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

COURT-I

Date of hearing: 23.02.2018
Date of Decision: 28.02.2018

Appeal No. E/50125/2018-EX (DB)
[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-326-17-18 dated 16/10/2017 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-BHOPAL (Appeal)]

Khanna Polyware (P) Ltd. Appellant

Vs.

CCE Jabalpur Respondent

Appearance:
Present Shri S.N. Panda, Advocate for the appellant
Present Shri H. Saini, DR for the respondent

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

FINAL ORDER No. 50837/2018

Per: V. Padmanabhan

1. The present appeal is filed against the Order-in-Appeal NO. 326/2017-18 dated 16/10/2017.

2. The brief facts of the case are that the appellant is manufacturer of PP woven sacks. During the course of audit of the records of the appellant the department observed that the appellant was charging and collecting VAT at the applicable rate from their buyers and the same were not included in transaction value as per Section 4 (3) (d) of the Central Excise Act for the purpose of charging and payment of Excise duty. The appellant was getting refund of 75 per cent of the VAT paid by them under the M.P. Industrial Permanent Assistance Scheme, 2010 and the cheque of such amount sanctioned under the

Scheme was issued in favour of Commercial Tax Office and was treated as advance tax deposited by the appellant. Department was of the view that deduction of VAT from transaction value is admissible only for amount of tax actually paid or payable. In the instant case the State Government deposited the subsidy amounts admissible under the Scheme towards the payment of VAT on behalf of the appellant, but the appellant collected full VAT from their buyers. Since the appellant deposited only the balance VAT with the Commercial Tax Department, the department took the view that the difference is required to be included in the transaction for payment of duty. The Lower Authorities, by relying on the judgment of the Hon'ble Supreme Court in the case of *Super Synotech 2014-TIOL-19 (SC) CX* upheld the demand. Aggrieved by the decision present appeal has been filed.

3. With the above background we heard Shri S.N. Panda. Ld. Counsel appearing for the appellant and Shri H. Saini, Ld. DR appearing for the Revenue.

4. The submission on behalf of the appellant is that:-

(i) Unit is situated in a backward district and hence covered by the policy of M.P. Government formulated in 2010 with the objection of setting up of new industrial units in such areas. The appellant recovers the VAT/CST at the applicable rate and deposits the same with the M.P. Government Treasury. Subsequently, subsidy sanctioned orders were issued under the Incentive Scheme and the cheque is issued, at the time of assessment by the State Government, directly into the account of the Commercial Tax Department who considers such amount as advanced tax. Such amounts are utilized in subsequent period to discharge the VAT liability.

(ii) The Ld. Counsel further submitted that there is no justification to include such subsidy amounts in the Transaction Value. In this regard he relied on *CCE V/s Welspun Corporation Ltd. 2017 (358) ELT 630 (Tri-Mumbai)* and *Final Order No. 50189-50191/2018 dated 18/01/2018* in the case of *Shree Cement V/s Commissioner*.

5. The Ld. DR justified the impugned order. He argued that the appellant has collected VAT at the full rate but at the time of making payment to the State Government, only the balance amount of tax is remitted after taking into account the subsidy already deposited as advance tax. He argued that in the light of the decision of the Apex Court in the case of *Super Synotech*, only the actual amount on VAT paid can be allowed as deduction from Transaction Value.

6. Heard both sides and perused the record.

7. The dispute is with reference to the subsidy received by the appellant under the M P Industrial Permanent Assistance Scheme, 2010. The VAT at the applicable rate is paid by the appellant and then subsidy is claimed. The sanctioned subsidy is paid in the form of advance tax to the Commercial Tax Department and the same is adjusted against the tax payable by the appellant for the subsequent tax period. The Department has taken the view that to the extent of the subsidy amount, the appellant has retained the VAT recovered from the buyers and hence such amounts are required to be included in the Transaction Value under Section 4(3)(d) of the Central Excise Act. The appellant however has argued that they are paying full VAT recovered from the buyers to the account of the State Government. The subsidy amount sanctioned to them on the basis of such VAT paid and hence the same is not includable in the Transaction Value.

8. A similar issue has come up before the Tribunal in the case of ***Shri Cement Ltd. V/s Commissioner*** decided by the Tribunal vide ***Final Order No. 50189-50191/2018 dated 18/01/2018*** in which the Tribunal observed as follows:-

> *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 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.*

12. In the result, the impugned orders are set aside and the appeals are allowed.

9. The facts of the present case are similar. In the case of the Schemes under the Rajasthan Government, the subsidy amount is paid in the form of VAT Challan whereas in the case of the Scheme of the MP Government, the same is allowed by way of book adjustment against the tax payable for the subsequent period.

10. Following the decision of the Tribunal in the cited case, we set aside the impugned order and allow the appeal.

[Order Pronounced in the open court on _28/02/2018_]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha