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

Ex. Misc. Application (COD) No. 76419 of 2018
And
Ex. Appeal No. 77578/2018

(Arising out of Order–in-Appeal No.98/GHY/CE(A)/GHY/2017)

M/s. Shree Sai Vamika Industries
….Appellant (s)

Vs.

Commissioner of Central Excise & ST - Guwahati
….Respondent (s)

WITH

1. Ex. Appeal No. 76537 of 2017- M/s. K. C. & Sons.
(Arising out of Order–in-Appeal No.56/GHY/CE(A)/GHY/2017)

2. Ex. Appeal No. 76807 of 2017- M/s. Griha shakti Steels Pvt. Ltd..
(Arising out of Order–in-Appeal No. 60/GHY/CE(A)/GHY/2017)

3. Ex. Appeal No. 76897 of 2017- M/s. Bhuyan Associates Pvt. Ltd.
(Arising out of Order–in-Appeal No.81/GHY/CE(A)/GHY/2017)

4. Ex. Appeal No. 76950 of 2017- M/s. York Print Pvt. Ltd.
(Arising out of Order–in-Appeal No.78/GHY/CE(A)/GHY/2017)

5. Ex. Appeal No. 77012 of 2017- M/s. Adhunik Electrodes
(Arising out of Order–in-Appeal No. 72/GHY/CE(A)/GHY/2017)

6. Ex. Appeal No. 75459 of 2018- M/s. Kamlang Saw & Veener Mills Pvt. Ltd.,
(Arising out of Order–in-Appeal No.90/GHY/CE(A)/GHY/2017)

7. Ex. Appeal No. 76022 of 2018- M/s. Burakia Steel & Alloys
(Arising out of Order–in-Appeal No.82/GHY/CE(A)/GHY/2017)

Appearance:
Sm. Raginee Goyal, CA for the Appellant (s)
Shri S.S. Chattopadhyay, Supdt. (AR), for the Respondent(s)

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

Date of Hearing:- 25.04.2019

ORDER NO.: MO No. 75643/2019 & FO No. 75450

PER : Shri V. Padmanabhan

The issue involved in all these appeals is identical and hence these appeals are taken up for a decision through this common order. The details of the appeals being disposed off through this common order are as follows :

Sl. No.	Appeal No.	Party Name	O/A No.	Dt. Of SCN	Period involved
1.	E/77578/18	Shree Sai Vamika Ind. (COD Misc. Petn.)	98/GHY/CE(A) GHY/2017	08.12.2015	Dec,11 to Mar,15
2.	E/76537/17	M/s. K. C. & Sons.	56/GHY/CE(A) GHY/2017	30.12.2014	Jan 2013 to Oct, 2014
3.	E/76807/17	M/s. Griha shakti Steels Pvt. Ltd..	60/GHY/CE(A) GHY/2017	03.11.2014	Oct.2009 to Jan,2013
4.	E/76897/17	M/s. Bhuyan Associates Pvt. Ltd. (Printing Unit)	81/GHY/CE(A) GHY/2017	24.11.2014	Nov.2009 to Jan,2014
5.	E/76950/17	M/s. York Print Pvt. Ltd.	78/GHY/CE(A) GHY/2016-17	10.11.2014	Oct. 2009 to Mar, 2014
6.	E/77012/17	M/s. Adhunik Electrodes	72/GHY/CE(A) GHY/2016-17	05.08.2014	July 2009 to Mar, 2014
7.	E/75459/2018	M/s. Kamlang Saw Pvt. Ltd.	90/GHY/CE(A) GHY/2016-17	18.04.2016	Jun, 2011 to Mar, 2015
8.	76022 of 2018	M/s. Burakia Steel & Alloys	82/GHY/CE(A) GHY/2017	03.11.2014	Sept. 2011 to Sept. 2013

2. Misc. Application has been filed in Appeal No. E/77578/2018 for condonation of delay of 113 days in filing the appeal before the Tribunal. The delay in filing of the appeal is condoned for the reasons mentioned in the COD application.

3. The brief facts involved in all these cases are that the appellants have established factories in the North-East Region. The State Governments introduced Schemes, for improving the industrialization of the region. As per the scheme, the manufacturing units set up in the North-East region were allowed to enjoy the benefit of various subsidies as well as remission schemes for VAT/Sales Tax. As per this industrial policy, the appellants were allowed to collect the VAT/Sales Tax from the buyers of the goods manufactured by them and to retain the same to the extent of 99% of the VAT/Sales Tax collected. Only the balance 1% was required to be deposited with the State Government.

4. The Department was of the view that in terms of Section 4 of the Central Excise Act, 1944, the amount of VAT/Sales Tax recovered by the appellants and retained by them was to be included in the assessable value for payment of Central Excise duty. Accordingly, the Department proceeded to include such VAT amounts retained by the appellants in the assessable value and issue Show Cause notices for recovery of differential amount of the Central Excise duty. The show cause notices were issued for demand of differential duty for a period of 5 years from the dates of SCN on the strength of allegation of suppression. The original authority confirmed the demand for payment of differential duty and the first Appellate Authority upheld the same. Against such Orders-in-Appeal, the present set of appeals stand filed before the Tribunal.

5. All the appellants are represented by Ms. Raginee Goyal, Ld. CA. Revenue represented by Shri S.S. Chattopadhyay, Supdt. (AR), Ld. D.R.

6. The Ld. CA fairly admitted that the issue of inclusion of retained VAT amounts in the assessable stands decided against the assessee by the Hon'ble Supreme Court in the case of Super Synotex (India) Ltd. V CCE Jaipur 2014 (301) ELT 273. However, she submitted that the demand resulting from such inclusion of VAT amounts is required to be restricted to the normal time limit. The Central Board of Excise and Customs has taken this view in its Circular No. 1063/2/2018-Cx dated 16.2.2018 (para – 12). After considering the said circular as well as the decision of the Hon'ble Supreme Court, the Hon'ble Guwahati High Court in Central Excise appeal Nos. 6 -14 of 2018 has upheld the view that the demand is required to be restricted to the normal time limit. Accordingly, she submits that impugned order may be modified to restrict the demand to normal time limit.

7. The Ld. D.R. while justifying the impugned order, submitted that CBEC's circular along with the Hon'ble Guwahati High Court has restricted the demand to the normal time limit.

8. We have considered arguments advanced by both sides and perused the records.

9. The issue involved in the present case stands decided against the appellant by the Hon'ble Supreme Court in the case of Super Synotex (India) Ltd. V CCE Jaipur (Supra). The Apex Court held that the amount of sales tax concession retained by the manufacturer is required to be added to the assessable value for paying the Central Excise duty. However, in terms of CBEC's circular as well as the Hon'ble Guwahati High Court's decision (Supra) such demand is to be restricted within the normal time limit. We order accordingly.

10. In view of the above discussions, we modify the impugned orders and remand the matter to original authority only for the limited

purpose of re quantifying the demand falling within the normal period of limitation. In the circumstances of the case, we find no reason to impose any penalty and set aside the penalty imposed.

In the result, all appeals are disposed off as above.

(Dictated and pronounced in the open court.)

(P.K. Choudhary)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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