

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench  
Court - I

**Appeal No. E/2041/2011**

(Arising out of Order-in-Appeal No.61/2011 (H-IV) CE dated 20.06.2011 passed by  
CCCE & ST (Appeals-II), Hyderabad)

<b>Jagadamba Engineering Pvt Ltd</b>	.....	<b>Appellant(s)</b>
<b>Vs.</b>		
<b>CCCE &amp; ST, Hyderabad - IV</b>	.....	<b>Respondent(s)</b>

**Appearance**

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

**Coram:**

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

**Date of Hearing: 21.12.2018**

**Date of Decision: 31.12.2018**

**FINAL ORDER No. A/31627/2018**

**[Order per: M.V. Ravindran]**

1. This appeal is directed against Order-in-Appeal No. 61/2011 (H-IV) CE dated 20.06.2011.
2. The relevant facts of the case in brief are appellant was registered with the authorities for manufacturing of LPG Valves; availed the sales tax deferment scheme from Government of Andhra Pradesh for a period spanning 14 years. The period involved is 2001-02 to 2005-06 and opted for the foreclosure of the scheme at a discounted rate of 6.5% of the NPV offered by the Government of Andhra Pradesh. Appellant paid off the dues to Government of Andhra Pradesh. During the course of an audit by AG Office, this point was raised with the appellants and since it was not accepted a show cause notice dated 07.05.2010 was issued to the appellant for demanding Central Excise Duty on the discount allowed by the Government of Andhra Pradesh for the period 2001-02 to 2005-06. Appellant contested the show cause notice on

limitation as well as on merits. The adjudicating authority, after following due process of law, confirmed the demands raised along with interest and imposed penalties. Aggrieved by such an order, an appeal was preferred before the first appellate authority who concurred with the views of the adjudicating authority and dismissed the appeal.

3. Learned counsel, after taking the Bench through the entire case records submits that the lower authorities were in error in not following the circular issued by CBEC, more specifically, Circular No. 378/11-1998-CX dated 12.03.1998 and Circular No. 679/70/2002-CX dated 04.12.2002. It is his submission that the Circulars covered the issue in his favour inasmuch as both the circulars are stating that no excise duty is payable and the sales tax which was deferred by the appellant consequent to the scheme introduced by the State Governments. It is his further submission that on an identical issue, Tribunal in the case of Kinetic Engineering Ltd Vs CCE, Pune [2012 (283) ELT 229], CCE, Mumbai Vs Welspun Corporation Ltd [2017 (358) ELT 630] and CCE, Raigad Vs Uttam Galva Steels Ltd [2016 (331) ELT 261] has held so i.e., Central Excise Duty does not arise on the amount extended as discount by the State Government in foreclosure of deferred sales tax payment scheme. He would submit that the demand is barred by limitation inasmuch the show cause notice is dated 07.05.2010 while the demand is for the period 2001-02 to 2005-06. He would submit that provisions of Sec.11A(1) and Proviso thereof of Central Excise Act, 1944 mandated only for the demand of Central Excise duty for the extended period of 5 years from the date of show cause notice. It is his submission that if this provisions are followed demand for the period 2001-02 to 2004-05 is hit by limitation and for the period 2005-06, again the question as to bonafide belief of the appellant that no Central Excise duty is payable on such amount is to be understood from the fact that during the period in question, Supreme Court in the case of CCE Vs Mazagon Docks Ltd [2005 (187)

ELT 3] had taken a view that subsidy is not an additional consideration. He would submit that discount offered by the Government of Andhra Pradesh is nothing but a subsidy when the sales tax deferment scheme is foreclosed.

4. Learned department representative, on the other hand, submits that the issue is now settled by the Apex Court in the case of CCE, Jaipur Vs Super Syncotex India Ltd [2014 (301) ELT 273] wherein the Hon'ble Apex Court has held that the discount extended by the State Governments are to be included in the violation of the goods manufactured when sales tax deferment scheme is opted for and foreclosure is taken up.

5. We have considered the submissions made at length by both sides and perused the records.

6. The issue that falls for consideration is whether the demand for Central Excise Duty on the appellant on the amount which has been extended as discount by the Government of Andhra Pradesh on foreclosure of sales tax deferment scheme is dutiable or otherwise. Undisputedly, the appellant had availed the sales tax deferment scheme and also opted for foreclosure of such scheme and paid for the period 2001-02 to 2005-06. The allegation in the show cause notice was issued on the basis of audit of C & AG. Show cause notice also relies upon the letter dated 12.04.2008 written by the Commissioner of Commercial Taxes, Andhra Pradesh permitting appellant to discount on foreclosure of deferment scheme.

7. Without going into the merits of the case, we find that demands which have been raised by the show cause notice dated 07.05.2010 for the period 2001-02 to 2004-05 is blatantly beyond the mandate given under first proviso to Sec.11A(1) of the Central Excise Act, 1944. The said section mandates demand of duty from the assessee, in the case of misstatement or suppression or fraud or collusion even in evasion of Central Excise Duty for the period 5 years from show cause notice. In the case in hand, none of these ingredients

appeared to have been brought out in the show cause notice. Be that as it may, since the mandate of first proviso of Sec.11A(1) of Central Excise Act only contemplates for the demand up to 5 years from the date of show cause notice, in our view the demands raised on the amount extended as discount by the Government of Andhra Pradesh for the period 2001-02 to 2004-05 is hit by limitation. We hold so.

8. As regards the demand for the period 2005-06, which falls within the period of 5 years of the issuance of show cause notice, we find that firstly, there is no allegation which would indicate that appellant had an intention to evade the Central Excise Duty on such discount received on foreclosure of the deferred sales tax offered by the Government of Andhra Pradesh. There is nothing on record which indicates that the appellant herein had wilfully violated the provisions of Central Excise Act and Rules made there under with an intention to evade payment of duty, as it is on record that appellant had during the period filed periodical returns with the authorities. Secondly, we find that appellant could have entertained a bonafide belief that the discount which has been offered by the Government of Andhra Pradesh on foreclosure of the deferred sales tax scheme is not an additional consideration as during the relevant period, judgment of the Apex Court in the case of Mazagon Docks Ltd (supra) gives that impression. In view of the foregoing, we hold that the impugned order is liable to be set aside only on the ground of being hit by limitation. Accordingly, we hold that appellant has made out a case on the ground of limitation.

9. The impugned order is set aside and the appeal stands allowed.

(Pronounced in the Open Court on 31.12.2018)

**(P.VENKATA SUBBA RAO)**  
**MEMBER (TECHNICAL)**

**(M.V. RAVINDRAN)**  
**MEMBER (JUDICIAL)**