CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86814 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/182/15-16 dated 08.06.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Nagpur)

Nice Papers Ltd. **.... Appellant**
138, Village Ghonghali, Tahsil Kalmeshwar,
District- Nagpur.

Versus

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

APPEARANCE:

Shri Durgesh Nadkarni, Advocate 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/86242/2024

Date of Hearing: 15.05.2024

Date of Decision: 15.05.2024

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. The appellants herein are engaged in the manufacture of Kraft Paper, falling under Chapter 48 of the First Schedule to the Central Excise Tariff Act, 1985. As a manufacturer of excisable goods, the appellants were registered with the jurisdictional Central Excise authorities, in terms of Section 6 of the Central

Excise Act, 1944 read with the rules framed there under. On removal of the said manufactured goods from the factory, the appellants used to discharge the Central Excise duty liability, leviable thereon as per the statute. For the disputed financial year 2003-04 (as on 31.03.2004), in the Annual Report, the appellants had shown an amount of Rs.41,66,475/- as 'other income' and clarified at Point No. 11 therein that "*other income includes Rs.39,17,853/- resulted due to making pre-payment of Deferred Sales Tax liability on Net Present Value basis during the accounting year 2003-04*". On verification of the books of accounts for the said period, the officers of Central Excise department had observed that the appellants were liable to pay Sales Tax of Rs.59,65,447/- to the State Government exchequer, but paid only Rs.20,32,689/- and retained the balance amount of Rs.39,32,758/-, though collected as Sales Tax from the buyers. Thus, the department had interpreted that such excess amount, representing Sales Tax, realized from the buyers by the appellants were the additional consideration and that such amount cannot be allowed as deduction for arriving at the transaction value in terms of Section 4(3)(d) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. On the basis of such understanding, the department had initiated show cause proceedings against the appellants, which culminated into the adjudication order dated 09.12.2014, wherein the original authority had confirmed the adjudged demands on the appellants. On appeal against the said adjudication order, the learned Commissioner (Appeals), Central Excise, Customs & Service Tax, Nagpur vide the impugned order dated 08.06.2015 has rejected the appeal filed by the appellants. In support of rejection of appeal, learned Commissioner (Appeals) has relied upon the judgment of Hon'ble Supreme Court, delivered in the case of *CCE, Jaipur-II vs. M/s Super Synotex (India) Ltd. and Others*, reported in 2014-TIOL-19-SC-CX. By placing reliance on the said judgment, he has held that the appellants are not entitled to claim deduction of Sales Tax amount payable from the assessable value under Section 4 *ibid*. Feeling aggrieved with the impugned order dated 08.06.2015, the appellants have preferred this appeal before the Tribunal.

3.1 The issue involved in this appeal, for consideration by the Tribunal, is concerning to the valuation provisions contained in Section 4 of the Act of 1944; and their relevance to the incentive scheme, provided by the Sales Tax department for industrial growth in the State of Maharashtra. The features of the said scheme are summarized, as under:

3.2 The Government of Maharashtra had introduced a Package Scheme of Incentives, 1993, with an objective of promoting industrial growth in the State of 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 the deferred period. The appellants were one of the eligible units and granted the benefits under the said scheme. The appellants were permitted to charge Sales Tax on the sale of goods for the period from October, 2000 to September, 2007 and the amount of sales tax so collected was permitted to be retained and to for payment of the same to the Government exchequer in 5 equal yearly installments, on expiry of the 10th year as computed from the last date of filing of the 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. Under the said Pre-mature Repayment Scheme, if a 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. The original order dated 09.02.2014 had also referred to the certificate issued by the Joint Commissioner of Sales Tax, under the cover of his letter dated 07.06.2006 for full and final settlement on NPV for the assessment year 2003-04.

4.1 The concept of 'transaction value', for the purpose of levy of Central Excise duty, has been defined under sub-section (3)(d) of Section 4 of the Act of 1994, to mean the price actually paid or payable for the goods, when sold to the buyer. The said sub-section also considers diverse amount charged for, or to make provision for different activities viz., advertising, marketing, storage etc., payable by the buyer either at the time of sale or at any other time, as the 'transaction value'. However, the said statute has excluded for consideration of the amount, within its ambit, the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

4.2 On reading of the statutory provision discussed above, it transpires that the legislative intent, has been clarified in clear and in explicit terms that the amount paid or ultimately payable by the buyer of the goods, for the benefit of the assessee-seller, itself would alone be considered as the 'transaction value'. In other words, if any benefit is obtained otherwise by the assessee-seller, by taking recourse to any other statute, without claiming that benefit from the buyer of the goods, then such benefit otherwise obtained, should not be considered as the 'transaction value', for the purpose of levy of Central Excise duty thereon. Further, on reading of the Sales Tax Package scheme of incentives, it transpires that the scheme does not provide for withholding of any amount by the assessee and the benefit provided for pre-mature payment at NPV on a discounted rate is entirely the arrangement between the State exchequer and the assessee-appellant, without the involvement of the buyer of goods. Therefore, the amount foregone by the State Government on account of pre-mature payment cannot be termed as additional consideration, as held by the adjudicating authority in the impugned order.

4.3 We find that the issue arising out of the present dispute, is no more *res integra*, in view of the order passed by this Tribunal, in the case of *Commissioner of Central Excise, Raigad vs. Uttam Galve Steels Ltd.*, reported in 2016 (331) E.L.T. 261 (Tri.-Mumbai). Relevant paragraph in the said order is quoted 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. <u>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</u>*

> *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."*
>
> (Emphasis supplied)

4.4 Further, this Tribunal in the case of Rational Engineers Pvt. Ltd. vs. Commissioner of Central Excise, Thane-I, vide Final Order No. A/87022/2023 dated 18.10.2023 (Excise Appeal No. 85163 of 2013), while allowing the appeal in favour of the party, has held as under:

> *"4. It is clear from the facts and circumstances of the proceedings that the scheme did not involve retention of any amount on the part of the assessee. On the other hand, it entailed premature payment restricted to the present value, net discounting term for measuring the time value of the money. In effect, what was foregone by the State Government was merely the cost incurred by the assessee for not awaiting the appropriate date of payment for discharge of tax liability."*

5. The learned Commissioner (Appeals) has rejected the appeal filed by the appellants, upon placing reliance on the judgement of Hon'ble Supreme Court in the case of *Super Synotex (India) Ltd.* (supra). We find that the issue before the Hon'ble Supreme Court was in context with retention of 75% of sales tax amount collected as incentive and payment of only 25% into the State Government account. In the case in hand, the amount of sales tax collected by the appellants from their customers was paid pre-maturely on the basis of Net Present Value (NPV). In other words, when the difference in timing is taken into consideration and the amount was paid on a pre-payment basis at NPV, then it establishes the fact that nothing was retained by the appellants. Thus, the said judgement relied upon by the learned Commissioner (Appeals) is distinguishable from the facts of the present case.

6. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld confirmation of adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM