CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 05.04.2018

Excise Appeal No. 50366 of 2018
(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-0015-17-18 dated 22.09.2017 passed by the Commissioner, Central Goods & Service Tax, Jodhpur).

M/s Shree Cement Limited — Appellant

Vs.

CCG&ST, Jodhpur — Respondent

Appearance:

Sh. Vivek Sharma, Advocate for the appellant
Sh. M. R. Sharma, AR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51252/ 2018

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the Order-in-Original No. JOD-EXCUS-000-COM-0015-17-18 dated 22.09.2017 passed by the Commissioner, Central Goods & Service Tax, Jodhpur.

2. Brief facts of the case are that the appellants have their factories situated in the State of Rajasthan and were operating under Rajasthan Investment Promotion Scheme which was notified by Government of Rajasthan with the objective of facilitating investment in the establishment of new enterprises. Under the various schemes of the Rajasthan Government, the appellant (assessee) was eligible for subsidies. As per the various schemes

applicable to the assessee, the appellant required to deposit VAT/CST/SGST at the applicable rate with the Government and in terms of the scheme notified, will be entitled to disbursement of subsidy by the appropriate authorities. The subsidy concerned is sanctioned and disbursed in form 37B and such challan in the form VAT 37B can be utilized for discharge of the VAT liability of the appellant for subsequent periods. However, Revenue was of the view that the VAT liability discharged by utilizing the investment subsidy granted in form 37B cannot be considered as VAT actually paid, for the purpose of Section 4 of the Central Excise Act, 1944. Accordingly, Revenue proceeded to include such subsidy amounts in the value of the goods cleared by the appellants and demanded the differential duty. The impugned order also charged interest and penalties on such differential duty. Aggrieved by the impugned order, present appeal has been filed.

3. With the above background we heard Shri Vivek Sharma, Ld. Counsel for the appellant as well as Shri M. R. Sharma, Ld. AR for the Department.

4. After hearing both sides and on perusal of record, it appears that the identical issue has already come up before the Tribunal in appellant's own case - ***Shree Cement Ltd. vs. CCE, Alwar – 2018 –TIOL-748-CESTA- Del*** where it was observed that-

> "7. *We have heard both sides at length and perused the appeal record. As out lined above, the appellants are covered by the Investment Promotion Schemes of the Rajasthan Government. In terms of the various schemes of the Rajasthan Government, the appellants are required to discharge their VAT liability by making payment of the same. Out of such VAT credited to the Government, a certain portion is disbursed back to them in the form of subsidies. Such disbursement happens in the form of VAT 37 B, challan which can be utilized in subsequent periods to discharge VAT liability. The crux of the dispute*

in the present case is whether such subsidy amounts are required to be included in the assessable value of the goods manufactured by the appellants, in terms of Section 4 of the Central Excise Act. As per the concept of transaction value outlined in Section 4, with effect from 01/07/2000, any sales tax/VAT actually paid can be deducted from the transaction value for payment of excise duty. Revenue has taken the view that payment of VAT using 37B Challans cannot be considered as actual payment of VAT.

8. Both sides have referred to the decision of the Apex Court in the case of Super Synotex India Ltd. In the above decision the Apex Court has categorically held that after 01/07/2000, unless the sales tax/VAT is actually paid to the good, no benefit towards excise duty can be given in terms of Section 4(3)(d). However, we note that the Tribunal in the case of Welspun Corporation Ltd. (Supra) has distinguished the decision of the Apex Court in the light of Gujarat VAT Act, 2003. In the Welspun Corporation Ltd. case, the assesse had opted for remission of tax scheme under which a portion of the VAT paid was remitted back to the assessee. The Tribunal held that such subsidy amounts are not required to the included in the transaction value.

9. In the present case we know that for the initial period the assessees are required to remit the VAT recovered by them at the time of sale of the goods manufactured. A part of such VAT is given back to them in the form of subsidy in Challan 37 B. Such Challans are as good as cash but can be used only for payment of VAT in the subsequent period. In terms of the scheme of the Government of Rajasthan payment of VAT using such Challan are considered legal payments of tax. In view of the above, Revenue is not correct in taking the view that VAT liability discharged by utilizing such subsidy challans cannot be taken as VAT actually paid.

10. It is pertinent to reproduce the observations of the Tribunal in the Welspun Corporation Ltd. case

> *"5.1 The Respondent company opted for "Remission of Tax Scheme" and was thus eligible for the Capital subsidy in the form of remission of Sales Tax subject to the conditions to be fulfilled…. The subsidy in the form of remission of sales tax was in fact a percentage of capital investment… Separate assessment orders were thus issued by the assessing officer of the sales tax department from time to time towards the incentive scheme amount. The Competent Authority was required to necessarily pass order for remission of such tax separately for each tax period. The remission of tax is thus directly related to capital investment in fixed asset. There was no option to claim exemption from payment of sales tax. The quantum of remission was based upon the investment made in the fixed assets. The condition of the remission amongst others included to remain in production, employment of certain*

percentage of persons in assessee unit, and numerous other conditions as brought out in Para 9 of the impugned Order-in-Appeal.

11. *By following the decision of the Tribunal in the Welspun Corporation Ltd. case we conclude that there is no justification for inclusion in the assessable value, the VAT amounts paid by the assessee using VAT 37B Challans*".

5. By following our earlier order (supra), we set aside the impugned order and allow the appeal.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr) Satish Chandra)
President

Pant