

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

EXCISE APPEAL NO. 51840 OF 2024

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-134-2023-24 dated 24.08.2023 passed by the Commissioner (Appeals) CGST, Customs and Central Excise, Indore)

M/s Bridgestone India Pvt. Ltd. **.....Appellant**
Plot No. 12, Kheda Growth Centre
Post Sagore, Distt. Dhar -(Madhya Pradesh)
VERSUS

Commissioner of Central Excise & CGST **....Respondent**
Ujjain - (Madhya Pradesh)

APPEARANCE:

Shri Vikash Agarwal, Consultant for the appellant
Shri S.K. Ray, authorized representative of the department

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

FINAL ORDER NO. 51882/2025

DATE OF HEARING/DECISION : December 16, 2025

JUSTICE DILIP GUPTA :

Bridgestone India Private Limited¹ has filed this appeal for quashing the order dated August 24, 2023 passed by the Commissioner (Appeals) by which the appeal has been dismissed and the order dated May 23, 2022 passed by the Additional Commissioner confirming the proposed demand of central excise duty amounting to Rs. 96,02,623/- for the period from April 2017 to June 2017 has been confirmed with a direction for its recovery with interest and penalty.

1 the appellant

2. It transpires from the records that the appellant was engaged in the manufacture of tyres, flaps of motor vehicles, buses, lorries and cars. When an audit was conducted by the central excise department for the period from 2016-17 and 2017-18 of the plant of the appellant at Pithampur, the audit team pointed out that the appellant had received excess CENVAT Credit of Rs. 96,02,623/- as it was allocated in excess by the Input Service Distributor.

3. Accordingly, a show cause notice dated January 17, 2022 was issued to the appellant. The show cause notice mentions that during the course of audit of the records of the appellant pertaining to the period from April 2017 to June 2017, the audit team noticed that the appellant availed CENVAT Credit of input services on the strength of invoices issued by the Input Service Distributor, but excess credit was passed on to the appellant in violation of the provisions of rule 7 of the CENVAT Credit Rules, 2004². The show cause notice also invoked the extended period of limitation and the relevant portion relating to the extended period of limitation is reproduced below :

"3 (ii) In view of the above it is clear that, had the audit has not pointed out the irregularity of availing inadmissible credit the same would have remain un-noticed and will a loss to government exchequer. Therefore, the provisions of extended period of 5 years in terms of Section 11A(4) of the Central Excise Act, 1944 along with rule 14 of Cenvat Credit Rules, 2004 is invocable in the instant case for initiate proceeding of recovery of inadmissible credit availed of Rs. 96,02,623/- during the period from April, 2017 to June, 2017. In addition to credit, interest under rule 14 of Cenvat Credit Rules, 2004 also recoverable at applicable rates. The provisions of Central Excise Act, 1944, therefore, invocable in the instant show cause notice for recovery of Cenvat Credit wrongly

availed along with interest. A penalty is also imposable on Noticee No. 1 for alleged contravention as discussed above.”

4. The appellant filed a reply dated April 04, 2022 to the aforesaid show cause notice and apart from contesting the demand on merits, the appellant also pointed out that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act, 1944³ could not have been invoked in the facts and circumstances of the case. The appellant submitted that it had made appropriate disclosures in Excise Return filled in Form ER-1 and, therefore, it cannot be alleged that there was any concealment on the part of the appellant, much less with an intent to evade payment of excise duty.

5. The Additional Commissioner examined this issue of invocation of the extended period of limitation in paragraph 11.5 of the order and the same is reproduced below :

“11.5 The Noticee No. 1 has further contended that the present SCN is barred by limitation and is liable to set aside. In this regard, I find that the Noticee No. 1 have deliberately suppressed the material facts from the department in as much as they never submitted the proportion of CENVAT Credit availed by them from the Noticee No. 2. Had the audit of the Noticee No. 1 not been conducted by the department the fact would have remained undiscovered and it would never have come to the knowledge of the department. The fact that the Noticee No. 1 has taken excess credit from the ISD unit i.e. Noticee No.2 has never come to knowledge of the department before the initiation of audit, the Noticee No. 1 were very much aware that they have taken excess credit and the Cenvat Credit transferred to them via Noticee No. 2 was out of proportion to their Annual Turnover as per Rule 7 of Cenvat Credit Rules, however the Noticee No. 1 never cared to submit any information regarding the same to the department. In view of the foregoing, I hold

that the instant demand is rightly issued by invoking extended period of limitation.”

6. The appellant filed an appeal before the Commissioner (Appeals) not only contesting the demand of central excise duty, but also contended that the extended period of limitation could not have been invoked. The Commissioner (Appeals) has examined the issue relating to extended period in paragraph 9 of the order and the same is reproduced below :

“09. As regards invoking extended period of limitation by the Adjudicating Authority, the Appellant have submitted that there was no suppression whatsoever and the department was having full information with regard to the present case, as they have periodically filed their ER-1 return, and that it is well settled that when facts are within knowledge of the department, alleging willful suppression with an intention to evade duty is not correct. I find the Appellant while relying on the details being shown in their ER-1 returns did not disclose the details of cenvat credit availed by them, as the said returns only show summery of the Cenvat Credit. The Appellant's contention that they had submitted all required documents and also filed their monthly returns and that the allegation of suppression of facts or contravention or any willful mis-statement of facts has not been made in the show cause notice, is factually incorrect, as in the said show cause notice it has been categorically alleged that the Appellant at no point of time disclosed the facts of having taken irregular Cenvat credit and that they had waited for the department to point out, thus find that the Adjudicating Authority has rightly held that the Appellant had willfully suppressed the fact, until the facts were noticed by the Departmental Audit Team. I also find that the Appellant neither before the Original Authority nor in their impugned appeal have adduced any evidence to refute the allegations of willfully suppressing the fact with intent to evade payment of duty. Therefore, I find that the Appellant's contention of demand being hit by time limitation holds no water, as the factor of "suppression of fact with intent to evade payment of duty by irregular availment of Cenvat credit" is present in this case. Hence, invocation of extended period of time is lawful. I also find that the ratio of case laws cited by the Appellant are not applicable in this case. In view of the above, I find that the Adjudicating Authority has rightly

invoked extended period provisions in the Appellant's case."

7. Shri Vikash Agarwal, learned consultant appearing for the appellant submitted that not only did the Commissioner (Appeals) commit an error in confirming the demand of central excise duty, but the extended period of limitation contemplated under section 11A(4) of the central excise act could not have been invoked in the facts and circumstances of the case. Learned consultant pointed out that complete disclosures had been made in the ER-1 return that has been filed by the appellant and, therefore, the extended period of limitation could not have been invoked merely by alleging that the facts came to notice only when the audit was carried out. To support this contention, learned consultant placed reliance upon decisions, to which reference will be made at appropriate stage.

8. Shri S.K. Ray, learned authorized representative appearing for the department, however, supported the impugned order and submitted that the extended period of limitation had been rightly invoked as the appellant had concealed material facts with an intent to evade payment of central excise duty.

9. The submissions advanced by the learned consultant appearing for the appellant and the learned authorized representative appearing for the department have been considered.

10. It is not in dispute that the appellant had disclosed the availment of the CENVAT Credit in the ER-1 return that had been filed. The Commissioner (Appeals) has, however, observed that as

the said returns only show summary of the CENVAT Credit and do not give the details, the appellant had suppressed the material facts.

11. The appellant is supposed to disclose those facts which are specifically provided in the ER-1 return. ER-1 return does not provide for giving details of the CENVAT Credit. If there was any doubt, the officer examined the returns could have asked the appellant for production of the documents, but that was not done.

12. The period involved in this appeal is from April 2017 to June 2017 and the show cause notice was issued on January 17, 2022. The entire period is covered by the extended period of limitation contemplated under section 11A(4) of the Central Excise Act.

13. Sections 11A(1) and 11A (4) of the Central Excise Act, as they stood at the relevant time, which deal with issuance of notices for recovery of duties not paid or levied are reproduced below:

“SECTION 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded —

(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) duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.

(2) *****

(3) *****

(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”.

14. It would be seen from a perusal of sub-section (4) of section 11A of the Central Excise Act that where any excise duty has not been levied or paid, the Central Excise Officer may, within two years from the relevant date, serve a notice to the person chargeable with the duty requiring him to show cause why he should not pay the amount specify in the notice. Sub-section (4) of section 11A, however, provides that where any duty of excise has

not been levied or paid or has been short levied or short paid or erroneously refunded, by reason for fraud; or collusion; or any wilful mis-statement; or suppression facts; or contravention of any of the provisions of the Act or Rules made thereunder with intent to evade payment of duty, the Central Excise Officer shall, within five years from the relevant date service notice on such person requiring into show cause why he should not pay the amount specified in notice with interest and penalty.

15. It is clear that to invoke the extended period of limitation, there has to be, amongst others, suppression of facts. Even assuming that there is suppression, it is necessary that such suppression is wilful and with an intent to evade payment of central excise duty. This is what the Supreme Court and the Delhi High Court have held.

16. In **Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay**⁴, the Supreme Court examined whether the department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Central Excise Act. The proviso to section 11A of the Central Excise Act which was considered by the Supreme Court carved out an exception to the provisions that permitted the department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context

⁴. **1995 (78) E.L.T. 401 (SC)**

that the Supreme Court observed that since “suppression of facts” has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations of the Supreme Court are as follows:

“4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. **But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.** The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.”

(emphasis supplied)

17. The show cause notice does not allege that any particular column in the EA-1 return had not been correctly filled by the appellant and material facts had not been disclosed with an intent to evade payment of central excise duty, nor does the impugned order mention so. A general statement has been made in the impugned order that the appellant did not give the details of the CENVAT Credit availed. It does not mention which particular serial number of the EA-1 return had not been complied with.

There is substance in the submission of the learned authorized representative appearing for the department that the EA-1 return does not require disclosure of details of the CENVAT Credit availed. It was for the department to not only allege that the appellant had suppressed material facts from the department to evade payment of duty, but also prove it. A mere statement in the show cause notice that the appellant suppressed material facts with an intent to evade payment of duty does not suffice. This apart, merely because facts came to the notice of the department when the audit was conducted would not by itself be sufficient for invocation of the extended period of limitation. Nothing prevented the officers of the department from scrutinizing the returns filed by the assessee. As noted above, the officers of the department could have scrutinized the returns filed by the appellant and sought information from the appellant in case there was any doubt. The conditions set out in section 11A (4) of the Central Excise Act for invoking the extended period of limitation had to be scrupulously followed by the department.

18. In this view of the matter, it is not possible to sustain the findings recorded by the Commissioner (Appeals) that the extended period of limitation was correctly invoked in the present case.

19. It is not necessary for us to examine the contention raised by the learned consultant appearing for the appellant on merits also.

20. As the demand of central excise duty could not have been confirmed by taking recourse to the provisions of section

11A(4) of the Central Excise Act, the impugned order dated August 24, 2023 passed by the Commissioner (Appeals) deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Dictated & pronounced in open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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