CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 3

EXCISE APPEAL NO. 50243 OF 2021

[Arising out of Order in Original No. 01/Pr. Commr./CE/BPL-II/2020 dated 13.01.2020 passed by the Principal Commissioner of Central Tax, Customs and Central Excise, Bhopal]

VIHAN ENTERPRISES **......APPELLANT**
Plot No. 30, Akansha Enclave,
Near Amulya Garden,
Gulmohar Colony,
Bhopal-462039

Vs.

PRINCIPAL COMMISSIONER, CENTRAL EXCISE, CUSTOMS & SERVICE TAX-BHOPAL **......RESPONDENT**
35-C, GST Bhawan, Administrative Area,
Arera Hills, Hoshangabad Road, Bhopal

Appearance:
Shri Sandeep Mukherjee, Chartered Accountant for the appellant
Shri Sanjeev Kumar Ray, Authorised Representative for the Respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51337 /2026

DATE OF HEARING : 02/07/2026
DATE OF DECISION : 18/08/2026

P.V.SUBBA RAO

1. M/s Vihaan Enterprises, Bhopal[1] filed this appeal to assail the order dated 13.01.2020 passed by the Principal Commissioner, CGST, Central Excise, Bhopal in which he confirmed the demand of Central Excise duty amounting to Rs.4,00,33,430.00/- under section 11D(1A) of the Central Excise Act, 1944[2] along with interest under section 11DD of the Act.

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1 Appellant
2 Act

2. The facts of the case are that the appellant was registered with the service tax department and was providing erection, commissioning service, works contract services and construction of complex services on turnkey basis. During audit, it was found that the appellant had received turnkey projects in energy sector from various clients including an award from the Madhya Pradesh Power transmission Company Limited, Jabalpur[3]. This award had four separate contracts with a clause specifying that breach of one contract would constitute breach of the other three as well. The first contract was for supply all equipment and materials required for sub-stations, etc. The second contract was for civil work, yard leveling, area fencing, yard fencing, cable trench building etc. The third contract was for installation/ erection, testing and commissioning including performance testing for sub-station. The fourth contract was for installation, erection, testing and commissioning including performance testing of transmission lines.

3. Dispute in this appeal is regarding the first contract. As per the tender document of MPPTCL, manufacturers of equipment could bid and others could also bid. Separate formats were quoting prices with instructions for manufacturer and non-manufacturer bidders were specified in the tender document.

4. MPPTCL had no control over the manner in which the bidder quotes the price. The appellant was a non-manufacturer and under the first contract it had procured various goods from other manufacturers and got them delivered at site. Although the appellant was a non-manufacturer, it filed bids in the format meant for

3 MPPTCL

manufacturers. The question which would arise is what will be the impact on such wrong bidding. The normal logical conclusion would be that if a bid is not as per the tender document, it has to be rejected. However, MPPTCL accepted the bid and awarded the contract to the appellant. During the course of adjudication, the appellant had submitted a leter dated 05.01.2019 issued by the MPPTCL confirming that if the appellant's bid had been rejected, the contract would have had to be awarded to the L-2 bidder at a higher cost. The relevant portion of the letter is reproduced below:

> "1. The formats for quoting the prices with instructions for manufacturer and non manufacturer bidder were specified in the tender document. MPPTCL had no control on the manner in which bidder quotes the price. Further, rejection of bid would have resulted into award of contract to L-2 bidder at higher cost.
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> 2. The payment to the bidder was allowed on the basis of landed cost of each item which was inclusive of taxes.
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> 3. Since the contract was awarded on package cost basis and payment was released on landed cost (FORD price) basis, any debit notes have not been raised against the party.
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> 4. The firm used to attach similar undertaking as with running account bills at the time of claiming payments."

5. The undisputed position is that a non-manufacturer was required to bid giving the total amount that would be charged to MPPTCL. A manufacturer, on the other hand, had to give the breakup of the cost in the following columns:

(1) Sr. No.
(2) description of work,
(3) Unit
(4) Total Quantity
(5) accepted EXW
(6) Excise duty
(7) CST
(8) any other taxes
(9) accepted F & I
(10) FORD
(11) Total

6. The appellant's bids were in above format and they were accepted while awarding the contract.

7. Thereafter the manufacturers on whom the appellant placed orders manufactured the goods, paid appropriate amount of excise duty and issued invoices in the name of the appellant and delivered the goods at site. The appellant, in turn, issued invoices in the name of MPPTCL for the same goods. These invoices were in two different forms. In some invoices, the amount of excise duty was shown separately and in other invoices, the total amount only has been indicated as per the accepted prices for supply of materials.

8. During audit, it was found that the amount indicated in the Accepted prices and represented as excise duty for various goods was much higher than the actual amount of excise duty paid on those goods by the manufacturers. Even in cases where the invoices were issued by the appellant separately indicating the excise duty, the amount indicated as excise duty, by the appellant and collected from MPPTCL was much higher than the actual amount of excise duty paid.

9. Learned counsel for the appellant has taken us through sample invoices issued by the appellant and the corresponding invoices issued by the manufacturers in the name of the appellant. These demonstrate that the amount collected as excise duty by the appellant from MPPTCL was much higher than the actual amount of excise duty paid. For instance, at page 229 of the compilation of documents submitted by the appellant, it's invoice no. BIG-001 dated 06.11.2015 issued to MPPTCL shows total value as Rs.2,41,21,634/- and excise duty as Rs.30,23,201/- while the actual excise invoice

issued by the manufacturer M/s IMP Powers Limited in the name of the appellant was invoice No. 0354 dated 03.10.2015 at page 247 of the compilation shows total value as Rs.2,04,75,000/-and the excise duty as Rs.22,75,000/-.

10. There is no dispute that the total amount indicated in the two invoices can be different because the appellant would have bought goods at lower prices and supplied them to MPPTCL on profit at higher prices. The only dispute is regarding the excise duty actually paid by the manufacturers and the amount collected as representing excise duty by the appellant. Learned counsel has also taken us to through a few more similar sets of invoices. All invoices show that the amount which was collected as representing excise duty by the appellant was much higher than the amount actually paid as excise duty.

11. A Show Cause Notice dated 10.04.2019[4] was, therefore, issued to the appellant proposing to recover the differential amount collected as representing the excise duty under section 11D(2) of the Act along with interest under section 11DD of the Act.

12. The appellant resisted the proposals in the SCN which were, however, confirmed by the Commissioner in the impugned order. Hence this appeal.

13. We have heard learned counsel for the appellant and the learned authorized representative for the Revenue and perused the records.

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4 SCN

Submissions of the appellant

14. Learned counsel for the appellant made the following submissions:

(i) The contract was awarded to the appellant on package cost basis including the taxes;

(ii) The appellant was a non-manufacturer but had incorrectly filed bids in formats meant amount for manufacturers indicating the amount of excise duty which it was not required to;

(iii) SCN and the OIO relied on documents on page 228 and 229 of the paper book which were stated to be invoices submitted to MPPTCL. These were, in fact, internal documents. MPPTCL awarded the contract on the basis of package cost (referred to as FORD price in the contract) and the payment was made inclusive of all taxes;

(iv) The Principal Commissioner erred in applying section 11D to the case because the goods were not excisable goods at the hands of the appellant and no excise duty was assessed or determined on such excisable goods;

(v) The appellant had not collected any amount as representing excise duty. Reliance is placed on the following decisions:

(i) Sangam (India) Ltd., reported in[5]

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5 2018 (364) ELT 292 (Tri.-Del.)

(ii) Mayfair Polymers P. Ltd.[6]

(iii) Pitambar Coated Paper Ltd. reported in[7]
(iv) Bharat Petroleum Corporation Ltd. reported in[8]
(v) Alpha Helical Pumps Pvt. Ltd Vs**. The Assistant Commissioner of Central GST and Central Excise, Coimbatore,**[9]
(vi) Mahesh Chemicals Allied Industries and Suresh Goyal Versus **Commissioner of Central Excise and Central Goods & Service Tax, Rohtak**[10]
(vii) M/s. Everest Industries Ltd. Versus **Commissioner of Central Excise**[11]
(viii) Indian Oil Corpn. Ltd. Versus **CCE and CCE Versus Indian Oil Corpn. Ltd.**[12]
(ix) M/s M.B. Rubber Pvt. Ltd. Versus **Commissioner of Central Excise, Ghaziabad**[13]
(x) Shree Shyam Pulp And Board Mills Ltd. Vs **Commr. Of C. Ex., Meerut-II**[14]**.**

(vi) The impugned order may be set aside and the appeal may be allowed with consequential relief to the appellant.

Submissions of the Revenue

15. Learned authorized representative for the Revenue submitted that the appellant was a non-manufacturer contractor in multiple turnkey projects of MPPTCL but had submitted bids as a manufacturer indicating the amount of excise duty separately. Later, it invoiced

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6 2009 (234) E.L.T. 663 (Tri. - Ahmd.)
7 2003 (152) E.L.T. 392 (Tri. - Del.)
8 2017 (358) E.L.T. 833 (Tri.-Del)
9 2025 (1) TMI 535 - MADRAS HIGH COURT
10 2024 (8) TMI 309 - CESTAT CHANDIGARH
11 2019(6) TMI 735 CESTAT CHENNAI
12 2015 (1) TMI 815 CESTAT CHENNAI
13 2019 (3) TMI 1274 CESTAT ALLAHABAD
14 2018 (364) E.L.T. 205 (Tri. - All.)

the MPPTCL also accordingly indicating excise duty which was far in excess of the actually amount of excise duty paid on the goods.

16. In some cases, the appellant issued invoices without separately indicating the amount of excise duty but those invoices were also as per the accepted prices. Further, in the bills the appellant had also given an undertaking as follows: "We hereby declare that all statutory taxes and duties payable in RA bills no. supplies/lime/RA-02 dated 31.01.2016 have been deposited to concerned authorities. This certificate is issued in line with requirement or specification."

17. The above undertaking was clearly false as the appellant had represented to MPPTCL that it had paid the excise duty as indicated in its invoices separately or indicated as part of its accepted prices when, in fact, the excise duty deposited was much less.

18. In view of the above, the impugned order is correct and proper and calls for no interference in the order and the appeal may be dismissed.

Findings

19. We have gone through the records of the case and considered the submissions advanced by both sides. There is no doubt that the appellant was not a manufacturer and as per the tender document was required to give only the total value for the goods to be supplied. However, the appellant submitted bids in format meant for manufacturers specifically indicating the excise duty CST and other taxes separately. MPPTCL could have rejected the bids because they were not as per the tender. However, it accepted the bids.

Therefore, the bid which was accepted by the MPPTCL included the basic amount, excise duty, CST, other taxes and accepted the F & I, etc. This is the consideration under the contract. Invoices, however, were raised from time to time as and when goods were supplied. In some invoices the excise duty was shown separately and in other invoices the total amount as per the accepted prices were indicated including the excise duty. In either case, what is clear is that the appellant had invoiced MPPTCL and collected some amount as excise duty either indicating it separately in the invoice itself or as per the excise duty indicated in the accepted prices of its bid. We have no manner of doubt that the MPPTCL has paid this amount to the appellant as excise duty in both cases even if it is not indicated separately in some invoices. The question which arises is if the actual amount of excise duty paid was less than the amount indicated in the accepted price list/ invoices to MPPTCL could the appellant pocket the difference or was it bound to deposit the differential amount in the government account. We note that, in all running bills, the appellant represented to the MPPTCL that the statutory taxes and duties have been deposited to the concerned authorities. Thus, not only had the appellant indicated the amount of excise duty separately in the accepted price list but it also re-affirmed in its running bills that all the statutory taxes and duties have been deposited to the concerned authorities. There is no dispute that the manufacturer paid the excise duty. What is in dispute is the differential amount collected by the appellant as representing excise duty in its prices list/ invoices and coupled with the undertaking that the amounts have been deposited by the concerned authorities.

20. Section 11D of Central Excise Act reads as follows:

> **"Section 11D. Duties of excise collected from the buyer to be deposited with the Central Government.** -
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> (1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.
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> (1A) Every person, who has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to *nil* rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.
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> (2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (1A), as the case may be, and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
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> (3) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.
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> (4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (1A) or sub-section (3), as the case may be, shall be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1) and sub-section (1A).
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> (5) Where any surplus is left after the adjustment under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount."

21. As is evident section, 11D(1) applies to persons who are liable to pay duty under Act and this would not apply to the appellant because it was not a manufacturer. Section 11D(1A) would apply to

a person who has collected any amount in excess of the duty be determined and paid on any excisable goods or has collected any amount as representing duty of excise. The appellant is certainly a person who has collected an amount as representing duty of excise on excisable goods in excess of the actual duty of excise. It has also been represented wrongly in its running bills that the amount has been deposited with the concerned authorities. Section 11D(1A) will squarely apply to the appellant and it was required to credit the amount to the central government but it had not done so. Therefore, the SCN was issued and the demand has been confirmed under section 11D(2) of the Act along with applicable interest under section 11DD of the Act.

22. The submission of the learned counsel is that section 11D would not apply to it at all because it was not a manufacturer and the goods which it supplied were not excisable goods in its hands having already been cleared by the manufacturer. We, however, find that section 11D covers any person and not necessarily the manufacturer. It is more so in this case because the appellant has explicitly stated in its running bills that the amount can excise duty was deposited to the concerned authorities.

23. The decisions relied upon by the learned counsel were on different facts and do not support the appellant's case. In **Sangam (India) Limited** the dispute was regarding the amounts paid by an insurance company to the client including the cost of the goods and the excise duty. It was not collected from a client. **Mayfair Polymers Limited** was on a different footing when the small scale

industries availing exemptions to various degrees for different slabs had supplied goods to its customers at a single cum-duty price. No excise duty was indicated in the invoices or was collected by **Mayfair**. Therefore, section 11D was held to be not applicable to that case.

24. **Pitambar Coated Papers Limited** was a case where the appellant had cleared the goods after paying excise duty and thereafter availed the benefit of an exemption notification. They did not reduce the sale price of the goods but left the excise duty column blank. Clearly, they did not collect any amount from its customers as representing excise duty. Once the benefit of exemption Notification became available, they increased the prices so as to profit from it. In **Bharat Petroleum Corporation Limited,** there were two sets of invoices as central excise invoice for clearance of evasion turbine fuels from refineries and installation on payment of duty and the corresponding cenvatable sales invoices for sale of ATF to private airlines. The two sets of invoices were compared and the Tribunal recorded that the duty per kilo liter of ATF was same in both and, therefore, no additional amount was collected as representing excise duty by the appellant.

25. In **Alpha Helical Pumps Pvt Ltd**., the High Court rejected the contention of the petitioner that it was not liable to pay any amount under section under 11D(1) or 11D(1A) as it had admitted its liability under the settlement scheme or SVLDRS. The Writ Petition was disposed of remanding the matter to the adjudicating authority to pass a fresh order. We find the facts of the remaining decisions relied

upon by the learned counsel were also different from the present case.

26. In view of the above, we find that the impugned order is correct and proper and calls for no interference and, accordingly, uphold it and dismiss this appeal.

[Order pronounced on **18/08/2026**]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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