iv) Based on the above records of SSSRM, the department concluded that the appellant had cleared 193 MT of MS ingots SSSRM whereas the appellant showed no clearances to SSSRM.

(v) After investigating further, the department also concluded, based on consumption of electricity, that the appellant had manufactured and cleared more goods than what were recorded.

(vi) Accordingly, the SCN was issued which was adjudicated by the impugned order. The commissioner dropped the major portion of the demand calculated on the

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7 **SSSRM**

basis of the electricity consumption, but confirmed part of the demand on the basis of the records recorded from SSSRM and another firm M/s. Nirmal Inductotherm[8].

(vii) The SCN was issued merely based on the examination of records of third parties - SSSRM and Nirmal and no evidence has been led by the department to establish that the appellant had manufactured and removed the goods. There is no other substantive or corroborative evidence in any form whatsoever, which could lead one to believe that the appellant had manufactured the goods clandestinely.

(viii) The entire case is based on the records and evidence of third-party, and it is a well-settled principle that the demand cannot be raised only on the basis of third-party evidence.

(ix) No cross examination of the person whose statements were recorded was allowed, and therefore they could not have been used as evidence at all.

(x) In the case of **Siva Prasad Mills Private Ltd[9],** wherein an identical case was booked based on the same investigation and searches of Nirmal, this tribunal had

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8 Nirmal
9 2015(329)ELT 250

dismissed the appeal of the department, which was upheld by the High Court.

(xi) The allegation of clandestine removal cannot be proved on the basis of assumptions and presumptions.

(xii) The demand in the SCN was time barred and the impugned order needs to be set aside on this ground alone.

(xiii) There was also an inordinate delay in deciding this SCN. It was issued on 3 December 2009 but was decided on 22 February 2019 after almost 10 years. The impugned order needs to be set aside even on this ground.

Submissions of the Revenue

4. Learned Authorised Representative for the Revenue, supported the impugned order and submitted as follows:

(i) Of the total demand of Rs. 33,18,98,137/-, the Commissioner dropped the demand of Rs. 32,38,57,321, which was exclusively based on the electricity consumption, confirmed the demand of Rs. 80,46,816/-

(ii) The clandestine manufacture and clearance of goods by the appellant was found from the records seized from SSSRM and the facts admitted in the statement of Shri Shravan Kumar Pathak, partner of the appellant.

(iii) Nirmal had supplied the ingots without bills to the appellant which is shown in its records. The appellant had not recorded the purchase of these ingots in its records, and the consequential manufacture of final products and their removal to SSSRM.

(iv) It is impossible for the department to prove with mathematical accuracy clandestine removal of the goods as held by the Supreme Court in **CCE Madras** vs. **VD Bhoormal**[10]**.**

(v) Notices for cross examination were issued to Shri Ghasi Lal Sharma, Director SSSRM, Shri Murari Lal Sharma, General Manager, SSSRM and Shri BB Malik, Director, Nirmal in respect of other cases of other parties of identical nature. Shri Malik and Shri Murari Lal Sharma had not responded while Shri Ghasi Lal Sharma had sent an affidavit to the effect that he had suffered from paralysis and hence was bed ridden. Shri Ghasi Lal Sharma had also filed an affidavit on 1.12.2008 retracting his statement dated 10.9.2005 but it was belated and hence cannot be accepted.

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10 1983(13) ELT 1546

(vi) Under the circumstances, the Commissioner passed the impugned order which was fair and proper and calls for no interference.

5. We have considered the submissions advanced by both sides and perused the records.

6. The SCN was issued on 3.12.2009 and the impugned order was passed after almost ten years on 22.2.2019. Section 11A which empowers the officers to issue a SCN demanding duty also places an obligation on them to decide them within a fixed time. This limitation was introduced in this section from 2011. Section 11A(11) which places this obligation reads as follows now:

> "(11) **The Central Excise Officer shall determine the amount of duty of excise under sub-section (10**) -
> (a) **within six months** from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
> (b) **within two years from the date of notice**, where it is possible to do so, in respect of cases falling under sub-section (4)."

7. This section was slightly modified from time to time but there was always a time limit. This section reads as follows:

> **"From 28.04.15 to 13.05.2015**
> 11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –
> (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
> (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4) or sub-section (5).

> **From 14.05.2015 to 13.05.2016**
> 11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –
> (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
> (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4).
> **From 14.05.2016**
> 11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –
> (a) within six months from the date of notice where itis possible to do so, in respect of cases fallingunder sub-section (1);
> (b) within two years from the date of notice, where itis possible to do so, in respect of cases falling under sub-section (4)."

8. While the limitation was introduced from 2011, even if there is no limitation under the Act, the order has to be passed by the officer within a reasonable time. After the introduction of the statutory limitation, the order has necessarily to be passed within the prescribed time unless it is impossible to do so. The effect of undue delay in issuing an adjudication order was examined at length by this bench in Excise Appeal No. 52178 OF 2022 **M/s Kopertek Metals Pvt. Ltd.** vs. **Commissioner** decided by Final Order No's. 59511-59720/2024 dated 25.11.2024. In that batch of appeals, the orders were passed beyond the time limit prescribed under section 11A(11) of the Central Excise Act, 1944 and the question was whether the delay itself would vitiate the order. After examining several judgments

of High Courts and Supreme Court on this question, it was held as follows:

> "25. It transpires from the aforesaid decisions that:
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> (i) The phrases " as far as possible" and "as far as practicable" are more or less inter-changeable along with the word "feasible";
>
> (ii) **Only when circumstances or insurmountable exigencies make it impracticable or not possible for the adjudication to take place within the stipulated period that the authorities may deviate from the time limit prescribed under the Statute**;
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> (iii) The mandate of the legislature that the show cause notices should be adjudicated within six months or one year, as the case may be, only provides flexibility for extension of the period when it is not practicable or possible to adjudicate it within the said time limit. **The time limit period cannot be extended endlessly without any plausible justification**;
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> (iv) The indifference of the Adjudicating Authority to complete the adjudicating process within the statutory time limit cannot be condoned to the detriment of the assessee or detrimental to the interest of the exchequer;
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> (v) There is a definite purpose and intention of the legislature to prescribe such time limit. The legislature has clearly intended to avoid uncertainly, which otherwise can emerge; and
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> **(vi) Even if no time limit is prescribed for adjudication of a show cause notice, then too the adjudication has to be done within a reasonable period. However, what would be a reasonable period would depend upon the nature of the Statute, rights and liabilities thereunder and other relevant factors."**
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> 42. The aforesaid discussion would lead to the inevitable conclusion **that the impugned order would have to be set aside only for the reason that the adjudication was not completed within the time limit prescribed under sub-section (11) of section 11A of the Central Excise Act."**

> 43. It would, therefore, not be necessary to examine the other two contentions raised by the learned counsel for the appellants.
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> 44. The first issue that has been decided also arises for consideration in all the remaining 209 appeals that have been filed by the assessee for setting aside the impugned order. This would be apparent from the chart annexed as "Annexure A" to this order wherein details of the Excise Appeals, date of show cause notice, and the date of order has been provided.
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> 45. It is evident that in all the 209 cases, the adjudication has taken place beyond the period stipulated in sub-section (11) of section 11A of the Central Excise Act and there is no plausible explanation as to why it was not possible for the Adjudicating Authority to complete the adjudication process within the stipulated time.
> **46. Thus, the impugned orders that have been assailed in all the 210Excise Appeals would have to be set aside and are set aside. The appeals are, accordingly, allowed with consequential relief(s), if any to the appellant."**
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> **(emphasis supplied)"**

9. The SCN was issued in this case on 3.12.2009 and the appellants filed replies on 1.1.2010 and 7.1.2010. Thereafter, the personal hearing was held nine years later on 29.1.2019 and in connection with the personal hearing, the appellant made some additional submissions dated 23.1.2019. The impugned order was passed on 22.2.2019 after the personal hearing. **From these dates, it is evident that the appellants had been prompt and vigilant in replying to the SCN and no reason whatsoever is given in the impugned order for not adjudicating the matter immediately and to have waited for over nine years just to fix the personal hearing.**

10. We are aware that the SCN was issued under section 11A in 2009 before the time limit for deciding the SCNs was introduced in 2011. Even if no limitation is prescribed under the law, then too the adjudicating has to be done within a reasonable period.

11. A question which may also arise is whether the limitation would also apply to cases where the SCN had already been issued. The Statute of Limitation, being a procedural law, would apply to pending cases as well with the rider that if something had already expired under the previous law, the new limitation would not revive it. So long as the issue is alive, the new limitation would apply. The date of cause of action is irrelevant to the limitation. This position was summed up by Justice G P Singh in his Principles of Statutory Interpretation as follows:

> "Thus, the Statutes of Limitation are retrospective in so far as they apply to all Legal proceedings after their operation for enforcing cause of action accrued earlier, but they are prospective in the sense that they neither have the effect of reviving a right of action which is already barred on the date of their coming into operation, nor do they have the effect of extinguishing a right of action subsisting on that date.[11]"

12. Even if the limitation is counted reckoning the date of amendment of section 11A on 8.4.2011, the date of the impugned order 22.2.2019 is clearly time barred and there is no explanation in the order for the inordinate delay. If we consider

11 Principles of Statutory Interpretation, 15th Edition by Justice G P Singh page 421 citing Suprene Court decision in Thirumalai Chemicals Ltd. vs UOI (2011) 6 SCC 739

that there was no limitation at all, even then the delay of almost ten years is passing the order with no reasons whatsoever recorded for the delay cannot be sustained.

13. The impugned order cannot, therefore, be sustained and needs to be set aside on this ground alone regardless of the merits of the case.

14. It is, therefore, not necessary for us to examine the merits of the case. The impugned order is set aside and both appeals are allowed with consequential relief to the appellants.

[Order pronounced on **07.03.2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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