CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21053 of 2016

(Arising out of Order-in-Appeal No. 21/2016 dated 31.03.2016 passed by the Commissioner of Central Excise, Bengaluru II Commissionerate, Bengaluru.)

M/s. Designer Pavings and Tiles Private Limited,
No. 36, KIADB Industrial Area,
Lingapura, Sira Road,
Tumkur – 572 106. — Appellant(s)

VERSUS

The Commissioner of Central Excise Bengaluru II Commissionerate
P.B.No. 5400, C.R. Building,
Queen's Road,
Bengaluru – 560 001. — Respondent(s)

With

Central Excise Appeal No. 21047 of 2016

(Arising out of Order-in-Appeal No. 21/2016 dated 31.03.2016 passed by the Commissioner of Central Excise, Bengaluru II Commissionerate, Bengaluru.)

Shri. Mohit Bhalla Director & CEO, M/s. Designer Pavings and Tiles Private Limited,
No. 36, KIADB Industrial Area,
Lingapura, Sira Road,
Tumkur – 572 106. — Appellant(s)

VERSUS

The Commissioner of Central Excise Bengaluru II Commissionerate
P.B.No. 5400, C.R. Building,
Queen's Road,
Bengaluru – 560 001. — Respondent(s)

APPEARANCE:

Mr. Rajesh Chander Kumar Rohra, Senior Advocate with Ms. Deepa Rani and Ms. Tashi Chaubey, Advocates for the Appellant

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)

Final Order No. 20033 - 20034 /2026

DATE OF HEARING: 18.07.2025
DATE OF DECISION: 16.01.2026

PER : DR. D.M. MISRA

These two appeals are filed against Order-in-Original No.21//2016 dated 31.003.2016 passed by the Commissioner of Central Excise, Bengaluru.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of cement concrete interlock pavers / bricks and kerb stones falling under Chapter sub-heading 68079090 of Central Excise Tariff Act, 1985. On the basis of intelligence, investigation was initiated against the appellant by retrieving records and recording statements etc. It is alleged that the appellant are availing SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 and during the period from November 2010 to December 2014 while availing SSI exemption up to the value of Rs.1.5 crores, the appellant had collected excise duty of Rs.66,83,256/- on the goods by raising commercial invoices indicating the price as inclusive of duty which was proposed to be recovered in terms of Section 11D(1A) of the Central Excise Act, 1944. Also, on verification of the relevant invoices and purchase orders, it was noticed that though the condition of clearances of sale is on FOR basis, the appellant had not included the value of cost of delivery / transportation in the assessable value claiming the clearance as ex-factory thereby short paid excise duty of Rs.28,75,181/-; also it is alleged that they have not paid an amount of Rs.17,41,907/- for clearance of goods for the period October 2013 to December 2014. Consequently show-cause notice was

issued to them for recovery of duty of Rs.66,83,256/- under Section 11D and Rs.25,75,181/- and Rs.17,41,907/- under Section 11(4) of the Central Excise Act, 1944. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant is an SSI unit availing exemption on the aggregate value of first clearances of specified goods in the respective financial years up to Rs.150 lakhs as per the Notification No.8/2003-CE dated 01.03.2003. The appellant during the period of exemption neither in the excise invoice nor in the commercial invoice collected any amount representing as duty of Central Excise. The amount collected in the invoices was the agreed rate at which goods were sold, which is an all inclusive rate. The price agreed with their customers was on ex-factory basis, inclusive of excise duty wherever applicable. The term 'inclusive wherever applicable' in the purchase order indicates that the duty would be charged only after crossing the SSI exemption limit of Rs.150 lakhs. After exceeding the clearance value of Rs.150 lakhs in a financial year in invoices, the applicable excise duty on goods cleared is reflected and collected from the customers. Thus, no excise duty was collected during the exemption period and their customers were well aware of it. He has submitted that if the amount charged in the invoices during the exemption period is all inclusive and a cum-duty price, the provisions of Section 11D will not be attracted. It is his contention that unless and until an amount is collected as representing central excise duty in the excise invoices / statutory documents prescribed under Section 12A of the CEA, 1944 provisions of Section 11D cannot be invoked. In support, they have referred to the following judgments:

i. **Everest Industries ltd. Vs. CCE, Coimbatore [2019(369) ELT 1569 (Tri. Mad.)]**
ii. **Shree Shyam Pulp and Board Mills Ltd. Vs. CCE, Meerut-II [2018(364) ELT 205 (Tri. All.)]**
iii. **Todi Rubber Pvt. Ltd. Vs. CCE, Nagpur [2018(361) ELT 737 (Tri. Mum.)]**
iv. **CCGST Vs. Hindustan Petroleum Corporation ltd. [(2023) 10 Centax 138 (Bom.)]**

3.2. Further, he has submitted that their sale is ex-factory basis. The entire demand in the present case is on the freight charges based on the transaction with two customers viz. NAPC and BPCL, which is overrated. As per Section 4 of the Central Excise Act, 1944 read with Rule 5 of the Central Excise Valuation Rules, 2000, transportation charges are not to be included in the assessable value when the goods are sold at the factory gate and transportation is arranged by the buyer. He has submitted that in the present case, the contracts were ex-factory and transport was arranged by the appellant on behalf of the customers and the transportation cost are separately recovered from the customers. These expenses were shown separately on the excise invoices. He has submitted that since the sale was completed at the factory gate, the cost of transportation cannot be part of the assessable value of the goods as per Section 4(3)(d) of the CEA, 1944. Further, he has submitted that as for as clearances to NAPC is concerned, the adjudicating authority relied upon the statement of officers of NAPC without accepting the letter dated 15.06.2014 issued to clarify the terms and conditions of the contract. He has submitted that in view of the settled law in the case of CC&CE vs. Ispat Industries Ltd. [2015(324) ELT 670 (SC)], place of removal ought to be considered as the place of manufacture. The reliance placed by the adjudicating authority on the judgment of the Hon'ble Supreme Court in the case of CC&CE, Aurangabad Vs. Roofit Industries Ltd. [2015(319) ELT 221 (SC)] is incorrect.

3.3. On the issue of non-payment of excise duty of Rs.17,41,907/-, it is submitted that they have discharged the duty partly through cash and partly through debiting their cenvat account as on the due date. The said amount has been appropriated in the order. There was delay in filing the periodical return for the period 01.10.2013 to 31.12.2014; due to the fault on the part of the Chartered Accountant, which was later filed on 24.01.2015. He has submitted that the delay was neither deliberate nor with intent to evade payment of duty. Hence, the same be condoned in the light of the compliance made subsequently.

3.4. Further, on the issue of classification, he has submitted that they have been classifying their product under heading 68079090 since 1992 and the reclassification proposed by the Department under Chapter sub-heading 68101990 was never proposed earlier and since both the headings attract same rate of duty and there is no revenue loss; hence, the question is academic and accordingly, not pressed. Further he has submitted that the demand for the period from 01.11.2010 to 31.12.2014 was issued invoking extended period of limitation. He has submitted that there is no suppression of facts with intention to evade payment of duty as the collection of transportation charges has been mentioned in the excise invoices separately and it is clear that no duty was paid on the transportation charges. Similarly, excise duty was collected wherever applicable after crossing the SSI exemption limit of Rs.150 lakhs but neither shown in the invoice nor collected being below the exemption limit. Hence, no facts were suppressed nor mis-declared to the department. Consequently, confirmation of demand and imposition of penalty on them is bad in law.

4. *Per contra*, the learned Authorised Representative (AR) for the Revenue referring to the excise invoices, has submitted that

when the turnover was below Rs.150 lakhs, excise duty is not shown separately on the invoice but the commercial invoices mention the fact that the value is inclusive of excise duty. Therefore, the appellant for the relevant financial years while availing the exemption has included the excise duty in the value and collected as cum-duty price from their customers. Accordingly, duty is recoverable under Section 11D of the CEA, 1944. Referring to the Purchase Orders dated 26.05.2024 of NAPC and MOU with BPCL, it is clear that the terms and conditions are for supply and laying of CC blocks in their premises at Mangalore. The appellant, in order to misguide, deliberately mentioned in their invoices as ex-factory price even though the delivery is on FOR basis/at site basis. The ownership of goods is transferred only at buyer's site/premises; hence, transportation and loading/unloading charges ought to be included in the assessable value. The letter dated 15.06.2014 from NAPC reveals reconfirmation of terms and conditions of the purchase orders dated 26.05.2014. Further, the said letter creates confusion; hence, cannot be relied upon. The statements of the Billing Engineer Mr. Sudikonda Ravi Kiran of NAPC dated 06.02.2015 clearly indicated that the delivery of goods is on FOR basis at BBMP site; hence, the ownership of goods is transferred to the customers only at project site, which has also been confirmed by the Project Manager Mr. M. Ashok. It is observed at para 23 of the Ispat Industries Ltd.'s case that in cases where the factory is the place of removal, cost of transportation from the place of removal to the place of delivery is to be excluded. Since in the present case, the place of removal being at the customers'/recipients' site, the transportation charges and loading/unloading charges are includable in the assessable value. In support, he has referred to the Board's Circular No.988/12/2014-CX dated 20.10.2014. Further, he has submitted that the appellant has suppressed the facts from the

knowledge of the Department; hence invocation of extended period of limitation and imposition of penalty are justified.

5. Heard both sides and perused the records.

6. The principal issues in the present appeals for consideration are whether:

i. the amount of Rs.66,83,256/- be recoverable in terms of Section 11D of Central Excise Act, 1944, and
ii. freight charges and loading/unloading charges be includable in the assessable value and differential duty of Rs.28,75,181/- be recoverable.

7. Regarding the confirmation of demand of Rs.66,83,256/- under Section 11D of Central Excise Act, 1944, the contention of the Department is that during the period of availing SSI exemption under Notification No.8/2003-CE dated 01.03.2003, the appellant in the excise invoices, though not recovered duty, by mentioning it separately and specifically but in the commercial invoices show the price as all-inclusive rate. Therefore, applicable duty must have been collected being included in the price but not deposited with the Department; hence, recoverable under Section 11D of the CEA, 1944. The relevant Section 11D of CEA, 1944 reads as follows:

Section 11D - Duties of excise collected from the buyer to be deposited with the Central Government –

(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

(1A) Every person, who has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (1-A), as the case may be, and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(3) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (1A) or sub-section (3), as the case may be, shall be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1) and sub-section (1A).

(5) Where any surplus is left after the adjustment under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of Section 11B and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.

8. A plain reading of the said provision reveals that any amount which is collected in excess of the duty assessed or determined and paid on any excisable goods in any manner representing as duty of excise shall be paid to the credit of the Government. The basis of recovery of the amount in excess of the assessed duty is its collection from the customers / buyers indicating / representing as duty of excise. In the present case, the invoices which are issued to the customers during the exemption period, nowhere in the invoices any amount is shown

and collected from the customers as excise duty calculated on the value of the goods sold even though the appellant has been availing value-based exemption under Notification No.8/2003-CE dated 01.03.2003 up to an aggregate value of clearances of specific goods of Rs.150 lakhs in a financial year. If any amount is not shown in the clearance document as representing duty, Section 11D is not attracted. This principle has been laid down by the Tribunal in a series of cases including **Everest Industries Ltd. Vs. CCE, Coimbatore** (supra). This Tribunal, taking note of the introduction of sub-section (1A) to Section 11D of the CEA, 1944 held as follows:

> **"9.** We have considered the arguments from both sides and perused the records. Section 11D of the Central Excise Act required during the relevant period of every person who is liable to pay duty under this Act or Rules and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods in any manner as representing duty of excise to forthwith pay such amount to the Central Government. Evidently, it did not cover the goods which are only wholly exempt from duty but on which manufacturer collects some amount as representing Central Excise duty. This lacuna was corrected by introduction of Section 11D(1A) in 2008. The Budget Speech of the Hon'ble Finance Minister for the year referred to above clarifies that prior to 2008 this Section 11D did not cover those goods where the goods were wholly exempted or were chargeable to Nil rate of duty as in the present case. The amendment in 2008 has not been given retrospective effect. For this reason, the liability to Section 11D does not apply to the appellant's goods because undisputedly, the products were fully exempted from payment of duty. A plain reading of Section 11D also shows that what is required to be deposited in the Government exchequer is any amount collected as representing excise duty. In this case there is nothing on record that they have collected any amount as representing excise duty. They have collected a consolidated amount stating it as inclusive of Excise duties. No specific amount was shown as representing excise duty. On this ground also, the demand does not sustain. We have carefully considered the arguments of Ld. D.R. that they should have reduced the price and passed on the benefit of exemption notification to customers which they have not. It is true, from a plain perusal of the records that the appellant has resorted to profiteering by not passing on the benefit of the exemption notification to the customers. While they enjoyed the exemption notification, they have not reduced the prices to customers thereby enhancing their own profits. However, non-profiteering is not what is contemplated in Section 11D of the Central Excise Act. Therefore no demand can be raised or sustained on this ground. Unless any amount is specifically collected representing as excise duty, Section 11D cannot be invoked. Whenever duties are reduced or exempted, a shrewd businessman can pocket the windfall by

not reducing his prices and such profiteering is not covered by Section 11D."

9. Similar view has been expressed by the Tribunal in the case of **Todi Rubber Pvt. Ltd. [2018(361) ELT 737 (Tri. Bom.)]**. The Hon'ble Bombay High Court, analysing the Section 11D in the case of **CCGST & CE, Belapur Vs. Hindustan Petroleum Corporation Ltd. [(2023) 10 Centax 138 (Bom.)]** observed as follows:

"13. On the plain reading of the above provision, it is clear that sub-section (1) of Section 11 D ordains that notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under C.E. Act or the rules made thereunder, has collected any amount in excess of the duty, assessed or determined and paid on any excisable goods under C.E. Act or the rules made thereunder from the buyer of such goods, in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

…….

18. On such conspectus, insofar as the applicability of Section 11D of the C.E. Act to the facts of the present case are concerned, as noted above, admittedly the Vashi terminal of the respondent received duty paid Motor spirit from its Refinery and also duty paid ethanol, which was blended in the ratio of 95:5 at the time of clearance from the Vashi unit to the customers in tankers. The price per kilolitre of EBP was similar to the price charged by the respondent for unblended motor spirit to the customers. In the invoice the duty paid on motor spirit (EBP) was not shown separately attributable to Motor spirit and Ethanol, but the sale price of EBP was a composite inclusive of duty. Thus, the price charged was inclusive of duty, and the duty attributable to Ethanol was not shown and recovered separately in the invoice, the same could not be recoverable under section 11D of C.E. Act. It may also be observed that only where any amount is collected representing as excise duty, the same is required to be credited to the Government. This is a case in which the revenue could not show that the respondent after blending ethanol with duty paid motor spirit collected amounts separately, mentioning the duty on ethanol in the invoices, but the same was not credited to the Government. In such situation, Section 11 D of C.E Act was certainly not attracted as the crucial requirement to attract Section 11 D was certainly not being fulfilled for the revenue to invoke Section 11D of the C.E. Act."

Following the aforesaid judgments, the confirmation of demand of Rs.66,83,256/- under Section 11D cannot sustained.

10. On the second issue, it is the contention of the learned advocate for the appellant that except in the cases of clearances to NAPC and BPCL, all other clearances made by the appellant to customers was ex-factory basis; in the case of NAPC and BPCL, it was agreed to carry out the fixing of the paver blocks at the respective sites and the agreements stipulated that it is an FOR site basis. He has submitted that the amounts involved against these two supplies are very small; however, generalisation of these contracts with rest of the clearances which were ex-factory basis and demanding duty on the freight and loading/unloading charges by the learned Commissioner considering it as FOR basis in the impugned order, cannot be sustained.

11. We find merit in the contention of the learned advocate for the appellant inasmuch as except in the cases of NAPC and BPCL, no other evidence has been placed on record by the Revenue to justify the clearances are on FOR basis. On the other hand, the sample invoices enclosed along with the appeal paper book reveals that the clearances are on ex-factory basis and transportation costs are shown separately which are paid on behalf of the customers and recovered separately. Also, we find merit in the contention of the Learned Advocate on the issue of limitation. Hence, confirmation of demand on this count also cannot be sustained. Further, it is submitted that major portion of the clearances were ex-factory basis and levy of duty on freight charges is a question of interpretation of law, hence invoking extended period is bad in law.

12. On the appropriation of the amount of Rs.17,41,907/-, we find that the appellant though discharged duty against periodical clearances within the stipulated time; however, there was delay in filing periodical returns with the Department. Attributing the reason, the learned advocate for the appellant has submitted that the delay was caused at the end of the Chartered

Accountant who was entrusted with the job of filing the Excise returns; however, they have filed the returns subsequently complete in all aspects. From the records, we find that the amount paid by the appellant for the respective period has been appropriated. Considering the fact that the appellant is an SSI unit, for delay in filing the return deserves to be condoned.

13. In the result, the impugned order is set aside and the appeals are allowed.

(Order pronounced in Open Court on 16.01.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja….