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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76397 of 2017

(Arising out of Order-in-Appeal No. 57/GHY/CE(A)GHY/2017 dated 06.07.2017 passed by Commissioner (Appeals), Central Goods and Service Tax & Customs, Guwahati.)

M/s. Shiv Steel Industries
(S. J. Road, Dhanuka Complex, Block-C,
Athgaon, Guwahati, 781001 (Assam)

Appellant

VERSUS

Commr. of Customs, Central Excise & Service Tax, Guwahati
(5th Floor, Sethi Trust Building, G. S. Road, Bhangagarh, Guwahati-781005, Assam)

Respondent

APPEARANCE :
Shri Devraj Sahu, Advocate for the Appellant
Shri S. K. Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 76662/2025

Date of Hearing : 30th June 2025
Date of Decision : 30th June 2025

PER R. MURALIDHAR

M/s. Shiv Steel Industries, (hereinafter referred as the Appellant) are engaged in the manufacture of excisable goods falling under CET 39 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant was issued with a Show Cause Notice dated 05/05/2015 proposing recovery of cenvat of Rs.48,76,862/- for the period April 2010, along with interest and penalty. It was alleged in the SCN that the Appellant have evaded payment of central excise duty by way on non-inclusion of the amount of VAT/Sales Tax collected and retained by them in the assessable value in violation of Section 4 of the Central Excise Act, 1944. The said notices were adjudicated and the Ld. adjudicating authority, wherein he has confirmed the demands of Central excise duty along with interest and penalty demanded in the Notice. On appeal, the Ld. Commissioner (Appeals) upheld the demands vide the impugned Order-in-Appeal dated 06.07.2017. Aggrieved against the confirmation of the demands, the appellant has filed this appeal.

2. The Learned Advocate appearing on behalf of the Appellant has made the following submissions:

(i) CBEC Circular issued under F. No. 6/8/2014-CX.1 dated 17.09.2014 on the subject matter 'Instructions in light of Judgment of Hon'ble Supreme Court on Sales Tax Incentive Scheme" directing decision of the case based on Hon'ble Supreme court's judgment dated 28.02.2014, passed in the case of CCE JaipurII versus M/s Super Synotex (India) limited and others in Revenue Civil Appeal No 9154-9156 of 2003 for the period prior to 28.02.2014 has unjustifiably influenced the adjudication process and thus caused denial of natural justice;

(ii) Any decision in the present case in the light of the Hon'ble Supreme Court judgement dated 28.02.2014 in the case of CCE, Jaipur-II -vs- M/s Super Synotex (India) Ltd would be an erroneous application and lead to miscarriage of justice;

(iii) No retrospective application of the judgment dated 28.02.2014 is permitted under law; and

(iv) The impugned SCN was barred by limitation as there was no suppression of facts as alleged. No suppression clause can be invoked for extending period of demand.

3. The appellant further submits that the remission of VAT given by the State Govt. is nothing but subsidy for having invested in the capital equipment's in the unit. Therefore, such subsidy cannot be taken as additional benefit being received by the appellant so as to add the value

of remission to the Assessable Value, as has been erroneously done by the lower authorities.

4. In support of their contention, the appellant relied on the following case laws:

(i) 2017 (358) E.L.T. 630 (Tri. - Mumbai) COMMISSIONER OF C. EX., MUMBAI-I Vs WELSPUN CORPORATION LTD. 2019 (366) E.L.T. 900 (Tri. - Del.)

(ii) SHREE CEMENT LTD. Vs CCE Alwar 2019 (370) E.L.T. 970 (Tri. - Delhi.) SELECT POLY PRODUCTS PVT. LTD. Vs CCE Jaipur Excise Appeal No.76498 of 2016

5. The submission of the appellant is that in all these cases, it has been held that the VAT incentive is not includible in the Assessable Value. Accordingly, he prays the appeal may be allowed on merits.

6. The Ld. AR submits that while the case laws cited by the appellant may be in favour of the appellant, but, the judgement of the Hon'ble Supreme Court in the case of Commnr. Of Central Excise, Jaipur vs M/S. Super Synotex (India) Ltd. & Ors – 2014 (301) ELT 273 (SC) is in favour of the Revenue. He submits that in this case, the Hon'ble Apex court has clearly held that the incentives given by way of VAT remission by the State Govt are includible in the Assessable Value. This case law was applied by this Bench in the case of Jalshakti Plastics Industrries VS Com (Appeals) CGST & Central Excise, vide Final Order No.76330/2023 dated 09.08.2023, wherein it has been held that the VAT incentive is includible in the Assessable Value. Therefore, he prays that the ratio of the Supreme Court judgement and the Final order passed by this Bench may be applied to dismiss the appeal.

7. We have perused the Appeal papers and the written submissions made by the appellant.

8. We observe that the facts are not in dispute. The appellant was eligible for remission under the State VAT scheme. Therefore, while the appellant were charging 100% VAT on their customers, they were retaining 99% of the VAT and paying only the balance 1% VAT to the State Govt. There is nothing on record that this 99% was required to be paid subsequently in instalments. Thus, it gets clarified that this amount is simply retained by the appellant.

9. We observe that this very issue was considered by the Hon'ble Supreme Court in the cited case of **Commnr. Of Central Excise, Jaipur vs M/S. Super Synotex (India) Ltd. & Ors – 2014 (301) ELT 273 (SC)** wherein it has been held as under:

> *"4. The Commissioner of Excise repelled the stand of the assessee, interpreted the benefit granted to the assessee as partial exemption and, taking certain other facts into consideration, came to hold that the assessee had deliberately with an intent to evade payment of duty had suppressed the fact that though it was availing partial sales tax exemption under the Sales Tax Incentive Scheme of 1989 for the relevant period upto 75% of tax liability, yet it was paying only 25% of the tax leviable despite collecting additional consideration to the extent of the amount of sales tax and, therefore, the additional amount collected under the camouflage of incentive tax had to be taken note of and, accordingly, price was to be declared and formed as a part of the value for the levy of excise duty. --*
>
> *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." 6.2. We find that the issue had reached the Apex Court, which has held that the retained portion of VAT is required to be treated as additional consideration and hence the same is to be added to the Assessable Value.*

10. On going through the case law of Jalshakti Plastics Industrries VS Com (Appeals) CGST & Central Excise, vide Final Order No.76330/2023 dated 09.08.2023, we find that on identical issue, this Bench has held as under:

> *"9. We observe that the issue is no more res integra as the Hon'ble Supreme Court in the case of Super Synotex (India) Ltd.Vs CCE, Jaipur reported in 2014 (301) ELT273, has held that the sales tax concession retained by the assesses is required to be added in the assessable value for the purpose of levy of Central Excise duty.* "

11. By relying on the above decision of the Hon'ble Supreme Court, we hold that the sales tax concession retained by the Appellant is required to be added in the assessable value for the purpose of levy of Central Excise duty.

12. On the other hand, we find that the case laws cited by the appellant have either not considered the judgement of the Supreme Court cited supra, or were dealing the issue wherein the VAT challans were required to be utilized for their subsequent payment of VAT. Therefore, we find that these case laws cannot come to the rescue of the appellant.

13. However, we find force in the arguments of the appellant with reference to the time bar angle. As has been observed above, the very issue was before various Tribunals and the same was finally settled by the Hon'ble Supreme Court. The Kolkata Bench in Jalshakti Plastics Industries VS Com (Appeals) CGST & Central Excise, vide Final Order No.76330/2023 dated 09.08.2023 has held that the confirmed demand in Excise Appeal No.76498 of 2016 pertaining to the extended period is legally not sustainable, holding as under:

> *"12. We find merit in the argument of the Appellant. The Appellant has not suppressed any information from the department. There were decisions of the Tribunals that the sales tax concession retained by the assesses is not required to be added in the assessable value for the purpose of levy of Central Excise duty. Thus, the appellant cannot be faulted for not including the same in the assessable value."*

14. Accordingly, we set aside the confirmed duty for the extended period. We hold that the appellant is required to pay the differential Excise Duty for the normal period along with interest. However, considering the factual details of the case, we set aside all the penalties.

15. In view of the above discussions, we uphold the demand of central excise duty for the normal period of limitation, along with interest. The demand confirmed for the extended period of limitation is set aside. No penalty imposable on the appellant.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja