CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 4145 of 2012

[Arising out of Order-in-Appeal No. 152/CE/APPL/Chandigarh/2012 dated 03.09.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s BDS Decor and Prefab P Ltd. **......Appellant**
182/13, Phase-I, Industrial Area, Chandigarh

VERSUS

Commissioner of Central Goods and Service Tax, Chandigarh-I **......Respondent**
Plot No. 19, C.R. Building,
Sector-17C, Chandigarh-160017

APPEARANCE:

Shri Sudeep Singh Bhangoo, Advocate for the Appellant

Shri Narinder Singh and Shri Varun Sharma Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60130/2026

DATE OF HEARING: 14.01.2026
DATE OF DECISION: 04.02.2026

P. ANJANI KUMAR:

The appellants, M/s BDS Décor and Prefab (P) Ltd. are engaged in the manufacture and supply of prefabricated structures solely supplied to the Ministry of Defence, Government of India at different Army locations; the supplies are made on the basis of a tender wherein a consolidated price, which includes transportation charges, is quoted. During the course of audit, it was observed that the appellant had received some indirect income on account of handling charges during the transportation; it appeared to the Revenue that this was an additional consideration on which duty was required to be paid; a show cause notice dated 04.09.2009 was issued to the appellants demanding central excise duty of Rs.5,39,559/- along with interest and penalty; Additional Commissioner vide OIO dated 29.11.2010 confirmed the duty along with interest and equal penalty. On an appeal filed by the appellants, learned Commissioner (Appeals) vide Order dated 03.09.2012 upheld the order passed by the lower authority.

2. Shri Sudeep Singh Bhangoo, learned Counsel for the appellant, submits that the place of removal is the factory gate; handling charges incurred during the transportation and reimbursed to the appellants cannot be included in the assessable value; these are the charges received for the extra services rendered by the appellant and has no nexus with the price charged for the goods; if the delivery is made at the buyer's place, the same cannot be treated as place of removal; it is pertinent to note that the appellants have paid service tax on the handling charges received from the buyers and demand of central excise duty on the same amount again amounts to double taxation. Learned Counsel relies on the following cases:

- Lamina Suspension Products Pvt. Ltd. – 2018 (17) GSTL 296 (Tri. Bang.)
- Baroda Electric Meters Ltd. – 1997 (94) ELT 13 (SC)
- Indian Oxygen Ltd. – 1988 (36) ELT 723 (SC) = 1988 (Supp.) SCC 658
- Accurate Meters – 2009 (235) ELT 581
- Icomm Tele Ltd. – 2010 (251) ELT 103
- Mercedes Benz India Pvt. Ltd. – 2010 (260) ELT 149 (Tri. Mumbai)
- Deekens Polyesters – 2009 (234) ELT 129 (Tri. Ahmd.)

- K.M. Sugar Mills Ltd. – 2010 (253) ELT 659 (Tri. Del.)
- Guwahati Carbon Ltd. – 2009 (243) ELT 307 (Tri. Kolkata)
- Escorts JCB Ltd. – 2002 (146) ELT 31 (SC)
- Associated Strips Ltd. – 2002 (143) ELT 131 (Tri.)
- Yamaha Motors India Pvt. Ltd. – 2008 (232) ELT 677 (Tri. Del.)
- Rajasthan Spg. & Wvg. Mills Ltd. – 2007 (218) ELT 641 (SC);

3. Learned Counsel submits that extended period cannot be invoked there is no suppression as no elements of suppression of facts, mis-statement, mis-declaration, collusion with intent to evade payment of duty are present; the facts were in the knowledge of the Department and Superintendent, Range – I, Chandigarh vide his letter dated 14.08.2007 asked the appellants for details, He submits that extended period cannot be invoked and penalty cannot be imposed as held in Tamil Nadu Housing Board – 1994 (74) ELT 9 (SC). He further submits that the appellants have acted under bona fide belief and therefore, extended period cannot be invoked. He relies on the following cases:

- EID Parry – AIR 2000 SCC 551
- Vikayan Industries – 1985 (21) ELT 596
- RS Graphics – 2001 (138) ELT 61
- Bharat Wagon – 2002 (146) ELT 118

4. Shri Narinder Singh, learned Authorized Representative for the Department, reiterates the findings of the impugned order and relies on the following:

- CBEC Circular No.1065/4/2018-CX dated 08.06.2018
- Roofit Industries Ltd. – 2015 (319) ELT 221 (SC)
- Ispat Industries Ltd. – 2015 (10) TMI 613 (SC)
- Emco Ltd. – 2015 (8) TMI 200 (SC)
- Ultra Tech Cement Ltd. – 2018 (2) TMI 117 (SC)
- The Ramco Cements Ltd. – E/40575/2018- Interim Order No.40020/2023 dated 21.12.2023
- CERA Boards and Doors – 2020 (373) ELT 794 (SC)

- Maruti Suzuki India Ltd. – 2025 (1) TMI 604- CESTAT Chandigarh
- Supreme Petrochem Ltd. – 2009 (6) TMI 51- CESTAT Mumbai

5. Heard both sides and perused the records of the case. We take up the issue of limitation to begin with. We find that the appellants submit that there is no suppression, mis-statement, mis-declaration, collusion etc. on the part of the appellants. We find that the same has not been alleged with evidence in the show cause notice. We find that the only case of the Department is that but for the audit, the alleged evasion could not have seen the light of the day. We understand that the appellants are regular assessees and are filing Returns regularly from time to time and are paying the applicable central excise duty. We find that Tribunal in a plethora of cases held that extended period cannot be invoked when the appellants have reasons to have an alternate interpretation of statutory provisions and more so, extended period cannot be invoked when the detection is on the basis of a routine audit conducted. We find that Principal Bench of the Tribunal held in the case of G.D. Goenka Private Ltd. vide Final Order No.51088/2023 dated 21.08.2023 as follows:

> 19. It has also been pointed out that but for the audit, the allegedly irregularly availed CENVAT credit would not have come to light. It is incorrect to say that but for the audit, the alleged irregular availment of CENVAT credit would not have come to light. It is undisputed that the appellant has been self-assessing service tax and filing ST-3 Returns. Unlike the officers, the assessee is not an expert in taxation and can only be expected to pay service tax and file returns as per its understanding of the law. The remedy against any potential wrong assessment of service tax by the assessee is the scrutiny of the Return and best judgment assessment by the Central Excise Officer under section 72. This section reads as follows:
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> "72. Best judgment assessment. If any person, liable to pay service tax,— (a)

> fails to furnish the return under section 70; (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment"

20. Thus, 'the central excise officer' has an obligation to make his best judgment if either the assessee fails to furnish the return or, having filed the return, fails to assess tax in accordance with the Act and Rules. To determine if the assessee had failed to correctly assess the service tax, the central excise officer has to scrutinize the returns. Thus, although all assessees self-assess tax, the responsibility of taking action if they do not assess and pay the tax correctly squarely rests on the central excise officer, i.e., the officer with whom the Returns are filed. For this purpose, the officer may require the assessee to produce accounts, documents and other evidence he may deem necessary. Thus, in the scheme of the Finance Act, 1994, the officer has been given wide powers to call for information and has been entrusted the responsibility of making the correct assessment as per his best judgment. If the officer fails to scrutinise the returns and make the best judgment assessment and some tax escapes assessment which is discovered after the normal period of limitation is over, the responsibility for such loss of Revenue rests squarely on the shoulders of the officer. It is incorrect to say that had the audit not been conducted, the allegedly ineligible CENVAT credit would not have come to light. It would have come to light if the central excise officer had discharged his responsibility under section 72.

21. This legal position that the primary responsibility for ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs7 in its Manual for Scrutiny of Service Tax Returns the relevant portion of which is as follows:

1.2.1A The importance of scrutiny of returns was also highlighted by Dr. Kelkar in his report on Indirect Taxation8. The observation made in the context of

> Central Excise but also found to be relevant to Service Tax is reproduced below: It is the view that assessment should be the primary function of the Central Excise Officers. Self assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers.
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> (emphasis supplied)
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> 22. Therefore, to say that had the audit not been conducted, the incorrect availment of CENVAT credit would not have come to light is neither legally correct nor is it consistent with the CBEC's own instructions to its officers.

6. In view of the above, we are of the considered opinion that Revenue has not made any case for invocation of extended period. Accordingly, we find that the impugned SCN is barred by limitation. Consequentially, the orders passed on the basis of SCN are liable to be set aside. As we find that the appeal merits to be allowed on limitation itself, there is no need to go into the merits of the case.

7. In view of the above, the appeal is allowed.

(Order pronounced in the open court on 04/02/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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