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. II

DATE OF HEARING : 13/12/2018.
DATE OF DECISION: 13/12/2018.

Excise Appeal No. 53570 of 2018

[Arising out of the Order-in-Appeal No. 71/SRM/CE/JDR/2018-19 dated 06/08/2018 passed by The Commissioner (Appeals), CGST, Jodhpur.]

M/s Suncity Sheets Pvt. Ltd. Appellant

Versus

CCE, Jodhpur Respondent

Appearance

Shri O.P. Agarwal, C.A. – for the appellant.

Shri R.K. Mishra, 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. 53522/2018 Dated : 13/12/2018

Per. C.L. Mahar :-

The brief facts of the matter are that the appellant is engaged in manufacture of SS Pipes, SS Circles and Sheets falling under Central Excise Tariff Heading 73 and 72 of the 1st Schedule. During the course of the audit of the appellant the Department has noticed that the appellant have received

investment subsidy amounting to Rs. 15,97,279/- against various entitlement certificates which were issued to them as per the prevailing policy under Rajasthan Investment Promotion Scheme, 2010. As per the investment subsidy ledger and balance sheet and other books of accounts, the entitlement certificates used under RIPS 2010 the appellant have used the same towards payment of the VAT/CST. It is also matter of record that Government of Rajasthan in order to promote investment in the State of Rajasthan and to further the cause of generation of employment opportunities, the above-mentioned Rajasthan Investment Promotion Scheme 2010 (RIPS 2010) have been started. The basic silent features of the scheme are that it grants subsidy and comprises the quantum thereof and procedure for its claim and disbursement. It has been the contention of the Department that by paying the VAT/CST liability from the investment subsidy received under the RIPS, 2010 scheme, the appellant have contravened the provisions of Section 4 of Central Excise Act, 1944 readwith Rule 6, 8 and 10 of Central Excise Rules, 2002 in as much as they have short paid central excise duty amounting to Rs. 1,98,385/- by not including the subsidy amount in the assessable value of their finished products. A show cause notice dated 26th May, 2016 was issued to the appellant, whereunder central excise duty amounting to Rs. 1,98,385/- was demanded under Section 11A (4) of the Central Excise Act, 1944, penalty under Section 11AC and interest under the relevant provisions of the Act have also been invoked. The matter has

been adjudicated vide order dated 30th January, 2017 by the learned Assistant Commissioner under which the above-mentioned charges of the show cause notice have been confirmed. The appellant have preferred an appeal against the above-mentioned order of the learned Assistant Commissioner and learned Commissioner (Appeals) vide his order dated 06/08/2018 have confirmed the order of lower Adjudicating Authority. The appellants are before us against the above-mentioned order-in-appeal.

2. We have heard both the sides. The matter is no longer res-integra as on the similar facts, various decisions have been passed by this Tribunal, wherein it has been held that there is no justification for inclusion of the subsidy used for the payment of VAT amount in the assessable value and accordingly the demand of central excise duty on this account has been dismissed. This Tribunal in the case of **Shree Cement Ltd. vs. CCE, Alwar** in its final order No. 50189-50191 of 2018 dated 18th January, 2018 has decided the above issue in detail. The relevant extract of the above decision are reproduced here below :-

> "4. The learned Counsel for the appellant explained in detail the scheme of the Rajasthan Government regarding the grant of subsidy for new enterprises. He explained that the VAT is initially paid to the Government of Rajasthan before a portion of the same is granted as subsidy in the form of Challan Form 37B. Such challan is one of the modes which is allowed to be utilized for payment of VAT in the subsequent period along with other modes of payment including cash and input tax credit. He

contended that the Revenue has wrongly proceeded under the presumption that the tax paid through 37B Challan does not represent actual payment of tax. He stressed on the fact that the scheme of the Rajasthan Government is not in the nature of exemption from payment of VAT but requires the VAT to be actually paid. Consequentially he submitted that in terms of Section 4 (3) (d), deduction of such VAT paid is allowed and hence the impugned orders are not sustainable.

5. He relied upon the decision of the Tribunal in the case of ***Commissioner of Central Excise v/s Welspun Corporation Ltd. (2017 TIOL 1287 CESTAT MUM).*** He submitted that the Tribunal in the above case has distinguished the decision of the Hon'ble Supreme Court in the case of ***Super Synotex India Limited reported as 2014-301-ELT- 273 (SC).***

6. The Ld. DR justified the impugned orders. He relied on the decision of the Apex Court in the *Super Synotex case* (Supra). He argued that with effect from 1/7/2000 assessee was bound to pay excise duty on the amount retained by them out of what was collected by them as VAT. He also added that in the present case the Rajasthan Government has refunded to the appellants a part of the VAT paid which is required to be included in the assessable value.

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.

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".

3. Since the facts of the matter in hand are similar to the one decided in the above decision, we follow the same and thus find that the order-in-appeal is devoid of any merits and accordingly we set aside the same and allow the appeal.

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

(Anil Choudhary)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

PK