CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI
REGIONAL BENCH - COURT No. I

Excise Appeal No.41542 of 2018

(Arising out of Order-in-Appeal No.53/2018/Audit-II dated 01.03.2018 passed by Commissioner of Central Excise, Service Tax & GST, Chennai)

M/s. Fritzmeier Motherson Cabin Engineering Pvt. Ltd. .... **Appellant**
Nh-4 to Athivakkam Road,
Singadivakkam,
Kanchipuram-631561

VERSUS

Commissioner of GST & Central Excise ..... **Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai-600 040.

APPEARANCE :

Shri Senguttuvan, Advocate for the Appellant
Ms. G. Krupa, Authorized Representative for the Respondent

CORAM :
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.41029/2026

DATE OF HEARING : 08.04.2026
DATE OF DECISION : 21.09.2026

Per: Shri Ajayan T.V.

Fritz Meier Motherson Cabin Engineering Pvt. Ltd., the appellant herein, has taken exception to the Order in Appeal No. 53/2018/Audit-II dated 01.03.2018. By that order the Appellate Authority held that the methodology adopted by the Adjudicating Authority in arriving at the cost of drawings and designs at 0.98% of the value of the motor vehicle cabins cleared, on the basis of just one customer of the appellant, namely M/s. Mahindra and Mahindra, was incorrect and could not be applied uniformly to the designs and drawings supplied by all their customers. It nevertheless remanded the matter to the Adjudicating Authority for arriving at the appropriate amortised cost, on the basis of which the revised duty liability was directed to be determined.

2. Relevant facts are that the appellant is a manufacturer of motor vehicle cabins and cabin parts, duly registered with the department. During an audit, it was observed that the appellant had received cabin designs and drawings, as well as certain inputs, free of cost from its customers. The appellant arrived at the transaction value by adding the cost of the inputs so received. Department was of the view that the appellant had not amortized and added the cost of the cabin designs as required by Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. A Show Cause Notice dated 26.10.2015 was accordingly issued demanding excise duty of Rs.22,49,164/- for the period October 2010 to March 2015 with interest, invoking the extended period of limitation and proposing penalty under Section 11AC of the Central Excise Act, 1944. After due process of law, the Adjudicating Authority confirmed the demand with interest and imposed an equivalent penalty vide Order in Original No.13/2017-CE dated 10.03.2017. The appeal preferred was disposed of by the impugned order in the manner set out above. Hence this appeal.

Submissions on behalf of the appellant

3. Shri Senguttuvan, Ld. Advocate for the appellant, argued that Section 4(1) of the Act makes the transaction value the measure of duty where the buyer and the seller are not related and the price is the sole consideration for the sale, and that the Valuation Rules can be resorted to only when those twin conditions fail. The appellant and its buyers are not related, and every cabin was sold at a negotiated price which was the sole consideration. He contended that the Department had never examined or verified the nature and relevance of the drawings provided. In the automobile industry the Original Equipment Manufacturers (OEMs) procure parts and components from multiple vendors, the design being proprietary to the OEM, and the OEM therefore furnishes the drawing so that the part produced by the ancillary suits its requirement. The designs here are only for manufacture as per the customer's specifications and the proprietary right in them remains with the OEM. Counsel pointed out that the appellant had added the value of the inputs supplied free of cost because they are used in the manufacture, whereas the drawings are supplied only for use without

transfer of any right, are not sold to the appellant and are provided for reference.

4. Ld. Advocate placed reliance on *Sintercom India Ltd. vs. Additional Director General (Adjudication), New Delhi, 2025 (2) TMI 514-CESTAT NEW DELHI* and *Denso India Pvt. Ltd. vs. Additional Director General (Adjudication), New Delhi, 2024 (3) TMI 686-CESTAT NEW DELHI*, for the contention that drawings furnished before the contract of sale was executed cannot be additional consideration; and on *M/s. Rane NSK Steering Systems Pvt. Ltd. vs. Principal Additional Director General (Adjudication), 2025 (4) TMI 177-CESTAT NEW DELHI and G.E. Plastics India Ltd. vs. Commissioner of Customs, Mumbai-I, 2004 (169) ELT 46 (Tri.-Del.)*, for the contention that what was supplied was indicative of product specifications and not detailed engineering work calling for amortisation. Assailing the quantification, Ld. Counsel argued that a percentage volunteered by one buyer in relation to an altogether different product is no measure of the value of drawings supplied by every buyer. On limitation, Ld. Counsel urged that the exercise is revenue neutral, the duty if paid being available as credit to the OEM, relying on *Nirlon Limited vs. CCE, Mumbai, 2015 (320) ELT 22 (S.C.)*. It was also contended that the appellant filed returns regularly and was periodically audited, and hence its practice was well known to the department. These circumstances too would preclude the Department from invoking extended period of limitation. Reliance was placed on the decisions in *CCE, Noida vs. M/s. Accurate Chemical Industries, 2014 (2) TMI 770-Allahabad High Court, Standard Drums and Barrels Mfg. Co. vs. Commissioner of Central Excise, Mumbai-II, 2018 (7) TMI 1590-CESTAT MUMBAI : MANU/CM/0117/2018, Popular Vehicles and Services Ltd. vs. The Commissioner of Central Excise, 2010 (18) STR 493 (Tri.-Bang.):* Manu/CB/0004/2010*,* and *Final Order No.40543-40544/2023 dated 11.07.2023 in M/s. Indo Shell Cast Pvt. Ltd. (Unit-I) vs. The Commissioner of GST & Central Excise, 2023 (7) TMI 429-CESTAT CHENNAI*. He prays that the appeal may be allowed.

<u>Submissions on behalf of the respondent</u>

5. Ms. G. Krupa, Ld. Authorised Representative for the respondent, reiterated the findings in the impugned order. She supported the view that the value of the designs and drawings supplied free of cost is liable

to be amortised and added in terms of Explanation 1 to Rule 6, and maintained that a remand for a correct determination of the amortised cost, customer wise, is the appropriate course.

Discussions and Findings.

6. We have heard the rival submissions and perused the materials available on record.

7. We frame the following issues as that which arises for our determination:
   a) Whether the notional value of the designs and drawings supplied free of cost by the customers is includible in the assessable value of the cabins under Section 4(1)(b) of the Act read with Rule 6 of the Valuation Rules as in force during the period in dispute?
   b) Whether the quantification of the demand, based upon a percentage suggested by one customer, is a determination of value known to the Act and to those Rules?
   c) Whether the extended period of limitation under the proviso to Section 11A(1) was available and consequently whether penalty under Section 11AC was imposable?

8. At the outset, it is pertinent to note how the demand came to be quantified, as it appears from the show cause notice, since it has considerable bearing on the issue. The department addressed the customers of the appellant. M/s. Mahindra and Mahindra replied that it was difficult to ascertain the value of the cabin drawings or their amortisation cost, that the development cost of motor vehicle parts had not been identified by them, that the total development cost for tractors worked out to 0.98%, and that this percentage might be considered for working out the value of the cabin drawings supplied. That suggestion was adopted as the measure of the addition, and the figure was applied to the value of the cabins cleared to every customer. The notice discloses neither the sequence in which the Valuation Rules were applied nor the provision under which a percentage suggested by one customer could be taken as the money value of the additional consideration. It is not in dispute that the notice relies upon no evidence of value beyond that reply. The Adjudicating Authority goes on to record that he deduced from the stand of the appellant that the cost of

the drawings had not been treated as part of the transaction, and that he had therefore adopted the best judgment method on the reasonable facts on record.

9. We notice that Section 4(1)(a) makes the transaction value the measure of duty where the goods are sold for delivery at the time and place of removal, the assessee and the buyer are not related, and the price is the sole consideration for the sale. Only in any other case does value fall to be determined under Section 4(1)(b) in the manner prescribed. That the appellant and its customers are unrelated has never been in dispute, and the case of the Revenue rests wholly on the third condition. Rule 6, as it stood during the relevant time, provides that where goods are so sold, except where the price is not the sole consideration, the value shall be deemed to be the aggregate of the transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. Explanation 1 then treats the value, apportioned as appropriate, of goods and services supplied by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, as such money value. Clause (ii) covers the value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods. Clause (iv) covers the value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

10. So read, the deeming provision is hedged by four conditions, and every one of them is a question of fact to be established by the Revenue, which alone seeks to displace the transaction value. What the buyer furnishes must answer the description of consideration, that is to say it must flow from the buyer to the assessee in relation to the sale. It must be supplied for use in connection with the production and sale of the goods. It must, under clause (ii), be used in the production of those goods, or, under clause (iv), be necessary for that production. And the addition operates only to the extent that the value has not already been included in the price actually paid or payable, the value being apportioned as appropriate. The words used in the production and necessary for the production are words of limitation deliberately chosen.

They exclude what is remotely connected with production, and they exclude material by which a buyer merely tells a manufacturer what the buyer wants. Apportionment, equally, presupposes an ascertained value and a known volume over which to spread it.

11. That this burden is real, and is not discharged by assertion, is settled by *Commissioner of Central Excise, Belgaum vs. Mysore Kirloskar Ltd., 2008 (226) ELT 161 (S.C.)*. Dealing with a demand raised by loading the value of machinery with charges for designs, drawings, patterns and jigs, the Supreme Court held that although such charges are in principle includible where the contract is composite, the nexus of the consideration to the negotiated price has to be established, and a demand raised without establishing that nexus is not sustainable. On limitation the Court held that adequate reasons for invoking the proviso to Section 11A(1) must be indicated and that the extended period cannot rest on a vague allegation in the notice.

12. Measured against these requirements the record is barren. The notice proceeds upon the bare circumstance that cabin designs and drawings were received free of cost. Neither the notice nor the order in original examines what those drawings were. There is no finding whether they were manufacturing drawings from which a cabin could be produced, or statements of the customer's requirement as to shape, dimension, fitment and function which left it to the appellant to design and engineer the cabin. There is no finding that they were supplied for use in connection with production, and none on whether their worth was already absorbed in the negotiated price. The contention of the Ld. Advocate that the respondent never examined or verified the nature and relevance of the drawings stands uncontroverted before us, the Ld. Authorised Representative having done no more than reiterate the impugned order.

13. What the Adjudicating Authority did instead is set out in paragraph 11.2 of the order in original, where he reasoned that though the assessee and the buyers are not related, the price is not the sole consideration for sale as it involves free supplies from the buyer which enhance the value of the goods to be supplied. To our mind, that is to assume the very thing which had to be found. A free supply does not of itself displace the sole consideration condition. It displaces that condition only

if it satisfies the conditions stated in Explanation 1 and in any one of its clauses, and whether it does is precisely the enquiry which was never undertaken. Reasoning which begins by taking the conclusion for granted cannot support a demand.

14. The distinction which that enquiry would have involved is a familiar one. In *Mangalore Refinery & Petrochemicals Ltd. vs. C.C., Mangalore, 2014 (313) ELT 353 (Tri.-Bang.)*, and earlier in *G.E. Plastics India Ltd. vs. Commissioner of Customs, Mumbai-I, 2004 (169) ELT 46 (Tri.-Del.)*, the Tribunal drew the line between mere specifications and detailed engineering drawings in these terms.

> *"The Rule permits inclusion of only engineering drawing, design, etc., necessary for the production of the imported goods. Rule does not envisage remote connection between engineering drawing, design, etc. and the imported goods. The gap between Basic Engineering Drawings and detailed drawing is vast. The one provides all the detailed inputs for undertaking manufacture. The other merely indicates the lay out, relative size etc. From the size specifications alone construction of engineering equipment is not feasible. Telling the manufacturer, the specification of what is being ordered is only in the nature of buyers' assist. Cost incurred towards buyers' assist cannot be included in the value of imported goods."*

15. Those decisions arose under the Customs Valuation Rules, but the language of Rule 9(1)(b)(iv) there considered is in substance the language of clause (iv) of Explanation 1 here, and the reasoning applies with equal force. A buyer who states the shape and the dimensions of what he wishes to buy confers no assistance upon the vendor. He imposes a requirement. The cost of arriving at that requirement is a buying cost of the buyer, not a cost of the seller from which the seller has been relieved.

16. The principle has since been applied to the very trade before us. In *Denso India Private Limited*, a batch of appeals by vendors of Maruti Suzuki India Limited was allowed on findings that the specification drawings shared at the request for quotation stage gave only the layout and dimensions of the desired part, that the vendor thereafter prepared its own detailed drawings containing components not even figuring in

the specification drawing, that the letter of intent placed on the vendor the responsibility for design, manufacture, testing and supply, and that the cost of the detailed drawings had been included by the vendor in the assessable value. On those facts the specification drawings were held to be neither used in production nor necessary for it, so that Rule 6 was not attracted. *Rane NSK Steering Systems Private Limited* follows that view. *Sintercom India Ltd.* reaches the same result. Testing the expression additional consideration against Section 2(d) of the Indian Contract Act, 1872, which governs contracts of sale by virtue of Section 3 of the Sale of Goods Act, 1930, the Tribunal held that consideration is something done at the desire of the promisor, that until offer and acceptance there is neither promise nor promisor, and that drawings furnished to all bidders while quotations are invited are furnished when no promisor and promisee relationship exists at all. We find that reasoning sound and we adopt it.

17. The unrebutted material before us is that the appellant manufactures cabins for motor vehicle manufacturers, that the cabin design is proprietary to the vehicle manufacturer, and that the drawing is furnished so that the cabin will answer the requirements of the vehicle for which it is intended. Nothing was placed by the Revenue to show that these were the production drawings from which the cabins were in fact made, or that they were necessary for that production. One further feature of the record deserves notice, telling as it is both here and on limitation. The appellant did amortise the value of the inputs supplied free of cost and did add it to the transaction value. Only the drawings were left out. An assessee which loads the value of one free supply and not of another is acting upon a view of the statute, and the view it took is the view which has since commended itself to the Tribunal in *Denso, Rane NSK* and *Sintercom*. Such conduct is the opposite of concealment.

18. We answer the first question against the Revenue and hold that the notional value of the designs and drawings furnished free of cost was not includible in the assessable value of the cabins, and that Rule 6 was not attracted. The case set up having failed for want of proof, and the record containing no material from which the true character of the drawings could be determined, we do not determine it. The setting aside proceeds on the failure of the Revenue to establish the ingredients of the Rule and not upon any finding as to what these drawings contained.

19. The second question that we now address is whether the quantification of the demand, based upon a percentage suggested by one customer, is a determination of value known to the Act and Valuation Rules and whether recourse to such a practice was permissible.

20. The SCN would show that the only enquiry the Revenue made into value was that addressed to the customers. The answer received from M/s. Mahindra and Mahindra is, on the Revenue's own showing, an admission that the thing sought to be valued could not be valued, since it is Mahindra's say that the value of the cabin drawings and their amortisation cost were difficult to ascertain and that the development cost of motor vehicle parts had not been identified at all. From that moment the Revenue knew it had no material from which the money value of the alleged additional consideration could be arrived at. It fastened instead upon the concluding sentence of the reply, by which the customer offered a figure of 0.98% worked out for the development of tractors and suggested that the same percentage might be considered.

21. That figure suffers from four infirmities, each fatal by itself. It is, first, a suggestion and not evidence. A buyer's suggestion as to how its vendor's duty liability may conveniently be computed proves the money value of nothing, and Section 4(1)(b) read with the Rules casts the duty of determining value upon the Central Excise Officer, a function which cannot be made over to a party to the very transaction under scrutiny. Secondly, the figure relates to a different subject matter. It is the total development cost for tractors. It is not the value of the cabin drawings, nor even the development cost of motor vehicle parts, which the customer said had not been identified. Thirdly, it was given by one customer and applied to clearances made to every customer, a course which the Appellate Authority itself found incorrect and in that limited finding was plainly right. Fourthly, and this appears to have escaped notice at both stages below, the percentage was applied to the wrong base. Explanation 1 requires the value of what the buyer supplied, apportioned as appropriate. What was added was 0.98% of the value of the cabins cleared by the appellant. The worth of a drawing furnished by a buyer bears no arithmetical relation to the price at which the seller

sells his goods, and neither the Rule nor the Explanation authorises the one to be expressed as a percentage of the other.

22. Equally serious is the silence of the notice upon the route by which it travelled. A demand under Section 4(1)(b) must identify the rule under which value is determined and, where more than one could apply, the sequence in which they were considered. This notice names no rule for the quantification at all. If the money value could not be determined under Rule 6, the only door open was Rule 11, the residuary provision, which requires that value be determined using reasonable means consistent with the principles and general provisions of the Rules and sub section (1) of Section 4. Rule 11 is no licence to adopt whatever figure comes to hand. It demands means which are reasonable, means consistent with principle, and a record of what those means were. A percentage referable to tractor development, volunteered by a buyer who had just said the true value was not ascertainable, satisfies none of these requirements. A valuation rule must be invoked and applied; it cannot be left to be inferred after the event.

23. The omission is the graver because the statute placed in the officer's hands a mechanism designed for exactly this difficulty. Section 14A of the Act provides that where, at any stage of an enquiry or investigation, a Central Excise Officer not below the rank of Assistant Commissioner is of the opinion, having regard to the nature and complexity of the case and the interest of revenue, that the value has not been correctly declared or determined by a manufacturer, he may, with the previous approval of the Chief Commissioner, direct a special audit by a cost accountant nominated by the Chief Commissioner. The opinion that value had not been correctly declared is the very opinion on which this notice proceeds, and the difficulty of ascertaining value was placed on record by the department's own enquiry. Nothing stood in the way of a special audit. The department instead preferred a figure volunteered by a buyer, to the machinery Parliament had given it.

24. On the second issue framed we accordingly hold that the addition of 0.98% of the value of the cabins is not a determination of value under Section 4(1)(b) read with the Valuation Rules as they stood during the period in dispute. It is an assumption presented as a computation, and no demand can rest upon it.

25. We proceed to address the decisions relied upon by the appellate authority and find that not one of the three decisions supports the order under appeal. *S.R. Enterprises vs. Commissioner of Central Excise, Raipur, 2017 (7) GSTL 466 (Tri.-Del.)*, concerned castings manufactured for the Bhilai Steel Plant against drawings supplied by that customer, the department having added fifteen per cent of the value of the design. The Tribunal, did observe that the value of the design would have to be added under Explanation 1 to Rule 6, but went on to hold that the design was about twenty two years old, that copyright was inapplicable to it, that it was in the public domain, and that its value as certified by a Chartered Engineer was nil. The demand was set aside and the appeals were allowed. Read as a whole the decision is authority that a notional percentage cannot be substituted for proof of value and that an unrebutted Chartered Engineer's certificate must be given effect. To extract from it the single sentence that value has to be added, while passing over the conclusion that the value to be added was nil, is to mistake an observation made along the way for the ratio of the case. Likewise, *Simplex Engg. & Foundry Works Pvt. Ltd. vs. C.C.E. & S.T.-LTU, Delhi, 2016 (343) ELT 458 (Tri.-Del.)*, is distinguishable on a ground going to the root. There the appellant manufactured custom made engineering goods and itself prepared the drawings in those cases where the customer supplied none. It was therefore not in dispute that the drawings supplied by customers were production drawings occupying the same place in the manufacture as those the appellant would otherwise have had to prepare. It was on that undisputed fact that inclusion was ordered. No such premise exists here. Beyond that, insofar as Simplex speaks to quantification it says the opposite of what the impugned order derives from it, having held in terms that the adoption of ten per cent of the value of the goods was arbitrary, unreasonable and without any basis, and that reasons had to be given if the Chartered Engineer's certificate were to be rejected. The vice which Simplex identified is the vice which attends the figure of 0.98%, and in an aggravated form, since ten per cent there was at least a percentage of the goods in question whereas 0.98% here is borrowed from the development of tractors. The decision in *Larsen & Toubro Ltd. vs. Commissioner of Central Excise, Chennai, 2015 (317) ELT 346 (Tri.-Chennai)*, is still further removed. That was job work for Mahindra and Hyundai on a paint finishing system, duty having been discharged on

the cost of raw materials and conversion charges *following Ujagar Prints vs. Union of India, 1988 (38) ELT 535 (S.C.)*. The department placed on record purchase orders and invoices establishing that M/s. Durr India had collected design and drawing charges from Mahindra and Hyundai and remitted Rs.31,41,000/- to M/s. Durr, Germany on that account. Inclusion was ordered on the strength of that proved flow of monetary consideration, and the Bench said as much while distinguishing Luna Agro Industries and Maharashtra Scooter on the fact that in those cases there was no flow back. Larsen and Toubro is thus authority for inclusion where a flow back is proved, and equally for the proposition that what is added must be an ascertained sum established by documents. Here no flow back is even alleged and no ascertained sum exists. It bears notice that on limitation a coordinate bench at Chennai held the extended period not invocable, on facts materially similar, namely drawings supplied free of cost, a question turning on the interpretation of the Valuation Rules, no material indicating suppression with intent to evade, and credit available to the recipient companies.

26. The Appellate Authority therefore drew from these decisions a proposition none of them lays down, and the course it then took cannot be supported either. Having recorded that the methodology of quantification was incorrect and that a percentage derived from a single customer could not be applied across the board, it ought to have carried that finding to its logical end. The quantification was not a severable part of the demand. It was the demand. A finding that the quantification is unsustainable is in substance a finding that the demand is unsustainable. Instead the Appellate Authority kept the demand alive and remitted the matter so that the amortised cost might be worked out afresh.

27. In our considered view, that course was not open, for a reason going beyond discretion. It is not in dispute that the notice relies upon no evidence of value other than a reply which says that value cannot be ascertained. A remand cannot improve upon the notice, because there is nothing in the notice on which an improved determination could be built. What it would in truth permit is the gathering, ten years after the event, of evidence the Revenue did not gather when it issued the notice, and the making of a case the notice does not make. The show cause notice is the foundation of the case, and a lacuna in it cannot be

rectified at the appellate stage or in remand proceedings, as this Tribunal held in *Saikrupa Sugar and Allied Industries Ltd. vs. Commissioner of Central Tax and Central Excise, Nashik, 2020-TIOL-132-CESTAT-MUM*, refusing on that very ground a request for remand made by the departmental representative. To the same effect is *Commissioner of Central Excise, Mumbai-III and Nagpur vs. HMS Metal Corporation, 1999 (114) ELT 409 (Tribunal)*, where a matter was held not to be sent back to investigate a question the department had not investigated, since that would amount to setting up a fresh case at that stage. *Standard Drums & Barrels Mfg. Co*. *supra*, cautions further that an assessee cannot be placed in a worse position merely because it chose to appeal. An appellate order is meant to correct the adjudication, not to repair the notice, and a remand is a judicial exercise directed at completing an enquiry, not a fresh innings offered to a party whose evidence has failed. We say no more than the occasion requires, and record these observations in the expectation that they will be borne in mind hereafter. The third question is answered accordingly and the remand does not survive.

Extended period of limitation

28. Our findings on the merits and on the quantification dispose of the whole demand, and strictly limitation need not be answered. It was, however, fully argued, and the manner of its invocation is itself open to comment. We therefore record a finding, mindful that a finding on limitation standing alone would not travel as far as the findings above. The demand covers October 2010 to March 2015 and the notice issued on 26.10.2015, so that it does not travel beyond the outer limit of five years from the relevant date and no grievance arises on that score. The question is whether the ingredients which alone permit the Revenue to go beyond one year were present.

29. The proviso to Section 11A(1), as it then stood, permitted a notice within five years only where the non levy or short levy arose by reason of fraud, collusion, wilful misstatement or suppression of facts, or contravention of the Act or the Rules, with intent to evade payment of duty. Each expression imports a state of mind. The law was recently restated in *Lipi Boilers Ltd. vs. Commissioner of Central Excise, Aurangabad, (2025) 36 Centax 210 (SC): 2025 INSC 1297*, where, after

noticing *Pahwa Chemicals Private Limited vs. Commissioner of Central Excise, Delhi, (2009) 4 SCC 658* and *Continental Foundation Joint Venture Holding vs. C.C.E., (2007) 10 SCC 337*, the Supreme Court held as follows.

> *"Judged by these principles laid down by this Court on the application of the proviso to Section 11A(1) of the Act, 1944, we find that the assessee is justified to contend that the extended period of limitation could not have been invoked in the present case since the assessee bona fide believed that the bought out items are not to be included in the assessable value of the boiler. A perusal of the show cause notice would show that the revenue itself admits that the assessee had filed the RT-12 returns with the revenue, which means that the revenue had the material particulars on record which it could have acted upon within the normal one year period. There is nothing on record to indicate that any material information had been suppressed by the assessee with any intention to evade payment of central excise duty."*

30. The parallel is close. The appellant is a registered manufacturer which filed periodical returns and was subjected to periodical audit. The case of the Revenue is itself that the omission came to light during an audit at the appellant's premises, from its own records. Beyond the omission nothing is alleged. No positive act of concealment is attributed, no document is said to have been withheld and no misdeclaration is identified. Mere failure to declare is not wilful suppression, and where the facts are known to both sides an omission by one to do what it might have done does not become suppression. An audit report cannot be the sole consideration for invoking the extended period and imposing penalty under Section 11AC, as held in *Commissioner of Central Excise and Service Tax, Goa vs. M/s. IFB Industries Ltd., 2019-TIOL-1925-CESTAT-MUM*. The Allahabad High Court took the same view in *Commissioner of Central Excise, Noida vs. M/s. Accurate Chemical Industries, 2014 (310) ELT 441 (All.)*, where the short payment could have been detected earlier on a scrutiny of the returns and the situation was in any event revenue neutral, and a coordinate Bench applied the same reasoning in *M/s. Indo Shell Cast Pvt. Ltd. (Unit-I)*.

31. A further consideration peculiar to this case is, to our mind, decisive on this aspect. An allegation of wilful suppression is an allegation that the assessee kept back something it was bound to disclose. Here the department went to the customers of the appellant and was told by one among them, namely, M/s. Mahindra & Mahindra, that the value of the cabin drawings was not ascertainable and that the development cost of motor vehicle parts had not even been identified. If the buyer who commissioned the drawings could put no value on them, it is difficult to see what the appellant is said to have concealed. An assessee cannot be charged with suppressing a figure which nobody, the department and its own customer included, was able to arrive at.

32. What does support the appellant here is *Nirlon Ltd. vs. Commissioner of Central Excise, Mumbai, 2015 (320) ELT 22 (S.C.)*, where the Court found no mala fide or intent to evade, found the exercise in addition revenue neutral, and held the extended period not invocable on that combination of circumstances. We are conscious of the caution in *Precision Moulds and Dies vs. Commissioner of CGST, Meerut, 2025 (394) ELT 363 (All.)*, that revenue neutrality cannot become an answer to every non payment since that would negate the scheme of Cenvat credit. That caution was addressed to an assessee invoking revenue neutrality to justify not paying duty at all. It does not touch the narrower use which Nirlon sanctions, as one of the circumstances from which an absence of intent to evade may be inferred, and it is in that narrower sense alone that we use it, in combination with the returns, the audits, the disclosure and loading of the free supplied inputs and the interpretational character of the question. It was not disputed before us that duty, if paid, would have been available as credit to the vehicle manufacturers.

33. We accordingly hold that the ingredients of the proviso to Section 11A(1) were not made out and that the extended period was not available. Had the matter rested on limitation alone the demand would have survived only for such clearances as fell within one year of 26.10.2015, that is to say for part of the period from about October 2014 to March 2015. Our findings on the merits and on the quantification govern the whole of the demand, which fails in its entirety.

Interest and penalty

34. Penalty under Section 11AC rests on the same ingredients as the proviso to Section 11A(1). Once it is held that there was neither wilful suppression nor intent to evade payment of duty, the section has no application, and that is so independently of our findings on the merits. The demand of duty having been found unsustainable, the demand of interest and the equivalent penalty must share its fate.

35. In view of our aforesaid discussions and for reasons given above, we hold that the Order in Appeal No. 53/2018/Audit-II dated 01.03.2018 passed by the Commissioner of Central Excise, Service Tax and GST, Chennai, including the direction of remand contained in it, is set aside. The Order in Original No.13/2017-CE dated 10.03.2017, by which duty of Rs.22,49,164/- was confirmed for the period October 2010 to March 2015 with interest and an equivalent penalty was imposed under Section 11AC of the Central Excise Act, 1944, is set aside in its entirety.

The appeal is allowed with consequential reliefs in law, if any.

(Order pronounced in the open court on 21.09.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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