CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

[E-HEARING]

EXCISE APPEAL NO. 55685 OF 2023

(Arising out of Order-In-Appeal No. 38(RLM)CE/JPR/2023 dated 02.08.2023 passed by the Commissioner (Appeals) Central Excise And Central Goods And Service Tax, Jaipur)

M/s Umang Boards Ltd. ...... **Appellant**
A-27, RIICO Industrial Area,
Kaladera, District Jaipur

Versus

The Commissioner, ... **Respondent**
Central Goods And Service Tax
Commissionerate,
NCRB, Statue Circle, Jaipur

APPEARANCE:
Shri Arun Goyal, advocate for the appellant
Shri S.K. Ray, authorised representative of the department

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

Date of hearing/decision: November 13, 2025

FINAL ORDER NO. 51776/2025

JUSTICE DILIP GUPTA:

M/s Umang Boards Ltd.[1] has sought the quashing of the order dated 02.08.2023 passed by the Commissioner (Appeals) by which the order passed by the Deputy Commissioner confirming the demand of central excise duty with interest under section 11AA of

1. **the appellant**

the Central Excise Act, 1944[2] and penalty under section 11AC(1)(c) of the Central Excise Act has been upheld and the appeal filed by the appellant has been dismissed.

2. It needs to be noted that the Deputy Commissioner, by the order dated 27.07.2021, confirmed the demand invoking the extended period of limitation contemplated under section 11A(4) of the Central Excise Act. The appellant had taken a specific ground before the Commissioner (Appeals) that the extended period of limitation could not have been invoked but the Commissioner (Appeals) has not discussed this contention of the appellant in the impugned order.

3. The show cause notice dated 30.07.2020 gave the following reasons for invoking the extended period of limitation under section 11A(4) of the Central Excise Act:

> "**7. Whereas, it appears that under the self-assessment (as defined under rule 20(b) of Central Excise Rules, 2002) regime, the said assessee is entrusted by virtue of Central Excise Law and the Rules framed there under, with the responsibility to assess the duty payable after determining himself the correct valuation, classification as well as the determination of eligibility & availment of CENVAT Credit correctly.** Out of the 08 audit paras discussed above, 06 audit paras are related to wrong availment of ineligible CENVAT Credit. **The facts of having taken the CENVAT Credit as discussed hereinabove have never been disclosed to the Department. The above said facts were disclosed from the Balance sheets, Scrutiny of CENVAT Records of the**

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2. the Central Excise Act

said assessee, during the course of audit. If the department had not conducted the audit of the said assessee, the above facts would have remained undetected. Therefore, it appears that in the present cases, the said assessee have availed the CENVAT Credit wrongly by resorting to suppression of the material facts with intent to avail the CENVAT Credit wrongly. Therefore, the impugned CENVAT Credit amounting to (i) Rs. 9,40,150/-, (ii) Rs. 25,818/-, (iii) Rs. 5,840/-, (iv) Rx. 7782/-, (v) Rs. 2,391/- **is liable to be disallowed and recovered from them under Section 11A(4) of the Central Excise Act, 1944** read with Rule 14 of the CENVAT Credit Rules, 2004 by invoking the provisions of extended period of five years.

7.1 Similarly, it appears that the assessee have evaded the Central Excise Duty of Rs. 1,59,060/- on the additional consideration of Rs. 12,72,483/- being sales tax collected from the buyers and retained by them to the extent of sales tax liability not actually paid to the state exchequer by contravening the provisions of Section 4 of the Central Excise Act, 1944 and Rules 6, 8 and 11 of the Central Excise Rules, 2002. **The assessee has not disclosed the above-mentioned facts to the department and appears to have suppressed the same with an intention to evade payment of excise duty on the amount of Sales Tax so retained. Had the auditors not detected the said adjustment being done by the assessee for payment of sales tax, through detailed scrutiny of their records, the same would have remained undetected.** Therefore, extended period of limitation appears to be invokable against the assessee. The assessee appears to have suppressed the transaction value of the goods with intent to evade payment of duty as they have never informed the department about the retention of additional consideration of sales tax

> collected from the buyers and retained by them to the extent of sales tax liability not actually paid to the state exchequer. **The duty short paid/not paid is recoverable from the assessee under Section 11A (4) of the Central Excise Act, 1944** along with interest under Section 11AA of the Act ibid. The assessee also appears to be liable for penal action under section 11 AC of the Central Excise Act, 1944 for contravening the above provisions."
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> **(emphasis supplied)**

4. The appellant filed a reply to the show cause notice and specifically asserted that the extended period of limitation could not have been invoked in the facts and circumstances of the case. The relevant portion of the reply is reproduced below:

> "**3.** The noticee further submit that the entire demand suffers from limitation.
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> Admittedly the Show Cause Notice is issued on the basis of objections raised by Audit during the scrutiny of the records of the noticee. The noticee in this regard submit that they had not concealed anything and as admitted the same was noticed during the examination of the records, hence the extended period of limitation is not available is now a settled law and the demand deserves to be set aside on this ground itself. **The demand has been raised on 30.07.2020 for the period of April, 2016 to June, 2017 which is beyond the normal period of limitation. The noticee further submit that the extended period cannot be invoked in each and every case by holding that since an assessee is working under self-assessment, any mistake on his part would tantamount to 'suppression" and that too with 'intent to evade payment of duty', or covering the issue involved in the impugned case, 'with intent to wrongful availment of CENVAT credit'.** ****

> **Thus, for invoking extended period, responsibility has been cast upon the departmental authorities to prove that any of the above elements exist. No attempt has been made in the instant case in the Show Cause Notice to prove that the noticee was involved in a fraud, or collusion or in willful mis-statement, or suppression of facts or for any contravention of rules with intent to** wrongful availment of CENVAT credit. The noticeee had been filing prescribed returns with required information timely. It had sufficient fund (CENVAT CREDIT, as well as Cash) to take care of its liability of payment of Service Tax/Central Excise duty at the material time period- thus ruling out possibility of intention to avail inadmissible credit to discharge its liability towards Service Tax/Central Excise duty."
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> **(emphasis supplied)**

5. The Deputy Commissioner examined the issue relating to invocation of the extended period of limitation in paragraph 35 of the order and this paragraph is reproduced below:

> "**35.** Further, I also find that the assessee wilfully and deliberately suppressed the facts with intent to evade payment of duty, which came to the notice of the department only during course of audit. The assessee has contravened the provisions of Rule 2,39(1)(bb), 3(7), 4(2) & 2 of CCR, 2004, Section 4, 11A of Central Excise Act, 1944 read with rule 4, 6, 8, and 11 of the Central Excise Rules 2002, Rule 5 of Central Excise valuation Rules (Determination of price of excisable goods) Rules 2000. **The assessee has suppressed the facts from the department. If the department had not audited records of the assessee, the above facts remain unearth. Therefore, I hold that the assessee is liable for penal action under section 11AC of the Central Excise Act, 1944.**"
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> **(emphasis supplied)**

6. As pointed out above, the appellant had raised a specific plea before the Commissioner (Appeals) that the extended period of limitation could not have been invoked. The Commissioner (Appeals) has not adverted to this issue at all.

7. Shri Arun Goyal, learned counsel for the appellant mainly contended that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act could not have been invoked and since the entire demand that has been confirmed is for the extended period, the impugned order deserves to be set aside for this reason alone.

8. Shri S.K. Ray, learned authorized representative appearing for the department, however, supported the impugned order and submitted that there is no error in the finding recorded by the Deputy Commissioner that the extended period of limitation was correctly invoked.

9. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

10. The main issue that arises for consideration is whether the extended period of limitation contemplated under section 11A(4) of the Central Excise Act could have been invoked in the facts and circumstances of the case.

11. To examine this issue, it will be appropriate to examine section 11A of the Central Excise Act. Sub-section (1) of section 11A provides that where any duty of excise has not been levied or paid for any reason other than reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the

provisions of the Central Excise Act, 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, requiring him to show cause why he should not pay the amount specified in the notice.

12. Sub-section (4), however, provides that where any duty of excise has not been levied or paid 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 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 with interest payable under section 11AA of the Central Excise Act. The relevant date has also been defined in the Explanation.

13. The show cause notice mentions that the officers of the Central Excise and Service Tax Audit Commissionerate, Jaipur conducted the audit of central excise for the period from September 2016 to June 2017 and Service Tax audit for the period from April 2016 to June 2017 and raised certain central excise audit paras dated 14.02.2022. It further mentions in paragraphs 7 and 8 that under the self-assessment scheme, the appellant was entrusted with the responsibility to assess the duty payable, after determining himself the correct valuation, classification as well as the determination of eligibility and availment of CENVAT credit, correctly. It further mentions that the appellant did not disclose to the department that the appellant had taken CENVAT credit and this fact came to the

notice of the department during the audit from the balance sheets and scrutiny of CENVAT records of the appellant. It is for this reason that the show cause notice alleges that the appellant appeared to have availed CENVAT credit wrongly by resorting to suppression of material facts with intent to avail CENVAT credit wrongly.

14. The appellant had filed a detailed reply to the show cause notice and pointed out that nothing had been concealed by the appellant from the department and even during the audit, this fact came to the notice of the department only from the records maintained by the appellant. The appellant also pointed out that the extended period of limitation could not have been invoked merely because the assessee was working under the self-assessment scheme. The appellant also pointed out that the appellant had regularly submitted the prescribed returns containing the required information and there was no intention at all to avail inadmissible credit.

15. The Deputy Commissioner has not considered the reply filed by the appellant on the invocation of the extended period of limitation and has confirmed the demand merely stating that the appellant had wilfully and deliberately suppressed facts with intent to evade payment of duty and this fact came to the notice of the department only during audit.

16. The Deputy Commissioner was required to examine the reply submitted by the appellant to the show cause notice before forming an opinion that the appellant had wilfully and deliberately suppressed facts with an intention to evade payment of central excise duty. However, a finding has been recorded without consideration of the

reply filed by the appellant. As noticed above, the audit that was carried out, pointed out certain audit paras on the basis of the records available with the appellant.

17. It has been repeatedly held by this Tribunal that the extended period of limitation cannot be blindly invoked merely because the assessee is working under the self-assessment scheme or when facts come to the notice of the department when an audit is carried out.

18. In **M/s. Vandana Global Ltd.** vs. **Commissioner (Appeals) Central GST, Central Excise & Customs, Raipur**[3] the Division Bench examined at length the aforesaid two issues and the observations are as follows:

> "**10.** We have considered submissions of both sides on the issue of limitation. Revenue's submission that since the appellant is working under self assessment, any deficiency in payment of duty would amount to suppression of facts and extended period of limitation can be invoked is not correct because as per Excise Rules, all assessees work under self assessment but section 11A still provides for normal period of limitation and extended period of limitation. If the argument of the learned authorised representative is accepted, there cannot be any normal period of limitation in any case because everyone is operating under self assessment and the provision for normal period of limitation is otiose.
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> **11.** The second submission on behalf of the Revenue is that had the audit not discovered, the alleged undervaluation would not have been detected and therefore it can be inferred that the appellant had suppressed facts.

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3. Excise Appeal No. 53026 of 2018 decided on 02.12.2022

12. This submission cannot be accepted. Firstly, the appellant is not a taxation expert or professional unlike the officers and can be expected to make genuine mistakes. Secondly, there could be two or more views on the same issue and the assessee self-assesses duty as per its view and understanding and cannot be expected to foresee what view the audit team may take sometime in the future and assess duty accordingly. Thirdly, the Excise Rules provide not only for self-assessment of duty and filing of returns by the assessee in ER-1, but also provide for scrutiny of the returns by the officers. Duty of excise is charged on excisable goods manufactured or produced in India (Section 3) but the duty becomes payable on removal (Excise Rule 4). The assessee has to self- assess (Excise Rule 6) the duty and pay it by the fifth day or sixth day (in case of electronic payment) of the following month (Excise Rule 8) and file Returns (Excise Rule 12) as per the form. The officers have to scrutinize the returns [Excise Rule 12(3)) and can, for the purpose call for documents and records which the assessee is bound to produce [Excise Rule 12(4)]. The relevant extracts of these rules are below:

Rule 4. Duty payable on removal.-

(1) Every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided

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Rule 6. Assessment of duty.-

The assessee shall himself assess the duty payable on any excisable goods:

Provided that in case of cigarettes, the Superintendent or Inspector of Central Excise

shall assess the duty payable before removal by the assessee.

Rule 8. Manner of payment.- The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case:

Provided that in case of goods removed during the month of March, the duty shall be paid by the 31st day of March:

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Rule 12 Filing of return.-

(1) Every assessee shall submit to the Superintendent of Central Excise a monthly return in the form specified by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates

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(3) The proper officer may on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to e prescribed by the Board.

(4) Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

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13. Thus, the scheme under the law is that although the duty is levied on manufacture of goods, it becomes payable only when they are removed and it must be paid based on self-assessment by the fifth or sixth of the following month. The assessee also has to file returns. Needless to say that the assessee may make mistakes in self-assessment and the check

against this has been provided in the form of scrutiny of the returns by the officers and the officer scrutinising the returns can call for any documents and records from the assessee which it is bound to provide. In other words, the officer is mandated under the Rules to do what the audit has done much later. Had the officer, who is an expert in taxation scrutinised the returns as he was mandated to do and called for any records as he was authorised to call for, the alleged mistakes which were pointed out by the audit would have come to light and an SCN could have been issued under section 11A within the normal period of limitation. It also needs to be pointed out that the relevant date to calculate the limitation is the date on which the Return is filed by the assessee or if it is not filed, the last date by which it was required to be filed because only when the return is filed, the officer can scrutinise it and raise demands for any short paid duty and if no return is filed by due date, the officer is expected to initiate steps to call for records and determine if the duty has been paid. From this date, the officer can issue an SCN within one year.

14. Lastly, the ER-1Return is filed online and it has certain columns which do not include any declaration if there was any sale to related parties nor was there any requirement of declaration of the nature of relationship. Thus, the assessee was not only NOT REQUIRED to disclose the relationship but it was also not possible for it to disclose the relationship in ER1.

15. To sum up, while the assessee was required to self-assess duty and file ER-1 return, a check against such self-assessment was the scrutiny which the officers were mandated to do by Rules. Audit is the next level of check against the scrutiny. If the audit points out some wrong assessment which was not pointed out by the officer scrutinising the ER-1 return, the fault lies at the doorstep of the officer. It does not, by

> itself, establish that the assessee had suppressed any facts."

19. What is also important to notice is that the Commissioner (Appeals) has completely failed to examine this issue even though a specific ground had been taken by the appellant in the appeal that had been filed to assail the order of the Deputy Commissioner.

20. Thus, for all the reasons stated above, the invocation of the extended period of limitation under section 11A(4) of the Central Excise Act could not have been invoked in the facts and circumstances of the case. The confirmation of demand with interest and consequential penalty, therefore, cannot also be sustained.

21. The impugned order dated 02.08.2023 passed by the Commissioner (Appeals) is, accordingly, set aside and the appeal is allowed.

(order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Kritika