

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 87141 of 2023**

(Arising out of Order-in-Appeal No. CSM/65/RGD APP/2023-24 dated 31.05.2023 passed by the Commissioner of Central Tax (Appeals), Raigarh, Navi Mumbai.)

**Gold Seal Engineering Products Private Limited**

**.... Appellant**

Gold Seal House, Bhandup Village Road,  
Near CEAT Tyres, Bhandup (West),  
Mumbai – 400 078.

Versus

**Commissioner of CGST & Central Excise**

**.... Respondent**

**Navi Mumbai Commissionerate**

16th Floor, Satra Plaza,  
Palm Beach Road, Sector-19D,  
Vashi, Navi Mumbai – 400 705.

**APPEARANCE:**

Shri Mahesh Bhattar, Chartered Accountant for the Appellant

Shri Ranjan Kumar, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86828/2025**

Date of Hearing: 30.06.2025

Date of Decision: 20.11.2025

**Per: M.M. PARTHIBAN**

This appeal has been filed by M/s Gold Seal Engineering Products Private Limited, Navi Mumbai (herein after, referred to as "the appellant", for short) assailing the Order-in-Appeal No. CSM/65/RGD APP/2023-24 dated 31.05.2023 (herein after, referred to as "the impugned order") passed by the Commissioner of Central Tax (Appeals), Raigarh, Navi Mumbai.

2.1 The brief facts of the case are that the appellant herein is engaged *inter alia*, in the business of manufacturing of parts of motor vehicles such as door beading, channels, clips, profile of solid rub & profile of sponge rub, vulcanized rubber other than hard rubber of cellular rubber etc. classifiable under Chapter 87 of the Central Excise Tariff Act, 1985. For the purpose of payment of excise duty on final products manufactured by them and in respect of service tax on taxable output services, if any, and for compliance

with the indirect tax statute, they are registered with the jurisdictional Commissionerate under Central Excise registration AAACG1492RXM001 and service tax registration No. AAACG1492RST003.

2.2 During the course of EA-2000 audit conducted on the records maintained by the appellant, the department had observed that on comparison of the sale value shown in trial balance and ER-1 returns on monthly basis during the audit period October, 2016 to June, 2017, there is a difference between the figures declared in both the documents; the figures of sale shown in trial balance is on higher side, whereas the figures on the basis of which Central Excise duty was paid was not matching to such figures. Therefore, the audit observed that the appellant had not declared the correct assessable value under Section 4 of Central Excise Act, 1944; and quantified the differential duty payable as Rs.2,64,039/-. In respect of the said audit objection raised by the Department, the appellant had explained that on account of target discount at a higher rate than the abatement percentage prescribed by the government, amount of sales return etc. offered by them to their customers, the sale value is less in the trial balance, when compared to the assessable value arrived at based on the central excise duty paid by them. In explaining the above issues, the appellant submitted reconciliation statement to the auditors. However, the audit did not accept such explanation of the appellant and concluded that show cause proceedings should be initiated by the Department under Section 11 of the Central Excise Act, 1944.

2.3 Pursuant to the audit objection, Show Cause Notice (SCN) No. 92/GST Audit RGD/AC/Gr.-I/Cir.-I/2021-22 dated 23.12.2021 was issued by the department to the appellant in demanding differential central excise duty of Rs. 2,64,039/- under Section 11A *ibid* along with interest and for imposition of penalty on the appellant under Section 11AC *ibid*. The matter arising out of the above said SCN was adjudicated by the jurisdictional Assistant Commissioner, Division-II, CGST & CX., Navi Mumbai vide Order-in-Original No.19/D-II/AC/SKS/GSEPPL/2022-23 dated 30.08.2022 in confirming all the proposals made therein. Being aggrieved with the impugned order, the appellant had filed an appeal before the learned Commissioner (Appeals), Raigarh. In deciding the issue, learned Commissioner (Appeals) vide the impugned order has rejected the appeal filed by the appellant as time barred. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3.1 Learned Chartered Accountant appearing for the appellant submitted that they are being manufacturers of automobile parts, supply these to vehicle manufacturers as Original Equipment Manufacturer (OEM) supplies and also as spare parts for retail sale in open market. Since the parts of automobile being excisable goods subjected to levy of Central Excise duty on the basis of Retail Sale Price (RSP/MRP) under Section 4A of the Central Excise Act, 1944, when these are sold to retail trade, the applicable central excise duty is required to be paid on the value ascertained as per Section 4A i.e., MRP/RSP less abatement; and when these automobile parts are supplied to industrial use/OEM, the central excise duty is payable on the basis of transaction value/sale value itself as per Section 4 *ibid*. Accordingly, in respect of OEM supplies, they have captured their entire sales value and trade discounts offered to the trade in Trial Balance and ER-1 returns, and there is no difference in these figures. However, in respect of sales to retail trade/open market, excise duty paid on MRP basis less abatement of 30% was reported in the ER-1 returns as sales value, whereas in the Trial Balance the sales value less the actual trade discount, which is higher than 30%, was reported. Further, certain export transactions were not taken into account for the purpose of arriving at the differential value of sales/assessable value for determining the differential excise duty by the audit. All these details were submitted by the appellant during the adjudication proceedings, but these have not been examined in a proper manner. There has been no short payment of duty in any transaction and the audit have also not pointed out any specific cases, except for the difference in the sales value reported in ER-1 and Trial Balance. Therefore, they submitted that the basis for demand of differential duty is without any basis and the same is not sustainable.

3.2 Learned Chartered Accountant further submitted representative invoices explaining the grounds as to how the difference in sales value has arisen, along with copies of shipping bills with supporting export documents, statements of bank realisation certified by the Directorate General of Foreign Trade towards such exports in support of their case. Further, he stated that the first appellate authority had not examined the merits of their case and rejected the appeal only on the basis of time bar, without considering the grounds for condonation of delay submitted by them. Hence, he submitted that their appeal deserves to be considered on merits on the basis of supporting documents submitted by them in appeal before the Tribunal.

3.3 In support of the above stand, the learned Chartered Accountant had relied upon the following case laws:

(i) *New Spice Sales and Solutions Ltd. Vs. Commissioner, CGST & Central Excise, Noida* – (2025) 30 Centax 358 (Tri.-All)

(ii) *Star Battery Limited Vs. Joint Commissioner, Central Excise, Kolkata-IV and Ors.* – 2022 (9) TMI 434 – Calcutta High Court

(iii) *Uniworth Textiles Limited Vs. Commissioner of Central Excise, Raipur* - 2013 (288) E.L.T. 161 (S.C.)

(iv) *Abhiram Care taking and Expert Services Vs. Commissioner of CGST & Central Excise, Bhubaneswar Commissionerate* – 2026 (3) TMI 381 – CESTAT Kolkata

(v) *Reliance Courier Vs. Commissioner of CGST & Central Excise, Chennai North Commissionerate* – 2024 (12) TMI 355 – CESTAT Chennai.

4. On the other hand, learned Authorized Representative (AR) appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records along with paper books and case law citations submitted by both sides in this case.

6. The issue for decision before the Tribunal is to determine the following:

(i) whether the confirmation of adjudged demands by the original authority and imposition of penalty on the appellant being made absolute, by the learned Commissioner (Appeals) in dismissing the appeal filed before him on time bar alone and not examining the merits of the case, is legally sustainable or not;

(ii) whether the adjudged demands confirmed on the basis of audit objection raised by the department, on the ground of 'wilful suppression', by invoking extended period of limitation are sustainable or otherwise, in the facts and circumstances of the case.

7. In order to address the above issues, I would like to refer the relevant legal provisions contained in Sections 4, 4A and 11A of the Central Excise Act, 1944 for consideration of proper and appropriate legal course of action available to the department, in respect of payment of central excise duty on the subject goods under dispute and the differential duty that is liable to be demanded under the Central Excise statute.

**Central Excise Act, 1944**

**"Valuation of excisable goods for purposes of charging of duty of excise.**

**Section 4.** (1) *Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—*

(a) *in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the*

*goods are not related and the price is the sole consideration for the sale, be the transaction value;*

*(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.*

*Explanation.—For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]*

*(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.*

*(3) For the purposes of this section,—*

*(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;*

xxx

xxx

xxx

xxx

*(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.*

**Valuation of excisable goods with reference to retail sale price.**

**Section 4A.** *(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.*

*(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.*

*(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.*

*(4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer—*

*(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be*

*declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or*

*(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,*

*then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.*

***Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.***

***Section 11A.*** (1) *Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,—*

*(a) the Central Excise Officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show-cause why he should not pay the amount specified in the notice;*

*(b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of—*

*(i) his own ascertainment of such duty; or*

*(ii) The duty ascertained by the Central Excise Officer,*

*the amount of duty along with interest payable thereon under section 11AA.*

*(2) The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.*

*(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (2).*

*(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—*

*(a) fraud; or*

*(b) collusion; or*

*(c) any wilful mis-statement; or*

*(d) suppression of facts; or*

*(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,*

*by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice."*

8.1 On plain reading of legal provisions of Section 4 and 4A *ibid* it transpires that duty of excise is chargeable on the assessable value determined for each removal of excisable goods, and excise duty payable is calculated in terms of prescribed rate applied on the value for delivery at the time and place of removal, when the buyer and seller are not related, on the condition that such value represents the entire consideration for sale, which is otherwise known as 'transaction value'. Further, where the Central Government had notified excisable goods on which payment of central excise duty has been prescribed on the basis of Retail Sale Price (RSP/MRP) in terms of Notification No. 2/2006-C.E. (N.T.) dated 1-3-2006, as amended, then the excise duty shall be payable on the basis of RSP/MRP less allowable deduction towards abatement provided as the percentage of retail sale price in a Table annexed to the said notification. Therefore, it flows from the above legal provisions, that for levy of central excise duty, there are two methods of determination of the amount of central excise duty payable on excisable goods, one as per 'transaction value' under Section 4 *ibid* and the other on the amount of 'RSP/MRP less abatement', both valid and legal for the specified goods or the situations for which these are applicable.

8.2 The list of goods which are covered under Section 4A *ibid* vide Notification No. 2/2006-C.E. (N.T.) dated 1-3-2006 are as given below:

**TABLE**

<b>S. No.</b>	<b>Chapter or heading or sub heading of the First Schedule</b>	<b>Description of goods</b>	<b>Abatement as a percentage of retail sale price</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
1.	0402 91 10 or 0402 99 20	Concentrated (condensed) milk, whether sweetened or not, put up in unit containers and ordinarily intended for sale	-
2.	17 or 21	Preparations of other sugars	40%
3.	1702	Sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel	40%
4.	1704	Gums, whether or not sugar coated (including chewing gum, bubblegum and the like)	40%
5.	1704 90	All goods, other than white chocolate	35%
6.	1704 90	White chocolate	40%
7.	1805 00 00 or 1806 10 00	Cocoa powder, whether or not containing added sugar or other sweetening matter	35%
8.	1806	Chocolates in any form, whether or not containing nuts, fruit kernels or fruits, including drinking chocolates	35%
9.	1806	Other food preparations containing cocoa	35%
10.	1901 20 00 or 1901 90	All goods	35%
11.	1902	All goods	-
12.	1904	All goods	35%
13.	1905 31 00 or 1905 19 20	Biscuits	35%
14.	1905 32 11 or 1905 32 90	Waffles and wafers, coated with chocolate or containing chocolate	35%
15.	1905 32 90	All goods, other than wafer biscuits	40%
16.	1905 32 19 or	Wafer biscuits	35%

	1905 32 90		
17.	2101 11 or 2101 12 00	Extracts, essences and concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee	35%
18.	2102	All goods	35%
19.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa	-
20.	2106 90 20, 2403	Pan masala and Pan Masala containing tobacco	50%
21.	2106 90 30	All goods	35%
22.	2106	Ready to eat packaged food, texturised vegetable proteins (Soya bari), and instant food mixes such as Pongal mix, Vadai mix, Pacoda mix, Payasam mix, Gulab jamun mix, Rava Dosa mix, Idli mix, dosai mix, Murruku mix, and Kesari mix.	37%
23.	2106 90 11	Sharbat	35%
24.	2106 10 00, 2106 90 50, 2106 90 70, 2106 90 80, 2106 90 91 or 2106 90 99	All goods (other than S.No 22 above)	40%
25.	2201 10 10, 2201 90 90, 2202 10 90, 2202 90 90	Mineral waters	50%
26.	2201 10 20 or 2202 10 10	Aerated waters	42.5%
27.	2209	Vinegar and substitutes for vinegar obtained from acetic acid	40%
28.	2403 99 10 or 2403 99 20	All goods	50%
29.	2523 21 00 or 2523 29	White cement, whether or not artificially coloured and whether or not with rapid hardening properties	35%
30.	2710	Lubricating oils and Lubricating preparations	40%
31.	3204 20	Synthetic organic products of a kind used as fluorescent brightening agents or as a luminophores	35%
32.	3206	All goods other than pigments and inorganic products of a kind used as luminophores	35%
33.	3208, 3209, 3210	All goods	40%
34.	3212 90 20	Dyes and other colouring matter put up in forms or small packing of a kind used for domestic or laboratory purposes	40%
35.	3213	All goods	40%
36.	3214	All goods	40%
37.	3303, 3304, 3305 or 3307	All goods	40%
38.	3306 10 20	Toothpaste	35%
39.	3401 19 or 3401 20 00	Soap (other than paper, wadding, felt and non-wovens, impregnated, coated or covered with	35%

		soap or detergent)	
40.	3401 11, 3401 19, 3402 except 3402 90 20	Organic surface active products and preparations for use as soap in the form of bars, cakes, moulding pieces or shapes	35%
41.	3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparation and mould release preparations based on lubricants)	35%

42.	3405	Polishes and creams, for footwear furniture, floors, coachwork, glass or metal; scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, non-wovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading No. 3404	35%
43.	3506	Prepared glues and other prepared adhesives, not elsewhere specified or included	40%
44.	3702	All goods (other than for X-ray and unexposed cinematographic films)	40%
45.	3808	Insecticides, fungicides, herbicides, weedicides and pesticides	35%
46.	3808 40 00 or 3808 90 90	Disinfectants and similar products	40%
47.	3814 00 10	Thinners	40%
48.	3819	Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals	40%
49.	3820 00 00	Anti-freezing preparations and prepared de-icing fluids	40%
50.	3824 90 24 or 3824 90 90	Stencil correctors and other correcting fluids, ink removers put up in packings for retail sale	40%
51.	3919	Self adhesive tapes of plastics	40%
52.	3923, 3924	Insulated ware	45%
53.	4816	Carbon paper, self-copy paper, duplicator stencils, of paper	40%
54.	4818 except 481840, 4818 50 00	Cleansing or facial tissues, handkerchiefs and towels, of paper pulp, paper, cellulose wadding or webs of cellulose fibres.	40%
55.	6401 to 6405	The following goods, namely:- (i) Footwear of retail sale price exceeding Rs 250/- and not exceeding Rs 750/- per pair (ii) All other footwear	37% 40%
56.	6506 10	Safety headgear	40%
57.	6907 10 10, 6907 90 10	Vitrified tiles, whether polished or not	45%
58.	6908	Glazed tiles	45%
59.	7321	Cooking appliances and plate warmers, other than LPG gas stoves (with burners only, without other functions such as, grills or oven)	40%
60.	7321	LPG gas stoves (with burners only, without other functions such as, grills or oven)	35%
61.	7323, 7615 19 10	Pressure Cookers	30%
62.	7324	Sanitary ware of iron or steel	40%
63.	7418 20 10	Sanitary ware of copper	40%
64.	8212	Razors and razor blades (including razor blade blanks in strips)	40%
65.	8305 20 00, 8305 90 20	Staples in strips, paper clips, of base metal	40%
66.	8414 51, 8414 59	Electric fans	40%
67.	8415	Window room air-conditioners and split air-conditioners of capacity upto 3 tonnes	30%
68.	8418	Refrigerators	40%
69.	8421 21	Water filters and water purifiers, of a kind used for domestic purposes	40%
70.	8422 11 00, 8422 19 00	Dish washing machines	35%

71.	8450	Household or laundry type washing machines, including machines which both wash and dry	40%
72.	8469	Typewriters	35%
73.	8470 (except 8470 40, 8470 50, 847090)	Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions	40%
74.	8472 90 10	Stapling machines	40%
75.	8506 except 8506 90 00	Primary cells and primary batteries	40%
76.	8509 except 8509 90 00	Electro-mechanical domestic appliances with self-contained electric motor	40%
77.	8510 except 8510 90 00	Shavers, hair clippers and hair-removing appliances, with self contained electric motor	40%
78.	8513 except 8513 90 00	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading No. 8512	35%
79.	8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters)	40%

		and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes	
80.	8517 11, 8517 19 or 8517 21 00	Telephone sets including telephones with cordless handsets; video phones; facsimile machines	40%
81.	8519, 8520	All goods	40%
82.	8521	All goods	40%
83.	8523	Unrecorded audio cassettes	40%
84.	8523, 8524	Video cassettes	40%
85.	8523 20, 8524	Magnetic discs	40%
86.	8525	Pagers, cellular or mobile phones	40%
87.	8527	Radio sets including transistors sets, having the facility of receiving radio signals and converting the same into audio output with no other additional facility like sound recording or reproducing or clock in the same housing or attached to it	35%
88.	8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock (other than goods covered at S.No. 86)	40%
89.	8528	Television receivers (including video monitors and video projectors) whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus	35%
90.	8536	All goods	40%
91.	8539	The following goods, namely:- (i) Compact Fluorescent Lamp (CFL) falling under tariff item 8539 31 10 (ii) All other goods	37% 40%
92.	9006	Photographic (other than cinematographic) cameras	35%
93.	9101, 9102	All goods, other than braille watches	35%
94.	9103, 9105	Clocks	45%
95.	9612	All goods	35%
96.	9617 00 11, 9607 00 12	Vacuum flasks	40%

8.3 The genesis for having two different 'sale value' is arising from the analysis of background in coverage of automobile parts under MRP scheme of valuation. On careful perusal of the list of goods covered under Retail Sale Price (MRP) based levy of Central Excise duty, as listed in the Table annexed to the said Notification, I find that all 96 specified goods under S. No.1 to 96 were described by certain parameters, to provide that the such list of goods are of exclusive category and that mostly these are sold to consumers and for which there is a requirement to declare the RSP/MRP, in terms of Legal Metrology Act, 2009 and/or Legal Metrology (Packaged Commodities) Rules, 2011. These parameters are (i) specific classification in terms of Chapter heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985; and (ii) specific goods, described as 'exclusive description' or as 'all goods' or 'all goods with exception/exclusion, if any'. I find that in only one case at Sl. No.2 the classification was mentioned by chapter, but herein the specific description of goods were used to make it an exclusive category, by providing the specific description as "preparation of other sugar". Hence, there were no goods for which Section 4A ibid for RSP/MRP based levy was applied, in which there existed any scope of ambiguity in determination of the 'value of sales', as to whether the 'transaction value' would apply; or, the 'RSP/MRP less abatement' for determination of excise duty to be paid by an manufacturer assessee, in respect of each and every removal, when they are required to discharge the central excise duty liability.

8.4 However, at the time of introduction of RSP/MRP based levy on 'parts of automobiles' vide Notification No. 11/2006-C.E. (N.T.) dated 29.05.2006, there was a departure from such laid down policy of the government, in adding an omnibus category of goods as evident from the extract of such notification given below:

**"Notification No. 11/2006-Central Excise (N.T.)**

*Dated 29th May, 2006*

*G.S.R. (E).- In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 4A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 2/2006-Central Excise (N.T.), dated the 1 st March, 2006, G.S.R. 113(E), dated the 1 st March, 2006, namely:-*

*In the said notification, in the TABLE, after S.No.96 and the entries relating thereto, the following shall be added, namely:-*

(1)	(2)	(3)	(4)
"97.	Any heading	Parts, components and assemblies of automobiles	33.5%
98.	3808 30 40	Plant-growth regulator	30%
99.	9603 21 00	Toothbrush	28.5%".

2. This notification shall come into force on the 1st day of June, 2006

[F. No. B1/1/2006-TRU]

Note.-The principal notification No. 2/2006-Central Excise (N.T.), dated the 1st March, 2006, was published vide number G.S.R.113(E), dated the 1st March, 2006."

The scope of entry given at Sl. No.97 of the above notification dated 29.05.2006, literally covered the entire goods covered under the Central Excise tariff by prescribing 'any heading' under column (2) where a specific 'Chapter or heading or sub-heading' is required to be mentioned. Adding more vulnerability to this category, the description of the goods also covered the entire range of 'parts, components and assemblies of automobiles' with scant disregard to the scheme of things for which the RSP/MRP based levy was firstly introduced in the year 1997 and later expanded carefully to specific category of goods to which such measure of levy was amendable to. This is evident from the fact that in the year 1998 vide Notification No. 18/98-Central Excise (N.T.) dated 02.06.1998, from 19 items covered therein, it was gradually expanded to cover 96 items in the year 2006 just prior to the introduction of MRP levy on parts of automobile. In the next year's budget in 1998, the then Hon'ble Finance Minister in his budget speech for the Union Budget 1998-99 had specifically mentioned about the scheme of MRP based levy being expanded to certain specific items as follows:

Budget Speech of the Union Finance Minister for the year 1998-99

"168. The Maximum Retail Price (MRP) based excise levy introduced last year in respect of certain products has been welcomed by the industry. This scheme provides for simplification and certainty in taxation. I propose to extend this scheme to a few more commodities, such as chocolates, malted food preparations, glazed tiles, razor blades, radio sets, domestic electrical appliances and pan masala."

8.5 Further, it is also clear from the entry at Sl. No. 79, that when the MRP/RSP based Central Excise levy was introduced to goods of heading 85.16, it limited its scope to 'Electric instantaneous or storage water heaters for domestic use' and industrial type water heaters were excluded by providing specific description. However, such was not the case in respect of MRP/RSP based levy for automobile parts, as it did not elaborate by description that it did not cover industrial/OEM supplies. Further, the issue of valuation of goods for the purpose of customs duty involving OEM supplies and spare parts in retail sale was known to the department, as is also evident from the CBEC Circular No. 82/2002-Cus.V. dated 03.12.2002, wherein the clarification on the issue has been issued as follows:

"4. The issue has been examined. The decision of the Board in this regard is as follows:

"It was decided that in view of the introduction of the 'transaction value' concept on the Customs side, dual prices in respect of components imported as OE parts and as spare parts had to be accepted unless there was evidence to the contrary. To reject



*duty is paid on transaction value i.c., on sale price itself when sold to OEM, no deduction for discounts are claimed at all, the said sales value is reported in Trial Balance as well as in ER-1 returns, hence there is no difference in these sales, in case of open market sales excise duty is paid on MRP based on valuation notified under Section 4A of CEA 1944, excise duty is paid on MRP less 30% abatement notified by Central Govt., ER-1 reports assessable value as 'MRP less 30%' but Trial Balance records sales at transaction value, i.e., actual selling price, hence there can be no reconciliation at all, differences are bound to occur as regular books of accounts are maintained at actual sales value and not special assessable values notified for Central Excise Act.*

*(ix) Appellant however has maintained books of account in a manner that reconciliation with MRP is possible, sales in open market are booked in Trial Balance at MRP value though goods are sold at sales price which is much lesser than MRP, trade discount is booked @ 30% of such MRP value equivalent to abatement, as actual sales price is even lesser, the difference between 'MRP less 30%' and that of actual sales price is further booked in Trade Discount Ledger. As an e.g., stated, in Bill No. EM1701015, goods are sold at Rs. 21,382/- though MRP of the said goods was Rs. 43,860/-. 30% abatement on the said MRP Rs. 13,158/- was accounted for as Trade Discount. Further discount of Rs. 9320/- is also accounted as Trade Discount, total discounts accounted is Rs. 13,158/- + 9,320/--22,478/-, which appears in trial Balance as Trade Discounts but deduction of only Rs. 13,158/- is allowed, i.e., 30% abatement from MRP. This is the root cause of present demand.*

*(x) Appellant has not claimed any deduction of any discount while paying excise duty except that of 30% of MRP value for open market sales.*

xxx

xxx

xxx

xxx

9.2 I have carefully examined the reply letter dated 15.05.2023 submitted before the learned Commissioner (Appeals) explaining the specific details of three shipping bills along with supporting export documents, and the reasons for variation in the figures of 'sales value' among ER-1 returns and Trial Balance, copy of which is submitted as a part of the appeal before the Tribunal. These along with details of home consumption clearances made for retail sale for levy of excise duty on MRP basis duly certified by the Chartered Accountant in their letter dated 27.06.2025, the differences in the trade discounts due to higher discounts offered over and above the prescribed rates under MRP notification, provide sufficient material for examination of the disputed issue herein.

9.3 It is certified by the Chartered Accountants M/s R.M. Bhattar Associates in their certificate dated 27.06.2025 that out of the total sales value of Rs.1,86,81,567/- for the period January, 2017 to June, 2017, as shown in Trial Balance, it consists of sale for retail trade of Rs.54,80,617/- , for which valuation as per Section 4A ibid apply; and sale to industrial OEM supply of Rs. 1,32,00,950/- for which valuation as per Section 4 ibid

would apply. Accordingly, after allowing the prescribed rate of abatement of 30% towards discount etc., the sale value of goods to be reported in ER-1 returns is Rs. Rs.1,86,81,567/- minus Rs. 16,44,186/- (30% abatement on MRP value of sale at Rs.54,80,617/-) i.e., Rs. 1,70,37,381/-. Whereas in terms of Order-in-Original dated 30.08.2022 at Table-II, the total sale value as per ER-1 is given at Rs.1,65,69,256/- and as per Trial Balance given as Rs.1,86,81,567/-. The variation between the sale value to be reported in ER-1 returns for Rs. 1,70,37,381/- and that was actually reported at Rs.1,65,69,256/- giving out a difference of Rs.4,68,125/- is on account of exports made through three Shipping Bills No. 4159303 dated 16.02.2017; No. 5124917 dated 31.03.2017 and No.7082803 dated 30.06.2017 involving export value of Rs.2,93,528/-, Rs.1,71,026/- and Rs.36,282/-, respectively. Similarly, the difference in figures of sales value between Trial Balance and ER-1 returns data of Rs.16,44,186/- [Rs.1,86,81,567/- (-) Rs. 1,70,37,381/-] is also explained by the prescribed rate of abatement 30% on MRP value. Thus, I find that the difference in figures of sales value occurring in the documents have been elaborately explained by the appellant in their records and before the authorities below as well as in the proceedings before the Tribunal, justifying that there is no short payment of excise duty in respect of sales made during this period.

9.4 I further find that the learned Commissioner in the impugned order has recorded the reasons for rejection of the appeal as follows:

**"DISCUSSION AND FINDINGS**

8. *Before going into the merits of the case, I find that appeal is hit by limitation of time. The impugned order was received by the appellant on 06.09.2022 (as mentioned in EA-1) and the instant appeal was filed on 02.12.2022, which should have been filed on or before 06.11.2022, which should have been filed on or before 06.11.2022. Hence the present appeal has been filed after the stipulated time period of 60 days from the date of receipt of the impugned order as required under Section 35(1) of Central Excise Act, 1944. The Appellant should have filed the Appeal on or before 06.11.2022. Thus I find appellant has delayed filing the Appeal by 26 days. The appellant has attributed delay due to "excise consultant not rendering the services after abolition of Central Excise and hence the matter was given to a new consultant for filing the appeal". They could have very well given to the same or some other consultant earlier. Also CGST Act, 2017 was implemented from 1<sup>st</sup> July 2017.*

9. *In terms of Section 35(1) of Central Excise Act, 1944, extension of time limit for filing the appeal can be considered subject to the satisfaction of the Commissioner (Appeals) that appellant was prevented by sufficient cause from presenting the appeal within the aforesaid stipulated period of 60 days. In the present case the cause given by the appellant is not a*

*sufficient cause to allow appeal filed by the appellant. I do not find merit in the cause attributed for delay in filing of appeal by the Appellant. Hence, I reject the appeal as being time barred."*

9.5 The legal provisions governing the appeal to be filed before the Commissioner (Appeals) is provided under Section 35 the Central Excise Act, 1944. The extract of the relevant portion of the legal provision is as below:

***Appeals to Commissioner (Appeals) .***

***"Section 35. (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer lower in rank than a Principal Commissioner of Central Excise or] Commissioner] of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order :***

***Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."***

From plain reading of the above provision, it transpires that the ground on which the extension beyond 60 days is to be given is that the appellant was prevented from presenting the appeal before the Commissioner (Appeals) and the cause or reason(s) is/are sufficient to explain this. Since, it has been specifically recorded in the impugned order that the appellant could not avail the facility of representing his appeal through legal/Central Excise consultant, it is evident that such an action was beyond the control of the appellant, as he had to appoint a new counsel/consultant to hear the case before the learned Commissioner (Appeals). Thus, I find that the legal requirement for condonation of delay within the permitted 30 days period beyond 60 days has been fulfilled by the appellant in the present case.

9.6 In the case of New Spice Sales and Solutions Ltd. (supra), the Coordinate Bench of the Tribunal have considered similar factual situation arising in the present case and have held that the delay in filing the appeal within the permissible period of 30 days is to be considered and refusal to condone the delay is set aside. The relevant paragraph of the said decision is extracted and given below:

*"3. Shri Atul Gupta, Learned Counsel for the appellants, submits that the Order-in-Original was received by the Appellant on 25.02.2019; accordingly, an appeal was required to be filed by 25.04.2019 i.e., within two months from the date of receipt of the OIO; however, due to certain circumstances, appeal was filed on 12.06.2019; thus, the appeal was preferred 48 days and 18 days after the condonable period. Learned Counsel submits that as per Section 35F of the Central Excise Act, the Appellant was required to make a pre-deposit of 7.5% of the demand confirmed; due to recession, the appellant suffered losses became a non-operating Company; they had to take several authorizations, from its Parent Company, to obtain authorisations which caused a delay in*

*filing of the Appeal; delay was not intentional. He submits that Hon'ble High Court of Uttarakhand, in the case of Central Industries Security Force 2017 (6) G.S.T.L. 28 (Uttarakhand), condoned the delay, beyond the condonable period, taking in to account the financial difficulties in making mandatory pre-deposit; appeal filed before Commissioner (Appeals) belatedly. He further submits that CESTAT New Delhi, in the matter of Jagdish Ispat Pvt. Ltd 2020-TIOL-819-CESTAT-DEL, held that the liberal approach is adaptable for condonation of delay as a litigant does not stand to benefit by lodging an appeal late and refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated.:*

9.7 Further, I also find that the issue under dispute has arisen from the details as recorded by the appellant in their books of accounts and ER-1 returns duly filed with the jurisdictional Central Excise authorities. The extract of the audit objection explains the entire dispute, how it has arisen, and what are the various documents and details furnished by the appellant before the audit officers and the authorities below:

*Extract of the Final Audit Report No.547/2021-22 of the unit M/s Gold Seal Engineering Products Private Limited.*

**\*\*\***

**"Assessee Agreement, Yes/No if no, reasons for disagreement:**

*The audit objection was communicated to the taxpayer vide this office letter dated 12.11.2021 under DIN-20211167UB0100222FE3.*

*Assessee has replied to the audit objection vide e-mail dated 24.11.2021 and stated that while arriving at the value, sales return and target discount are not being considered. The assessee has forwarded few details in excel sheet namely "GL311100 Oct, 16 to Mar,17". The sheet containing figures of various ledgers. On perusal of that it is noticed that the re conciliation submitted is not proper and satisfying and not meeting the requirements of audit objection. The differential value between Trial balance and ER returns are not reconciled.*

**Recommendation of the Auditors:** *SCN is proposed to be issued to recover the dues under section 11 of Central Excise Act, 1944.*

**Department's conclusion with reason: Para is accepted. Group to issue SCN immediately.**

**Remarks:** *SCN No. 92/GST Audit RGD/AC/Gr-1/Cir-1 2021-22 issued under F. No. GADT/CnG/ADT/CE/895/2021-GR 1-CGST-ADT-RAIGAD ON 24.12.2021."*

Since the audit was conducted by the department on 23.09.2021 and the objection was raised based on the documents and financial records maintained by the appellant and the Trial Balance, it cannot be said that the appellant had suppressed the material facts. Thus, in my opinion there is no grounds for invocation of 'wilful suppression' when the entire records on which audit objection was raised was made available to the department

always and nothing was hidden from the financial records as every thing has been duly accounted for by the appellant.

In the case of New Spice Sales and Solutions Ltd.(supra), the Coordinate Bench of the Tribunal have also held that the demand of duty by invoking extended period is not sustainable. The relevant portion of the said order is extracted and given below:

**"10.** *In view of the above, we find that the Show Cause notice, being vague and not clear on facts, is not maintainable as held in Brindavan Beverages (supra). Further, two show Cause Notices have been issued on the basis of audit objections. It has been held in several cases that extended period cannot be invoked, if the show cause notice is issued on the basis of an audit objection. Further, extended period was invoked in both the Show Cause Notices. Extended period cannot be in any way, in the subsequent show Cause Notice as held in Nizam Sugar Factory (supra). We find that Commissioner himself held, vide OIO dated 17.11.2017, adjudicating the first Show Cause Notice, that extended period cannot be invoked. Therefore, it is certain that extended period cannot be invoked in the subsequent Show Cause Notice. Learned Commissioner finds that*

*6.11 I further find that, the demand in the present case is for the period 2011-12 to 2013-14 and the impugned show cause notice was issued on 29.03.2016 however, the facts were known to the department during the earlier audit conducted in February 2013. I do not find any gravity in the allegation made in the show cause notice that "the said evasion was unearthed by the department during the course of audit of the records of the party". In fact, the procedural lapse had already been observed and recorded in the earlier audit report dated 20.05.2013.*

*6.12 Further, the party vide its letter dated 31.03.2014 has informed the department as under-  
Since, we had opted for the option available under clause (ii) of sub-rule (3) of rule 6 of CENVAT Credit Rules, 2004. However, from 01.04.2014, we have continued this practice and have started maintaining separate set of books".*

*In such circumstances, I hold that the extended period of limitation under Section 73(1) has been wrongly invoked and the impugned demand is not sustainable and is time barred on this ground also."*

**11.** *In view of the above, we are of the considered opinion that the Show cause Notice is not maintainable on limitation. Taking in to account other factors that the Show Cause Notice is vague and Non-specific, the same does not have any chance of survival. As such, remitting the matter back to the Commissioner (Appeals) is not going to serve any fruitful purpose. On the contrary, it would continue the litigation endlessly, without a reason. Therefore, we are of the considered opinion that the impugned Show Cause Notice is liable to be set aside. Therefore, the impugned OIO and OIA are not maintainable. The only way left for us, in the interest of Justice, is to allow the appeal. We do so.*

9.8 I further find that in the case of Uniworth Textiles Limited (supra), the Hon'ble Supreme Court have held that there is no ground for invocation of extended period of limitation, since there is no case of 'wilful suppression' etc. The relevant paragraphs of the said case is given below:

**"18.** We are in complete agreement with the principle enunciated in the above decisions, in light of the proviso to Section 11A of the Central Excise Act, 1944. However, before extending it to the Act, we would like to point out the niceties that separate the analogous provisions of the two, an issue which received the indulgence of this Court in *Associated Cement Companies Ltd. v. Commissioner of Customs - (2001) 4 SCC 593*, at page 619 = [2001 \(128\) E.L.T. 21 \(S.C.\)](#) in the following words :-

"53... Our attention was drawn to the cases of *CCE v. Chemphar Drugs and Liniments - (1989) 2 SCC 127*, *Cosmic Dye Chemical v. CCE - (1995) 6 SCC 117*, *Padmini Products v. CCE - (1989) 4 SCC 275*, *T.N. Housing Board v. CCE - 1995 Supp (1) SCC 50* and *CCE v. H.M.M. Ltd. (supra)*. In all these cases the Court was concerned with the applicability of the proviso to Section 11-A of the Central Excise Act which, like in the case of the Customs Act, contemplated the increase in the period of limitation for issuing a show-cause notice in the case of non-levy or short-levy to five years from a normal period of six months...

54. While interpreting the said provision in each of the aforesaid cases, it was observed by this Court that for proviso to Section 11-A to be invoked, the intention to evade payment of duty must be shown.

This has been clearly brought out in *Cosmic Dye Chemical* case where the Tribunal had held that so far as fraud, suppression or misstatement of facts was concerned the question of intent was immaterial. While disagreeing with the aforesaid interpretation this Court at p. 119 observed as follows : (SCC para 6)

'6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words 'misstatement or suppression of facts' which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty'. It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.'

The aforesaid observations show that the words "with intent to evade payment of duty" were of utmost relevance while construing the earlier expression regarding the misstatement or suppression of facts contained in the proviso. Reading the proviso as a whole the Court held that intent to evade duty was essentially before the proviso could be invoked.

55. Though it was sought to be contended that Section 28 of the Customs Act is in pari materia with Section 11-A of the Excise Act, we find there is one material difference in the language of the two provisions and that is the words "with intent to evade payment of duty" occurring in proviso to Section 11-A of the Excise Act which are missing in Section 28(1) of the Customs Act and the proviso in particular...

56. The proviso to Section 28 can inter alia be invoked when any duty has not been levied or has been short-levied by reason of collusion or any wilful misstatement or suppression of facts by the importer or the exporter, his agent or employee. Even if both the expressions "misstatement" and "suppression of facts" are to be qualified by the word "wilful", as was done in the *Cosmic Dye Chemical* case while construing the proviso to Section 11-A, the making of such a wilful misstatement or suppression of facts would attract the provisions of Section 28 of the Customs Act. In each of these appeals it will have to be seen as a fact whether there has been a non-levy or short-levy and whether that has been by reason of collusion or any wilful misstatement or suppression of facts by the importer or his agent or employee."

[Emphasis supplied]

xxx

xxx

xxx

xxx

**22.** We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or misstatement. The use of the word "willful" introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one's state of mind. Black's Law Dictionary, Sixth Edition (pp 1599) defines "willful" in the following manner :-

*"Willful. Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass..."*

*An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..."*

**23.** In the present case, from the evidence adduced by the appellant, one will draw an inference of bona fide conduct in favour of the appellant. The appellant laboured under the very doubt which forms the basis of the issue before us and hence, decided to address it to the concerned authority, the Development Commissioner, thus, in a sense offering its activities to assessment. The Development Commissioner answered in favour of the appellant and in its reply, even quoted a letter by the Ministry of Commerce in favour of an exemption the appellant was seeking, which anybody would have found satisfactory. Only on receiving this satisfactory reply did the appellant decide to claim exemption. Even if one were to accept the argument that the Development Commissioner was perhaps not the most suitable repository of the answers to the queries that the appellant laboured under, it does not take away from the bona fide conduct of the appellant. It still reflects the fact that the appellant made efforts in pursuit of adherence to the law rather than its breach.

**24.** Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that "the appellants had not brought anything on record" to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in *Union of India v. Ashok Kumar & Ors.* - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."

**25.** Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In *Aban Loyd Chiles Offshore Limited and Ors.* (supra), this Court made the following observations :

*"21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement or suppression of fact with intent to evade the payment of duty. It has been observed :*

*'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression*

*of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'*

*It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :*

*...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso...."*

**26.** *Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant.*

**27.** *In view of the afore-going discussion, the appeal is allowed and the decisions of the authorities below are set aside, leaving the parties to bear their own costs."*

10. In view of the foregoing discussions and on the basis of the orders passed by the Co-ordinate Benches of the Tribunal and the judgement delivered by the Hon'ble Supreme Court, I do not find any merits in the impugned order dated 31.05.2023 passed by the learned Commissioner (Appeals) to the extent it has not allowed condonation of delay in filing the appeal within 30 days permissible period on showing sufficient cause and in confirmation of adjudged demands by invoking extended period of limitation, by default.

11. In the result, the impugned order dated 31.05.2023 is set aside and the appeal filed by the appellant is allowed in their favour.

(Order pronounced in the open court on 20.12.2025)

**(M.M. Parthiban)**  
**Member (Technical)**