

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
Principal Bench, New Delhi**

COURT NO. II

Excise Appeal No. 53210 of 2018

[Arising out of the Order-in-Appeal No. 445 (CRM)/CE/JDR/2018 dated 15/05/2018 passed by The Commissioner (Appeals), Central Excise & CGST, Jodhpur (Rajasthan).]

**M/s Rajasthan Powergen
Transformers Pvt. Ltd.**
Karola, Bhinmal Road, Karola,
Sanchore – 343 041
District – Jalore (Rajasthan).

Appellant

Versus

The Commissioner (Appeals)
Central Excise & Central Goods Service Tax
Jodhpur.

Respondent

Appearance

Shri Jatin Singhal, Advocate – 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. 53583/2018 Dated : 13/12/2018

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

C.L. MAHAR :-

The brief facts of the case are that the appellant are engaged in the manufacture of transformers falling under Chapter Heading 8504 of 1st Schedule to the Central Excise Tariff Act, 1985. It has been the contention of the department that the appellant has received investment subsidy and employment generation subsidy against Entitlement Certificate No. 1/1 dated

31 October 2013 sanctioned under the Rajasthan Investment Promotion Policy 2010. It has been the stand of the department that the assessee has not paid the central excise duty on the additional consideration collected from the buyers and retained by them to the extent of sales tax liability not actually paid to the State Exchequer and thereby the appellant have evaded central excise duty amounting to Rs. 74,011/- for which a show cause notice came to be issued which was confirmed by the order-in-original No. V (CEX) SCN/RPT/Pali/62/2015/1691 dated 24 November 2016 by the learned Assistant Commissioner, wherein the charges levied in the show cause notice has been confirmed. The appellant have made an appeal before the Commissioner (Appeals) who vide his impugned order No. 445 (CRM)/CE/JDR/2018 dated 15/05/2018 has rejected the appeal of the appellant and upheld the order-in-original. The appellant are before us against the above-mentioned impugned order-in-appeal.

2. We have heard both the sides and perused the record of the appeal.

3. It appears that identical issue has already been settled by this Tribunal in the case of **M/s Shree Cements Ltd. vs. CCE, Alwar** reported in **2018 – TIOL – 748 – CESTAT – DEL.**, where it has been held that :-

"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 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”.

4. Since, the facts of the matter in hand are identical to the one decided in preceding paras, we follow the same and set aside the impugned order and allow the appeal.

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

(Anil Choudhary)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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