CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70196 of 2026

(Arising out of Order-in-Appeal No.221-ST/APPL/LKO/2025 dated 04/07/2025 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s DK Infosolutions Pvt. Ltd., **.....Appellant**
(10/128, Indira Nagar, Lucknow-226016)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow **....Respondent**

(7A, Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Arun Srivastava, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70222/2026

DATE OF HEARING : 29 June, 2026
DATE OF PRONOUNCEMENT : 08 July, 2026

SANJIV SRIVASTAVA:

This appeal is directed against ORDER-IN-APPEAL No. 221-ST/APPL/LKO/2025 of the Commissioner (Appeal) Customs, Good & Service Tax and Central Excise Lucknow by the impugned order the appeal file by the appellant against order in original No 96/DC/HQ/LKO-III/ST/2023-24 dated 28.03.2024 of Deputy Commissioner (HQ), CGST & C Ex, Commissionerate Lucknow.

2.1 Appellant is engaged in providing services under the category of Service Sector [IT. enabled services, BPO service pro" and is registered having Registration No.AAECD0416CSD001.

2.2 On the basis of third party information received from the Income Tax department for the financial year 2016-17, it was observed that appellant has receipts towards the provisions of services as follows:

S.No.	Description	Amount (In Rs.)
1.	Amount paid 194C, 1941a, 194lb, 194J,194H (26 AS)	3164563/-
2.	Sale of Services ITR	3481019/-

2.3 To enquire investigate into the receipts and payment of service tax against these receipts, letter dated 24.02.2021 and reminder letter 19.03.2021 and 31.08.2021 were written to the appellant aking them to furnish Balance Sheet. Service Tax returns, Ledger Account, Bank Statement, Copies of Invoices for the Financial Year 2016-17 to Financial Year 2017-18 (April 17 to June 17) for verification of their Service Tax liability. In the absence of any reply a summon dated 09.09.2021 was issued.

2.4 Appellant did not provided any documents viz. invoice, agreement etc. therefore, it is not possible to determine the benefit of any abatement or exemption, available if any. As such, the party is liable to pay Service Tax on the gross receipts as per the information available with this office. Further Appellant did not file any ST-3 Returns for the Financial Year 2016-17. Thus the service tax short/ not paid by the appellant for the Financial Year was determined on the basis of the information provided by the Income Tax authority as indicated in the table below:

Financial Year	Receipts as per		Higher of (2) & (3)	Service tax (inclusive of all cess)	
	26AS	ITR		@%	Payable
1	2	3	4	5	6
2016-17	3164563	3481019	3481019	15.00	522153

2.5 The appellant willfully suppressed their assessable value from the department despite having considerable amount against the service provided by them. The party on all occasions when required neither furnished the desired documents nor on their own have appropriately discharged their Service tax liability which had accrued upon him/ them on the value of taxable

services as indicated in the 3rd Party information provided by the Income Tax Department. This indicated that the appellant suppressed material facts and contravened the provisions of the Finance Act, 1994 and the Rules of the Service Tax Rules, 1994 with intent to evade payment of Service Tax despite being engaged in providing taxable services and receiving payments. Had the Department not initiated the inquiry against the party on the basis of the third party information, the said non-payment of service tax could not have been unearthed. Therefore, extended period of limitation of five years is invokable in this case. Therefore, proviso to Section 73(1) of the Finance Act 1994 along with Section 75 of the Act for appropriate interest read with Section 142, Section 173 and Section 174 of CGST Act, 2017 is invokable in this case. or CGO Complex Aliganj, Lucknow within thirty days of receipt of this Notice as to why:-

2.6 A show cause notice dated 14,10.2021 was issue to the appellant asking them to show cause as to why:

(i) *The Service Tax amounting to Rs.522153/- (Rupees Five Lakh Twenty Two Thousands One Hundred Fifty Three only)including Education Cess, Secondary & Higher Education Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.*

(ii) *The due interest on the amount of Service Tax mentioned at (i) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017.*

(iii) *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for failure to pay Service Tax & suppressing the facts and contravening provisions or rules with intent to evade payment of Service Tax.*

(iv) *Penalty should not imposed under Section 77(1)(b) of the Finance Act, 1994 read with Section 142, Section 173 and*

Section 174 of CGST Act, 2017 for not maintaining the proper records.

(v) Penalty should not be imposed upon them under Section 77(1)(C)(i)(ii)(iii) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for not furnishing the information before a Central Excise officer.

(vi) Penalty should not be imposed upon them under Section 77(1)(d) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for fails to pay the Service tax electronically.

(vii) *Penalty/Late fee under Section 77(2) of the Finance Act, 1994 read with Section 142 & 174 of CGST Act, 2017 for non filing of ST-3 returns.*

2.7 The appellant submitted their defence reply vide letter dated 12.12.2023 claiming that their service were exempted under Sl No 9 of the Notification No 25/2012-ST dated 20.06.2012. They also attended the personal hearing on 12.12.2023. Taking into account the submissions made the show cause notice was adjudicated as per order in original referred in para 1 above holding as follows:

"Order

- *I confirm the demand of service tax of Rs. 522153 under Section 73.*
- *I confirm the demand of interest on the above amount of Rs. 522153 under Section75.*
- *I impose penalty of Rs. 522153 under Section 78.*
- *I impose penalty of Rs. 6000 under Section 77(1) (b).*
- *I impose penalty of Rs. 6000 under Section 77(1) (c).*
- *I impose penalty of Rs. 6000 under Section 77(1) (d).*
- *I impose penalty of Rs. 10000 under Section 77(2)."*

2.8 Aggrieved appellant filed an appeal before Commissioner (Appeal) which has been dismissed as per the impugned order referred in para 1 above.

2.9 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Arun Srivastava, Advocate for the appellant and Ms Chitra Srivastava, Authorized Representative for the revenue.

3.2 Counsel for the appellant submitted that:

- the appellant entertained bonafide belief that services provided by them were exempt from payment of service tax.
- The information relied upon by the revenue viz balance sheet and the ITR etc., was available on their website and for that reason they cannot said to have suppressed any facts from the department.
- The demand is barred by limitation. Reliance placed on the following decisions:
    - Pushpam Pharmaceuticals Company [1995 (78) ELT 401 (SC)];
    - Padmini Products [1989 (43) ELT 195 (SC)];
    - Chemphar Drugs and Liniments [1989 (40) ELT 276 (SC)];
    - Balajee Machinery [2022 (66) GSTL 440 (T-Kolkata)
    - Antares Services Pvt. Ltd. [2024 (15) CENTAX 492 (T-Chennai)

3.3 Authorized representative re-iterated the findings recorded in the impugned order.

3.4 During the arguments specific query was made to the counsel for appellant after showing the Rule 5 of Service Tax Rules, 1994 as to whether any declaration in respect of the documents maintained by them on their web site was made to the jurisdictional authorities. Counsel agreed to file a written note after enquiring from the appellant. Along with the e-mail dated 02.07.2026 counsel responded by attaching the reply stating as follows:

> *"The captioned Appeal was listed for hearing on 29/06/26 wherein the undersigned appeared before your honor with the facts of the case. During the course of arguments the undersigned also relied upon various judgments of Hon'ble*

Supreme courts and Tribunals to strengthen the argument that there is no positive action on the part of the Appellant so as to lead to the conclusion that there is suppression etc. and therefore extended period of limitation is not invokable merely on the basis of third party information gathered by the Department. Further it was also argued that the Balance Sheets, ITR etc. are public documents and the extended period of limitation cannot be invoked merely on the basis of this information.

During the course of argument a query was raised by the Hon'ble bench as to whether a list of documents as mentioned under Rule 5 of the Service Tax Rules has been provided to the Department. The undersigned was asked to check this fact from the Appellant and respond back.

The undersigned has checked with the appellant and submits that the list under Rule 5 of the Service Tax Rules has not been provided to the Department. The appellant was under the bonafide belief that being a Private Ltd. Company, the Balance sheets, ITR etc. are already available on the public domain (being Public documents).

The undersigned further reiterates that the appellant was always under a bonafide belief that the services covered under serial No 9 of the Mega Exemption Notification No 25/2012 dated 20.06.12 and thus suppression of facts etc. with intent to evade the payment of tax is absent in the present case. Therefore the demand is liable to be set aside on the ground of limitation etc."

4.1 I have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

5. DISCUSSION & FINDINGS:

I have carefully gone through the case records, grounds of appeal, and the appellant's submissions, and find that the sole issue for determination is whether the appellant is

entitled to claim exemption under the Mega Exemption Notification in respect of the income declared in the Income Tax Return for the financial year 2016-17.

5.1 In the appeal, the appellant has contended that the services provided are exempt from service tax under the Mega Exemption Notification, asserting that they operate under a tripartite contract involving Mahindra & Mahindra Limited and various educational institutions to deliver IT software services for conducting examinations. To support this claim, they have submitted copies of the relevant agreements with the service recipients.

However, a plain reading of the agreement with BAJA SAE INDIA (Society of Automobile Engineers India) indicates that the appellant was assigned to prepare test papers for final-year engineering students-covering Aptitude and Technical Tests along with related project activities. Similarly, the agreement with Mahindra & Mahindra Limited reveals that the appellant was tasked with designing a computer based training module on the company's code of conduct.

Based on these documents, it is evident that the agreements are bilateral in nature and executed for specific services, rather than constituting a tripartite arrangement with schools and colleges as claimed by the appellant for seeking exemption from service tax. Further, on the issue of exemption from service tax, I observe that exemption is available in terms of Para 9 (b) of the said notification for following services-

> *"9. Services provided-*
>
> *(b) to an educational institution, by way of, -*
>
> *(i) transportation of students, faculty and staff;*
>
> *(ii) catering, including any mid-day meals scheme sponsored by the Government;*

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;"

Upon analyzing the facts of the case in light of the legal provisions, it is observed that the service recipients in the present case are neither educational institutions nor do the services rendered by the appellant fall under any of the categories of exempted services specified herein above.

5.2 I further note from the impugned order that the appellant has declared an income of 234,81,019/- from services in his Income Tax Return (ITR). However, as seen from the following table, the appellant has not provided any explanation or submission regarding an amount of ₹3,16,456/-.

Income from services as per ITR	*Name of the service recipients whose agreement is submitted*	*Amount in Rupees as per Form 26AS*	*Differential Amount*
	SAE INDIA	*539563*	
	MAHINDRA & MAHINDRA LTD.	*2625000*	
34,81,019	*sum*	*31,64,563*	*3,16,456*

4.3 In the appeal or during the arguments there was not challenge to the demands on merits. Evidently and undisputedly from the facts available on records it is clear that appellant was providing these services not to any educational institution but was providing the services to commercial entities. The agreements record the above facts. The relevant paras from the agreements/ contracts are reproduced below:

A. Agreement with Mahindra and Mahindra.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non disclosure Agreement (the "Agreement") is made and entered into on this 19th day of September. 2016

BY AND BETWEEN

***Mahindra And Mahindra Limited**, a company incorporated under the laws of India, and having its registered office at Gateway Building. Apollo Bunder, Mumbai 400001, here in after referred to as the **"Disclosing Party"**, (which expression shall unless it be repugnant to the context or meaning there of shall mean and include its successors and assigns) of the **One Part**:*

AND

***D K Infosolutions Private Limited**, a company incorporated under the Companies Act 1956 and having its registered office at 10/128 Indira Nagar, Lucknow 226012 (Uttar Pradesh), hereinafter referred to as the **"Receiving Party"**, (which expression shad unless it be repugnant to the context or meaning there of shall mean and include its successors and permitted assigns) of the Other Part.*

Hereinafter, the Disclosing Party and the Receiving Party shall be individually referred Party and collectively as the "Parties").

WHEREAS, the Disclosing Party is inter alia engaged in business of manufacture of utility vehicles and parts and accessories thereof and farm equipment;

AND WHEREAS, the Receiving Party is engaged in the business of providing consultation & development of customized digital learning solutions;

*AND WHEREAS, the Parties wish to design a Computer Based Training module on the Code of Conduct for Mahindra & Mahindra Limited (hereinafter referred to as the **"Project"**);*

AND WHEREAS, for this purpose, the Disclosing Party is sharing the information which will be of strategic, proprietary and confidential nature, about its Code of Conduct

AND WHEREAS, the Parties recognize that careful protection and non-disclosure by the Receiving Party of the

Confidential Information (as defined herein below) received from the Disclosing Party is of utmost importance to the Disclosing Party.

AND THEREFORE, in consideration of the promises made herein, the Disclosing Party agrees to disclose and the Receiving Party agrees to obtain and protect certain confidential information under the terms and conditions hereinafter appearing."

From perusal of the above agreement there is no room for any doubt that services provided by the appellant to M/s Mahindra and Mahindra were not in nature of the services covered by (iv) of S No 9 of the Notification No 25/2012-ST dated 20.06.2012. These services were not provided to any educational institution and were not in relation to conduct of any examination. There is also no room for any doubt about the non admissibility of exemption in respect of these services in view of the specific recitations in the agreement itself.

B. Agreement with BAJA SAEINDIA.

THIS AGREEMENT ("Agreement") is made and entered into on this the ***1st Day of February 2016, Two Thousand and Sixteen (01/02/2016)****, BY AND BETWEEN:*

DK INFOSOLUTIONS PRIVATE LIMITED*, a company registered under the Companies Act, v1956, having its office at 10/128, INDIRA NAGAR LUCKNOW (UP) PIN 226016*

and running its operations under the brand name "X-JAAM" (hereinafter referred to as "X-JAAM", which term shall, where the context permits, mean and Include its successors and permitted assigns), of the ONE PART;

AND

BAJA SAEINDIA (SOCIETY OF AUTOMOBILE ENGINEERS INDIA)*, having its office at,* ***BAJA SAEINDIA SECRETARIAT, SAE INDORE DIVISION, C/O PRESTIGE INSTITUTE OF ENGINEERING AND***

SCIENCE, SCHEME NO. 74-C, SECTOR D, VIJAY NAGAR, INDORE (MP) PIN 452010

(here in after referred to as BAJA SAEINDIA, which term shall, where the context permits, mean and include, its successors and permitted assigns), of the OTHER PART.

WHEREAS:

1. ***X-JAAM is, inter alia, engaged in the business of providing*** *ONLINE ASSESMENT services to Corporates as well as education institutions for hiring and various other internal assessment purposes.*

2. ***BAJA SAEINDIA is****, inter alia, engaged in the running a* ***SOCIETY OF AUTOMOBILE ENGINEERS****,*

3. ***BAJA SAEINDIA*** *desirous of utilizing the expertise and resources of X-JAAM for the benefit of its students based on the approach made* ***BAJA SAEINDIA*** *in this regard;*

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS UNDER:

1. X-JAAM DELIVERABLES

- *X-JAAM Assessment team will design the test matrix and share the same with BAJA SAEINDIA for necessary approval.*
- *Creation of final test (as mentioned in the ANNEXURES) on the basis of approved matrix and uploading of the same on X-JAAM Platform.*
- *X-JAAM team will create two (2) different test papers for the 4th year of Engineering Aptitude test & Technical Test.*
- *X-JAAM will create a special Psychometric Test for the top 500 evaluated students after the first two rounds of evaluation.*
- *Deployment of one (1) Technical Consultant to the event at the venue location, for evaluation of the Infrastructure needed for online assessment. The Consultant will report at the venue location one day*

prior to the day of test and conduct a lab readiness program and ensure the complete process runs smoothly on the day of the test.

- *X-JAAM team will also provide one (1) dedicated Data Analyst to SAE India, who will support then in the complete process and co-ordinate with the on ground authorities. Analyst will also be responsible for co-coordinating with the assessment team for final test result analysis and preparation.*
- *Post evaluation and psychometric test, X-JAAM team will share the test scores with SAE India for deciding the final cut off list.*
- *The final cut off list will be used for preparing the copy of certificates. The same will be shared with BAJA SAEINDIA, The Certificates will be printed and posted to the candidates directly by X-JAAM, without any additional cost to BAJA.*
- *The Certificate format will be shared by BAJA, and the quality will be approved by BAJA SAE INDIA.*

2. BAJA SAEINDIA DELIVERABLES

- *Payment Terms*
  - *Contract validity period: 3 years (2016-2018)*
    - *SAE-BAJA 2016 INR 4.85 Loc 14.5% ST (year 2016)*
    - *SAE-BAJA 2017 INR 4.85 Lac 15.0% ST (year 2017)*
    - *SAE-BAJA 2018 INR 4.85 Lac 15.0% ST (year 2018)*
- *Backend Support*

  For smooth execution of the event and to ensure proper test integrity X-JAAM Team will deploy a ground team to support the BAJA SAEINDIA team on ground on the day of the event.

- *Terms and conditions:*

1. *Invoicing will be done yearly one time for services rendered throughout the year*
2. *The invoices are to be cleared within 15 days of completion of all formalities as stated above and Inclusive of BAT Certificates. A signed hardcopy of the Invoice will be sent to the BAJA SAEINDIA. A scanned copy of the same will also be emailed.*

From this agreement also it is evident that the services provided by the appellant were not to any education institution though they were for conduct of examination. However the fact that these services were not exempt from payment of services as being claimed by the appellant, is evident from the payment terms recorded in the agreement which provide for the service tax payment. When the agreement itself provided for the payment of service tax there cannot be any dispute that service tax was leviable in respect of these services and was being collected by the appellant form its clients. It also do not leaves any doubt or bonafide belief that could be pleaded by the appellant.

4.4 Thus I have no hesitation in endorsing the findings recorded by the authorities below. From the impugned order and the order in original it is evident that these orders have been passed considering the submissions made by the appellant in their defence. The appellant has never raised the ground of limitation or bonafide in any of the proceedings before the lower authorities even though the demand was made by invoking the extended period of limitation as per proviso to Section 73 (1) of the Finance Act, 1994 after making a case of suppression of facts with intent to evade payment of service tax. In case of Modern Engineering Plastics Pvt. Ltd. [2009 (243) E.L.T. 289 (Tri. - Chennai)] Chennai bench held as follows:

> ***"5.*** *We are also in agreement with the finding that MEPP was guilty of suppression. The argument that they were under the bona fide belief that the other two units were independent units merits rejection, as they have not been*

able to explain the basis of such belief. The plea that RT-12 returns were being filed regularly by MFE and EPI, and hence clearance by the two units was within the knowledge of the department is rejected for the reason that this is a new plea which was not raised either in the reply to the Show Cause Notice or in the appeal before the lower appellate authority and such plea has not been raised even in the present appeal and the plea also remains unsubstantiated. Therefore, MEPP's intention to evade payment of duty is clearly evident and invocation of the proviso to Section 11A of the Central Excise Act, 1944, for the purpose of demand of duty for the extended period is justified. For the same reason, penalty upon MEPP is also warranted."

Affirming this order Madras High Court [Order dated 02.01.2026 in CMA No. 3435 of 2009] held as follows:

"2. The questions raised for adjudication relates solely to the non consideration of the aspect of limitation by the Tribunal and read thus:

(1) Whether the 1st respondent is right in rejecting the legal plea regarding department's knowledge and time bar by holding that this plea was not raised before the lower authorities?

(2) *Whether the 1st respondent is right in rejecting the above plea by holding that the same was not raised even in the appeal filed before it, but only during the hearings?'*

12. Normally, limitation, if it were to be a pure question of law may be raised at any stage of the proceeding, and it would not have been fatal for either the Tribunal or even this Court, at the stage of appeal on a substantial question of law, to consider the question of limitation for the first time. The only caveat is that all necessary facts to determine that question are available on record. In the present case, the necessary facts, to determine as to

whether invocation of larger period of limitation is correct or otherwise, are unavailable.

13. Section 11A deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. The period of limitation provided for such recovery is one year from the relevant date, being the date of short levy/non-levy. However, in cases where the Revenue is able to establish the ingredients of a) fraud, b) collusion, c) wilful misstatement, 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, the Department has in its arsenal, an extended period of 5 years of limitation from the relevant date, to serve a notice for assessment.

14. It is the case of the assessee that since manufacturing activities have been carried out in the appellant unit and exemption from Duty had been by MFE for the previous years, the Department was well aware of the existence of MFE. The ingredients of Section 11A(4), that provides for a larger limitation, had not been established.

15. A compilation of 34 documents including registration certificates and returns filed under the Income Tax Act have been placed before us. We are unaware as to whether any of these documents have been produced before the authorities as there is no certification to the effect that these documents form part of the records.

16. Be that as it may, we find from those records that relevant form has been filed by MFE before the Assistant Collector of Central Excise, Salem Division, Salem-7 on 26.04.1991 claiming exemption as an SSI unit for the period 1990-91. However, as far as EPI is concerned, there is only a registration certificate dated 03.02.1998 and nothing to indicate that EPI was in existence prior to its registration on the aforesaid date. Hence, we are unable to

accept, as a fact, the position that the Department was well aware of the existence of EPI and its activities.

17. This becomes a very relevant question of fact, one which is critical to determine the question of limitation, in this case thus, a mixed question of law and fact. Thus, and in the absence of necessary facts, we find nothing untoward in the conclusion of the Tribunal rejecting the plea of limitation raised for the first time before it, particularly in the absence of any supporting material. We answer the substantial questions of law in favour of the Department and against the assessee."

4.5 From the discussions it is evident that appellant has no ground also on limitation. They have in fact suppressed the agreements which were never produced before the authorities below even when called for by letters dated 24.02.2021, 19.03.2021 & 31.08.2021 and summon dated 09.09.2021. Further I also observe that even the argument made by the appellant that all their balance sheet and ITR were public documents available on their web site also do not support their case. They have admitted that they had never disclosed about these documents being available on their website to the jurisdictional authorities as required in terms of Rule 5 of Service Tax Rules, 1994, reproduced below:

"5. Records.

(1) The records including computerised data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.

(2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-

(a) providing of any service,

(b) receipt or procurement of input services and payment for such input services;

(c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

(d) other activities, such as manufacture and sale of goods, if any.

(ii) all other financial records maintained by him in the normal course of business;

(3) All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.]

(4) Records under this rule may be preserved in electronic form and every page of the records so preserved shall be authenticated by meand sof a digital signature.

(5) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records."

4.6 Thus the decisions relied upon by the appellant are clearly distinguishable and will not support the case of appellant where there is clear case of suppression with intent to evade payment of service.

4.7 As I upholding the demand made by invoking the extended period of limitation penalty under Section 78 of Finance Act, 1994 is natural corollary as held by the Hon'ble Apex Court in the case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)] holding as follows:

"17. The main body of Section 11AC lays down the conditions and circumstances that would attract penalty and the various provisos enumerate the conditions, subject to which and the extent to which the penalty may be reduced.

18. One cannot fail to notice that both the proviso to sub-section 1 of Section 11A and Section 11AC use the same expressions : "....by reasons of fraud, 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,...". In other words the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty. It, therefore, follows that if the notice under Section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under Section 11A(2) there is a legally tenable finding to that effect then the provision of Section 11AC would also get attracted. The converse of this, equally true, is that in the absence of such an allegation in the notice the period for which the escaped duty may be reclaimed would be confined to one year and in the absence of such a finding in the order passed under Section 11A(2) there would be no application of the penalty provision in Section 11AC of the Act. On behalf of the assessees it was also submitted that Sections 11A and 11AC not only operate in different fields but the two provisions are also separated by time. The penalty provision of Section 11AC would come into play only after an order is passed under Section 11A(2) with the finding that the escaped duty was the result of deception by the assessee by adopting a means as indicated in Section 11AC.

19. From the aforesaid discussion it is clear that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section.

20. At this stage, we need to examine the recent decision of this Court in Dharamendra Textile (supra). In almost every case relating to penalty, the decision is referred to on behalf of the Revenue as if it laid down that in every case of non-payment or short payment of duty the penalty clause would automatically get attracted and the authority

had no discretion in the matter. One of us (Aftab Alam, J.) was a party to the decision in Dharamendra Textile and we see no reason to understand or read that decision in that manner. In Dharamendra Textile the court framed the issues before it, in paragraph 2 of the decision, as follows :

> *"2. A Division Bench of this Court has referred the controversy involved in these appeals to a larger Bench doubting the correctness of the view expressed in Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai & Anr. [2007 (8) SCALE 304]. The question which arises for determination in all these appeals is whether Section 11AC of the Central Excise Act, 1944 (in short the "Act') inserted by Finance Act, 1996 with the intention of imposing mandatory penalty on persons who evaded payment of tax should be read to contain mens rea as an essential ingredient and whether there is a scope for levying penalty below the prescribed minimum. Before the Division Bench, stand of the revenue was that said section should be read as penalty for statutory offence and the authority imposing penalty has no discretion in the matter of imposition of penalty and the adjudicating authority in such cases was duty bound to impose penalty equal to the duties so determined. The assessee on the other hand referred to Section 271(1)(c) of the Income Tax Act, 1961 (in short the IT Act') taking the stand that Section 11AC of the Act is identically worded and in a given case it was open to the assessing officer not to impose any penalty. The Division Bench made reference to Rule 96ZQ and Rule 96ZO of the Central Excise Rules, 1944 (in short the "Rules') and a decision of this Court in Chairman, SEBI v. Shriram Mutual Fund & Anr. [2006 (5) SCC 361] and was of the view that the basic scheme for imposition of penalty under section 271(1)(c) of IT Act, Section*

11AC of the Act and Rule 96ZQ(5) of the Rules is common. According to the Division Bench the correct position in law was laid down in Chairman, SEBI's case (supra) and not in Dilip Shroff's case (supra). Therefore, the matter was referred to a larger Bench."

After referring to a number of decisions on interpretation and construction of statutory provisions, in paragraphs 26 and 27 of the decision, the court observed and held as follows :

"26. In Union Budget of 1996-97, Section 11AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given.

"27. Above being the position, the plea that the Rules 96ZQ and 96ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff's case (supra) was not correctly decided but Chairman, SEBI's case (supra) has analysed the legal position in the correct perspectives. The reference is answered.....".

21. From the above, we fail to see how the decision in Dharamendra Textile can be said to hold that Section 11AC would apply to every case of non-payment or short payment of duty regardless of the conditions expressly mentioned in the section for its application.

22. There is another very strong reason for holding that Dharamendra Textile could not have interpreted Section 11AC in the manner as suggested because in that case that was not even the stand of the revenue. In paragraph 5 of the decision the court noted the submission made on behalf of the revenue as follows :

"5. Mr. Chandrashekharan, Additional Solicitor General submitted that in Rules 96ZQ and 96ZO there is no reference to any mens rea as in section 11AC where mens rea is prescribed statutorily. This is clear from the extended period of limitation permissible under Section 11A of the Act. It is in essence submitted that the penalty is for statutory offence. It is pointed out that the proviso to Section 11A deals with the time for initiation of action. Section 11AC is only a mechanism for computation and the quantum of penalty. It is stated that the consequences of fraud etc. relate to the extended period of limitation and the onus is on the revenue to establish that the extended period of limitation is applicable. Once that hurdle is crossed by the revenue, the assessee is exposed to penalty and the quantum of penalty is fixed. It is pointed out that even if in some statues mens rea is specifically provided for, so is the limit or imposition of penalty, that is the maximum fixed or the quantum has to be between two limits fixed. In the cases at hand, there is no variable and, therefore, no discretion. It is pointed out that prior to insertion of Section 11AC, Rule 173Q was in vogue in which no mens rea was provided for. It only stated "which he knows or has reason to believe". The said clause referred to wilful action. According to learned counsel what was inferentially provided in some respects in Rule 173Q, now stands explicitly provided in Section 11AC. Where the outer limit of penalty is fixed and the statute provides that it should not exceed a particular limit, that itself indicates scope for discretion but that is not the case here."

23. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or

otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-section (2) of Section 11A. That is what Dharamendra Textile decides."

4.8 I also uphold the penalties imposed upon the appellant under Section 77 (1)(b), 77 (1)(b). 77 (1)(b) and 77 (2) of the Finance Act, 1994 following the decision of the Hon'ble Supreme Court in case of Gujarat Travancore Agency [1989 (42) ELT 350 (SC)] holding as follows:

4. Learned Counsel for the assessee has addressed an exhaustive argument before us on the question whether a penalty imposed under Section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the proceedings by way of penalty under Section 271(1)(a) of the Act are quasi criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under Section 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what it intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of

Section 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum Volume 85, page 580, Paragraph 1023 :

> *"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."*

5. Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income Tax Officer under Section 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67.

4.8 I uphold the demand of interest which is necessary corollary upon upholding the demand for service tax following decision of Hon'ble Bombay High Court in case of Valecha Engineering Limited [2010 (249) E.L.T. 167 (Bom.)] wherein following was held:

> *30 ……..*
>
> *The law as now settled is that the charging Section for Customs Duty is Section 12 whereas the charging Section in so far as the Customs Tariff Act is Section 3. However, relevant for our discussion would be the Sections 3, 3A and their relevant sub-sections. Would a construction of these provisions, result in holding that interest be treated as having been incorporated under the provisions of the Customs Tariff Act, 1975. The provision for interest as now settled is a part of the machinery provisions. It by itself is not penal in character, but is compensatory in nature. In other words it re-compensates the State on failure to pay duty at the rate of interest as determined by the Board. Two constructions flow. One the rule of strict construction it being a taxing statute and the other not a strict construction if it be part of the machinery provisions.*
>
> *We may now refer to Section 28AA. Under Section 28AA interest becomes automatically payable on failure by the assesee to pay duty as assessed within the time as set out therein. Similarly, under Section 28AB on duty being ascertained as under Section 28 interest is payable by operation of law. In a case, therefore, where duty has been ascertained as due under the Customs Tariff Act, 1975 by the machinery under the provisions of the Customs Act if the provisions of Sections 3 and 3A are read in their proper context, then Section 28 would first be attracted. No interest will be payable under Section 28AB if the predicates of Section 28 are not satisfied. Therefore, in a case of non-payment of duty of the payment or erroneous refund even under the provisions of the Customs Tariff Act, 1975, Section 28 would be attracted*

and once duty is ascertained under Section 28 interest becomes payable under Section 28AB as the machinery provisions of the Customs Act are incorporated into the Customs Tariff Act and the provision for interest is part of the machinery provisions though at the same time Section 28AB is a substantive provision for payment for interest under the Customs Act. The rule of strict construction must be rejected. Interest is compensatory for failure to pay duty on the date due and payable. Therefore, once duty is determined considering the expression, the provisions of the Customs Act shall as far as may apply Section 28AB would be applicable. The amendment of the 18th April, 2006 only clarifies the position.

Hon'ble Supreme Court in case of Navayuga Engineering Co. Ltd. [2024 (390) E.L.T. 3 (S.C.)] held as follows:

"10.1 …… We have held that Section 28 would come into operation for assessing and determining the duty and other charges payable with respect to goods redeemed under Section 125(2). Once Section 28 applies for determination of duty obligation arising under Section 125(2), the interest on delayed payment of duty arises under Section 28AB. The said provision obligates payment of interest in addition to the duty. We thus answer the last issue by holding that the interest liability under Section 28AB is also attracted."

4.9 I do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-08 July, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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