

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

PRINCIPAL BENCH - COURT NO. I

Excise Appeal No. 50516 of 2019

[Arising out of Order-in-Appeal No. 507-516(SM) CE/JPR/2018 dated 30.11.2018 passed by the Commissioner (Appeals), Central Excise & CGST, NCRB, Statue Circle, Jaipur-302005]

M/s Dhawan Box Sheet Containers Pvt. Ltd.

....Appellant

A-455, RIICO Industrial Area,
Chopanki, Bhiwadi,
Distt-Alwar (Rajasthan)-301019

Versus

**Commissioner, Goods and Service Tax,
Commissionerate - Alwar (Rajasthan)**

....Respondent

APPEARANCE:

None for the appellant

Shri Rakesh Agarwal, Authorized Representative of the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT HON'BLE
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50917/2023

Date of Hearing: July 12, 2023

JUSTICE DILIP GUPTA

M/s Dhawan Box Sheet Containers Pvt. Ltd.¹ has filed this appeal for setting aside the order dated 30.11.2018 passed by the Commissioner (Appeals) by which the order dated 27.11.2017 passed by the Assistant Commissioner for recovery of Central Excise duty from the appellant, has been upheld.

1. the appellant

2. The issue that arises for consideration in this appeal is as to whether the amount of subsidy received by the appellant from the State Government under the Rajasthan Investment Promotion Scheme, 2010 is includible in the assessable value of the goods cleared during the period in dispute i.e. from 2011-12 to 2015-16, in terms of section 4(3)(d) of the Central Excise Act, 1944.

3. The Commissioner (Appeals), while allowing the appeal, made the following observations:-

" 30. In view of the above and following the judicial discipline, I hold that the appellants are liable to pay Central Excise Duty on the amount received as said to be subsidy and equal amount of sales tax have been collected from the buyers but retained by them. "

4. No one has appeared on behalf of the appellant.

5. The issue, stands settled by an order dated 21.03.2023 of the Tribunal while answering on the reference that had been made on account of difference of opinion between the two Members constituting the Division Bench in **M/s Harit Polytech Pvt. Ltd. Vs. Commissioner, Central Excise, CGST, Jaipur-I²**.

6. Shri Rakesh Agarwal, learned authorized representative appearing for the Department has, however, submitted that in view of the decision of Supreme Court in **Commissioner of Central Excise Jaipur-II Vs. Super Synotex (India) Ltd.³**, the appeal deserves to be dismissed.

2. 2023 (3) TMI 1120-CESTAT NEW DELHI
3. 2014 (301) ELT 273 (SC)

7. The records have been perused and the submissions advanced by the learned authorized representative appearing for the Department have also been considered.

8. The reference that was made by the Division Bench in **Harit Polytech** is as follows:-

“ **(A)** whether in the facts and circumstances, the capital/wage subsidy in question reduces the selling price of goods, as held by the Member (Technical)

OR

As held by the Member (Judicial) that the subsidy in question does not reduce the selling price of the goods. Nor does it amount to indirect flow from the buyer to the seller.

(B) The amount of subsidy under dispute is an independent amount of subsidy received from the Government on the basis of the capital investment and employment generation/wages paid and thus, is not an additional sales consideration, as held by the Member (Judicial).

OR

The amount of subsidy under dispute is not an independent amount received by the appellant. Rather it is computed with reference to the sales tax paid and thus, is an additional consideration for sales, as held by the Member (Technical).

(C) The facts in this appeal are similar to the facts in the case of **Super Synotex India Ltd. (supra)** as held by the Member (Technical)

OR

The facts in the present case are difference (should be different) and hence, ruling of the Apex Court in the case of Super Synotex India Ltd. (supra) is not applicable.

(D) Under the facts and circumstances, the appellant have received VAT subsidy (directly affecting the selling price of the goods), as held by the Member (Technical)

OR

It is not a case of VAT subsidy, affecting or depressing the selling price of the goods, as held by the Member (Judicial)."

(E) The provisions of Section 9 of Rajasthan VAT Act has not been considered in the case of **Shree Cement Ltd. (supra)** leading to erroneous judgment in the said case, as held by the Member (Technical)

OR

The provisions of section 9 of Rajasthan VAT Act 2003 has got no application in the facts of the present case, as held by the Member (Judicial).

(F) It is an appropriate case for reference to the Id. Third Member on the questions framed by the Id. Member (Technical)

OR

There is no case for reference to the Id. Third Member and the appeal is fit to be allowed, as held by the Member (Judicial)."

9. After referring to the provisions of law and the various decisions referred to by the Department, the reference was answered in the following manner:-

"31. To revert, what has to be examined is whether in a case where the assessee collects Rs.2500/- towards sales tax and adjusts the sales tax liability of Rs.1000/- from VAT 37B challan issued by the State Government as subsidy under the promotion policy and deposits the remaining amount of Rs. 1500/- towards sales tax in cash through VAT 37A Challan, then whether this 1000/- can be said to be an additional consideration. **The decision of the Supreme Court in Super Synotex India would not be applicable to the facts of the present case as that was a case where 25% of the amount collected as sales tax from the customers was paid by the assessee and the remaining 75% of the amount was retained by the assessee, which amount was treated to be the price of the goods. In the promotion policy involved in the present case, the subsidy does not reduce the sales tax that is required to be paid by the assessee as the entire amount of sales tax collected by the assessee from the customer is paid.** The subsidy amount, therefore, cannot be included in the transaction value for the purpose of levy of central excise duty under section 4 of the Excise Act.

32. In view of the aforesaid discussion, the reference is answered in the following manner:

- a- Subsidy under the promotion policy does not reduce the selling price;
- b- The amount of subsidy under the promotion policy is not an additional consideration;
- c- The decision of the Supreme Court in Super Synotex India would not be applicable to the present case;
- d- The subsidy amount under the promotion policy does not affect the selling price of the goods;
- e- Section 9 of the Rajasthan VAT Act, 2003 would have no application to the facts of the present case; and
- f- As neither party raised any objection on this issue, the reference has been answered.

33. The matter shall now placed before the regular bench hearing the excise appeals."

10. The decision of the Supreme Court in **Super Synotex India** was considered in the aforesaid order and it was held that it would not be applicable in the facts of the present case.

11. In view of the aforesaid answer to the reference made by the Division Bench, the order of the Commissioner (Appeals) deserves to be set aside and is set aside.

12. The appeal is, accordingly, allowed.

(Order dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Rekha