CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 52154 of 2022

[Arising out of Order-in-Original No.44/2022-CE dated 21.06.2022 passed by the Additional Director General (Adjudication), New Delhi]

M/S. P.P. JEWELLERS PVT. LTD., ...**APPELLANT**

H-5, Netaji Subhash Place,
Pitampura, New Delhi-110 034.

Vs.

PRINCIPAL COMMISSIONER, CENTRAL TAX, AND CGST COMMISSIONERATE, ...**RESPONDENT**

Delhi West, 4th& 5th Floor, EIL Annexure Building,
Bhikaji Cama Place,
New Delhi-110 066.

Appearance:
Present for the Appellant : Shri Jitendra Singh, Advocate
Present for the Respondent: Shri Rakesh Agarwal, Authorised Representative

AND

EXCISE APPEAL NO. 50572 of 2024

[Arising out of Order-in-Original No.44/2022-CE dated 21.06.2022 passed by the Additional Director General (Adjudication), New Delhi]

SHRI PAWAN GUPTA, ...**APPELLANT**

C-19, Rana Pratap Bagh,
New Delhi-110 007.

Vs.

PRINCIPAL COMMISSIONER, CENTRAL TAX, AND CGST COMMISSIONERATE, ...**RESPONDENT**

Delhi West, 4th& 5th Floor, EIL Annexure Building,
Bhikaji Cama Place,
New Delhi-110 066.

Appearance:
Present for the Appellant : Shri Karan Khanna, Shri Puneet Jain and Shri Om Sudhir Advocates
Present for the Respondent: Shri Rakesh Agarwal, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NOS.50446-50447/2025

Date of Hearing : 31/01/2025
Date of Decision : 28/03/2025

BINU TAMTA:

1. M/s. P.P. Jewellers [1] have filed appeal challenging the Order-in-Appeal No.44/2022-CE dated 21.06.2022 levying central excise duty along with interest & penalty under the provisions of the Central Excise Act, 1944[2]. Shri Pawan Gupta, Director has separately filed an appeal challenging the imposition of penalty under Rule 26 of Central Excise Rules, 2002[3].

2. The appellant is engaged in the manufacture of articles of jewellery falling under Chapter Heading 7113 of CETA. Investigations revealed that the appellant had not paid central excise duty on the articles of jewellery manufactured and cleared by them during the period 1.03.2016 to 30.0 6.2017. They were not charging central excise duty from the customers till December 2016. From 01.01.2017, the appellant collected the central excise duty from the customers on the invoices and paid the same under GAR-7 challans, however, they did not file any central excise returns during the period 1.03.2016 to 30.06.2017. The central excise duty liability on the articles of jewellery manufactured and cleared by them, was found to be as under:-

CHART

Details of excisable sales	**Assessable Value of**	**Rate of Central Excise Duty**	**Central Excise Duty payable**
On the basis of Trial Balance/details submitted by PPJ	4,68,88,50,377	1%	4,68,88,504/-
On "PENDENT"	10,52,23,867	1%	10,52,239
On invoices having incorrect description	6,45,598	1%	6,456
Exemption claimed twice in respect of	2,88,356	1%	2,884
On invoices having description as 24 CT	3,42,904	1%	3,429
On goods exported without fulfilling the conditions prescribed for export of excisable goods without payment of duty	65,69,20,723	1%	65,69,207
Total	545,22,71,825	1%	5,45,22,719

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[1] The Appellant
[2] Act, 1944
[3] Rules, 2002.

3. The evasion of central excise duty amounted to Rs.5,45,22,719/-. During investigation, the appellant deposited the amount of Rs.4,93,99,620/- and vide letter dated 29.11.2017 requested for closure of the investigation by waiver of show cause notice. The Department issued the show cause notice dated 14.11.2019 calling upon the appellants as to why :-

> "a). Central excise duty amounting to Rs/5,45,22,719/- not paid by them during the period 01.03.2016 to 30.06.2017 on the finished goods should not be recovered from them under section 11A(4)of the Act, invoking the extended period of limitation.
>
> b). Interest on the said duty should not be demanded under section 11 A(4) read with section 11 AA of the Act.
>
> c). Central excise duty amounting to Rs.1,19,866/- collected by them from their customers on invoices having description of goods as 24CT Gold should not be demanded under section 11D(2) along with interest under Section 11 DD(1)of the Act.
>
> d). Amount deposited by the appellant during investigation should not be appropriated.
>
> e). Penalty should not be imposed upon them under Section 11AC(1)(c) of the Act read with Rule 25 of the Rules and
>
> f). Penalty should not be imposed upon Shri Pawan Gupta, Director under Rule 26 of the Rules for his act of omission and commission.

It appears that the appellant neither filed reply to the show cause notice nor appeared for personal hearing. On adjudication, the demand was confirmed by the impugned order. Hence, the present appeals have been filed before this Tribunal.

4. Heard both sides and perused the records of the case.

5. Shri Jitender Singh, the learned Counsel for the appellant has challenged the impugned order on the ground that:-

i). It has been passed in violation of the principles of natural justice and fair procedure as the proceedings were held ex-parte in quick succession on 19.3.2021, 20.04.2021 & 29.06.2021, ignoring the mandate of the Supreme Court regarding the Covid period.

ii). Confirming the demand in respect of exports on the ground of non-compliance of the conditions prescribed in Rule 19(3) of the Rules is patently erroneous when the exports have been physically affected under the supervision of the proper officer of Customs.

iii). No duty is chargeable on Pendant of 24CT purity as they are items of pure gold having trademark of the appellant which was in the form of gold coins classifiable under 7114 and liable to 'nil' rate of duty under Entry 200 of notification no.12/2012 dated 17.03.2012, which have remained the same, even after substitution of the new Entry 199 imposing central excise duty.

iv). The entire sale proceeds of Rs.2,74,28,94,752/- as reflected in the balance sheet and trial balance was the net value realised by the appellant which was required to be treated as inclusive of duty. Appellant is entitled to the benefit of cum-duty as they did not collect any duty from their clients.

v). The appellant is entitled to SSI benefit in terms of notifications. SSI benefit has been wrongly denied considering the turnover of 2015–16 as 1198.64 whereas the gold Jewellery became taxable only with effect from 1.03.2016 and in March 2016, the turnover was Rs.1.71 crores only.

vi). The entire demand was barred by limitation as show cause notice was issued on 14.11.2019 for the period 1.03.2016 to 30.06.2017, which is after the expiry of period of limitation of two years as per Section 11 A(1)(a) of the Act. The provisions of section 11A(4) cannot be invoked as it is not a case of fraud or collusion or wilful misstatement or suppression of facts or contravention of any provisions of Act/ Rules with an intent to evade payment of duty. Referring to the clarification issued by CBIC, the learned counsel challenged the issuance of show cause notice, having made the total payment of Rs.4,93,99,620./-.

vii). Imposing 100% penalty is unwarranted in view of the prevailing circumstances and the fact that the appellant had not acted in defiance of law or was guilty of any contumacious or dishonest conduct.

6. Shri Rakesh Aggarwal, learned Authorised Representative for the Respondent supported the findings of the Adjudicating Authority and *inter-alia* submitted as under:-

i). The appellant has been afforded sufficient opportunities however, he failed to appear and hence there is no violation of the principles of natural justice.

ii). There is deliberate contravention of law by the appellant and hence will have to suffer the consequences of violation. In support, he relied on the decision in the case of **Schneider Electrical India, (P) Ltd. Vs. Commissioner of C.EX, Nashik and CIT & Anr. Vs. Jayaram Metal Industries**.

iii). The appellant did not follow the statutory procedure prescribed for exports and, therefore, the clearances did not qualify as export under Rule 19 of Central Excise Rules. The appellant did not furnish the Bond/LUT. Reliance was placed on the decision of the Delhi High Court in **Hindustan Aluminium Corporation Ltd.Vs. Superintendent, Central Excise,Mirzapur-1981(8)ELT 642**.

iv). Demand of duty on 24 carat pendant has been correctly confirmed in view of the statement made by Shri Ajay Goyal authorised representative of the appellant that 'pendants' are articles of jewellery and also Chapter Note 9 includes pendants.

v). The appellant is not entitled to the benefit of cum-duty value and relied on the decision of the Supreme Court in **M/s Amrit Agro Industries Ltd v CCE, Ghaziabad, 2007 (210) ELT 183 (S C).**

vi). The issuance of show cause notice was necessary in terms of Board's Circular dated 10.03.2017 as the issues were likely to be litigated at a later date by the appellant. Also the duty determined by the appellant was incorrect.

vii). The appellant was not eligible for threshold SSI exemption either for March 2016 (of Rs.85 lakhs) or for the FY 2015–16 FY 2016–17 (of Rs. 15 crores) as their sale of excisable goods for March 2016 was Rs.1.71 crores and for FY 2015–16 was Rs.793 crores.

viii). The extended period need not be proved once accepted in view of the decision of the Tribunal in **Satya Power & Limited versus Commissioner, Central GST, Central, Excise and Customs, Raipur.**

ix). Penalty on the appellant under Rule 26 has been correctly imposed in view of his statement.

7. We may first consider the preliminary objection of the impugned order being passed ex-parte without affording sufficient opportunity of being heard. We find that the appellant had neither filed any reply to the show cause notice nor participated in the adjudication proceedings. The personal

hearings were fixed on 19.03.2021, 20.04.2021, 29.06.2021, 29.07.2021 and 15.06.2022, however, the appellant failed to appear. In so far as the plea taken with reference to the order of the Supreme Court on COVID-19 pandemic, it needs to be appreciated that time was extended by the Supreme Court only on the issue of limitation and not on the hearing of the matters. The scope of the *suo moto* petition before the Supreme Court as is evident from the Order dated 10.01.2022 is that the Court took cognizance of the difficulties that might be faced by litigants in filing petitions /applications/suits/appeals/all other quasi-proceedings within the period of limitation prescribed under the General Law of Limitation or under any special laws due to the outbreak of the COVID-19 Pandemic and thereafter due to surge of the virus on public health, it was directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation, as may be prescribed under the General or Special laws. The matters were taken up for hearing virtually before all the forums. The appellant could have availed the facility of appearing online during the various opportunities granted by the Adjudicating Authority. Therefore, there is no substance in the arguments of the appellant that there is violation of the mandate of the Supreme Court or that sufficient opportunity has not been granted in terms of Section 33A of the Act. The impugned order does not suffer from any infirmity in this regard.

8. Referring to the decision in **Kopertek Metals Pvt. Ltd. Vs. Commissioner of CGST, Delhi** [4] the learned counsel for the appellant has also taken a preliminary objection that the impugned order needs to be set aside since there is delay of two years and seven months in deciding the show cause notice, which was issued on 14.11.2019. We are of the opinion that the appellant has no locus to raise this issue since he has deliberately

[4] Final Order No.59511-59720/2024 dated 25.11.20

avoided the adjudication. The basic principle to be followed is that no one should be allowed to take benefit of its own wrong and as the appellant failed to appear before the Adjudicating Authority, he has no reason to challenge that the proceedings were delayed. On the one hand, the case of the appellant is that he has not been granted sufficient opportunities for personal hearing before the Adjudicating Authority and on the other hand, he is raising the issue of delay in disposal of the show cause notice. In view of the contentions raised, the learned counsel was apprised that if such challenge has to be made, they are required to make specific application to urge special grounds, however, the learned counsel instead of making the application, had proceeded to argue the matter on merits. After hearing had concluded, the learned counsel filed additional submissions that the impugned order is time barred, being violative of provisions of Section 11A(11) of the Act. That the issue of delay has to be considered in the facts of each case, as to whether there were circumstances or insurmountable exigencies, which makes it impracticable for the adjudication to take place [**(M/s. Swatch Group India Pvt. Ltd. Vs. Union of India-2023 (386) ELT 356 (Del.)].** If the appellant wanted to take such a plea, it was incumbent to make specific application giving specific details to show that the adjudication should have been concluded within the prescribed time and the extended period of 7 months taken was un-reasonble and unjustified. Merely making the submissions without any such details deprived the Revenue to contest the same and hence this is one of the reasons that we are not inclined to entertain this plea in the present case. Moreover, the extended period of 7 months is really not enormous more so for the reasons that the period had fallen during the COVID pandemic and there could have been some eventualities in the prevailing conditions. We, therefore, reject the plea that the impugned order needs to be set aside, in view of the decision in **M/s. Kopertek Metals Pvt. Ltd. (supra).**

9. Before considering the matter on merits, we need to examine the background of the demand of central excise duty made against the appellant.

10. That vide Union Budget 2016-17, Central Government introduced levy of Central Excise duty, with effect from 01.03.2016 at the rate of 1% on articles of jewellery, if no credit availed under Rule 3 or Rule 13 of CENVAT Credit Rules, 2004, by substituting new Entry No. 199 vide Notification No. 12/2016-C.Ex dated 01.03.2016 in place of Entry No. 199 of Notification No. 12/2012-C.Ex dated 17.03.2012.

Whereas the substituted Entry 199 of Notification No.12/2016-C.Cx reads as under:-

SI. No	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
199	7113	(1) Articles of jewellery (II) Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire	1% Nil	16 If no credit under Rule 3 or 13 of CCR, 2004 has been taken in respect of inputs

11. The Government of India vide **Circular No.1021/9/2016-CX dated 21.03.2016** constituted the high level Sub-Committee to interact with the trade and industry and the terms of reference was to include the issues related to the compliance procedure for the excise duty including records to be maintained, forms to be filled, operating to the procedures and any other issues that may be relevant in respect of the articles of 'Jewellery'. The Committee submitted its report on 23.06.2016 and pursuant thereto various

notifications/circulars were issued. Vide **Notification No.33/2016-CE (NT) dated 26.07.2016,** the Government fixed the Tariff value in respect of the excisable goods falling under Heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985 as under:-

S.No.	**Description of excisable goods**	**Tariff Value**
2.	Articles of jewellery or parts of articles of jewellery or both which are manufactured from the precious metal provided by the retail customer.	Value which is sum of the ,- (a)cost of additional materials used by the manufacturer or principal manufacturer, as the case may be, for making such articles of jewellery; (b) labour charges charged by the manufacturer or principal manufacturer, as the case may be, from the retails customer; and (c) value of preciaous metal provided by the retail customer.

12. In exercise of the powers conferred by Section 37 of the Act, the Central Government introduced the **Articles of 'Jewelry' (Collection of Duty) Rules, 2016 vide Notification No.34/2016-CE (NT) dated 26.07.2016.** Rule 3(f) defined the "Articles" to mean articles of jewelry falling under Heading 7113 and the expression "Articles of Jewelry" shall have the meaning assigned to it under Chapter Note-9 of Chapter 71 of the Tariff Act.

13. The Government of India issued the **Circular No.1042/13/2016-CX dated 26.07.2016** simplifying the export related procedures of excise duty on articles of jewellery as under:-

> "2. In this context, pending finalisation of the procedure for exports, in consultations with the Department of Commerce and trade and industry,
> (i) There shall be no requirement for taking central excise registration by a manufacturer or principal manufacturer or a jeweller, who exports 100% of articles of jewellery manufactured by him or got manufactured by him on job work basis, subject to the following conditions that:
> ………………
>
> ……………….

> a) the manufacturer or principal manufacturer or a jeweller, as the case may be, gives a bank guarantee for excise duty payable of articles of jewellery over and above the bank guarantee for customs duty on gold and VAT payable on articles of jewellery with the nominated agency/authorised bank;"

14. The appellant is engaged in the manufacture of articles of jewellery and was, therefore, liable to pay central excise duty pursuant to the Union Budget 2016–17 imposing basic excise duty of 1% without credit and 12.5% with credit on articles of jewellery. In compliance to the **Public Notice No.07/2016 dated 26th July 2016**, extending the time limit for taking Central Excise registration upto 31 July 2016, the appellant was registered with the Central Excise Department on 29th July 2016. It implies that the appellant had understood the liability towards Central excise duty on manufacture of articles of jewellery and therefore, there is no reason for them not to discharge the central excise duty liability w.e.f. 1st March, 2016. The stand of the Government was very clear in view of the various steps taken by issuing series of notifications and circulars after the issuance of notification on 1st March 2016, levying basic excise duty on articles of jewellery. Shri R.R. Singla, Authorised Representative of the appellant in his statement dated 9.12.2016 recorded under Section 14 of the Act accepted that they would comply with the provisions of the Act and would deposit the central excise duty. Shri Pawan Gupta, Director of the appellant also in his statement dated 20.12.2016 accepted that they had knowledge that central excise duty had been imposed with effect from 1.03.2016, but they could not discharge their liability due to their family dispute as the burden of compliance had shifted on each brother. He admitted the fault and undertook to deposit the duty along with interest and penalty as per the provisions of law. The appellant having admitted that they had knowledge about the excise duty levied on gold jewellery, the necessary corollary is that the appellant is liable to pay excise duty w.e.f. 1st March 2016.

15. The clearance of items with description 'PENDANT' during the period from 1.0 3.2016 into 31.12.2016 from their branches at Pitampura and Karol Bagh was Rs.6,14,70,479/- and Rs.4,37,53,388/- respectively, total Rs.10,52,23,867/-. On verification of the invoices submitted by the appellant, it was found that they had wrongly availed the exemption on pendants as they appeared to be articles of jewellery and therefore, query was raised to Shri R.R.Singla as to whether 'pendant' is an article of jewellery or not. To which, he categorically stated on the basis of the invoices that pendant is a kind of locket, which is generally worn in a chain around the neck and is an article of jewellery and exemption was claimed as purity of these items was mentioned as 24 CARAT, which suggested that it was a kind of gold coin. So the contention of the appellant that the goods have been classified as articles of jewellery on the basis of the statement of Shri R. R. Singla is not correct as they were rather based on the invoices produced by the appellant.

Apart from this, we find that Rule 3(f) of the Articles of Jewellery (Collection of Duty) Rules, 2016 defines "articles of jewellery" as under:-

> "3.(f) "articles" means articles of jewellery or both falling under Heading 7113 of the Tariff Act, wherein the expression "articles of jewellery" shall have the meaning assigned to it as under chapter note 9 of chapter 71 of the Tariff Act;"

Chapter Note 9 reads as :

> "9. For the purpose of heading 7113, the expression "articles of jewellery" means:
> (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, ear-rings, watch-chains, fobs, **pendants,** tie-pins, cuff-links, dress-studs, religious or other medals and insignia); and
> (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

> These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semi-precious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

The Chapter Note quoted above clearly includes 'pendants' as articles of jewellery and the contention of the appellant that it does not cover pendant of 24 CARAT within its purview is misleading and unsustainable as nowhere in the Chapter Note or the Heading, the jewellery is distinguishable on the basis of purity of gold. The appellant is deliberately reading the words, "24 carat in the chapter note, which is not permissible". As per the trade practice, it is well known that no articles of jewellery can be manufactured of 24 CARAT purity gold. The appellant is not entitled to claim any exemption on the articles described as 'Pendants' and is, therefore, liable to pay excise duty on the said amount.

16. The invoices for sale from Chandni Chowk branch and Karol Bagh branch with the description of the goods as gold ornaments/gold chain in respect of which the appellant had claimed exemption from Central excise duty was admitted by Siri Ajay Goyal that they had mistakenly claimed exemption on the clearance under the said invoices and accepted their duty liability. The goods under and these invoices were covered under the definition of articles of gold jewellery. The excise duty has been rightly confirmed on account of non-inclusion of the value of goods sold on invoices having description "24 Carat Ornaments/Gold Chain" valued at Rs.3,42,904/- during the period from 1.03.2016 to 30.06.2017.

17. The benefit of SSI exemption claimed by the appellant needs to be examined in the light of the Notification No. 28/2016–CE dated 26th July 2016, whereby amendments were made in the Notification No.8/2003–CE

dated 1st March 2003. The relevant contents of the notification are quoted below:-

"In the said notification :-

(a) In the Table, for serial no.3, and the entries thereto, the following serial number and entries shall be substituted, namely:-

(1)	(2)	(3)
3.	First clearances of the articles of jewellery or parts of articles of jewellery or both for home consumption, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under Chapter Heading 7113 of the First Schedule upto an aggregate value not exceeding ten crore rupees made on or after the 1st day of April in any financial year, from the whole of the duty of excise specified thereon in the First Schedule: **Provided** that during the period starting from 1st march, 2016 and ending on 31st March, 2016, the exemption shall apply to the first clearances of the articles of jewellery or part of articles of jewellery or both for home consumption, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby emerald or sapphire, falling under Chapter Heading 7113 of the First Schedule, upto to an aggregate value not exceeding eighty five lakh rupees."	Nil

As discussed by the Adjudicating Authority, the total clearances of the appellant for the FY 2015–16 was Rs.1,198.64 crores as per the balance sheet and out of which Rs.793 crores was pertaining to the sale of articles of jewellery as per the statement of Shri R.R. Singla and the sale of excisable goods for the month of March 2016, was Rs.1.71 Cr. as per the Trial Balance. In view of the notification quoted above, the threshold limit for SSI exemption was Rs.85 lakhs for the month of March 2016 and Rs.15 crores (as amended) for the preceding financial year. Resultantly, the appellant is not entitled to avail the benefit of SSI exemption either for March 2016 or for FY 2015-16 and FY 2016-17. We do not find any error in the findings recorded by the Adjudicating Authority in view of the clear and simple wordings of the notification.

18. On verification of the invoices, it was found that the exemption from payment of Central excise duty has been claimed twice in some of the items. To which, Shri R.R. Singla admitted that the exemption has been claimed twice under branch transfer and under gold or silver trading and also agreed to pay the excise duty amounting to Rs.2,884/-. There is no reason to interfere with the duty demanded on wrongful availment of double exemption in view of the admission made by Shri Singla.

19. The appellant has been non-suited to avail cum-duty benefit towards demand of central excise duty on the ground that the invoices issued by them on which they have not collected Central excise duty from their customers had no indication that the amount collected by them is inclusive of Central excise duty. Shri Ajay Goyal has specifically stated and also as it appears from the documents made available, the appellant had not charged the central excise duty from their customers any time during 1.03.2016 to 31.12.2016 in view of the prevailing circumstances at that time. The net sale value of articles of jewellery amounting to Rs.274,28,94,752/- has to be assessed giving the benefit of cum-duty value. We would like to refer that by virtue of an amendment an explanation was added to section 4 w.e.f., 14.05.2003 which provides that when duty is not collected separately, the price actually realised is deemed to be cum-duty price. The Tribunal in **Triveni Udyog versus Commissioner of Central Excise, Jaipur** [5] was pleased to hold as under:-

> **"12.** ***Claim for cum-duty benefit :***The appellants have referred to Board Circular No. 749/65/2003-CX, dated 26-9-2003 claiming cum-duty benefit. For the goods already sold to the customer, it is an accepted principle that the assessee would be entitled to cum-duty benefit as the duty component now cannot be recovered separately from the customers. In other words, the sale price of the goods is to be treated as inclusive of duty component. The Explanation to Section 4(1) of Central

[5] **2017 (358)ELT 950 (Tri.-Del.)**

> Excise Act makes it clear. We, therefore, hold that the appellants are entitled to cum-duty benefit for the subject goods already sold.”

The aforesaid decision has been affirmed by the Apex Court as reported in **2018 (361)ELT A-80**. The present case is squarely covered by the said decision and the appellant is entitled to claim the benefit of cum-duty value.

20. The next issue to be considered is whether the demand of Rs.65,69,207/- on exported goods is sustainable as these clearances did not qualify as ‘export’ under Rule 19 of Central Excise Rules, 2002 which reads as under :-

> “**Export without payment of duty. — RULE 19.**
> (1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the [Principal Commissioner or Commissioner, as the case may be]. Any material may be removed without payment of duty from a
> (2) factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the [Principal Commissioner or Commissioner, as the case may be].
> (3) The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board. “

Reading of Rule 19 shows that excisable goods can be exported without payment of duty subject to such conditions, safeguards, and procedures as may be specified by notification issued by the Board. Notification No.42/2001–CE (NT) dated 26.06.2001 (as amended) has been issued by the Board under Rule 19(3) specifying the conditions and the procedure which the exporter is required to follow for removal of goods without payment of duty. The relevant provisions of the notification are set out below:-

> (e) Notification No. 42/2001-C.E. (N.T.) dated 26.06.2001 as amended, issued by the Board in exercise of powers conferred by sub-rule (3) of rule 19 of the Rules. notified "the conditions

and procedures for export of all excisable goods, except to Nepal and Bhutan without payment of duty from the factory of production or the manufacture or warehouse or any other premises as may be approved by the Principal Commissioner or Commissioner of Central Excise, namely:-
1.Conditions:
i) that the exporter shall furnish a general bond in the Form specified in Annexure-I to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory, warehouse or such approved premises, as the case may be, or the Maritime Commissioner or such other officer as authorised by the Board in this behalf in a sum equal at least to the duty chargeable on the goods, with such surety or sufficient security, as such officers may approve for the due arrival thereof at the place of export and their export therefrom under Customs or as the case may be postal The manufacturer-exporter may furnish a letter of undertaking in the Form specified in Annexure-II in lieu of a bond."

21. With the introduction of excise duty on articles of jewellery, the Government of India vide Circular No. 1021/9/2016 – CX dated 21st March 2016, constituted a high level Sub-Committee and till finalisation of the recommendations, laid down that, "exporters will be allowed to export on self declaration and submission of LUT to customs without the need to get LUT ratified by central excise, prevailing system will continue."

22. Pursuant to the report made by the Sub-Committee, the Government of India vide Circular no. 1042/30/2016 – CX dated 26 July 2016, simplified the procedure relating to export on articles of jewellery till the finalisation of the procedure for exports. The relevant paragraph of the Circular reads as:-

"**Subject: Export related procedural simplifications-excise duty on articles of jewellery falling under heading 7113-regarding**

2. In this context, pending finalisation of the procedure for exports, in consultations with the Department of Commerce and trade and industry, –
(i) There shall be no requirement for taking central excise registration by a manufacturer or principal manufacturer or a jeweler, who exports 100% of articles of jewellery manufactured by him or got manufactured by him on job work basis, subject to the following conditions that:

> **a)** the manufacturer or principal manufacturer or a jeweler, as the case may be, gives a bank guarantee for excise duty payable of articles of jewellery [over and above the bank guarantee for customs duty on gold and VAT payable on articles of jewellery] with the nominated agency/authorised bank;
> **b)** in case of default in fulfillment of his export obligation, the manufacturer or principal manufacturer or a jeweler, as the case may be, shall take central excise registration;
> **c)** either the manufacturer or principal manufacturer or a jeweler, as the case may be, shall pay the excise duty on the articles of jewellery sold to the domestic buyers on first sale basis or the nominated agency/bank shall release bank guarantee equal to excise duty payable on the articles of jewellery
> [provided the customs duty on gold content in the jewellery and VAT payable on such articles of jewellery has been paid by the manufacturer or principal manufacturer or a jeweler or bank guarantee equivalent to that has been released by the nominated agency/authorised bank]; and
> **d)** in case there are no sales to domestic tariff area for subsequent return cycles, such unit will file nil return for such return cycles.
> **(ii)** Exporters may continue to export articles of jewellery, as provided by the circular no. 1021/9/2016-CX dated 21.03.2016, on self-declaration and submission of Letter of Undertaking [LUT] to customs without the need to get such LUT ratified by the jurisdictional central excise authorities, till the detailed procedures in this regard are put in place."

What appears from the aforementioned is that for facilitating exports, safeguards in the form of procedural requirements were provided whereby the exporter is required to furnish the Bond and the Letter of Undertaking (LUT). The purpose is to ensure that the goods cleared from the manufacturing premises without payment of duty are not diverted in transit and are actually exported, however in the event the goods are not exported, the duty which would be leviable thereon maybe recovered by enforcing the bank guarantee. Coming to the present case, it is an undisputed fact that exports have been physically effected under the supervision of the Proper Officer of Customs and documentary evidence such as invoices and shipping bills have been duly produced by the appellant, however, the appellant has not furnished any Letter of

Undertaking/Bank Guarantee/Bond before the Customs or Central Excise authorities. The submission made by the learned Counsel that the goods have been undoubtedly exported stands proved by the documentary evidence and therefore, confirmation of duty demand on exported goods is erroneous, needs to be accepted. It is not the case of the Revenue that the goods have not been exported rather, the only allegation is that the procedure laid down for availing the benefit of exporting the goods without payment of excise duty have not been followed by the appellant while making the export which is contrary to the principle that a substantive right cannot be denied for want of procedural formalities. We therefore, do not find any substance in raising the demand on the goods exported merely on the ground that the conditions prescribed for export of excisable goods without payment of duty has not been fulfilled.

23. Coming to the issue of limitation, we find that the show cause notice has been issued on 14.11.2019 raising the demand for the period 1.03.2016 to 30.06.2017, which, according to the appellant is beyond the period of limitation of two years prescribed in Section 11 A(1)(a) of the Act. At the outset, it cannot be ignored that the levy of excise duty on articles of jewellery was new and there was widespread resentment amongst the customers as well as the manufacturers, dealers of gold jewellery and they were under the perception that it would be eventually withdrawn by the government as was done on the earlier occasion in 2012. The Government was also looking into the grievances of the assesses and was trying to come out with remedial measures in consultation with the trade and industry. In fact the time limit for getting registration with the excise department was extended from time to time and was finally fixed as 31.07.2016.

24. Considering the facts of the case which have been noted in extenso by the adjudicating authority, we find that the department had called upon the appellant to submit the details of purchase and sale during the period 07.11.2016 to 10.11.2016, including the details of central excise duty paid for the month of November 2016. Pursuant to the summons, statement of Shri R.R. Singla, the authorised representative of the appellant was recorded on 9.12.2016 and Shri Pawan Gupta, Director of the appellant was recorded on 20.12.2016. The appellant vide letter date 16.11.2017 submitted copies of branch wise trial balances for the period April to December 2016 and also explained the sales returns and purchase returns. In his subsequent statement on 24.11.2017, Shri R R Singla submitted the following documents:-

> "i. Branch-wise Trial Balance from 01.04.2016 to 31.12.2016 (RUD-7(i)].
>
> ii. Summary of sales for all branches from March, 2016 to December, 2016 [RUD-7(ii)] showing total sale, export sale, branch transfer, silver sale/bullion trading/loose diamond and net sale showing clearances of gold jewellery. He clarified that they were paying Central Excise Duty when the sales is made on the first time on invoice to the customer from any of the branch. In other words, when goods were removed on branch transferred basis no duty was paid. Similarly, PPJ were not discharging any duty on silver sale, gold trading and loose diamonds being exempted from Central Excise duty.
>
> iii. Calculation chart showing excise duty liability and interest liability from 01.03.2016 to 31.12.2016 [RUD-7(iii)].
>
> iv. Branch-wise total sales and net sales for Karol Bagh Branch, Sadar Bazar Branch, Chandni Chowk Branch, Pitampura Branch and Gurgaon Branch [RUD-7(iv)].
>
> v. Chart showing export sales from 01.04.2016 to 31.12.2016 [RUD-7(v)]."

By 28.11.2017, on the basis of self assessment, the appellant deposited amount of Rs.4,93,99,620/- towards excise duty and therefore vide letter dated 29.11.2017, the appellant requested for closure of investigation by waiver of show cause notice. Further, as asked for by the Department, the appellant vide letter dated 11.06.2018 submitted copies of all invoices (printouts of computer generated invoices) issued by them from all their branches during the period 1.03.2016 to 31.12.2016 for which exemption has been claimed. Considering the conduct of the appellant in submitting all the documents and cooperating in all manner by explaining the details and further depositing a substantial amount towards excise duty, we are of the opinion that the appellant had not suppressed any material facts. Rather it is because of the assistance and willingness on the part of the appellant that everything came to the knowledge of the department. It was, therefore incumbent on the department to have issued the show cause notice within the normal period of limitation as prescribed under section 11A(1) of the Act.

25. The law on invoking the extended period of limitation has been settled over the period by various decisions of the Apex Court and other forums. The principle of law enunciated by the Apex Court in **Collector of Central Excise versus Chemphar Drugs & Liniments** [6] subsequently followed in **Pushpam Pharmaceuticals Company Vs. CCE, Bombay**[7] **& Easland Combines, Coimbatore Vs. CCE, Coimbatore**[8] is that extended period of limitation is applicable only when something positive other than mere inaction or failure on the part of assessee is proved. Conscious or deliberate withholding of information by manufacturer is necessary to invoke larger limitation of five years. Similar view was expressed by the Apex Court in **Uniworth Textiles Ltd versus Commissioner of Central Excise, Raipur** [9]**,** where the Court was concerned with the invocation of extended period under Section 28 of the Customs Act and it was observed the conclusion that mere non-payment of duties is equivalent to collusion or

[6] 1989 (40) ELT 276 (SC)
[7] 1995 (78) ELT 401 (SC)
[8] (2003) 3 SCC 410
[9] 2013 (288) ELT 161 (S.C.)

willful mis-statement or suppression of facts is untenable. The relevant portion of the judgement is reproduced below:-

> **"12. ....In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellants as fit for the applicability of the proviso."**

26. With reference to the concept of suppression which has been used in the proviso to Section 11A of the Act, the Supreme Court in **Continental Foundation Joint Venture versus Commissioner of Central Excise, Chandigarh** [10] observed that it has been accompanied by very strong words as "fraud " or "collusion "and therefore has to be construed strictly. Mere omission to give correct information is not suppression of facts, unless it was deliberate to stop the payment of duty.

27. Reiterating the same view, the jurisdictional High Court of Delhi in **Bharat Hotels Ltd. versus Commissioner of Central Excise (Adjudication)**[11] observed that invocation of the extended limitation period under the proviso to section 73(1) does not refer to a scenario where there is an omission or failure to pay duty without the presence of such intention.

28. In the case of **Mahanagar Telephone Nigam Ltd versus Union of India & Ors.,**[12] the Delhi High Court observed that merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had wilfully suppressed any material fact and therefore, no intent to avoid tax can be inferred by non-disclosure of the receipt in the service tax returns.

[10] 2007(216) ELT 177 (SC)
[11] 2018 (12) GSTL 368 (Del.)
[12] W.P.(C) 7542 of 2018 dated 6.4.2023

29. Following the aforementioned decisions and the dictum that mere suppression of facts is not enough, the Tribunal in a latest decision in **M/s. Aglowmed Ltd. Versus Commissioner of Central Goods & Service Tax, Dehradun [13],** where the extended period of limitation was invoked for wrongly availing the benefit of the exemption notification held that the appellant had disclosed all the relevant facts and submitted all the relevant documents and therefore the show cause notice could have been issued within the normal period contemplated under section 11 A(1) of the Act. The appeal, was accordingly allowed on the sole ground that the extended period of limitation could not have been invoked in the facts of the case.

30. The Madras High Court in **Commissioner of C.EX., Chennai–III versus Supreme Industries Ltd.[14]** had emphasized that the authorities are bound to record a prima facie finding about intent to evade payment of duty by suppressing the material facts or by making wilful misstatement or by committing fraud or collusion. The relevant para of the decision is reproduced below:-

> **"10.** We have perused the show cause notice, the Order-in-Original, the order passed by the appellate authority and the impugned order passed by the Tribunal. **In the show cause notice dated 10-10-2001, except for stating that the respondent/assessee has contravened the provisions of the Rules, there is no specific allegation so as to hold the respondent/assessee guilty of having committed fraud, collusion or suppression of facts or made any wilful misstatement with an intent to evade payment of duty.** In terms of the provision of Section 11AC of the Act, the authority is bound to record a *prima facie* finding that there was an intent to evade payment of duty by suppressing the material facts or by making wilful misstatement or by committing fraud or collusion. Thus, in the absence of any such specific allegation in the show cause notice, the authorities cannot mechanically impose penalty under Section 11AC of the Act. After the assessee submitted their explanation, the adjudicating authority while passing the order dated 24-9-2002, only observed that there is possible manipulation of scrap accounts to show higher production than what would have been normally produced and there is no finding that the first respondent/assessee was guilty of wilful misstatement or suppression of facts or act of fraud with an intention to evade payment of duty.

[13] Excise Appeal NO.51902 of 2021 Final Order No.50310 of 2025 dated 17.02.2025
[14] 2014 (303) ELT 513 (Mad.)

31. The decision of the Tribunal in **Tiger Logistics, India Ltd versus Commissions of Service Tax-III, Delhi**[15] is relevant for considering the conduct of the party. Having noted that the only allegation against the appellant was that they have not disclosed the full value of the taxable service in their ST-3 returns, observed that it is now well established legal principle that suppression of facts is not mere omission, it must be deliberate act with mens rea to suppress and thereby evade , however, the impugned order do not demonstrate the *mens rea*. The Bench, further observed that the appellant had recorded all the transactions in its records and when called for during investigation, provided full facts to the department based on which the SCN was issued and the appellant did not dispute the demands of service tax which he paid along with interest, even before the show notice was issued. Considering the conduct of the appellant during the investigation in providing all the information and paying the service tax with interest to the extent is not disputed has made out a case for seeking waiver of penalty by invoking Section 80.

32. Applying the ratio of the aforementioned decisions of the Tribunal in the case of Tiger Logistics and M/s Aglowmed, the conduct of the appellant in fully cooperating with the department and submitting all the requisite documents which the department called upon from time to time and further paying the excise duty latest by 28.11.2017, the show cause notice could have been issued within the normal period as per section 11 A(1) of the Act. Also, in the present case, it cannot be said that the facts were not known to the Department. Rather, the facts were known to both the parties and the appellant acted promptly in paying the excise duty on the basis of self assessment. However, the revenue failed to issue the show cause notice

[15] 2022 (63) GSTL 337 (T-Delhi)

within the prescribed period. In the case of **Anand Nishikawa Co. Ltd versus Commissioner Central Excise, Meerut** [16], the Supreme Court, observed that where facts were known to both the parties, as in the instant case, it was not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts". Thus on examining the facts of the present case, we find that it is not a case of fraud, collusion, wilful misstatement, suppression of facts, or contravention of any provisions of Act/Rules with an intent to evade payment of duty as enshrined in section 11A(4) which are necessary ingredients for invoking the extended period of limitation.

33. The decision cited by the learned Authorised Representative in the case of **Schneider Electrical versus Commissioner of Central Excise, Nasik (Mumbai)**[17], where the issues were decided by the Third Member and on the issue of extended period of limitation, the finding recorded was that the appellant was fully aware of the legal requirements to declare the RSP on the packages, however, despite such knowledge, they chose not to comply with the law. The relevant para is quoted below:-

> **"29.4** From the facts available on record, it is seen that the appellants were aware that they were required to declare RSP on the packages of the goods manufactured and sold by them. They were so advised by the Director of Legal Metrology as early as in 2002. However, in spite of being aware of their legal obligations, the appellants did not comply with the statutory directions. After a gap of five years, they challenged the decision of the Director, Legal Metrology before the Hon'ble Bombay High Court and the Bombay High Court directed the Director, Legal metrology to pass a speaking order which the Director, Legal Metrology has done in 2007. The said decision of the Director, Legal Metrology was challenged unsuccessfully by the appellants before the Hon'ble Bombay High Court and the Hon'ble Bombay High Court upheld the decision of the Director, Legal Metrology and held on the products manufactured by the appellants were covered under the Standard of Weights and

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[16] 2005 7 SCC 749

[17] 2014(1) TMI 1642

> Measures Act and the Packaged Commodities Rules and the appellants were required to declare RSP on the packages. Thus, the appellants were fully aware of the legal requirements. In spite of such knowledge, the appellant chose not to comply with the law in complete defiance of the law. There was no reason for the appellant to entertain any reasonable belief that they were not required to declare the RSP on the packages. The question is when an appellant deliberately defies a statutory requirement, can they be allowed to get away with it and obtain the benefit under some other law."

34. In view of our findings above on the issue of extended period of limitation, we are of the view that the penalty of equivalent amount imposed under Section 11 AC(1)(c)read with Rule 25 of the Rules is unsustainable.

35. We cannot ignore the fact that the appellant had taken the registration with the central excise authorities on 29.07.2016, however, did not file the returns for the period 01.03.2016 to 30.06.2017 nor charged the excise duty from their customers during the period 01.03.2016 to December 2016. The failure to file service tax returns is a violation but the said violation cannot be attributed with intent to evade payment of duty and therefore the penalty imposed under section 11AC Is not sustainable however, since no general penalty has been imposed by the Adjudicating Authority, there is no reason for us to impose any such penalty on the appellant.

36. Although on merits, we have held that the appellant is liable to pay central excise duty on manufacture of articles of jewellery during the period in question except demand towards the exports and the benefit of cum-duty tax, however, having held that the extended period of limitation cannot be invoked, the demand raised in the show cause notice is hereby set aside. Consequently, the impugned order is unsustainable to that extent. The appeal is, accordingly allowed.

Appeal No 50572/2024

37. Shri Pawan Gupta, Director of PPJ has filed the above appeal, challenging the personal penalty imposed on him under rule 26 of the Rules on the allegation that he had guided and consciously participated in the evasion of the central excise duty. Shri Jain has argued at length that imposing penalty under Rule 26 on Shri Pawan Kumar is not justified. Learned counsel for the appellant has raised several arguments challenging the imposition of penalty under Rule 26, however, since we have already taken the view that the demand is not sustainable being time barred, consequently the penalty would also not survive.

38. The impugned order in so far as it imposes the penalty of Rs.1,00,00,000 on Shri Pawan Kumar under rule 26 of the Rules is set aside. The appeal filed, is accordingly allowed.

[Order pronounced on 28th March, 2025]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.