CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 55846 OF 2023

(Arising out of Order-in-Original No. 24-26/2023/VCG/Principal Commissioner/ICD-Import/TKD dated 31.08.2023 passed by the Principal Commissioner of Customs, (Imports), ICD TKD, New Delhi)

M/s Myntra Jabong India Pvt Ltd **.....Appellant**
Plot No. 82A, Sector-18,Gurugram,
Haryana-122015

Versus

Principal Commissioner of Customs ACC (Imports) **.....Respondent**
Inland Container Depot,
Tughlakabad, New Delhi

APPEARANCE:

Shri Kishore Kunal, Ms. Ankita Prakash and Shri Anuj Kumar, Advocates for the Appellant

Shri Shiv Shankar, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 28.08.2025
DATE OF DECISION: 27.02.2026

FINAL ORDER NO. 50302/2026

JUSTICE DILIP GUPTA:

M/s Myntra Jabong India Pvt Ltd[1] has filed this appeal for setting aside the order dated 31.08.2023 passed by the Principal Commissioner of Customs, ICD (Import), Tughlakabad, New Delhi[2]. The order holds that the provisions of section 28(4) of the Customs Act, 1962[3] have been correctly invoked; confirms the classification of the Jackets proposed in the show cause notice; confirms the differential customs duty with interest but the amount deposited by the appellant was directed to be

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1. **the appellant**
2. **the Principal Commissioner**
3. **the Customs Act**

appropriated and no balance demand of duty and interest was to be recovered from the appellant; the goods have been held to be liable to confiscation under section 111(m) of the Customs Act but no redemption fine has been imposed as the goods were not physically available; and penalty has been imposed upon the appellant under section 114A of the Customs Act.

2. The appellant is engaged inter alia in the business of selling various consumers goods, electronic items and fashion apparels to end customers by listing the same on electronic commerce portal www.myntra.com. For this purpose, the appellant imports consumer fashion and lifestyle products, including clothing, footwear, accessories and beauty products. According to the appellant from July 2017 to November 2023, it paid customs duty for import of such items amounting to Rs. 800 crores.

3. The relevant period in the present appeal is from 09.08.2017 to 03.10.2019. The impugned order adjudicates three show cause notices dated 20.09.2021, 24.12.2021 and 29.03.20212. The duty that has been confirmed under section 28(4) of the Customs Act is for Rs. 3,47,37,530/- with interest under section 28AA of the Customs Act. The amount that was paid by the appellant towards differential duty prior to the issue of the show cause notice is Rs. 3,50,97,782/- with an amount of Rs. 66,59,210/- towards interest. It is for this reason that the Principal Commissioner, after appropriating this amount, held that no amount of duty with interest remained to be paid by the appellant.

4. The following goods, namely Men's Polyster Knitted Jackets of various descriptions, are the subject matter of the present appeal:

> "**a.** 100% Polyster knitted men's Jackets were classified under the CTI 6101 90 90 of the

Customs Tariff Act attracting BCG @20% ad valorem.

b. Men's Knitted Jackets (Shell 1-100% Polyester, Shell 2-60% T Polyester-40% PU) were classified under the CTI 6103 33 00 of the Custom Tariff Act attracting BCD @ 20% ad valorem.

c. The 60% PU 40% Polyester Knitted men's PU Jackets were T classified by the appellant under CTI 6101 90 90 attracting BCD T @20% ad valorem.

d. The appellant had classified the Men's Knitted Jacket (Shell 1-60% Polyester-40% PU Shell 2 100% Polyester under CTI 6103 33 00 attracting BCD @ 20% ad valorem."

5. All the above Knitted Jackets were front open with Zippers and the nature of the material differed on account of composition of Polyester/PU in the Jackets.

6. The Customs (Preventive) Commissionerate, New Delhi, entertained a view that the classification adopted by the appellant was not correct. Accordingly, investigation in respect of a Bill of Entry dated 31.08.2019 was initiated. The shipment of the appellant was examined and a seizure memo dated 03.10.2019 was drawn. After examination, it was found that that classification adopted by the appellant was not correct. The appellant, however deposited the differential duty and IGST with interest amounting to Rs. 4,17,56,992/- by challans dated 01.06.2020 and 07.02.2020 and also intimated the Customs (Preventive) that it had paid the differential amount with interest so that a show cause notice may not be issued.

7. However, three show cause notices were issued by invoking the extended period of limitation contemplated under section 28(4) of the Customs Act alleging that the appellant had not disclosed the actual description i.e. the Zipper and length of the Jackets and classification and

this fact was willfully suppressed with an intent to evade payment of duty. The Show cause notices also proposed confiscation of goods under section 111(m) of the Customs Act and imposition of penalty under section 114A of the Customs Act.

8. The appellant submitted replies to the show cause notices. Apart from contending on merits, the appellant also contended that the extended period of limitation could not have been invoked. The Principal Commissioner, however, held that the extended period of limitation under section 28(4) of the Customs Act was correctly invoked. The Principal Commissioner also imposed a penalty of Rs. 3,47,37,550/- under section 114A of the Customs Act and also held that the imported goods were liable to confiscation under section 111(m) of the Customs Act.

9. Shri Kishore Kunal, learned counsel for the appellant assisted by Ms. Ankita Prakash and Shri Anuj Kumar made the following submissions:

(i) The appellant had made suo moto payments of the differential duty alongwith interest before issuance of the show cause notice and had also informed the Principal Commissioner of this fact. Section 28 of the Customs Act, therefore, could not have been invoked;

(ii) The extended period of limitation could not have been invoked in the present case as there was no outstanding duty amount on the date of issuance of the three show cause notices. The finding recorded in the impugned order that the appellant made payments only after initiation of the investigation in respect of the past imports is erroneous. The investigation was first undertaken on 03.09.2019 and the appellant, on its own ascertainment,

made payment on 07.02.2020 in respect of the disputed imports;

(iii) The first show cause notice was issued on 20.09.2021 and, thereafter, the show cause notices dated 24.12.2021 and 29.03.2022 were issued by invoking the extended period of limitation. In view of the decision of the Supreme Court in **Nizam Sugar Factory** vs. **Collector of Central Excise, A.P.**[4], the extended period of limitation could not have been invoked;

(iv) On the same issue, three orders dated 08.11.2019, 07.11.2019 and 31.12.2019 had already been passed and, therefore, it cannot be said that the department was not aware of the facts;

(v) The description of goods in the Bills of Entry were based on the description mentioned in the invoices and packing list provided by the overseas supplier. In such a situation, it cannot be said that there was an element of suppression of correct description of goods leading to mis-classification of goods. In this connection, learned counsel placed reliance upon the decision of the Tribunal in **M/s Benetton India Private Limited** vs. **Additional Commissioner, Customs (Preventive), New Delhi**[5];

(vi) The extended period of limitation could not have been invoked where the dispute is in relation to classification of goods, particularly, when the appellant had made the complete description in the Bills of Entry. In this connection, learned counsel for the appellant placed reliance upon the decision of the Delhi High Court in

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4. 2006 (197)E.L.T. 465 (S.C.)
5. Customs Appeal No. 50957 of 2021 decided on 11.07.2024 (Tri-Del.)

Ismartu India Pvt. Ltd. vs. **Union of India**[6] and the decision of the Supreme Court in **Densons Pultretaknik** vs. **Commissioner of Central Excise**[7];

(vii) Penalty under section 114A of the Customs Act was not imposable as the appellant had discharged the differential duty in respect of all the three show cause notices before the issue of the show cause notice;

(viii) In any case, as none of the conditions for invocation of the extended period of limitation stands satisfied, penalty under section 114A of the Customs Act could not have been imposed; and

(ix) The goods were not liable to confiscation under section 111(m) of the Customs Act.

10. Shri Shiv Shankar, learned authorized representative appearing for the department, however, supported the impugned order and submitted that the extended period of limitation was correctly invoked. Learned authorized representative also submitted that the Principal Commissioner was justified in holding that the goods were liable to confiscation under section 111(m) of the Customs Act and that penalty was also correctly imposed upon the appellant under section 114A of the Customs Act. Learned authorized representative pointed out that the appellant had deliberately mis-declared the description and classification of the imported goods in the Bills of Entry and this resulted in short payment of customs duty and, therefore, section 111(m) of the Customs Act for confiscation of goods was clearly applicable.

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6. (2025) 29 Centax 320 (Del.)
7. (2003) 11 Supreme Court Cases 390

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

12. As noticed above, the department had alleged that the classification of the Jackets imported by the appellant was not correctly mentioned by the appellant in the Bills of Entry. According to the appellant, the classification that was adopted was based on invoices and other related documents such as packing list, airway bills and invoices issued by the supplier. It is not in dispute that the appellant had paid the differential duty with interest prior to the issuance of the three show cause notices.

13. The three show cause notices had been issued by invoking the extended period of limitation contemplated under section 28(4) of the Customs Act. It would, therefore, be useful to reproduce the relevant portion of the show cause notice relating to the invocation of the extended period of limitation and it is as follows:

> "M/s. Myntra Jabong India Pvt. Ltd. have been constantly mis-declaring the description: that they have not only mis-declared but also misled the Customs; that they wrongly classify the description of Men's and Women's knitted Jackets and do not correctly represent the descriptions per se contradicted each other with reference to the correct description identity of the item under import; that there is an inherent contradiction/mismatch between what was imported and what was declared to Customs; that with the above modus operandi the importer had evaded duty; **that by this, the importer has wilfully suppressed as well as mis-stated the actual complete description of the impugned goods under import.**
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> **From this it appears that the importer had wilful suppression coupled with mis-statement of the very description of goods imported which misled the Customs authorities for a number of years and appears to be a fit case for invoking extended**

period of limitation in terms of Section 28 (4) of the Customs Act, 1962."

(emphasis supplied)

14. The appellant had filed detailed replies to the show cause notices and in respect of the invocation of the extended period of limitation contended:

(i) The appellant had voluntarily paid the differential Customs duty with interest prior to the issue of the show cause notice and, therefore, the allegation regarding suppression is not true;

(ii) Mis-statement and suppression of facts are qualified by the word 'willful' and, therefore, onus is on the department to show that there was willful mis-statement and suppression of facts; and

(iii) Section 28(4) is not applicable when allegation of suppression of facts came to light by detailed investigation of the records submitted by the appellant.

15. The Principal Commissioner, however, held that the extended period of limitation was correctly invoked and the findings are as follows:

(i) The appellant paid differential duty and interest for the past Bills of Entry not suo moto but only after issuance of summons by the Customs Officers;

(ii) The introduction of the self-assessment scheme since 2011 mandates that due diligence has to be exercised by an importer in filing the Bill of Entry. Therefore, under the self-assessment scheme larger responsibility is cast upon the importer. Had the Preventive Commissionerate not intercepted the import consignment, the payment of short duty would have remained undetected. The submission of

the appellant that short levy/short payment arose due to mistake on the part of the overseas supplier cannot be accepted as it is a matter of record that there was an element of suppression of correct description of goods imported in the Bills of Entry as well as in the invoices. This amounts to suppression of facts; and

(iii) The decisions cited by the appellant relate to the provisions of section 11A of the Central Excise Act but in the Customs Act "with intent to evade payment of duty" as it appears in the proviso to section 11A of the Central Excise Act is not there. Thus the contention of the appellant that it had no intention to evade payment of duty is not relevant. In support of this contention, reliance has been placed on the decision of the Supreme Court in **M/s Associated Cement Companies** vs. **Commissioner of Customs**[8].

16. The first issue that arises for consideration is whether the extended period of limitation could have been invoked because if this issue is decided in favour of the appellant, it would not be necessary to examine the classification dispute. To examine this issue it has to be determined whether the appellant had suppressed facts and then it has to be determined whether such suppression was with intent to evade payment of duty.

17. The dispute in the present appeal relates to classification of the Jackets imported by the appellant. As noticed above, there are five types of Jackets that were imported. The appellant contends that the description

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8. 2001(128)E.L.T. (21) (S.C.)

of goods in the Bills of Entries were based on the description mentioned in the invoices and packing list provided by the overseas supplier.

18. The classification of goods is a matter of belief and it cannot be said that facts have been suppressed merely because the department believes that the goods should have been classified under a different Customs Tariff Item.

19. The facts of present appeal are similar to the facts of **Benetton India** decided by the Tribunal. Benetton India was engaged in the business of manufacture and distribution of apparel which it imported. The products imported were women's 100% polyester knitted jackets, 100% polyester woven jackets and 100% PU woven jackets for which a Bill of Entry dated 14.09.2019 was filed. Benetton India classified under the goods under CTI 6104 33 00 and CTI 6204 33 00. The department, however, noted that the goods had a full opening front with a zipper fastener and, therefore, were required to be classified under CTI 6102 30 10 and CTI 6202 93 90. Benetton India paid the differential duty but a show cause notice was issued invoking the provision of section 28(4) of the Customs Act and an order confirming the demand was passed by the Additional Commissioner, which order was assailed before the Commissioner (Appeals) but the appeal was dismissed. The submissions made by the learned counsel for Benetton India were considered by the Tribunal in the following manner:

> "**7.** Shri Ayush A. Mehrotra, learned counsel for the appellant assisted by Shri Upkar Aggarwal submitted that in the facts and circumstances of the case, the provisions of section 28 (4) of the Customs Act could not have been invoked. **Elaborating this submission, learned counsel pointed out that the error in the classification of subject goods was a bonafide mistake and as soon as this was pointed, the**

appellant accepted the classification suggested by the department and paid the differential duty amount. To support this contention that the provisions of section 28 (4) of the Customs Act could not have been invoked, learned counsel relied upon an order passed by the Commissioner in respect of a similar matter where a categorical finding has been recorded that the provisions of section 28 (4) of the Customs Act could not have been invoked.

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10. The contention that has been advanced by the learned counsel for the appellant is that the term "jacket" has not been defined in Chapter 61 or Chapter 62 of the First Schedule to the Tariff Act. However, the Explanatory Notes for Chapter 61, which have also been made applicable to Chapter 62, do define "jackets" and "Blazers" and it is on the basis of the Explanatory Notes that the department proposed re-classification of the goods. Once the department suggested this classification, it was accepted by the appellant and the differential duty amount was paid.

11. It is, therefore, clearly a case of interpretation of the Tariff entries and willful suppression of facts cannot be attributed in such a situation for section 28 (4) of the Customs Act to be applicable. The appellant had declared the details of the imported goods which were also physically examined. It is also stated that earlier the Customs Authorities had also examined the previous classification of subject goods on several occasions and permitted clearance under the classification adopted by the appellant."

(emphasis supplied)

20. In this connection, the Tribunal also noticed the order dated 24.02.2023 passed by the Commissioner in respect of the show cause notice dated 01.10.2022 issued to Benetton India for the past consignment of same goods under section 28(4) of the Customs Act. The

Commissioner had held that the provisions of section 28(4) of the Customs Act could not have been invoked and also held that penalty could not have been imposed under section 114A of the Customs Act. The relevant portion of the order dated 24.02.2023 passed by the Commissioner in respect of the appellant for the previous consignment of same goods is reproduced below:

> "**41.** Consistent with the acceptance regarding mis-classification, Shri Abhik Saha undertook that they would pay the differential duty, along with fine and penalty which arises due to mis-classification. On this issue, during the personal hearing held before me on 23.01.2023, it was submitted that they have accepted the change in classification, discharged the differential duty liability and interest on delayed payment thereof.
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> **42.** In view of the above, it is evident that the impugned goods were mis-classified even during the past period of five years covered by this SCN. Based on the HSN Notes, the impugned goods merit re-classification under CTH 6101, instead of 6103 and 6104, as was done during the self-assessment. The noticee has accepted the proposed re-classification.
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> **43. As highlighted earlier, the critical factor resulting in the proposed reclassification is the fact of the impugned jackets having full front opening with a closure of slide fastening (zipper). It is a fact that the presence of the zipper was not mentioned in the bills of entry filed by the noticee. However, it has been submitted by the notice that the Company's error in classification of goods was inadvertent and technical in nature in light of the Explanatory Notes to the HSN classification issued by World Customs Organization, which do not form part of the First Schedule to the Tariff Act and was without any intention to evade the payment of Customs duty. I find merit in the submission made by the noticee, that there is nothing available on file to suggest that the presence of zipper was required to be disclosed by the noticee, and failure to do so**

> **could be considered as willful suppression of fact, required to invoke extended period under section 28 (4).** In coming to this conclusion, I also take note of the fact that atleast select consignments were physically examined by the department during the cargo clearance process and the precise nature of the jackets, including presence of zipper would have become evident during the said examination. **I observe that upon being informed of the correct classification as per the HSN, the noticee have accepted the same and discharged the differential liabilities promptly, thereby supporting the position that non-disclosure of the presence of zipper was not a willful suppression of fact. Therefore, this is a simple case of mis-classification, wherein provisions of section 28 (4) cannot be invoked.**
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> **48. Since this is a simple case of mis-classification, with no mis-declaration and willful suppression of fact with intent to evade the duty, the impugned goods are not liable for confiscation, also noting that these relate to past clearances and are not available for confiscation under section 111 (m) as proposed in the SCN.**
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> **49. Since the impugned goods are not liable for confiscation under provisions of section 111, no penalty can be imposed on the noticee either under section 114A in case of section 28 (4) invocable or under section 112, this being a simple case of mis-classification.**"
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> **(emphasis supplied)**

21. The Tribunal upheld the findings recorded by the Commissioner and the relevant portion of the decision of the Tribunal is reproduced below:

> "**14.** The Commissioner has noted in the aforesaid order that there was nothing to suggest presence of willful suppression of facts so as to enable the department to take recourse to the provisions of section 28 (4) of the Customs Act as it was a case of mis-classification only. The Commissioner also noted

> that once informed, the correct classification was accepted and the differential duty was paid.
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> **15. In view of the findings recorded by the Commissioner in the order dated 24.02.2023, which findings would be applicable in the present case, the impugned order dated 21.06.2021 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is accordingly allowed.**"
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> **(emphasis supplied)**

22. It is seen that the Commissioner noticed that the critical factor resulting in the proposed re-classification was that the Jackets had full front opening with a closure of slight fastening zipper. The Commissioner noted that there was nothing to suggest that the presence of zipper was required to be disclosed by the noticee and failure to do so would be considered as willful suppression of facts required for invoking the extended period of limitation under section 28(4) of the Customs Act. The Commissioner also noticed that since this was a simple case of mis-declaration there was no willful suppression of facts with intent to evade duty and the goods could not be held liable for confiscation. This finding of the Commissioner was accepted by the Tribunal.

23. In the present appeal, the Principal Commissioner also noted that since the appellant did not disclose the zipper length, there was mis-description of goods and so the extended period of limitation could be invoked. This position was not accepted by the Commissioner in the order passed for the earlier period and this finding was accepted by the Tribunal. The appellant also deposited the entire differential duty before the issuance of the show cause notice when this fact was pointed out to the appellant by the department. Thus, there was no mis-description of imported goods by the appellant.

24. The Principal Commissioner also noted that the self-assessment scheme mandates due diligence to be exercised by the importer in filing the Bill of Entry and, therefore, a large responsibility is cast upon the importer to correctly describe the goods. It is for this reason that the Principal Commissioner concluded that the appellant had suppressed correct description of goods in the Bills of Entry as well as in the invoices.

25. This conclusion drawn by the Principal Commissioner cannot be accepted. It is true that from 2011 the self-assessment scheme was introduced. However it is the duty of the officers scrutinizing the returns to examine the information disclosed by an assessee and the department cannot be permitted to take a plea that it is the duty of the assessee to disclose correct information and it is not the duty of the officers to scrutinize the returns.

26. In this connection, reference can be made to the decision of the Tribunal in **M/s. Raydean Industries** vs. **Commissioner CGST, Jaipur**[9]. The Tribunal, in connection with the extended period of limitation, observed that even in a case of self assessment, the department can always call upon an assessee and seek information and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted that departmental instructions issued to officers also emphasis that it is the duty of the officers to scrutinize the returns. The relevant portion of the decision of the Tribunal is reproduced below:

> "24. **It would be seen that the ER-III/ER-I returns filed by the applicant clearly show that the applicant had categorically declared that it had cleared the final products by availing the exemption under the notification dated**

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9. Excise Appeal No. 52480 of 2019 decided on 19.12.2022

17.03.2012. The applicant had furnished the returns on the basis of self assessment. Even in a case of self assessment, the Department can always call upon an assessee and seek information. It is under sub-rule (1) of rule 6 of the Central Excise Rules, 20028 that the assessee is expected to self assess the duty and sub-rule (3) of rule 12 of the 2002 Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**

25. **Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns.** The instructions issued by the Central Board of Excise & Customs on December 24, 2008 deal with "duties, functions and responsibilities of Range Officers and Sector Officers". It has a table enumerating the duties, functions and responsibilities and the relevant portion of the table is reproduced below:

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26. The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to SCRUTINY OF ASSESSMENT.

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> 27. **It is thus evident that not only do the 2002 Rules mandate officers to scrutinise the Returns to verify the correctness of self assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.**"
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> **(emphasis supplied)**

27. The view that has been taken by the Commissioner was also not accepted by the Tribunal in **M/s G.D. Goenka Private Limited** vs. **Commissioner of Central Goods and Service Tax, Delhi South**[10] and the observations are as follows:

> "**16. Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns.** If some tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect self-assessment itself is held to establish wilful suppression with an intent to evade. **To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.**"
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> **(emphasis supplied)**

28. The Commissioner has also noted in the impugned order that in view of the judgment of the Supreme Court in **Associated Cement**

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10. Service Tax Appeal No. 51787 of 2022 dated 21.08.2023 (Tri.-Del.)

Companies there is no requirement in law that the suppression of facts should be with an intent to evade payment of duty.

29. This finding recorded by the Commissioner cannot be accepted in view of the later judgment of the Supreme Court in **Uniworth Textiles Ltd.** vs. **Commissioner of Central Excise, Raipur**[11]. The Supreme Court examined the provisions of section 28(1) of the Customs Act and the proviso, which is now section 28(4) of the Customs Act, and the relevant portions of the judgment are reproduced below:

> "**12.** We have heard both sides, Mr. R.P. Bhatt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. **The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default?** Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. **In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.**
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> **13. This Court, in Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay** - 1995 Supp (3) SCC 462 = 1995 (78) E.L.T. 401 (S.C.), **while interpreting the proviso of an analogous provision in Section 11A of The Central Excise Act, 1944, which is pari materia to the proviso to**

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11. 2013 (288) E.L.T. 161 (S.C.)

Section 28 discussed above, made the following observations :

> "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 course 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."
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> [Emphasis supplied]

14. In Sarabhai M. Chemicals v. Commissioner of Central Excise, Vadodara - (2005) 2 SCC 168 = 2005 (179) E.L.T. 3 (S.C.), **a three-judge Bench of this Court, while referring to the observations extracted above, echoed the following views :**

> "23. Now coming to the question of limitation, at the outset, we wish to clarify that there are two concepts which are required to be kept in mind for the purposes of deciding this case. Reopening of approvals/assessments is different from raising of demand in relation to the extended period of limitation. Under section 11A(1) of the Central Excise Act, 1944, a proper officer can reopen the approvals/assessments in cases of escapement of duty on account of non-levy, non-payment, short-levy, short-payment or erroneous refund, subject to it being done within one year from the relevant date. On the other hand, the demand for duty in relation to extended period is mentioned in the proviso to section 11A(1). Under that proviso, in cases where excise duty has not been levied or

paid or has been short-levied or short-paid or erroneously refunded on account of fraud, collusion or wilful mis-statement or suppression of facts, or in contravention of any provision of the Act or Rules with the intent to evade payment of duty, demand can be made within five years from the relevant date. In the present case, we are concerned with the proviso to section 11A(1).

24. In the case of Cosmic Dye Chemical v. Collector of Central Excise, Bombay (1995) 6 SCC 117, this Court held that intention to evade duty must be proved for invoking the proviso to section 11A(1) for extended period of limitation. It has been further held that intent to evade duty is built into the expression "fraud and collusion" but mis-statement and suppression is qualified by the preceding word "wilful". Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for invoking the proviso to section 11A.

25. In case of Pushpam Pharmaceuticals Company v. C.C.E. [1995 (78) E.L.T. 401 (S.C.)], this Court has held that the extended period of five years under the proviso to section 11A(1) is not applicable just for any omission on the part of the assessee, unless it is a deliberate attempt 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 constitute suppression of fact."

15. In Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut - (2005) 7 SCC 749 = 2005 (188) E.L.T. 149 (S.C.), **while again referring to the observations made in Pushpam Pharmaceuticals Company (supra), this Court clarified the requirements of the proviso to Section 11-A, as follows :-**

"26... This Court in the case of Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay (supra), while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and willful to evade payment of duty. The Court, further, held :-

'In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to

> escape 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.'
>
> 27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11A of the Act."

16. In Collector of Central Excise v. H.M.M. Ltd. - 1995 Supp (3) SCC 322 = 1995 (76) E.L.T. 497 (S.C.), this Court held that mere non-disclosure of certain items assessable to duty does not tantamount to the mala fides elucidated in the proviso to Section 11A(1) of the Central Excise Act, 1944. It enunciated the principle in the following way :-

> "The mere non-declaration of the waste/by-product in their classification list cannot establish any wilful withholding of vital information for the purpose of evasion of excise duty due on the said product. There could be, counsel contended, bona fide belief on the part of the assessee that the said waste or by-product did not attract excise duty and hence it may not have been included in their classification list. But that per se cannot go to prove that there was the intention to evade payment of duty or that the assessee was guilty of fraud, collusion, misconduct or suppression to attract the proviso to Section 11A(1) of the Act. There is considerable force in this contention."

Therefore, if non-disclosure of certain items assessable to duty does not invite the wrath of the proviso, we fail to understand how the non-payment of duty on

disclosed items, after inquiry from the concerned department meets, with that fate.

17. In fact, the Act contemplates a positive action which betrays a negative intention of willful default. The same was held by Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore - (2003) 3 SCC 410 = 2003 (152) E.L.T. 39 (S.C.) wherein this Court held :-

> "31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or willful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.
>
> [Emphasis supplied]

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]

19. Thus, Section 28 of the Act clearly contemplates two situations, viz. inadvertent non-payment and deliberate default. The former is canvassed in the main body of Section 28 of the Act and is met with a limitation period of six months, whereas the latter, finds abode in the proviso to the section and faces a limitation period of five years. For the operation of the proviso, the intention to deliberately default is a mandatory prerequisite.

20. This Court in Aban Loyd Chiles Offshore Limited and Ors. v. Commissioner of Customs, Maharashtra - (2006) 6 SCC 482 = 2006 (200) E.L.T. 370 (S.C.) observed :-

> "The proviso to Section 28(1) can be invoked where the payment of duty has escaped by reason of collusion or any willful misstatement or suppression of facts. So far as "misstatement or suppression of facts" are concerned, they are qualified by the word "willful". The word "willful" preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an intention on the part of the assessee to evade the duty."

*****

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…"
>
> **(emphasis supplied)**

30. It seen from the aforesaid judgment of the Supreme Court in **Uniworth Textiles** that the judgment of the Supreme Court in **Associated Cement Companies**, on which reliance was placed by the Principal Commissioner, was considered and a finding was recorded for the applicability of the proviso to section 28(1) of the Customs Act or for the applicability of section 28(4) of the Customs Act, there must be an intent to avoid payment of customs duty.

31. In the instant case, the appellant had deposited the entire amount of duty with interest prior to the issuance of the show cause notice and the appellant also had a bona fide belief regarding the description and classification of the goods imported by the appellant. It cannot, therefore, be alleged that there was any intention of the part of the appellant to evade payment of customs duty, even if it is assumed that there was suppression of material facts by the appellant in the Bills of Entry. The extended period of limitation, therefore, could not have been invoked in the facts and circumstances of the case.

32. The next issue that arises for consideration in this appeal is whether the imported goods were liable to confiscation under section 111(m) of

the Customs Act and penalty under section 114A of the Customs Act could be invoked upon the appellant.

33. This issue was examined at length by the Tribunal in **Benetton India** and it was held that in such circumstances neither the goods could be held liable to confiscation nor penalty could be imposed under section 114A of the Customs Act.

34. As the issue relating to invocation of the extended period of limitation has been decided in favour of the appellant, it is not necessary to examine the other contentions that have been raised by the learned counsel for the appellant.

35. The impugned order dated 31.08.2023 passed by the Principal Commissioner, therefore, deserves to be set aside and is aside. The appeal is, accordingly, allowed.

(Order pronounced on **27.02.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shenaj, Shreya

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 55846 OF 2023

(Arising out of Order-in-Original No. 24-26/2023/VCG/Principal Commissioner/ICD-Import/TKD dated 31.08.2023 passed by the Principal Commissioner of Customs, (Imports), ICD TKD, New Delhi)

M/s Myntra Jabong India Pvt Ltd **.....Appellant**
Plot No. 82A, Sector-18, Gurugram,
Haryana-122015

versus

Principal Commissioner of Customs ACC (Imports) **.....Respondent**
Inland Container Depot,
Tughlakabad, New Delhi

APPEARANCE:

Shri Kishore Kunal, Ms. Ankita Prakash and Shri Anuj Kumar, Advocates for the Appellant

Shri Shiv Shankar, Authorised Representative of the Department

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 28.08.2025
DATE OF DECISION: 27.02.2026

ORDER

Order pronounced.

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Jyoti