CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

EXCISE APPEAL NO. 52196 OF 2024

[Arising Out Of Order-in-Original No. 08/Commr./Dehradun/2024 dated 30.04.2024 passed by the Commissioner, Central Goods & Service Tax, Dehradun]

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX-DEHRADUN **.....APPELLANT**

Vs.

M/S HINDUSTAN UNILEVER LIMITED **....RESPONDENT**
Plot No. 1, Sector 1A,
Integrated Industrial Estate,
SIDCUL, Haridwar, Uttarakhand

WITH
EXCISE APPEAL NO. 52197 OF 2024

[Arising Out Of Order-in-Original No. 08/Commr./Dehradun/2024 dated 30.04.2024 passed by the Commissioner, Central Goods & Service Tax, Dehradun]

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX -DEHRADUN **....APPELLANT**

Vs.

M/S TODAY JOBS **.....RESPONDENT**
Plot No. F-112, 113 and E-125,
Industrial Area, Bahadrabad, Haridwar

WITH

EXCISE APPEAL NO. 52198 OF 2024

[Arising Out Of Order-in-Original No. 09/Commr./Dehradun/2024 dated 30.04.2024 passed by the Commissioner, Central Goods & Service Tax, Dehradun]

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX-DEHRADUN **.....APPELLANT**

Vs.

M/S HINDUSTAN UNILEVER LIMITED **....RESPONDENT**
Plot No. 1, Sector 1A,
Integrated Industrial Estate,
SIDCUL, Haridwar, Uttarakhand

AND

EXCISE APPEAL NO. 52199 OF 2024

[Arising Out Of Order-in-Original No. 09/Commr./Dehradun/2024 dated 30.04.2024 passed by the Commissioner, Central Goods & Service Tax, Dehradun]

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX-DEHRADUN **.....APPELLANT**

Vs.

M/S MAXIMA SOLUTIONS **.....RESPONDENT**
D-5, Industrial Area,
Bahadrabad Haridwar, Uttarakhand

Appearance:

Shri Rakesh Agarwal and Shri R.K. Mishra, Authorised Representatives for the Department

Shri M.H. Patil, Shri Sachin Chitnis, Shri Viraj Reshamwala and Shri J.M. Sharma, Advocates for the respondent

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

FINAL ORDER NO'S. 51171-51174 /2025

Date of Hearing : 25/06/2025
Date of Decision : 11/08/2025

P.V. SUBBA RAO:

1. These four appeals have been filed by the Revenue to assail two orders passed by the Commissioner of Central Excise and CGST, Dehradun as follows:

Sr No.	Name of the party	SCN dated	Order in Original dated	Period involved	Job work undertaken for HUL
1.1	Today jobs E/52197/2024	09.08.2010	30.04.2024	July, 2009 to March, 2010	Job work of flow wrapping pouching labelling, packing, etc of

					skin cream and detergent power received from HUL u/r 4(5)(a) of CCR
1.2	HUL E/52198/2024	09.08.2010	30.04.2024	July, 2009 to March, 2010	HUL sent goods u/r 4(5)(a) of CCR
Sr. No.	**Name of the party**	**SCN dated**	**Order in Original dated**	**Period involved**	**Job work undertaken for HUL**
2.1	Maxima Solutions E/52199/2024	08.09.2010	30.04.2024	August, 2009 to March, 2010	Job work of labelling packing, cleaning, and bar coding etc of lipstick, nail polish, eyeliner, mascara and face cream, etc. u/r 4(5)(a)of CCR
2.2	HUL E/52198/2024	08.09.2010	30.04.2024	August, 2009 to March, 2010	HUL sent Goods u/r 4(5)(a) of CCR

2. During the relevant period, **M/s. Today Jobs, Dehradun**[1] and **Maxima Solutions, Dehradun**[2] were job workers of **M/s. Hindustan Unilever Ltd.**[3] in Dehradun and had undertaken certain jobs such as wrapping, pouching, packing, labelling, etc. of the goods manufactured by HUL. Considering these activities as services, both Today and Maxima had obtained service tax registrations and paid service tax on the job charges received by them. During the relevant period, Service Tax was payable if taxable services were rendered. One of the taxable services was 'business auxiliary service' which definition included 'processing

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1 Today
2 Maxima
3 HUL

of goods on behalf of a client' if that activity did not amount to manufacture. Thus, if the processing undertaking by an assessee did not amount to manufacture, service tax was payable and if it amounted to manufacture, central excise duty was payable.

3. The department observed that as per the Chapter Note of the Central Excise Tariff applicable to the goods in question, the activities of labelling, packing and re-packing. undertaken by Today and Maxima amounted to manufacture. This legal position is not in dispute. Therefore, both Today and Maxima had to pay Central Excise duty and did not have to pay service tax.

4. However, a conditional, area-based central excise exemption notification no. 50/2003-CE dated 10.6.2003 was available to goods manufactured in some areas including the areas where Today and Maxima were located. To avail it, the assessee had to fulfil some conditions including the condition that it had to opt for it. The relevant portion of the exemption notification is reproduced below:

> "Provided that the exemption contained in the notification shall apply subject to the following conditions, namely:-
>
> (i) The manufacturer who intends to avail of the exemption under this notification **shall exercise his option in writing before effecting the first clearance and shall option shall be effective from the date of exercise of the option** and shall not be withdrawn during the remaining part of the financial year;
>
> (ii) The manufacturer shall, **while exercising the option under condition (i), inform in writing** to the jurisdictional Deputy Commissioner of Central Excise or Assistant

Commissioner of Central Excise , as the case may be, with a copy to the Superintendent of Central Excise giving the following particulars, namely:-

a. Name and address of the manufacturer;
b. Location/locations of factory/factories;
c. Description of inputs used in manufacture of specified goods;
d. Description of the specified goods produced;
e. Date on which option under this notification has been exercised.

……"

5. **Maxima** filed a declaration on 31.3.2010 before the Deputy Commissioner opting for this notification indicating the "date on which the option has been exercised" as 15.3.2010.

6. **Today** filed a declaration on 31.3.2010 before the Deputy Commissioner opting for this notification indicating the "date on which the option has been exercised" as 30.3.2010.

7. Show Cause Notice[4] dated 8.9.2010 was issued to **Maxima** demanding central excise duty amounting to Rs. 14,21,16,151/- along with interest for the period August 2009 to March 2010 under section 11A of the Central Excise Act, 1944[5] and further proposing to impose penalty under section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002[6]. In this SCN, penalty was also proposed on **HUL** under Rule 26. The entire period of demand was within the normal period of limitation.

8. The proposals against **Maxima** and **HUL** in this SCN were dropped by the Commissioner, CGST, Dehradun by Order dated 30.4.2024 relying on the Final Order dated 12.11.2014 of this

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4 SCN
5 Act
6 Rules

Tribunal in **Excise Appeal no. 3130 of 2009 filed by M/s. Vasantham Enterprises**.

9. Revenue filed Excise appeals **52198 of 2025** and **52199 of 2025** to assail this order.

10. Show Cause Notice[7] dated 9.8.2010 was issued to **Today** demanding central excise duty amounting to Rs. 9,59,85,119/- along with interest for the period July 2009 to March 2010 under section 11A of the Act and further proposing to impose penalty under section 11AC of the Act read with Rule 25. In this SCN, penalty was also proposed on **HUL** under Rule 26. The entire period of demand was within the normal period of limitation.

11. The proposals against **Today** and **HUL** in this SCN were dropped by the Commissioner, CGST, Dehradun by Order dated 30.4.2024 relying on the Final Order dated 12.11.2014 of this Tribunal in **Excise Appeal no. 3130 of 2009 filed by M/s. Vasantham Enterprises.**

12. Revenue filed Excise appeals **52197 of 2025** and **52196 of 2025** to assail this order.

Submissions of the Revenue

13. Shri Rakesh Agarwal, learned authorised representative for the Revenue made the following submissions:

(i) There is no dispute that the processing undertaken by Maxima and Today amounted to manufacture as per the Chapter Note to

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7 SCN

the Central Excise Tariff and hence they were required to pay central excise duty.

(ii) There is also no doubt that Today and Maxima could have availed the benefit of the exemption notification no. 50/2003-CE dated 10.6.2003.

(iii) This notification was a conditional notification available to an assessee located in the notified areas if the assessee opts for it by filing a declaration indicating therein the date from which it was opting for it. Thereafter, the assessee could not change this option for the rest of the financial year.

(iv) The option had to be exercised before effecting the first clearance availing the benefit of the notification.

(v) Therefore, the exemption was available for all clearances made after the declaration opting for it was filed and once opted, the option could not be changed for the entire financial year.

(vi) The demand made in both the SCNs was only in respect of clearances made before opting for the notification.

(vii) Both Maxima and Today not only opted for the notification but also specified the dates from which they were opting for them. The demand of excise duty in the SCNs was made only for the period for which they had not opted for the exemption notification. Both demands are within the normal period of limitation under section 11A.

(viii) The Commissioner erred in dropping the proposals effectively extending the benefit of the notification even for the period when Maxima and Today did not opt for.

(ix) The Commissioner wrongly relied on the order of this Tribunal in the case of **Vasantham Enterprises** in which the assessee had filed the declaration but it was incomplete and therefore, the matter was remanded to the Commissioner allowing the assessee to cure the defects in the declaration.

(x) In this case, the Maxima and Today filed proper declarations indicating the date of the declarations and the date from which they wished to avail the benefit of the notification.

(xi) The Commissioner gravely erred in applying the notification even for the period when the Maxima and Today had not opted for the exemption.

(x) Consequently, he erred in dropping the proposal to impose penalties on Maxima, Today and HUL

(x) The impugned orders may be set aside and Revenue's appeals may be allowed.

Submissions of the Respondents- Maxima, Today and HUL

14. Shri M.H. Patil, Shri Sachin Chitnis, Shri Viraj Reshamwala and Shri J.M. Sharma, learned counsels for the respondents vehemently supported the impugned orders and made the following submissions:

(i) The issue is no more *res integra* and the declaration under notification no. 50/2003-CE is only a procedural requirement. Area based exemption notification, being a beneficial notification, must be interpreted liberally. Reliance is placed on the following decisions:

(a) Vasantham Enterprises vs. **Commissioner of Central Excise, Chandigarh**[8] Upheld by Supreme Court[9]

(b) Vasantham Enterprises vs. **Commissioner of Central Goods and Service Tax**[10]**.**

(c) Herbal Concepts Healthcare Pvt. Ltd. vs. **Commissioner of Shimla**[11]

(d) Krsna Urja Projects Ltd. vs. **Commissioner of Central Excise, Meerut-I**[12]

(e) Indica Industries Pvt. Ltd. vs. **Commissioner of C. Ex. & ST-Dehradun**[13] upheld by Supreme Court[14]**.**

(f) Gillette India Ltd. vs. **Commissioner of Central Excise, Chandigarh**[15]

(g) Controls and Switchgears Co. Ltd. vs. **Commissioner of Central Excise, Meerut**[16]

(h) Pearl Enterprises vs. **Commissioner of Central Excise, Chandigarh**[17]

(ii) One of the grounds taken in the Revenue's appeals is that the respondents were not located in the notified areas. This is not factually correct. Further, the SCN did not propose to deny exemption on this ground and it is not open to the department to urge a completely new ground in these appeals beyond the proposals in the SCN.

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8 2015 (37) STR 1007 (T)
9 2018 (13) GSTL J-33 (SC)
10 2024) 23 Centax 263 (T)
11 2013 (294) ELT 570 (T)
12 2019 (366) ELT 839 (T)
13 2017 (357) ELT 961 (T)
14 2018 (360) ELT A-124 (SC)
15 2011 (272) ELT 154 (T)
16 2017-TIOL-1960-CESTAT-DEL
17 2023-TIOL-1106-CESTAT-CHD.

(ii) The respondents had not opted for the exemption notification for the reason that they were under the impression that they had to pay service tax and were paying service tax.

(iii) Once service tax is paid treating the activity as service, no excise duty is payable.

(iv) Interest under section 11AB and penalty under section 11AC are not applicable in this case because none of the factors necessary to impose penalty viz., fraud, collusion, wilful misstatement or suppression of facts or violation of the Act or Rules with intent to evade payment of duty have been established.

(v) No penalty under Rule 26 is imposable on HUL.

Findings

15. We have considered the submissions advanced by both sides and perused the records. The following issues need to be decided:

(a) Can the ground taken by the Revenue that the respondents were not located in the notified Khasras be accepted?

(b) Were the respondents entitled to the benefit of the exemption notification no. 50/2003-CE and if so, from which date?

(c) Should the demand have been confirmed by the Commissioner under section 11A(1) [normal period of limitation]?

(d) Should the Commissioner have imposed penalty under section 11AC on the Maxima and Today?

(e) Should the Commissioner have imposed penalty on HUL under Rule 26?

16. It is undisputed that as per the statutory definition in the Chapter Note, the activity of Maxima and Today amounted to manufacture. Therefore, but for the exemption, excise duty was payable and service tax was not payable by them.

17. We now proceed to decide each of the five issues identified by us in the above paragraph.

Ground of the Revenue that Maxima and Today were not located in the areas notified in 50/2003-CE

18. It is not disputed in the SCNs that Maxima and Today were located in the areas notified under notification no. 50/2003-CE. In the appeals, Revenue raised a new ground that Maxima and Today were not located in the notified areas. This ground cannot be entertained as it was not the proposal in the SCNs. Learned counsels for the respondents have also shown to us that they were located in the Khasras notified in the notification. Therefore, this ground deserves to be rejected.

Entitlement of Maxima and Today to the benefit of notification no. 50/2003-CE

19. We note that the notification is a conditional one- available to one who opts for it. An assessee may find it beneficial to opt

for the exemption or it may find it beneficial to not opt for it. Just as in case of minor car accidents or minor illnesses, one makes a decision whether to claim insurance (and lose on say, no claim bonus in the next year) or not claim insurance (and pay the bills out of one's pocket), in case of conditional exemption notifications, the assessee has a choice. At times, the assessee prefers to pay duty and avail CENVAT credit or some other benefits instead of availing the optional exemption notification.

20. What choice the assessee makes is it's business decision. It is not for the officers to alter this choice or force any one option on the assessee or confer benefits of a notification when the assessee did not opt for it (which may have other consequences such as denial of CENVAT credit). If the assessee explicitly opts for the exemption from a particular date, it is not open to the officer or any adjudicating authority or appellate authority to apply the exemption retrospectively from some other date. This is especially so in this case because the declaration also requires the assessee to state the date from which it opted for the notification.

21. The submission of the learned counsel is that area based exemption notification, being a beneficial exemption, must be liberally interpreted. It is also the submission that giving a declaration opting for the notification is a procedural requirement, non-fulfilment of which should not deprive them of the benefit of the notification.

22. These submissions cannot be accepted. There is no doubt that the appellants were entitled to the optional exemption. There is equally no doubt that it is for the assessee to opt for the exemption from any date or not opt at all. Once the assessee opts for an exemption, it cannot change it during the financial year. Evidently, the assessee could opt out of the exemption next year. As discussed above, once an exemption is claimed, the assessee will not get CENVAT credit and may lose some other benefits. Therefore, it cannot be said that the optional exemption notification should be applied even if the assessee does not opt for it or for even for period before it opts for it.

23. Another submission of the learned counsel is that the appellants were under an impression that service tax was payable and excise duty was not payable and, therefore, they had not opted for the exemption notification.

24. To examine this submission, we need to look at the declarations of the two appellants in this respect. **Maxima** filed the declaration on 31.3.2010 before the Deputy Commissioner opting for this notification retrospectively from 15.3.2010. **Today** filed a declaration on 31.3.2010 before the Deputy Commissioner opting for this notification retrospectively from 30.3.2010. To this extent, we are inclined to give the appellants the benefit of doubt and accept the date from which the notification would apply as per the declaration; in case of Maxima it is 15.3.2010 (although the declaration was submitted on 31.3.2010) and in case of Today it is 30.3.2010 (although the declaration was submitted on

31.3.2010). Consequently, of the demand in the SCN issued to Maxima (for the period August 2009 to March 2010), the demand can be confirmed only upto 14.3.2010. Of the demand in the SCN issued to Today (for the period July 2009 to March 2010), the demand can be confirmed only up to 29.3.2010.

25. We have gone through the decisions relied on by the respondents; none of them would apply to these appeals because Maxima and Today made a choice and opted to avail the benefit of the exemption notification from specific dates indicated by them in their declarations.

26. Learned authorised representative is correct in his submission that the case of **Vasantham** relied on by the Commissioner to drop the proceedings in the SCN was different inasmuch as in that case, the assessee had filed declarations but they were defective and a bench of this Tribunal found that the defects were curable and for that reason remanded the matter to the Commissioner. Learned counsel for the appellant also submitted that Revenue's appeal against **Vasantham** was dismissed by the Supreme Court. We find that the Supreme Court dismissed the appeal only on grounds of limitation leaving it open to the Revenue to contest the issues in the remand proceedings.

27. The impugned orders cannot be sustain to the extent they drop the demands even for the periods for which Maxima and Today had not opted for the exemption. Neither can an

optional exemption notification be forced upon an assessee nor can any benefits (such as CENVAT) be denied by the Revenue which inevitably follow the benefit of the exemption notification.

28. The demand of duty on Maxima for the period 1.08.2009 to 14.03.2010 needs to be confirmed. The demand of duty on Today for the period 1.07.2009 to 29.03.2010 needs to be confirmed along with interest as applicable.

Penalty under section 11AC

29. The SCN proposed imposing penalty under section 11AC which proposal was dropped by the Commissioner since he dropped the demand of duty itself. Since we found that demand is liable to be confirmed for some period, we proceed to examine the question of penalty under section 11AC.

30. Penalty under section 11AC can be imposed only if the duty is not paid, short paid, etc. by reason of fraud or collusion or wilful mis-statement or suppression of facts or violation of act or rules with an intent to evade. Nothing in the records shows that there was any such intent. Both Maxima and Today were under the impression that service tax was payable and not central excise duty and were paying service tax. Nothing in the records shows that the officers had told them that service tax was not payable but central excise duty was payable. Therefore, we find no grounds whatsoever to impose any penalty under section 11AC.

Penalty under section Rule 26 on HUL

31. The proposals in the SCN was to impose penalty on HUL under Rule 26. It 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.

32. This Rule provides for penalty (a) for acts or omissions which rendered goods liable to confiscation; and (b) for issuing invoices without supplying goods to enable the recipient to avail ineligible CENVAT credit. In the SCNs there was no proposal to confiscate goods nor is there any allegation that HUL had issued invoices without supplying goods. Therefore, by no stretch of imagination can the penalty under Rule 26 be imposed on HUL.

33. In view of the above:

(i) **Excise Appeal No. 52196 of 2025** filed by the Revenue is dismissed

(ii) **Excise Appeal No. 52198 of 2025** filed by the Revenue is dismissed.

(iii) **Excise Appeal No. 52197 of 2025** filed by the Revenue is partly allowed and the impugned order is modified by upholding the demand of duty on **Today** for the period 1.07.2009 to 29.03.2010 with applicable interest.

(iv) **Excise Appeal No. 52199of 2025** filed by the Revenue is partly allowed and the impugned order is modified by upholding the demand of duty on **Maxima** for the period 01.08.2009 to 14.03.2010 with applicable interest.

34. The impugned order is modified to the extent indicated above.

[Order pronounced on **11.08.2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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