CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 85734 of 2015

(Arising out of Order-in-Original No. 03/CEX/2015 dated 21.01.2015 passed by the Commissioner of Central Excise, Customs & Service Tax, Nashik-I}

Caprihans India Limited **.... Appellants**
Plot No.76 & 77, MIDC Industrial Area
Satpur
Nashik – 422 007.

VERSUS

Commissioner of Central Excise & Customs **.... Respondent**
Nashik-I Commissionerate
Kendriya Rajaswa Bhavan
2nd Floor, Annex Building
R.G. Gadkari Chowk, Old Agra Road
Nashik – 422 002.

APPEARANCE:

Ms. Payal Nahar, Advocate for the Appellants

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/86997/2024

Date of Hearing: 15.05.2024

Date of Decision: 15.05.2024

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Caprihans India Limited, Nashik (herein referred to as 'the appellants' for short) assailing Order-in-Original No. 03/CEX/2015 dated 21.01.2015 (referred to, as 'the impugned order') passed by the Commissioner of Central Excise, Customs & Service Tax, Nashik-I.

2.1 The facts of the case, leading to this appeal, are summarised herein below:

2.2 The appellants are having their factory at M.I.D.C. Industrial Area, Satpur, Nashik, Maharashtra and *inter alia*, are engaged in the manufacture of excisable goods viz. Plastic sheets and Rigid PVC film, falling under Chapter Sub-heading 3920 00 of the First Schedule to the Central Excise Tariff Act, 1985. As a manufacturer of excisable goods, the appellants are duly registered with the Central Excise department vide Central Excise Registration No. AAACC 1646FXM002 and also discharge appropriate duty liability on removal of the said final products out of their factory premises.

2.3 In this case, the Government of Maharashtra had framed a Scheme, known as "Package Scheme of Incentives, 1993" (PSI), as a part of Industrial, Investment and Infrastructure Policy with objective of promoting fixed capital investment, employment generation and overall industrial growth in the State of Maharashtra. According to the said PSI scheme, eligible assessee can collect Sales tax/VAT/CST from its purchasers and pay the same to the Government of Maharashtra on the expiry of a deferred period. The appellants were one of the eligible units and granted the benefits of PSI. Under the said scheme, the eligible unit was permitted to charge sales tax for the sale of the goods and the amount of sales tax so collected was permitted to be retained by the appellants, subject to such sales tax amount should be paid in 5 equal yearly instalments on expiry of the 10th year, as computed from the last date of filing sales tax return.

2.4 Subsequently, in December 2002, the Sales Tax Department of the Government of Maharashtra introduced a Scheme for pre-mature repayment of deferred sales tax at Net Present Value (NPV) as per proviso to Section 38(4) of the Bombay Sales Tax Act, 1959/ Section 94(2) of the Maharashtra Value Added Tax, 2002 (MVAT). Under such provision, where the sales tax liability is paid by way of pre-mature payment as per NPV, then it would be deemed as if the full Sales tax/VAT/CST liability has been discharged. Accordingly, the eligible unit had an option of either retaining the Sales tax/VAT/CST so collected until expiry of the deferment period and pay it in its full value or to make a pre-mature payment at NPV rates fixed by the Government of Maharashtra. The appellants have opted for NPV scheme, and started paying its sales tax liability on its eligible sales under the deferment scheme as per NPV. The jurisdictional Central Excise Commissionerate had interpreted that the difference between actual sales tax collected by the appellants from their customers and the payment made towards Sales tax/VAT/CST at NPV i.e., the net gain component was in fact an additional consideration for the goods sold and therefore the same was liable to be included in the assessable value for the purpose of determination of Central Excise Duty, under the provisions of Section 4 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, show cause proceedings were initiated by the department, seeking for recovery of the Central Excise duty of Rs.62,13,895/- along with interest and also proposed for imposition of penalty on the appellants. The show cause notice (SCN) dated 24.09.2009 issued in this regard was adjudicated vide the impugned order dated 21.01.2015, wherein the proposals made in the SCN were confirmed. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3. Heard both sides and perused the records of the case. We have also perused the additional written submission made in the form of paper book submitted by both sides.

4.1 We find that the issue arising out of the present dispute is no more *res integra*, in view of the judgements relied upon by the appellants in the cases of Commissioner of Central Excise, Raigad Vs. Uttam Galva Steels Ltd. – 2016 (331) E.L.T. 261 (Tri.-Mumbai); PGP Glass Private Ltd., Vs. CCE & ST, Vadodara – 2023 (7) TMI 659 (CESTAT Ahmedabad); Rational Engineers Pvt. Ltd. Vs. Commissioner of Central Excise, Thane-I – 2023 (11) TMI 363 – CESTAT Mumbai; and Mahindra Steel Service Centre Ltd., Vs. Principal Commissioner of CGST & Central Excise, Bhopal – (2024) 17 Centax 241 (Tri. Del.). The issue decided in those cases was that incentives/subsidy of VAT/Sales Tax refunded by the State Government at a percentage of the tax paid by the assessee, under the PSI, would not be includable in the assessable value for the purpose of payment of central excise duty thereon.

4.2 We further find that in the case of Mahindra Steel Service Centre Ltd. (supra), the Civil Appeal filed by Revenue was dismissed by the Hon'ble Supreme Court, reported in (2024) 17 Centax 242 (S.C.). The extract of the said judgement dated 05.04.2024 is given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

<u>CIVIL APPEAL NO.   OF 2024</u>
[@ DIARY NO.13005 OF 2024]

PRINCIPAL COMMISSIONER OF CGST AND CENTRAL EXCISE, BHOPAL, M.P. — **APPELLANT(S)**

VERSUS

M/S MAHINDRA STEEL SERVICE CENTRE LTD. — **RESPONDENT(S)**

<u>O R D E R</u>

Delay in filing the appeal is condoned.

We have heard learned senior counsel for the appellant and learned counsel for the respondent-caveator.

We find no merit in this appeal.

Hence, the civil appeal stands dismissed.

Pending application(s), if any, shall also stand disposed of.

. . . .,J
[B.V. NAGARATHNA]

. . . .,J
[AUGUSTINE GEORGE MASIH]

NEW DELHI,
APRIL 05, 2024

In view of the settled position of law, as discussed in those referred cases, and in view of the above judgement of the Hon'ble Supreme Court dated 05.04.2024, the issue arising out of the present dispute is no more open for any debate and as such, the impugned order passed by the learned adjudicating authority is liable to be set aside.

5. Therefore, the impugned order dated 21.01.2015 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