CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87489 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000-APPL/105-106/15-16 dated 26.08.2015 passed by the Commissioner (Appeals), Customs Central Excise & Service Tax, Nagpur)

M/s SKG Refractores Ltd. .... **Appellant**
Plot No. B-193, MIDC, Bitobori,
Nagpur – 440 001

Versus

Commissioner of Central Excise, Nagpur-I .... **Respondent**
Telangkhedi Road, Civil Lines, Nagpur – 440 001

Appearance:

Shri Akhilesh Kangasia a/w Ms. Madhura Khandekar, Advocates for the Appellant

Shri C.S. Vinod, 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/85662/2024

Date of Hearing: 02.07.2024
Date of Decision: 02.07.2024

PER: S.K. MOHANTY

Heard both sides and perused the records.

2. The appellant herein is engaged in the manufacture of excisable goods namely, Refractory items and materials, falling under Chapters 38 and 69 of the First Schedule to the Central Excise Tariff Act, 1985. The Government of Maharashtra had introduced a Package Scheme of Incentives, 1993, with an objective of promoting industrial growth in Maharashtra. According to the said Scheme, an eligible assessee can collect CST/VAT from its purchasers and pay the same to Government

of Maharashtra on expiry of a deferred period. The appellant was one of the eligible units and granted the benefits under the said scheme. The appellant was permitted to charge Sales Tax for the sale of goods and the amount of sales tax so collected was permitted to be retained and to pay in 5 equal yearly installments on expiry of the 10^{th} year as computed from the last date of filing return. In December 2002, the Sales Tax Department of the Government of Maharashtra introduced a scheme for premature repayment of deferred sales tax at Net Present Value (NPV) under the aforesaid Package Scheme of Incentives. In order to illustrate, in terms of the said Pre-mature Repayment Scheme, if an sales tax assessee is required to pay Rs.100/- on a month after actual deferred period, and if he prefers to pay such amount 24 months prior to that month, then as per NPV table notified, the assessee is required to pay only Rs.80.7314/-, and balance of Rs.19.2686/- is treated as incentive given by the Government of Maharashtra for such early or pre-mature payment. As per Section 38(4) of the Bombay Sales Tax Act, 1959/Section 94(2) of the MVAT Act, 2002, in case where the deferred sales tax liability is paid by way of pre-mature payment as per NPV as explained in the above illustration, then it would be deemed as if the full sales tax/VAT liability has been discharged. The appellant, in the present case, had opted for pre-mature payment at NPV prescribed by the Government of Maharashtra. Since the appellant got some incentives for opting out for premature payment at NPV, the Department has interpreted that such incentives should added to the assessable value for the purpose of discharge of Central Excise duty liability on the final products manufactured by it. Accordingly, upon issuance of the show-cause notice, the matter was adjudicated by the Department against the appellant in confirming the adjudged demand of duty. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. We find that the issue arising out of the present dispute is no more *res integra* in view of the Final Order No. A/85509-85510/2024 dated 14.05.2024 by this Tribunal, in the case of *Hardoli Paper Mills Ltd. Vs. Commissioner of Central Excise, Nagpur*. By relying upon the earlier order passed in the case of *Commissioner of Central Excise, Raigad Vs. Uttam Galva Steels Ltd. – 2016 (331) ELT 261 (Tri-Mumbai)*, the Tribunal in the case of *Hardoli Paper Mills Ltd. (supra)* has allowed the appeal by holding as under: -

> *"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:*
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> > *"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."*

4. In view of the fact that the issue arising out of the present dispute is no more open for any debate in view of the order passed by this Bench of this Tribunal, the present appeal should be allowed in favour of the appellant. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha