CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50063 of 2019-SM

(Arising out of order-in-appeal No. 356 to 415 (SM)CE/JPR/2017 dated 31.10.2017 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur).

M/s Jajoo Iron Re-rolling Pvt. Limited **Appellant**
Plot No. 108, Industrial Area, Jhotwara
Jaipur-302012 (Rajasthan)

VERSUS

Commissioner of Central Excise and Service Tax, **Respondent**
NCR Building, Statue Circle, C-Scheme
Jaipur-302005 (Rajasthan)

APPEARANCE:

None for the appellant
Shri Pradeep Gupta, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51864/2019

DATE OF HEARING/DECISION: 31.07.2019

ANIL CHOUDHARY:

When the case is called, none present on behalf of the appellant inspite of notice.

2. Brief facts of the case are that M/s Jajoo Iron Re-Rolling Pvt. Limited, Plot No. 108, Industrial Area, Jhotwara, Jaipur having Central Excise Registration No. AAACJ6180FEM003 and engaged in the manufacture of MS Bars/ Rec. Bars, MS Flats and Angles, Channels, Shape, Section falling under sub-heading 72142090 and 72161000

respectively of the first Schedule to the Central Excise Tariff Act, 1985, have not paid Central Excise duty on the Sales Tax collected from the buyers and retained by them, to the extent of sales tax liability not actually paid to the State Exchequer, with intent to evade payment of duty and have thereby evaded Central Excise duty to the tune of Rs. 1,19,986/- (BED Rs. 1,16,491/- + Education Cess Rs. 2,330/- + SHE Cess Rs. 1,165/-) by contravening the provisions of Section 4 of the Central Excise Act, 1944 and rules 6, 8,11 of the Central Excise Rules, 2002.

3. During the course of audit of records of the appellant, it was noticed that the appellant have received 'Investment Subsidy' and 'Employment Generation Subsidy' against Entitlement Certificate No. 1/129 and 130 dated 08.03.2013 sanctioned under 'Rajasthan Investment Promotion Policy -2010' amounting to Rs. 9,70,760/-, disturbed by issue of various 37B challans and the same has been adjusted towards payment of VAT and CST in their VAT 10 returns during the period 01.04.2013 to 30.09.2014.

4. Heard the learned Authorised Representative Shri Pradeep Gupta appearing for the Revenue, who justified the impugned order.

5. 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 penalty on such differential duty. Aggrieved by the impugned order, present appeal has been filed.

6. On going through the impugned order, I find that the issue is covered by the Final Order No: A/51427-51514/2018-EX (DB) dated 11/4/2018 of this Hon'ble Tribunal. The relevant portion of the order is extracted below:-

> *"After hearing both sides and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of Shree Cements Ltd. V/s CCE, Alwar 2018-TIOL-748-CESTAT-DEL where it was observed that:-*
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> > *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.*
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> > *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 govt., 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.*
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> > *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. 12. In the result, the impugned orders are set aside and the appeals are allowed."

7. Following the precedent order, I set aside the impugned order and allow the appeal. The appellant is entitled to consequential benefits, in accordance with law.

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

(Anil Choudhary)
Member (Judicial)

Pant