IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 22.06.2026

DELIVERED ON: 15.07.2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MRS.JUSTICE N. MALA

CMA Nos. 2381, 2382 and 2383 of 2016
and
CMP Nos. 16593, 16594 and 16595 of 2016

M/s. Santel Communications Pvt. Ltd.,
No.268, Old Mahabalipuram Road,
Sholinganallur, Chennai 600 119.

..Appellant(s)

Vs

1. The Customs, Excise and Service Tax Appellate Tribunal, Haddows Road,
Shastri Bhawan Annexe 1st Floor,
Chennai 600 006.

2. The Commissioner of Central Excise,
Chennai IV Commissionerate,
Chennai.

..Respondent(s)

CMA No. 2382 of 2016

A.Nagarajan
Director, M/s.Santel Communications Pvt. Ltd.,
No.268, Old Mahabalipuram Road,
Sholinganallur, Chennai- 600 119.

..Appellant(s)

Vs

1. The Customs, Excise and Service Tax Appellate Tribunal, Haddows Road, Shastri Bhavan Annexe 1st Floor, Chennai- 600 006.

2. The Commissioner of Central Excise,
Chennai IV Commissionerate, Chennai.

..Respondent(s)

CMA No. 2383 of 2016

S.Muralidharan
Financial Advisor, M/s.Santel Communications Pvt. Ltd,
No.268, Old Mahabalipuram Road,
Sholinganallur, Chennai- 600 119.

..Appellant(s)

Vs

1. The Customs, Excise and Service Tax Appellate Tribunal, Haddows Road, Shastri Bhavan Annexe 1st Floor, Chennai – 600 006.

2. The Commissioner of Central Excise, Chennai IV Commissionerate, Chennai.

..Respondent(s)

CMA No. 2381 of 2016

Civil Miscellaneous Appeal is filed under Section 35G of the Central Excise Act, 1944, arising out of Final Order No.40399/2016 dated 04.03.2016 in E/700/2007 of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

CMA No. 2382 of 2016

Civil Miscellaneous Appeal is filed under Section 35G of the Central Excise Act, 1944, arising out of Final Order No.40400/2016 dated 04.03.2016 in E/701/2007 of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

CMA No. 2383 of 2016

Civil Miscellaneous Appeal is filed under Section 35G of the Central Excise Act, 1944, arising out of Final Order No.40401/2016 dated 04.03.2016 in E/702/2007 of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant(s): Mr.N.Viswanathan
in all cases

For Respondent(s): in all cases	Mr.A.P.Srinivas, Standing Counsel for R2 R1 - Tribunal

JUDGMENT

N.MALA, J.

The above Civil Miscellaneous Appeals are preferred against the common order dated 04.03.2016 of the CESTAT, Chennai, in Final Order Nos.40399/2016 in E/700/2007, 40400/2016 in E/701/2007 & 40401/2016 in E/702/2007.

2.The above Civil Miscellaneous Appeals are filed by the appellant company, one of its Directors and its Financial Advisor. At the outset it is to be noted that the appellant has restricted the challenge in the appeal to the extent of invocation of Section 11A(1) of the Central Excise Act (Hereinafter called as the Act) and the imposition of Mandatory Penalty under Section 11AC of the Act.

3.The brief facts of the case are as follows:

The appellant company was engaged in the import of telephone instruments as well as their parts, in the brand names Santel and TATA. The company assembled the parts into telephone instruments and marketed the same by packing them in a retail pack affixing the MRP (except in the case of TATA, where it was supplied for personal use of TATA for providing the private telephone communication services to its customers). Whileso, the authorities visited the appellant company's unit on 30.01.2006 and after verification of records, issued a show cause notice dated 04.10.2006, demanding a duty of Rs.60,13,236/- for the periods 2001-02, 2002-03, 2003-04, 2004-05. In addition, interest and penalty were also proposed on the assessee as well as the individuals. The company gave its reply to the show cause notice on 19.02.2007 and thereafter the following Original Order No.8/2007 dated 24.07.2007 was passed, which reads as follows:

> *I. I hold that assembling of imported and indigenously procured telephone parts in to Basic Wired Telephone Instruments through the process of "assembling, soldering, and testing" amounts to manufacture and the resultant products are classifiable under Chapter Heading 8517 of the Central Excise Tariff Act, 1985.*
>
> *II. I hold that the activity of labeling / re-labeling and affixing / altering of RSP/MRP stickers amounts to manufacture on or after 1.3.2003.*
>
> *III. I demand a duty of Rs.20,56,807/- (Rupees Twenty lakh fifty-six thousand eight hundred and eight seven only) (Rs. 20,16,477/- Duty and Rs.40330/- Education Cess) from M/s.Santel Communications (P) Ltd., as detailed in the enclosed Annexure-A, under Sub Section 1 of Section 11A of the Central Excise Act, 1944.*
>
> *IV. I appropriate and adjust the amount of Rs.2,00,000/- already paid by M/s. Santel Communications (P) Ltd., vide GAR*

7 Challan dated 15.2.2006 against the above demand.

V. I allow M/s.Santel Communications (P) Ltd., to adjust the Cenvat Credit of Rs.8,43,242/- (Rupees Eight lakh forty three thousand Two hundred and forty two only) (As detailed in the enclosed Annexure- B) from the above demand.

VI. I impose a penalty of Rs.20,56,807/- (Rupees Twenty lakh fifty-six thousand eight hundred and seven only) under Section 11 AC of the Central Excise Act, 1944 on M/s Santel Communications (P) Ltd.

VII. I also demand appropriate interest under the provisions of Section 11AB of the Central Excise Act, 1944.

VIII. I impose a personal penalty of Rs.1,00,000/- (Rupees One Lakh only) on Shri A.Nagarajan, Director of M/s.Santel Communications (P) Ltd., under Rule 26 of the Central Excise (No.2) Rules 2001/ Central Excise Rules, 2002.

IX. I impose a personal penalty of Rs.50,000/- (Rupees Fifty Thousand Only) on Shri. S. Muralidharan, Financial Advisor of M/s Santel Communications (P) Ltd., under Rule 26 of the Central Excise (No.2) Rules 2001, Central Excise Rules, 2002.

4.Aggrieved by the said order, the appellants preferred Appeals in No.40399/2016 in E/700/2007, 40400/2016 in E/701/2007 & 40401/2016 in E/702/2007 before the CESTAT Appellate Tribunal, Chennai. The Tribunal on consideration of the entire materials on record confirmed the order of the Original Authority. Aggrieved by the order of the Tribunal, the appellants filed the above Civil Miscellaneous Appeals.

5.The two basic substantial questions of law, which fall for consideration are as follows:

1) Whether the order in Original Order No.8/2007 dated 24.07.2007 passed by the learned Commissioner invoking extended period of time under the proviso to Section 11A(1) of the Act is valid?

2) Whether the imposition of penalty on the Director and the Financial Advisor invoking Rule 26 of the Central Excise Rules, 2002, which stood confirmed in the impugned final order passed by the CESTAT, Chennai is proper/correct?

6.The facts narrated above are not traversed to avoid verbosity. The foremost question is whether the Tribunal was justified in adopting the extended period under Section 11A(1) of the Central Excise Act. Section 11A(1) of the Act reads as follows:

> "Section 11A of the Act empowers the Central Excise Officer to initiate proceedings where duty has not been levied or short-levied within six months from the relevant date. But this period to commence proceedings under proviso to the Section stands extended to five years if the duty could not be levied or it was short-levied due to fraud, collusion, wilful misstatement or suppression of facts etc. The provisio to Section 11A reads as under:

"Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder, with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "Central Excise Officer", the words "Collector of Central Excise" and for the words "six months", the words "five years" were substituted."

7.The learned counsel for the appellant submitted that the respondent had invoked the extended period of limitation on two grounds, one, that the appellant did not intimate the manufacturing activity to the department and that they failed to produce financial records. The learned counsel relying on the judgments in (i) Collector of CE Vs HMM Limited, (ii) Padmini Products Vs. Collector of CE and (iii) Collector of CE Vs. Chemphar Drugs and Liniments, contended that in the absence of conscious and deliberate intention to evade the payment of excise duty, the mere omission to inform about the activity or taking out of a registration will not attract the proviso to Section 11A(1) of the Act. The learned counsel submitted that the reliance placed by the Tribunal on the judgment of the Hon'ble Supreme Court in Eagle Flask Industries Limited was improper, since the judgment did not deal with the question of invocation of extended period of time, but only dealt with denial of the benefit of exemption for non-filing of the declaration, on the ground that filing of declaration was not an empty formality. The learned counsel further submitted that in the show cause notice, no reasons or grounds were stated to show that there was conscious and deliberate suppression or an intention to evade duty. Hence it was contended that the demand on the basis of the extended period under Section 11A(1) of the Act was illegal and unsustainable.

8.From the order of the original Authority, it appears that on the basis of the appellant's own admission that they did not maintain any records for production, stock and sale of finished goods, the Authority had concluded that the intention to suppress the fact of manufacturing and turnover details from the Department was deliberate and with an intention to evade payment of appropriate duty, justifying the invocation of extended period under Section 11A[1] of the Act. So also the Tribunal, on the basis of its appreciation of the exemption Notification dated 26.06.2001, found that the failure of the assessee to file a declaration claiming exemption from registration and the omission to seek registration despite crossing the SSI value limit, amounted to wilful suppression with an intention to evade duty attracting the proviso to Section 11A[1] of the Act. The Tribunal, relying on the judgment of the Hon'ble Supreme Court in the case of ***Eagle Flask Industries Ltd. Vs. CCE Pune***, found that the appellants failure to register themselves under the Act despite crossing the SSI value limit and engaging in manufacture of exercisable goods, omitting to file declarations for availing SSI exemption and not following the procedure prescribed under the Act, even after crossing the SSI value limit, sufficiently justified the invocation of the extended period under the proviso to Section 11A(1) of the Act.

9.We are called upon to test the aforesaid conclusions of the authorities below on the invocation of extended period under the proviso to Section 11A(1) of the Act.

10.The main contention of the learned counsel for the appellants is that mere omission or commission to inform the manufacturing activity or taking out registration, will not justify the invocation of the proviso to Section 11A(1) of the Act and that only if the existence of conscious and deliberate intention to evade is brought out in the show cause notice and established, the extended period could be invoked. The learned counsel, to buttress the said contention, relied on certain judgments which will be dealt with later.

11.It is no doubt true that the show cause notice does not quote in *Haec Verba* (Formal latin word for "in these exact words") the proviso to Section 11A(1). However upon holistic reading of the entire show cause notice, it is seen that there is a narration of the entire facts, data collected, the statements of the highest officials of the assessee company and the conduct of the assessee which explicitly manifest clear evidence of fraud, suppression, wilful conscious and deliberate intention to evade excise duty. In our view, it is the substance and context of the show cause notice which is material and not its mere form or missing magic words. Further, it is true that specific phrasing helps, but in our considered view, for invoking the extended period if the foundational facts laid down in the show cause notice, unambiguously demonstrate that the assessee systematically withheld information or made a conscious and deliberate misstatement, the show cause notice cannot be faulted. In the present case, on an overall reading of the show cause notice, it is clear that the assessee conducted clandestine operations by clearing telephone instruments bearing their own brand name for value exceeding Rs.1 Crore, in a financial year without discharging their excise duty obligations, re-packed and relabelled the imported telephone and fax machines without paying excise duty and removed the telephone instruments bearing the brand name of TATA Indicom, without paying the required excise duty. Further the appellant neither intimated the details of its manufacturing activity to the Department, nor filed declarations in the prescribed form for claiming exemption for the excisable goods and also did not obtain registration, once the value of the turn over exceeded the exempted limit. Above all, the commissions and omissions came to light only at the time of investigation by the Intelligence Wing of the department. Had the Intelligence Wing of the Department not investigated the company, the omissions and commissions would not have come to light. The show cause notice, in our view, candidly, clearly and unequivocally discloses the factual foundation of the clandestine operations of the assesee. Once the material facts constituting the ingredients of the provisions of Section 11A[1] of the Act are specifically pleaded, the mere omission to employ the precise statutory phraseology of the proviso, does not render the show cause notice invalid or legally unsustainable. Further, pursuant to the show cause notice, the assessee has also actively defended itself against those facts during the hearings before the authorities below. Therefore, by mere non-mention of the specific words used in the statute, the assessee cannot be said to have suffered any prejudice. The assessing officer on the basis of the admission of the Director, Financial Advisor and other top officials of the company, concluded that the non maintenance of records for production, stock and sale of finished goods was clearly a conscious and deliberate suppression of the fact of manufacture and clearance of excisable goods with an intent to evade payment of duty. The assessing officer therefore found that he was justified in invoking the proviso to Sub-section 1 of Section 11A of the Act.

12.From the statements of the Director, Shri.A.Nagarajan, it is seen that the company removed the RSP stickers from the telephone instruments imported by them and affixed two stickers, one bearing the brand SANTEL on the instrument and the other indicating the MRP which was approximate 30% more than RSP. Further, the Director Shri.Nagarajan, admitted that the above commissions were made pursuant to his conscious decision to do them. Shri.Nagarajan also admitted to the fact that he did not seek any clarification from Central Excise Department at any point of time on any issues including his supposed impression that exemption limit was Rs.3 Crores. Shri.Nagarajan also admitted to the fact that they did not maintain any records for production, stock and sale of finished goods. Pertinently Shri.Nagarajan undertook to pay the duty liability. The statements of the other officials of the assessee are similar with regard to non-maintenance of register for production, stock and sales of finished goods. Under the factual scenario, this Court finds no force in the contention of the learned counsel for the appellants that the extended period of limitation is inapplicable.

13.We are therefore of the view that the facts of the present case clearly establish that there was conscious and deliberate intention to evade the payment of excise duty and therefore we find that the extended period under the proviso to Section 11A(1) of the Act, is clearly attracted to the facts of the case.

14.We have gone through the judgments referred to by the learned counsel for the appellant in the written submission in the case of ***Collector of Central Excise Versus H.M.M Limited***, reported in ***1995 (76) E.L.T. 497 (S.C).,*** in ***Padmini Products versus Collector of C.EX.,*** reported in ***1989 (43) E.L.T. 195 (S.C).,*** and in the case of ***Collector of central Excise Versus***

Chemphar Drugs & Liniments, reported in ***1989 (40) E.L.T. 276 (S.C.).*** The Hon'ble Supreme Court in H.M.M Ltd. case, held that the show cause notice must contain an averment pointing out specifically as to which of the various commissions or omission stated in the proviso to Section 11A(1) of the Act were committed by the assessee. We have gone through the judgment and find from the facts that the judgment is distinguishable. In H.M.M. Ltd, the Apex Court on appreciation of the facts, accepted the company's contention, that it was under the bona fide belief that the products did not attract excise duty. However, the facts of the present case are that despite crossing the SSI exemption limit the company did not apply for Registration with the Excise Department, deliberately suppressed the fact of manufacture and failed to maintain records for production, stock and sales of finished goods. But for the investigation by the intelligence wing of the department, the fact would not have come to the notice of the authorities.

15.In the case of ***Padmini Products Versus Collector of C.EX.*** reported in ***1989 (43) E.L.T. 195 (S.C.),*** the Hon'ble Supreme Court found on facts that failure to take out the license to pay duty arose out of a belief or opinion that the goods were exempted goods and hence, held that the provisions of Section 11A(1) of the Act, were not attracted. The facts of the present case, for the reasons aforesaid, are distinguishable from that case.

16.In the judgment of ***Collector of Central Excise Versus Chemphar Drugs & Liniments,*** reported in ***1989 (40) E.L.T. 276 (S.C.),*** the Hon'ble Supreme Court held that "*something positive other than mere inaction or failure on the part of the manufacture or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of 6 months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case*". The Apex Court on the facts of that case found that the SSI had declared the goods on the basis of its belief and interpretation of provision of law that exempted goods were not to be included and thus did not include the exempted goods which they manufactured at the relevant time. Even the said judgment is distinguishable on the facts of the present case. It is pertinent to note here that the Hon'ble Supreme Court in the said judgment, further held that *"whether there is fraud or collusion or wilful misstatement or suppression or contravention of any provision of the Act is a question of fact depending on the facts and circumstances of the particular case".* This Court finds that under the facts and circumstance of this case as discussed above, there is deliberate and conscious intention to evade the payment of duty and therefore the proviso to Section 11A(1) of the Act is attracted.

17.In so far as the second question of law is concerned, the Original Authority on the basis of the records in general and specifically from the statement of one Shri.Ravishankar dated 06.03.2006, found that the second appellant, Director of the company had given specific instructions to clear the finished goods without payment of Central Excise duty under the sales invoices. The Original Authority noticed from the records that the instructions to remove RSP sticker on the imported Basic Wired Telephone Instruments and Fax machines and replace them with MRP sticker with higher value and to clear the excisable goods without payment of Central Excise Duty, was made on the specific instructions of the Director, second appellant herein. The Original Authority on facts found that the second appellant, Director played a crucial role in the evasion of excise duty, causing loss to the Government Exchequer and therefore, imposed penalty on him personally. The original Authority found that the Financial Advisor, third appellant was equally involved and responsible for the evasion of duty and therefore imposed penalty personally on him also. The Appellate Authority did not find any reason to interfere with the factual findings of the Original Authority, since the findings clearly brought out the role of the said persons in the evasion of duty.

18.We find no perversity in the factual findings of the Original Authority, as confirmed by the Tribunal and hence we are not inclined to interfere with the same.

19.In view of the above discussions, we find no merit in these Civil Miscellaneous Appeals and therefore, the same are ***dismissed.*** No costs. Consequently, the connected miscellaneous petitions are closed.

(DR.G.J.J.) (N.M.J)

15.07.2026

Index:Yes/No
Speaking Order:Yes/No
Neutral Citation:Yes/No
Internet:Yes
dsn/AP

To

1. The Customs Excise and Service Tax Appellate Tribunal,
   Haddows Road, Shastri Bhawan Annexe 1st Floor,
   Chennai 600 006.

2. The Commissioner of Central
   Excise Chennai Iv Commissionerate, Chennai.

DR.G.JAYACHANDRAN J.
and
N.MALA J.

dsn / AP

Common Judgment in

CMA Nos. 2381, 2382 and 2383 of 2016

15.07.2026