IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 50334 of 2019

[Arising out of the Order-in-Appeal No. 507-516 (SM) CE/JPR/2018 dated 30/11/2018 passed by The Commissioner (Appeals), Central Excise & CGST, Jaipur.]

M/s Ramayana Ispat Pvt. Ltd. **Appellant**
SP-45 A, RIICO Industrial Area,
Khushkhera, Bhiwadi,
Alwar (Rajasthan) – 301 019.

VERSUS

The Commissioner of Central Excise & Central Goods and Service Tax, **Respondent**
NCR Building, Statue Circle,
C-Scheme,
Jaipur (Rajasthan) – 302 005.

<u>Appearance</u>

Shri P. Kumar, Advocate – for the appellant.

Shri P. Juneja, Authorized Representative (DR) – for the Respondent.

CORAM: **HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)**
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50981/2019

DATE OF HEARING : 24/07/2019.
DATE OF DECISION:24/07/2019.

<u>C.L. MAHAR :-</u>

The brief facts of the matter are that the appellant is engaged in manufacture of MS Ingots etc. falling under Chapter 7206 of Central Excise Tariff Act, 1985. The appellant is availing the Cenvat credit on inputs, capital goods, input services in terms of provision of Cenvat Credit Rules, 2004. It has been the contention of the Department that investment subsidy received by the appellant in the form of retention of the sales tax amount in the form of VAT-37V challans issued to them by the Rajasthan Government should not be included into the transaction value of the final goods cleared by them as per the provision of Section 4 (3) (d) of the Central Excise Act, 1944 and accordingly a show cause notice dated 19 April 2017 came to be issued for demanding central excise duty amounting to Rs. 36,41,170/- which was confirmed upto the level of Commissioner (Appeals) vide impugned order-in-appeal No. 507-516 (SM) CE/JPR/2018 dated 30 November 2018.

2. Having heard both the sides, we feel that the matter is no longer res-integra as it has already been decided in the case of **M/s Shree Cement Limited, Shree Jaipur Cement Limited versus CCE, Alwar** vide final order No. 50189-50191 of 2018 dated 18 January 2018. The relevant extract of the above decision is reproduced here below :-

> "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 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 the included in the transaction value.
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> 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.
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> 10. It is pertinent to reproduce the observations of the Tribunal in the *Welspun Corporation Ltd**.*** case
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> > *"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.*
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> 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.
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> 12. In the result, the impugned orders are set aside and the appeals are allowed".

3. As the facts are similar to the one decided in **Shree Cement Limited** (supra), we follow the same and set aside the impugned order-in-appeal.

4. The appeal is accordingly allowed.

(Operative part of order pronounced in open court.)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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