CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO.55777 OF 2014

[Arising out of Order-in-Appeal No. 45/SM/ST/D-II/14 dated 10.07.2014 passed by the Commissioner of Central Excise (Appeals), Delhi- II]

M/s. Artifacts India
B-51, Mayapuri Industrial Area,
Phase-I , New Delhi-110064 **Appellant**

Vs.

Commissioner of Central Excise (Appeals), Delhi- II
First Floor, New CGO Complex,
D-Block, N.H-VI, Faridabad **Respondent**

Appearance:
Present for the Appellant : Shri A.K.Batra, Chartered Accountant
Present for the Respondent: Shri Anand Narayan, Authorised Representative

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 28.03.2025
Date of Decision:30.05.2025

FINAL ORDER No.50804/2025

HEMAMBIKA R. PRIYA

The present appeal is filed by Artifacts India[1] against the impugned Order-in-Appeal No. 45/SM/ST/D-II/14 dated 10.07.2014 passed by the Commissioner of Central Excise

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1. **the Appellant**

(Appeals), Delhi- II imposing the penalty of Rs.1000/- under section 77 & section 78 of the Finance Act, 1994[2].

2. Brief facts are that the appellant is a proprietorship concern and is engaged in the manufacturing of various paper products, including paper boxes, bags, and gift sets, as well as handicraft items. The Appellant is registered as a 100% Export Oriented Unit. During the period 01.04.2007 to 31.03.2012, the Appellant had exported goods manufactured by him and had received consideration in foreign currency from buyers. As the Appellant was exclusively engaged in the export of goods, therefore the appellant had not sought registration under service tax.

3. During the audit of the appellant's records, the Department observed that the appellant had paid certain expenses in foreign currency, on which tax had not been paid under the Reverse Charge Mechanism (RCM). The Department alleged the following:

- Bank charges paid to foreign banks are subject to service tax under RCM, classifiable under 'Banking and Other Financial Services' (BOFS).
- Commission paid to agents is liable to service tax under RCM, taxable under 'Business Auxiliary Services' (BAS), as the Appellant had promoted the agents' business.
- Design charges paid to professionals are subject to service tax under RCM, categorizable as 'Design Services'.

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2. the Finance Act

4. A show cause notice dated October 17, 2012, was issued to the appellant proposing a service tax demand of Rs. 10,09,952/-, which was subsequently adjudicated by the Additional Commissioner vide Order-in-Original dated August 30, 2013. Vide the said order, the demand for Rs.1,67,895/- was dropped on account of computational errors and the balance demand for Rs.8,42,057/- was confirmed along with interest under section 75 and penalties under section 77 and 78 of the Act.

5. Aggrieved by the order-in-original, the appellant filed an appeal before the Commissioner (Appeals) who decided the appeal vide Order-in-Appeal dated 29.05.2014 and upheld the adjudication order. Hence, the present appeal has been filed by the appellant before the Tribunal.

6. Learned counsel for the appellant submitted that the Department had erred in its understanding, as there exists no contractual relationship (privity of contract) between the Appellant and the foreign service providers. In the absence of a service provider-recipient relationship, the demand for service tax is unfounded. He contended that foreign buyers had availed the services of foreign banks to facilitate payments to the appellant in foreign currency. Notably, no arrangement existed between the foreign banks and the appellant. Instead, the Appellant had merely borne the bank charges based on an understanding with the foreign buyers. Furthermore, the Department had failed to identify the specific clause within the Banking and Other Financial

Services (BOFS) category that purportedly governs this transaction. Learned counsel submitted that it is settled legal proposition that service tax cannot be levied under a particular taxable category without specifying the relevant clause. He placed reliance on the following decisions.

(i). **Balaj Enterprises** vs. **Commissioner of C. Ex. & S.T., Jaipur[3].**

(ii). **Commissioner of Customs & Central Excise, Goa** Vs. **Swapnil Asnodkar[4].**

7. Learned counsel further stated that the foreign buyers had engaged commission agents to identify potential suppliers, but the Department had erroneously alleged that the Appellant's payment of commission to these agents constituted promotion of the agents' business. He contended that this assertion was factually incorrect, as there was no agreement between the agents and the Appellant in this regard. He submitted that the foreign buyers had engaged the designers and artwork professionals to customize product designs and the Appellant had merely borne the costs of these services, as mutually agreed upon with the buyers. Consequently, no service provider-recipient relationship existed between the Appellant and the designers.

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3. 2020 (33) GSTL 97 (Tri. - Del.) dated 20.09.2019
4. 2018 (10) GSTL 479 (Tri. - Mumbai) dated 10.11.2017

8. Learned counsel contended that the Commissioner (Appeals) had overlooked a crucial fact that the appellant was a 100% EOU. Consequently, any tax paid by the appellant under the Reverse Charge Mechanism (RCM) would be available to them as CENVAT Credit or liable to be refunded thus the situation was revenue neutral.

9. Learned counsel stated that extended period of limitation was not invocable in the present case as interpretational issues were involved. Further, he contended that it was a revenue neutral situation. He submitted that it was a settled legal position that extended period was not invocable in the case of revenue neutrality. Reliance was placed on the following decisions:

(i) **Jet Airways (1) Ltd** Vs. **CST, Mumbai**[5]

(ii) The aforesaid decision has been affirmed by the Hon'ble Apex Court in **Jet Airways (India) Ltd**. v. **Commissioner**[6]**.**

(iii) **M/s. The Indure Private Limited** Versus **Commissioner of Service Tax, New Delhi**[7]**.**

10. Learned counsel further stated that the appellant was unregistered during the disputed period. Therefore, as per Section 73(6) of the Finance Act 1994, the relevant date for computing the extended period was the due date for payment of tax in cases where the assessee was unregistered. Hence, he submitted that

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5. 2016 (44) STR 465 (Tri- Mumbai), dated 29.07.2016
6. 2017 (7) G.S.T.L. J35 (S.C.)
7. 2025 (3) TMI 380 - CESTAT New Delhi, Dated 05.03.2025

the show cause notice was time-barred and prayed for setting aside the impugned order.

11. Learned authorized representative for the Department submitted that the demand was confirmed on the grounds that the appellant had incurred expenses under the head 'Foreign Bank Charges' as shown in their Balance Sheet, which were taxable under Section 66A of the Finance Act, 1994. Learned authorized representative further submitted that the appellant had argued that while the foreign buyers contracted directly with the foreign banks, the charges were borne by the appellants per their mutual agreement with the buyers. However, he submitted that the adjudicating authority had found that the appellants were making these payments in their own capacity for the services provided by foreign banks and were thus liable to pay the Service Tax.

12. Learned authorized representative further stated that the demand of Service Tax on commission paid to foreign agent was confirmed on the grounds that the appellant was providing services to foreign buyers by promoting their business. He stated that the appellant had argued that the payments made were only a rebate or discount and were recoverable from the appellant. However, learned authorized representative stated that the adjudicating authority had held that the appellant was promoting the business of foreign buyers, which fell under the definition of BAS.

13. As regard the demand for design and artwork charges paid to

foreign designers, learned authorized representative that these payments were directly linked to the design services received for the products manufactured by the appellant, thus making them liable for payment of Service Tax.

14. Learned authorized representative stated that the invocation of the extended period was correct as the appellant had willfully contravened the provisions of Service Tax Rules, 1994..

15. We have heard the learned Counsel for the appellant and the learned authorized representative for the department, and perused the records. The following issues are before us for decision:-

(i) Whether Bank charges paid to foreign banks are subject to service tax under reverse charge?

(ii) Whether Commission paid to agents is liable to service tax under reverse charge?

(iii) Whether design charges paid to professionals are subject to service tax under reverse charge?

(iv) Whether extended period has been rightly invoked?

16. We will take up each issue for consideration:

Bank charges paid to foreign banks:- It is noted that the foreign buyers or clients of the appellant avail the services of the foreign banks to facilitate payments to the appellant in foreign currency. It has been submitted before us that there was no arrangement between the foreign banks and the appellant for such

payments, instead the appellant bore the bank charges based on an understanding with their foreign buyers/clients. The Department has submitted that the same was payable in terms of section 66A of the Finance Act, under Banking & Financial Services. In order to appreciate the submissions, it would be appropriate to reproduce the definition of Banking & Financial services:-

> *"(12) "banking and other financial services" means*
> *(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or [commercial concern], namely :—*
> *(i) financial leasing services including equipment leasing and hire-purchase;*
> *Explanation.—For the purposes of this item, "financial leasing" means a lease transaction where—*
> *(i) contract for lease is entered into between two parties for leasing of a specific asset;*
> *(ii) such contract is for use and occupation of the asset by the lessee;*
> *(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and*
> *(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;]*
> *[(ii) Omitted]*
> *(iii) merchant banking services;*
> *(iv)Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;]*
> *(v) asset management including portfolio management, all forms of fund management, pension fund management, 6[custodial, depository and trust services,]*
> *(vi)advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;*

(vii) provision and transfer of information and data processing;

(viii) banker to an issue services; and

(ix) 8 other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;] (b) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a);

Explanation.— For the purposes of this clause, it is hereby declared that "purchase or sale of foreign currency, including money changing" includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately;

The 'taxable service' under section 65(105)(zm) of the Finance Act is as follows :

> *"**65(105)(zm) 'taxable service'** means any service provided or to be provided to any person by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, in relation to banking and other financial services;*

17. In the instant case, the department has noted that the Balance Sheet of the appellant reflected Foreign Bank charges which was paid by them in foreign currency deducted from their account in lieu of services received by them from the foreign bank. The Ld Counsel has submitted that the appellant did not have any privity of contract between the appellant and the foreign bank. We are of the opinion that the facts in the instant case indicate that

appellant had booked the sale, and instead of reducing these amounts released against such sale, had booked the same under the head charges/ deductions levied by the Foreign Banks, so as to distinguish such deductions from the actual export proceeds. As such, the Foreign Bank of the customer located outside India has not provided any service to the appellant located in India. In the instant case, the buyer is the client for the Foreign Bank, and not the appellant. Thus, we are of the opinion that the service provider and service recipient relationship exists between the foreign bank and the buyer and not between the foreign bank and appellant. It has been submitted by the learned Counsel that the service tax liability has been paid by the Indian bank of the appellant company providing the 'banking and financial service' to the appellant. We hold that bearing of such expenses is the business arrangement between the appellant and his buyer. Consequently, we hold that no service has been provided by the foreign Bank within the taxable territory to the appellant. Further, it has to be appreciated that the Foreign Bank of the buyer had provided its services to its client i.e. the buyer who has the letter of credit facility with the Foreign bank. The said Bank retains its charges and commission, and thereafter remits the net amount to appellant's bank in India where the appellant enjoys the said facility of letter of credit. The appellant received services from the bank in India with whom all the documents were negotiated. There is direct nexus of the buyer with the Foreign Bank, and it is held that when the provider of

service i.e. 'the Foreign Bank' and recipient of service i.e. 'the Buyer' are both located outside India, there is no question of taxing such service in India as the said service has been provided outside the taxable territory and outside the purview of Section 66B the charging section for levy of service tax. We draw support from the Tribunal's decision in **Greenply Industries Ltd.** VS **CCE**[8] wherein it was held that there is no document showing foreign banker charging any amount directly from assessee and the assessee cannot to be treated service recipient and Service Tax not to be charged under Section 66A of Finance Act, 1994 read with Rule 2(1)(2)(iv) of Service Tax we ort from: Rules, 1994. We also draw our support from the following decisions:

1. Kadri Mills (CBE) Ltd. Versus Commissioner of GST & Central Excise, Salem[9] **-**

2. SKM EGG Products Export (1) Ltd. Versus The Commissioner of Central Excise (Appeals), Annai Medu Salem[10]**.**

3. Theme Exports Pvt. Ltd. Versus C.S.T., Delhi[11]

4. Dileep Industries Pvt. Ltd. Versus CCE, Jaipur[12] **-**

18. We now take up the second issue for consideration:

Commissioner payment to Agent:

We note that the show cause notice has alleged that the appellant had made commission payment in foreign currency to foreign

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8. 2015 (38) S.T.R. 605 (Tri.- Del)
9. 2023 (8) TMI 1149-CESTAT, CHENNAI
10. 2023 (3) TMI 1384 - CESTAT CHENNAI
11. 2018 (5) TMI 825 - CESTAT NEW DELHI
12 .2017 (10) TMI 1231 - CESTAT NEW DELHI

principal for procuring orders. In the instant case, it has been submitted by Ld Counsel that such agents had been appointed by the foreign buyers to identify potential suppliers and the Commission agent was providing services to their foreign clients. We note that services provided by a commission agent are included in the category of taxable service termed as "business auxiliary service". In cases where this 'service' is provided by a service provider who is based outside India to a service recipient who is based in India, Section 66A, inserted by the Finance Act, 2006 read with the Service Tax Rules, 1994 mandate that service tax liability is to be discharged by the service recipient. However, a perusal of sample purchase order of the client M/s TESCO, it is noted that the terms of the agreement is that the appellant will bear the artwork charges, Foreign Bank charges, Agent commission charges. It is clear from these terms that the services of the Commission agent was received by the buyer abroad and he charges the said commission amount to the appellant. This was paid by the appellant as per the terms and conditions of sale and there is no evidence that he was the recipient of the services of the foreign commission agent. We draw support from the Tribunal's decision in the case of **SURYANARAYAN SYNTHETICS P LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE & ST, SURAT-I**[13] wherein the coordinate bench of this Tribunal held that as per the documentary evidence such as invoice, it is clear that appellant has not made any payment directly to any commission agent whereas

13. 2024 (8) TMI 908 - CESTAT AHMEDABAD

deduction was provided from the total value of the bill raised to foreign buyer of the goods. In these facts, it is nothing but discount extended by the appellant to the buyer of the goods. Even though some service provider is involved, there is no relationship between the appellant and any foreign based service provider as there is no direct transaction made by the appellant with the commission agent. It is also a fact that there is no contract between the appellant and the foreign based service provider. The arrangement of payment was between the buyer of the goods and the commission agent in the foreign country. For this reason, the demand of service tax on the commission shown in the invoice raised to the buyer cannot be upheld. This issue was time and again considered by this Tribunal in various judgments, viz.,:-

> *"Laxmi Exports vs. CCE&ST in Final Order No. A/11247-11251/2020 dated 22.09.2020.*
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> *"6. We have heard both sides and perused the record. The issue involved is that whether there is any commission paid by the appellant to Commission Agent in relation to export of their goods exists and whether that commission is liable to service tax under the head Business Auxiliary Service. In this regard, we carefully gone through the export documents such as shipping bills, export invoice of appellant, bank realization certificate.*
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> *7. From the above invoice, Shipping Bill and Bank Certificate, it is seen that against the C&F value shown is sales value in the invoice, the amount equivalent to 11%-12.5% was shown as deduction under the head commission and therefore, the net invoice value is the value after deduction of said 11%-12.5%. As per the invoice, 11%-12.5% commission was extended to the foreign buyer of the goods. Since there is transaction of sale and purchase between the appellant and buyer of the goods, whatever value shown in the invoice is a sale value and the deduction shown is nothing but discount given by the exporter to the foreign buyer. As per the bank realization certificate of exporter, in appendix 22A (scanned above), the amount after deduction of 11%-12.5% which was shown in column 12. The heading of column is 'commission/ discount paid to foreign buyer, agent'. In the entire enquiry, the department*

has not brought any tip of evidence to show that there is a commission agent exists in this transaction and any amount of commission is paid to such person. Admittedly, in the entire transaction only two persons are involved, one the appellant as exporter of the goods and second the buyer of the goods. In the sale of goods, in case of service of commission agent, if involved, there has to be third person as service provider to facilitate and promote the sale of exporter to a different foreign buyer. In the present case, there is absolutely no evidence that this 11% is paid to some third person as commission. There is no contract of commission agent service with any of the commission agent, there is no person to whom payment of commission was made therefore, it is clear that no service provider i.e. foreign commission agent exists in the present case and no service was provided by any person to the appellant. In the absence of any provision of service, no service tax can be demanded. The trade discount even though in the name of commission agent was given by the appellant to the foreign buyer, by any stretch of imagination cannot be considered as commission paid towards commission agent service, hence cannot be taxable."

19. In the case of **Duflon Industries Pvt. Limited** vs. **CCE, Raigad**[14] the Tribunal held as under*:*

"6. The entire issue revolves around the fact whether clearances effected by appellant on goods which exported by them to DEL is of actual sale or sale based on commission basis. If it is direct sale to DEL then appellant has case and if it is held that it is not direct sale, but the sale based on commission basis then appellant has no case. For this we have to examine the agreement dated 16-5-2001 entered between appellant and DEL. The agreement is enclosed to the appeal memorandum and on perusal of the same we find that the agreement sets out clauses about the sale of goods by appellant to DEL. The said agreement speaks of purchasing of various items from appellant by the said DEL and it also records that appellant shall allow flat deduction/commission of 8% on the invoice value to DEL. We perused the invoice raised by appellant to DEL and find that the invoice is for the sale of the goods and 8% commission is indicated as has been given on the total invoice value. It is also seen invoice value has been reduced by 8% shown as commission, is against the sale of the goods to DEL. We agree with the contentions raised by learned Counsel that the purchaser of the goods cannot be considered as a "commission agent" as the deduction/commission is for the goods sold. There is nothing on record to show that the said DEL was appointed as "commission agent" for the sale of the goods of the appellant to third parties. It may be that DEL might purchase the goods from the appellant and sells the same in Europe. The reliance placed by learned DR and adjudicating

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14. 2016 (12) TMI 230 - CESTAT MUMBAI

> *authority on the clause of agreement that "DEL shall increase the market share of appellant's products" to conclude that DEL was a commission agent, seems to be erratic reading of the clauses of agreement and this itself does not amount DEL has been appointed as "commission agent". The amount indicated on the invoice and recorded in the accounts as commission, in our view, will not attract tax under reverse charge mechanism. We also find strong force in the contentions raised by learned Counsel that in order to tax this account as a commission, there has to be necessarily three parties, seller, purchaser and a person who negotiates such transaction. From the records it is very clear that DEL had not negotiated purchase or sale on behalf of appellant or their customers; to our mind the deduction/commission is nothing but trade discount. In view of the factual position as ascertained from the records, we hold that the impugned orders demanding service tax under reverse charge mechanism from appellant are unsustainable and liable to be set aside."*

20. Accordingly, we hold that the demand of service tax on the commission reimbursed by the appellant to their foreign buyer cannot be sustained.

21. We now address the third issue.

Payment for Artwork Charges: the show cause notice has alleged that the appellant had paid in foreign currency for the artwork charges and design and development charges. In this context, we note from the perusal of sample purchase order of the client M/s TESCO, that the terms of the agreement are that the appellant will bear the artwork charges, Foreign Bank charges, Agent commission charges. It is clear from these terms that the Artwork charges was received by the buyer abroad and he charges the said amount to the appellant. This was paid by the appellant as per the terms and conditions of sale and there is no evidence that he was the recipient of the services of the design charges. Hence,

we hold that no service tax is liable to be paid by the appellant on such artwork charges and design and development charges.

22. We also observe that even if appellant is legally required to pay the amount of service tax under reverse charge mechanism, then the appellant would be entitled to avail CENVAT credit of the amount of service tax so paid and utilize it against payment of duties in respect of its clearances of final products. This would clearly render the situation to be revenue neutral and hence extended period cannot be upheld. We draw support from the judgment in the case of **JET Airways** supra reads as follows:

> "As regards the question of longer limitation period under Proviso to Section 73(1) of the Finance Act, 1944, the same would not be available to the Department, as no intention to contravene the Provisions of Finance Act, 1994 and of the rules made there under can be attributed to the Appellant for the reason that even if they are required to pay service tax on the service, in question, provided by CRS/GDS Companies, the entire service tax paid would be immediately available to them as Cenvat Credit and collection of service tax from the Appellant would be a revenue neutral exercise. A Larger Bench of the Tribunal in case of Jay Yushin Ltd. reported in 2000 (119) E.L.T. 718, has held that in such circumstances where revenue neutral situation comes about in relation to the credit available to the assessee himself of the duty paid by him and not by the way of availability of credit to the buyer of the assessee's manufactured goods (para 13(b) of the judgment), longer limitation period under Proviso to Section 11(1) of Central Excise Act, 1994 would not be applicable. The ratio of this judgment is squarely applicable to the facts of this case, as the Provisions of Section 11A(1) of Central Excise Act, 1944 are in pari-materia with the Provisions of Section 73(1) of the Finance Act, 1994. Since in this case, intention to evade the tax is absent, the penalty under Section 78 of Finance Act, 1994 would not be attracted."

23. Similarly, in the case of **M/s. The Indure Private Limited** vs. **Commissioner of Service Tax, New Delhi**[15] the Tribunal held as follows:

> "16. We now consider the Learned Counsel's submissions regarding revenue neutrality. It has been argued before us that in revenue neutral situations, no malafide intentions can be attributed. In this context, we note that the Apex Court's decision in the case of **Formica India Division** Versus **Collector of Central Excise**[16], the Hon'ble Supreme Court approved an alternative plea of availability of CENVAT credit leading to Revenue neutral situation. It was also held that mere Non Registration and non filing of return cannot be a reason to dismiss the plea of bonafide belief to non taxable nature of the activity of the appellant in that case. This was followed by coordinate Bench of this Tribunal in **Jet Airways** wherein it was reiterated that the extended period cannot be invoked due to applicability of Revenue neutrality.
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> 17. We also note that this issue is further relied by this Tribunal by explaining in detail the inapplicability of extended period of limitation in **Commissioner of Customs, Central Excise and Service Tax, Hyderabad-I** Versus **Parker Markwel Industries Pvt. Ltd. (Vice-Versa)**[17]. The Tribunal held that on non payment of tax on Management Consultancy services and export sales commission, the eligibility of CENVAT credit on the tax payable on the two services and the situation will be revenue neutral. Hence there was no intention to evade service tax and accordingly the demand under extended period of limitation is hit by limitation. This order inter alia laid down that even if payment is made through CENVAT for GTA services, which is impermissible, it cannot be stated that the assessee had misstated or suppressed any information or evaded tax in as much as the details of the payment were available in the return. The order also determined the applicability of Penalty in case where an assessee failed to pay the due tax under Reverse Charge which is an eligible credit for further payment of Tax for output services. If an Assessee fails to discharge tax liability under the bonafide belief that no tax need be paid due to Revenue neutrality, then as the judgement stated that as "the issue involved in this case was purely of interpretation, we hold that no penalty is leviable on the Appellant".

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15. 2025 (3)TMI 380-CESTAT NEW DELHI
16. 1995(3) TMI 98 - SUPREME COURT
17. 2019(1) TMI 826 - CESTAT HYDERABAD

24. Therefore, the invocation of the extended period cannot be sustained.

25. In view of the above discussions with respect to three of the issues framed above, we set aside the impugned order. Consequently, the appeal is allowed.

(Order pronounced in the open court on **30.05.2025**)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana