

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 50161 of 2014**

[Arising out of Order-in-Original No. 07/Commissioner/Fbd/CX/2013 dated 18.09.2013 passed by the Commissioner of Central Excise, Delhi-IV at Faridabad]

**Consolidated Engineering Company**

**...Appellant**

1/8, Northern India Complex,  
20/3, Mathura Road, Faridabad, Haryana

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Faridabad**

**...Respondent**

New CGO Complex, NH-IV,  
Faridabad, Haryana 121001

**WITH**

**Excise Appeal No. 50162 of 2014**

[Arising out of Order-in-Original No. 07/Commissioner/Fbd/CX/2013 dated 18.09.2013 passed by the Commissioner of Central Excise, Delhi-IV at Faridabad]

**Rajeev Shamlal**

**...Appellant**

Partner of Consolidated Engineering Company  
1/8, Northern India Complex,  
20/3, Mathura Road, Faridabad, Haryana

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Faridabad**

**...Respondent**

New CGO Complex, NH-IV,  
Faridabad, Haryana 121001

**APPEARANCE:**

Ms. Krati Singh, Advocate for the Appellants

Mr. Anurag Kumar and Mr. Goverdhan Dass Bansal, Authorized

Representatives for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60033-60034/2026**

DATE OF HEARING: 15.09.2025

DATE OF DECISION: 13.01.2026

**S. S. GARG :**

These two appeals are directed against a common impugned order dated 18.09.2013 passed by the Commissioner of Central Excise, Faridabad, whereby the learned Commissioner has confirmed the demand of excise duty amounting to Rs.1,37,75,564/- under Section 11A of the Central Excise Act, 1944 along with interest under Section 11AB of the Act and imposed an equal penalty under Section 11AC of the Act; and has also imposed a penalty of Rs.14,00,000/- under Rule 26 of the Central Excise Rules, 2002 on Shri Rajeev Shamlal, the partner of the firm ('The Appellant No.2').

2. Briefly stated facts of the present case are that M/s Consolidated Engineering Company ('The Appellant') is a partnership firm engaged in fabrication and installation of aluminium and alucobond aluminium curtain walls, doors, windows and their frames, thresholds for doors, roofing frames made of sections and alucobond aluminum; retail visual identity elements, namely, spreaders, facility signs, direction signs, moulded logos fixed on walls, monoliths etc. The Appellant was awarded a number of contracts/work orders *interalia* basis the tenders issued by Indian Oil Corporation Ltd ('IOCL') for supply and installation of Retail Visual Identity ('RVI') Elements at their retail outlets i.e. petrol pumps across the country. As per the contracts/work orders, the RVI Elements are to be supplied and installed at the outlets of IOCL. The primary raw

materials required for the fabrication of the RVI Elements are Aluminium Composite Sheets/Panels ('ACP'), Aluminium Sections and Mild Steel Sections and other raw materials like electrical components, wires, screws, nuts & bolts, neoprene etc. The Appellant purchased such raw materials from various suppliers on which machining activities like routing, riveting, welding etc were done by the Appellant in the factory with the aid of machines. The Appellant duly made the payment of excise duty on the items cleared from the factory. In respect of worked upon material supplied by the Appellant to IOCL, separate invoices in respect of different materials cleared were raised with applicable excise duty by the Appellant at the time of removal from factory, but no payment was made by IOCL in respect of such invoices. Further, for bought-out items on which no work was done at the factory, the said items were sent along with their purchase invoices from the factory with rest of the goods but no excise duty was paid on the bought-out goods which were sent directly to the site without any work being done on them. Further, on receipt of the material at the site i.e. retail outlets of IOCL, the RVI Elements were assembled and installed at the site either by the employees of the Appellant or by the labour employed by them or by sub-contracting the work to third parties. Once the installation of RVI element is complete, the same is inspected by an engineer of IOCL and upon approval of the same, the IOCL makes the payment of the entire contract/work order amount on the basis of the 'service entry sheet' to the Appellant. Besides this, the Appellant also manufactured aluminium doors, aluminium windows, aluminium frames for various customers during the period 2005-06, 2006-07, 2007-08 & 2008-09.

The Appellant duly paid excise duty on the parts/sections of the aluminium doors, aluminium windows, aluminium frames cleared from the factory.

2.1 Investigation was initiated by the department against the Appellant with a view that the Appellant was levying excise duty by undervaluing the goods supplied to IOCL and other customers by not considering the total contract price for the purpose of payment of excise duty. On these allegations, a show cause notice dated 04.07.2011 was issued to the Appellant proposing to demand central excise duty amounting to Rs.1,37,75,564/- under Section 11A of the Act along with applicable interest under Section 11AB of the Act and an equal penalty under Section 11AC of the Act. Vide the show cause notice, the department proposed the demand of differential duty on RVI Elements like monoliths, Indian Oil and Xtra Care logos, Directional signs, Facility Signs & Spreaders supplied to IOCL on the ground that the same were manufactured by the Appellant in the factory and were cleared from the factory without payment of excise duty on the entire value of the contract. Demand was also proposed on aluminium doors, windows and frames cleared to others on the basis that the same were manufactured in the factory of the Appellant and therefore, excise duty is leviable on the entire contract value. A personal penalty of Rs.14,00,000/- under Rule 26 of the Central Excise Rules was also proposed to be imposed on the Appellant No.2 on the ground that he was involved in clandestine removal of excisable goods in an irregular manner being aware that the same were dutiable and were liable for confiscation.

2.2 After following the due process, the learned Adjudicating Authority, vide the impugned order, confirmed the demand proposed in the show cause notice along with applicable interest and imposed an equal penalty, after invoking extended period of limitation; and a personal penalty was also imposed on the Appellant No.2. Hence, the Appellants have preferred the present appeals before us.

3. Heard both the sides and perused the material on records.

4. The learned Counsel for the Appellants has filed the written submissions in both the appeals which have been taken on record.

4.1 The learned Counsel further argues that the issue under dispute as to whether the Appellant is engaged in manufacturing of RVI Elements and thereby subject to excise duty, is no longer *res integra* as has been dealt by various benches of the Tribunal in respect of similarly situated assessees in the identical factual scenario. She further submits that the Tribunal has held that the RVI Elements are not cleared from the factory in fully manufactured condition, rather the same came into existence as a part of permanent structure at site only; and the same once installed, are not dismantled nor re-installed at alternate locations/petrol pumps; these RVI elements are not resold/marketed by IOCL; therefore, it cannot be said that the RVI Elements were manufactured by the assessees. For this, she places reliance on the following decisions:

- **M/s Classic Signages Private Limited and Shri Deepak Maheshwari vs. Commissioner of Central Goods & Service Tax, Alwar - 2023 (384) ELT 675 (Tri- Del)**

- **Secure Mobile India and others vs. Commissioner of Central Excise, Delhi - 2019 (5) TMI 1430-CESTAT New Delhi**

4.2 The learned Counsel further submits that the RVI Elements are not subject to excise duty because as per Section 3 of the Act, excise duty is leviable on all excisable goods produced or manufactured in India and as per Section 2(d) of the Act, excisable goods are the goods which are capable of being bought and sold for the consideration and such goods shall be deemed to be marketable. She further submits that for levying any excise duty, the goods should be manufactured goods and the same should be in marketable condition; whereas, in the present case, the parts of the RVI Elements are made as per the specifications of IOCL, to be installed at their retail outlets and these parts, in the form that they are cleared, are not capable of being used for any other purpose than for the fabrication and installation of the RVI Elements at the retail outlets of IOCL only. She also submits that the contract of IOCL is not regarding purchase of the parts of RVI Elements cleared from the factory from the Appellant rather the work order was for supply of complete RVI Elements which come into existence only upon fabrication and installation of the RVI components at the site. She also submits that parts of the RVI elements in the form that they are cleared from the factory do not have any buyer as the same are made as per the specifications of IOCL and thus cannot be used by any other company. She further submits that parts of the RVI Elements are not capable of being bought and sold for a consideration in the form that they exist when they are cleared from the factory, and thus they cannot be deemed to

be marketable. She places reliance on the following decisions wherein it has been held that if the product is not saleable, the same is not marketable and thus does not amount to manufacture:

- **Flex Engineering Ltd vs. CCE - 2012 (276) ELT 153 (SC)**
- **UOI vs. Delhi Cloth and General Mill - 1977 (1) ELT J199 (SC)**
- **Hindustan Polymers vs. Collector of Central Excise - 1989 (43) ELT 165 (SC)**
- **Collector of Central Excise vs. Ambalal Sarabhai Enterprises - 1989 (43) ELT 214 (SC)**
- **Union Carbide India Ltd vs. Union of India & ors - 1986 (24) ELT 169 (SC)**

4.3 She further submits that it is a settled law that the burden to prove marketability of the product to hold the goods exigible to duty is on the department. In this regard, she places reliance on the following cases:

- **M/s Classic Signages Private Limited and Shri Deepak Maheshwari vs. Commissioner of Central Goods & Service Tax, Alwar - 2023 (384) ELT 675 (Tri- Del)**
- **Commissioner of Central Excise, Jamshedpur vs. Castings (India) Inc. - 2016 (342) ELT 343 (Jhar.)**
- **Board of Trustees vs. Collector of Central Excise, A.P. - 2007 (216) ELT 513 (SC)**
- **Flex Engineering Ltd vs. CCE - 2012 (276) ELT 153 (SC)**

4.4 She further submits that the RVI Elements qualify as 'immovable property', but the Adjudicating Authority has held that the RVI Elements are attached with the help of nuts and bolts to a civil foundation to make them stand still and therefore, the same do not qualify as being 'attached to earth'. She also submits that the

above findings of the Adjudicating Authority are on the presumption that the RVI Elements are manufactured by the Appellant in its factory and the same are merely installed at IOCL's site using nuts and bolts. She further submits that the said presumption is erroneous and flawed as the goods cleared from the factory are the parts of the RVI Elements and not the RVI Elements itself and once the said parts of RVI Elements brought to the site along with other raw materials, the said parts are installed at the site with the view of permanency. She further submits that the RVI Elements, on which the department is raising the demand, come into existence only at the site of IOCL and not at Appellant's factory which is also evident from the fact that IOCL makes the payment to the Appellant as per the work order only after proper verification of the installed RVI elements. She further submits that once the RVI Elements are installed, the same become immovable property because, if the said Elements are dismantled from the site then the same would get damaged and will no longer remains usable. She also refers to the Board's Circular No. 58/1/2002-CX dated 15.01.2002 wherein the Board has clarified that the excisable goods, besides being marketable, shall not be immovable as well; also clarified that if the items are assembled or erected at site and attached by foundation to earth cannot be dismantled without any substantial damage to its components and thus cannot be reassembled, the said items would not qualify as movable goods and therefore, not excisable goods. She also submits that in the present case, the RVI Elements are permanently attached to earth and there is no intention to move them from one place to another and if the same are dismantled, the same would result in

substantial damage and the said components cease to be RVI Elements. In this regard, she places reliance on the following decisions wherein it has been held that if the goods are dismantled and gets substantially damaged, then the same qualify as immovable property:

- **Secure Mobile India and others vs. Commissioner of Central Excise, Delhi - 2019 (5) TMI 1430-CESTAT New Delhi**
- **Triveni Engineering & Industries Ltd & ors vs. CCE - 2000 (120) ELT 273 (SC)**
- **TTG Industries Ltd vs. Collector of Central Excise, Raipur - 2004 (167) ELT 501 (SC)**
- **Quality Steel Tubes (P) Ltd vs. Collector of C.Ex. - 1995 (75) ELT 17 (SC)**
- **M/s Bharti Airtel Ltd vs. Commissioner of Central Excise, Pune - 2025 (391) ELT 3 (SC)**

4.5 The learned Counsel further submits that in the impugned order, the department has held that the RVI Elements under dispute are illuminated signs which are classifiable under sub-heading 9405 60 90 of the Central Excise Tariff Act and accordingly are dutiable. She further submits that from the heading of Section XX (Miscellaneous Manufactured Articles), under which Chapter 94 falls, as well as the entry in Heading 9405 (not elsewhere specified or included), it is evident that this heading is residuary in nature and therefore, any item can be classified under this Heading only if its classification elsewhere in the Tariff is ruled out. She also submits that in the impugned order, there is no such finding that the RVI Elements were not classified under any other tariff heading and hence covered under Heading 9405. For this, she places reliance on the following cases:

- **Studio Printall (New Delhi) Pvt Ltd vs. Commissioner of C. Ex., Delhi-I - 2004 (172) ELT 402 (Tri - Del)**
- **Havell's India Ltd vs. Commissioner of Customs, New Delhi - 2014 (309) ELT 112 (Tri - Del)**
- **Commissioner of C. Ex., Bangalore-II vs. Madras Cements Ltd - 2010 (259) ELT 213 (Kar.)**

4.6 The learned Counsel further submits that the Appellant has already discharged excise duty on the goods manufactured and cleared from the factory. She also submits that there is no dispute with respect to the fact that the Appellant has already paid excise duty on the worked upon components i.e. the RVI Elements as alleged by the department while clearing from the factory. She further submits that in fact, the department itself has admitted that the said RVI Elements being cleared from the factory in CKD condition which were merely assembled at the site of IOCL; this clearly proves that the department itself admitted that no new product came into existence at the site of IOCL and therefore, the Appellant is not liable to pay excise duty again as no new product has been manufactured with a different identity. For this, she relies on the following cases:

- **Reliance Textile Industries Ltd vs. Union of India - 1993 (63) ELT 67 (Bom.)**
- **Union of India vs. Delhi Cloth And General Mills Co Ltd - 1977 (1) ELT J199 (SC)**
- **Commissioner of Trade Tax vs. Kumar Paints And Mill Stores - 2023 (384) ELT 517 (SC)**
- **Commissioner of Central Excise vs. Bharat Petroleum Corporation Ltd - (2023) 5 Centax 244 (SC)**

4.7 Further, she also submits that no excise duty is leviable on the bought-out items as the same were not subject to manufacturing process and cleared to sites as such. In this regard, she places

reliance on the following cases, wherein the Courts have held that value of bought-out items would not be included in the assessable value:

- **Mihir Engineers (P) Ltd vs. Collector of Central Excise, Ahmedabad - 1999 (107) ELT 756 (Tribunal)**
- **Commissioner of C. Ex., Nagpur vs. Unitech Power Transmission Ltd - 2018 (364) ELT 1048 (Tri - Mumbai)**
- **Transrail Lighting Ltd vs. Commissioner of C. Ex. & S.T., Silvassa - 2023 (385) ELT 749 (Tri - Ahmd)**
- **India Tube Mills & Metal Industries vs. Commissioner of C. Ex., Mumbai - 2017 (353) ELT 353 (Tri - Mumbai)**
- **Commissioner of Central Excise, Mumbai vs. Voltas Ltd - 2006 (196) E.L.T. 358 (Tri. - Mumbai) [Maintained in Supreme Court - 2016 (336) ELT A135 (SC)]**
- **Kerala State Electronics Dev. Corpn. Ltd. vs. Commr. of C. Ex., Cochin - 2004 (171) ELT 281 (Tri - Bang) [Maintained in Supreme Court - 2006 (199) ELT A130 (SC)]**

4.8 The learned Counsel further submits that in the impugned order demand of excise duty has also been confirmed on the aluminium doors, windows and their frames and other aluminium structures fabricated by the Appellant for various parties at their sale value. She further submits that this issue has already been decided in favour of the Appellant vide **Order-in-Original No. 111/2003 dated 31.10.2003** wherein it was held that the conditions of marketability and of being goods were not satisfied as the final product is immovable and hence not chargeable to excise duty. She further submits that the said Order-in-Original was not challenged by the department and hence attained finality. She also submits that it is a settled law that the department cannot take contrary stands in

proceedings on the same issue for the same assessee. In this regard, the she relies on the following cases:

- **Commissioner of Central Excise, Pune-II vs. SS Engineers - Supreme Court's Order dated 07.07.2023**
- **Rosmerta Technologies Ltd vs. Commr. of Central Excise - 2020-TIOL-916-CESTAT-CHD [Affirmed by Supreme Court vide order dt. 10.07.2023]**

4.9 As regards the penalty on the partner of the firm (The Appellant No.2) under Rule 26 of the Central Excise Rules, the learned Counsel submits that requirement of imposing penalty under Rule 26 is that the person should be engaged in clandestine removal of the excisable goods by paying short duty rendering the goods liable for confiscation; whereas, in the present case, the department has not produced any evidence showing *mala fide* intention and involvement of the Appellant No.2 in respect of the allegations raised in the show cause notice and the impugned order. For this, she relies on the following decisions:

- **Commissioner of Central Excise, Delhi-III vs. M/s Vee Gee Faucets Pvt Ltd - 2015 (329) ELT 76 (P & H)**
- **M/s Quality Flavours Exports and others vs. Commissioner of Central Excise, Chandigarh-II - 2024 (9) TMI 1592-CESTAT Chandigarh**
- **Good Year India Ltd and anr. vs. Commissioner of Central Goods & Service Tax, Faridabad - 2024 (10) TMI 287-CESTAT Chandigarh**
- **Zapak Digital Entertainment Limited vs. Commissioner of Central Excise, Mumbai-II - Final Order No. 85107/2023 dated 31/01/2023 (Tri - Mumbai)**
- **Steel Tubes of India vs. CCE, Indore - 2007 (217) ELT 506 (Tri - LB)**

4.10 As regards the extended period of limitation, the learned Counsel submits that the demand has been confirmed by invoking the extended period of limitation because the show cause notice was issued on 04.07.2011 for the period 2006 to 2009 which is beyond the normal period of limitation. She further submits that the extended period of limitation cannot be invoked as there was no wilful suppression of any fact, fraud or misstatement on part of the Appellant who has duly filed the returns regularly and disclosed the goods manufactured in the factory and paid excise duty on the same on the respective tariff headings. She also submits that the department was very well aware about the activities of the Appellant which is also evident from the fact that for the previous period, the similar demand in respect of aluminium doors, windows and other aluminium structures was raised which was subsequently dropped by the Commissioner. She also submits that the Appellant was under the *bona fide* belief that the RVI Elements once installed become immovable in nature and hence do not qualify as goods and not subject to excise duty. She further submits that the said issue had been a matter of interpretation of legal provisions, therefore, the extended period of limitation cannot be invoked. In this regard she relies on the following cases:

- **M/s Socomec India Private Limited vs. Principal Commissioner of CGST, Gurugram - Final Order No. 60436/2025 dated 26.03.2025 (Tri. - Chandigarh)**
- **M/s GD Goenka Private Limited vs. Commissioner of CGST, Delhi South - Final Order No. 51088/2023 dated 21.08.2023 (Tri. - New Delhi)**
- **Good Year India Ltd and anr. vs. Commissioner of Central Goods & Service Tax, Faridabad - 2024 (10) TMI 287-CESTAT Chandigarh**

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record. The main dispute in the instant case is the demand of excise duty on RVI Elements and aluminium doors/frames/shutter/lockers etc manufactured and installed by the Appellant at the sites of its various vendors. As per the department, the impugned goods are classifiable under sub-heading 9405 60 90 of the Central Excise Tariff Act, and as per the Appellant, the goods cleared from the factory, were only parts of RVI Elements and the RVI Elements came to existence only at the retail outlets as 'immovable property'. Further, we find that the Appellant has paid the duty on the parts cleared from the factory and no further value was added to the parts.

7. As per the impugned order, we find there are two issues involved in the case:

(A) Whether the RVI Elements and aluminium doors/frames/shutter/lockers etc installed by the Appellant at the sites of its various vendors are liable to central excise duty or not? and

(B) Whether invocation of extended period of limitation is justified in this case or not?

8. Further, we find that as per the Appellant, the first issue is no longer *res integra* as the same has been decided by various benches of the Tribunal in the cases cited supra in favour of the assesseees in

respect of similar contracts. We also find that the RVI Elements are not cleared from the factory in fully manufactured condition rather the same came into existence as a part of permanent structure on site only and the once the same installed, the same cannot dismantled nor re-installed at alternate locations/petrol-pumps. We further find that these RVI Elements are not resold/marketable by IOCL, therefore, it cannot be said that the Appellant manufactured the RVI Elements completely.

9. Further, we find that the Adjudicating Authority in the impugned order, has wrongly confirmed the demand of differential amount of excise duty on the ground that the RVI Elements were manufactured by the Appellant in its factory and the same were cleared from the factory in CKD condition which were assembled at site and fixed to civil foundation with nuts and bolts to make them stand still. We also find that in the case of RVI Elements, the Test of Marketability has also not been satisfied because these parts, in the form that they are cleared, are not capable of being used for any other purpose than the fabrication and installation of RVI Elements at the retail outlets of IOCL only. We also find that the parts of the RVI Elements are not capable of being bought and sold for a consideration in the form that they exist when they are cleared from the factory, and thus they cannot be deemed to be marketable. The department has failed to prove that the RVI Elements are freely marketable to be exigible for the excise duty as held in the decisions cited supra. We also find that the RVI Elements once fixed with civil foundation, are attached to the earth and are 'immovable property' because the said

parts once installed, become permanent and if the said parts being dismantled, the same would get damaged and will no longer remain useable. Therefore, the department's case also fails on this account. We also find that in the cases relied upon by the Appellant cited supra, it has been held that if the goods are dismantled and get substantially damaged, it can qualify as 'immovable property' and therefore, demand of excise duty is also not sustainable on this account.

10. As regards the classification of the RVI Elements by the department under sub-heading 9405 60 90, we find that this heading is a residuary clause and therefore, any item can only be classified under this heading if its classification elsewhere in the Tariff is ruled out. There is no such finding in the impugned order that the RVI Elements were not classified under any other tariff heading and hence covered under 9405. It has been held by the Tribunal in the case of Studio Printfall New Delhi Pvt Ltd (supra) that 9405 covers those items which have permanent light source.

11. As regard the demand of excise duty on aluminium doors, windows, frames and other structures fabricated by the Appellant, we find that this issue is already settled in favour of the Appellant vide **Order-in-Original No. 111/2003 dated 31.10.2003** wherein it was held that the conditions of marketability and of being goods were not satisfied as the final product is immovable and hence not chargeable to excise duty. We also note that the said Order-in-Original was not challenged by the department and hence attained finality.

12. As regards the personal penalty under Rule 26 of the Central Excise Rules, we find that for imposing the penalty under Rule 26, the department has to produce evidence showing *mala fide* intention and involvement of the person in respect of the allegations raised in the show cause notice; whereas, in the instant case, the department has failed to prove any *mala fide* intention of the Appellant No.2. Further, we find that the penalty under Rule 26 can be imposed only when a person has dealt with the excisable goods with the knowledge of the liability of the said goods to confiscation; whereas, in the present case, there has been no such proposal in the show cause notice stage to confiscate the goods. Therefore, imposition of penalty under Rule 26 is not sustainable in law, as held in various decisions cited supra.

13. As regards invocation of extended period of limitation, we find that the entire demand has been confirmed by invoking the extended period of limitation. The period under dispute is 2006 to 2009 whereas the show cause notice was issued on 04.07.2011 by alleging suppression of facts, fraud or misstatement on the part of the Appellant. We find that the Appellant has been regularly filing the returns and has disclosed the goods manufactured in its factory and has been paying excise duty for the same under respective tariff heading. We also find that the similar demand in respect of aluminium doors, windows and other aluminium structures was raised which was subsequently dropped by the Commissioner. We also find that the Appellant was under a *bona fide* belief that the RVI Elements once installed become 'immovable' in nature and do not qualify as 'goods' and are not subject to excise duty. We also find that identical

issue was decided in favour of the assesseees in similar contracts as cited above; therefore, it cannot be said by any stage of imagination that the Appellant has suppressed the material facts from the department with intent to evade payment of duty. Therefore, invocation of extended period is not justified and the entire demand is also barred by limitation.

14. In view of our discussion above, we are of the considered view that the impugned order is not sustainable in law and is liable to be set aside on merit as well as on limitation and we do so by allowing both the appeals of the Appellants.

(Order pronounced in the open court on 13.01.2026)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**