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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.75478 of 2017

(Arising out of Order-in-Appeal No.105/SH/CE(A)/GHY/2016 dated 21.12.2016 passed by Commissioner(Appeals) of Customs, Central Excise & Service Tax, Guwahati.)

M/s. Byrnihat Ispat Private Limited, Unit-II
(41, B.K. Kakati Road, Ulubari, Guwahati-781007.)

...Appellant

VERSUS

Commissioner of Central Excise, Shillong

.....Respondent

(Morellow Compound, M.G. Road, Shillong-793001.)

APPEARANCE

Shri Bipin Kumar, Chartered Accountant for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77228/2023

DATE OF HEARING : 26 September 2023
DATE OF DECISION : 26 September 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order.

2. It is alleged that the excisable goods manufactured by the appellant attracts duty of excise with reference to their value and sale of the excisable goods covered under section 4(1)(a) of the Central Excise Act, 1944. The goods manufactured and cleared by the appellant during the period 2009-10 to 2010-11 (upto 14.03.2011) was assessed on ad-valorem basis and central excise duty was on the transaction and central excise duty was assessed on the transaction value under section 4(1)(a) of the Central Excise Act, 1944. However, the said appellant

while arriving at the assessable value of their excisable goods under section 4(1)(a) of the Central Excise Act, 1944, did not include the amount of sales tax and VAT remitted to the appellant by the Govt. of Meghalaya in terms of Meghalaya Industries (Tax Remission) Scheme 2006 under Meghalaya Value Added Tax Act, 2003, in the value of goods for charging of duty on clearance of such goods during the relevant periods. It was alleged that the 99% of the VAT amount collected by the appellant from the buyers as Sales Tax and VAT has not been paid by the appellant to the department concerned in terms of section 4(3)(d) of the Central Excise Act, 1944 and remission the same. The remission amount is includible in the transaction value for charging of Central Excise duty, therefore, the appellant has short paid excise duty, the remission amount has to be included in the assessable value. In these terms, a show cause notice dated 07.03.2014 was issued to the appellant to demand differential duty along with interest and to impose penalty on the appellant by invoking the extended period of limitation. The matter was adjudicated, demand of duty was confirmed as proposed in the show cause notice along with interest and penalty was also imposed. Against the said order, the appellant is before us.

3. The Ld.Counsel appearing on behalf of the appellant submits that in this case the show cause notice has been issued to them by invoking the extended period of limitation, which is barred by limitation as held by this Tribunal in the case of Swagath Plastics Private Limited & Others v. Commissioner of CGST & CX, Guwahati vide Final Order No.75927-75929/2023 dated 26.06.2023, therefore, the impugned order is to be set aside.

4. On the other hand, the Ld.AR for the department reiterated the findings in the impugned order.

5. Heard the parties, considered the submissions.

6. We find that on merits, the appellant is not contesting, but contended that the show cause notice has been issued to them by invoking the extended period of limitation, therefore, the same is

barred by limitation as there is no allegation of suppression against the appellant.

7. We find that similar issue came up before the Tribunal in the case of Swagath Plastics Private Limited & Others (supra), wherein this Tribunal has held as under:-

> *"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:*
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>> *"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 excise duty on the said sum after amended provision had brought on the statute book."*
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> *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]."*
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> *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 CESTAT held 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 30.06.2020 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 Appelant 1 is liable to pay the duty for the normal period along with interest. In the appeal filed by Appellant 2, the demand pertins 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."*

8. As it is an admitted fact that the show cause notice has been issued to the appellant by invoking the extended period of limitation and in similar cases it is held that the extended period of limitation is not invocable, therefore, we hold that whole of the demand raised against the appellant is barred by limitation.

9. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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