CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Excise Appeal No. 30482 of 2019
With Application No. E/CROSS/30568/2019
(Arising out of Order-in-Original No.GUN-EXCUS-000-COM-21-18-19-CE dt.24.01.2019 passed by Commissioner of Central Tax, Guntur)

Commissioner of Central Tax
Guntur - GST **……Appellant**
PB No.331, CR Building, Kannavari Thota,
Guntur, Andhra Pradesh – 522 004

VERSUS

M/s Eco-Care Building Products Pvt Ltd
Sy No.136/3, Konakanchi (V), Penuganchiprolu (M),
Krishna Dist., Andhra Pradesh – 521 178 **……Respondent**

Appearance
Shri V. Srikanth Rao, AR for the Appellant.
Dr. T. Satya Murthy, Advocate for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30466/2026

Date of Hearing: 21.07.2026
Date of Decision: 25.08.2026

[Order per: A.K. JYOTISHI]

The Department has come in appeal against Order-in-Original dt.24.01.2019 passed by the Commissioner, whereby the Commissioner has confirmed the demand of Rs.3,08,785/- for the period November, 2015 to March, 2017, as against demand of Rs.2,55,97,224/- for the period November, 2012 to March, 2017, vide SCN dt.27.11.2017. The department is aggrieved with the dropping of the demand of Rs.69,31,506/- pertaining to the period November, 2015 to March, 2017 and is also aggrieved by the fact that the adjudicating authority has not upheld the invocation of extended period in the facts of the case, as also imposition of penalty under section 11AC of the Central Excise Act, 1944.

2. M/s Eco-Care Building Products Pvt Ltd (hereinafter referred to as the respondent) have also filed Cross Objections, vide Application No. E/CROSS/30568/2019, pursuant to the appeal filed by the department.

3. The grounds of appeal, on which the department has filed the appeal, are as under:

(i) Non-examination of purchase orders placed by all the major customers of the respondent.

(ii) Setting aside of invocation of extended period is not proper and correct on the grounds of examination by audit.

(iii) Non-imposition of penalty under section 11AC by the adjudicating authority.

4. The brief facts of the case are that the respondents are engaged in the manufacture of 'fly ash bricks' and are supplying to various customers. The department, based on certain intelligence, asked for certain information from the respondents, which was furnished by them during the period September, 2016 to September, 2017. Based on the scrutiny of such records, the department also recorded statements of Deputy Manager (Finance & Accounts) of the respondent, as also that of Managing Director. Thereafter, it was felt that in view of certain terms and conditions of sale, the place of removal in respect of sales made by the respondents is the customer's premises and hence, exclusion of transportation and loading charges and non-payment of Central Excise duty thereon is not in conformity with the provisions under section 4 of the Central Excise Act, 1944. The department also invoked extended period for raising the demand primarily on the ground that they have suppressed non-inclusion of the cost of transportation and loading charges in the assessable value and the fact that the value of impugned goods declared by the respondent in ER1 returns filed by them did not include the element of freight and loading charges, thereby adopting incorrect assessable value and hence, certification given by them in the invoices appeared to be a willful misstatement of facts and suppression of facts with intent to evade payment of duty and further that but for current investigation conducted by the officers of the department going through various documents like purchase orders, invoices, etc., all the above facts would have gone unnoticed.

5. On adjudication, the adjudicating authority examined the grounds taken in the SCN for demanding differential duty, evidence on record and submissions of both sides. Thereafter, he proceeded to examine the issue as to whether based on given facts and evidence on record, as also judgments relevant to the issue, there is a requirement for inclusion of amount attributable to transportation and loading in the value or otherwise, for the purpose of discharging Central Excise duty. He also took note of the fact that the verification of purchase orders by the department has ascertained, inter alia, the following:

(i) The price agreed upon by the assessee is inclusive of duties/taxes, freight and loading charges;

(ii) The assessee is required to supply their goods i.e., Fly Ash Bricks by road, with a condition that any damage over and above the agreed percentage i.e., 2%/3% during the transit, will be borne by the assessees;

(iii) 100% payment against sales would be made only on delivery of the goods.

6. He also took into account that the presumption of the department was that since assessee has issued invoices incorporating details of value of goods, Central Excise duty, freight charges and service tax on freight charges, loading charges and computed VAT/CST to come to the conclusion that all sales are on FOR basis. He, thereafter, proceeded to examine the purchase orders as relied upon and available on record, based on which said conclusion was drawn by the department. His observation was that in most of the cases, the purchase orders indicate freight charges separately, as detailed below:

Sl.No.	Buyers name	PO No.	Date	Whether freight is indicated separately	Conclusion drawn on the basis of freight indication
1	East Coast Constructions	1010145/ 2100015166	30.11.2012	No	On FOR basis
		155	26.04.2013	No	On FOR basis
2	Lodha	4400016445	15.12.2012	No	On FOR basis
3	Manjeera Constructions	130	13.07.2012	No	On FOR basis
4	Manjeera Retails Holdings	252	07.01.2013	No	On FOR basis
		111	14.02.2017	No	On FOR basis
		215	08.06.2016	No	On FOR basis

5	My Home Constructions	4100004602	23.09.2013	No	On FOR basis
6	OmCon	259	07.05.2016	No	On FOR basis
7	Pacifica Projects	0219	03.03.2017	No	On FOR basis
8	Vijay Nirman Co.	06.12.2013	14.04.2012	No	On FOR basis
		09.12.2013	03.05.2012	No	On FOR basis
		207.12.13	03.06.2012	No	On FOR basis
9	Alliance	11.12.13	18.08.2012	Yes	Not on FOR basis
		39/13-14	28.10.2013	Yes	Not on FOR basis
10	B.E. Billimoria & Co.	1273	21.03.2012	Yes	Not on FOR basis
		1272	21.03.2012	Yes	Not on FOR basis
		1277	24.03.2012	Yes	Not on FOR basis
		1278	24.03.2012	Yes	Not on FOR basis
		1281	25.03.2012	Yes	Not on FOR basis
		1280	25.03.2012	Yes	Not on FOR basis
		1283	30.03.2012	Yes	Not on FOR basis
11	Bhavya Constructions	0	30.11.2012	Yes	Not on FOR basis
12	BL Kashyap & Sons Ltd.	1112/ 00014321	27.01.2012	Yes	Not on FOR basis
		1112/ 00014226	23.01.2012	Yes	Not on FOR basis
		1213/ 00000377	12.04.2012	Yes	Not on FOR basis
		1213/ 00002876	04.07.2012	Yes	Not on FOR basis
13.	EldiTechs	0	13.07.2015	Yes	Not on FOR basis
14.	Larson & Toubro Ltd.	EB511 PO5000545	26.08.2015	Yes	Not on FOR basis
		E8965 PO5000655	18.08.2015	Yes	Not on FOR basis
		EB511 PO5000456	30.07.2015	Yes	Not on FOR basis
		EF171 PO6000156	03.11.2016	Yes	Not on FOR basis
		EE681 PO6000668	21.11.2016	Yes	Not on FOR basis
		EE681 PO6000713	09.12.2016	Yes	Not on FOR basis
15	MW Hitech Projects	IND1805887	17.01.2015	Yes	Not on FOR basis
		IND1804533	09.05.2014	Yes	Not on FOR basis
16	Raasi Associates	17.07.1900	18.07.2012	Yes	Not on FOR basis
17	Unique Infra	13-14/58	26.09.2013	Yes	Not on FOR basis

18	Vasathi Housing Ltd	728	06.06.2012	Yes	Not on FOR basis
		21.02.1902	30.06.2012	Yes	Not on FOR basis

7. Based on said verification, he arrived at a conclusion that in respect of 8 customers, the sales are on FOR basis, inasmuch as the freight charges are inclusive in the price quoted and contain a condition that material will be accepted on inspection after receipt at their premises, whereas, in remaining cases, it was held that it is not on FOR basis. He also took into account the judgments of Hon'ble Supreme Court in the case of CCE Vs Ispat Industries Ltd [2015 (324) ELT 670 (SC)], as also in the case of CCE, Aurangabad Vs Roofit Industries Ltd [2015 (319) ELT 221 (SC)] and thereafter, came to the conclusion that the criteria for FOR sales decided in the case of Roofit Industries Ltd (supra), were met in respect of 8 customers mentioned in Para 18 of the OIO and therefore, supplies made to such customers were to be treated as FOR basis and the respondent was required to pay excise duty on the value which is inclusive of freight from factory premises to the place of removal i.e., buyer's place. In remaining cases, he concluded that place of removal is at the factory gate only, as decided by the Apex Court in the case of Ispat Industries Ltd (supra) and as clarified by the Board in circular dt.08.06.2018.

8. Insofar as invocation of extended period is concerned, he took into account the fact that the respondents were audited twice during the notice period; once in 2013 and again in 2016 and various judgments relied upon by the respondent in support that in such circumstances, invocation of extended period cannot sustain. He relied on the judgment of Coordinate Bench in the case of CCE, Rajkot Vs Fluid Synthetic Incorporation [2007 (5) STR 442 (Tri-Ahmd)] and CCE, Aurangabad Vs Rohit Industries [2009 (242) ELT 240 (Tri-Mumbai)]. He also held that demand, therefore, can be sustained only for the normal period and since the notice was hit by limitation, penalty under clause (c) of section 11AC of the Act is also not tenable.

9. Learned AR on behalf of the Revenue, has reiterated the grounds taken in the appeal filed by the department and especially, highlighted the fact that conclusion drawn by the adjudicating authority is based only on

purchase orders of 18 units, whereas, in terms of statement of sales made against purchase orders, which is also relied upon document, in addition to 18 customers, sales were also made to various other customers on the basis of purchase orders placed by them. Therefore, to that extent, the conclusion drawn by the adjudicating authority is fallacious as he only examined sample purchase orders available on record without calling for all the purchase orders from the respondent. Insofar as the issue of non-sustainability of extended period is concerned, learned AR pointed out that merely because the unit was audited, it cannot become a ground for not sustaining the invocation of extended period. He has relied on the judgment of Coordinate Bench in the case of Godrej & Boyce Mfg Co Ltd Vs CCE, Mumbai-II [2015 (38) STR 431 (Tri-Mum)], in support that knowledge of the department cannot be relevant factor for not invoking extended period. He has also relied on the judgment of Hon'ble Gujarat High Court in the case of CCE, Surat-I Vs Neminath Fabrics Pvt Ltd [2010 (256) ELT 369 (Guj)] and judgment of Coordinate Bench in the case of CCE, Aurangabad Vs Tigrania Metal & Steel Industries [2001 (132) ELT 103 (Tri-Del)]. He has also contested that in view of clear suppression, there was sufficient grounds for not only invoking extended period but also for imposing penalty under sub-clause (C) of section 11AC.

10. Learned Advocate for the respondent has submitted that the grounds taken by the department are not proper and correct and that the order of the adjudicating authority is legally proper and hence, the same should be upheld. He has essentially invited attention to the fact that the adjudicating authority has examined only 18 purchase orders, which were relied upon documents and thereafter, based his findings thereon held that since the department did not rely upon all the purchase orders and only on sample purchase orders, the adjudicating authority was required to only go through the said documents and not beyond that. He has relied on the judgment of Hon'ble Supreme Court in the case of CCE Vs Ballarpur Industries Ltd [2007 (215) ELT 489 (SC)], wherein it was held that SCN is the foundation and nobody can travel beyond the allegations in the notice. He also pointed out that SCN itself, at para 3.2, admits that 2/3rd of the total sales are made without any purchase orders i.e., on oral order, whereas, despite this, the department made the demand on such sales also presuming that they were also FOR sales. Therefore, the adjudicating authority has rightly dropped the

remaining demand, where there was no evidence as regards its being in the nature of FOR sales. On the issue of limitation, the adjudicating authority has rightly considered the repeated visit of audit team and various audit reports which, inter alia, supports his conclusion that the department was aware of non-inclusion of transportation and loading charges for the purpose of payment of Central Excise duty. He has also pointed out that audit officers have accepted that payment of service tax by the respondents on the transportation charges incurred by them for transport of finished goods from the factory premises to the place of customer. He has further submitted that respondent had bonafide belief that transportation charges collected by them were not required to be included in the assessable value of the goods cleared by them, as held by various Court including Hon'ble Supreme Court in the case of Escorts JCB Ltd Vs CCE, Delhi-II [2002 (146) ELT 31 (SC)]. He has also submitted that there were conflicting judgments on the issue of inclusion or otherwise, as is apparent from plethora of judgments of the Tribunal and superior courts. Thus, under the circumstances, extended period could not have been invoked. He has placed reliance on following case laws.

a) CCE, Vapi Vs Kolety Gum Industries [2016 (335) ELT 581 (SC)]
b) CCE, Vadodara Vs BIL Metal Industries Ltd [2015 (321) ELT 644 (Guj)]
c) Savira Industries Vs CCE, Chennai-II [2016 (331) ELT 504 (Tri-Chennai)]
d) VNK Menon & Co Vs CESTAT, Chennai [2015 (323) ELT 524 (Mad)]

11. Learned Advocate has further relied heavily on CBEC Circular No. 1065/4/2015-CX dt.08.06.2018, whereby, the Board clarified that extended period of limitation should not be invoked in cases where an alternative interpretation was taken by the assessee before the date of Supreme Court judgment in the case of CCE Vs Roofit Industries Ltd (supra), as the issue is in the nature of interpretation of law.

12. Heard both sides and perused the records.

13. We find that the issue to be decided is whether the adjudicating authority was correct in setting aside the large chunk of demand without examining all the purchase orders and only relying on sample purchase orders or otherwise. We find that the issue is regarding inclusion of

transportation and freight charges in the assessable value for the purpose of Central Excise duty. While the department was of the view that sale is taking place at the customer's premises and hence the place of removal is customer's premises or otherwise FOR sales and thus, the same is includable in view of the judgment of Hon'ble Supreme Court in the case of Roofit Industries Ltd (supra). Department based on the documents furnished by the respondents themselves, computed the differential duty presuming that all the sales are on FOR basis, whereas, the adjudicating authority examined the 18 purchase orders relied upon in the SCN to come to the conclusion that while in respect of 8 purchase orders, sales were clearly on FOR basis as the price was consolidated price inclusive of freight and therefore, it was termed as FOR sale and to that extent, demand was sustained. In respect of remaining purchase orders, since freight charges were mentioned separately and keeping in view other terms and conditions, it was held that it cannot be called an FOR sale and hence, demand to that extent cannot be sustained. He has also taken into account apart from the sample purchase orders, other relevant facts to come to the conclusion that based on the evidence on record, demand can be sustained only to the extent of Rs.15,95,107/-. While deciding whether sales are on FOR basis or otherwise, he has relied on the instructions contained in the Board circular, referred supra. He has further reduced this demand by setting aside invocation of extended period.

14. We find from the SCN that the following documents were relied upon by the department for demanding duty.

a) Copies of sample purchase orders submitted by the assessee;
b) Copies of ER1 returns filed by the assessee for the period from November, 2012 to March, 2017;
c) Copies of sales statements containing clearance/invoice wise details viz., basic value, central excise duties, transit freight charges, service tax on transit freight charges, loading charges and VAT/CST submitted by the assessee.
d) Statement of Shri O. Pulla Reddy, Deputy Manager (Finance & Accounts) of the respondent, dt.05.10.2017.
e) Statement of Shri Suryadevara Vijay Bhaskar Chowdary, Managing Director of the respondent, dt.11.10.2017.

15. Therefore, we find that instead of relying on all the purchase orders, the department relied only on sample purchase orders. It is an admitted fact that even though purchase order numbers appear to be mentioned on the statement of sales, merely because it was indicated does not mean that the said purchase orders were also specifically relied upon documents, as such. The fact that if department had any doubt about sample purchase orders, being not representative, they could have relied on all the purchase orders. Therefore, we do not find any infirmity when the adjudicating authority has considered the relied upon 18 purchase orders and distinguished them into two separate categories viz., one, where sale was considered as FOR sale and other, where it was treated as ex-factory sale. Therefore, the conclusion arrived at by the adjudicating authority cannot be faulted insofar as merit of the case of concerned. In fact, the adjudicating authority has considered both the judgments of Hon'ble Supreme Court viz., Roofit Industries Ltd (supra) and Ispat Industries Ltd (supra) and has also taken into account the Board's clarification that the applicability of these two judgments would depend on the facts of each case, which need to be examined for arriving at the conclusion whether sale is on FOR basis or otherwise. It may also be noted that the department has not come in appeal against the findings to the extent it was held to be non-FOR sale i.e., ex-factory sale. Therefore, the criterion adopted by the adjudicating authority to arrive at his conclusion has not been found wrong or improper by the department. Their only grievance is that he should have gone through the entire purchase orders as given in the statement of sale and not merely the 18 purchase orders, which have been referred to as sample purchase orders in the SCN. We also find force in the submission of the respondent that adjudicating authority could not have gone beyond explicit charge made out in the SCN, wherein those sample purchase orders were the relied upon documents to allege that sales were on FOR basis, whereas, on adjudication, not all were found to be on FOR basis. Therefore, we do not find any ground to interfere with the findings of the adjudicating authority on this count.

16. Insofar as the issue of limitation is concerned, we find that the department is aggrieved with the fact that adjudicating authority has only taken into account the audit visit as the basis for not sustaining invocation of extended period, whereas, there are various judgments and especially in the case of CCE, Surat-I Vs Neminath Fabrics Pvt Ltd (supra), that prior

knowledge of the department cannot be a ground for not invoking extended period. We find that the respondents have vehemently opposed that it was not only a question of visit by the audit but the fact that audit team has extensively examined all the records including their having been engaged in transporting goods also on behalf of the customers, for which, as a transporter, they were paying service tax on reverse charge basis. Therefore, the fact of transportation was very much within the knowledge of the department. This apart, there are several judgments, whereby it was held that transportation cost is not includable in the assessable value. It was further pointed out that the entire issue of whether transportation cost can be included or otherwise and the fact that whether place of removal can be buyer's premises or factory gate was the subject matter of various litigations and these matters were ultimately decided by higher judiciary forum at a much later date. In the meanwhile, because of conflicting judgments and views, they had bonafide belief that transportation and loading charges were not includable, especially since they were paying VAT at the factory gate itself considering it ex-factory sale, as also other judgments supporting that sales can only be ex-factory gate sale. We find that these submissions were made by the respondent before the adjudicating authority also, however, while the adjudicating authority has highlighted the fact relating to audit, it did not take away the fact that in the given circumstances, the extended period could not have been invoked otherwise also. In fact, this gets amply clear from instructions and clarification issued by the Board vide circular dt.08.06.2018, wherein it has been mentioned that due to conflicting views, the whole issue is that of interpretation and therefore, extended period could not be invoked. Thus, we find that even on the grounds of limitation, the findings of the adjudicating authority cannot be faulted with and he has rightly held that extended period cannot be invoked in the facts of the case. Similarly, as the extended period could not have been invoked, the penalty under section 11AC was also not imposable and therefore, we do not find any infirmity in holding that penalty under section 11AC is not imposable.

17. Therefore, in view of the discussions supra, we find that the impugned order is proper and legal and is based on evidence on record as well as various case laws cited by the respondent, instructions issued by the Board, etc. Hence, we do not find any infirmity in the order passed by the adjudicating authority and hence, we are not inclined to allow the appeal

filed by the department to set aside the impugned order to the extent appealed against.

18. Appeal filed by the department is dismissed. Accordingly, the Cross Objections filed by the respondent is allowed by upholding the impugned order passed by the adjudicating authority.

(Pronounced in the Open Court on 25.08.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda