

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. 3

Excise Appeal No. 52473 of 2023-SM

(Arising out of order-in-appeal No. 59 & 60 (BSM)/CE/JPR/2022 dated 16.09.2022 passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur).

M/s Rajasthan Digital Tiles (P) Ltd., **Appellant**
Khasra No. 1360/542, Lakhni
Near Reengus, Distt – Sikar
Rajasthan -332404.

VERSUS

Commissioner, Central Excise & CGST **Respondent**
NCRB, Statue Circle
Jaipur-302005, Rajasthan.

AND

Excise Appeal No. 52475 of 2023-SM

(Arising out of order-in-appeal No. 59 & 60 (BSM)/CE/JPR/2022 dated 16.09.2022 passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur).

M/s Rajasthan Digital Tiles (P) Ltd., **Appellant**
Khasra No. 1360/542, Lakhni
Near Reengus, Distt – Sikar
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VERSUS

Commissioner, Central Excise & CGST **Respondent**
NCRB, Statue Circle
Jaipur-302005, Rajasthan.

APPEARANCE:

Sh. Ajay K. Mishra, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER Nos. 50618 – 50619/2023

DATE OF HEARING/DECISION: 08.05.2023

BINU TAMTA:

The appellant herein has filed separate appeals challenging the common order dated 16.09.2022 passed by the Commissioner (Appeals).

2. The issue in the present case is whether the Central Excise duty is payable on the subsidy received by the appellant under the Rajasthan Investment Promotion Scheme, 2014 (RIPS). The said issue has been decided by the Tribunal in series of decisions as cited by the appellant.

3. The appellant –assessee is engaged in the manufacture of glaze tiles and is registered with the Central Excise Department under Central Excise Registration No. AAGCR4458LEM002. It appears to the Department that the appellant had undervalued the finished goods and short paid the Central Excise duty by not including the amount of subsidy received from the Sales Tax Department for arriving at the transaction value of the goods cleared. Separate show causes dated 22.08.2019 and 26.03.2019 were issued for the period April, 2017 to June, 2017 and April, 2016 to March, 2017 respectively. The said show cause notices were adjudicated and separate Order-in-Originals were passed on 17.02.2022 and 31.03.2021 confirming the demand under the show cause notices, relying on the decision of the Apex Court in **CCE vs. Maruti Suzuki India Ltd., -2014 (307) ELT 624** and also in the case of **CCE, Jaipur vs. Super Syntex (India) Ltd., -2014 (301) ELT 273**. The appeals filed by the appellant before the Commissioner (Appeals) stood rejected by the impugned order dated 16.09.2022 and the reference to the decision of the Tribunal in the

case of **M/s Shree Cement Ltd., vs. CCE Final Order No. 50189 - 50191/2018 dated 18.01.2018** was not complied with as the Department had challenged the said order before the Hon'ble Supreme Court and appeal was admitted. Being aggrieved, the appellant has filed the present appeals before the Tribunal.

4. I have heard the learned Counsel for the appellant and also the learned Authorised Representative for the Revenue and have perused the case law cited and also the records of the present case.

5. The learned Counsel for the appellant has submitted that the subsidy received by them from the Government of Rajasthan does not constitute any consideration for the purpose of levy of excise duty and in support thereof he has cited several decisions of the Tribunal where the issue has been settled. Learned Authorised Representative on the other hand has relied on the findings of the authorities below and has prayed for affirming the said order.

6. The Government of Rajasthan had introduced the Rajasthan Investment Promotion Scheme, 2014 with a view to promote investment in the State and to generate employment opportunities through such investment. The scheme provided for various exemptions and at the same time provided for investment subsidy. I find that the appellant is covered by the investment promotion scheme of the Rajasthan Government and in terms thereof they are required to discharge their VAT liability by making payment of the same. The VAT so credited to the Government, certain portion is disbursed as VAT to the appellant in the form of subsidies in form of

VAT 37B challan which can then be utilised in the subsequent period towards discharge of VAT liability. The appellant has been following the said practice and therefore the present case is squarely covered by the decision of the **Shree Cement Ltd., vs. CCE - 2019 (366) ELT 900**, wherein this Tribunal has considered the same subsidy under Rajasthan Investment Promotion Scheme and relying on the earlier decision of the Tribunal in **CCEx, Mumbai-I vs. Welspun Corporation Ltd., - 2017 (358) ELT 630 (Tri. Mumbai)** which dealt with the incentive in the form of subsidy under the Sales Tax Incentive Scheme, 2001, concluding that there is no justification for inclusion in the assessable value, the VAT amounts paid by the assessee using VAT 37B challans. The Tribunal quoted the observations in case of Welspun Corporation Ltd., which reads as under:-

"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."

7. I find that the aforesaid decision have been consistently followed by the Tribunal subsequently, in the case of **Select Poly Products Pvt. Ltd., vs. Commissioner of C. Ex. Jaipur - 2019 (370) ELT 970 (Tri. Delhi)**, **Honda Motorcycle and Scooters India Pvt. Ltd., vs. Commr. of CGST, Cus. & C.Ex, Alwar -2020 (374) ELT 941 (Tri. Del.)**.

8. In the show cause notice dated 22.08.2019 for the period April, 2016 to March, 2017, the Department has invoked the extended period of limitation on the ground that the assessee did not disclose the correct information to the Department. According to the Department, the facts regarding non payment of duty by the appellant or in other words the amount retained of sales tax collected from the customer, came to the notice of the Department only through the audit of the records conducted by the Audit Officer. Thus, there was suppression of material facts with intent to evade payment of duty. Although, the issue on merits has been decided in favour of the appellant and therefore the issue of extended period of limitation does not require any decision thereon. I also find that the issue whether the subsidy amount was includible in the transaction value in terms of Section 4(3)(d) of the Central Excise Act was a matter of interpretation of law and therefore the allegation of suppression of fact are not applicable in the present case and consequently neither interest nor penalty is leviable. The allegation of mis-representation with reference to the inclusion of the subsidy amount under the instant scheme have been considered by the Tribunal in **Select Poly Products Pvt. Ltd.**, (supra) and also in **Honda Motorcycle and Scooters India Pvt. Ltd.**, (supra). The relevant paragraph is quoted below:-

"10. Finally coming to the issue of alleged mis-representation, we are of the opinion that it has already been observed that no amount of Government Exchequer as far as the VAT was concerned, was retained by the appellant. No question of evasion of duty at all arises. As already discussed above, once sales tax stands paid as per the Sales Tax Department, the Central Excise Department cannot contend and allege a short levy on the ground that some amount thereof has been remitted back to the appellants. Thus, there appears no alleged suppression of facts nor even the mis-representation. The entire above discussion rather clarifies the misunderstanding on part of the Department about the relevant provisions specially the definition of transaction value, under Rule 4(3)(d) CEA. The appellant cannot be held liable for the said wrong on part of the Department. The evidence about any positive act except the allegation of using the VAT Challans for discharging the

VAT liability for subsequent period could not be produced on record. As discussed above, discharge of liability by way of VAT 37B Challans has already been held as legally sustainable methodology of discharging tax liability for subsequent period. It is held that, in the given circumstances, Department was not entitled to invoke the extended period of limitation. The demand could be confined only to the normal period of one year. As already held above, the demand as such is not sustainable”.

9. In view of the decisions of the Tribunal, I am of the considered view that the impugned orders are unsustainable. I find from the observations of the Commissioner (Appeals) that though an appeal has been filed by the Department before the Hon’ble Supreme Court in the case of **Shree Cement Ltd.**, (supra), however no stay of the impugned order has been passed. Consequently, the present appeals needs to be decided in the light of the decision in **Shree Cement Ltd.**, (supra) and other decisions cited at the Bar. I accordingly set aside the impugned orders and allow the appeals with consequential benefit, if any.

10. In the result, both the appeals are allowed.

(Operative part of the order pronounced in open Court).

(Binu Tamta)
Member (Judicial)