CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41775 of 2017

(Arising out of Order-in-Appeal No. 95/2017(CXA-I) dated 21.04.2017 passed by Commissioner of Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Road, Chennai – 600 034)

M/s. Sree Gokulam Food and Beverages (P) Ltd. **...Appellant**
No. 53, New E.V. Palayam Village,
Athur, Cholavaram,
Chennai – 600 067.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

And

Excise Appeal No. 41776 of 2017

(Arising out of Order-in-Appeal No. 95/2017(CXA-I) dated 21.04.2017 passed by Commissioner of Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Road, Chennai – 600 034)

Mr. K. Sinosh **...Appellant**
Executive Director,
Sree Gokulam Food and Beverages (P) Ltd.,
No. 6, Rajaveethi,
Choolaimedu,
Chennai – 600 094.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:
For the Appellants : Mr. P. Satheesan, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41488-41489 / 2025

DATE OF HEARING : 24.11.2025
DATE OF DECISION : 16.12.2025

Per Mr. VASA SESHAGIRI RAO

This Appeal is filed by M/s. Sree Gokulam Food & Beverages, Chennai (hereinafter referred to as "the Appellant") against Order-in-Appeal No. 95/2017(CXA-I) dated 21.04.2017 ('Impugned Order' for short), whereby the Commissioner (Appeals) confirmed the demand by slightly modifying the Order-in-Original passed by the Lower Adjudicating Authority (LAA).

2.1 The Appellant is engaged in manufacture and clearance of packaged drinking water under the brand "Holy Aqua" from multiple units at Athur, Coimbatore, Tiruvallur, Konnakuzhy.

2.2 On the basis of intelligence collected and search action, the Show Cause Notice No.03/2013 dated 08.01.2013 was issued to the Athur unit proposing demand of duty on MRP basis under Section 4A of Central Excise Act, 1944 for the period from 01.04.2007 to 15.09.2010 involving differential duty of Rs.21.79 lakhs, interest and equal penalties under Section 11AC and Rules 25 & 26 of CER,

2002, seizure and proposed confiscation/redemption fine were also made.

2.2 Original Adjudicating Authority (Joint Commissioner) confirmed the demand and penalties *vide* his Order-in-Original No.03/2016 dated 29.11.2016; Commissioner (Appeals) rejected the appeal *vide* Order-in-Appeal No.95/2017 dated 21.04.2017 who ordered to: -

i. set aside the demand of duty of Rs.21,79,988/- with interest made on the Appellant on packaged drinking water adopting assessable value under Sec.4A of the CEA, 1944;
ii. demanded duty with interest on the impugned goods computed based on assessable value as per Sec.4 ibid under proviso to Section 11A(1) of the CEA, 1944;
iii. set aside the penalty of Rs.21,79,988/- imposed on the Appellant under Section 11AC *ibid*;
iv. ordered that penalty equal to duty determined under (ii) above is imposable on the Appellant under Section 11AC *ibid*, and
v. upheld the penalty of Rs.5,00,000/- imposed on Shri K. Sinosh, Executive Director of the Appellant company under Rule 26 of Central Excise Rules, 2002.

3. Aggrieved by the Order-in-Appeal, the Appellant has filed this appeal before this Tribunal. The Appellant has earlier obtained favorable Tribunal decisions in respect of other units (Coimbatore and Konnakuzhy).

4. We have heard the Ld. Advocate Mr. P. Satheesan appearing for the appellant, and the Authorised Departmental Representative Ms. Anandalakshmi Ganeshram for the Revenue, who advanced their respective submissions which are summarized hereinbelow

5. The Ld. Advocate Mr. P. Satheesan, submitted that: -

5.1 The MRP assessment under Section 4A applies only to goods expressly covered by the MRP Notifications. The Notifications relied upon (Nos. 02/2006, 14/2008, 49/2008) refer to "Mineral water" under specific tariff items. Packaged drinking water sold under the appellants' classification heading (CTH 22019090 / 22011010) is distinct from "Mineral water" and is not included in the MRP Notifications as originally framed.

5.2 The subsequent Notification No.03/2015-CE (N.T.) (01.03.2015) inserted a wider entry (Sl. No.25A) which by its express language demonstrates that earlier

notifications covered only specific categories (mineral/ aerated waters) and that extension to other items was by later amendment. The attempt to apply later wording retrospectively to earlier periods is unsustainable. Thus, assessment ought to have been done on the transaction value under Section 4 and not MRP under Section 4A.

5.3 That mineral water and packaged drinking water are classifiable separately under the Central Excise Tariff and their descriptions are not interchangeable. A plain reading of the notification text and the tariff headings shows that the product manufactured by the Appellant does not fall within the ambit of the MRP Notification applicable for mineral water.

5.4 When turnover of all four units (Athur, Coimbatore, Tiruvallur, Konnakuzhy) is aggregated, the total annual clearances for the relevant years were within the SSI threshold. The department proceeded on an isolated unit assessment without taking into consideration of aggregate turnover.

5.5 The demand arises from an interpretational issue of the scope of the MRP notifications; there is no evidence of suppression, fraud, or deliberate concealment. As the

Supreme Court and Tribunals have held repeatedly, that extended period and invoking proviso to Section 11A(1) is not permissible where the matter is one of *bona fide* interpretation as held in *Nizam Sugar Factory vs. Collector of Central Excise, AP [2008 (9) STR 314 (SC)]* and other precedents cited. The SCN in question was the fourth administrative communication on the issue further negating any allegation of concealment.

That penalties are punitive and require *mens rea* or negligence. The case law in Uniflex Cables Ltd. establishes that interpretation disputes do not give rise to penalty. Liability of the director Shri K. Sinosh is also not established as there is no evidence of his direct malfeasance and prior orders in related units have exonerated him.

5.6 That the Appellant has obtained favourable Tribunal decisions for related/identical periods for other units (Coimbatore, Konnakuzhy), where demands and penalties were set aside; these decisions are directly relevant and call for consistency.

5.7 Finally the Appellant prayed to allow the appeal and to set aside the impugned orders and grant consequential relief

6.1 The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram have appeared for the Department who reiterated the findings in the impugned Order-in-Appeal No. 95/2017(CXA-I) dated 21.04.2017.

6.2 She has argued that the processes of demineralisation / reduction of minerals or other treatments will convert purified water into artificial mineral water and Board circulars Nos.84/84/94 CE and 239/73/96 CE support classification as mineral water.

6.3 She relied on sample analysis/field findings and contended that aggregate clearances exceeded the SSI threshold; SCN was issued within extended limitation given suppression and common scheme across units. The penalty on Director is justified as he had control and responsible for the affairs of the unit.

7. We have heard both the sides and perused the Appeal records

8. The following issues arise for our consideration: -

i. Whether the impugned goods i.e. packaged drinking water manufactured and cleared by the

Athur unit is required to be assessed on MRP basis under Section 4A of Central Excise Act, 1944?

ii. Whether, for the purpose of aggregate turnover for SSI exemption, assessment must consider combined clearances of all units of the assessee?

iii. Whether the invocation of extended period in terms of proviso to Section 11A(1) and imposition of penalties on company and Director is justified having regard to the facts and legal position? and,

iv. Whether confiscation, redemption fine and penalties imposed are justified?

On the issue (i) as to whether packaged drinking water is to be assessed to duty under Section 4A of the Central Excise Act, 1944: -

9.1 We find that Notifications under Section 4A are statutory; they must be read strictly and can apply only to goods specified in Column (3) of the notification table. The impugned notifications (Nos.02/2006, 14/2008, 49/2008) list "Mineral waters" (and aerated waters) under the relevant entries do not, by plain text, include all forms of packaged drinking water.

9.2 We note that the Board Circulars indicate that where minerals are added or where de-mineralisation/

alteration produces a product which is in substance an artificial mineral water, classification under 2201 may follow. However, the circulars do not empower the department to treat every packaged potable water as mineral water when there is no evidence of addition/reduction of minerals. The test is factual and depends on whether the manufacturing process results in addition of mineral salts or their alteration to the extent that the product becomes mineral water in commercial parlance.

9.3 We have perused the Record in the present case. A certificate from an independent/ex-Government Scientist and the Appellant's process details (filtration, chlorination, ozonization, UV) which show no addition/removal of minerals. The Appeal records do not identify any laboratory analysis demonstrating addition of mineral salts or demineralization to convert the product into mineral water for the Athur unit. In the absence of positive evidence, the classification as "mineral water" is not tenable.

9.4 In view of the above, we hold that the Athur unit's product is packaged potable drinking water and is not covered by the MRP notifications. The Order-in-Appeal's reliance on MRP notifications to reach valuation under Section 4A is therefore erroneous.

10. As we find that the product is not statutorily covered by the notifications relied upon, the impugned demand which proceeds on MRP valuation under Section 4A cannot be sustained and must be set aside. As the manufactured product is not mineral water, demand of duty under Section 4A of Central Excise Act, 1944 is not sustainable.

On the issue (ii) Aggregate turnover / SSI exemption: -

11. The Appellant's contention that aggregate clearances of all units must be considered for SSI threshold was raised and supporting figures are on record. The Revenue has not placed any credible findings showing that the Athur unit alone (or differentially) followed any separate tax avoidance scheme. Moreover, Tribunal decisions in favour of the Appellant for Coimbatore & Konnakuzhy (copies on record) require consistent treatment of the Athur unit also unless material differentiators are proved. In the absence of such demonstrable distinctions, the aggregate position and SSI exemptions must be given due regard and cannot justify demand of duty.

On the issue of Extended period / proviso to Section 11A (1):

12. The Department has invoked extended period alleging suppression. It is well settled that extended limitation and harsh consequences thereof should be invoked only where there is evidence of deliberate concealment, fraud or suppression of material facts. Where the controversy is essentially interpretational or classification-based and the assessee has acted on a bona fide view, extended period is not attracted. Reliance is placed on the decision in the case of *Nizam Sugar Factory 2008 (9) S.T.R 314 (SC)* and *Uniflex Cables Ltd. 2011 (271) ELT 161 (SC), etc.*

13. In this case: (i) the question involved is regarding classification/interpretation of MRP notifications; (ii) there is no cogent evidence of concealment and the Appellant's financials, returns were on record and earlier SCNs and actions were in the knowledge of the Department (iii) Tribunal decisions for allied units show that matters were arguable. Consequently, the proviso to Section 11A (1) is not attracted and the extended period is not invokable and any demand based on extended period is unsustainable.

On the issue (iv) Imposition of penalties on Company and the Director and confiscation / redemption fine: -

14.1 Penalty under Section 11AC / Rule 25 is a penal provision requiring *mens rea* or culpable negligence for

deliberate evasion. Because the tax demand in this case is founded on an unsustainable classification and the Appellant advanced a bona fide position, imposition of penalty is not justified. Higher judicial forum and Tribunal's decisions cited above hold that penal consequences should not follow on the grounds of mere disagreement on statutory interpretation. Accordingly, penalty on the company under Section 11AC must be set aside, which we do so.

14.2 As regards personal penalty on Shri K. Sinosh under Rule 26 CER: the Order-in-Appeal records no evidence to establish active dishonest conduct or deliberate concealment by Shri Sinosh. His role as Executive Director does not ipso facto make him liable where the charge is one of interpretation and there is no proof of mens rea. In the absence of any evidence, the penalty on Shri Sinosh is also not sustainable and is set aside.

15. Confiscation/seizure and redemption fine (Rs.15,000) were imposed; given that the primary liability itself under 4A is unsustainable and no evidence shows the goods were prohibited or illegally cleared, the confiscation and redemption fine must be set aside, which we do so.

16. Further, we note that the questions before us is no longer res integra. In two earlier final decisions concerning the Appellant's own units the Tribunal has examined the same issue on classification of "packaged drinking water" and applicability of MRP valuation under Section 4A and ruled in the Appellant's favour. The relevant decisions are:

i. *M/s Sree Gokulam Food & Beverages Pvt. Ltd. & Anr. v. Commissioner of GST & Central Excise, Coimbatore, CESTAT Chennai, 2024 (3) TMI 490; and*
ii. *M/s Sree Gokulam Food & Beverages (P) Ltd. & Anr. v. Commissioner of Central Excise, Customs & Service Tax, Cochin, CESTAT Bangalore, 2025 (8) TMI 489.*

17. We have carefully considered the reasoning in the CESTAT Chennai decision in Final Order Nos.40221-40222/2024 dated 05.03.2024, which holds that: -

> *"**24**. All these would go to show that both are different products. The valuation of the product has to be based upon the classification of the product. When the classification unambiguously falls under 22019090 the valuation has to be on transaction value as per Section 4 of Central Excise Act, 1944. Merely because the abatement notification mentioned heading 22019090 in column (2) it cannot be said that the Packaged Drinking Water is included in the Mineral Waters. Interestingly, the department does not dispute the classification adopted by appellant for 'packaged drinking water'. However, department construes that packaged drinking water is mineral water as per notifications 2/2006, 14/2008 and 49/2008. These notifications are issued under subsection (1) and (2) of Section 4A. As per subsection (1) of Section 4A, the Central Government may, by notification in the official Gazette, specify any goods in relation to which SWM (P&C) Rules, 1977 apply so as to declare the RSP on such goods, to which the provisions of subsection (2) shall apply. As per subsection (2) the value of such goods shall be deemed to be the RSP declared on such goods less the abatement. Thus, Section 4A provides for valuation in case of goods on which RSP / MRP has to be declared as per SWM (P&C) Rules, 1977 or Legal Metrology Act, 2011. Thus for section 4A to apply the goods are to be specified*

by notification. Notifications 2/2006, 14/2008 and 49/2008 do not mention 'packaged drinking water'; instead mentions 'mineral water'. These notifications give the rate of abatement available to goods which are to be assessed under Section 4A of the Act ibid. Indeed, there is confusion in the notification as it mentions the sub-heading 22019090 which applies to drinking water. Section 4A is the provision for payment of duty on goods cleared on MRP basis. In order to assess the value of goods under Section 4A, the abatement granted in these notifications also have to be considered. The department is of the view that sub-heading 22019090 applicable to packaged drinking water when mentioned in column (2) of the notification, it is implied that packaged drinking water is to be included in the category of mineral water. We are not able to endorse this view. Taxation statutes cannot be interpreted on any presumptions or assumptions. In other words, there is no implied power of taxation. It has often been held by courts that subject goods is not to be taxed, unless the words of the statute unambiguously impose a tax. An ambiguity in a taxation provision is to be interpreted in favour of assesee. [Commissioner of Customs (Import), Mumbai Vs Dilip Kumar & Company - 2018 (361) ELT 577 (SC)]. Our view is further fortified by the fact that in subject notification No.3/2015-CE (NT) dt. 1.3.2015, in column No. (2) the tariff heading is mentioned as 2202 and description of the goods is given as "all goods except mineral waters and aerated waters". In Notification 49/2008, the Sl.No.24 referred to 'Mineral Water' and Sl.No.25 to 'Aerated Water'. As per amendment brought forth in Notification 49/2008 w.e.f. 1.3.2015, a new Sl.No.25A was added which referred to 'all goods except mineral water and aerated water'. This makes it clear, that 'drinking water' was never intended to be specified as goods to which Section 4A would apply. We therefore find that the duty demand cannot sustain.

***25**. The Ld. Counsel has argued on limitation. The issue is purely interpretational in nature. Further, there were earlier notices issued to the appellant on the very similar set of facts. In other similar matters, the department has set aside demand and taken the view that Packaged Drinking Water cannot be assessed under Section 4A of the Act ibid. For these reasons, we hold that the invocation of extended period cannot sustain. For the same reasons, the penalty imposed on the Executive Director of appellant-company is not warranted and requires to be set aside, which we hereby do.*

26. In the result, the impugned order is set aside. Appeals are allowed with consequential reliefs, if any."

18. We have also perused the Bangalore decision in respect of the Konnakuzhy unit and find it consistent with

the Chennai Tribunal's view. In our opinion both Tribunal decisions are directly on the point and, being decisions of coordinate Benches on identical facts involving the same assessee, bind the adjudicatory exercise in the present appeal. No distinguishing factual matrix has been shown to us that would justify a departure from those decisions.

19. Applying the ratio of the above decisions to the facts of the Athur unit, Chennai and having regard to the absence of any evidence demonstrating addition/removal of minerals or other processes that would convert the packaged potable water into "mineral water", we conclude that:

i. the impugned assessment under Section 4A is not sustainable;
ii. the invocation of the extended limitation period is not justified; and
iii. penalties imposed on the company and on Shri K. Sinosh are not warranted.

20. For the reasons recorded above and having regard to the binding precedents in the Appellant's own cases (CESTAT Chennai and CESTAT Bangalore), the Order-in-Appeal No.95/2017 dated 21.04.2017 is set aside.

21. Thus, the appeals are allowed with consequential relief(s), if any as per Law.

(Order pronounced in open court on 16.12.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK