

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. I

DATE OF HEARING : 06/07/2018.
DATE OF DECISION : 06/07/2018.

Excise Appeal No. 51401 of 2018

[Arising out of the Order-in-Appeal No. 108 (AG) CE/JDR/2018 dated 16/02/2018 passed by The Commissioner (Audit), Central Goods & Service Tax, Jodhpur.]

M/s Birla Corporation Ltd.

Appellant

Versus

CCE & ST, Udaipur

Respondent

Appearance

Shri Himanshu Bansal, Advocate – for the appellant.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 52490/2018 Dated : 06/07/2018

Per. Anil Choudhary :-

The present appeal has been filed against order-in-appeal No. 108 (AG) CE/JDR/2018 dated 16/02/2018.

2. The brief facts of the case are that the appellant has established his factory in the State of Rajasthan and was operating under Rajasthan Investment Promotion Scheme which

was notified by the Government of Rajasthan with the objective of facilitating investment in the establishment of new enterprises under the various schemes of Rajasthan Government. The appellant (assessee) was eligible for subsidies as per the various schemes applicable to the assessee and he was 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 appropriated authority. The subsidy concern is sanctioned and disbursed in Form 37B and as such challans in the form VAT 37B can be utilised for discharge of the VAT liability of the appellant for subsequent period. The Revenue was of the view that VAT liability discharged by the utilisation of the investment subsidy granted in Form 37B actually paid, for the purpose of Section 4 of the Central Excise Act. Accordingly, the Revenue proceeded to include such subsidy amounts in the value of the goods cleared by the appellant and demanded the difference of the duty. Being aggrieved, the appellant has filed the present appeal.

3. With this background we heard learned advocate for the appellant and Shri M.R. Sharma, learned DR for the Revenue.

4. 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:-

"7. We have heard both sides at length and perused the appeal record. As outlined 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 assessee 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 be included in the transaction value.

9. In the present case we know that for the initial period the assesseees 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".

5. By following our earlier order (supra), we set aside the impugned order and allow the appeal with consequential relief, if any.

(Order dictated and pronounced in the open court.)

(C.L. Mahar)
Member (Technical)
PK

(Anil Choudhary)
Member (Judicial)