CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 54166 of 2014

[Arising out of Order-in-Original No. 06/CE/COMMR/DM/RTK/2014-15 dated 26.05.2014 passed by the Commissioner of Central Excise, Rohtak]

M/s Pepsico India Holdings Pvt. Ltd. **……Appellant**
Village Ali Asgarpur, G.T. Road, Panipat,
Haryana-132103

VERSUS

Commissioner of Central Goods & Service Tax, Panchkula **……Respondent**
GST Bhawan, Sector-25, Panchkula,
Haryana-134116

APPEARANCE:

Shri B.L. Narasimhan, Ms. Krati Singh and Ms. Samiksha Uniyal, Advocates for the Appellant

Shri Anurag Kumar and Shri 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. 60847/2025

DATE OF HEARING: 24.06.2025
DATE OF DECISION: 11.07.2025

P.ANJANI KUMAR:

The appellants, M/s Pepsico India Holdings Pvt Ltd, filed this Appeal, No. E/54166/2014, challenging the Order-in-Original dated 26.05.2014 passed by Commissioner of Central Goods & Service Tax, Panchkula, vide which a demand of Rs. 3,45,50,702 was

confirmed against the appellants with equal penalty, for the period 2008-2009 to 2011-2012, on account of alleged non-reversal of Cenvat credit in accordance with Rule 6(3) of Cenvat Credit Rules, 2004

2. The Appellant was engaged in the manufacture of aerated water(classifiable under Tarriff Item 22021010) which was dutiable and beverage syrup 'Lehar Slice' (classifiable under Tarriff Item 22029020) which was exempted from payment of excise duty under *Notification No. 3/2006-CE* dated 01.03.2006, from April 2008 to February 2011; appellant paid excise duty at the concessional rate of 1% on Lehar Slice w.e.f. 01.03.2011 as per Notification No. 1/2011-CE and informed the department through letter dated 01.04.2011. The appellants did not avail any credit on common inputs and common input services, except for some input services such as Architect services, Management consultant services, Security agency services, Maintenance or repair services, technical testing and analysis services, Construction services, Pest control services and Labour supply services, during April 2008 to March 2010; Appellant started availing the credit on chemicals, a common input, and common input services from April 2010 and informed the department vide letter dated 31.03.2009. In respect of common input services, the Appellant reversed the proportionate credit under Rule 6(3) of Credit Rules on monthly basis based on the ratio of quantity of exempted goods to the quantity of exempted and dutiable goods, April 2010 to July 2011 in July 2011; thereafter, the reversal was done on monthly basis; sugar was procured and

accounted as a common input and the credit was availed with effect from February 2011. Based on an audit conducted, show cause Notice dated 07.05.2013 was issued to the Appellant seeking to demand of Rs. 3,45,50,702 along with interest and penalty on the ground that the Appellant did not reverse the credit availed on common inputs/input service in the ratio of value of exempted goods to the value of dutiable goods. The proposals in the show cause Notice, dated 07.05.2013, came to be confirmed vide the impugned order.

3. Shri B.L. Narasimhan, Learned counsel for the appellants submits that the appellant has correctly reversed the credit in respect of common inputs; Rule 6(3) of Cenvat Credit Rules provides that the manufacturer who manufactures taxable as well as exempted goods has two options while reversing the credit pertaining to common inputs and input services, either to pay a certain percentage of value of exempted goods or pay an amount determined under Rule 6(3A) of Credit Rules; Rule 6(3A)(b)(i) provides that the manufacturer of goods has to reverse the credit attributable to inputs used in or in relation to manufacturing of exempted goods; this clause does not provide for any formula for calculating the amount of credit to be reversed; Rule 6(3A)(b)(ii) and 6(3A)(b)(iii) which prescribes the formula for reversing the credit based on the value of exempted goods only provides for the payment/reversal towards the credit attributable to inputs used for providing the exempted services and input services used in relation to exempted goods or services; the Appellant cannot be forced to reverse the credit based on the value

of exempted goods in absence of any prescribed formula provided in the Credit Rules.

4. Learned counsel submits further that Circular No. 868/6/2008-CX, dated 09.05.2008, clarifies that the calculation of Cenvat credit attributable to inputs used in or in relation to the manufacture of exempted goods has to be done on the basis of actual consumption of inputs used and the quantification may be made based upon the stores/ production records maintained by the manufacturer; a Perusal of Circular dated 09.05.2008 indicates that the Appellant is free to devise its own method to reverse the credit in respect of inputs used in the manufacturing of exempted goods as the Circular uses 'may' while suggesting that the calculation can be done be based on stores/ production records; sole requirement is that the method of reversal devised should be in relation to the actual consumption of inputs in the manufacturing of exempted goods; the quantity of the common chemicals consumed in the manufacturing of exempted goods is directly proportional to the quantity of the said exempted and dutiable goods manufactured; further, the Appellant is reversing the credit in respect of sugar based on the quantity of sugar utilised in the manufacturing of exempted goods; the reversal made by the Appellant is in consonance with the Circular dated 09.05.2008; Adjudicating Authority failed to take into consideration the Circular dated 09.05.2008 while confirming the demand of reversal of credit based on the value of exempted goods. Ld. Counsel submits that it is a settled principle that if the taxpayer has proportionately reversed the credit or availed the credit, by adopting

the procedure which is resulting in the availment of credit attributable to only the dutiable goods, Rule 6(3) is said to be complied. He relies on following cases:

- Astrix Laboratories Limited 2019-TIOL-1773-CESTAT-HYD and Final Order No. 30852/2020 dated 20.02.2020 (Tri.-Hyd.)
- M/s Mylan Laboratories Ltd 2023-TIOL-1052-CESTAT-HYD
- Matrix Laboratories Ltd 2018-TIOL-3831-CESTAT-HYD
- Foods, Fats & Fertilisers Ltd 2009-TIOL-2438-CESTAT-BANG
- Sri Ramachandra Paper Boards Ltd 2007-TIOL-1859-CESTAT-BANG

5. Learned counsel submits further that in any case, the procedure/formula of reversal prescribed in Rule 6(3A) does not take away the substantive right of the Appellant to proportionately reverse the credit attributable to exempted goods. She relies on M/s Philips Carbon Black Ltd., M/s Promode Kumbhakar Final Order No. 76973-76975/2019 dated 17.12.2019 (Tri.-Kol.) and M/s. Rockey Marketing (Chennai) Pvt Ltd 2020-TIOL-1585-CESTAT-MAD and submits that in the worst case, in the least, non-reversal of credit in accordance with Rule 6(3A) can be said to be the procedural lapse which can be condoned; the Appellant has rightly reversed the credit in respect of common inputs.

6. Learned counsel submits further that credit is not required to be reversed in respect of common input services for the period April 2008 to March 2010; for the period from April 2008 to March 2010, the Appellant did not avail the credit of common inputs; they have utilised credit only on input services like Architect service, Management consultant service, Security agency service, Maintenance or repair service, Technical testing and analysis

service, Technical inspection and certification service, Construction service, Pest control service and Labour supply service; however, with effect from 01.04.2011, the Appellant started taking credit on common input services and chemicals; during the period from 01.04.2008 to 31.03.2011, the Appellant is not required to reverse the credit, as per Rule 6(5) of Credit Rules, as they have not provided any exempted services but credit was utilised only for the manufacturing of the exempted as well as dutiable goods; the Adjudicating Authority also agreed with this principle, at Para No. 24 of the Impugned Order; By the virtue Rule 6(5), the Appellant is entitled to avail the credit in respect of input services from 01.04.2008 to 31.03.2011, as held in M/s The Incoda Final Order No. 76571/2024 dated 30.07.2024 (Tri.-Kol.); M/s. Paradeep Phosphates Limited 2024-TIOL-698-CESTAT-KOL and Intas Pharmaceuticals Limited 2023-TIOL-1131-CESTAT-AHM.

7. Learned counsel submits further that extended period of limitation cannot be invoked; entire demand is barred by limitation; department conducted yearly audits of the Appellant, who regularly filed the statutory returns; department did not raise the dispute on the method of reversal adopted by the Appellant post 01.04.2008, during multiple audits; the present proceedings are the outcome of the audit proceedings conducted by the department; department had full knowledge that the Appellant took credit in the manner discussed above; in this regard, Appellant intimated the department that it started availing the credit on common inputs and input services, through letter dated 31.03.2009 and department issued a

letter dated 19.11.2010, in reference to the compliance to audit report; hence, fraud, wilful misstatement or suppression cannot be alleged against the Appellant; the Appellant was under the bona fide belief that the procedure adopted for the reversal of the credit is correct; in any case, the issue in the present case involves interpretation of complex legal provisions regarding the reversal of credit; moreover, the department failed in bringing out any positive act on part of the Appellant which establishes fraud, wilful misstatement or suppression etc; therefore, extended period of limitation cannot be invoked. Learned Counsel relies on.

- Pepsico India Holdings Pvt Ltd, Final Order No. 60489/2025 dated 22.04.2025 (Tri. -Chan.)
- Mahanagar Telephone Nigam Ltd 2023-TIOL-407-HC-DEL-ST
- M/s GD Goenka Private Limited 2023-TIOL-782-CESTAT-DEL
- Delhi Airport Metro Express Pvt Ltd Final Order No. 50031/2024 dated 11.01.2024 (Tri. - Del.)
- Mahesh Chemicals Allied Industries and Suresh Goyal 2024-TIOL-1120-CESTAT-CHD.

8. Learned Authorised representative reiterates the findings of the impugned order and submits in so far as limitation is concerned that the adjudicating authority has dealt with each of the submissions of the appellant on this issue in the impugned order. Learned Authorised representative submits that learned Commissioner observed (Page No.54, Para 14) that

> 14. …. the Noticee had intimated vide their letters dated 17.02.2011 and 08.03.2011 that they had not availed any credit of inputs/ input services till date used in the manufacturing of exempted goods, The Noticee wilfully mis-stated and suppressed the facts from the

> department that they had availed the CENVAT Credit on input services and inputs used exclusively for the manufacture of dutiable goods i.e. Pepsi, Mirinda etc. whereas they were availing the CENVAT credit on common input and input services used in the manufacture of dutiable and exempted goods. They had not reversed the CENVAT credit as required under Rule 6 (3) (ii) of the CENVAT Credit Rules, 2004. Thus, proviso to Section 11A (4)/11A (1) of the Central Excise Act, 1944 and Section 73 of the Finance Act, 1944 for invoking the extended period of limitation appeared applicable…..

9. Learned Authorised representative refers to Page No.79, Para 27 of the impugned order and says Commissioner observed as follows.

> 27. The Noticee has also made a submission that demand beyond one year is time bared and therefore, unsustainable. It is observed that show cause notice was issued on 07.05.2013. It seeks to recover Cenvat credit taken by the Noticee from 2008-09 to 2011-12, applying extended period under proviso to Section 11A(1)/Section 73 of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules. 2004. In normal circumstances, show cause notice for recovery of duty/credit wrongly taken is permitted to be issued covering a period of one year from the relevant date. In the case of the Noticee, it has been alleged that they wilfully suppressed and mis-stated the fact of availing credit on inputs and input services used for manufacture of dutiable and exempted goods. The allegation is proved beyond doubt as I find that the Noticee, vide their letter dated 17.02.2011 and 08.03.2011(RUD-5 and RUD-6 of the SCN) wrongly intimated to the Department that they had not availed any credit till date on inputs/input services used in manufacture of exempted goods and that they had availed

> Cenvat credit on inputs and input services used exclusively for the manufacture of dutiable goods whereas in fact, they were availing Cenvat credit on inputs and input services used in manufacture of dutiable and exempted goods. They had not reversed credit taken in relation to exempted goods as required under Rule 6(3) (ii) of the Cenvat credit. Facts contrary to what they disclosed in their letter dated 17.02.2011 and 08.03.2011 came to the knowledge of the Department when the Departmental officers conducted audit of their records. But for the audit, these facts would not have come to the fore and Department would not have been able to initiate action for recovery of credit taken beyond the limitation period of one year. Thus, I observe that in the present era of self-assessment, the Noticee shattered the faith reposed in them by the Government. They took wrong advantage of the liberty extended to them and went to the extent of mis-stating and suppressing the facts with sole intent to wrongly avail Cenvat credit as proposed for recovery in the show cause notice. I, therefore, hold that extended period of five years has been correctly invoked in this case.

10.Heard both sides and perused the records of the case. To begin with, learned Counsel for the appellants argues on the issue of limitation. He would submit that the show cause notice dated 07.05.2013 which covers the period April 2008 to March 2012 and that the entire demand is barred by limitation. He would cite the reasons that the appellant has been regularly filing the statutory ST-3 Returns; regular audit of the unit was being conducted by the Department; the appellants vide letter dated 31.03.2009 informed that they started availing the credit on common inputs and input services; a letter dated 19.11.2010 written by the Department itself

would indicate that the facts are before the Department; Department did not dispute the method of reversal adopted by the appellant post 01.04.2008, though, several audits have taken place. He would further submit that the issue is about interpretation of complex legal provisions about which various Benches of the Tribunal and Hon'ble High Courts gave different rulings and therefore, there are reasons for the appellant to entertain an opinion which is different from the Department. He submits that no positive act of commission or omission on the part of the appellant has been brought on record to show any mis-declaration etc. with an intent to evade payment of tax. On the other hand, learned Authorized Representative submits that the appellants, vide their letters dated 17.02.2011 and 08.03.2011, wrongly intimated to the Department that they had not availed any credit till date on inputs/input services used in manufacture of exempted goods and that they had availed Cenvat credit on inputs and input services used exclusively for the manufacture of dutiable goods whereas in fact, they were availing Cenvat credit on inputs and input services used in manufacture of dutiable and exempted goods and therefore, learned Adjudicating Authority has correctly upheld the invocation of extended period

11. In the instant case the appellants have been a long-standing assessee for the Revenue, both under Central Excise and Service Tax. They have been regularly filing the statutory ER-1 and ST-3 returns. They have been subjected to various audit through the years and the previous audits did not raise any objection regarding the impugned issue of reversal of credit of input and input services,

utilised both in dutiable and exempted goods. We find that the Audit Report IAR No 218/2008-09, on audit conducted on 10.0.2008 to 12.09.2008 does not raise this issue. In addition to audit, in terms of department Circulars Nos 818/15/2005-CX dated 15-7-2005 and No. 887/7/2009-CX dated 11-5-2009, officers are required to scrutinise the records of the appellant. There is no whisper of scrutiny, if any, that has been undertaken in this regard. When the audit and scrutiny did not find out wrong practice, if any, adopted by the appellants, it is not proper on the part of the department to invoke extended period of limitation.

12. We find that when the Hon'ble High Court's and different Benches of the Tribunal were having different opinions on the issue, the appellant's adoption of the practice of reversal of credit availed on common input and input services cannot be said to be with a *mala fide* intent. Learned adjudicating authority finds that the appellants have suppressed the facts vide their letters dated 17.02.2011 and 08.03.2011. We find that while the show cause notice covers the period 2008-09 to 2011-12, it cannot be said that the appellants have suppressed any material facts that too with intent to evade payment of duty on the basis of two letters written in 2011 within a fortnight. Moreover, the appellants submit that the credit is not required to be reversed in respect of common input services for the period April 2008 to March 2010; for the period from April 2008 to March 2010, the Appellant did not avail the credit of common inputs; they have utilised credit only on input services like Architect service, Management consultant service, Security agency

service, Maintenance or repair service, Technical testing and analysis service, Technical inspection and certification service, Construction service, Pest control service and Labour supply service; however, with effect from 01.04.2011, the Appellant started taking credit on common input services and chemicals; during the period from 01.04.2008 to 31.03.2011, the Appellant is not required to reverse the credit, as per Rule 6(5) of Credit Rules, as they have not provided any exempted services but credit was utilised only for the manufacturing of the exempted as well as dutiable goods; the Adjudicating Authority also agreed with this principle, at Para No. 24 of the Impugned Order. We find that Revenue has not placed those letters on record. Even assuming that such letters have been written, the fact that audit has been conducted right from 2008-09 regularly will rightly raise a question as to why Revenue could not detect the procedural or material infirmity, if any, committed by the appellants. We find that there are reasons for the appellants to entertain a bona fide belief that what they are opining is the correct interpretation of law. We find that for that reason also extended period cannot be invoked. We find that the Principal Bench has gone into the issue of invocation of extended period in an elaborate manner while dealing with the case of M/s G.D. Goenka Pvt. Ltd. – 2023-TIOL-782-CESTAT-DEL, the Bench observed as follows:

> 12. Section 73 provides for recovery of service tax not levied, not paid, short levied, short paid or erroneously refunded. The provisions of this section apply mutatis mutandis to irregularly availed CENVAT credit recoverable under Rule 14 of CCR. This section permits

invoking extended period of limitation to raise a demand on the following grounds:

a) Fraud; or

b) Collusion; or

c) Willful misstatement; or

d) Suppression of facts; or

e) Violation of the Act or Rules with an intent to evade payment.

13. There is no other ground on which the extended period of limitation can be invoked. Evidently, fraud, collusion, willful misstatement and violation of Act or Rules with an intent all have the mens rea built into them and without the mens rea, they cannot be invoked. Suppression of facts has also been held through a series of judicial pronouncements to mean not mere omission but an act of suppression with an intent. In other words, without an intent being established, extended period of limitation cannot be invoked. In Pushpam pharmaceuticals company vs Collector of Central Excise Mumbai5, the Supreme Court examined Section 11A of the Central Excise Act, 1944 which was worded similar to Section 73 of the Finance Act, 1994 and held as follows:

> " 4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company

> of such strong words as fraud, collusion or willful default. In fact, it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

14. In this appeal, the case of the Revenue is that the appellant had willfully and deliberately suppressed the fact that it had availed ineligible CENVAT credit on input services. The position of the appellant was at the time of self-assessment and, during the adjudication proceedings and is before us that it is entitled to the CENVAT credit. Thus, we find that it is a case of difference of opinion between the appellant and the Revenue. The appellant held a different view about the eligibility of CENVAT credit than the Revenue. Naturally, the appellant self-assessed duty and paid service tax as per its view. Such a self-assessment, cannot, by any stretch of imagination, be termed deliberate and wilful suppression of facts.

15. Another reason given in the SCN for invoking extended period of limitation was that the appellant had deposited the disputed amount of service tax during audit but later disputed it which shows the appellant's intent to willfully and deliberately suppress the facts. This reasoning of the Revenue cannot be accepted because there is nothing in the law which requires the assessee to accept the views of the audit or of the Revenue. There is nothing in the law by which an inference of intent to evade can be drawn if the assessee does not agree with the audit. It also does not matter if the assessee

deposited the disputed amount as service tax during audit and later disputed it. Often, during audit or investigation, the assessee deposits some or all of the disputed amounts and later, on consideration or after seeking legal opinion, disputes the liability and seeks a notice or an adjudication order. This does not prove any intent to evade or deliberate or willful suppression of facts.

16. Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns. If some tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect self-assessment itself is held to establish willful suppression with an intent to evade. To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.

17. The argument that the appellant had not disclosed in its returns that it was availing and using ineligible CENVAT credit also deserves to be rejected. The appellant cannot be faulted for not disclosing anything which it is not required to disclose. Form ST-3 in which the appellant is required to file the returns does not require details of the invoices or inputs or input services on which it availed CENVAT credit and the appellant is not required to and hence did not provide the details of the CENVAT Credit taken. It also needs to be pointed out that the Returns are filed online and therefore, it is also

not possible to provide any details which are not part of the returns. If the format of ST-3 Returns is deficient in design and does not seek the details which the assessing officers may require to scrutinise them, the appellant cannot be faulted because as an assessee, the appellant neither makes the Rules nor designs the format of the Returns. So long as the assessee files the returns in the formats honestly as per its self-assessment, its obligation is discharged.

18. Another ground for invoking extended period of limitation is that the appellant had not sought any clarification from the department. We find that there is neither any provision in the law nor any obligation on the assessee to seek any clarification. It was held by the High Court of Delhi in paragraph 32 of Mahanagar Telephone Nigam Ltd. vs. Union of India & Ors.6 as follows:

> " 32. As noted above, the impugned show cause notice discloses that the respondents had faulted MTNL for not approaching the service tax authorities for clarification. The respondents have surmised that this would have been the normal course for any person acting with common prudence. However, it is apparent from the statements of various employees of MTNL that MTNL did not believe that the amount of compensation was chargeable to service tax and therefore, there was no requirement for seeking clarifications. Further, there is no provision in the Act which contemplates any procedure for seeking clarification from jurisdictional service tax authority. Clearly, the reasoning that MTNL ought to have approached the service tax authority for clarification, is fallacious."

Therefore, there is no force in this ground also.

19. It has also been pointed out that but for the audit, the allegedly irregularly availed CENVAT credit would not have come to light. It is incorrect to say that but for the audit, the alleged irregular availment of CENVAT credit would not have come to light. It is undisputed that the appellant has been self-assessing service tax and filing ST-3 Returns. Unlike the officers, the assessee is not an expert in taxation and can only be expected to pay service tax and file returns as per its understanding of the law. The remedy against any potential wrong assessment of service tax by the assessee is the scrutiny of the Return and best judgment assessment by the Central Excise Officer under section 72. This section reads as follows:

> "72. Best judgment assessment. If any person, liable to pay service tax,— (a) fails to furnish the return under section 70; (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment."

20. Thus, 'the central excise officer' has an obligation to make his best judgment if either the assessee fails to furnish the return or, having filed the return, fails to assess tax in accordance with the Act and Rules. To determine if the assessee had failed to correctly assess

the service tax, the central excise officer has to scrutinize the returns. Thus, although all assessees self-assess tax, the responsibility of taking action if they do not assess and pay the tax correctly squarely rests on the central excise officer, i.e., the officer with whom the Returns are filed. For this purpose, the officer may require the assessee to produce accounts, documents and other evidence he may deem necessary. Thus, in the scheme of the Finance Act, 1994, the officer has been given wide powers to call for information and has been entrusted the responsibility of making the correct assessment as per his best judgment. If the officer fails to scrutinise the returns and make the best judgment assessment and some tax escapes assessment which is discovered after the normal period of limitation is over, the responsibility for such loss of Revenue rests squarely on the shoulders of the officer. It is incorrect to say that had the audit not been conducted, the allegedly ineligible CENVAT credit would not have come to light. It would have come to light if the central excise officer had discharged his responsibility under section 72.

21. This legal position that the primary responsibility for ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs7 in its Manual for Scrutiny of Service Tax Returns the relevant portion of which is as follows:

> 1.2.1A The importance of scrutiny of returns was also highlighted by Dr. Kelkar in his report on Indirect Taxation8. The observation made in the context of Central Excise but also found to be relevant to Service Tax is reproduced below: It is the view that assessment should be the primary function of the Central Excise Officers. Self assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory

> responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers.
>
> (emphasis supplied)

22. Therefore, to say that had the audit not been conducted, the incorrect availment of CENVAT credit would not have come to light is neither legally correct nor is it consistent with the CBEC's own instructions to its officers.

23. For the sake of completeness, it needs to be pointed out that the aforesaid Manual provides for two levels of scrutiny- preliminary scrutiny of all Returns and Detailed Scrutiny of some Returns selected based on some criteria laid down in it. Relevant extracts of the manual are as follows:

> 1.2A Service Tax administration has had the benefit of building on the experience of Central Excise administration which is an older tax going back to 1870. More recently, in July 2000, under the CIDA-assisted capacity building project, a detailed business process reengineering exercise was initiated. For the first time, key business processes were identified and small working groups set up to examine each business process and suggest qualitative improvements to enhance revenue efficiency and ensure taxpayer satisfaction. The business re-engineering exercise conducted for returns' scrutiny revealed the need to distinguish between preliminary scrutiny and detailed scrutiny in a two-tier scrutiny process. 1.2B It was decided that a preliminary scrutiny would be conducted on all returns. This

could even be undertaken online. Detailed scrutiny, on the other hand, would cover select returns, identified on the basis of risk parameters, drawn from the information furnished by taxpayers in the statutory returns (Service Tax returns or ST-3 in this case). CBEC felt that facilitating preliminary scrutiny online would enhance efficiency and release manpower for detailed manual scrutiny, which could then become the core function of the Range/Group. 2) A detailed scrutiny program also serves a 'workload development' function by initiating referrals for audit/anti-evasion. 1.2.2 Authority and Ownership 1.2.2A The authority to conduct scrutiny of returns for verifying the assessment done by the assessee is provided in Rule 5A of the Service Tax Rules, 1994. This rule, inter alia, authorizes the Commissioner to empower any officer to carry out 'Scrutiny, verification and checks, as may be necessary to safeguard the interest of revenue'. The Rule also allows the officer to call for any record maintained by the assessee for accounting of transactions, the trial balance or its equivalent, and the Income Tax Audit Report maintained under Section 44AB of the Income Tax Act. In other words, the Rule permits the officer to examine financial records for scrutinizing the return to determine the correctness of the assessments made. In pursuance of this, the Board has also issued guidelines vide letter F.No.137/27/2007 CX.4, dated 08.02.2007, which makes it mandatory to scrutinize returns on a regular basis. Details of the Board's guidelines on returns' scrutiny are discussed in Chapter 2 of this Manual.

> 1.2.2B The guidelines clearly envisaged that returns' scrutiny would become the core function of the Service Tax Group/Range, supervised by the Assistant Commissioner of the Service Tax Unit.

24. Thus, the CBEC took a conscious decision that detailed scrutiny of the Returns should be done only in some cases selected based on some criteria. In those Returns, where detailed scrutiny is not done by the officers some tax may escape assessment which may not be discovered within the normal period of limitation. As a matter of policy, the CBEC, took such risk and the loss of Revenue is a result of the policy.

25. To sum up:

a) The appellant assessee was required to file the ST 3 Returns which it did. Unless the Central Excise officer calls for documents, etc., it is not required to provide them or disclose anything else.

b) It is the responsibility of the Central Excise Officer with whom the Returns are filed to scrutinise them and if necessary, make the best judgment assessment under section 72 and issue an SCN under Section 73 within the time limit. If the officer does not do so, and any tax escapes assessment, the responsibility for it rests on the officer.

c) Although the Central Excise Officer is empowered to scrutinise all the Returns call for records and if necessary, make the best judgment assessment, if, as per the instructions of CBIC, the officer does not conduct a detailed scrutiny of same Returns and as a result is unable to discover any short payment of tax within the period of limitation, neither the assessee nor the officer is responsible for such loss of revenue. Such a loss of Revenue is the risk taken by the Board as a matter of policy.

d) Extended period of limitation cannot be invoked unless there is evidence of fraud or collusion or wilful

misstatement or suppression of facts or violation of the provisions of Act or Rules with an intent.

e) Intentional and willful suppression of facts cannot be presumed because (a) the appellant was operating under self-assessment or (b) because the appellant did not agree with the audit and claimed that CENVAT credit was admissible; or (c) because the appellant did not seek any clarification from the Revenue; or (d) because the officer did not conduct a detailed scrutiny of the Returns and the availment of CENVAT credit which is alleged to be inadmissible and was discovered only during audit.

13. In the impugned case too, there have been regular audits conducted and the appellants have been filing returns regularly. Having failed to detect the inconsistency/ lapse/ mistake, if any, in the manner of assessment by the appellants either during the audits or during the scrutiny of the records, Department cannot invoke extended period. Extended period, as per Section 73 of the Finance Act, 1994, cannot be invoked in special circumstances and thereto only when the criteria laid down is satisfied. It cannot be a weapon in the hands of the Department to cover up their failure to detect evasion or avoidance of duty by the assessees. This Bench while dealing with another case of Pepsico India Holdings Pvt. Ltd. vide Final Order No.60489/2025 dated 22.04.2025 held that extended period is invocable under similar circumstances. We also find that the appellants could successfully demonstrate that there are reasons which made them interpret the provisions differently from the revenue. In view of the cases cited above, we find that Revenue has not made out any case for invocation of extended period. Therefore, the appeal succeeds on limitation. As the appeal succeeds on

limitation, we find that going into the merits of the case is not warranted as held by the Hon'ble Bombay High Court in the case of Rochem Separation Systems (I) P. Ltd. – 2019 (23) GSTL 446 (Bom.) and by the Hon'ble Allahabad High Court in the case of Monsanto Manufacturer Pvt. Ltd. – 2014 (35) STR 177 (All.).

14. In the result, the appeal is allowed on limitation.

(Order pronounced in the open court on 11/07/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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