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

PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 54133 of 2018

[Arising out of the Order-in-Appeal No. 828 (CRM) CE/JDR/2018 dated 31/07/2018 passed by The Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur.]

M/s Shree Cement Limited **Appellant**
Near NH 15, Village Udaipur – Udasar
Suratgarh, Distt. – Sriganganagar,
Rajasthan – 335 804.

VERSUS

Commissioner (Appeals) **Respondent**
Central Excise & Central Goods
& Service Tax,
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur.

Appearance

Ms. Ananya Sharma, C.A. – for the appellant.

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

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51137/2019

DATE OF HEARING : 05/08/2019.
DATE OF DECISION: 05/08/2019.

C.L. MAHAR :-

The brief facts of the matter are that the appellant is engaged in manufacture of cement falling under Chapter Heading 2523.29 of the first Schedule of the Central Excise Tariff Act, 1985. The Department contended that the appellant had not paid full amount of the central excise duty by not including the element of the sales tax collected by it from the buyers in the assessable value and thereby violated the provision of Section 4 of Central Excise Act, 1944. The appellant contended that the amount of sales tax retained by the appellant in the form of VAT-37A challan (received from the Rajasthan Government) did not form part of the transaction value as per the provision of Section 4 (3) (d) of the Central Excise Act, 1944 for payment of central excise duty.

2. Accordingly, a show cause notice demanding excise duty of Rs. 20,77,340/- under Section 11A (1) of the Central Excise Act, 1944 came to be issued. Interest and penal provision were also invoked by the Department.

3. The matter was adjudicated vide order-in-original No. 03/2017-CE (Demand) dated 20 January 2017 whereunder the charges as invoked in the show cause notice have been confirmed by the learned Adjudicating Authority. The appellant approached Commissioner (Appeals) against the impugned order-in-original. However, the Commissioner (Appeals) vide its order-in-appeal No. 828 (CRM) CE/JDR/2018 dated 31 July 2018 rejected the appeal of the appellant. The appellant is before us against the impugned order-in-appeal.

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

5. We feel that the matter is no longer res-integra as the issue involved in the appeal has already been decided by this Tribunal in the appellant's own case vide final order No. 51252 of 2018 dated 05 April 2018. The relevant extract of the above decision is reproduced here below :-

> "4. After hearing both sides and on perusal of record, it appears that the identical issue has already come up before the Tribunal in appellant's own case - **Shree Cement Ltd. versus Commissioner of Central Excise, Alwar** reported in **2018 –TIOL-748-CESTAT- DEL.** where it was observed 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 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".

6. Since, the facts of the present appeal are similar to the one decided by the above-mentioned final order, accordingly, we hold that the impugned order-in-appeal is devoid of any merits. The same is set aside and the appeal is, accordingly, allowed.

(Operative part of order pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.L. MAHAR)
MEMBER (TECHNICAL)

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