IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/458/2009

(Arising out of Order-in-Appeal No. 19-21/SLG/2009 dated 05/06/2009 passed by Commissioner of Central Excise, (Appeals), Kolkata-IV.)

M/s. Maynaguri Silicate Appellant (s)
Vs.
Commr. of Central Excise and Service Tax, Siliguri
Respondent (s)

Appearance
Shri A. K. Bhattacharya, Consultant for the Appellant
Shri S. Mukhopadhyay, Suptd. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing-08.01.2019
ORDER NO. FO/75091/2019
PER CORAM

The present appeal is against the Order-in-Appeal No. 19-21/SLG/2009 dated 05/06/2009. The impugned order has decided the issue in respect of three appellants but out of three, only M/s. Maynaguri Silicate is in appeal in the present proceedings.

2. The brief facts are that the appellant company is a manufacturer of Sodium Silicate falling under Chapter 28 of the Central Excise Tariff. The dispute covers the period 24/01/2004 to 15/05/2004. The appellant set up the factory as SSI Unit in a backward district of West Bengal. Section 37 of the West Bengal Sales Tax Act allowed the appellant to collect the Sales Tax from their buyers and retain the same.

3. The Revenue was of the view that the appellant was required to include the amount of Sales Tax so collected in the assessable value for

the purpose of including Central Excise Duty. The Original Authority as well as the First Appellate Authority upheld the demand for payment of such differential duty. The impugned Order is challenged in the present proceedings.

4. The appellant is represented by Shri A. K. Bhattacharya, Ld. Consultant and Revenue by Shri S. Mukhopadhyay, Ld. DR.

5. The Ld. Consultant submitted at the outset that the issue stands decided against the appellant by the Hon'ble Supreme Cout in the case of Super Synotex (India) Ltd. Vs. CCE Jaipur, 2014 (301) ELT 273 (SC). But he submitted that the appellant will be entitled to the benefit of limitation in view of the CBEC circular No. 1063/2/2018-CX dated 16/02/2018. For the same circular, it has been circulated that the demand for differential duty may be restricted to the Normal time limit.

6. Ld. DR reiterated the findings of the Lower Authorities.

7. We observe that the valuation dispute in this case arose in view of the fact that the appellant unit is situated in a backward area of West Bengal and they were permitted under West Bengal Sales Tax Act to collect the Sales Tax from their buyers and retain the same without remitting to the Sales Tax Department. The above benefit was extended by way of an incentive to set up units in the backward districts of West Bengal. Revenue has taken the view that the amount of Sales Tax

retained by the appellant is required to be included in the assessable value for payment of Central Excise Duty.

8. We find that the issue has been settled by the Hon'ble Supreme Court in the case of Super Synotex (India) Ltd. Vs. CCE Jaipur (Supra), wherein the Apex Court has approved the inclusion of the retail Sales Tax in the assessable value with the following observations:

> "23. In view of the aforesaid legal position, unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value" under Section 4 (4) (d), for it is not excludible. As is seen from the facts, 25% of the sales tax collected has been paid to the State exchequer by way of deposit. The rest of the amount has been retained by the assessee. That has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1-7-2000. Therefore, the assessee is bound to pay the excise duty on the said sum after the amended provision had brought on the statute book."

9. In view of the decision of the Apex Court as above, the issue stands decided against the appellant on merit.

10. Next, we discuss the argument of the appellant for the aspect of time bar. The CBEC has clarified the issue (among other things) vide their circular No. 1063/2/2018-CX dated 16/02/2018. The relevant portion of the Circular is extracted below:-

> "**12. Decision of the Hon'ble High Court of Punjab & Haryana dated 12.08.2016 in the case of Microtek Forgings CEA No. 32/2016 [2016-TIOL-1866-HC-P&H-CX]."**
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> 12.1 Department has accepted the order of the Hon'ble High Court where the Hon'ble Court relying on the judgment of the Apex

Court in the matters of 'Maruti Suzuki India Ltd. vs. CCE Delhi, 2014 (307) ELT 625 (SC) ad Super Synotex (India) Ltd. vs. CCE Jaipur, 2014 (301) ELT 273 dismissed the departmental appeal.

12.2 In the case, CESTAT relying on Apex Court decision in the case of 'Maruti Suzuki India Ltd. vs. CCE Delhi, 2014 (307) ELT 625 (SC) and Super Synotex (India) Ltd. vs. CCE Jaipur, 2014 (301) ELT 273 had held that amount of sales tax concession retained by the respondent is required to be added in the assessable for levy of Central Excise Duty. However CESTAT held that extended period of limitation would not apply. Deciding the departmental appeal, High Court has held that CESTAT in its order has observed that under Circular dated 30.06.2000 CBEC had clarified that such amount retained by the assessee is not required to be added to the assessable value. This view was negated by Apex Court in the above said orders. Since there was no clarity on the issue, the assessee cannot be said to be at fault, hence extended period would not be available to raise the demand.

11. After carefully considering the CBEC Circular and the decision of the Apex Court, we are of the view that the appellant will be entitled to the benefit of time bar. Since no demand survives within the normal time limit, the impugned order merits to be set aside.

12. In the result, appeal is allowed.

(Dictated and pronounced in the open court.)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja