CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 55542 OF 2023

[Arising out of the Order-in-Appeal No. 42-43/2022-23 dated 06/03/2023 passed by The Commissioner of Central Tax Appeal-II, Delhi, New Delhi – 110 066.]

M/s Sona Printers Pvt. Ltd., ...**Appellant**
F-86/1, Okhla Industrial Area, Phase – I,
New Delhi – 110 020.

Versus

The Commissioner of Central Tax, ...**Respondent**
Appeal – II, Delhi,
UG Floor, EIL Annexe Building, Bhikaji Cama Place,
New Delhi – 110 66

APPEARANCE:

Shri Rajesh Kumar and Shri K.K. Tiwari, Advocates for the appellant.
Shri Ratnesh Kumar Mishra, Authorized Representative for the Department

WITH
EXCISE APPEAL NO. 51302 OF 2024

[Arising out of the Order-in-Appeal No. 42-43/2022-23 dated 06/03/2023 passed by The Commissioner of Central Tax Appeal-II, Delhi, New Delhi – 110 066.]

Principal Commissioner, ...**Appellant**
Central Goods and Service Tax,
Delhi – South Commissionerate

Versus

M/s Sona Printers Pvt. Ltd., ...**Respondent**
F-86/1, Okhla Industrial Area, Phase – I,
New Delhi – 110 020.

AND
EXCISE APPEAL NO. 51303 OF 2024

[Arising out of the Order-in-Appeal No. 42-43/2022-23 dated 06/03/2023 passed by The Commissioner of Central Tax Appeal-II, Delhi, New Delhi – 110 066.]

Principal Commissioner, ...**Appellant**
Central Goods and Service Tax,
Delhi – South Commissionerate

Versus

Shri Kishore Mittal, Director of M/s Sona Printers Pvt. Ltd., ...**Respondent**
F-86/1, Okhla Industrial Area, Phase – I,
New Delhi – 110 020.

APPEARANCE:

Shri Ratnesh Kumar Mishra, Authorized Representative for the Department
Shri Rajesh Kumar and Shri K.K. Tiwari, Advocates for the assessee.

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50430-50432/2025

DATE OF HEARING : 10.12.2024
DATE OF DECISION: 24.03.2025

P.V. SUBBA RAO

These three appeals have been filed by the assessee and the Revenue assailing the order-in-appeal dated 06.03.2023 passed by the Commissioner (Appeals)[1], whereby he decided the appeal of the assessee against order-in-original dated 30.09.2022 passed by the Joint Commissioner. The Joint Commissioner had, in his order, decided the proposals made in the show cause notice dated 04.12.2017[2] invoking extended period of limitation covering the period 01.04.2012 to 31.03.2017. In the same order, he also decided the follow up statement demand dated 08.05.2019 covering the period

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1. impugned order
2. SCN

01.04.2017 to 30.06.2017. The entire period in the statement of demand was within the normal period.

2. The issue in dispute is regarding the classification of goods namely Student Almanac and teacher planner, Diaries, Workbook, Calendars, Note-Pads and Scrap books. The appellant printed these goods and removed them at nil rate of duty classifying them under Chapter 49 of the Schedule to the Central Excise Tariff Act, 1985[3], which Chapter covers printed books, newspapers, pictures and other products of printing industry.

3. The case of the Department is that these goods fall under Chapter 48 as "Articles of Paper or of Paper Board" and attract duty @ 12.5% ad valorem. It is also the case of the department that the assessee had wrongly not paid duty and, therefore, the extended period of limitation was invokable and that Shri Kishore Mittal, the Director of the assessee was liable to penalty under Rule 26 of the Central Excise Rules, 2002[4].

4. The details of the goods and the duty demanded are as follows :-

Sl. No.	Item/rate of duty	1st SCN – duty involved (Rs.)	2nd SCN – duty involved (Rs.)
1.	Student Almanac/12.5%	1,41,26,424/-	7,46,864/-
2.	Teacher Planner/12.5%	1,88,428/-	630/-
3.	Diaries/12.5%	1,67,599/-	--
4.	Workbook/2%	15,00,634/-	--
5.	Calendars/2%	19,894/-	--
6.	Note-Pads/2%	1,400/-	--

3. CETA
4. the Rules

7.	Scrap/6%	1,74,854/-	32,235/-
	Total	1,61,79,233/-	7,79,729/-

5. In his order dated 30.09.2022, the Joint Commissioner confirmed the demand along with interest and imposed an equal amount of penalty on the assessee and also imposed penalty of Rs. 10,000/- on Shri Kishore Mittal, Director under Rule 26 of the Rules.

6. On appeal, the Commissioner (Appeals) upheld the confirmation of demand only on two products namely Student Almanac and teacher planner and only for the normal period of limitation. He set aside the demand for the extended period of limitation and also the penalty imposed on the assessee. He also set aside penalty imposed on Shri Kishore Mittal, the Director of the assessee.

7. **Appeal No. E/55542 of 2023** filed by the assessee assails the confirmation of demand on Student Almanac and teacher planner by the Commissioner (Appeals) holding that they were correctly classifiable under chapter 48 of the CETA. **Appeal No. E/51302 of 2024** filed by the Revenue assails the dropping of demand for extended period of limitation. **Appeal No. E/51303 of 2024** is filed by the Revenue to assail the dropping of penalty on the Director.

8. The operative part of the impugned order is as follows :-

"6. I partly allow the appeal filed by the appellant no. 1 & 2 and the impugned order dated 30.09.2022 is modified to the extent as below :-

(a) As regards demand for the item viz. Student Almanac & Teacher Planner, I hereby confirm the demand for normal period of limitation. The same is payable with interest under Section 11AA of the Central Excise Act, 1944. The demand for extended period and any penalty on appellant no. 1 pertaining to these items is set aside;

(b) As regards demand pertaining to paper waste and scrap, I hereby confirm the duty demanded along with interest and equivalent penalty under section 11AC (c) of Central Excise Act, 1944 (in respect of SCN-2);

(c) Penalty imposed upon appellant no. 2 under Rule 26 of the Central Excise Rules, 2002 is set aside ;

(d) The remaining part of the impugned order-in-original dated 30.09.2022 will remain same as before".

9. We have heard learned counsel for the assessee and learned authorized representative for the Revenue and perused the records.

<u>Submissions by the assessee</u> :-

10. Learned counsel for the assessee made the following submissions :-

(i) The assessee is a printer who prints on paper and manufactures various articles of printing and was paying central excise duty on certain goods, such as, exercise books classifiable under Chapter 48 and on certain other products, such as, calendars, drawing books, diaries which are classifiable under Chapter 49. It was not paying duty on letter pads and note pads, note books, Student Almanac and teacher planner and scrap book. These are correctly classifiable under Chapter 49 as articles of printing and therefore no duty was chargeable. In the impugned order, the Commissioner (Appeals) gave only part relief to the assessee upholding the demand of duty on Student Almanac and teacher planner only. Both these are classifiable under Chapter 49.

(ii) As per Chapter Note 12 to Chapter 48, except for the goods of Central Excise Tariff heading 4814 or 4821, paper, paper board, cellulose wadding and articles thereof, printed motives, characters or pictorial representation, which are not merely incidental to the primary use of the goods, fall in Chapter 49 of CETA.

(iii) The Student Almanac and teacher planner contain all printed pages of which the first 10-15 contain general information about the school Rules and Regulations, prayers etc. The rest of the Student Almanac is meant for the students/teachers to write their assignments etc. and get signatures of the teacher/parents. The teacher planner, likewise, is meant for the teacher to record his/her classes and timings. Therefore, the primary purpose of the Student Almanac and teacher planner is the printed material which is provided and, therefore, they are correctly classifiable under Chapter 49 as articles of printing industry.

(iv) Revenue classified these products as diaries, which is not correct for the following reasons :-

(a) These have nothing to do with dates or year ;

(b) These products are not of general use and can be used only by students or teachers of the institution ;

(c) They are not sold in general stationery shops ;

(d) A person who goes to buy a diary in a market will not buy the school almanac or the teacher's diary.

(v) Reliance is placed on the decision of the Tribunal in **Box Corugators & Offset Printers** versus **Commr. of CGST, C. EX. & CUS., Bhopal**[5]

(vi) The onus of classifying any article under a particular tariff heading through a show cause notice rests on the Revenue. The only reason for classifying the Student Almanac and teacher planner as diaries in the show cause notice is that they are used to record some assignments. This view of the Revenue is not correct and these are essentially products of printing industry.

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6. 2019 (366) E.L.T. 335 (Tri. – Del.)

(vii) As all the products cleared by the assessee were exempted, the waste and scrap generated by it is also exempted under Notification No. 27/2011-CE.

(viii) The impugned order needs to be set aside in so far as it upheld confirmation of demand of duty on Student Almanac and teacher planner.

(ix) Revenue’s appeal may be dismissed.

Submissions by the department :-

11. Learned authorized representative for Revenue made the following submissions :-

(i) The Commissioner (Appeals) erred in dropping the demand for extended period of limitation and setting aside the penalty under Rule 26 of the Central Excise Rules on Shri Kishore Mittal, Director of the assessee.

(ii) The assessee neither declared the sale of all types of goods nor paid duty on them in its ER-1 returns nor informed the department about these products in any manner. Had the enquiry not been conducted and had the officers not visited the place of the assessee, the fact that the assessee was manufacturing Student Almanac and teacher planner would not have come to light at all. Quite clearly, the assessee intentionally suppressed the fact with an intent to evade payment of duty on these goods. Suppression of facts with an intent to evade under section 11A (4) is clearly evident in this case. The Commissioner (Appeals), therefore, erred in dropping the demand for the extended period of limitation.

(iii) Considering the intention of the assessee, its Director Shri Kishore Mittal was liable to penalty under Rule 26 which has also been wrongly dropped by the Commissioner (Appeals) in the impugned order.

(iv) As far as the assessee's appeal is concerned, the distinction between Chapter 48 and Chapter 49 of the Central Excise Tariff is that while Chapter 48 deals with paper and paper boards, Chapter 49 deals with products of printing industry.

(v) As per Chapter Note 12 to Chapter 48, even if a product falls under the general description of 48.20, it would not be classified thereunder if the printed motif, characters or periodic representation are not merely incidental to the primary use of the goods. Shri Kishore Mital admitted that his Student Almanac and teacher planner would have about 90% of the space is for writing purpose and only about 10% is printed.

(vi) Therefore, it is evident that the Student Almanac and teacher planner are primary meant for writing but also provide some information which is printed on them.

(vii) The waste and scrap which arises during the manufacture of exempted goods are exempted by Notification No. 27/2011-CE dated 24.03.2011 provided it is not cleared from the factory in which any other excisable goods other than exempted goods are also manufactured. In the instant case, excisable goods namely diaries, note pages, Student Almanac and teacher planner which are dutiable are also manufactured in the same factory. Therefore, the benefit of the exemption notification is not available to the assessee.

12. We have considered the submissions by both sides and perused the records.

13. The following questions need to be answered :-

(a) Is the assessee correct in asserting that the Student Almanac and teacher planner manufactured should be treated as products of printing industry and not as paper and paper products as held by the Commissioner (Appeals) in the impugned order?

(b) Consequently, is the assessee entitled to exemption from waste and scrap under Notification No. 27/2011-CE dated 24.03.2011 ?

(c) Is the Commissioner (Appeals) correct in setting aside the demand for the extended period of limitation on the ground that the assessee had reasonable belief that they were not chargeable to excise duty?

(d) Did the Commissioner (Appeals) err in setting aside the penalty on Shri Kishore Mittal imposed under Rule 26 ?

Classification of Student Almanac and teacher planner:-

14. The undisputed legal position is that there are two types of products – those which are paper and paper products falling under Chapter 48, and products of printing industry falling under Chapter 49. It must be noted that even products which are primarily paper and paper products may have some printing on them. For instance note books will have lines printed on them and on the cover etc. Similarly, even products of printing industry, such as, books may have some blank space to write one’s name, etc. or extra pages to make additional notes. What needs to be seen is what is primary purpose of the good. Is it primarily meant for a person to read, such as a text book which may have some extra space to make notes, or is it primarily something meant to be used as an article of paper, with some material also printed in it.

15. Chapter Heading 4820 of the Central Excise Tariff reads as follows :-

4820 Registers, account books, note books, receipt books, letter pads, memorandum pads, diaries and similar articles, excise books, blotting pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets

> and other articles of stationery, of paper or paper board; albums for samples or for collections and book covers, of paper or paper board".

16. Student Almanac, undisputedly, is meant to help the students record details of assignments to be completed, etc. and for the teachers and parents to put their signatures. This helps the student keep track of his home work and assignments. However, these are printed specifically on an order placed by the concerned school. Some information pertaining to the school, such as, school prayer, school logo, school Rules & Regulations etc. are also printed on the Student Almanac. We find that this is similar to a diary which, even though is meant for recording events and appointments, also has some pages with maps, postal information, telephone codes, list of holidays in the year, etc. All these are essentially meant for ease of reference while the primary purpose of the diary is to help the user write in it. The Student Almanac is the same as a diary except that it is customized to meet the requirements of students of the particular school. Therefore, the information relevant to that school is printed in it. The submission of the learned counsel that since Student Almanac is used only by students of a particular school, it becomes a product of printing industry cannot be accepted. Undisputedly 90% of the space in the Student Almanac is left blank for students to write. Providing additional information relevant to the school does not make it a product of printing industry. The

teacher planner, likewise is to help to make notes and, therefore, stand on the same footing.

17. In view of the above, the submission of the assessee deserves to be rejected.

Waste and scrap

18. The only submission of the assessee with respect to waste and scrap is that since Student Almanac and teacher planner were exempted from payment of duty, the scrap generated also should be exempted by virtue of Notification No. 27/2011-CE. The submission of the learned authorized representative for the Revenue is that since Student Almanac and teacher planner and other products, such as, diaries, note pads were exigible to duty, the assessee was not entitled to exemption from waste and scrap. For the reasons stated above while dealing with classification of Student Almanac and teacher planner, the submission of the learned authorized representative deserves to be accepted and the assessee is not entitled to the benefit of exemption on waste and scrap.

Extended period of limitation :-

19. The Commissioner (Appeals) recorded the following findings on the question of extended period of limitation :-

> "5.5 From the above, it can be seen that there was indeed difference of opinion even among various Commissionerates regarding classification of Text books, Printed work text books

etc., which are similar to the impugned items in the present appeals. Therefore, I note that classification of the impugned items under Chapter 48 and 49 was not unambiguous and remained under continuous litigation during the period under dispute. I further find that the Student Almanac and teacher planner were being mentioned by the appellant M/s Sona Printers in their VAT declarations, and it is not the case of the department that these were being clandestinely removed by M/s Sona Printers.

From the above discussion & judicial pronouncements, I note that the appellants stopped paying the Central Excise duty on Student Almanac/teacher planner under Chapter 4820, under the bona fide belief that the same is not required to be paid, not realizing that the same should have been paid by them. I find that it is not the case, where prescribed returns have not been filed or the appellants suppressed some material facts, but the appellants under bonafide belief classified the impugned products under heading 4911 due to various judgments before the period of dispute and prevailing during the period of dispute and that there were no clear-cut instructions from the department till then, as discussed above. **The same fact is also ascertainable from the initial/on-the-spot statement of appellant no. 2, as mentioned in Para 4 of the impugned order, where it is mentioned that when the department asked appellant no. 2 about non-payment of duty on student diaries also called as almanacs, then Shri Kishore Mittal, appellant no. 2, stated as below :**

"when pointed out about the non-payment of duty on such products, Shri Mittal vide his statement dated 05.01.2017 recorded under section 14 of Central Excise Act, 1944 stated that such products falls under Chapter Heading 4911 which attracts "NIL" rate of duty."

As such, I hold that non-payment of Central Excise duty on student almanac/teacher's planner under heading 48.20 was under the bona fide belief on the part of the appellant and that mere failure to pay duty which is not due to any fraud, collusion or willful mis-statement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of

> limitation. Accordingly, in absence of any fraud, misrepresentation, collusion or willful mis-statement or suppression, there is also no justification in levying equivalent penalty under section 11AC of the Central Excise Act, when the entire issue for classification of the impugned goods viz. student almanac/teacher planner was debatable, during the period of dispute. In view of the above, I hold that the contravention by the appellant was due to bonafide belief and usch contravention was without any intention to willfully evade the payment of duties".

20. The submission of the learned authorized representative for the Revenue is that the assessee had not declared the production of these goods in its ER-1 returns and the department had no way of knowing that the assessee was manufacturing these goods on which it was not paying duty. It is also his submission that the assessee had not intimated the department in any other way about the manufacture of these goods and therefore, the assessee had an intention to evade payment of duty and for that reason the assessee had willfully suppressed facts. Therefore, extended period of limitation was correctly invoked.

21. Learned counsel for the assessee on the other hand supports the impugned order on the question of limitation.

22. We have considered the submissions advanced by both sides and have perused the records.

23. We agree with the finding of the Commissioner (Appeals) in the impugned order that there was no evidence of intention to evade payment of duty and suppression of facts because it

was possible for the assessee to have entertained the belief that the Student Almanac and teacher planner were not exigible to duty and, therefore, to have NOT declared them in their excise returns.

24. In view of the above, we find that the question of limitation in favour of the assessee and against the Revenue and the impugned order needs to be upheld in so far as this limitation is concerned. Consequently, we find that the penalty under section 11AC was also correctly set aside by the Commissioner (Appeals) in the impugned order.

Penalty under Rule 26 of the Central Excise Rules of the Central Excise Rules on Shri Kishore Mittal, Director of the assessee.

25. Revenue is aggrieved by the fact that the penalty on Shri Mittal under Rule 26 of the Rules has been set aside by the Commissioner (Appeals). This rule reads as follows :-

> **"RULE 26. Penalty for certain offences.** — (1) Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or [two thousand rupees], whichever is greater.
>
> **Provided** that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.
>
> (2) Any person, who issues -

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater".

26. An examination of the Rule shows penalty under this rule can be imposed under two conditions :-

(a) Where certain goods have been rendered liable for confiscation and the person did or omitted certain acts which resulted in such confiscation.

(b) Where the person issued invoices without supplying goods so as to enable the recipient of the invoices to avail ineligible Cenvat credit.

27. In this case there is no confiscation of the goods nor is there any allegation that any Cenvat credit has been wrongly taken.

28. In view of the above, we find that the Commissioner (Appeals) was correct in setting aside the penalty on Shri Kishore Mittal under Rule 26 of the Rules.

29. In view of above findings, we uphold the impugned order and dismiss Appeal No. E/55542 of 2023 filed by M/s Sona

Printers Pvt. Ltd. Appeal No's. E/51302 and Appeal No. E/51303 of 2024 filed by the Revenue are also dismissed.

(Order pronounced in open court on 24/03/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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