

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

PRINCIPAL BENCH- COURT NO. I

**Excise Appeal No. 51564 of 2025**

(Arising out of Order-in-Original No. 181/2025-CE dated 31.01.2025 passed by the Additional Director General (Adjudication), New Delhi)

**Sun Home Appliances Private Limited,**  
(Formerly, M/s. Sun Industries),  
Plot No. SP5-129, Industrial Area Ghiloth,  
General Zone Ghiloth, District-Alwar,  
Alwar, Rajasthan-301705.

**...Appellant**

VERSUS

**Additional Director General (Adjudication),**  
Directorate General of GST Intelligence,  
2<sup>nd</sup> Floor, West Block No. 8, Wing No. 6,  
Sector-1, R.K. Puram,  
New Delhi – 110066.

**...Respondent**

WITH

**Excise Appeal No. 50862 of 2025**

(Arising out of Order-in-Original No. 181/2025-CE dated 31.01.2025 passed by the Additional Director General (Adjudication), New Delhi)

**Shri Jasraaj Singh Kalra,**  
Managing Director, Sun Home Appliances Private Limited  
(Formerly, M/s. Sun Industries),  
A-30 & 31, Hosiery Complex,  
Phase-II, Noida

**...Appellant**

VERSUS

**Additional Director General (Adjudication),**  
Directorate General of GST Intelligence,  
2<sup>nd</sup> Floor, West Block No. 8, Wing No. 6,  
Sector-1, R.K. Puram,  
New Delhi – 110066.

**...Respondent**

AND

**Excise Appeal No. 50861 of 2025**

(Arising out of Order-in-Original No. 181/2025-CE dated 31.01.2025 passed by the Additional Director General (Adjudication), New Delhi)

**Shri Sarabjit Singh Kalra,**  
Proprietor, Noble Industries  
A-30 & 31, Hosiery Complex,  
Phase-II, Noida

**...Appellant**

VERSUS

**Additional Director General (Adjudication),**

Directorate General of GST Intelligence,  
2<sup>nd</sup> Floor, West Block No. 8, Wing No. 6,  
Sector-1, R.K. Puram,  
New Delhi – 110066.

**...Respondent****APPEARANCE:**

Shri B.L. Narasimhan, Shri Dhruv Tiwari and Shri S.C. Vaidyanathan,  
advocates for the appellant

Shri Mihir Ranjan, Special Counsel for the department and Shri Bhagwat Dayal,  
authorised representative of the department

**CORAM:**

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

**Date of Hearing: 05.02.2026**  
**Date of Decision: 29.04.2026**

**FINAL ORDER NO's. 50816-50818/2026**

**JUSTICE DILIP GUPTA:**

**Excise Appeal No. 51564 of 2025** has been filed by Sun Home Appliances Private Limited<sup>1</sup> to assail that portion of the order dated 31.01.2025 passed by the Additional Director General (Adjudication)<sup>2</sup> that, after denying exemption claimed by the appellant on the area-based exemption under Notification No. 50/2003-C.E. dated 10.06.2003<sup>3</sup>, confirms the demand of central excise duty with interest and penalty after invoking the extended period of limitation contemplated under section 11A(4) of the Central Excise Act, 1944<sup>4</sup>.

2. **Excise Appeal No. 50862 of 2025** has been filed by Jasraaj Singh Kalra, Managing Director of the appellant against that portion of

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1. the appellant
  2. the Additional Director General
  3. the Exemption Notification
  4. the Central Excise Act

the order 31.01.2025 passed by the Additional Director General that imposes a penalty of Rs. 2 crores upon him under rule 26 of the Central Excise Rules, 2002<sup>5</sup>.

3. **Excise Appeal No. 50861 of 2025** has been filed by Sarabjit Singh Kalra, Proprietor, Noble Industries that imposes a penalty of Rs. 5 crores upon him under rule 26 of the Central Excise Rules.

4. The appellant is inter alia engaged in the manufacture and clearance of washing machines and LED television sets<sup>6</sup> of 'Haier', 'BPL' and 'Daenyx' brands. It was initially set up as a partnership firm in the name of M/s. Sun Industries. With effect from 26.08.2019, the appellant was incorporated as a private limited company in the name of Sun Home Appliances Private Limited from 31.08.2015 to 30.06.2017.

5. M/s. Om Sai Enterprises, located at Part of Khasra No. 45, Village Jamalpur Khurd, F-83, Bahadrabad Industrial Area, Haridwar<sup>7</sup> was initially engaged in the manufacture of footwear and leather accessories and was clearing such goods without payment of duty by availing the benefit of the Exemption Notification for a period of ten years from 29.03.2010. Om Sai had filed a declaration with District Industries Centre, Directorate of Industries and Commerce, Roorkee<sup>8</sup> in March 2010 along with all the necessary documents and Acknowledgement in Form-496.

6. After some point of time, Om Sai considered it viable to manufacture some other products. Accordingly, on 01.05.2015, Om Sai informed the Sales Tax Department of the State of Uttarakhand

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5. **the Central Excise Rules**  
6. **the products**  
7. **Om Sai**  
8. **DIC**

regarding the addition of new line of electrical products, namely, light-emitting diode television (LED TV), washing machine, and air conditioner<sup>9</sup>. The requisite approval was given by the department in R-29 receipt.

7. Om Sai also filed a declaration with DIC, by letter dated 10.05.2015, along with a Form in Part-II regarding the addition of new products. The DIC also acknowledged by providing Form-447 dated 12.05.2015.

8. Om Sai also filed a declaration with the jurisdictional Central Excise Department, by a letter dated 11.05.2015 addressed to the Assistant Commissioner, Customs and Central Excise, Haridwar, regarding the addition of new products and for availing the benefit of area-based exemption on the clearances. Acknowledgement was given by the Central Excise Department on 12.05.2015.

9. It is claimed that the manufacture of new products was started by Om Sai and the new products were cleared by Om Sai from June 2015 onwards. The clearances were made to M/s Amba Electronics<sup>10</sup> and M/s Taneja Electronics<sup>11</sup> through Invoice No. 0001 dated 26.06.2015 and Invoice No. 0002 dated 26.06.2015. Subsequent clearances were also made to other buyers. Om Sai also availed the benefit of area-based exemption in terms of the Exemption Notification in respect of the new products also.

10. Subsequently, Om Sai, by a letter dated 13.07.2015, sought permission from the DIC for shifting its factory premises from the location where it was operating, i.e., F-83, Bahadrabad Industrial Area,

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**9. the new products**

**10. Amba Electronics**

**11. Taneja Electronics**

Haridwar to the new factory premises located at Khasra No. 83, Vardaman Industrial Estate, Sector-3, Bahadarpur Saini, Roorkee Road, Haridwar<sup>12</sup>, which was also eligible for the benefit of area-based exemption under the Exemption Notification. By an internal letter dated 20.07.2015, the Assistant Manager, DIC requested the General Manager, DIC to provide the requisite permission to Om Sai. The General Manager, DIC, by a letter dated 20.07.2015, granted the requisite permission to Om Sai.

11. For shifting to Khasra-83 address premises, Om Sai entered into a rent agreement dated 26.06.2015 with M/s Maxx Mobile Communications<sup>13</sup>. The rental period in terms of the said agreement was to begin either from 01.07.2015 or from the date of handing over the premises in the desired condition, whichever was later.

12. Before shifting of the premises, necessary inspection and verification was done by the Chartered Engineer on 24.07.2015 and a certificate was also issued in this regard. After Om Sai shifted its factory premises from F-83 address to Khasra-83 address, the necessary inspection and verification was again done by the Chartered Engineer on 01.08.2015 and a certificate was issued in this regard.

13. Om Sai, by a letter dated 10.08.2015, informed the DIC that it had shifted its factory premises from F-83 address to Khasra-83 address, which is also a notified area and eligible for the benefit of exemption. Om Sai also informed the jurisdictional Central Excise Department that it had shifted its factory premises from F-83 address to Khasra-83 address through a letter that was received on 13.08.2015.

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**12. Khasra-83 address**

**13. Maxx Mobile**

14. It is stated that as a part of shifting the factory premises, Om Sai installed the requisite plant and machinery in the new factory premises and started manufacturing the new products and cleared the same after availing the benefit of area-based exemption in terms of the Exemption Notification.

15. The appellant claims that the Exemption Notification does not restrict manufacturing of new products or shifting of factory premises from one place to another as long as the new place is also a specified area as the only intent of the Exemption Notification is the location of industrial unit/ factory premises and so as long as an industrial unit is located in the area specified in the Exemption Notification, the benefit of area-based exemption is available. According to the appellant, this was further affirmed by Central Board of Excise and Customs<sup>14</sup> Circulars as well. In the Circular dated 22.12.2010, it was clarified that area-based exemption is allowed to industrial units who are manufacturing new products with or without installation of new plant and machinery. The Circular dated 17.02.2012 issued by CBEC also clarified that the industrial units shall continue to be eligible for area-based exemption for the remaining period in cases of expansion of an industrial unit by acquiring adjacent plot or installing new plant and machinery on the existing unit itself.

16. According to the appellant, the shifting of factory premises and manufacturing of new products by Om Sai was permissible and the same was duly intimated to the concerned authorities. The relocation of factory premises was duly verified and approved by the Chartered Engineer. Thus, the shifting of factory premises was legal and Om Sai

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**14. the CBEC**

was eligible for exemption under the Exemption Notification from payment of central excise duty with respect to manufacturing of new products and clearance of the same from the factory premises located at Khasra-83 premises.

17. The appellant purchased Om Sai as a going concern basis, for which Business Transfer Agreement dated 14.08.2015<sup>15</sup> was entered between the appellant and Om Sai whereby ownership of Om Sai was transferred to the appellant. For this, the appellant also entered into a Rent Agreement dated 09.09.2015 with Maxx Mobile for taking the premises on rent from Maxx Mobile, which was previously taken on rent by Om Sai.

18. As the appellant acquired Om Sai, which was availing the benefit of area-based exemption on a going concern basis, the appellant informed the DIC about taking over Om Sai by a letter that was received on 24.08.2015. The appellant further informed the jurisdictional Central Excise Department by a letter that was received on 24.08.2015.

19. The appellant claims that it started availing the benefit of area-based exemption in terms of the Exemption Notification in respect of final products manufactured by it and cleared during the relevant period from 31.08.2015 to 30.06.2017.

20. An intelligence was gathered by the officers of Directorate General of Central Excise Intelligence, New Delhi<sup>16</sup> that the appellant was misusing area-based exemption granted to Om Sai by illegally extending the benefit to itself. It was further gathered that Sarabjit Singh Kalra,

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**15. Business Transfer Agreement**

**16. DGGI**

Proprietor of M/s Noble Industries, Noida, a group company of appellant adopted a unique modus operandi by creating a proxy entity, i.e. the appellant, which took over Om Sai for availing area-based exemption and supplying products to Haier Appliances (India) Pvt. Ltd., a major customer of Noble Industries, without payment of central excise duty.

21. The DGGI officers conducted a search at the factory premises of the appellant located at Khasra-83 address. During the investigation, DGGI officers recorded the statement S.W. Ali, General Manager of Noble Industries and Plant Head of the appellant. The DGGI officers also conducted investigation at the end of Haier. During the search proceeding, officers recorded the statement of P. Krishna Mohan, Senior General Manager – Supply Chain Management, Haier. The DGGI officers conducted investigation at the end of Ashish Dhawan and Sanjeev Khera. Statement of Ravinder Singh, Accountant of Om Sai was recorded on 22.06.2016. Statements of Dhawan and Khera were also recorded on 22.06.2016.

22. The DGGI officers recorded statement of Rajiv Jindal, Consultant of Om Sai, Noble Industries and the appellant on 22.06.2016.

23. The DGGI officers also recorded statements of certain personnel associated with Noble Industries, Om Sai, appellant, Haier and Maxx Mobile. Details are provided below:

<b>S. No.</b>	<b>Name and designation of the Personnel</b>	<b>Date of Statement</b>	<b>RUD to the SCN</b>
1.	Sarabjit	28.06.2016	<u>RUD-29</u>
2.	Eric Braganza, President, Haier	17.08.2016	<u>RUD-30</u>
3.	Hemanshu Mody, Vice President, Maxx Mobile	13.07.2016	<u>RUD-66</u>
4.	Ankur Mehta, Assistant Manager (Administration), Maxx Mobile	14.07.2016	<u>RUD-71</u>
5.	Jasraaj Singh Kalra	22.02.2017	<u>RUD-107</u>
6.	Dhawan	16.02.2017	<u>RUD-78</u>
7.	Khera	16.02.2017	<u>RUD-80</u>

8.	Dhyan Singh Negi, Plant Head, Maxx Mobile	08.02.2017	<u>RUD-74</u>
9.	Anuj Manglik, Assistant General Manager (Sales), Appellant	13.02.2017	<u>RUD-76</u>
10.	Anand Kumar Bajpai, Assistant, Noble Industries	14.02.2017	<u>RUD-77</u>
11.	Rajender Singh, Co-Owner of premises at F-83 address	07.02.2017	<u>RUD-101</u>
12.	Smt. Sushila Devi, Co-Owner of premises at F-83 address	07.02.2017	<u>RUD-104</u>

24. The DGGI officers conducted investigation at the end of Sumed Chandra Shastri, Assistant Manager, DIC to clarify the factual position regarding shifting of factory premises from F-83 address to Khasra-83 address. Statement of Shastri was recorded on 15.07.2016.

25. DGGI then issued a show cause notice dated 28.05.2020 to the appellant proposing to demand of central excise duty amounting to Rs. 33,78,13,127 under section 11A(4) of the Central Excise Act, 1944<sup>17</sup> with interest under section 11AA and penalty under section 11AC and rule 25 of the Central Excise Rules, 2002<sup>18</sup>.

26. This show cause notice were also issued to Jasraj Singh Kalra and Sarabjit Singh Kalra and called upon them to show cause why penalty under rule 26 of the Central Excise Rules may not be imposed upon them.

27. The appellant filed a preliminary reply on 06.03.2024 requesting for cross examination of persons whose statement were relied upon in the show cause notice against the appellant. The appellant filed submissions on 25.04.2024 giving reasons for the said cross examination. Thereafter, the appellant filed a detailed reply to the show cause notice on 10.12.2024, rebutting the allegations contained in the show cause notice along with the supporting documents to show that

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**17. the Central Excise Act**

**18. the Central Excise Rules**

the appellant had acquired Om Sai as a going concern and so the appellant had correctly claimed the benefit of area-based exemption in terms of the Exemption Notification. The appellant also stated that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act could not have been invoked.

28. Jasraj Singh Kalra and Sarabjit Singh Kalra also filed a reply and contended that the ingredients of rule 26 of the Central Excise Rules were not satisfied and so penalty could not be imposed.

29. The Additional Director General, however, confirmed the entire demand of central excise duty as proposed in the show cause notice with interest and penalty by giving a finding that the appellant had fraudulently availed benefit of exemption under the Exemption Notification. The Additional Director General also held that the invocation of the extended period of limitation under section 11A(4) of the Central Excise Act was justified.

30. The relevant findings recorded by the Additional Director General with respect to the extended period of limitation under section 11A(4) of the Central Excise Act is reproduced below:

**"A.4.** As regards the Noticee's contention that they have maintained proper records in terms of Central Excise Act, 1944 and rules made thereunder and have filed the same with the department as and when required and hence extended period is not invocable, **I find that the Noticee have not adduced any evidence to the effect that they have not availed benefit of exemption provided under Notification No. 50/2003-CE dated 10.06.2003 fraudulently. They also did not produce any documentary evidence to the effect that the department had gone through such documents relating to methodology adopted by them for availment of such exemption benefit and manufacture of**

washing machines, LED TVs, etc. manufactured and cleared by the Noticee, M/s. Sun during the relevant period. From the impugned SCN dated 28.05.2020, I find that Sh. Sarabjit Singh Kalra entered into a Business Transfer Agreement dated 14.08.2015 in the name of the Noticee, M/s. Sun with M/s. Om Sai enterprises on paper only with a design to fraudulently extend the exemption period in the name of the Noticee for the goods manufactured by M/s Noble Industries because the area based exemption in respect of M/s Noble Industries was available till February, 2016. I further find from the impugned SCN that Sh. Sarabjit Singh Kalra under well thought plan created M/s Sun as a proxy of M/s Noble Industries and business transfer of an existing firm, namely, M/s Om Sai Enterprises was engineered in the name of the Noticee, M/s Sun so that time period of area based exemption provided under Notification No. 50/2003-CE dated 10.06.2003 could be extended upto the time period available to M/s. Om Sai Enterprises, i.e., March, 2020."

**(emphasis supplied)**

31. The Additional Director General then examined whether the exemption was correctly claimed by the appellant. In this connection, various statements recorded under section 14 of the Central Excise Act were considered. Regarding the claim of the appellant that he had taken the premises of Maxx w.e.f. 01.07.2017, the Additional Director General observed as follows:

**"B.13.** Regarding claim of M/s Om Sai Enterprises that they had taken premises of M/s Maxx w.e.f. 01.07.2017 without any security deposit and M/s Maxx had not received not received any advance rent from M/s Om Sai Enterprises from 01.07.2015 to 18.08.2015 (period during which M/s Om Sai Enterprises was claimed to be in operation at Vardhman Industrial Area, New Delhi), **I find from the impugned SCN and the documents placed before me that the rent of this period was**

**paid to M/s Maxx from the accounts of M/s Om Sai Enterprises only on 21.09.2015 and the Noticee, M/s Sun Industries had transferred Rs. 23 Lakh to M/s Om Sai Industries on 14.09.20.15, which was utilized to pay rent to M/s Maxx. This fact is also admitted by Shri Hemanshu Mody in his statement dated 13.07.2016 from emails. I further find that no unit in the name and style of M/s Om Sai Enterprises under the partnership of Shri Ashish Dhawan and 77 Shri Sanjeev Khera was working at Sector-3, Vardhman Industrial Area, Bahadarpur Saini, Haridwar in the month of July & August, 2015, therefore, the question of taking over of said unit by the Noticee, M/s Sun Industries on 17.08.2015 does not arise. I further find that Shri Anand Kumar Bajpai, Assistant of M/s Noble Industries, A-30-31, Hosiery Complex, Phase-II Extension, Noida in his statements (RUD-77), has clearly accepted that the rent agreement dated 17.08.2015 between M/s Maxx and the Noticee, M/s Sun which were filed by the Noticee, M/s Sun with various authorities and attested by Shri Jasraj Singh Kalra. Containing his signature was not signed by him and some one has made his forged signature in this agreement and used his name and his father's name fraudulently."**

**(emphasis supplied)**

32. Regarding the authenticity of the certificate issued by Chartered Engineer the Additional Director General observed:

**"B.14. Regarding authenticity of certificate issued by Sh. V.K. Sharma, Chartered Engineer certifying inspection conducted on 01.08.2015, I find from the impugned SCN that was obtained fraudulently as the said the certificate was issued by the Chartered Engineer in the letter head of M/s Maxx Mobile Communication Ltd. and attached certifying electricity load sharing by M/s Maxx with M/s Om Sai Enterprises and claimed to be issued on 25.07.2015. I find that as per emails exchanged between Shri Syed Wajid Ali and Shri**

Hemanshu Mody and Shri D.S. Negi of M/s Maxx on 06.08.2015, copies of which were also sent by Shri Ali to Shri Sarabjit Singh Kalra and Shri Jasraj Singh Kalra, whereby Shri Syed Wajid Ali had requested to issue such certificate on the letter head of M/s Maxx Mobile on 06.08.2015 and mentioned that Chartered Engineer had asked for such certificate when he visited their premises on 06.08.2015. **Thus, I find that the certificate requested on 06.08.2015 was shown to be issued on 25.07.2015 seems to be back dated certificate. This fact was also accepted by Shri D.S. Negi of M/s Maxx Mobile in his statement dated 07.02.2017, who issued this certificate as per directions of Shri Hemanshu Mody.**"

**(emphasis supplied)**

33. The Additional Director General then recorded the following findings:

**"B.18. From the above discussions, I find that M/s Om Sai Enterprises was not functioning at F-83, Bahadrapur Industrial Area, Haridwar in the month of Jun, 2015 and they have not shifted their plant, machineries, manpower, etc. Industrial Estate, Sector-3, Village-Bahadrapur Saini, Roorkee Road, Haridwar and that at Khasra No. 83, Vardhman the rent agreement submitted by the Noticee, M/s Sun to various authorities claiming that they had taken over M/s Om Sai Enterprises by claiming to be running at rented premises of M/s Maxx at Vardhman Industrial Area, Sector-3, Vill. Bahadrapur Saini, Roorkee Road, Haridwar was forged and the entire fraud was committed by Sh. Sarabjit Singh Kalra in connivance with his persons/employees to fraudulently obtain the exemption from payment of Central Excise duty beyond the available time period.** In light of the above discussions, I find that the case laws relied upon by the Noticee, M/s Sun are not relevant and do not render any assistance to the cause of the Noticee. Therefore, I hold that the benefit of the exemption claimed/availed by the Noticee, M/s Sun

during the period 31.08.2015 to 30.06.2017 under Notification No. 50/2003-CE dated 10.06.2003 readwith clarifications issued vide Circular No. 939/29/2010-CX dated 22.12.2010 by CBIC is liable to be denied and Central Excise Duty of Rs. 33,78,13,127/- demanded in the impugned SCN dated 28.05.2020 is also liable to be recovered from them under Section 11A(4) of the Central Excise Act, 1944.”

**(emphasis supplied)**

34. Regarding imposition of penalty upon Jasraj Singh Kalra and Sarabjit Singh Kalra, under rule 26 of the Central Excise Rules the Additional Director General observed:

“D.3.2.xxxxxxxxxx I find from the impugned SCN that Sh. Jasraj Singh Kalra and Sh. Sarabjit Singh Kalara were the main beneficiaries of the entire fraud and evasion of Central Excise Duty committed by the Noticee, M/s. Sun during the relevant period. I find that Sh. Jasraj Singh Kalra in his statement has admitted that he has not provided the date of starting production in the factory of the Noticee, M/s Sun and also accepted having transactions with M/s Noble Industries & M/s Maxx. I find that Sh. Jasraj Singh Kalra was concerned with full knowledge regarding transportation/removing, concealing, selling and purchasing of the goods. In view of above, I find that the ingredients of Rule 26 are satisfied in the case of Sh. Jasraj Singh Kalra, Partner of the Noticee, M/s Sun. Therefore, I hold that Sh. Jasraj Singh Kalra is liable to penalty under Rule 26 of the Central Excise Rules, 2002.”

35. The three appeals have been filed to assail the aforesaid order of the Commissioner.

36. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Shri Dhruv Tiwari and Shri S.C. Vaidyanathan, made the following submissions:

- (i)** The show cause notice made vague allegations without examination of relevant facts, which have been confirmed in the impugned order. The impugned order also suffers from legal infirmities inasmuch as the same is vague and has been passed without dealing with the submissions made by the appellant;
- (ii)** The appellant has correctly availed the benefit of area-based exemption under the Exemption Notification;
- (iii)** The entire proceedings by the department are based on certain assumptions and presumptions. The evidence produced by the department are not sufficient to prove that there was no addition of new products (electrical items) by Om Sai at F-83 address;
- (iv)** Om Sai has correctly applied for addition of new products and documents furnished to the concerned authorities were not forged;
- (v)** Om Sai has manufactured electrical items in the premises located at F-83 address and sold them to different buyers;
- (vi)** Cross-examination of witnesses proves that Om Sai was engaged in the manufacture of new products (i.e., Electrical items);
- (vii)** The confirmation of demand on the basis of allegations in the show cause notice regarding shifting of factory premises by Om Sai from F-83 address to Khasra-83 address, suffer with apparent inconsistencies and such findings and allegations are factually incorrect;
- (viii)** Om Sai legally shifted from the premises located at F-83 address to Khasra-83 address by adopting the right

procedure and every action/ document pertaining to shifting of factory premises was in the knowledge of the department;

- (ix)** Post-shifting Chartered Engineer certificate issued for shifting of factory premises, is not forged. Reliance on statements dated 27.06.2017 and 21.02.2017 of Sharma is misplaced and the allegations/ findings based on such statements are factually incorrect;
- (x)** The appellant is not a proxy unit of Noble Industries and appellant has not illegally taken over the unit of Om Sai to fraudulently avail the benefit of the Exemption Notification;
- (xi)** List of employees shown to be transferred from Om Sai to unit of the appellant is genuine;
- (xii)** Duty demand confirmed on the basis that Om Sai did not manufacture the new products (electrical items) is factually incorrect. Such confirmation of demand is based upon mere assumptions and presumptions;
- (xiii)** The factual position with regard to fake invoices furnished by Om Sai vis-à-vis procurement of raw materials is incorrect;
- (xiv)** Reliance on electricity consumption to allege that electrical items were not manufactured at F-83 address is incorrect;
- (xv)** The charges of clandestine clearance of final products without payment of central excise duty are serious charges which needs to be proved with positive and cogent evidence. The same cannot be based upon mere assumptions and presumption. The burden of proving

such charges is on department, which has not been discharged;

**(xvi)** Invocation of extended period of limitation is not sustainable. Duty demand confirmed is entirely time barred;

**(xvii)** Penalty is not imposable on the appellant under rule 25 of the Central Excise Rules and on Jasraaj and Sarbjit under rule 26 of the Central Excise Rules; and

**(xviii)** Interest is also not payable.

37. Shri Mihir Ranjan, learned special counsel and Shri Bhagwat Dayal, learned authorised representative appearing of the department, however, supported the impugned order and made the following submissions:

**(i)** The impugned order is a well-reasoned and detailed order which conclusively establishes that the appellant wrongfully availed the benefit of the Exemption Notification;

**(ii)** The arrangements that was made by the appellant was specifically designed to secure exemption which was never intended for the manner in which the appellant operated;

**(iii)** The exemption was intended for genuinely established units notified in Uttarakhand. M/s. Noble Industry rightfully availed the benefit of the Exemption Notification which benefit was due to expire in March 2016 but M/s Noble Indutries created the appellant as a proxy manufacturing arrangement to unlawfully

continue to avail the benefit beyond the permissible period;

- (iv)** S. Wazid Ali was an employee of Noble Industries but he was compelled to sign rent agreements, invoices and chartered engineer certificates on behalf of the appellant;
- (v)** The documentary evidence and the statements of Ashish Dhawan and Sanjeev Khera, partners of the appellant, conclusively established that the appellant was merely a proxy for Noble Industries created solely to wrongfully avail benefit of the area-based Notification;
- (vi)** The investigations revealed that financial transaction as well as rental payments associated with Om Sai Enterprises was subsequently Noble group;
- (vii)** The statements recorded during the investigation reveal that when the exemption status held by Noble Industries was approaching its expiration in February 2016, efforts were made to extend the period by indirect means; and
- (viii)** Imposition of penalty under rule 26 of the Central Excise Rules upon Jasraj Singh Kalra and Sarabjit Singh Kalra is justified.

38. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

39. The first issue that arises for consideration is whether the extended period of limitation contemplated under section 11A(4) of Central Excise Act was correctly invoked.

40. Section 11A of the Excise Act deals with recovery of duties not levied or not paid or short levied or short paid or erroneously refunded is reproduced below:-

**"Section 11A.** Recovery of duties not levied or not paid or shortlevied 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;"

41. Thus, a notice can be issued by the central excise officer within two years from the relevant date. However, if the notice is not issued within two years from the relevant date, the central excise officer can still issue a notice within five years from the relevant date provided the conditions set out in sub-section (4) of section 11A of the Excise Act are satisfied. Section 11A (4) is reproduced below:-

**"Section 11A(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.”

42. The show cause notice was issued on 28.05.2020 proposing duty demand for the period from 31.08.2015 to 30.06.2017. Thus, the entire demand is beyond the normal period of limitation of two years. The contention of the appellant that the extended period of limitation could not be invoked since it had maintained proper records in terms of the Central Excise Act and the Central Excise Rules and had filed the same before the department as was required was not accepted in the impugned order for the reason that the appellant had not adduced any evidence to show that it had not availed benefit under the Notification fraudulently and that the appellant had not produced any documentary evidence to show that the department had gone through such documents relating to the methodology adopted by the appellant for availment of the exemption. The order also holds that from the show cause notice it is clear that Sarabjit Singh Kalra entered into a business transfer agreement dated 14.08.2015 between the appellant and Om Sai Enterprises on paper only with a design to fraudulently extend the exemption period in the name of the appellant for the goods manufactured by Noble Industries. The order also holds that Sarabjit

Singh Kalra thought of a plan so that for extension of the time period of the Exemption Notification of the appellant could be extended to the time period available to Om Sai Enterprises which was upto March 2020.

43. The order, therefore, accepts that the appellant had maintained proper records and had filed the same with the department. It is not the requirement in law that the appellant should have adduced evidence to show that it had not availed the benefit of the Exemption Notification fraudulently or to have produced documentary to establish that the department had gone through such documents relating to the methodology adopted by the appellant for availing of the Exemption Notification. Once the appellant had filed the documents, it was for the officers of the department to scrutinise them and there is no obligation cast upon an assessee to prove that the documents had actually been scrutinised by the department.

44. It needs to be noted that when all the facts were in the notice of the department, the extended period of limitation could not have been invoked. What is important to notice is that the internal communication that was exchanged between the Central Excise Officers scrutinises the availment of exemption benefit by the appellant in 2015. In this communication it has been noticed that the appellant was taking over a running unit of Om Sai situated at Khasra-83 engaged in manufacture of electrical products/items and was availing the area-based exemption under Exemption Notification. The Central Excise Department also categorically noted that the report received from the Range Officer and the documents submitted by the appellant after taking over Om Sai had

been examined and nothing objectionable was noticed. The relevant observation is reproduced below:

".....

In view of the above and the documents submitted by the party in this regard, the taken over of the unit by M/s. Sun Industries appears in order subject to the condition that the new owner exercises his option in writing to avail of the benefit of the exemption Notification before effecting the first clearance."

45. Thus, even though the department was aware in 2015 that the appellant had taken over Om Sai, the show cause notice was not issued within the normal period of limitation of two years, but was issued only on 28.05.2020 after an inordinate delay of almost five years. The department cannot, therefore, urge any suppression on the part of the appellant, much less with an intention to evade payment of duty, since all the material facts were in the knowledge of the department in 2015.

46. The Supreme Court in **Collector of Central Excise vs. Chemphar Drugs & Liniments**<sup>19</sup> held that when the department had full knowledge about manufacture of the goods manufactured by the respondent as the declaration was filed, the extended period of limitation under the proviso to section 11A(4) of the Central Excise Act could not have been invoked. The relevant portions of the judgement are reproduced below:

"8. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. **In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not**

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19. 1989 (40) E.L.T. 276 (S.C.)

**been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months.** Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. **The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under Tariff Item 14E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence.**

9. In that view of the matter and in view of the requirements of Section 11A of the Act, the claim had to be limited for a period of six months as the Tribunal did. We are, therefore, of the opinion that the Tribunal was right in its conclusion. The appeal therefore fails

and is accordingly dismissed.”

**(emphasis supplied)**

47. Even otherwise, wilful suppression of facts has to be with an intent to evade payment of excise duty.

48. In **Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay**<sup>20</sup>, 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 Excise Act. The proviso to section 11A of the Excise Act 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 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 are as follows;

“4. Section 11A empowers the Department to reopen 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

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**20. 1995 (78) E.L.T. 401 (SC)**

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.”

(emphasise supplied)

49. This decision was referred to by the Supreme Court in **Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise**<sup>21</sup>

and the observations are as follows:

“26..... This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, 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)

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**21. 2005 (188) E.L.T. 149 (SC)**

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 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 proviso to Section 11A of the Act.”

**(emphasis supplied)**

50. These two decisions in **Pushpam Pharmaceuticals** and **Anand Nishikawa Company Ltd.** were followed by the Supreme Court in the subsequent decision in **Uniworth Textile Limited vs. Commissioner of Central Excise, Raipur**<sup>22</sup> and the observation are:

“18. We are in complete agreement with the principal enunciated in the above decisions, in light of the proviso to section 11A of the Central Excise Act, 1944.”

51. The Supreme Court in **Continental Foundation Joint Venture Holding vs. Commissioner of Central Excise, Chandigarh-I**<sup>23</sup> also held:

“10. The expression “suppression” has been used in the proviso to Section 11A of the Act accompanied by very strong words as ‘fraud’ or “collusion” and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.  
**Suppression means failure to disclose full**

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22. 2013 (288) E.L.T. 161 (SC)

23. 2007 (216) E.L.T. 177 (SC)

**information with the intent to evade payment of duty.** When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.”

**(emphasis supplied)**

52. The Delhi High Court in **Bharat Hotels Limited vs. Commissioner of Central Excise (Adjudication)**<sup>24</sup> also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Finance Act and held as follows;

“27. Therefore, it is evident that failure to pay tax is not a justification for imposition of penalty. Also, the word “suppression” in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. “fraud, collusion, wilful misstatement”. As explained in Uniworth (supra), “misstatement or suppression of facts” does not mean any omission. It must be deliberate. **In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty.**

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**Thus, invocation of the extended limitation period under the proviso to Section 73(1) does not refer to a scenario where there is a mere omission or mere failure to pay duty or take out a license without the presence of such intention.”**

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**The Revenue has not been able to prove an intention on the part of the Appellant to avoid tax**

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24. 2018 (12) GSTL 368 (Del.)

**by suppression of mention facts. In fact it is clear that the Appellant did not have any such intention and was acting under a bonafide belief.”**

**(emphasis supplied)**

53. In the present case, the Additional Director General assumed that Sarabjit Singh Kalra entered into a Business Transfer Agreement in the name of the appellant with Om Sai only with a design to fraudulently extend the exemption period for the appellant. The appellant had contended that the said agreement was in accordance with law and in terms of the Exemption Notification and the Circulars issued by the department. The Additional Director General has not adverted at all to the reply submitted by the appellant to the show cause notice and merely because of the allegations made in the show cause notice has assumed that the Business Transfer Agreement was executed fraudulently to enable the appellant to get some extension in the exemption period. Thus, also the extended period of limitation could not have been invoked in the facts and circumstances of the case.

54. It has, therefore, to be held that the Additional Director General was not justified in holding that the extended period of limitation contemplated under section 11A(4) of the Central Excise Act was correctly invoked.

55. It is not in dispute that the entire demand that has been confirmed is for the extended period of limitation. The order confirming the demand, therefore, cannot be sustained.

56. The issues raised on merits in the impugned order can also be examined as submissions have been made both by the learned counsel

for the appellant and the learned special counsel appearing for the department.

**Whether Om Sai and the appellant correctly availed the benefit of the Exemption Notification**

57. Under the Exemption Notification goods manufactured by eligible industries are exempt from payment of the whole of duty of excise for a period of ten years. The two classes of industrial units which are eligible for claiming the benefit under the aforesaid Notification are new industrial units which commenced commercial production on or after 07.01.2003 and existing industrial units which have undertaken substantial expansion (by increasing the production capacity at least upto 25%) on or after 07.01.2003. The eligible areas are enlisted under Exemption Notification, which also include the district of Haridwar in Uttaranchal.

58. Subsequently, by the Notification No. 27/2004-C.E. dated 09.07.2004, a sunset clause was introduced whereby the benefit of area-based exemption under the Exemption Notification was restricted to industrial units which had commenced production or undertaken substantial expansion on or after 07.01.2003, but not later than the 31.03.2007. The said cut-off date was extended to 31.03.2010 by amending Notification No. 38/2006-C.E. dated 02.08.2006.

59. A perusal of the Exemption Notification, makes it clear that the objective behind the exemption was to attract investments in the States of Uttaranchal and Himachal Pradesh and boost the economy and the overall development of such States.

60. Circular 939 issued by CBEC clarifies that under the Exemption Notification, any new unit which commenced commercial production before the cut-off date is entitled for exemption from payment of excise duty on the goods manufactured and cleared by it, except for such goods which appear in the negative list of the said Notification, for a period of ten years. Circular 939 further clarifies that the Exemption Notification did not contain any provisions placing any restrictions on addition/ modification in the plant/ machinery of the factory, or on the productions of new products by an eligible unit after the cut-off date and during the course of ten year period of exemption benefit. Thus, Circular 939 clarifies that any eligible unit would continue to enjoy the benefit of area-based exemption even with respect to new products which were not initially being manufactured, whether manufactured with or without installation of new plant/ machinery.

61. This view was again clarified by CBEC by Circular 960. In Circular 960, the clarification sought by trade representations pertains to admissibility of exemption benefit where an eligible unit already availing area-based exemption expands by acquiring a plot of land adjacent to its existing premises and installing new plant/ machinery on such land. It clarifies that expansion of an eligible unit by acquiring adjacent plot and installing new plant and machinery was akin to expansion by way of installing new plant and machinery on the existing plot itself; and since the latter had already been clarified as permissible by earlier Circular 939, expansion by acquiring adjacent premises was also permissible and such units shall continue to enjoy the exemption benefit for the residual period.

62. Circular 960 as clarifies that transfer of ownership will not prejudice the exemption benefit being availed by the transferor company and the transferee shall be entitled to enjoy area-based exemption for the remainder period of ten years.

63. It, therefore, transpires that the manufacture of new products with or without installation of new plant/ machinery, is not prohibited under the Exemption Notification. So long as the industrial unit fulfils the eligibility criterion under the Exemption Notification, any new products manufactured by using the same plant and machinery as already installed or by setting up of a new manufacturing line shall also be exempt from the payment of duty for the residual period of ten years. The only exception is where an already eligible unit becomes ineligible for availment of exemption where the new products manufactured are goods of the negative list (Annexure-I of the Exemption Notification). The said view was also clarified by CBEC through Circular 939 and later affirmed by Circular 960.

64. Thus, the Exemption Notification did not put any restriction on shifting of factory premises to a new location so long as the eligible unit is shifted to a premise which is also located in one of the specified areas of the said States. Restriction was also not placed on transfer of ownership in the Exemption Notification, and the same was even clarified by Circular 960 as it provides that since the area-based exemption is admissible to a 'unit', change in ownership would not affect that admissibility of the same for the remainder years of the exemption period.

65. In the present case, Om Sai was engaged in the manufacture of leather footwear and accessories, and was availing the benefit of area-

based exemption under the Exemption Notification since 29.03.2010. Subsequently, on 10.05.2015 and 11.05.2015, Om Sai filed a letter with the DIC and the Central Excise Department, respectively, intimating the latter about addition of new line of products, like washing machine, LED TV, and AC. Thus, Om Sai rightly availed the exemption from payment of central excise duty even with respect to the new products.

66. The production in new manufacturing line and clearance of electrical items was started in June 2015. Subsequently, by letter dated 13.07.2015, Om Sai filed an application for shifting its factory premises from the premises location at F-83 address to the new premises located at Khasra-83 address. The permission for shifting of premises was granted by DIC to Om Sai on 20.07.2015 and a certificate of Chartered Engineer dated 01.08.2015 that verifies the shifting of the premises, was also issued. Om Sai shifted its premises to a location at Khasra-83 address, which was also a specified area under the Exemption Notification. These facts have not been disputed by the department. The shifting was duly intimated to the concerned authorities and as per the requirement of Circular 960, the relocation of premises was duly verified and approved by a certificate of Chartered Engineer. Thus, the said shifting of premises was also permissible law and could not have prejudiced the eligibility of exemption under the Exemption Notification. Om Sai was, therefore, eligible for exemption from payment of central excise duty with respect to the new products manufactured and cleared from the new premises located at Khasra-83 address.

67. Consequent to the shifting of premises to new location, Om Sai was acquired by the appellant in August 2015. The area-based

exemption under the Exemption Notification is granted to an industrial 'unit' established in the specified area.

68. The three events, namely manufacture of new products by Om Sai; shifting of factory premises from F-83 address to Khasra-83 address; and transfer of ownership of Om Sai to the appellant, were permissible in law and did not prejudice the eligibility of the unit from area-based exemption.

69. The findings to the contrary recorded in the impugned order are, therefore, unsustainable.

**Whether reliance could have been placed on the statements  
recorded under section 14 of the Central Excise Act**

70. The issue that arises for consideration is whether the statements recorded under section 14 of the Central Excise Act can be considered as relevant when the procedure contemplated under section 9D of the Central Excise Act has not been followed.

71. It is not in dispute that the appellant and other persons whose statements were recorded under section 14 of the Central Excise Act were not examined by the Additional Director General as was required to be done under section 9D of the Central Excise Act.

72. Section 14 of the Central Excise Act deals with power to summon persons to give evidence and produce documents. It provides that any Central Excise Officer empowered by the Central Government shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry, which such officer is making under the Central Excise Act.

73. Section 9D of the Central Excise Act deals with relevancy of statements under certain circumstances and it is reproduced below:

**"9D. Relevancy of statements under certain circumstances.**

**(1)** A statement made and signed by a person before any Central Excise Officer of gazette rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

**(2)** The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

74. It would be seen that section 14 of the Central Excise Act enables the concerned Officer to summon any person whose attendance he considers necessary to give evidence in any inquiry which such Officer is making. The statements of persons so summoned are then recorded under these provisions. It is these statements which are referred to in

section 9D of the Central Excise Act. A bare perusal of sub-section (1) of section 9D makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act, the provisions of sub-section (1) of section 9D shall apply to any proceedings under the Central Excise Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether, having regard to the circumstances of the case, the statement should be admitted in evidence, in the interest of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of persons making them would be of relevance for the purpose of proving the facts which they contain.

75. Section 138B of the Customs Act is almost identical to section 9D of the Central Excise Act.

76. It would now be appropriate to examine decisions interpreting section 9D of the Central Excise Act and section 138B of the Customs Act.

77. In the case of **M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**<sup>25</sup>, a Division Bench of this Tribunal examined the provisions of section 108 and 138B of the Customs Act as also the provisions of section 9D and 14 of the Central Excise Act which are similar to the provisions of section 108 and 138B of the Customs Act, and the observations are:

"28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of

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**25. Excise Appeal No. 51148 of 2020 decided on 01.04.2025 (Tri.-Del.)**

the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence.”

78. In **Ambika International vs. Union of India**<sup>26</sup> decided on 17.06.2016, the Punjab and Haryana High Court examined the provisions of section 9D of the Central Excise Act. The show cause notices that had been issued primarily relied upon statements made under section 14 of the Central Excise Act. It was sought to be contended by the Writ Petitioners that the demand had been confirmed in flagrant violation of the mandatory provisions of section 9D of the Central Excise Act. The High Court held that if none of the circumstances contemplated by clause (a) of section 9D(1) exist, then clause (b) of section 9D(1) comes into operation and this provides for two steps to be followed. The first is that the person who made the statement has to be examined as a witness before the adjudicating authority. In the second stage, the adjudicating authority has to form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice. The judgment further holds that in adjudication proceedings, the stage of relevance of a statement recorded before Officers would arise only after the statement is admitted in evidence by the adjudicating authority in accordance with the procedure contemplated in section 9D(1)(b) of the Central Excise Act. The judgment also highlights the reason why such an elaborative procedure has been provided in section 9D(1) of the Central Excise Act. It notes that a statement recorded during inquiry/investigation by an Officer of the department has a possibility of

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26. 2018 (361) E.L.T. 90 (P&H)

having been recorded under coercion or compulsion and it is in order to neutralize this possibility that the statement of the witness has to be recorded before the adjudicating authority. The relevant portions of the judgment are reproduced below:

**“15. A plain reading of sub-section (1) of Section 9D of the Act makes it clear that clauses (a) and (b) of the said sub-section set out the circumstances in which a statement, made and signed by a person before the Central Excise Officer of a gazetted rank, during the course of inquiry or proceeding under the Act, shall be relevant, for the purpose of proving the truth of the facts contained therein.**

16. Section 9D of the Act came in from detailed consideration and examination, by the Delhi High Court, in J.K. Cigarettes Ltd. v. CCE, 2009 (242) E.L.T. 189 (Del.). Para 12 of the said decision clearly holds that by virtue of sub-section (2) of Section 9D, the provisions of sub-section (1) thereof would extend to adjudication proceedings as well.

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**22. If none of the circumstances contemplated by clause (a) of Section 9D(1) exists, clause (b) of Section 9D(1) comes into operation. The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence.** Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.

(i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and

(ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

23. **There is no justification for jettisoning this procedure, statutorily prescribed by plenary parliamentary legislation for admitting, into evidence, a statement recorded before the gazetted Central Excise Officer, which does not suffer from the handicaps contemplated by clause (a) of Section 9D(1) of the Act. The use of the word "shall" in Section 9D(1), makes it clear that, the provisions contemplated in the sub-section are mandatory.** Indeed, as they pertain to conferment of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.

24. **The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/ investigation, by the gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion.** It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. **It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudication authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.**

25. **Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a gazetted Central Excise Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1).** The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. **In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during**

**investigation/inquiry before the gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1).** In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

26. In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination.

27. **It is only, therefore, -**

(i) **after the person whose statement has already been recorded before a gazetted Central Excise Officer is examined as a witness before the adjudicating authority, and**

(ii) **the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,**

**that the question of offering the witness to the assessee, for cross-examination, can arise.**

28. **Clearly, if this procedure, which is statutorily prescribed by plenary parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the CCE, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from**

**consideration, as they would not be relevant for proving the truth of the contents thereof."**

**(emphasis supplied)**

79. In **Hi Tech Abrasives Ltd. vs. Commissioner of C. Ex. & Cus., Raipur<sup>27</sup>** decided on 04.07.2018, the Chhattisgarh High Court also examined the provisions of section 9D of the Central Excise Act. The allegation against the appellants was regarding clandestine removal of goods without payment of duty and for this purpose reliance was placed on the statement of the Director of the Company who is said to have admitted clandestine removal of goods. The contention of the appellants before the High Court was that the statement of the Director could be admitted in evidence only in accordance with the provisions of section 9D of the Central Excise Act. After examining the provisions of sub-sections (1) and (2) of section 9D of the Central Excise Act, and after placing reliance on the judgment of the Punjab and Haryana High Court in **Ambika International**, the Chhattisgarh High Court held:

**"9.3 A conjoint reading of the provisions therefore reveals that a statement made and signed by a person before the Investigation Officer during the course of any inquiry or proceedings under the Act shall be relevant for the purposes of proving the truth of the facts which it contains in case other than those covered in clause (a), only when the person who made the statement is examined as witness in the case before the court (in the present case, Adjudicating Authority) and the court (Adjudicating Authority) forms an opinion that having regard to the circumstances of the case, the statement should be admitted in the evidence, in the interest of justice.**

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27. 2018 (362) E.L.T. 961 (Chhattisgarh)

9.4 **The legislative scheme, therefore, is to ensure that the statement of any person which has been recorded during search and seizure operations would become relevant only when such person is examined by the adjudicating authority followed by the opinion of the adjudicating authority then the statement should be admitted. The said provision in the statute book seems to have been made to serve the statutory purpose of ensuring that the assessee are not subjected to demand, penalty interest on the basis of certain admissions recorded during investigation which may have been obtained under the police power of the Investigating authorities by coercion or undue influence.**

9.5 **\*\*\*\*\* The provisions contained in Section 9D, therefore, has to be construed strictly and held as mandatory and not mere directory.** Therefore, unless the substantive provisions contained in Section 9D are complied with, the statement recorded during search and seizure operation by the Investigation Officers cannot be treated to be relevant piece of evidence on which a finding could be based by the adjudicating authority. A rational, logical and fair interpretation of procedure clearly spells out that before the statement is treated relevant and admissible under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the adjudicating authority is obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. **Therefore, we would say that even mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice. The rigor of this provision, therefore, could not be done away with by the adjudicating authority, if at all, it was inclined to take into consideration the statement recorded earlier during investigation by the Investigation officers.** Indeed, without examination

of the person as required under Section 9D and opinion formed as mandated under the law, the statement recorded by the Investigation Officer would not constitute the relevant and admissible evidence/material at all and has to be ignored. **We have no hesitation to hold that the adjudicating officer as well as Customs, Excise and Service Tax Appellate Tribunal committed illegality in placing reliance upon the statement of Director Narayan Prasad Tekriwal which was recorded during investigation when his examination before the adjudicating authority in the proceedings instituted upon show cause notice was not recorded nor formation of an opinion that it requires to be admitted in the interest of justice.** In taking this view, we find support from the decision in the case of *Ambica International v. UOI* rendered by the High Court of Punjab and Haryana.”

**(emphasis supplied)**

80. In **M/s. Drolia Electrosteel P. Ltd. vs. Commissioner, Customs, Central Excise & Service Tax, Raipur**<sup>28</sup> decided on 30.10.2023, a Division Bench of the Tribunal examined the provisions of section 9D of the Central Excise Act and after placing reliance upon the decision of the Punjab and Haryana High Court in **Jindal Drugs Pvt. Ltd. vs. Union Of India**<sup>29</sup>, observed that if the mandatory provisions of section 9D(1)(b) of the Central Excise Act are not followed, the statements cannot be used as evidence in proceedings under Central Excise Act. The relevant portions of the decision of the Tribunal are reproduced below:

“14. Evidently, the statements will be relevant under certain circumstances and these are given in clauses (a) and (b) of subsection (1). There is no assertion by either side that the circumstances indicated in (a)

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**28. Excise Appeal No. 52612 of 2018 decided on 30.10.2023**  
**29. 2016 (340) E.L.T. 67 (P & H)**

existed in the case. **It leaves us with (b) which requires the court or the adjudicating authority to first examine the person who made the statement and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence. Of course, the party adversely affected by the statement will have to be given an opportunity to cross examine the person who made the statement but that comes only after the statement is, in the first place, after examination by the adjudicating authority, admitted in evidence.** This has not been done in respect of any of the 35 statements. Therefore, all the statements are not relevant to the proceedings.

15. **It has been held in a catena of judgments including Jindal Drugs Pvt. Ltd. versus Union Of India [2016 (340) E.L.T. 67 (P&H)] that section 9D is a mandatory provision and if the procedure prescribed therein is not followed, statements cannot be used as evidence in the proceedings under Central Excise Act. \*\*\*\*\***

16. Therefore, the 35 statements relied upon in the SCN are not relevant and hence also not admissible.”

**(emphasis supplied)**

81. It is, therefore, not possible to accept the contention of the learned special counsel for the department that it was not necessary in law for the adjudicating authority to examine the persons whose statements were recorded under section 14 of the Central Excise Act. Section 9D of the Central Excise Act deals with all persons whose statements have been recorded under section 14 of the Central Excise Act and, therefore, it is also not possible to accept the contention of the learned special counsel appearing for the department that the appellant was not required to be examined by the Additional Director General under section 9D of the Central Excise Act.

82. In this view of the matter, the Additional Director General could not have placed reliance upon the statements made by persons under section 14 of the Central Excise Act to hold that the demand of central excise duty should be confirmed with interest.

**Penalty upon the appellant under rule 25 of the Central Excise Rules**

83. Penalty under rule 25 of the Central Excise Rules could also not have been imposed upon the appellant as the appellant had been removed any goods in contravention of any of the provisions of the rules.

**Whether penalty under rule 26 of the Central Excise Rules could be imposed upon Jasraj Singh Kalra and Sarabjit Singh Kalra**

84. The next issue that arises for consideration is regarding imposition of penalties under rule 26 of the Central Excise Rules.

85. Learned counsel for the appellant submitted that the impugned order does not confiscate the goods nor is there any finding that the goods are liable to confiscation and only while imposing penalty under rule 26 of the Central Excise Rules it has been stated that penalty has been imposed under rule 26 of the Central Excise Rules since the goods are liable to confiscation.

86. Learned special counsel appearing for the department, however, supported the imposition of penalties under rule 26 of the Central Excise Rules.

87. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department on the imposition of penalty under rule 26 of the Central Excise Rules

have been considered. In order to appreciate the contentions, it would be appropriate to reproduce rule 26 of the Central Excise Rules. They are as follows:

**"26. Penalty for certain offences**

**(1)** Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater:

PROVIDED that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded."

88. It clearly transpires from the impugned order that there is no discussion in the order that the goods are liable to confiscation and it is only while imposing penalties under rule 26 of the Central Excise Rules that it has been observed that the goods are liable to confiscation. There has to be a discussion and a finding that the goods are liable to confiscation. In the absence of such a finding penalties under rule 26 of the Central Excise Rules could not have been imposed. This is clear from a bare perusal of rule 26(1) of the Central Excise Rules.

89. The view that has been taken finds support from the decision of the Tribunal in **Shri Ramesh Garg, Chairman of M/s K.S. Oil Ltd. vs. Commiissioner, CGST, Customs & Central Excise**<sup>30</sup> and the relevant portion of the order is reproduced below:

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**30. Excise Appeal No. 51760 of 2017 decided on 09.12.2024**

"5. In the impugned order, goods have not been confiscated nor have any goods been held liable to be confiscated. We, therefore find, the essential ingredient to impose penalty under Rule 26, namely, confiscation of the goods or goods are liable for confiscation, has not been fulfilled in this case. Therefore, the penalty could not have been imposed under Rule 26."

90. In this view of the matter, penalties under rule 26 of the Central Excise Rules could not have been imposed.

### **Conclusion**

91. The confirmation of demand of central excise duty with interest and penalty after invoking the extended period of limitation contemplated under section 11A(4) of the Central Excise Act cannot be sustained and is set aside. The imposition of penalty under rule 26 of the Central Excise Rules upon Jasraj Singh Kalra and Sarabjit Singh Kalra cannot also be sustained and is set aside.

### **Order**

92. Thus, for all the reasons stated above, the impugned order dated 31.01.2025 passed by the Additional Director General is set aside and all the three appeals are allowed.

**(Order pronounced on 29.04.2026)**

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

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