

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI**

**APPEAL NO. E / 1038 / 11-MUM**

(Arising out of Order-in-Appeal No. P-I/RKS/45/2011 dated 25.3.2011  
passed by the Commissioner of Central Excise (Appeals), Pune I)

**Finolex Cables Ltd** : **Appellant**  
26-27, Mumbai-Pune Road, Pimpri,  
Pune Pin Code 411 018

**VS**

**CCE PUNE I** : **Respondent**  
F, Wing, 3<sup>rd</sup> Floor, ICE House, 41-A, Sasson Road,  
Opp. Wadia College, Pune Pin Code 411 001

**Appearance**

Shri Gajendra Jain, Adv for Appellant

Shri Anil Choudhary, D.C. (A.R) for Respondent

**WITH**

**APPEAL NO. E / 659 / 11-MUM**

(Arising out of Order-in-Appeal No.P-I/RKS/10/2011 dated 20.01.2011  
passed by the Commissioner of Central Excise (Appeals), Pune I)

**Finolex Cables Ltd** : **Appellant**  
26-27, Mumbai-Pune Road, Pimpri,  
Pune Pin Code 411 018

**VS**

**CCE PUNE I** : **Respondent**  
F, Wing, 3<sup>rd</sup> Floor, ICE House, 41-A, Sasson Road,  
Opp. Wadia College, Pune Pin Code 411 001

**Appearance**

Shri Gajendra Jain, Adv for Appellant

Shri Anil Choudhary, D.C. (A.R) for Respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**  
**Hon'ble Shri P Anjani Kumar, Member (Technical)**

**Date of hearing : 18.02.2019**  
**Date of decision : 14.06.2019**

**ORDER NO. A/86117-86118/2019**

**Per : P Anjani Kumar, Member (Technical)**

Brief facts of the case are that M/s. Finolex Cables Ltd, the appellants, are engaged in the manufacture of Cables falling under Chapter 85, of the First Schedule to the Central Excise Tariff Act, 1985 and also manufacture Auto (Annexure A) / Battery (Annexure B) / Ignition Cables, which are specifically used in Automobiles. The appellants have been assessing the goods under Section 4, of the Central Excise Act, 1944. Revenue contended that they are specifically used in automobiles and hence liable for assessment under Section 4A of the Central Excise Act, 1944, in view Sr. No.97 under Notification No.11/2006-CE/ (NT) dated 29.5.2006 as amended from time to time.

**2.** On the basis of investigations conducted, the department opined that the appellants were manufacturing Auto Cables, having thickness of 0.50, 0.75, 1.00, 1.50, 2.50, 4.00 and 6.00 mm; these cables are packed in lengths of 25 Mtr and 100 Mtr; were affixed with MRP label and packed in carton boxes for transfer to their branches from where they were sold in retail market/ directly to customers; they merit classification as "Parts, Components and Assemblies of Automobiles"

and assessable to duty, under the provisions of Section 4A of the Central Excise Act, 1944, as the auto cables are an essential part of I.C. Engines, Electrical Assemblies, Head Lamps, Tail Lamps etc. of automobiles; technical literature of the product indicated that the Auto Cables are specifically designed to withstand temperatures between - 40 degrees to 105 degrees Centigrade to withstand increase in temperature of Automobile Engine and to withstand exposure temperatures; the products is sold to traders in the secondary market in retail packages affixed with MRP and label indicating that the product is to be used in automobiles components in cut-lengths as per requirement after affixing connectors at the ends. It was contended that Auto Cables and Battery/Ignition Cables are and thus such cables are liable for assessment under Section 4A of the Central Excise Act, 1944 being parts of automobile. Show cause Notice dated 29-9-2009 (in respect of Urse Unit) and SCN dated 7-12-2009 In respect of Pimpri Unit) were issued to the appellants, seeking payment of differential duty of Rs.30,77,116 and 31,30,990 respectively, were issued, under the provisions of Section 11A while proposing to demand interest under Section 11AB; Penalty under 11AC of CEA,1944. Additional Commissioner, vide order in original PI/ADC/39/2010 dated 9-9-2010& PI/JC/47/2010 dated 4-11-2010 confirmed the demand of duty along with interest and imposed equal penalty under the provisions of Section 11AC read with Rule 25 of the Central Excise Rules, 2002. On an appeal file by the appellants, Commissioner (Appeals), Pune, vide order in Appeal dated 28/01/2011 has upheld the orders, of lower authorities, vide orders P-I/RKS/10/2011 dated 20-01-2011&P-I/RKS/45/2011 dated 25-3-2011. Hence, these appeals.

**3.** The Learned Counsel for appellants submits that they have cleared goods by classifying them under Chapter Heading 8544 as 'Cables'; Notice has not proposed to change the assessment of goods from "cables" adopted by the appellants to "parts of automobiles"; parts and accessories of vehicles are classifiable under Chapter Heading 8714; the department cannot consider the goods as "parts and accessories of automobiles", for the purpose of valuation, without changing the assessment from "cables" to "parts and accessories of automobiles".

**3.1.** By virtue of Notification No.2/2006-CE (NT) dated 1.3.2006 (as amended by Notification No.11/2006-CE (NT) dated 29.5.2006, issued under Section 4A of the Central Excise Act, 1944, MRP based valuation of parts, components and assemblies of automobiles classified under any heading of the First Schedule to the Central Excise Tariff Act, 1985 was introduced w.e.f. 1.6.2006. Prescribed abatement was 33.5%.

| (1) | (2)         | (3)                                             | (4)   |
|-----|-------------|-------------------------------------------------|-------|
| 97. | Any heading | Parts, components and assemblies of automobiles | 33.5% |

Notification No.2/2006-CE (NT) was rescinded by Notification No.14/2008-CE (NT) dated 1.3.2008 and prescribed abatement was 31.5% Sr. No.107 reads as under:

| (1) | (2)         | (3)                                             | (4)   |
|-----|-------------|-------------------------------------------------|-------|
| 107 | Any heading | Parts, components and assemblies of automobiles | 31.5% |

Thereafter, the abatement of 30% continued as under Sr. No.108 of Notification No.49/2008-CE(NT) dated 24.12.2008.

| (1) | (2)         | (3)                                             | (4)   |
|-----|-------------|-------------------------------------------------|-------|
| 108 | Any heading | Parts, components and assemblies of automobiles | 31.0% |

In view of the above, only those goods which are parts, components and assemblies of automobiles are specified in the notification issued under Section 4A of the Central Excise Act, 1944 for the purpose of assessment based on MRP. Therefore, the items covered under the above Notification should be part of components of automobiles.

**3.2.** In this context, it may be relevant to examine the meaning of parts as construed by the Hon'ble Supreme Court and Hon'ble High Courts in a number of cases. Hon'ble Supreme Court, in the case of State of Uttar Pradesh Vs. Kores (India) Ltd. (1976) 4 SCC 477, held that ribbon is an accessory to a typewriter and not a part of the typewriter, though it might not be possible to type out any matter on the typewriter without the ribbon. Consequently, typewriter, ribbons do not attract tax as per entry 18 of the Second Schedule to the Mysore Sales Tax Act, 1957; this case was followed by the Hon'ble Tribunal in the case of CCE Vs Harish Industries – 2008 (223) ELT 651 (T); as they are not sold along with the vehicles, auto /battery cables manufactured by the appellants cannot be valued under Section 4A.

**3.3.** The appellants' submitted that cables cleared in running length cannot be treated as parts of automobiles as it is settled law that goods have to valued/assessed in the form in which they are removed from the factory gate; entire roll of auto/battery cables in running length is incapable of being used 'as such' in the automobiles for wiring or for any other purpose; the service station/garage owner who purchases from the dealer/distributor of the appellants has to necessarily cut it into required lengths for use in wiring; connectors have to be necessarily fitted, at both the ends, after cutting wires so as to make the end product ready for the replacement; therefore, the cables cleared by the appellants in no way can be treated as parts/ components of automobiles.

**3.4.** The appellants submit that from the affidavits (on Page 99-108 of Appeal No. E/659/2011 and Page 90-97 of Appeal No. E/1038/2011) of the personnel of the appellants company, it is quite evident cables are of running length and cannot be directly used in the vehicle; further, cables cleared by the appellants are capable of being used in household appliances, STD booths, etc; affidavits; therefore, cables cleared by the appellants are not solely and principally meant for vehicles and therefore the same cannot be considered as part of the vehicles.

**3.5.** The appellants submit that iron sheet of specific characteristics meant for automobile industry is not assessed as parts and components of vehicles; iron sheet is required to be

cut/ punched into specific size and shape for being used in the vehicle; in the present case also, the cables cleared by the appellants are not used 'as such'; therefore, the same cannot be considered as parts of the vehicle; the department has not adduced any evidence to prove that the entire roll of auto/battery cables in running length, in the form in which it is cleared from the factory of the appellants, is used 'as such' in the automobiles for wiring; without such conclusive proof, it is not open for the department to treat the auto/battery cables cleared to dealers/distributors, as parts/components of automobiles.

**3.6.** The appellants submit that cables cleared in running length for use in specific industry / sector does not make them parts and components of that industry/sector; just for the reason that the end use of the product is for particular industry/sector, nature of the product does not change. They placed reliance on the following.

- (i) United Cables Industries Vs CCE – 2000 (119) ELT 668 (T) Maintained in Supreme Court at 2002 (141) ELT A280 (SC)
- (ii) Nicco Corporation Vs CCE – 2006 (203) ELT 362 (SC) (Affirmed by Three Bench of Supreme Court at 2008 (225) ELT A131 (SC))
- (iii) Incab Industries Vs CCE – 2001 (137) ELT 574 (T)
- (iv) CCE Vs Skytone Electricals (India)–2002 (141) ELT 723 (T) Affirmed by Supreme Court at 2008 (225) ELT A97 (SC)
- (v) CCE Vs Omega Cables Limited – 2005 (196) ELT 410 (T)
- (vi) CCE Vs Alankar Sales Corporation – 2003 (151) ELT 317(T)
- (vii) J.K.Tyre & Industries Ltd. Vs CCE–2017(258) ELT 1044 (T)

**3.7.** Appellants submit that they have maintained all the records and also filed statutory returns from time to time; nature of goods and valuation practices adopted by the appellants were

known to the department; records were always available for scrutiny to the department; therefore, demand beyond the normal period of limitation is not maintainable; there is no suppression of fact and much less with intent to evade payment of duty; no evidences have been produced by the department to show that the appellants have willfully suppressed/ misstated any fact or had acted fraudulently with an intent to evade payment of duty. In the absence of any such evidence, the invocation of extended period is not sustainable; the present case is one of pure interpretation on question of law; the view entertained by the appellants is possible in the facts of the case and hence, the allegation of evasion is bad in law; accordingly, the demand beyond normal period of limitation is not maintainable; therefore, no penalty is imposable on the appellants; as the demand itself is not sustainable, the question of imposing interest does not arise.

**4.** Learned AR for the department, submits that Commissioner (Appeals) observed that the appellants are manufacturing “Auto Cables, Battery Cables and Ignition cables”, which have a specific use only in the ‘Automobile Industry’ and are cleared in retail packages affixed with MRP; the cables are used in the automobiles and automobile components for carrying electric currents to various parts of the automobiles, in cut lengths as per requirements after connecting connectors at the end of the cables of desired lengths; the appellants have not disputed the fact that the said cables are used only in the automobiles and automobile components and are ‘parts and

components' of automobiles; technical literature of the product also shows that these cables are specifically designed to withstand temperatures in the range of minus 40 degree centigrade to 105 degree centigrade; though the appellants contended that the said cables cleared in running length cannot be treated as 'automobile parts', Shri N. Ramanujam, Deputy Manager of Madras Auto Service, Pune, in his statement dated 11.09.2009, stated that they are the wholesale distributors of spare parts required for automobiles; they are procuring Auto cables from the appellants, which are of standard size, packed in carton boxes affixed with MRP and that these cartoon contain auto cables of 25 metres length of various sizes, viz 0.50, 0.75, 1.00, 1.50, 2.50, 4.00 or 6.00 sq. mm. thickness; these auto cables are only sold to automobiles dealers, who in turn sell it to various automobile retailers or to auto electronics or vehicles owners for repairing vehicles; these cables are also sold to automobile dealers only; from the statements of Shri N. Ramanujam, Deputy Manager of Madras Auto Service, Shri Dinakar Krishnarao Joshi, Assistant General Manager (Excise) and Shri S.S. Buva, Assistant General Manager (QC) of the appellants, it is clearly evident that the Auto cables/ Battery cables/Ignition cables are used only in the automobile industry only and not in any other industry; the same fulfill all the requirements as prescribed under the Standards of Weights & Measures Act, 1976 & the rules made there under and are correctly liable to be assessed under the provisions of Section 4A of the Central Excise Act, 1944.

**4.1.** Learned AR submits also that the appellants' reliance on various cases including that of State of Uttar Pradesh Vs Kores

(India) Ltd. – (1976)4 SCC 477, wherein it was held that type writer ribbon is not an essential part of the type writer, but an accessory of the type writer. However, the said judgement is not applicable to the facts of this case, as the Auto Cables/Battery cables/Ignition cables are an essential part of the automobiles, and are specifically covered as “parts, components & assemblies of automobiles”, under the Notification No.11/2006-C.E. (N.T) dated 29.05.2006, 14/2008-CE (N.T.) and 49/2008-CE (N.T.), as referred to above.

**4.2.** Learned AR submits that the Appellant’s stand that the impugned goods are industrial goods is also not valid since the appellants sell one of their products distinctly marked as Industrial Cable as evidenced by a photograph of the product (enclosed at Annexure 1); moreover, the company also sells other products distinctly marked as household wire, LAN cable, Speaker Cable, etc as evidenced by photograph (enclosed at Annexure 2); similarly, the impugned goods are distinctly sold as Auto Cables only, and are neither marked as Industrial Cables, nor are they sold to industry; these goods are sold as Auto Cables and are meant for mechanics and auto electricians only; on the appellants’ reliance on upon Affidavits by Shri M. Sridhar Reddy, an employee of the Assessee, Shri Shyam B. Chhabria, owner of Neotric Investment and Trading Corporation P. Ltd. (Trader of the impugned goods) and Shri Ajay C. Kale Owner of Enterprises, engaged in repairing of various types of vehicles affirming that the goods need to be cut before using them in

automobiles and cannot be used as such and that the goods can be used for household appliances and equipment, boats, STD/PCO Booth along with D.G. Sets, learned AR submits that the subject goods cannot be used for household wiring or equipment because generally, a household wire/equipment consist of a cable/wire that is composed of two different wires, for positive and negative terminals, that are either entwined or placed together in another insulated covering (Annexure 3 shows this photograph of entwined wire and two separate wires enclosed in an insulated wire); thus, the contention of the appellant that these wires can be used in household appliances or in equipment is also not correct; moreover, the appellants are producing another product specifically for household appliance/equipment (photograph at Annexure 4) clearly establishes the fact that Auto Cable are not intended or possible to be used in house for wiring or for any household equipment /appliance.

**4.3.** Learned AR submits that the goods are sold in running length of 50/75/100 meters only because there are tens of types of automobiles like Truck/SUV/ Buses/Tractor/Sedans/Motorcycles/Scooters/Mopeds/three wheelers etc. and for each type of vehicle has many manufacturers, both Indian as well as Foreign; moreover, there are different models of similar vehicle like whether it is manual/ automatic /semi-automatic; there is a further class of vehicle like diesel/petrol/ CNG; all these different types of automobiles

require wiring which differs in length from model to model/make to make etc; it is not possible or feasible for any auto cable manufacturer to sell their product in cut to size form in view of the thousands of various models of automobiles on the road; hence, it is only for the sale of convenience and marketability that the goods are being sold in running length and not because they are industrial goods.

**4.4.** On the issue of limitation, Learned AR states that the original authority held that the Auto Cables, Battery Cables & Ignition cables, are liable for assessment under the provisions of Section 4A of the Central Excise Act, 1944 as they are specifically used in automobiles; the appellants were fully aware of the appropriateness of assessment under Section 4A of the Central Excise Act, 1944, and with an intention to evade payment of duty they have short payment of duty they have short paid duty on the subject goods by resorting to self-assessment under Section 4 of the Central Excise Act, 1944, and hence, the proviso to Sub-section (1) of Section 11A is rightly invocable in this case. Learned AR further submits that appellants were selling their products viz., "Auto Cables, Battery cables & Ignition cables" in packaged form by affixing MRP; the package contains the details like manufacturer's name, of the products, size, specification, measure (length) and the MRP and thus fulfilling all the requirements under the Packaged Commodity Rules, 1977; description on the package itself indicates that the cables being sold are for specific use in the

motor vehicles and not for general use; appellants were well aware that auto/battery cables/Ignition cables are used in the automobiles only; being an ISO 9011 company and having an independent Department dealing with Central Excise matters, they were well conversant with the provisions of the Central Excise Act/Rules made thereunder. In spite of being fully aware, they have cleared the same by resorting to assessment under the provisions of Section 4. Therefore, it has to be construed that they have undervalued the impugned goods with an intent to evade payment of duty and hence proviso to sub-section (1) of Section 11A has been rightly invoked. Further, since the appellants have contravened the provisions of Section 4A of the Central Excise Act, 1944 read with Rule 6, Rule 4 and Rule 8 of the Central Excise Rules, 2002, with an intention to evade payment of duty and hence they are also liable to penalty under Section 11AC of the Central Excise Act, 1944. Further, the interest on duty so evaded, is liable to be recovered under Section 11AB of the Central Excise, Act, 1944.

**5.** Heard both sides and perused the records of the case. Brief issue which requires to be decided in the instant case as to whether the auto cables and battery/ignition cables manufactured and cleared by the Appellants merit valuation under the provisions of Section 4A of Central Excise Act, 1944 as contended by the Revenue. It was the Appellants contention that the items manufactured by them fall under Chapter Heading 8544 and the parts and accessories of motor vehicles are classifiable under Chapter Heading 8714; department cannot

change the assessment without changing the classification. They submit that the cables manufactured by them are in running lengths and can only be used in automobiles only after cutting the same to the required size. The Learned Authorised Representative on the other hand argued that the cables manufactured by the Appellants are tailor made to be used in the automobiles.

**5.1.** On the issue of the Appellants submissions based on classification we find that the Appellants are trying to mix two different things; classification of goods under Central Excise Tariff Heading and valuation of the same under MRP basis are altogether different propositions. Classification of goods under the particular Heading under Central Excise Tariff is with reference to head note, chapter notes, section notes, general principles of classification and notes to Harmonious System of nomenclature. The goods are subjected to assessment under Section 4A of Central Excise Act, 1944 if they are covered under the MRP regime in terms of Packaged Commodities Rules, 1977. Therefore we don't find that the Appellants contention on the basis of classification are acceptable.

**5.2.** The Learned Authorised Representative for the Revenue submits that the cables have 0.50, 0.75, 1.00, 1.50, 2.50, 4.00 and 6.00 Sq. mm and are packed in lengths of 25 Mtr and 100 Mtr and are cleared to their branches and further to the customers. The Learned A. R., citing the technical literature of the product, states that the auto cables manufactured by them are specifically designed to withstand temperatures between -40 degrees to 105 degree Centigrade. The

Learned A.R. further submitted from the records that the cables manufactured by the Appellants are cleared in detail packages are fixed with MRP; the Appellants have not disputed the fact that the said cables are used only in the automobiles and automobiles components. We find that Shri N. Ramanujam, Dy. Manager of Madras Auto Service, Pune stated that they are wholesale distributors of spare parts required for automobiles and that they are procuring auto cables from the Appellants. From the statements of Shri N. Ramanujam, Shri Dinakar Krishnarao Joshi, Asst. General Manager (Excise) and Shri S. S. Buva Asst. General Manager (QC) of the Appellants, it is clear that the impugned goods are used by automobile industries only.

**5.3.** Learned A.R. refutes the stand of the Appellants that the impugned goods are industrial goods on the basis of evidence in the form of a photograph that the Appellants sell one of their products separately marked as “industrial cables”; they also sell product distinctly marked as “household wire”, LAN cables, speaker cables, etc. The impugned goods are sold as auto cables only and they are not marked as “industrial cables”. On the submission of the Appellants the affidavit of Shri M. Shridhar Reddy, Shri Shyam D. Chhabria and Shri Kale stating that the cables need to be cut before using automobiles and they can also be used as a household wire, the Learned A.R. submits that on the basis of the fact that the Appellants are also selling separately household cables and on the basis of the fact that the cables are made to withstand high temperatures they cannot be set to be for household use. We find that the contention of the Learned A.R. are acceptable as he has demonstrated the various

products manufactured and cleared by the Appellants packed in distinctive packages depending on the use. In view of the averment of Shri Ramanujam it is understood that the impugned cables cleared by the Appellants are identified by the retailers and ultimate users to be parts of automobiles. Only by the reason that they require to be cut in to different lengths before use, they do not cease to be automobile parts. We are in agreement with the contention of the Learned A.R. that in view of the variety of brands of automobiles, models of automobiles and sizes of automobiles, it is anybody understanding that they cannot be a fixed length of these wires. Moreover, it was successfully demonstrated by the Learned A.R on the basis of the product profile of the impugned goods that the goods are meant for automobile industry only. For ease of reference, the product profile advertised by the Appellants is as given below:

*Finolex Cables Limited offers a range of Auto Cables. These 105°C temperature resistant PVC insulated thin wall automobile cables are designed specially for new generation automobiles. In these automobiles the focus is on miniaturization and optimization of space, which results in increase of temperature in the engine compartments and other locations. The cables with electrolytic grade bare annealed bunched copper conductors are insulated with a PVC compound specially designed and formulated in-house in a wide range of colours including those with stripes (i.e. double coloured), Finolex auto cables are manufactured with specially formulated lead-free PVC compound complying to Restrictions of Hazardous Substances (RoHS) regulations. The PVC compound is impervious to water, petrol, diesel, acids, engine and lubricating oils and grease. Finolex range of auto cables include:*

*FLRY-B cables (as per DIN 72551 Part 6) for temperature range from - 40°C; AV cables (as per JIS C 3406); AVS & AVSS cables (as per JASO D611). Finolex automobile cables are supplied to major wiring harness manufacturers like Tata Yazaki Autocomp Limited, TYCO Electronics Corporation India Limited, Yazaki Wiring Systems, Aditya Auto and many more. These companies in turn use the wires to manufacture customized harnesses for the automobile industry.*

**5.4.** In view of the above, it is evident that the impugned goods are tailor made to be used in automobiles and the Appellants themselves advertised and packed the products describing the same to be used in automobiles. It is pertinent to note that the retail customers understand the impugned goods to be parts of automobiles. the appellants are manufacturing "Auto Cables, Battery Cables and Ignition cables", which have a specific use only in the 'Automobile Industry' and are cleared in retail packages affixed with MRP. They do not increase the efficiency of automobiles and therefore, the whole discussion on accessories is incorrectly placed. It is prudent that the goods are to be understood/ evaluated/classified as per the perception and use of the customers. Therefore, we find force in the department's contention that the auto cables and battery/ignition cables manufactured and cleared by the Appellants are to be treated as automobile parts. As long as they were covered under Standards of Weights and Measures Act, 1976 and they are not exempted under Rule 34 of Standards of Weights and Measures Rules (Packaged Commodities) Rules, 1977 assessment of the same requires to be done under Section 4A of the Central Excise Act, 1944. As per our finding above if the impugned goods are automobile parts for the purposes of Packaged Commodity Rules, they need not be necessarily classified as same under Central Excise Tariff Act, 1944. We find that auto/battery/ignition cables manufactured by the Appellants are essential parts of automobiles and are covered as "parts, components and assemblies of automobiles", under the notification No.11/2006-CE (NT) dated 29.05.2006, 14/2008 CE(NT) dated 01.03.2008 and 14/2008 CE(NT) dated 24.12.2008.

**5.5.** Regarding the issue of limitation, the appellants contend that no evidence has been produced by the department to show that the Appellants have willfully suppressed or mis-stated any fact or acted in a fraudulent manner with an intent to evade payment of duty and therefore extended period cannot be evoked; they further contended that they have maintained all the records and filed the returns from time to time and therefore suppression cannot be invoked. For this reason no interest in penalty are attracted. Learned A.R. submits that the Appellants were selling their products in packaged form by affixing MRP as per Packaged Commodity Rules, 1977; the description on the package indicates that they are for specific use in motor vehicles and not for general use. In spite of the same the Appellants continued to assess the goods under Section 4 and therefore intention to evade payment is evident. We find that the Appellants have been submitting the RT12 returns regularly; during the period several audits were conducted by the department; department was aware of the manufacturing of cables and the valuation practice adopted thereof and all the material facts relating to the manufacture, clearance and valuation of the cables to dealers / distributors was in the knowledge of the department. We find force in this argument. The Appellants have also submitted that, in view of Hon'ble Supreme Court decision in the case of Pahwa Chemicals Vs CCE 2005 (189) ELT 257 SC, mere failure to disclose does not amount to misdeclaration or willful suppression. We find that it is not open for the department to sit over the RT12 returns over

a period of time and invoke extended period on the completion of investigation. Department was free to raise queries on the returns filed / during the visit of audit parties to obtain necessary information from the Appellants. This having not been done extended period cannot be invoked. In the result while we uphold the impugned orders on merits we hold that extended period cannot be invoked. Therefore the demand requires to be restricted to the normal period. In order to conclude the duty payable for the normal period we find that the issue needs to go back to the original authority.

6. In view of the above, the appeals are partially allowed by way of remand for the purpose of calculation of duty for the normal period. Accordingly there shall not be any penalty under Section 11AC of Central Excise Act, 1944

(Order pronounced in open court on 14.06.2019)

**(D.M. Misra)**  
**Member (Judicial)**

**(P Anjani Kumar)**  
**Member (Technical)**

