

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Excise Appeal No. 77067 of 2017

(Arising out of Order-in-Appeal No. 85/GHY/CE(A)GHY/2017 dated 12.09.2017 passed by Commissioner (Appeals), CGST & Central Excise, Guwahati.)

M/s Swagath Plastics Private Limited.,

1st Floor, Commerce House, M.G. Road, Guwahati-781035.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Guwahati.

6th Floor, sethi Trust Building, G.S. Road, Bhanagarh, Guwahati-781005.

...Respondent(s)

WITH

Excise Appeal No. 77069 of 2017

(Arising out of Order-in-Appeal No. 85/GHY/CE(A)GHY/2017 dated 12.09.2017 passed by Commissioner (Appeals), CGST & Central Excise, Guwahati.)

M/s Maruti Nandan Plastic Pvt. Ltd.,

College Road, Silasenduri Ghopa, Gauripur,
Amingaon, Guwahati-781031.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Guwahati.

6th Floor, sethi Trust Building, G.S. Road, Bhanagarh, Guwahati-781005.

...Respondent(s)

And

Excise Appeal No. 76901 of 2018

(Arising out of Order-in-Appeal No. 19/GHY/CE(A)GHY/2018 dated 27.02.2018 passed by Commissioner (Appeals), CGST & Central Excise, Guwahati.)

M/s Swagath Plastics Private Limited.,

Commerce House, M.G. Road, Guwahati-781001. (Assam)

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Guwahati.

6th Floor, sethi Trust Building, G.S. Road, Bhanagarh, Guwahati-781005.

...Respondent(s)

APPERANCE :

Shri Bipin Kumar Jain, Chartered Accountant for the Appellant

Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:**HON'BLE MR. P. K. CHOUDHARY MEMBER (JUDICIAL)**
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**FINAL ORDER No...75927-75929/2023**DATE OF HEARING : 08.06.2023DATE OF PRONOUNCEMENT: 26.06.2023**PER K. Anpazhakan:**

M/s Maruti Nandan Plastic Pvt. Ltd.(Appellant 1) is a Private Limited Company engaged in the manufacture of Plastic chairs, stool, Table tub etc. A Show-cause Notice dated 05/05/2015 was issued to the Appellant 1, demanding Central Excise duty amounting to Rs.37,96,556/- covering the period April 2010 to March 2015 on account of undervaluation of goods by non-inclusion of the VAT amount collected under the Assam Value Added Tax Act, 2003 and retained by them in violation of Section 4 of the Central Excise Act, 1944. The demand made in the Notice was confirmed by the adjudicating authority vide Order-in-Original dated 20.03.2017.

2. Swagath Plastic Pvt Ltd (Appellant 2) engaged in manufacture of plastic moulded furniture was also issued a Show Cause Notice dated 29/05/2015 demanding duty of Rs.23,54,766/-covering the period May 2010 to April 2012, on account of undervaluation of goods by non-inclusion of the VAT amount collected under the Assam Value Added Tax Act, 2003 and retained by them in violation of Section 4 of the Central Excise Act, 1944. The demand made in the Notice was confirmed by the adjudicating authority vide Order-in-Original dated 20.03.2017. Another Notice dated 21.04.2017 was issued to the Appellant 2 proposing to reject their application for surrender of their Registration Certificate on the ground that the above said dues are pending realization from them. The Notice was adjudicated and the rejection of the Application of surrender of Registration was confirmed vide Order dated 16.11.2017. On appeal the rejection of application for cancellation of Registration was upheld by the Commissioner (Appeals) vide O-I-A dated 08.03.2018. The Appellant filed appeal against the order dated 08.03.2018 before this Tribunal. As the O-I-A is related to the demand pertains to the above said Appeal pending before this Tribunal, this appeal is also taken up together for decision.

3. Appeal filed against both the orders were decided by the Commissioner (Appeals) by a common order dated 12.09.2017, wherein he upheld the

demands confirmed in the Orders-in-Originals. Aggrieved against the impugned order dated 12.09.2017, the Appellants 1 and 2 has filed the present appeals.

4. In their submissions, the Appellants stated that they said have availed remission under the Assam Industries (Tax Exemption) Scheme, 2009 with effect from February, 2009. As per terms of the above remission scheme the Appellants retained 99% of the VAT collected and paid only 1% to the State Government. Sub clause (d) of clause (3) of Section 4 of the Central Excise Act, 1944 defines that "transaction value" does not include sales tax and other taxes, if any, actually paid or payable on the excisable goods. Thus, the contention of the department is that the definition of transaction value itself makes it clear that whatever amount of excise duty, sales tax or other taxes actually paid or payable to the Government shall be excluded from the transaction value. Therefore, the contention of the department is that the Appellants should have excluded only 1% VAT paid to the State Government from the transaction value, but they have excluded the entire amount of VAT collected from the buyers. Thus, the amount of 99% VAT collected from buyers which was not paid to the State Government should have formed part of the assessable value in terms of Section 4 of the Central Excise Act, 1944 for the purpose of payment of Central Excise duty.

5. The Ld A.R. Reiterated and justified the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that the present issue has arisen on account of the decision of the Hon'ble Supreme Court in the case of Super Synotex (India) Ltd. Vs. CCE Jaipur, wherein the Hon'ble Apex Court has approved the inclusion of the Sales Tax retained 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 excludable. 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 17-2000. Therefore, the assessee is bound to pay the

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excise duty on the said sum after amended provision had brought on the statute book.”

8. However, we observe that after the decision of the Hon'ble Supreme Court, many High Courts and Tribunals have decided that in this issue there was no suppression involved and hence extended period of limitation not applicable. The Appellants particularly cited the decision of Hon'ble Punjab and Haryana High Court dated 12.08.2016 in the case of Microtek Forgings and subsequent clarification issued by Board vide Circular No. 1063/2/2018-CX dated 16/02/2018, in support of their contention that extended period not invocable in this case. They stated that Hon'ble Punjab and Haryana High Court while relying on Hon'ble Supreme Court's 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 has held that amount of sales tax concession retained by the assesses is required to be added in the assessable value for levy of Central Excise Duty. However, the Tribunal held that extended period of limitation would not apply. Deciding on the departmental appeal, the Hon'ble High Court upheld the decision of the Tribunal and dismissed the department's appeal. The Hon'ble High Court has held that Tribunal in its order has observed that Board Circular dated 30.06.2000 had clarified earlier that such amount retained by the assessee was not required to be added to the assessable value. This view was negated by the decision of the Hon'ble 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.

9. The Appellant stated that Board has accepted the decision of Hon'ble Punjab and Haryana High Court in the case of Microtek Forgings, 2016-TIOL-1866-HC-P&H-CX and issued 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].”

12.1 IN THE CAE, cestat RERLYING ON Apex Court decision in the cae 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 CCSTAT held

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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 30.06.202000 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 of the issue, the assessee cannot be said to be at fault, hence extended period would not be available to raise the demand.”

10. After carefully considering the Board’s Circular, the decision of Hon’ble Punjab and Haryana High Court in the case of Microtek Forgings and the decision of the Hon’ble Supreme Court in the case of Super Synotex, we observe that there is no suppression involved in these cases and accordingly, extended period cannot be invoked to demand the duties. We find that the demand in the appeal filed by Appellant 1 pertains to the period from April 2010 to March 2015 and the Notice was issued on 05/05/2015. Thus, after excluding the extended period of limitation, the Appellant 1 is liable to pay the duty for the normal period along with interest. In the appeal filed by Appellant 2, the demand pertains to the period May 2010 to April 2012 and the Notice was issued on 29/05/2015. In this case the entire demand is time barred and liable to be set aside.

11. In respect of Appellant 2, since the entire demand is set aside, their application for cancellation of Registration can be considered by the department now (Appeal No. E/76901/2018).

12. In view of the above discussions, we confirm the demands in respect of normal period and set aside the demand pertains to the extended period. Accordingly we dispose of all the three appeals on the above terms.

(Pronounced in the open court on.....26.06.2023.....)

Sd/-
(P. K. Choudhary)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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