CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

E-HEARING

EXCISE APPEAL NO. 52049 OF 2022

[Arising out of the Order-in-Original No. 39 & 40/2022-CE dated 20/05/2022 passed by The Additional Director General (Adj.), Director General of GST Intelligence, New Delhi.]

M/s Swarup Mechanical Works (Unit 1), ……Appellant
B-15/570, Overlock Building, Overlock Road,
Miller Ganj, Ludhiana.

Versus

Additional Director General (Adj.), ….Respondent
Director General of GST Intelligence,
West Block – VIII, Wing – 6, 2nd Floor, R.K. Puram,
New Delhi.

APPEARANCE:

Shri R.K. Hasija, Advocate for the appellant.
Shri Rakesh Agarwal, Authorized Representative for the Department

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

FINAL ORDER NO. 51208/2025

DATE OF HEARING : 26.06.2025
DATE OF DECISION: 22.08.2025

P.V. SUBBA RAO

M/s. Swarup Mechanical Works[1] filed this appeal to assail the order dated 20.5.2022 passed by the Additional Director General[2] deciding the proposals made in two show cause

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1. **appellant**
2. **impugned order**

notices[3] dated 20.1.20215 and 20.5.2015 and confirmed demand of duty of Rs. 8,48,64,846/- under section 11A of the Central Excise Act, 1944[4] and imposed penalty of an equal amount under Section 11AC of the Act.

2. This is the second round of litigation. The SCNs were initially decided by an order dated 29.1.2016 dropping the demands which order was assailed by the Revenue in Excise Appeal No. 51759 of 2016. By Final Order No. 50784 of 2018 dated 21.2.2018, this Tribunal had remanded the matter keeping all issues open. The relevant portion of the Final Order is as follows:

> "….
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> 3. With this background, we have heard Shri H. Saini, learned DR for the Department and Shri R.K. Hasija, learned counsel for the assessee-Respondents.
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> 4. The learned DR submits that under Notification No. 1/2011-CE dated 01.03.2011 at Sl. No. 97 'Sewing machines other than those with inbuilt motors' was given under the concessional rate of duty @1% being under sub-heading 8452. He also submits that the adjudicating authority has relied upon the ratio of the Gabbar Engineering Co. versus CCE, Ahmedabad, 2009 (244) ELT 552 (T-Ahmd.), which was distinguished in the grounds of appeal. So, he submits that it has inbuilt motors and concessional rate of duty is not applicable.
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> 5. On the other hand, the learned counsel for the assessee-Respondents supported the impugned order. He has drawn our attention to the annexures of reports obtained by

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3. SCN
4. Act

> them. One of the reports is from Northern India Textile Research Association dated 03.09.2014 wherein it was clearly stated that the said machines do not come under the heading of 'Inbuilt Electric Motor' since these motors are attached with the ….. Similar opinion was also given by the CSIR-Central Mechanical Engineering Research Institute. Another report was also obtained from Central Manufacturing Technology Institute, Bangalore, which also opined the same view.
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> 6. Fair enough, the learned counsel submits that, though the original authority has mentioned the said reports, but has not given any finding on merit.
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> 7. When it is so, then we set aside the impugned order and remand the matter to the adjudicating authority to decide the issue denovo after considering these expert opinions, but by providing a reasonable opportunity to the assessee-Respondents to present their case with liberty to file additional documents, if any, as per law. All issues are kept open.
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> 8. In the result, the appeal filed by the Department is allowed by way of remand. Cross-objection also stands disposed of accordingly."

3. In pursuance of the Final Order, the impugned order has been passed confirming the demand and imposing penalty.

4. We have heard learned Shri R. K. Hasija, learned counsel for the appellant and Shri Rakesh Agarwal, learned authorised representative for the Revenue and perused the records.

5. We also note that in the first round of litigation, all issues were kept open by this Tribunal while remanding the matter. The issues which fall for consideration in this appeal are as follows:

(a) Whether the appellant is entitled to the benefit of exemption Notification No. 6/2006-CE dated 1.3.2006 (S. No. 15) and its successor Notification No. 1/2011-CE dated 1.3.2011 (S. No. 97) on the industrial sewing machines which it had manufactured and cleared during the period 1.4.2009 to 10.7.2014 or not?

(b) Whether the 'suspension unit with hanging hook' manufactured and cleared by the appellant is a part of the sewing machine classifiable under **Central Excise Tariff Heading[5] 8452990** (as classified by the appellant) or is it a 'suspending tool' classifiable under **CETH 84289090** (as held in the impugned order)?

(c) Whether extended period of limitation under section 11A of the Act was correctly invoked in confirming the demands?

(d) Whether penalty under section 11AC was correctly imposed on the appellant?

Benefit of Notification No. 6/2006-CE and 1/2011-CE

5. The undisputed legal position is that the benefit of both these notifications was available to 'Sewing machines other than those with inbuilt motors'. Notification No. 6/2006-CE dated 1.3.2006 (S. No. 15) which corresponds to the disputed

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5. CETH

period 1.4.2009 to 28.2.2011 provided for Nil rate of duty. Notification No. 1/2011-CE dated 1.3.2011 (S. No. 97) provided for a concessional rate of duty of 1% (which corresponds to the disputed period 1.3.2011 to 16.3.2012) and 2% (which corresponds to the disputed period 17.3.2012 to 10.7.2014).

6. The undisputed factual position is that the appellant had manufactured and cleared sewing machines meant for stitching bags and that each of these machines had a motor and they were not meant for manual stitching. The sewing machines when they were cleared from the factory had the motors in them. The motor was part of the sewing machine and was not an optional accessory. The motor was connected to the sewing mechanism through a belt and the motor, the belt and the sewing mechanism all have proper housing and are covered.

7. According to the Revenue and as held in the impugned order, the sewing machines, being with in-built motors, were not eligible for exemption under Notifications No. 6/2006-CE and 1/2011-CE. The Commissioner relied on the decision of the Tribunal in the case of **Gabbar Engineering Co.** versus **Commissioner of C. Ex. Ahmedabad**[6]

8. According to the learned counsel for the appellant, although the motor was part of the sewing machine as cleared from the factory and although the motor was housed and

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6. 2009 (244) E.L.T. 552 (Tri. – Ahmd.)

covered in the machine, since the motor and the sewing mechanism were connected by a belt and not though a shaft, the motor cannot be said to be inbuilt in the sewing machine. Therefore, according to the learned counsel, the appellant was entitled to the benefit of the exemption notifications. Learned counsel for the appellant relied on the following:

a) Opinion of Northern India Textile Research Association dated 3.9.2014 in which it is stated that since the sewing machines cleared by the appellant have a belt and pulley drive mechanism and not a direct drive mechanism, they cannot be said to have in-built motors.

b) An opinion from CSIR – Central Mechanical Engineering Research Institute, Durgapur, stating that 'in-built motor' means a motor where the mechanical power of the electrical motor is transferred directly to the spindle or axle without any mechanical transmission elements. Since the sewing machines of the appellant had a belt connecting the motor and the sewing mechanism, they cannot be said to have an inbuilt motor.

c) **Collector of Central Excise** versus **ALCO Industries**[7]

d) **Commissioner of Customs, Bangalore** versus **Harichand Anand & Co.**[8]

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7. 1991 (55) E.L.T. 184 (Mad.)

e) **Singer India Ltd.** versus **Commissioner of Central Excise, Delhi-I**[9]

9. We have considered submissions of both sides on this issue.

10. The benefit of the notifications is available to sewing machines without in-built motors. The notification does not stipulate any mechanism of transmission of the power from the motor to the sewing unit. It is well known that any prime mover (electric motor, an internal combustion engine, an external combustion engine, etc.) provides mechanical power in the form of rotation using electricity petrol, diesel, coal or some other fuel. The mechanical power in the form of rotation is used by various machines to perform various functions. The power of the prime mover has to be transmitted to the rest of the machine. This transmission can take place by directly connecting the machine to the prime mover with a shaft or through a belt and pulley or through gears or through levers.

11. The notification does not stipulate any particular mechanism of transmission of power from the motor to the sewing mechanism. So long as there is an in-built motor in the sewing machine, it is not eligible for exemption and if there is no in-built motor, it is eligible for exemption. There is no definition of the expression 'in-built' in the notification. The

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8. 2008 (223) E.L.T. 598 (Tri. – Bang.)
9. 2016 (342) E.L.T. 385 (Tri. – Del.)

correct way of interpreting it is, therefore, as someone in the market would understand. If one goes to the market to buy a sewing machine, one would like to know if it has an in-built motor or not. If the machine has no in-built motor, it may have to be operated through human effort or a separate motor would have to be bought and fitted to it. Each sewing machine of the appellant had a motor within it and the motor, the sewing machine as well as the belt and pulley were all cased in a housing within the sewing machine. Anyone buying the sewing machine would buy it as one with an in-built motor.

12. The meaning of the words 'in-built' in the Oxford Advanced Learner's Dictionary (9th edition) is as follows:

> **in-built** *adj.* =BUILT-IN
>
> **built-in** *(also less frequent,* **in-built)** *adj.* [only before noun] included as part of sth and not separate from it: *built-in cupboards*

13. Thus, the dictionary meaning of the expression 'in-built' is also the same as is commonly understood- that which is a part of something. For instance, a car with an in-built CNG kit will come with the kit as a part of the car. One may also buy a car with no in-built CNG kit and get one installed separately. The sewing machines in dispute, undisputedly, came with motors as a part. The motor was not bought separately nor was it an optional accessory. The motor as well as the belt

used to connect the motor with the sewing mechanism were parts of the sewing machine. The expert opinions relied upon by the appellant are all based on the wrong premise that for something to be in-built, no belt should have been used and the transmission should have been through a shaft. That is not the meaning of the expression as understood in common parlance and also as per the dictionary meaning.

14. Identical question arose in **Gabbar Engineering** and a bench of this Tribunal held that benefit of the exemption Notification No. 6/2006-CE was not available. It was held in that case that the motor, pulley as well as V-belt were all part of the sewing machine as it is in this case.

15. The question before the Madras High Court in **Alco Industries** relied on by the appellant was completely different. Revenue demanded excise duty on the wet-grinders manufactured by **Alco** under erstwhile Tariff Item 33-C of the Excise Act as 'Domestic Electrical Appliances, not elsewhere specified'. The wet-grinders had no motors when they were cleared from the factory. Motors were separately bought from outside and third parties connected them. As the wet-grinders manufactured by the **Alco** had no motors, Madras High Court held that they would not fall under Tariff Item 33-C.

16. In **Harichand Anand,** the importer imported sewing machines without motors and in that factual position, a bench

of this tribunal held that the importer was eligible for exemption Notification No. 6/2006-CE.

17. In **Singer India Ltd.,** sewing machines were imported without motors and thereafter, motors were added separately and this activity was held to be not manufacture because no new article had come into existence.

18. The case in this appeal is completely different as the motor, V belt as well as the rest of the sewing machine were all encased in a housing and were all part and parcel of the sewing machine. Therefore, **Gabbar Industries** would squarely apply to this case.

19. **We, therefore, find that the appellant is not entitled to the benefit of the exemption notifications.**

Suspension unit with hook

20. The sewing machines manufactured by the appellant were meant to stitch up bags. These are used in industries to stitch up the bags after filling them. One convenient way of stitching the mouth of the bags after filling them is to hang the sewing machine with a hook. The suspension unit helps in hanging the sewing machine. It is sold by the appellant as an optional accessory. It is not sold as part of the sewing machine.

21. The submission of the appellant is that since the suspension unit is meant to be used with the sewing machine, it should be classified as part of the sewing machine and accordingly should be treated as exempted by Notification No. 6/2006-CE and 1/2011-CE.

22. The submission of the learned authorised representative is that the suspension unit is not at all a part of the sewing machine and hence it cannot be so classified. It is also his submission that the notification provided for exemption for sewing machines without in-built motors but not to parts of sewing machines. Therefore, even if the suspension unit is held to be a part of the sewing machine, the benefit of the exemption would not be available to the appellant.

23. We have considered the submissions of both sides on this question. We have also seen the brochure of the appellant. The suspension unit with the hook is, no doubt, meant to be used along with the machine but it is not the part of the sewing machine. It is an optional accessory available to those who want to buy it. By no stretch of imagination can this be called a part of the sewing machine. We, therefore, hold in favour of the Revenue and against the appellant on the question of this classification of the suspension unit and hook.

Extended period of limitation

24. The submission of the learned counsel for the appellant is that extended period of limitation could not have been invoked in this case, as there is no evidence of fraud or collusion or wilful mis-statement or suppression of facts or violation of provisions of the Act or Rules with an intent to evade payment of duty.

25. Learned authorised representative supported the impugned order and asserted extended period of limitation was correctly invoked.

26. We have considered the submissions of both sides on this question. We find that the show cause notice invoked extended period of limitation because:

a) The appellant was operating under self-removal and self-assessment procedure under central excise law under which every assessee has an obligation to assess his Central Excise Duty liability correctly at the time of clearance of excisable goods;

b) the appellant failed in its duties and responsibilities wilfully and consciously inasmuch as they mis-declared their finished goods to avail ineligible benefit of the notifications with malafide intent to evade Central Excise duty;

c) this wilful act would have gone unabated but for detection by DGCEI.

27. We find from records that the appellant had been filing its central excise returns regularly assessing duty as per its understanding. The appellant had not failed in its duties. If the non-payment of duty was not detected within time, it is because, the range officer with whom the returns were filed failed in his duty to scrutinise the returns and raise a demand within time and not because the appellant had failed in its duties. The appellant's responsibility is to self-assess duty as per its understanding and it has no obligation to anticipate if DGCEI would one day look into its records and if so, what view DGCEI would take and file returns accordingly. The appellant's view was that it was eligible to the exemption and accordingly assessed the duty. It was for the range officer to have scrutinised the returns.

28. At this stage, learned authorised representative vehemently argued that the range officer was not at fault because as per the instructions issued by the Central Board of Excise and Customs, only preliminary scrutiny of the returns was to be done and the officer was explicitly prohibited by the instructions of the Board from looking into further details. He further submits that the Board had issued instructions to officers as to in which cases only preliminary scrutiny can be conducted and in which case detailed scrutiny can be conducted. This was done to facilitate trade.

29. **Thus, as per the submission of the learned authorised representative, although the returns were filed on time, their detailed scrutiny was not carried out by the Range officer because he was forbidden by the Board's instructions.**

30. **We find that in tax administration, a balance is often maintained between assessment, scrutiny and enforcement on one hand and trade facilitation on the other- the former ensures better Revenue collection and the latter facilitates trade at the risk of losing Revenue. If the submissions of learned authorised representative are correct, the Board had taken a decision to facilitate trade and risk losing some revenue such as in this case and has lost revenue. It is a policy of the Board and it does not prove that the appellant had any intention to evade.**

31. We find that none of the elements necessary to invoke extended period of limitation was present in this case. Therefore, the demand for extended period of limitation deserves to be set aside.

Penalty

32. The elements necessary to invoke extended period of limitation and the elements necessary to impose penalty under section 11AC of the Act are the same. Since it has been found

that none of these elements have been established, we find that penalty under section 11AC cannot be sustained.

Conclusion

33. In view of the above, we partly allow the appeal of the appellant setting aside the demand for the extended period of limitation and penalty under section 11AC. We uphold the rest of the demand.

(Order pronounced in open court on 22/08/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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