CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86800 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/198/15-16 dated 17.06.2015 passed by the Commissioner, (Appeals) Customs, Central Excise, Nagpur.)

M/s. Hardoli Paper Mills Ltd. **.... Appellant**
42 Km. Stone, Nagpur- Amravati Road,
Village Hardoli, Dist. Nagpur- 441 103.

Versus

Commissioner of Central Excise, Nagpur **.... Respondent**
Kendriya Utpad Shulka Bhavan,
Telangkhedi Road, Civil Lines,
Nagpur- 440 001.

With

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Telangkhedi Road, Civil Lines,
Nagpur- 440 001.

Appearance:

Shri Durgesh H. Nadkarni, Advocate for the Appellant

Shri Rajiv Ranjan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85509-85510/2024

Date of Hearing: 14.05.2024

Date of Decision: 14.05.2024

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. The appellant herein had availed the benefit provided under 1993/1998 Sales Tax package Scheme of Incentive, announced by the Government of Maharashtra. Under such scheme, the Government had provided for premature re-payment of deferred sales tax at Net Present Value (NPV). In case, where the deferred sales tax liability is paid by way of premature payment as per NPV, then it would be deemed as if the full sales tax / VAT liability has been discharged and as a result the remaining amount towards such liability retained by the dealer/assessee would be considered as incentive. The incentive received by the appellant in the present case was interpreted by the Department that the same is on account of discount and should form part of the transaction value under Section 4(1) (a) read with Section 4(3) (d) of the Central Excise Act, 1944. On the basis of such analysis, the department proceeded against the appellant for confirmation of the Central Excise duty attributable on such discount amount received from the State Government exchequer. The show cause notices issued in this regard were adjudicated vide order dated 31.10.2006 and 19.12.2014. On appeal against the said adjudication orders, the learned Commissioner (Appeals) vide the impugned orders dated 17.06.2015 has upheld confirmation of the adjudged demands on the appellant. Feeling aggrieved with impugned orders, the appellant has preferred these appeals before the Tribunal.

3. Learned Advocate appearing for the appellant has stated that the issue arising out of the present dispute is no more *res integra* and has relied upon the following judgments to support the case of the appellant that the adjudged demands cannot be confirmed against them:

(i) Commissioner of Central Excise, Raigad Vs. Uttam Galva Steels Ltd. 2016(331) E.L.T.261 (Tri. –Mumbai)

(ii) Rational Engineers Pvt. Ltd. Vs. Commissioner of Central Excise, Thane-I - Final Order No. A/87022/2023 dated 18.10.2023 in Excise Appeal No. 85163 of 2013

(iii) Kinetic Engineering Ltd. Vs. Commr. of C.Ex., Pune, Nagpur, Nashik - 2012(283) E.L.T. 229 (Tri.- Mumbai)

(iv) Mentha & Allied Products Ltd. Vs. Commissioner of C.Ex., Meerut -2004 (167) E.L.T. 494 (S.C.)

(v) Palayam Textiles Processors Vs. Commissioner of C.Ex., Bangalore - 2010 (254) E.L.T. 133 (Tri.- Bang.)

(vi) Commissioner of Central Excise Bangalore Vs. Mazagon Dock Ltd. -2005 (187) E.L.T. 3 (S.C.)

4. We find that an identical issue to the present case has been dealt with by the Tribunal in the case of Uttam Galva Steel Ltd. (supra). The relevant paragraph in said order is extracted herein below:

> *"40. One of the contentions of the learned Commissioner (AR) was with reference to Explanation in Section 4(1) of the Central Excise Act. In the said Explanation, the words used are "actually paid" with reference to exclusion of sales tax and other taxes. A lot of emphasis was given by the learned Commissioner (AR) that since in the Explanation, the words used are "actually paid" and not "actually paid or actually payable", so all that can be excluded is the amount actually paid. According to the learned Commissioner (AR), in view of the said Explanation, the words "actually payable" have to be read along with 'actually paid' and if the amount actually paid is less than the amount actually payable, then the exclusion can be only of the amount actually paid. In the facts of the present cases, the amount actually paid is far less than the amount actually payable at the time of clearance. We are not impressed with the said argument of the learned Commissioner (AR). The definition of "transaction value" given in Section 4(3)(d) very clearly stipulates exclusion of the amount of sales tax and other taxes actually paid or actually payable on such goods. In the present cases, the goods were cleared excluding the amount of sales tax actually payable. This amount has not been changed by the Sales Tax Authority. All that has been done is the manufacturer-assessees were given an option to make pre-payment of the deferred sales tax based on the Net Present Value. Thus, though the Net Present Value may be less than the actually payable amount but the fact remains the timings have changed. The difference between the amount actually paid and actually payable has arisen due to the time when the amount was paid and originally stipulated date of payment under the deferral scheme. As discussed earlier, the concept of actually paid or actually payable is to be determined at the time of removal. Thus the amount actually paid cannot be determined at some other time. In any case,*

in the present case, the amount payable has not been varied by the Sales Tax Authorities. Under the facts of the present cases, in our view, the Explanation may not be of any help to the Revenue as at the time of clearance, the term 'actually payable' was relevant and not 'actually paid'. Further, the amount of actually payable sales tax has not been varied by the Sales Tax Authorities. In view of the said factual matrix in the present cases, in our considered view, the Explanation does not help the cause of the Revenue and the contention is therefore rejected."

5. The Hon'ble Supreme Court in the case of Mazagon Dock Ltd. *(supra)* have held that subsidy received from the Government cannot be said to be the additional consideration, as it is not received from the buyer either directly or indirectly and thus, not includable in the price of the excisable goods for the purpose of payment of central excise duty.

6. In view of the settled principles of law, we do not find any merits in the impugned orders passed by the learned Commissioner (Appeals) in confirming the adjudged demands on the appellant. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM