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

REGIONAL BENCH – COURT NO. 1

Excise Miscellaneous Application No. 75675 of 2019

Excise Cross Objection No. 75668 of 2019

IN

Excise Appeal No. 78921 of 2018

(Arising out of Order-in-Original No. 01/COMM/CE/SLG/18-19 dated 16.05.2018 passed by the Commissioner of C.G.S.T. and Central Excise, Siliguri Commissionerate, Central Revenue Building, Haren Mukherjee Road, Hakimpara, Siliguri – 734 001)

M/s. CIPLA Limited **: Appellant**
Kumrek, P.O.: Rangpo,
District: East Sikkim,
Sikkim – 737 132

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Siliguri Commissionerate,
Central Revenue Building, Haren Mukherjee Road, Hakimpara,
Siliguri – 734 001

APPEARANCE:

Smt. Ekta Jhunjhunwala, Advocate,
Shri Rahul Tangri, Advocate
For the Appellant

Shri S.K. Jha, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75949 / 2026

DATE OF HEARING / DECISION: 27.07.2026

ORDER: [PER SHRI ASHOK JINDAL]

At the outset, we observe that the Revenue has submitted a Memorandum of Cross Objection accompanied by an application for condonation of delay. Having examined the stated grounds and being satisfied that adequate cause has been demonstrated, we are inclined to condone the delay in the interest of justice. The application is therefore allowed.

1.1. Since the issue lies in a narrow compass, with the consent of the parties, both the Appeal as well as the cross objection are taken up for final disposal.

2. The appellant is in appeal against the impugned Order-in-Original dated 16.05.2018 passed by the Commissioner of C.G.S.T. and Central Excise, Siliguri, whereby the demand of Central Excise duty amounting to Rs. 3,41,15,506/-, together with applicable interest and equivalent penalty under Section 11AC of the Central Excise Act, 1944, came to be confirmed against them, on the allegation that it had irregularly availed suo motu re-credit of the annual differential refund for the financial years 2011-12 to 2013-14 without obtaining refund orders from the jurisdictional Assistant Commissioner/Deputy Commissioner, allegedly in contravention of the procedure prescribed under Paragraph 4 of Notification No. 20/2007-CE dated 25.04.2007, as amended by Notification No. 38/2008-CE dated 10.06.2008.

3. The facts of the case are that the appellant is engaged in the manufacture of medicaments falling under Chapter 30 of the Central Excise Tariff Act, 1985 and was admittedly availing the benefit of the Area-based exemption under the Central Excise Notification No. 20/2007–CE dated 25.04.2007, as amended, in respect of dutiable goods manufactured and cleared by them. In terms of Paragraph 2D thereof, the appellant had opted for the prescribed mechanism of availing monthly self-credit in its PLA and, for such purpose, regularly furnished monthly statements indicating the computation of the eligible amount, upon verification whereof the jurisdictional authorities issued verification certificates from time to time.

4. Apart from such monthly self-credit, Paragraph 4 of the Notification contemplated grant of refund of the differential amount, wherever the total amount of refund obtained by the assessee on a monthly basis is less than the amount which is eligible under the Notification when computed on an yearly basis, the assessee would be eligible to obtain refund of such differential amount. The Notification requires the jurisdictional Assistant Commissioner or Deputy Commissioner to sanction such annual differential refund claim for a particular year, by 15th May of the subsequent financial year.

5. The appellant accordingly submitted applications seeking grant of the annual differential refund for the financial years 2011-12, 2012-13 and 2013-14, enclosing the requisite particulars relating to the duty paid through PLA, the self-credit already availed and the differential amount claimed. According to the appellant, although the prescribed period for sanction of such refund expired, no orders were passed by the jurisdictional authority. It is their case that, upon expiry of the stipulated period, they availed suo motu credit of the differential amount in their PLA and, significantly, intimated the Department of such availment through letters dated 07.05.2012, 15.05.2013 and 29.04.2014, while simultaneously reflecting the same in the monthly statements submitted to the Department. For clarity of the factual sequence and the particulars of such annual differential claims and corresponding suo motu credits, the appellant has furnished the following tabulation:

S. No.	**Particulars**	**2011-12**	**2012-13**	**2013-14**
1	Differential refund amount	Rs. 1,48,56,777	Rs. 88,36,321	Rs. 1,04,22,408
2	Date of applying for the refund and stating that the Appellant shall be taking self-credit of the said amount	07.05.2012	15.05.2013	29.04.2014
3	Due date to sanction refund as per notification	15.05.2012	15.05.2013	15.05.2014
4	Month of taking self-credit by the Appellant*	August 2012	June 2013	June 2014
5	Disclosure of self-credit in the monthly refund claim filed by Appellant	August 2012	June 2013	June 2014

6. Subsequently, a CERA Audit was conducted by the Department and an audit objection report dated 31.03.2015 was conveyed to the appellant seeking clarification on the differential amounts of suo-motu credit availed by the appellant in its PLA account without following the refund procedure. The appellant submitted its reply dated 19.05.2015 explaining the basis of such availment.

7. Thereafter, a Show Cause Notice dated 08.09.2016 came to be issued proposing recovery of the entire amount of Rs. 3,41,15,506/-, together with interest and equivalent penalty, by invoking the extended period of limitation, principally on the ground that the appellant had taken self-credit of the annual differential refund without following the refund procedure contemplated under Paragraph 4 of the notification.

7.1. The appellant contested the allegations by filing a detailed reply dated 06.04.2017.

7.2. The matter was adjudicated vide the impugned Order-in-Original dated 16.05.2018, wherein the ld. adjudicating authority confirmed the proposals raised in the above Notice in entirety.

7.3. Against the said order, the appellant is before us. The Revenue has also filed a cross objection to the appeal preferred by the assessee-appellant.

8. The Ld. Counsel appearing on behalf of the appellant made various submissions in support of their contentions, which are inter alia summarized below: -

<u>A. Annual differential refund ought to be allowed suo motu by the department within stipulated time, as per Para 4 of the Notification. Having not followed the same, the department cannot be allowed to take benefit of its own wrong by denying the suo motu credit availed by the Appellant under proper application and intimation.</u>

(i) That the demand vide the impugned order has been confirmed merely on the ground that the Appellant availed suo-motu credit instead of waiting for the refund sanction order, alleging that there is no provision under the said notification permitting self-credits for the annual differential amount.

(ii) In this regard, it is their submission that Para 2C of the said notification allows refund in cash of the duty paid through PLA subject to verification by the Department of the duty payment statements on monthly basis. However, being aware of the delay that might occur in processing of such refunds when left at the mercy of the Department, and to incentivise the establishment of industries in the North-Eastern States, para 2D of the said notification provided an option to the assessees to avail suo-motu credit of the eligible refund amount, subject to subsequent monthly verification by the Departmental authorities.

(iii) Further, Para 4 of the said notification provided that in case in a particular financial year, the total amount of refund obtained by the assessee on a monthly basis is less than the amount which is eligible under the Notification when computed on an yearly basis, the assessee would be refunded such differential amount. As per the Notification, the said refund was required to be *suo motu* sanctioned by the Assistant Commissioner or Deputy Commissioner to the assessee by 15^{th} May of the subsequent financial year, without any requirement of assessee filing any claim. This is clear from the manner Para 2C and Para 4 of the Notification are worded.

(iv) It is reiterated that no procedure for submission of duty payment statement for seeking such annual refund has been prescribed under Para 4 of the said notification and the same has to be granted by the Department suo-motu relying upon the monthly duty payment statements submitted by the assessees.

(v) However, in the instant case, the department did not adhere to such legislative mandate and did not take any steps for granting the differential annual refund to the Appellant suo motu. Further, even after the application by the Appellant in each of the years, the Department did not take any action.

(vi) Thereafter, when the Appellant took the credit suo motu after the mandated period of refund under the Notification expired (viz. 15^{th} May of the subsequent year), the department has arbitrarily sought to recover the eligible differential refund claimed on the ground that the Appellant should have continued to wait for the department to sanction the refund.

(vii) Thus, it is pertinent to note that there is no dispute in the instant case regarding the eligibility or the computation of the differential refund. The department never raised any objection regarding the eligibility of refund or computation submitted by the Appellant. It is pertinent to note that even the audit conducted by the department leading to the issuance of the SCN never disputed the computation of the annual differential refund for any year. Having failed to pass orders within time stipulated under the notification, which led to the assessee taking the suo-motu credit, the department cannot find fault with the assessee since doing so would amount to the department taking benefit of its own wrong. In this regard, reliance is placed on the Hon'ble Apex Court's judgment in the case of *Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, 1991 (55) E.L.T. 437 (SC).*

(viii) Therefore, the availment of self-credit by the Appellant after the expiry of the time stipulated for department to sanction refund cannot be disputed. Thus, the impugned order seeking recovery of the annual differential refund availed as self-credit by the Appellant is perverse and bad in law.

(ix) Further, it is also humbly submitted that once the Appellant had already opted for availing self-credits under para 2D of the said notification, no error has been committed on the part of the Appellant to avail self-credits of the differential amount arising on yearly re-computations and the same is within the four corners of law.

(x) Thus, the disallowance of such suo motu credits by raising demand thereof vide the impugned order is legally unsustainable and deserves to be set aside.

(xi) It is submitted that in the case of *Commissioner of Cus. & C. Ex., Jammu Versus Meera & Co. [2007 (217) E.L.T. 460 (Tri. - Del.)],* the

Tribunal has validated the availment of suo-motu credit by the assessee, on account of delay in sanctioning of refund by the department, under the relevant area-based exemption notification [N. No. 56/2002-CE dated 14.11.2002], even during the period when there was no specific provision allowing self-credits under the said notification. The Hon'ble Tribunal, accordingly, had set aside the interest demand raised by the department for pre-mature credit suo moto taken by the assessee in its PLA, without awaiting for the belated refund sanctioning order.

(xii) Thus, the instant demand is liable to be set aside on this ground alone.

<u>B. As the facts were already in the knowledge of the department ever since the appellant filed the applications for obtaining the differential refund, the extended period of limitation cannot be invoked. Thus, the entire demand is barred by limitation.</u>

(i) The entire demand has been confirmed pursuant to SCN issued on 08.09.2016 for the period 2011-12 to 2013-14 invoking the provisions of Section 11A(4)(e) of the Central Excise Act, 1944 ('CEA'), viz. extended period of limitation.

(ii) The Appellant submits that the extended period is not invocable in the present case as there was no contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty on the part of the Appellant.

(iii) As evident from the table reproduced in the facts, the department was aware of the self-credit of differential annual refund availed by the Appellant vide the following communications/ documents:

- Applications filed by Appellant on 07.05.2012 (for FY 2011-12), 15.05.2013 (for FY 2012-13) and 29.04.2014 (for FY 2013-14) for refund;
- Monthly duty payment statements filed for the months of August 2012, June 2013 and June 2014 where the factum of availment of self-credit of the annual differential refund was reflected in the computation chart.
- The suo motu credit has been availed in PLA, which is regularly verified by the department while issuing the verification certificates for monthly credit availed.

(iv) Therefore, it transpires that the department was always aware of the availment of differential annual self-credit. The facts were always on record and the Department had complete knowledge of the same. Thus, there cannot be any allegation of suppression or *mala fide* intent to evade payment of duty as the Appellant has always disclosed all the facts to the department. Therefore, the issuance of SCN dated 08.09.2016 and confirmation of demand thereof by invoking the extended period of limitation when all the relevant facts and/or documents were already available with the department since 2012 is untenable and liable to be set aside. Reliance in this regard is placed on the judgment of M*/s. Alkem Laboratories Limited vs Commissioner of CGST & Central Excise, Siliguri [2025-VIL-411-CESTAT-KOL-CE]*, wherein in identical set of facts of *suo motu* availment of annual differential refund, when the department did not act on the application filed by the Appellant, the Hon'ble Tribunal set aside the proceedings initiated by invoking the extended period of limitation as being fully time-barred.

(v) It is a settled law that when facts are known to both the parties, the omission by one to do what he might have done, not that he must have done, would not lead to invocation of extended period of limitation. This principle has been upheld by the Hon'ble Supreme Court in the case of *Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut, 2005 (188) E.L.T 149 (S.C).*

(vi) Thus, invocation of extended period of limitation to issue SCN is not sustainable, accordingly the entire demand is time-barred. Similar proposition has been held in the following judgments:

- *Alstom Projects India Ltd. v. CCE, Bolpur, 2023 (7) TMI 762 (CESTAT-Kol.)*
- *M/s SAIL, Alloys Steel Plant v. Commissioner of Central Excise, Bolpur, 2023 (6) TMI 1307 (CESTAT-Kol.)*
- *Commissioner of CGST & Central Excise v. Adani Gas Pvt. Ltd. – 2017 (356) E.L.T. 541 (Guj.)*

(vii) As evident from the facts narrated above, the Department was aware of the facts since 2012 and it is a trite law that if there is an inordinate delay in issuance of show cause notice, extended period of limitation is not invokable. Therefore, issuance of SCN on 08.09.2016 by invoking the extended period of limitation is grossly erroneous.

(viii) Reliance in this regard is placed on the following decisions wherein various Courts held that if the activities of the assessee were already in the knowledge of the department, then no SCN can be issued invoking the extending period of limitation:

- *M/s. Super Forgings & Steel Limited v. Commr. of Central Excise, Kolkata – IV – 2024 (1) TMI 448 – CESTAT Kolkata.*

- *Orissa Bridge & Construction Corpn. Ltd. v. CCE, Bhubaneshwar, 2011 (264) ELT 14 (SC)*

(ix) In view of the aforesaid submissions, the extended period of limitation is not invokable in the present case.

C. When demand itself is not sustainable, no interest is payable, and no penalty is imposable.

(i) Where the principal demand itself is not payable, the demand for interest and penalty ought to be set aside.

(ii) Even otherwise, in the absence of any suppression or mala fide intent, when the department was aware of the facts all along, the question of imposition of penalty does not arise.

8.1. In view of the above submissions, the Ld. Counsel for the appellant prayed for setting aside the impugned order and allowing the present appeal, thereby granting consequential reliefs to the appellant.

9. On the other hand, the Ld. Authorized Representative of the Revenue supported the findings in the impugned order.

10. Heard the parties and considered their submissions.

11. Without going into the merits of the case, we find that the appellant has argued that the impugned demands are not sustainable on account of limitation, on the ground that the invocation of the extended period of limitation in the Show Cause Notice is not sustainable in the facts and circumstances of the case.

11.1. We find that in the present case, the period involved is from 2011-12 to 2013-14. During the impugned period, the refund claims were to be sanctioned, as per the said Notification, by 15.05.2012, 15.05.2013 and 15.05.2014 for the Financial Years 2011-12, 2012-13 and 2013-14 respectively, and since no action was taken by the Revenue, the appellant took self-credit of the amount which was entitled to them, in August, 2012, June 2013 and June 2014 respectively. It is a fact that the above availment of self-credit during the said months was disclosed by the appellant in the monthly duty payment statements filed during the months of August, 2012, June, 2013 and June, 2014. Admittedly, the above fact of self-credit of differential annual refund availed was also intimated to the Department by way of letters dated 07.05.2012, 15.05.2013 and 29.04.2014 for the Financial Years 2011-12, 2012-13 and 2013-14 respectively.

11.2. It is also a fact that the Revenue had not raised any dispute regarding the entitlement of the appellant to the refund claims filed by them, but the same had also not been entertained by the Revenue.

13. Therefore, it is evident that all the relevant facts were already within the knowledge of the Department. In these circumstances, the Revenue has failed to bring any evidence on record so as to substantiate the allegation of suppression or fraud or mala fide intent on the part of the appellant so as to evade payment of duty. In view of this, we hold that the Show Cause Notice issued to the appellant on 08.09.2016 is highly barred by limitation. Consequently, as the Show Cause Notice issued to the appellant is barred by limitation, no proceedings are sustainable against the appellant.

14. In the result, we set aside the impugned order and allow the appeal, with consequential reliefs, if any. The cross objection filed by the respondent is disposed of in these terms.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd