IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Excise Appeal No. E/52725/2018-EX [DB]

[Arising out of Order-in-Appeal No.164-166(SM) CE/JPR/2018 dated 28.03.2018 passed by the Commissioner (Appeals) of Central Excise, Jaipur]

M/s. Select Poly Products Pvt. Ltd. ...Appellant

Vs.

Commissioner of Central Excise, Jaipur ... Respondent

Present for the Appellant : Mr. R.K. Ranjan, Advocate
Present for the Respondent: Mr.R.K. Mishra, D.R.

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 16.10.2018

FINAL ORDER NO. 53402 /2018

PER: RACHNA GUPTA

The appellant herein is engaged in manufacture of branded mattresses, quilt cloth and rebound sheet. During the course of audit of record of the appellant, Department observed that the appellants have not paid Central Excise duty on the amount of sales-tax collected from the buyers and retained by them to the extent of sales-tax liability being discharged through VAT 37-B Challans. It was alleged that the same has not actually paid by the appellant to State Exchequer with intent to evade the payment of duty for the period from Financial Year 2014-15 to the Financial Year 2015-16. Resultantly, a show cause notice No. 595 dated 16.03.2017 was served upon the appellant proposing the recovery of Central Excise duty amounting to Rs.69,149/- alongwith the interest at appropriate rate in accordance of section 11AA of the Act, 1944 and the penalty under Section 11AC of the Act. The said proposal was confirmed vide the order of Assistant Commissioner bearing No. 05 dated 16.05.2017. Being aggrieved an appeal was filed before Commissioner (Appeals), who vide the impugned order 164-166 dated 28.03.2018 has rejected the appeal. Being aggrieved thereof the appellant is before this Tribunal.

2. We have heard Shri R.K. Ranjan, ld. Advocate for the appellant and Shri R.K. Mishra, ld. D.R. for the Department.

3. It is submitted on behalf of the appellant that the sales-tax benefit as is extended to the manufacturer is in the nature of incentive for promoting employment and investment in the State of Rajasthan. It has no link with production and sale price on manufactured product. Hence, cannot be alleged as short payment of sales-tax. It is mentioned that under Rajasthan Investment Promotion Scheme (RIPS) 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 assesses. The appellant was required to deposit VAT/CST/SGST at the applicable rate with the Government and in terms of the scheme notified, was entitled to disbursement of subsidy by the appropriated authorities. The subsidy is sanctioned and disbursed in Form 37B and as such challans in the form VAT 37B were utilised for discharge of the VAT liability of the appellant for subsequent period. It is impressed upon that the adjudicating authorities below have wrongly declined the amount deposited towards payment of VAT and CST liability through VAT 37-B challan as a payment of excise duty and has wrongly held the employment subsidy under RIPS, 2010, the utilization thereof as the amount of VAT retained. Order is accordingly prayed to be set aside.

4. Ld. D.R. on the other hand has justified the order. Submitting that the subsidy amounts in the value of the goods cleared by the appellants and demand of differential duty has rightly been included in the assessable value. It is impressed upon that the decision of Hon’ble Apex Court in **CCE vs. Maruti Suzuki India Ltd. – 2013 (207) ELT 625 (SC)** has rightly been applied were the Hon’ble Apex Court has clearly

laid down that any amount retained by assessee will form the part of the assessable value. Appeal is accordingly prayed to be dismissed. Ld. D.R. has also relied upon **M/s.Super Synotex- 2014 (301) ELT 273 (SC**).

5. After hearing both the parties, we observe that the appellant was availing the benefit of Rajasthan Investment Promotion Scheme, 2010 (RIPS) notified by State Government of Rajasthan with a view to promote investments thereby entitling the appellant to a subsidy up to certain percentage of the VAT paid by the appellant. It is an admitted fact that the said subsidy is credited to the sales tax account of the appellant which he receives by way of VAT 37B Challans. It is also apparently an admitted fact that the appellant was paying total VAT charged at applicable rates on sale of goods to the State Exchequer and was filing the VAT returns. The VAT 37B Challans, the appellant was utilising to discharge the output VAT liability for the subsequent period. The Department has treated the said discharge of VAT liability vide the said VAT Challans as retention of sales tax by the appellant holding same, while levying/ confirming the impugned demand to have been included in the transaction value. The authorities below have held that utilising the VAT Challans does not amounts to the actual payment. Accordingly, the value thereof is liable to be included in assessable value and is liable for the duty.

6. In view of these facts, we are of the opinion that appellant herein had opted for remission of tax scheme under which a portion of the VAT paid was remitted back to the appellant. It becomes clear that when the sales tax/ VAT is payable at the time of removal, in that case, in terms of Section 4D of Central Excise Act, the same is not includable in transaction value. Tribunal Mumbai in the case of **CCE, Mumbai Vs. M/s Welspun Corporation Ltd. 2017 TIOL 1287 (Tri. – Mum.)** has held that once the Sales Tax Department has assessed the sales tax as paid, the Central Excise Department cannot contend that since the State Government has remitted the amount back to the appellants as incentive, sales tax was not paid by them. After the assessment by the Sales Tax Department for sales tax to have been paid, condition of Section 4(3)(d) of Central Excise Act, 1944 stands fulfilled. We are also of the opinion that there is a difference between remission and exemption. As while in case of exemption, the levy itself is statutorily exhausted and no sales tax is paid or payable by the assessee whereas in case of remission, the sales tax is payable as there is no exemption from levy and /or payment of sales tax at the time of clearance and the same has to be statutorily discharged.

7. In the present case, the remission is in the nature of subsidy which the appellant was receiving from the State

Government in the form of VAT 37B Challans and not from the buyers of the appellant. The said remission was not only as good as cash but can also not be considered as an additional consideration. The definition of transaction value under Section 4(3)(d) of Central Excise Act becomes relevant at this stage which reads as follows:-

> *"Transaction value means the price actually paid or payable for the goods, when sold and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."*

7.1 In terms of the aforesaid definition, it is clear that the transaction value includes all the payments made by the buyer to the assessee. However, in the instant case, the subsidy has been paid to assessee by the State Government. Only the mode of payment is by way of crediting the sales tax head under VAT challan in favour of the appellant. Thus, it could not be said that the amount is in the nature of additional consideration.

8. We also draw our support from the case **Shree Cement Ltd. Vs. C.C.E., Alwar 2018 (Vol-I) TMI 915-CESTAT-Mum** wherein it was held that where assesses are required to remit the VAT recovered by them at the time of sale of goods manufacture and a part of such VAT is given back to them in the form of subsidy in VAT 37b Challans, such Challans are as good as cash but for the limited purpose of being used for the payment of VAT in the subsequent period. The Tribunal has clarified that in terms of the scheme of Government of Rajasthan payment of VAT using such Challans are the legal payments of tax.

9. Though Department has given much emphasis upon Maruti Suzuki (supra) but we are of the opinion that the facts of present case are absolutely different from the said case in the terms that the Hon'ble Apex Court in the said case was dealing with sales tax incentive scheme. But in the present case, the issue is with respect to the grant of sales tax subsidy. In Maruti Suzuki (supra) case, the assessee was retaining 75% of the sales tax collected from the customers whereas in the present case, the appellant had paid the entire amount of sales tax collected from the customers, with the Sales Tax Department without retaining even a meager portion thereof. Hence, the benefit granted by RIPS to the appellant herein is not in the nature of exemption or incentive from payment of

sales tax but is a remission where nothing was initially retained by the appellant. Thus, the facts of present case are absolutely different from the case decided by the Hon'ble Apex Court.

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.

11. Resultantly, the Order under challenge is hereby set aside and the Appeal in hand is allowed.

[Operative part pronounced in the open Court]

(C.L. MAHAR)	**(RACHNA GUPTA)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita