IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 76696 of 2025

(Arising out of Order-in-Appeal No. 02-03/HWH/CE/2020-21 dated 05.08.2020 passed by the Commissioner of CGST & C. EX., Appeal-II 3rd Floor & 4th Floor Bamboovilla, 169, A. J. C. Bose Road, Kolkata-700014)

M/s. S. A. Enterprises, **: Appellant**
Sole Proprietor Manjari Rungta,
Room No. 34, 2ND Floor, 5/1, Clive Row, Kolkata-700001

VERSUS

Commissioner of CGST & C. EX. **: Respondent**
Commissionerate,
M.S. Building, Custom House,
15/1 Strand Road, Kolkata-700001

AND

Excise Appeal No. 75586 of 2026

(Arising out of Order-in-Appeal No. 02-03/HWH/CE/2020-21 dated 05.08.2020 passed by the Commissioner of CGST & C. EX., Appeal-II 3rd Floor & 4th Floor Bamboovilla, 169, A. J. C. Bose Road, Kolkata-700014)

M/s. Aayush Rungta, **: Appellant**
Room No. 34, 2ND Floor, 5/1, Clive Row, Kolkata-700001

VERSUS

Commissioner of CGST & C. EX. **: Respondent**
Commissionerate,
M.S. Building, Custom House,
15/1 Strand Road, Kolkata-700001

APPEARANCE:

Shri Agnibesh Sengupta, Advocate
Shri Indranil Banerjee, Advocate for the Appellant

Shri S. K. Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.75904-75905/2026

DATE OF HEARING / DECISION: 16.07.2026

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed assailing the Order-in-Appeal No. 02-03/HWH/CE/2020-21 dated 05.08.2020 passed by the Commissioner of CGST & C. EX., Appeal-II 3rd Floor & 4th Floor Bamboovilla, 169, A. J. C. Bose Road, Kolkata-700014, wheren Central Excise duty of Rs. Has been confirmed along with interest and penalty against M/s. S.A. Enterprises, Sole Proprietor Shri. Manjari Rungta (herein after referred as the Appellant-company). Penalty of Rs. has also been imposed on it's authorized representative Shri. Aayush Rungta (Appellant 2), under Rule 26 of the Central Excise Rules.

2. The facts of the case are that the appellants were traders and had purchased and sold goods. The appellants had represented only to Power Supply Corporations that they were manufacturers in order to procure business since such Corporations placed orders only on manufacturers. Accordingly, proceedings were initiated against the Appellants on the allegation that the Appellants were the actual manufacturers of the goods. As the Appellants have not paid Central Excise duty on the goods cleared by them during the period April, 2017 to June, 2017, Show Cause Notice 29th August, 2018 was issued to the Appellant demanding Central Excise duty of Rs. 93,79,002/- for the goods manufactured and cleared by them.

3. The Appellants submits that during the relevant period, they got a few items manufactured from job workers to whom raw materials were supplied. The quantum of goods obtained from job workers was quite small (Rs.22,05,220.05) in value

as against trading sales of about 8,22,05,801.70. As per law, the job workers were the actual manufacturers and not the appellants. The appellants did not have the infrastructure to manufacture the goods sold by them. The inventory prepared by officers of the Central Excise Department on February 8, 2010 when they visited premises No. 207/7, Belilious Road, Howrah would show that there was only one forging machine, one part of landis machine and one brick furnace with electrical blower all of which were old and were covered with dust and filth and the landis machine was not even installed. An independent Chartered Engineer upon visiting the said premises on December 12, 2014 reported that the said machines had been lying unused for many years and that the commodities dealt with by the appellants cannot be manufactured using such machines. The appellants' electricity bills showed that they had not undertaken any manufacturing activity. Only visual/physical inspection of the goods such as checking of dimensions, weight and packing took place at the said premises. Tests like galvanization test, mechanical test, slip load test etc. were conducted in outside laboratories approved by the Power Supply Corporations. The appellants did not have any testing equipment for such tests.

3.1. The appellants did not have any trade mark or brand name. The initials like "S", "SA" or "SAE" were got embossed on the goods by the suppliers or job workers for the purpose of identification in case the goods were required to be replaced due to any sort of fault. Goods were also supplied and accepted by the customers without such embossing. The appellants never represented to any private party that they were the manufacturer of the goods sold by them. Such representation was made only to the Power Supply Corporations for the purpose of securing orders. Whether a person was a manufacturer or not had to be decided according to the provisions of section 2(f) of the Central Excise Act, 1944 and not on the basis of any representation made to procure business.

3.2. In support of their contention that the job workers are the actual manufacturers, the Appellants cited the decision of the Tribunal in the case of Aska Equipment Pvt. Ltd. v Commissioner of Central Excise, (2006) 202 ELT 795. In the said case it has been held by the Tribunal that the fact that the assessee in that case had claimed before the Government companies that it was the manufacturer or that it had given warranty or affixed brand name stickers cannot be a reason to conclude that the assessee was a manufacturer within the meaning of the Central Excise Act. Department's appeal in respect of the said decision of the Tribunal was dismissed on the ground of delay as also on merit as reported in (2010) 254 ELT A37. The facts of this case cited is similar to the present case on hand and hence the ratio of this decision is applicable to this case.

3.3. Further, the Appellant submits that on the very same issue, first show cause notice dated December 24, 2010 was issued by the Additional Director General of the Directorate General of Central Excise Intelligence in respect of the period December 2005 to March 2010. The said Notice was adjudicated by the Commissioner vide order dated February 29, 2012, wherein duty was demanded from the assessee only in respect of electrical hardware supplied to Power Supply Corporations to whom the appellants had represented that they were the manufacturer. Sales to private parties of such hardware as also sales of wires, pipes, bars, angles and channels were excluded from the purview of the demand. Same course of action was followed in the next order for the period April, 2010 to January, 2011. However, a demand had been made in respect of such goods in the notices for the period from April, 2017 to June, 2017 contrary to the Department's stand in the earlier proceedings.

3.4. The appellants did get some goods manufactured on job work basis, but the quantum thereof was very small. Surprisingly, in the impugned order the Commissioner (Appeals) sought to suggest as if all the goods sold by the appellants were got manufactured by them from job workers. There is no basis for such suggestion which is completely contrary to the record. The Commissioner (Appeals) has ignored the Department's own inventory dated February 8, 2010 and certificate of the Chartered Engineer based on his visit on December 12, 2014 submitted by the appellants. It is submitted that it is ex facie apparent from the inventory dated February 8, 2010 that at the said premises there was only one forging machine, one part of landis machine and one brick furnace with electrical blower. The Central Excise officers who had visited the premises of the appellants had themselves recorded that all the aforesaid machines were old and were covered with dust and filth, and the landis machine was not even installed. It was thus apparent that the machines were lying unused and the appellants had not undertaken any manufacturing activity. The Commissioner (Appeals) also ignored the certificate of the Chartered Engineer wherein it had been certified that the machines which were lying in the factory of the appellants had been lying unused for many years and that the commodities which the appellants were dealing in could not have been manufactured using the said machines. The Chartered Engineer had mentioned the names of some of the machines required to manufacture the goods dealt in by the appellants as also the size of the factory required for such purpose, which the appellants did not have. There can be no dispute that only visual inspection of the goods took place at the premises of the appellants. The appellants did not have any testing equipment to carry out tests like galvanization test, mechanical test, slip load test etc. and these were conducted in laboratories approved by the Power Supply Corporations. The record does not show that the second appellant had stated anywhere that verification/inspection of the items to be supplied to various power corporations was done by the designated authorities to ensure that the goods were actually manufactured at the declared premises.

3.5. The records do not show that the appellants admitted that initials like “S”, “SA” or “SAE” were trademarks and the Commissioner (Appeals) was not justified in holding to the contrary. The Commissioner (Appeals) should have accepted the appellants’ explanation that the said initials were got embossed on the goods by the suppliers or job workers for the purpose of identification in case the goods were required to be replaced due to any sort of fault. The appellants had included in the annexures to their replies documents to show that goods were accepted by the Power Supply Corporations even without such embossing.

3.6. Thus, the appellant company submits that they are not liable for any duty, interest or penalty. The second appellant all along acted bona fide in the discharge of his duties as authorized representative and was not liable for any penalty under rule 26. The second appellant did not know nor did he have any reason to believe that the goods of the first appellant were liable to confiscation. No duty was evaded. No fact was suppressed. There was no contumacious or dishonest conduct or willful disregard of any statutory provision. None of the conditions precedent for imposing any penalty on the appellants exists and/or has been fulfilled or satisfied. Since the appellant company is not liable for any duty the question of charging any interest or penalty does not arise. Equally, no penalty can be imposed on the second appellant.

4. The Ld. Authorized Representative reiterated the findings in the impugned order.

5. Heard both sides and perused the Appeal documents.

6. We find that the appellants were traders and had purchased and sold goods. We find that the Revenue has demanded central excise duty from the Appellant as the appellants themselves had represented before the Power Supply Corporations that they were manufacturers The submission of the Appellants in this regard is that in order to procure business from the Corporations they have declared themselves as the manufacturers as the Corporations placed orders only on manufacturers.

6.1. We find that the department considered the Appellants as the actual manufacturers of the goods and demanded Central excise duty from them on the basis of the declarations made by the Appellants as manufacturers before the Power Supply Corporations. There is no other evidence available on record to establish that the Appellant has actually manufactured the goods. In this regard, we agree with the submission of the Appellants that the job workers are the actual manufacturers of the goods. Just because they have represented themselves as manufacturers before the Power Supply Corporations, to get orders, the Appellants cannot be considered as the manufacturers as defined under the Central Excise Act. The evidences available on record indicates that the Appellants did not have the infrastructure to manufacture the goods sold by them. They had only one forging machine, one part of landis machine and one brick furnace with electrical blower all of which were old and were covered with dust and filth and the landis machine was not even installed. An independent Chartered Engineer upon visiting the said premises on December 12, 2014 reported that the said machines had been lying unused for many years and that the commodities dealt with by the appellants cannot be manufactured using such machines. The appellants' electricity bills showed that they had not undertaken any manufacturing activity.

6.2. In this regard, we rely upon the decision of the Tribunal in the case of *Aska Equipment Pvt. Ltd. v Commissioner of Central Excise, (2006) 202 ELT 795.* In the said case it has been held by the Tribunal that the fact that claims made before the Government companies that it was the manufacturer or that it had given warranty or affixed brand name stickers cannot be a reason to conclude that the assessee was a manufacturer within the meaning of the Central Excise Act. Department's appeal in respect of the said decision of the Tribunal was dismissed on the ground of delay as also on merit as reported in (2010) 254 ELT A37. We find that the ratio of the said decision is squarely applicable to the facts and circumstances of the present case.

6.3. Further, we find that on the very same issue, first show cause notice dated December 24, 2010 was issued by the Additional Director General of the Directorate General of Central Excise Intelligence in respect of the period December 2005 to March 2010. The said Notice was adjudicated by the Commissioner vide order dated February 29, 2012, wherein duty demanded from the assessee was confirmed. On appeal, this Tribunal has held that the Appellant did not have the infrastructure to manufacture the said goods supplied by them to the Power Supply Corporations. It has also been held that the appellants did not have any trade mark or brand name. The initials like "S", "SA" or "SAE" were got embossed on the goods by the suppliers or job workers for the purpose of identification in case the goods were required to be replaced due to any sort of fault. Goods were also supplied and accepted by the customers without such embossing. The appellants never represented to any private party that they were the manufacturer of the goods sold by them. Such representation was made only to the Power Supply Corporations for the purpose of securing orders. Whether a person was a manufacturer or not had to be decided according to the provisions of section 2(f) of the Central Excise

Act, 1944 and not on the basis of any representation made to procure business. On the basis of these findings, the demand of Central Excise duty along with interest and penalty confirmed in the Order-in-Original was set aside by the Tribunal. For ready reference, the findings of the Tribunal in Appellant's own case for the earlier period are reproduced below:-

> *9. We find that the show cause notice dated 24.12.2010, which was the first show cause notice in the matter, had been issued by primarily relying on the representations to various power supply corporations by the appellant firm that she was the manufacturer of the goods supplied by her. After referring to the statements given during the course of investigations by the appellant firm's authorized representative, the said show cause notice had relied on the stipulations and conditions of the tender documents/ contracts, as would appear from a reading of page nos. 55 to 75 of the Paper Book filed in relation to Ex. Appeal No. 392 of 2012. We note that the appellant firm had taken the factual stand that the declarations/representations to the power supply corporations had been made only for the purpose of procuring business and that they had always engaged in trading and supply of the goods in question. The appellant firm had also clarified that the factory at the Belllious Road premises lacked the infrastructure to manufacture any transmission line accessory or hardware equipment and that there was no testing facility inside the sald premises. Surprisingly, in the adjudication*

order dated 29.02.2012, It had been held that upon investigation by the revenue authorities, manufacturing facility had been found at the Belilious Road premises, which had also been admitted by the noticee no. 2 in his statement dated 21.05.2010 and that no contrary evidence could be adduced by the noticees. Such findings had clearly been rendered in disregard of the inventory dated 08.02.2010 drawn up by the Central Excise officers, which established the point of lack of manufacturing facilities. The appellant firm's defence was further supported by the Chartered Engineer's Certificate filed in the subsequent stages.

10. Further, it is noticeable that between the year 2007, when Investigations had been Initiated and the year of 2010, when Investigation was resumed, no additional evidence was brought on record by the revenue in order to counter the appellant firm's contentions. Likewise, the revenue could not adduce any positive evidence of clandestine manufacture by the appellant firm or incriminating evidence showing procurement of unaccounted raw materials/ seml-processed goods for purpose of further manufacturing/ job work, for example, discovery of undisclosed manufacturing facility, incriminating statement from any supplier of the appellant firm and the like. A careful perusal of the various statements given by the appellant firm's authorized representative shows that the she had maintained a consistent stand regarding her defense of trading against the charge of manufacturing.

In such circumstances, the Commissioner of Central Excise, Kolkata IV Commissionerate had been unjustified in holding ".....excisability and dutlability of the impugned materials have never been disputed...." at paragraph no 11.8 at page no. 30 of the Order-in-Original dated 29.02.2012. In arriving at his findings against the appellant firm, the Commissioner of Central Excise, Kolkata- 4 Commissionerate had disregarded the actual course of dealing between the parties concerned and, on the other hand, attached overwhelming importance to the appellant firm's declaration/representation given to power supply corporations of being a manufacturer and to the stipulations/conditions of the tenders/ agreements. We agree with the submissions of Shri Khaitan on behalf of the appellant firm that the decisions of Aska Equipment, 2006 (202) ELT 795---2010 (254) ELT A37 fully supported the appellants' case.

11. We observe that the enquiry and Investigations leading up to Issuance of the show cause notices dated 24.12.2010 and 24.03.2011, though, giving rise to suspicion against the appellant firm, were insufficient to justify the confirmation of demands. We must bear in mind the fundamental principle of law that suspicion, howsoever grave, cannot take the place of proof. The appellant firm had consistently maintained its defence and, furthermore, no inconsistency could be pointed out to us between the statement dated 15.03.2011 of Appellant No.2/Shri Aayush Rungta and the statements given earlier by

Shri Dinesh Rungta. In our opinion, the Department has not been able to prove its case with the help of concrete evidences.

12. We are also constrained to hold that the observations in the Order-in-Original dated 29.02.2012 as well as the observations in the Order-in-Original dated 21.03.2012 in relation to alleged inspection and testing at the factory premises, embossing of trademark on the materials supplied, voluntary payment of Rs. 10.50 Lakhs in admission of liability by the appellant firm and job work gotten done by the appellant firm in contravention of the Central Excise law are unsustainable due to the following reasons -

I. Only physical verification of the items used to be carried out at the Belilious Road premises/ godown premises and other tests were conducted in the approved laboratories of third parties like M/s. Analyst, Benaras Road, Howrah, M/s. S. B. Steels, Liluah, Howrah. The said positions had been clarified in answer to question no. 13 of statement dated 25.01.2010 given by Shri Dinesh Rungta, as appears at page no. 63-64 of the Paper Book relating to Ex. Appeal No. 392 of 2012. None of the test reports relied on by the appellant firm had challenged by the revenue.

II. The appellant firm did not have any trademark or brand name and in some cases, marks like "S", "SA" etc. had been embossed on the goods supplied to the various power *supply corporations solely for identification purpose. In reply to question nos. 3-5 of his statement dated 01.12.2010, Shri Dinesh Rungta had categorically explained why the aforesaid marks/symbols could not be treated as any 'trademark', notwithstanding that the same had been declared as trademarks in the Guaranteed Technical and Other Particulars for supply of the disputed items. No cogent evidence had been adduced to contradict the appellant firm's defence.*

As appears from the answer to question no. 18 of statement dated 25.01.2010 given by Shri Dinesh Rungta read with the answer to question no. 11 of his statement dated 01.12.2010, there had been no acceptance of liability on part of the appellant firm and the alleged voluntary deposit had been made under misconception and to buy peace. This is further evidenced from use of the phrase "... towards our duty liability If accrued and on ad-hoc basis..." in the appellant firm's letter dated 11.07.2007, under cover whereof the cheques for Rs. 10.50 Lakhs had been made over to the Department. In the sald facts and circumstances, we must hold that the payment of Rs.10.50 Lakhs had been made without prejudice to the appellant firm's rights and contentions.

IV. Quantum of goods obtained through job work was quite small as compared to the quantum of trading sales. No Incriminating statement had been obtained from any job worker or specific evidence adduced by the *revenue establishing unaccounted supply of raw materials/semi-processed goods to job workers by the appellant firm or clandestine receipt of finished goods from the job workers over and above the declared quantities. In any event, we hold that the appellant firm should not have been held llable to duty in respect of job work activities by the job workers on a principal-to-principal basis.*

13. As regards the Orders-in-Original dated 22.09.2017 and 01.05.2018, our conclusions and reasoning are stated in the following manner which would also summarize the crucial aspects of the matters: -

A. Co-relatable purchase and sales: We find that the appellant firm's claim of trading is borne out from records such as purchase invoices and corresponding sale invoices. We find that the appellant firm has submitted voluminous documents in this regard, however, the same had not been properly appreciated while passing the impugned Orders-in -Original. On specimen basis, we have examined the documents at page nos. 2632 to 5148 in Part 7 of the combined Paper Book, covering the period from February, 2011 to March, 2013 and are satisfied about the appellant firm's explanations. The said documents being purchase and sale Invoices contain all relevant information such as supplier's details, description of goods, payment of central sales tax, vehicle number for transportation of goods etc., which the adjudicating authorities neglected to examine.

Thus, we cannot uphold the finding at page no. 21 of the impugned Order-in-Original dated 22.09.2017 to the effect that the appellant firm "....could not produce any document which settles the fact they have trading sales...". Similarly, the finding in the Impugned Order-in-Original dated 01.05.2018 that transmission line hardwares were manufactured after the appellant firm received purchase orders from her customers is also Incorrect.

B. Duty paid on purchases We find that the appellant firm had already paid central excise duty in respect of a substantial part of its purchases. That the appellant firm had provided all the necessary details in this behalf, is evident from the written submissions filed before the Commissioner of Central Excise, Kolkata-II Commissionerate, as appears at page nos. 15549 to 15550 in Part 38 of the combined Paper Book filed before this Tribunal. To such extent of duty paid purchases, it follows that no demand ofCentral Excise duty can survive.

C. Job work: We find that the appellant firm had also traded in items obtained through job work. However, as compared to the total turnover of the appellant firm, the quantum of sale of job worked goods was quite low in value. To support such conclusions, we have perused the details and documents submitted by the appellant firm in relation to job worked goods for the period 2011-12 and 2012-13. We find that during the said period the appellant firm had maintained separate set of sale bills *for sale of goods manufactured by job workers which the appellant firm referred to as 'manufacturing sales' and in respect of the others sale of goods purchased and sold as such, the appellant firm had maintained during the said two years a separate set of sale bills referred to as 'trading sales'. Notwithstanding that the appellant firm may have flouted the procedures under central excise law relating to job work, no duty liability could have been fastened on the appellant firm as regards job work activities undertaken by the job workers on principal-to-principal basis.*

D. Testing at third party premises: The adjudicating authorities should have observed that only visual/ physical inspection of the goods had taken place at the appellant firm's premises and that tests like galvanization test, mechanical test, slip load test etc. had been conducted in outside laboratories. Such position is evident from the documents relied upon while Issuing the show cause notice dated 21.02.2014 such as Annexures 'X' and 'B1' as also the test reports filed by the appellant firm in their defense, such as the documents at page nos. 5149 to 5400 (Part 8), page nos. 7897 to 7944 (Part 14), page nos. 8761 to 8786 (Part 17) of the combined Paper Book filed before this Tribunal.

E. Demand on sale of materials to private parties and sale of wires, channels, angles etc. We find that the Department has raised demands on the sale of materials to private parties and sale of wires, channels, angles etc.

for the period on and from February, 2011, although, the appellant firm had never held itself out as a manufacturer in respect of such supplies. It must be noted here that, in the earlier two show cause notices dated 24.12.2010 and 24.03.2011 no such demand had been raised. In this regard, we agree with the appellant firm's contentions that the basis and computation of demand in the subsequent show cause notices were contrary to those of the earlier two show cause notices dated 24.12.2010 and 24.03.2011. While passing the Order-In-Original dated 01.05.2018 the Commissioner ought to have appreciated that, whether the private parties to whom the appellant firm had supplied the goods In question further supplied the goods to electricity distribution companles was of no consequence for determining the appellant firm's llability. We also find that, qua such supplies of wires, channels, angles etc. as well as supplies to private partles, there is no evidence at all that the appellant firm had undertaken manufacturing activities.

F. Non-existence of alleged four suppliers: As regards the Issue of non-existence or untraceability of the four disputed suppliers, namely, M/s. B.K. Enterprises, M/s. Shiv Shakti Trade Centre, M/s. Hari Om Enterprises and M/s. Evergreen Enterprises, we observe that the appellant firm had provided sufficient clarifications in their reply to the show cause notice dated 21.02.2014 as well as in their written submission filed before the Commissioner of Central Excise, Kolkata-II

Commissionerate. In fact, the Department had investigated the appellant firm's purchases covering a substantial period of time and dispute was raised only as regards the aforesaid four suppliers and not the remaining several suppliers. Moreover, the Department cannot hold the appellant firm Ilable solely on the basis that the aforesald four disputed suppliers may have discontinued their business or failed to renew their enlistment with the Kolkata Municipal Corporation when investigations had been undertaken. We do not find sufficient justification for doubting the purchase transactions entered into by the appellant firm much prior to the date of Investigation by the Department, especially when payment for the sald purchases had been made by the appellant firm through banking channels. At paragraph nos. 7.12 and 7.26 at page nos. 21 and 26 of the impugned Order-in-Original dated 22.09.2017 sweeping observations have been made against the appellant firm to the effect that the appellant firm had falled to prove the existence of its supplier and that "...the suppliers/vendors list, who gave the Noticee No. 1 manufactured goods for trading purpose, proved to be non-existent thereby indicating to be an afterthought and thereby creating paper trail..". In our opinion, the said observations gannot be confirmed and are llable to be set aside.

G. Physical movement of goods: We do not find proper justification to confirm the findings that the appellant firm had not adduced *evidence of the physical movement of goods purchased by her or gotten manufactured on job work basis or that the bills referred to by the appellant firm as trading sales did not contain any sort of supporting documents to prove conclusively that the subject sales were trading sales or that the submitted documents did not bring forth evidence of the physical movement of goods. The Commissioner falled to hold that the appellant firm had submitted not only invoices but also challans covering movement of the goods In question and the challan mentioned the mode of transport as also the registration number of the motor vehicles. Job work challans and documents showing movement of goods to and fro from the job worker's premises had been duly submitted by the appellant firm. In such circumstances, the adjudicating authority should not have faulted the appellant firm for failing to produce documents like agreement with suppliers, consignment notes, transporters' bill and their payment details, loading/unloading slips, weighment slips etc. To take an example, the Commissioner had held that the appellant firm could not establish physical movement of the goods purchased from SubhLabh Enterprises to Vishwanath Projects Ltd. which was incorrect. During the course of hearing before us, it was demonstrated as to how the sald purchased goods had been transported to the premises of Vishwanath Project Ltd. by truck bearing no. AP-16TX/9879. Further and in any event, such Issues were alien to the show cause notices* *and had been raised for the first time in the Order-In-Original dated 22.09.2017, which is illegal and unacceptable.*

14. Regarding penalty, the Appellant contended that the Notice demanding duty for the period 2005 to 2009-10 was issued on 24.12.2010. Since they have not suppressed any information from the department, Notice cannot be issued by invoking extended period. We observe that the Appellant has not taken any Central Excise Registration on the ground that the activities undertaken by them did not amount to manufacture. The Investigation concluded that the activities amounts to manufacture and demanded duty by Invoking extended period. In view of the above discussion, it is our considered view that the activities undertaken by the Appellant would not amount to manufacture. Hence the demand of duty in the normal period itself Is not sustainable. Accordingly, the question of Invoking extended period for demanding duty does not arise since the activities undertaken by the Appellant does not amount to manufacture. In view of the above, the question of alleging suppression and invoking extended period does not arise. Accordingly, penalty also not Imposable on the Appellant as well as its Authorized Representative Shri Aayush Rungta.

15. In view of the aforesaid discussions, we answer the legal. question in favour of the appellants and hold that the demands of duty, Interest and penalty against the appellant firm

> *cannot be sustained. The confirmation of personal penalties against Shri Aayush Rungta/Appellant No.2 is also llable to be set aside. Accordingly, the impugned Orders-in-Original dated 29.02.2012, 21.03.2012, 22.09.2017 and 01.05.2018 are set aside.*
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> *16. In the result, all the appeals are allowed with consequential reliefs.*

6.4. We find that the above decision of the Tribunal is squarely applicable to the facts and circumstances of the present case as the said decision pertains to the same assessee, on the very same issue, for the earlier period. Thus, by relying on the ratio of the decision cited supra, we hold that the demand of central excise duty confirmed in the impugned order is legally not sustainable and hence we set aside the same. As the demand of central excise duty is not sustained, the question of demanding interest and imposing penalty on the Appellant Company does not arise and hence we set aside the same.

6.5. Regarding the penalty imposed on Shri. Aayush Rungta (Appellant 2), under Rule 26 of the Central Excise Rules, we find that the second appellant all along acted bona fide in the discharge of his duties as authorized representative. The second appellant did not know nor did he have any reason to believe that the goods of the appellant company were liable to confiscation. In view of the discussions in the foregoing paras, it has been concluded that the demand of central excise duty confirmed against the Appellant Company is not sustainable. Accordingly, we hold that no penalty imposable on the second Appellant under Rule 26 and hence we set aside the same.

7. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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