CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85964 of 2016

[Arising out of Order-in-Appeal No. GOA-EXCUS-00-APP-241-242-2015-16 dated 19.01.2016 passed by the Commissioner (Appeals), Pune Appeal-II Cx. (At Goa)]

Eskay Packaging **.... Appellant**
Margaon Industrial Estate,
Salcete, Goa- 403 709.

Versus

Commissioner of Central Excise (Appeal) **.... Respondent**
Pune Appeal –II CX (At Goa)
Central Excise & Customs, ICE House,
E.D.C. Complex, Patto Plaza, Goa- 403 001.

With

Excise Appeal No. 86001 of 2016

[Arising out of Order-in-Appeal No. GOA-EXCUS-00-APP-241-242-2015-16 dated 19.01.2016 passed by the Commissioner (Appeals), Pune Appeal-II Cx. (At Goa)]

Monak Packaging **.... Appellant**
Margaon Industrial Estate,
Salcete, Goa- 403 709.

Versus

Commissioner of Central Excise (Appeal) **.... Respondent**
Pune Appeal –II CX (At Goa)
Central Excise & Customs, ICE House,
E.D.C. Complex, Patto Plaza, Goa- 403 001.

Appearance:

Shri Nitesh Agrawal, Advocate for the Appellant

Shri Dinesh Nanal, 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/87570-87571/2024

Date of Hearing: 13.11.2024

Date of Decision: 13.11.2024

Per: S.K. MOHANTY

Feeling aggrieved with the Order-in-Appeal No. GOA-EXCUS-000-APP-241-242-15-16 dated 19.01.2016 (hereinafter, for short, referred to as "the impugned order"), passed by the learned Commissioner (Appeals), Pune Appeal-II Cx., Goa, the appellants have filed these appeals before the Tribunal.

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

2.2 The appellants are engaged *inter alia,* in the manufacture of Aluminium Printed Collapsible Tubes falling under Chapter 76 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 and also comply with various provisions contained in the statute, including payment of appropriate duty on removal of the said final products, out of their factory premises.

2.3 In this case, the Government of Goa had framed a Scheme, known as "*Goa Sales Tax Deferment-cum-Net Present Value Compulsory Payment Scheme, 2005*" (for short referred to as "Goa VAT NPV"), as a part of its investment promotion and industrialization in the State of Goa. The State government had framed such an industrial policy by providing benefits or concessions in the form of tax exemption for a period of 15 years, operative during 01.07.1983 to 31.03.2000, reckoned from the date of its first sale of commercial production under Entry 68 of the Second Schedule of the Goa VAT/Sales tax law. Such exemption was periodically modified as per the policy in force in the State of Goa and this tax waiver for a limited period created a large contingent liability on the part of the industry to pay such accumulated tax liability after the tax holiday period. According to the Goa ST NPV scheme, 2005, upon introduction of VAT w.e.f. 01.04.2005, the balance un-expired period of the aforesaid tax exemption for eligible manufacturing units were given an option to convert their liability into Net Present Value of such accumulated future payments. In other words, the eligible assessee can collect Sales tax/VAT/CST from its purchasers and pay the same to the Government of Goa on the expiry of a deferred period or were given an option to pay the Net Present Value of such deferred payment i.e., 25% of the sales amount prior hand as the same is being collected and the balance 75% of the amount were allowed to be retained by the eligible unit. The appellants herein were one of the eligible units and granted the benefits of Goa VAT NPV scheme, 2005.

2.4 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 along with interest and also proposed for imposition of penalty on the appellants. The show cause notices (SCN) issued in this regard were adjudicated upon by the learned Assistant Commissioner of Central Excise vide the adjudication order dated 19.05.2015/21.05.2015, wherein the proposals made in the SCNs were confirmed. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 19.01.2016 has modified the adjudication order in setting aside the demand confirmed under the extended period of limitation. However, the impugned order has sustained the Central Excise duty demand along with interest confirmed within the normal period provided under Section 11A of the Central Excise Act, 1944. The penalty imposed on the appellants in the adjudication order was set aside in the impugned order. To the extent, the impugned order has upheld confirmation of the demands within the normal period of limitation, the appellants have preferred this appeal before the Tribunal.

3. Heard both sides and perused the case records.

4. We find that the learned Commissioner (Appeals) in the impugned order has dropped the part of the duty and interest demand confirmed in the adjudication order, holding that the extended period of limitation cannot be invoked and the such demand can only be sustained for the normal period of limitation. In

support of such contentions, the learned Commissioner (Appeals) has held that the issue arising out of the present dispute is within the knowledge of the department and that the appellant had all along agitated the inclusion of sales tax collected and retained by them in the assessable value. It was further held that inclusion of Sales Tax Incentive amount in the assessable value was interpretational issue and there were divergent views expressed by different judicial forums, and therefore, the charges of suppression etc., cannot be levelled against the appellant for invoking the extended period of limitation. However, the learned Commissioner (Appeals) in the impugned order has upheld confirmation of the duty and interest demand made within the normal period, holding that retention of Sales Tax incentive by the appellants should form part of the transaction value, for the purpose of payment of Central Excise duty thereon.

5. We find that the issue arising out of the present dispute, whether retention of sales tax incentives should be considered as additional consideration for the purpose of levy of Central Excise duty, 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 to the effect that incentives/subsidy of VAT/Sales Tax refunded by the State Government at a percentage of the tax paid by the assessee, under the *NPV scheme*, would not be includable in the assessable value for the purpose of payment of Central Excise duty thereon. Further, we also 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.). In view of the settled position of law on the subject issue, we find that there is no substance in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants.

6. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Operative part of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM