CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 89995 OF 2014

[Arising out of Order-in-Original No: PUN-EXCUS-003-COM-012-14-15 dated 25th August 2014 passed by the Commissioner of Central Excise & Service Tax, Pune – III.]

Bharat Forge Ltd
Machine Components Divisio
Gat No. 635, Pune- Nashik Road, Vill: Kuruli
Tal: Khed, Pune - 410501 … ***Appellant***

versus

Commissioner of Central Excise
Pune – III
41-A ICE House, Sassoon Road, Pune - 411001 ***…Respondent***

APPEARANCE:

Ms Manasi Patil and Shri Viraj Reshamwala, Advocate for the appellant

Shri Xavier Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86233/2024

DATE OF HEARING:	23/04/2024
DATE OF DECISION:	22/10/2024

PER: C J MATHEW

This appeal of M/s Bharat Forge Limited, against order[1] of

[1] [order-in-original no. PUN-EXCUS-003-COM-012-14-15 dated 25th August 2014]

Commissioner of Central Excise & Service Tax, Pune – III, relates to recovery of duty of central excise amounting to ₹ 1,10,74,052/- for the period from 1st July 2000 to 31st March 2006 under section11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, besides imposition of penalty of like amount under section 11AC of Central Excise Act, 1944. Briefly, the duty was sought to be recovered, as additional consideration for sale of manufactured goods, on such amount as the appellant, having originally availed Package Scheme of Incentive 1993 of the Government of Maharashtra – enabling retention of the ‘value added tax (VAT)’ from 1st May 1994 to 31st January 2005 to be repaid in five equal annual installments starting from 26th April 2015 – which came to be modified in December 2002 permitting such assessees to remit the ‘net present value (NPV)’ of the accumulated amount as full and satisfactory compliance with the dues, was enabled to retain for itself. The difference between the amount collected and the ‘net present value (NAV)’, computed with the date of schedule payments as benchmark, was considered by the jurisdictional central excise authorities to be liable to be included in the assessable value of goods cleared by them.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

3. According to Learned Counsel for the appellant, the issue stood covered by the decision of the Tribunal in *Commissioner of Central Excise, Raigad v. Uttam Galva Steels Ltd [2016 (331) ELT 261 (Tri.-Mumbai)]* which, in identical circumstances of dispute of another similarly situated automotive parts manufacturer, *Rational Engineers Pvt Ltd v. Commissioner of Central Excise, Pune – I,* was followed by Tribunal in final order[2] disposing off appeal[3] against order[4] of Commissioner of Central Excise (Appeals), Mumbai Zone – I. We find that the issue did come up in the above referred dispute and it was held therein that

> *'5. A similar dispute had came up before the Tribunal in re Uttam Galva Steels Ltd and it was held*
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> > *'14. We have gone through the judgment of the Hon'ble Supreme Court in the case of Super Synotex. A perusal of the order would indicate that what was being considered by the Hon'ble Supreme Court was that when a part of the sales tax collected which was permitted to be retained by the manufacturer will form part of the transaction value for determination of excise duty or not. Thus the issue was that the law permits Rs. 100/- to be collected as sales tax which was collected by the manufacturer but law also provided that Rs. 75/- will be retained by the manufacturer and only Rs. 25/- will be paid to the Government. The question was whether Rs. 75/- will form part of the transaction value or not. The issue in all the appeals here is not this but a different. Here the issue involved is that the manufacturer assessees were required to collect certain amount as sales tax which was collected by them. The said amount of sales tax was to be paid after a specified period say 11 to 15 years and in the meantime, was allowed to be retained by the law with the assessees. In 2002, the law was amended by which it became optional for the manufacturer assessees to pay the amount either at the end of stipulated period or at any point of time earlier on the basis of net present value (on the date*

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[2] [final order no. A/87022/2023 dated 18th October 2023]
[3] [E/85163/2013]
[4] [order-in-appeal no. BR/240/Th-I/2012 dated 8th October 2012]

of prepayment) of the amount of sales tax to be paid at the end of deferral period. We also note that there is no discussion about such a scheme in the Super Synotex judgment of the Hon'ble Supreme Court. The obvious conclusion is that none of the parties who were appearing before the Hon'ble Supreme Court pointed out to the Hon'ble Supreme Court that the issue involved in other appeals is different. It also appears to us that none of such affected appellants/ respondents have argued issue involved in their cases as we do not find any arguments which have been advanced before us or which were discussed in the case of Kinetic Engineering by this Tribunal as recorded or discussed in the Hon'ble Supreme Court's judgment. It does not appear that the counsels for the various respondents in the case of Kinetic Engineering were present in the Hon'ble Supreme Court and did explain the differentiating aspect and after hearing them, the Hon'ble Supreme Court dismissed their pleas and passed the said judgment. We also note that the Hon'ble Supreme Court has not finally allowed the appeal of the Revenue but has set aside all the orders passed by the original authority as also the Tribunal and remanded the matter to this Tribunal to decide the issues keeping in view the principles laid down in the said order. In view of the above factual position, we are of the considered view that the issue involved in the present appeals is not decided by the Hon'ble Supreme Court in the case of Super Synotex. However, the principles laid down by the Hon'ble Supreme Court in the case of Super Synotex have to be taken into account while deciding the present set of appeals.'

6. Furthermore, in re Kinetic Engineering Ltd, it was held

'5.5 A combined and harmonious reading of the above instructions make it more than abundantly clear that the consistent stand and understanding of the revenue has always been that the amount of sales tax paid or payable is permissible to be deducted irrespective of the fact whether the sales tax was paid immediately or on a deferred basis and irrespective of the fact whether incentives were provided by the State Government towards sales tax in any manner.

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5.7 A careful reading of the above legal provisions clearly indicates that much emphasis has been placed in the central excise law with regard to the concept of time and place of removal. The law very clearly provides that the value for the purposes of levy of excise duty has to be determined at the time and place of removal for delivery. So, while determining the value at the time and place of removal, the permissible deductions in arriving at the value are also required to be *determined at that point of time. In other words, if sales tax is permitted to be abated while determining the assessable value, the deduction towards sales tax will be in respect of sales tax actually paid or actually payable at the time and place of removal of the goods. The word "payable" means "to be paid" or "liable to be paid" as per ordinary dictionary meaning. "Liable to be paid" means, liability in accordance with the law. Therefore, what is permissible to be abated in respect of sales tax is the sales tax, actually paid or actually payable in accordance with the law at the time of removal of the goods. If that liability undergoes any change subsequently, such alterations/ modifications should not have any impact on the determination of the assessable value. This is for the reason that "certainty in taxation" is a fundamental cannon of taxation; if that cannon is not followed, there will be confusion and chaos in the tax administration. If tax liability is made dependent on a future event, such a law can not be enforced or implemented in a fair and reasonable way. That is the reason why in all the provisions relating to determination of value, right from 1944 onwards, it has been provided in the law that the value has to be determined at the time and place of removal of the goods. In the instant case, the appellants claimed deduction towards sales tax as per the liability at the time of removal of the goods. Subsequently if that liability got altered due to changes in law or for any other reason, such alteration cannot have any impact or effect on the assessable value of the goods, which were cleared much earlier. A perusal of the table listed in the opening paragraph of this order clearly shows that the period of dispute involved was from 1992 to 2007-2008. In other words, the goods were cleared during this period. In all these cases, the sales tax liability applicable at the time of removal of the goods was deferred and the said liability was allowed to be discharged at the net present value of the deferred tax in terms of the changes in sales tax law introduced in November, 2002 in public interest. This change in the liability has nothing to do with the abatement towards sales tax permissible under the central excise law at the time of removal of the goods. All the board's instructions cited supra also clearly points to this fact. The provision for payment of NPV towards discharge of deferred sales tax liability was introduced in the Bombay Sales Tax Act only in 2002 subject to certain terms and conditions. The said provisions as can be seen in para 2.1 above clearly states that the premature payment in place of tax deferred by an amount equal to NPV of the deferred tax can be availed by the sales tax assessee at his option and such payment shall be deemed to be in discharge of the total sales tax liability under the sales tax deferral scheme and the provisions has been introduced in the law in public interest. It would be also relevant to note that the changes in sales tax law made in November 2002, did not alter the rate of sales tax payable nor provided any exemption from payment of sales tax. The only consequence was that it provided an* *option to the eligible assessee to discharge the deferred sales tax liability by paying its Net Present Value (NPV). It is relevant to note that the said provision did not, in any way, reduce the deferred sales tax liability or amount. What the law provided was that it gave an option to the assessee to discharge the deferred/future liability by paying its present value immediately. An assessee who has cleared the goods from 1992-1993 onwards could not have anticipated that ten years later the Government will introduce a law providing for discharge of duty liability on NPV basis. Therefore, in our view, the appellant cannot be saddled with a tax liability on account of changes in law, which took place several years after the clearance of the goods.*

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5.9 The appellants have relied on a number of judicial pronouncements of this Tribunal in support of their contention that sales tax collected and retained by the manufacturer as an incentive does not change the character of amount collected and they remain as sales tax payable, which is eligible for deduction. However, as Civil appeals filed by the department in all these cases have been admitted by the Hon'ble Apex Court, these judgments are in jeopardy till the matter is finally decided by the Hon'ble Apex Court and hence they may not have any precedential value. However, it would be relevant to note that the Hon'ble Apex Court did not stay any of these orders, which implies the law as interpreted in these orders are still valid and enforceable. In all these judgments (cited in para 3.5 supra), the consistent view taken is that abatement of sales tax granted under the state laws or grant of sales tax incentives does not, in any way, affect the admissibility of deduction towards sales tax while determining the value for the purposes of Central Excise levy. We are in respectful agreement with the interpretation of law made in these judgments. On the ether hand, the citations relied upon by the Revenue also do not support the Revenue's case. In the Adhunik Detergents Ltd., case relied upon by the Revenue there was a sales tax exemption available and no sales tax was payable on the goods and, therefore, it was held that deduction as contemplated in Section 4(4)(d) (ii) would not be permissible. The Mewar Textile Mills case relied upon by the Revenue also deals with a case where sales tax exemption was granted. The Bata (India) case referred to by the Revenue dealt with a situation were the tax was not part of the price and, therefore, exclusion of tax was not permitted. In the case under consideration before us, there is no exemption from sales tax. Sales tax is liable to be paid on a deferred basis. An option has been given to the assessee to discharge the entire liability by paying a sum/amount equal to NPV of the deferred tax liability and on such payment the entire deferred tax liability is deemed to be discharged. Since the facts are totally distinct and distinguishable, the *judgments relied upon by the Revenue have no relevance to the facts in hand and, therefore, the ratio of these judgments do not apply.*

5.10 There are a few judicial pronouncements, which considered the issue of impact on the assessable value on account of changes which take place subsequent to the clearance of the goods and the ratio of these judgments has a bearing on the issues involved in the present case. In Indo Hacks Ltd. v. CCE, Hyderabad, reported in 1986 (25) E.L.T. 69 (Tribunal), a three member Bench of this Tribunal considered the question whether subsequent reduction in prices after the clearance of the goods from the factory could impact the assessable value already determined. It was held that once the correct assessable value has been declared by the assessee and the goods cleared from the factory, any subsequent reduction in prices cannot be a matter of concern for the Central Excise in determining the correct assessable value or even for determining the valuation for the purpose of claiming exemption. In the case of MRF Ltd. v. CCE, Madras, reported in 1997 (92) E.L.T. 309 (S.C.), the Hon'ble Apex Court held as follows :

> *"Once the assessee has cleared the goods on the classification and price indicated by him at the time of the removal of the goods from the factory gate, the assessee becomes liable to payment of duty on that date and time and subsequent reduction in prices for whatever reason cannot be a matter of concern to the Central Excise Department insofar as the liability to payment of excise duty was concerned. This is the view which was taken by the Tribunal in the case of Indo Hacks Ltd. v. Collector of Central Excise, Hyderabad - 1986 (25) E.L.T. 69 (Tribunal) and it seems to us that the Tribunal's view that the duty is chargeable at the rate and price when the commodity is cleared at the factory gate and not on the price reduced at a subsequent date is unexceptionable. Besides as rightly observed by the Tribunal the subsequent fluctuation in the prices of the commodity can have no relevance whatsoever so far as the liability to pay excise duty is concerned. That being so, even if we assume that the roll back in the price of tyres manufactured by the appellant-company was occasioned on account of the directive issued by the Central Government, that by itself, without anything more, would not entitle the appellant to claim a refund on the price differential unless it is shown that there was some agreement in this behalf with the Government and the latter had agreed to refund the excise duty to the extent of the reduced price."*

Again in the case of Shri Bhagwati SSK Ltd. v. CCE, Pune, reported in 2000 (115) E.L.T. 120 (Tri.) this Tribunal held that fluctuations in price of excisable goods subsequent to clearance of goods would not affect assessable value and liability of excise duty already accrued. In the case of Triveni Engineering & Industries v. CCE, Meerut, reported in 2002

(148) E.L.T. 1041 (Tri.-Del.), this Tribunal considered a case, where sugar was cleared at prices fixed by the Government for levy quota sugar and the prices were subsequently revised by the Government. In that case it was held that assessable value of sugar would be the price at which the sugar was cleared and subsequent revision of price by the Government was held as not an additional consideration so as to form a part of the price. An appeal by the Revenue before the Hon'ble Apex Court against the said decision was dismissed by the Hon'ble Apex Court in CCE v. Triveni Engineering & Industries, reported in 2009 (236) E.L.T. A58 (S.C.). A perusal of all the above judgments clearly indicate that the assessable value and the duty liability have to be determined at the time of the clearances of the goods. Once the assessable value is determined taking into account the various abatements permissible as provided for in the law, the question of re-determination of assessable value on account of changes that happened subsequent to the clearances, whether on account of changes in the law or otherwise will not be a cause for re-determination of assessable value. In the instant case, a certain amount of sales tax was payable under the sales tax laws when the goods was cleared from the factory and the same was a permissible reduction under the excise law. Much after the clearance of the goods, the sales tax laws were amended to provide for payment of net present value of the sales tax deferred in complete discharge of the sales tax liability. Such changes in sales tax liability on account of changes in sales tax law cannot be a cause for re-determination of the assessable value determined in accordance with the law of central excise as it stood at the time of removal of the goods. Applying the ratio of these judgments to the facts of the present case, we hold that the abatement towards sales tax has to be allowed in terms of the sales tax liability (as per law) at the time of clearance of the goods. Such abatement cannot be subsequently altered or restricted to the net present value of sales tax subsequently paid in complete discharge of such sales tax liability. In other words, there is no cause for re-determination of assessable value on account of changes which arose in the sales tax law much after the clearance of the goods.

5.11 The C.B.E. & C. has issued a number of circulars clarifying the abatement towards sales tax under various situations. These have been discussed in paragraphs 5.1 to 5.4 supra. From these clarifications, it is very evident that the deduction towards sales tax is permissible based on the amount billed or charged from the customers in accordance with the law irrespective of the fact whether the amount is retained by the assessee or incentives are given by the State Government to the assessee in respect of the sales tax so collected. The present stand of the Revenue goes directly against the instructions contained in the circulars issued by the board. The Hon'ble Apex Court in Paper Products Ltd. v.

> *CCE reported in 1999 (112) E.L.T. 765 (S.C.) held that the circulars issued by the C.B.E. & C. are binding on the department and the department is precluded from challenging the correctness of the circulars even on the basis that the same is inconsistent with the statutory provision. A similar view was held by the Hon'ble Apex Court in CCE v. Dhiren Chemicals - 2002 (143) E.L.T. 19 (S.C.). Similarly in the case of Commissioner of Customs, Calcutta & Others v. Indian Oil Corporation Ltd. & Anr. reported in 4 (2002) 2 SCC 1275 (S.C.) = 2004 (165) E.L.T. 257 (S.C.), it was held that the circulars issued by the Board will be binding on the departmental authorities to maintain uniformity in the levy of tax/duty throughout the country. The stand adopted by the Revenue before us is in complete disregard of the clarifications given by the C.B.E. & C. Neither is the Revenue able to show to us any contrary interpretation of the statute either by this Tribunal or by any higher Court. In view of this position, the arguments put forth by the Revenue have to be negated and rejected.'*

> *7. In view of the decisions of the Tribunal, relating to the peculiarity of the scheme which was prevailed insofar as the impugned order is concerned, we set aside the demand and other detriments to allow the appeal.'*

4. In view of the decisions of the Tribunal, deciding on the dispute arising from the peculiar features of the said scheme of the Government of Maharashtra, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 22/10/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*