

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

EXCISE APPEAL No. 51532 of 2022

(Arising out of Order-in-Appeal No. 08(SM)/CE/JPR/2022 dated 09.02.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

Mahindra & Mahindra Ltd

....Appellant

Regional Distribution, Spares Business Unit
Plot No. DTA001-009,10 & 00,
Mahindra World City, Sanganer, Jaipur
Rajasthan

VERSUS

**Commissioner of Central Excise & CGST-
Jaipur I**

....Respondent

Jaipur, Rajasthan

APPEARANCE:

Ms. Sukriti Das, Advocate for the Appellant

Shri S.K. Rai, Authorised Representative of the Department

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MR. K. ANPAZHAKAM, MEMBER (TECHNICAL)

Date of Hearing/Decision : 11.05.2026

FINAL ORDER NO. 50906/2026

JUSTICE DILIP GUPTA:

Mahindra & Mahindra Ltd¹ has filed this appeal to assail the order dated 09.02.2022 passed by the Commissioner (Appeals) by which the appeal that was filed by the appellant to assail the order dated 26.11.2020 passed by the Additional Commissioner confirming the demand for recovery of the wrongly availed CENVAT credit with interest and penalty, has been dismissed.

2. The appellant, through its Regional Distribution Centre located at Jaipur, was operating as a 'deemed manufacturer' under section 4A of the

1. the appellant

Central Excise Act, 1944². At this Regional Distribution Centre, all activities from procurement of materials to sales of goods to the ultimate customers through the channel partners of the appellant took place. The appellant undertook expansion of the existing facilities at the Regional Distribution Centre and received various input services as well as other services and availed CENVAT credit of taxes paid on such services in terms of the provisions of the CENVAT Credit Rules 2004³. The appellant claimed that it had been regularly filing the ER-1 returns in which the availment of such credits was stated in the returns.

3. However, during the audit of the records of the appellant, it was noticed that the appellant had availed inadmissible CENVAT credit on various services used in relation to 'setting up' of a unit.

4. Accordingly, a show cause notice dated 20.03.2020 was issued to the appellant proposing to demand and recover inadmissible CENVAT credit amounting to Rs. 82,55,265/- along with interest and penalty for the period from April 2015 to June 2017 by invoking the extended period of limitation contemplated under section 11A(4) of the Central Excise Act. The appellant filed a reply to the show cause notice and not only contended that it had correctly availed the CENVAT credit, but also submitted that the extended period of limitation could not be invoked in the facts and circumstances of the case. The Additional Commissioner, however, by order dated 26.11.2020 confirmed the demand proposed in the show cause notice by holding that the extended period of limitation was correctly invoked.

5. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals), which appeal was dismissed on 09.02.2022. The

2. **the Central Excise Act**
3. **2004 Credit Rules**

Commissioner (Appeals) not only held that the appellant had wrongly availed CENVAT credit but also held that the extended period of limitation had been correctly invoked.

6. It is against this order dated 09.02.2022 passed by the Commissioner (Appeals) that this appeal has been filed.

7. Ms. Sukriti Das, learned counsel for the appellant contended that not only had the Commissioner (Appeals) committed an error in holding that the appellant had wrongly availed the CENVAT credit, but the Commissioner (Appeals) also committed an error in holding that the extended period of limitation was correctly invoked. To support this contention that the invocation of the extended period of limitation was wrongly invoked in the show cause notice, learned counsel placed the relevant paragraphs of the show cause notice and the reply filed by the appellant as also the order passed by the Commissioner (Appeals). Learned counsel also placed reliance upon two decisions of the Tribunal rendered in **M/s GD Goenka Private Limited vs The Commissioner of Central Goods and Services Tax, Delhi South**⁴ and **National Engineering Industries vs Commissioner of CGST & Central Excise**⁵.

8. Shri S.K. Ray, learned authorised representative appearing for the department, however, submitted that there is no error in the order passed by the Commissioner (Appeals) as not only had the appellant wrongly availed CENVAT credit, but in the facts and circumstances of the case the extended period of limitation was correctly invoked.

4. Service Tax Appeal No. 51787 of 2022 decided on 21.08.2023

5. Excise Appeal No. 51129 of 2022 decided on 19.08.2025

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

10. The first issue that needs to be examined is whether the extended period of limitation was correctly invoked, because if this issue is decided in favour of the appellant it may not be necessary to examine the issues raised on merits.

11. To appreciate the contention that has been advanced by the learned counsel for the appellant in respect of the extended period of limitation, it would be necessary to first reproduce the relevant portion of the show cause notice that invokes the extended period of limitation.

Paragraph 7 of the show cause notice is reproduced below:

"7. From the foregoing, It appears that the assessee deliberately and intentionally availed and utilised inadmissible CENVAT Credit amounting to Rs. 82,35,265 on various ineligible Input Services during the audit period, in contravention of Rule 2(I) and Rule 3 of CCR. 2004 with intent to evade payment of Central Excise Duty. Had the auditors not detected the wrong availment of CENVAT Credit through detailed scrutiny of their records, the same would have remained undetected. Therefore, the extended period of limitation as contained under Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 appears invokable for recovery of the Cenvat Credit so wrongly availed and utilised by them. Accordingly, the Cenvat credit of Rs. 82,55,265/. appears liable to be recoverable from the assessee under the provisions of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 along with interest under Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1994 Since they appear to have contravened Rule 2(1) and 3 of Cenvat Credit Rules 2004, they also appear liable for

penalty in terms of Rule 15(2) of Cenvat Credit Rules 2004 read with Section 11AC of Central Excise Act. 1944.”

(emphasis supplied)

12. The appellant filed a reply to the show cause notice and the relevant paragraph in the reply relating to the invocation of the extended period of limitation is reproduced below:

“We submit that the show cause notice has been issued to us by invoking the extended period of limitation by alleging suppression of facts. **This is erroneous, since there has been no suppression of facts and we have stated the fact of availing the Cenvat credits in our ER 1 returns filed from to time. Details given below.**

Month Er-1	Date of filing	Copy enclosed as sample	Page no. Service tax credit declared
Jul-16	09/08/2016	yes	4
Aug- 2016	09/09/2016		4
Sept. 2016	07/10/2016	yes	4
Oct. 2016	07/11/2016		4
Nov. 2016	07/12/2016	yes	4
Dec. 2016	07/01/2017		4
Jan. 2017	07/02/2017		4
Feb. 2017	09/03/2017		4
Mar. 2017	05/04/2017	yes	4
Apr. 2017	10/05/2017		5
May. 2017	70/06/2017		5
Jun-17	03/07/2017		5

We submit that the SCN’s need to be set aside in the absence of suppression of facts and malafide intention.”

(emphasis supplied)

13. The Commissioner (Appeals), while dealing with the extended period of limitation, made the following observations:

“As regard invocation of extended period, I find that after introduction of Self-assessment system and increasing liberalization in laws and procedures, under the taxation regime, overall responsibility for availment of CENVAT Credit on

inputs and input service, assessment, classification, valuation and duty payable in respect of excisable goods had been casted upon the Assessee. Thus, it was the responsibility of the appellant to comply with the provisions of Central Excise Law. Further, the appellant has failed to produce any evidence which proves that they intimated the department about the anomaly. I find that there is no such provision or law which debars the department from issuing show cause notice(s) by invoking extended period where the assessee did not disclose the correct information to the department. No law would encourage any assessee to adopt such measures to avoid show cause notice by showing disregard to the legal provisions. **Therefore, I find that the appellant has violated the provisions of the CENVAT Credit Rules, 2004 and the department is very much correct in applying clause of extended period for recovery of government dues.** And, also the appellant cannot escape from penal action under Rule 15 of the CENVAT Credit Rules, 2004. In this regard, my views find support from the following decisions."

(emphasis supplied)

14. The period involved in this appeal is from April 2015 to June 2017. As the show cause notice was issued on 23.01.2020, the entire period is covered by the extended period of limitation.

15. Sections 11A(1) and 11A (4) of the Central Excise Act, as they stood at the relevant time, which deal with issuance of notices for recovery of duties not paid or levied are reproduced below:

"SECTION 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

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

(2) *****

(3) *****

(4) Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded, by the reason of –

- (a) fraud; or
- (b) collusion; or
- (c) any wilful mis-statement; or
- (d) suppression of facts; or
- (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.”

16. It would be seen from a perusal of sub-section (4) of section 11A of the Central Excise Act that where any excise duty has not been levied or paid, the Central Excise Officer may, within two years from the relevant

date, serve a notice to the person chargeable with the duty requiring him to show cause why he should not pay the amount specify in the notice. Sub-section (4) of section 11A, however, provides that where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, by reason for fraud; or collusion; or any wilful mis-statement; or suppression facts; or contravention of any of the provisions of the Act or Rules made thereunder with intent to evade payment of duty, the Central Excise Officer shall, within five years from the relevant date service notice on such person requiring into show cause why he should not pay the amount specified in notice with interest and penalty.

17. It is clear that to invoke the extended period of limitation, there has to be, amongst others, suppression of facts. Even assuming that there is suppression, it is necessary that such suppression is wilful and with an intent to evade payment of central excise duty. This is what the Supreme Court and the Delhi High Court have held.

18. In **Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay**⁶, the Supreme Court examined whether the department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Central Excise Act. The proviso to section 11A of the Central Excise Act which was considered by the Supreme Court carved out an exception to the provisions that permitted the department to reopen proceedings if the levy was short within six months of the of 2022 relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context

6 1995 (78) E.L.T. 401 (SC)

that the Supreme Court observed that since —suppression of facts” has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations of the Supreme Court are as follows:

“4. Section 11A empowers the Department to reopen proceedings if the 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 it being suppression of facts.** The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful 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.”

(emphasis supplied)

19. To examine this issue relating to the extended period of limitation, it would be pertinent to refer to the show cause notice and the findings recorded by the Commissioner (Appeals).

20. A perusal of the show cause notice reproduced above shows that it appeared to the department that the appellant had deliberately and

intentionally availed and utilised inadmissible CENVAT credit on various ineligible input services with intent to evade payment of central excise duty and had the auditors not detected the wrong availment of CENVAT credit **'through detailed scrutiny of the records, the same would have remained undetected'**. It is for this reason that the extended period of limitation has been invoked.

21. What transpires from a perusal of the show cause notice is that there is no allegation that the appellant has suppressed any information in the ER-1 returns. The only allegation is that the appellant deliberately and intentionally availed and utilised inadmissible CENVAT credit.

22. In the reply to the show cause notice, the appellant categorically referred to the 12 ER-1 returns filed from July 2016 to June 2017 and also mentioned the page numbers showing the availment of credit.

23. It cannot, therefore, be said that the appellant had suppressed any information from the department in the ER-1 returns and it appears that it is for this reason that the show cause notice also does not allege that the appellant had suppressed any information from the department.

24. The Commissioner (Appeals), however, in the impugned order has placed much emphasis on the self-assessment scheme that was introduced. It needs to be noted that this was not even a reason alleged in the show cause notice for invoking the extended period of limitation. The Commissioner (Appeals) noted that under this system the overall responsibility of availment of CENVAT credit lies on the assessee. It is, therefore, the responsibility of the assessee to comply with the provisions of the Central Excise law. The Commissioner (Appeals) also held that there is no provision in law which bars the department from issuing the show cause notice by invoking the extended period of limitation where the assessee does not disclose the **correct information** to the department.

The Commissioner (Appeals), however has not referred to the allegation made in the show cause notice that had it not been for the audit, the department would not have been able to find the wrong availment of CENVAT credit by the appellant.

25. Though the reasons assigned by the Commissioner (Appeal) are beyond the allegations made in the show cause notice but even in respect of self-assessment, this Tribunal in **G.D. Goenka** examined this issue and held that merely because of the introduction of self-assessment, the department cannot invoke the extended period of limitation. Relevant paragraphs 16 and 17 of the decision of the Tribunal in **G.D. Goenka** are reproduced below:

"**16.** Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns. If some tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect selfassessment itself is held to establish wilful suppression with an intent to evade. To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.

17. The argument that the appellant had not disclosed in its returns that it was availing and using ineligible CENVAT credit also deserves to be rejected. The appellant cannot be faulted for not disclosing anything which it is not required to disclose. Form ST-3 in which the appellant is required to file the returns does not

require details of the invoices or inputs or input services on which it availed CENVAT credit and the appellant is not required to and hence did not provide the details of the CENVAT Credit taken. It also needs to be pointed out that the Returns are filed online and therefore, it is also not possible to provide any details which are not part of the returns. If the format of ST-3 Returns is deficient in design and does not seek the details which the assessing officers may require to scrutinise them, the appellant cannot be faulted because as an assessee, the appellant neither makes the Rules nor designs the format of the Returns. So long as the assessee files the returns in the formats honestly as per its self assessment, its obligation is discharged."

26. In respect of the audit, the Tribunal in **G.D. Goenka** observed as follows:

"**19.** It has also been pointed out that but for the audit, the allegedly irregularly availed CENVAT credit would not have come to light. It is incorrect to say that but for the audit, the alleged irregular availment of CENVAT credit would not have come to light. It is undisputed that the appellant has been selfassessing service tax and filing ST-3 Returns. Unlike the officers, the assessee is not an expert in taxation and can only be expected to pay service tax and file returns as per its understanding of the law. The remedy against any potential wrong assessment of service tax by the assessee is the scrutiny of the Return and best judgment assessment by the Central Excise Officer under section 72. This section reads as follows: "72. Best judgment assessment. If any person, liable to pay service tax,— (a) fails to furnish the return under section 70; (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the

assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.”

20. Thus, ‘the central excise officer’ has an obligation to make his best judgment if either the assessee fails to furnish the return or, having filed the return, fails to assess tax in accordance with the Act and Rules. To determine if the assessee had failed to correctly assess the service tax, the central excise officer has to scrutinize the returns. Thus, although all assessees self-assess tax, the responsibility of taking action if they do not assess and pay the tax correctly squarely rests on the central excise officer, i.e., the officer with whom the Returns are filed. For this purpose, the officer may require the assessee to produce accounts, documents and other evidence he may deem necessary. Thus, in the scheme of the Finance Act, 1994, the officer has been given wide powers to call for information and has been entrusted the responsibility of making the correct assessment as per his best judgment. If the officer fails to scrutinise the returns and make the best judgment assessment and some tax escapes assessment which is discovered after the normal period of limitation is over, the responsibility for such loss of Revenue rests squarely on the shoulders of the officer. It is incorrect to say that had the audit not been conducted, the allegedly ineligible CENVAT credit would not have come to light. It would have come to light if the central excise officer had discharged his responsibility under section 72.

21. This legal position that the primary responsibility for ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs⁷ in its Manual for Scrutiny of Service Tax Returns the relevant portion of which is as follows: 1.2.1A The importance of scrutiny of returns was also highlighted by Dr. Kelkar in his report on Indirect Taxation⁸. The observation made in the context of Central Excise but also found to be relevant to Service Tax is reproduced below: It is the view that assessment should be the primary function of the Central Excise Officers. Selfassessment on the part of the taxpayer is

only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers.”

22. Therefore, to say that had the audit not been conducted, the incorrect availment of CENVAT credit would not have come to light is neither legally correct nor is it consistent with the CBEC’s own instructions to its officers.”

27. The same view was reiterated by the Tribunal in **National Engineering Industries**. In fact, it appears that the reasons stated by the Commissioner (Appeals) in the order impugned in this appeal and the order impugned in **National Engineering Industries** are same as is clear from paragraph 22 of the decision which reproduces the order passed by the Commissioner (Appeals). The relevant paragraphs 22 and 23 of the decision are reproduced below:

“22. The Commissioner (Appeals) recorded the following findings on the invocation of the extended period of limitation:- —7. As regards imposition of penalty, I find that after introduction of self-assessment system and increasing liberalization in laws and procedures, under the taxation regime, overall responsibility for availment of CENVAT Credit, assessment, classification, valuation and duty/tax payable in respect of excisable goods had been casted upon the Assessee. Thus, it was the responsibility of the appellant to comply with the provisions of Law. Further, the appellant has failed to produce any evidence which proves that they intimated the department before availing credit under dispute. I find that there is no such provision or law which debars the department from issuing show cause notice(s) by invoking extended period where the assessee did not disclose the correct information to the department. No law would encourage any assessee to adopt such measures to avoid show cause notice by showing

disregard to the legal provisions. Therefore, I find that the appellant has violated the provisions of the CENVAT Credit Rules, 2004 and the department is very much correct in applying clause of extended period for recovery of government dues. And, also the appellant cannot escape from the provisions of equal penalty under Rule 15 of the CENVAT Credit Rules, 2004 as the case may be.

23. It is not in dispute that the appellant has been regularly filing the central excise returns and its record had also been audited by the department from time to time. The appellant believed that it could legally reverse the credit in Form GSTR-3B returns. The appellant could not foresee what view the audit team may ultimately take in the future. Thus, when two or more views were possible on a particular issue then merely because the appellant took one view would not mean that the appellant had suppressed any facts from the department with an intention to evade payment of duty. It was for the department to not only allege that the appellant had suppressed material facts from the department to evade payment of duty, but also prove it. A mere statement in the show cause notice that the appellant suppressed material facts with an intent to evade payment of duty does not suffice. This apart, merely because facts came to the notice of the department when the audit was conducted would not by itself be sufficient for invocation of the extended period of limitation. Nothing prevented the officers of the department from scrutinizing the returns filed by the assessee. It also needs to be noted that it is not the case of the department that the appellant had avoided giving any particulars required to be mentioned in the returns or that it had mis-stated certain facts in the returns. The order mentions that a burden is cast upon the appellant to correctly state facts in the era of self-assessment. As noted above, the officers of the department could have scrutinized the returns filed by the appellant and sought information from the appellant in case there was any doubt. The conditions set out in section 11A (4) of the Central Excise Act for

invoking the extended period of limitation had to be scrupulously followed by the department.”

(emphasis supplied)

28. The Tribunal then referred to the earlier decision of the Tribunal in **G.D. Goenka** and observed:

“The aforesaid decision of the Tribunal in G.D. Goenka clearly holds that even during the period of self-assessment, the extended period of limitation cannot be automatically invoked in a case whether there is a difference of opinion between the assessee and the department. The decision holds that to invoke the extended period of limitation, the necessary elements contemplated under the section 11A(4) of the Central Excise Act must be established. It has also been held that so long as the assessee submitted the returns as per its assessment in the format provided by the department, the obligation is discharged and merely because the department may have a different view would not mean that the extended period of limitation can be extended. The decision also rejects the contention of the department that the extended period of limitation could be invoked since it was during an audit that certain facts came to the notice of the department. Even in such a situation, the Tribunal held that when the assessee had been filing returns, the responsibility of taking action, if the assessee is not correct, rests upon the central excise officers before whom the return is to be filed.”

29. The aforesaid discussion would lead to the inevitable conclusion that the Commissioner (Appeals) committed an error in holding that the extended period of limitation was correctly invoked in the facts and circumstances of the case.

30. In this view of the matter it will not be necessary to examine the contentions raised by the learned counsel for the appellant on the merits of the case.

31. The impugned order dated 09.02.2022 passed by the Commissioner (Appeals), therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **12.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(K. ANPAZHAKAM)
MEMBER (TECHNICAL)

Apoorva