CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

EXCISE APPEAL NO. 50150 OF 2024

(Arising out of Order-in-Appeal No. ind-excus-000-app-189-2023-24 dated 26.10.2023 passed by the Commissioner of Customs, CGST & Central Excise, Indore)

Process Agrochem Industries Pvt. Ltd. ...... **Appellant**
Khasra No. 55/2/2, Halka No. 27
Shiv Nagar, Simrol
Indore - 452 020

VERSUS

Commissioner of CGST & Central Excise ..... **Respondent**
Manik Nagar Palace
Indore

APPEARANCE:

NONE for the appellant
Shri Ratnesh Kumar Mishra, authorised representative of the department

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

FINAL ORDER NO. 50988/2025

DATE OF HEARING/DECISION : July 01, 2025

JUSTICE DILIP GUPTA :

M/s Process Agrochem Industries Pvt. Ltd.[1] has filed this appeal to assail the order dated October 26, 2023 passed by the Commissioner (Appeals). The Commissioner (Appeals) found no infirmity in the order dated September 21, 2022 passed by the Assistant Commissioner confirming the demand of central excise duty

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1 the appellant

under section 11A(4) of the Central Excise Act, 1944[2] and, therefore, rejected the appeal filed by the appellant.

2. A communication dated June 30, 2025 has been sent on behalf of the appellant mentioning therein that the appellant does not wish to attend the hearing before the Tribunal and the appeal may be decided on the basis of the submissions made in the Memorandum of Appeal.

3. Accordingly, the Memorandum of Appeal has been perused and Shri Ratnesh Kumar Mishra, learned authorized representative appearing for the Department, has been heard.

4. The adjudicating authority has confirmed the demand under section 11A(4) of the Central Excise Act.

5. Section 11A(1) of the Central Excise Act deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. Sub-section (1) of section 11A is reproduced below:

> "**11A(1)** Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-
>
> > (a) the Central Excise Officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

2 the Central Excise Act

> (b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-
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> (i) his own ascertainment of such duty; or
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> (ii) the duty ascertained by the Central Excise Officer,
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> the amount of duty along with interest payable thereon under section 11AA.

6. Section 11A(4) of the Central Excise Act deals with circumstances under which the extended period of limitation of five years can be invoked. It is reproduced below:

> "Section 11A(4) Where any duty of excise has not been levied or paid or has been short-levied or shor-paid or erroneously refunded, by the reason of-
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> (a) fraud; or
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> (b) collusion; or
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> (c) any wilful mis-statement; or
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> (d) suppression of facts; or
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> (e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice."

7. It would be seen from a perusal of sub-section (1) of section 11A of the Central Excise Act that where any duty of excise has not been levied or paid, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act or the Rules made thereunder with intent to evade payment of duty, the Central Excise Officer, shall within two years from the relevant date, serve notice on the person chargeable with the duty which has not been paid. However, sub-section (4) of section 11A of the Central

Excise Act provides that where any duty of excise has not been levied by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act with intent to evade payment of duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on the person to show cause why he should not pay the amount specified in the notice.

8. The Commissioner (Appeals), while upholding the order passed by the adjudicating authority on the issue of extended period of limitation, made the following observations :

> "**09.1 As regards time limitation and invoking extended period of limitation by the Adjudicating Authority, the Appellant have submitted that the subject period of audit was 2015-16 to June-17 whereas the Show Cause Notice was issued on 08.09.2020 and there is no specific allegation was made in the said SCN for invoking the extended period, I find that the show cause notice in the matter was issued invoking extended period, which has also been upheld by the Adjudicating Authority as also upheld, infra, and as the demand has been raised on 08.09.2020, i.e., within 5 years, therefore find no substance in the Appellant's contention that the demand raised is hit by time limitation**. I observe that the evasion of duty by the Appellant has surfaced out of the Departmental Audit carried out by the officers of Central Excise department. Had the officers of Audit team not taken up the audit, the evasion of Central Excise duty would have remained unnoticed**. I also find that the Appellant neither before the Original Authority nor in their present appeal have adduced any evidence to refute the allegations of wilfully suppressing the entire facts from the department about the clearance to related party and also not done the correct**

> **valuation with intent to evade payment of Central Excise duty**. Therefore, I find that the Appellant's contention of demand being hit by time limitation holds no ground, as the factor of "suppression of fact with intent to evade payment of tax is present in this case. **Thus, I find that the Adjudicating Authority has rightly held that element of suppressions of facts is involved in the instant case, therefore extended period has been invoked rightly**."
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> **[emphasis supplied]**

9. It is seen from the aforesaid order passed by the Commissioner (Appeals) that the contention of the appellant that there was no specific allegation made in the show cause notice for invoking the extended period of limitation was rejected for the reason that the show cause notice was issued invoking the extended period and the demand was raised within five years. The Commissioner (Appeals) also observed that the appellant had neither produced any evidence before the adjudicating authority or the Commissioner (Appeals) to refute the allegation of wilful suppression of facts from the Department relating to clearance to the related party and incorrect valuation. The findings recorded by the adjudicating authority regarding extended period of limitation have been upheld holding that the adjudicating authority correctly invoked the extended period of limitation.

10. The Commissioner (Appeals) has invoked the extended period of limitation for the reason that the appellant had suppressed the material facts from the Department. This finding of the Commissioner (Appeals) cannot be sustained.

11. The provisions of section 11A of the Central Excise Act, as it then stood, came up for interpretation before the Supreme Court in **Pushpam Pharmaceuticals Company** vs. **Collector of Central**

Excise, Bombay[3]. The Supreme Court observed that the proviso to section 11A empowers the Department to reopen the proceedings if levy has been short levied or not levied within six months from the relevant date but the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of which is suppression of facts. It is in this context that the Supreme Court observed that the act must be deliberate to escape payment of duty. The relevant observations of the Supreme Court are:

> "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.
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> ********
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> 4. A perusal of the proviso indicates that it has been used in company of such strong works 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."
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> **[emphasis supplied]**

12. The Supreme Court in **Continental Foundation Joint Venture** vs. **Commissioner of Central Excise, Chandigarh**[4] also observed in connection with section 11A of the Central Excise Act, that

3 1995 (78) ELT 401 (SC)
4 2007 (216) ELT 177 (SC)

suppression means failure to disclose full information with intention to evade payment of duty and the observations are as follows:-

> **"10. 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 facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. 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 wilful misstatement. The latter implies making of an incorrect statement with knowledge that the statement was not correct."
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> **[emphasis supplied]**

13. It is, therefore, clear that the suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct information was not disclosed deliberately to escape payment of duty. The show cause notice issued to the appellant, however, merely mentions that the appellant wrongly availed the benefit of the Exemption Notification with intent to evade payment of central excise duty. It does not elaborate why the appellant intended to evade payment of duty. The Commissioner also held that since the appellant did not fulfill the condition stipulated in the Exemption Notification, the clearing of products at a reduced rate of duty is intentional. The reply filed by the appellant has not been appreciated by the Commissioner in its correct perspective. Thus, in the absence of any intent of the appellant to evade payment of service,

the extended period of limitation under section 11A(4) of the Central Excise Act could not have been invoked.

14. The contention of the appellant that the show cause notice does not mention why there was willful suppression of facts has also been rejected. This submission was made by the appellant before the Commissioner (Appeals), but it has been rejected holding that the show cause notice was issued invoking the extended period of limitation.

15. The Commissioner (Appeals) was obliged in law to examine whether grounds for invoking the extended period of limitation under section 11A(4) of the central excise act existed or not and the submission of the appellant that there was no mention about the willful suppression of fact could not have been rejected merely because the provisions of section 11A(4) of the Central Excise Act had been invoked. A perusal of the show cause notice does indicate that there is no allegation as to why facts were suppressed with intention to evade payment of duty.

16. It also transpires from the order passed by the Commissioner (Appeals) that since the show cause notice was issued within five years from the relevant date, there is no substance in the submission of the appellant that the demand was barred by time. The normal period for issuing the show cause notice, as noted above, is two years and, therefore, if the notice was issued beyond the period of two years, it was obligatory on the part of the Commissioner (Appeals) to have examined whether the extended period of limitation could have been invoked in the facts and circumstances of the case.

17. Another reason why the Commissioner (Appeals) dismissed the appeal is that the evasion of duty by the appellant surfaced when the audit was carried out by the officers of the central excise department and had the audit not been conducted, this evasion of duty would have remained unnoticed. This contention cannot be accepted. The appellant had been regularly filing the returns and there is no allegation that relevant facts were not disclosed in the returns.

18. The inevitable conclusion that follows from the aforesaid discussion is that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act could not have been invoked in the facts and circumstances of the case.

19. The impugned order dated October 26, 2023 passed by the Commissioner (Appeals), therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Dictated & pronounced in open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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