CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 30594 of 2018
(Arising out of **Order-in-Appeal** No.VIZ-EXCUS-002-APP-141-17-18 dated 28.02.2018 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)

M/s Vasudha Pharma Chem Ltd., .. **APPELLANT**
Unit – II, Plot No. 79,
Jawaharlal Nehru,
Pharma City, Parwada,
Visakhapatnam,
Andhra Pradesh – 531 021.

VERSUS

Commissioner Of Central Tax Visakhapatnam - GST .. **RESPONDENT**
GST Commissionerate,
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri Ankur Upadhyay, Advocate for the Appellant.
Shri B. Sangameshwar Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30510/2025

Date of Hearing: 24.07.2025
Date of Decision: 21.11.2025

[ORDER PER: ANGAD PRASAD]

M/s Vasudha Pharma Chem Ltd., (hereinafter referred to as appellant) are in appeal against the Order-in-Appeal No. VIZ-EXCUS-002-APP-141-17-18 dated 28.02.2018, passed by the Adjudicating Authority / Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam by which demand an amount of Rs. 3,53,642/- being the excise duty payable on the VAT/CST reimbursed by the Andhra Pradesh State Government from the appellant under Section 11A(10) of the Central Excise Act, 1944 with interest and also imposed called penalty against appellant.

2. The facts in brief, the appellant unit have received an amount from Industries and Commerce (IP) Department of AP State Government under Industrial Investment and promotion policy 2005-10.

3. The Show Cause Notice No. C.N. V/1/24/2015-16-Gr..IV-KKD dated 27.01.2016, wherein it was contended that the said amount issued by Industries and Commerce Department and that amount were includible in the assessable value. Appellant had not included the amount of incentive in the assessable value and not declared the same in their ER-I returns and suppressed the facts with intent to evade duty.

4. Therefore, the issue involved in the present appeal is the reimbursement of incentive / grant of VAT / CST by Andhra Pradesh State Government to appellant and Revenue's contention is that the said amount received by the Appellant is liable to be included in the assessable value under Section 4 of the Central Excise Act, 1944.

5. Learned Counsel for the appellant submits that the issue is covered by various judgements of Tribunal and other courts wherein it has been held that amount of incentive / grant is not liable to be included in the assessable value. The appellant place reliance upon the following judgments:

i) M/s Harit Polytech Pvt Ltd., & Others Vs Commissioner, Central Excise & CGST – Jaipur in Final Order Nos. 51033-51039/2023 dated 24.07.2023.

ii) Commissioner of Central Excise, Mumbai – I Vs Welspun Corporation Ltd., [2017 (358) E.L.T. 630 (Tri-Mumbai)]

iii) Shree Cement Ltd.m Vs Commissioner of Central Excise, Alwar [2019 (366) E.L.T. 900 (Tri-Del)]

6. Learned Counsel for the appellant also submits that the demand is time barred as there is no suppression involved in the present case and Show Cause

Notice has been issued to the appellant on 27.01.2016 for the period 2009-10 to 2012-13, thus impugned order is liable to set aside on limitation also.

7. Learned Representative of Department reiterates the findings given by Adjudicating Authority and also relied on following judgments:

i) M/s Commissioner of Central Excise, Jaipur Vs National Engg. Industries [2015 (320) E.L.T. 27 (S.C.)]

ii) Commissioner of Central Excise, Mumbai – I Vs Welspun Corporation Ltd., [2017 (358) E.L.T. 630 (Tri-Mumbbai)]

iii) Commissioner of Central Excise, Jaipur Vs Shree Rajasthan Syntex Ltd., [2015 (318) E.L.T. 626 (S.C.)]

iv) Commissioner of Central Excise, Delhi – III Vs Maruti Suzuki India Ltd., [2014 (307) E.L.T. 625 (S.C.)]

8. Learned Counsel for the appellant in reply submits that the judgment of Commissioner of Central Excise, Jaipur Vs National Engg. Industries, supra and Commissioner of Central Excise, Jaipur Vs Shree Rajasthan Syntex Ltd., and in which relation by the Learned AR which has been passed relying upon the Supreme Court judgment in the case of Super Synotex (India) Ltd., which is not applicable to the facts of the present case as held by CESTAT, New Delhi in the case of M/s Harit Polytech Pvt Ltd., and others. It is also distinguished in the case of M/s Welspun Corporation Ltd., passed by CESTAT, Mumbai, supra, thus relied upon the revenue is not applicable to the facts of the present case.

9. Learned Counsel for the appellant also submits that the judgment of Commissioner of Central Excise, Delhi –III Vs Maruti Suzuki India Ltd., is not applicable to the facts of the present case. Since in that case the 50% collection of sales tax is retained by the assesse and not paid to the Government exchequer whereas the present case deals with the reimbursement of grant of 25% of sales VST/CST paid to the Government

during a particular year which can be used for payment of VAT/CST in the nest financial year.

10. Learned Counsel for the appellant also submits that on the same issue of reimbursement of grant of VAT/CST by the Andhra Pradesh Government in the case of Appellant's Unit – III, the Adjudicating Authority vide Order-in-Original No. 06/2021-22/VSP-SOUTH/CEx dated 10.01.2022 have dropped the demand against them. Hence the impugned Order is not sustainable.

11. Heard Learned Counsel for the appellant Shri Ankur Upadhyay and Learned Representative of Department Shri B. Sangameshwar Rao and perused the records with their submissions.

12. The issue in brief that the reimbursement of incentive / grant of VAT/CST by Andhra Pradesh State Government to Appellant and revenue's contention is that the said amount received by the appellant is liable to be included in the assessable value under Section 4 of the Central Excise Act, 1944 or otherwise.

13. Principal Bench CEATAT New Delhi in the case of M/s Harit Polytech Pvt Ltd., decided by three member bench held that, amount of subsidy under the promotion policy is not an additional consideration and also held that the subsidy amount under the promotion policy does not affect the selling price of the goods. The relevant para of the judgment in this regard as thus:

"56. We further observe that the third Hon'ble Member vide Order No. 5-11/2023 dated 21.03.2023 has decided the above mentioned questions in the following manner;

A. Subsidy under the promotion policy does not reduce the selling price.
B. The amount of subsidy under the promotion policy is not an additional consideration.

C. The decision of the Supreme Court in Super Synotex India would not be applicable to the present case.
D. The subsidy amount under the promotion policy does not affect the selling price of the goods.
E. Section 9 of the Rajasthan VAT Act, 2003 would have no application to the facts of the present case.
F. As neither party raised any objection on this issue, the reference has been answered.

Since the subsidy under promotion policy is held to not to be an additional consideration, it is held that the impugned demands cannot sustain. Resultantly, the orders under challenge are hereby set aside. Consequent thereto, all appeals stand decided in terms of aforesaid Interim Order No. 5-11/2023 dated 21.03.2023 in favour of the appellant".

14. The Tribunal Mumbai, in the case of M/s Welspun Corporation Ltd., supra, the VAT which was payable was actually paid the same is required to be excluded from the transaction value. The sales tax remitted by the Government towards incentive of Capital investment cannot be a part of the transaction value. The relevant part of the judgment as thus:

"5.10. Thus, in our view, once the Sales Tax Department has assessed the Sales Tax as paid, the Central Excise Department cannot contend that since the State Government has remitted the amount back to the appellants as incentive, Sales Tax was not paid by them. Hence we find that once the Sales Tax Department assessed the Sales Tax as paid, the condition of Section 4(3)(d) of the Central Excise Act, 1944 stands fulfilled".

"5.11. We also find that remission and exemption was separately considered by the Govt. of Gujarat. While, Section 5 of the Gujarat Value Added Tax Act, 2003 provides in sub-section (1) thereto that sales and purchase of goods specified in schedule I shall be exempt from tax, sub-section (2) empowers the State Government by a notification in the official gazette to exempt any specified class of sales or purchase or sales or purchase by any specified dealer or specified class of dealers from payment of the whole or part of the sales tax. On the other hand, the scheme of remission provided

for under Section 41 of the Gujarat Value Added Tax Act, 2003, contemplates that the State Government/Commissioner of Sales Tax may remit the whole or any part of the tax payable in respect of any dealer or class of dealers. It is clear from reading of Section 5(2) as also Section 41 of the Act that while Section 5 grants exemption from the levy/payment of sales tax, remission under Section 41 is granted in respect of any part of the tax payable by a dealer. In case of exemption no tax is actually paid or actually payable, whereas in the case of remission, tax is actually payable and paid which is allowed to the remitted by way of retention or by way of refund. In the instant case as already discussed above it is not that Sales Tax was not only payable but in fact is stood actually paid, as the instant case as already discussed above it is not that sales tax was not only payable but in fact it stood actually paid, as the remission was nothing but the incentive or capital subsidy which the State Government granted with respect to the investment made by the appellants in the earthquake ravaged region of kutch of State of Gujarat. Instead of recovering sales tax and then refunding the same as capital subsidy, the State Government had remitted the same to appellants. Consequently like CST since VAT which was payable was actually paid the same is required to be excluded from the transaction value. Hence for this reason also the sales tax remitted by the Government towards incentive of capital investment cannot be a part of the transaction value".

15. In the case of Shree Cement Ltd., Vs Commissioner of Central Excise, Alwar decided by CESTAT Delhi by following the decision of the Tribunal that there is no justification for inclusion in the assessable value, the VAT amounts paid by the assessee.

16. Judgment cited by Learned AR in the cases of National Engg. and Shree Rajasthan Syntex Ltd., based on Hon'ble Supreme Court decision in Super Synotex India Ltd., [2014 (301) E.L.T. 273 (SC)] in the Super Synotex (India) Ltd., does not apply here, this is because the case of M/s Harit Polytech Pvt Ltd., and others decisions of CESTAT New Delhi clearly distinguish it.

17. Decision in the case of Maruti Suzuki India Ltd., also distinguishable since fact is different.

18 Even in another case of appellant's own case Adjudicating Authority vide OIO No. 06/2021-22/VSP-SOUTH/CEx dated 10.01.2022 dropped the demand on the same issue of reimbursement of grant of VAT/CST by the Andhra Pradesh Government.

19. Therefore, in view of discussions supra, and following the ratio laid down by the Coordinate Benches. We find that the reimbursement of incentive / grant of VAT / CST by Andhra Pradesh State Government to the appellant is not liable to be included in the assessable value under Section 4 of the Central Excise Act.

20. Since, the amount of incentive / grant is not liable to be included in the assessable value. Therefore, no any suppression of fact.

21. Thus, appeal is liable to be allowed on merit as well as on the ground of limitation both.

22. Therefore, appeal is allowed.

(Pronounced in open court on 21.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha