IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76483 of 2018

(Arising out of Order-in-Appeal No.09/Pat-II/S.Tax/Appeal/2017-18 dated 05.03.2018 passed by Commissioner of Central GST & Central Excise, Patna-II)

M/s Poddar Hyundai
(Jail Road, At & PO-Gaya, Bihar,
823001)

Appellant

VERSUS

Commr. of CGST & CX, Patna
(C. R. Building (Annexe), Bir Chand Patel path, Pathna)

Respondent

APPEARANCE:

Mr. N. K. Lal, FCA for the Appellant
Mr. Debapriya Sue, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO. 77256/2025

Date of Hearing : 18th August 2025
Date of Decision : 18th August 2025

ORDER [PER R. MURALIDHAR]

The appellant is engaged in activity of Motor Vehicle. They were issued a Show Cause Notice on 02/06/2011 in respect of income derived from "extended warranty", "insurance", "Business Auxiliary Services", etc, for the period 2008-09 and 2009-2010. The demand came to be confirmed by the Adjudicating Authority. On appeal, the Commissioner (Appeals) vide OIA dated 20/06/2013 set aside the impugned order and allowed the appeal filed by the appellant. After about four years, the present proceedings were initiated for the period 2010-11 to 2013-14 by invoking the extended period provisions. The Adjudicating Authority confirmed the demand and on appeal, the Commissioner (Appeals) has dismissed the appeal filed by the appellant. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Consultant appearing on behalf of the appellant submits that on the same set of facts, the Department has issued the present Show Cause Notice for the subsequent period 2010-11, 2013-14. The earlier OIA passed by the Commissioner (Appeals) on 20/06/2013, was not further appealed against by the Revenue. Therefore, the issue has reached finality. He submits that since the Department was aware of the transactions of the appellant, the Revenue could not have invoked the extended period provisions once again as has been held by the Hon'ble Supreme Court in the case of **Nizam Sugar Factory v. Collector of Central Excise, A.P. [2008 (9) S.T.R. 314 (SC)]**.

3. He further submits that so far as the other confirmed penalty of Rs. 46,900/- on account of delay filing of Returns is concerned, the same stands paid and is also appropriated in the OIO itself. Similarly, the interest of Rs. 3641 confirmed in the OIO was already paid before the OIO was passed and the same stands appropriated in the OIO.

4. In view of the above submissions, he prays that the appeal may be allowed on account of time bar.

5. The Learned AR reiterates the findings of the lower authorities. He submits that the Adjudicating Authority has discussed in detail as to how the facts of the present case are different from the facts of the earlier case. Therefore, he submits that the time bar benefit cannot be granted to the appellant.

6. Heard both sides and perused the appeal papers.

7. I have gone through both the Show Cause Notices and the OIO passed by the Adjudicating Authority. It is seen from Page 8 of the OIO that income from "extended warranty", "insurance" and "other miscellaneous services" were the issues in the earlier Show Cause Notices as well as the present Show Cause Notice. Therefore, I find that

the Revenue was in error in invoking the extended period for the second time for the present proceedings.

8. The Hon'ble Supreme Court in the case of **Nizam Sugar Factory v. Collector of Central Excise, cited supra** has held as under :-

> ***"8.*** *Without going into the question regarding Classification and marketability and leaving the same open, we intend to dispose of the appeals on the point of limitation only. This Court in the case of P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in (2003) 3 SCC 599 = 2003 (153) E.L.T. 14 (S.C.) has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the department. It was observed in para 14 as follows :*
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> > *"14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard*

M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period."

This judgment was followed by this Court in the case of ECE Industries Limited v. Commissioner of Central Excise, New Delhi reported in (2004) 13 SCC 719 = 2004 (164) E.L.T. 236 (S.C.). In para 4, it was observed :

"4. In the case of M/s. P&B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked."

Similarly, this judgment was again followed in the case of Hyderabad Polymers (P) Ltd. v. Commissioner of Central Excise, Hyderabad reported in 2004 (166) E.L.T. 151 (S.C.). It was observed in para 6 :

"………. On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct."

9. *Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and* *third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.*

9. Accordingly, I hold that the confirmed demand for the extended period is required to be set aside on account of time bar. I do so.

10. It is made clear that if any confirmed demand falls within the normal period, the same is required to be paid by the appellant along with interest.

11. Since the penalty has been imposed only under Section 78, no penalty is imposable. I set aside the penalty imposed.

12. The appeal stands partly allowed on the above terms. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja