CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86616 of 2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-004-15-16 dated 30.04.2015 passed by the Commissioner of Central Excise & Service Tax, Panaji, Goa)

Essae Teraoka Pvt Ltd **.... Appellant**
Chalta No. 10, Street No. 8,
Chandrawada, Fatorda, Goa- 403 602.

Versus

Commissioner of Central Excise & Service Tax **.... Respondent**
ICE House, EDC Complex, Patto Plaza,
Panji, Goa- 403 001.

Appearance:

Shri Anand N., Advocate for the Appellant

Shri P.K. Acharya, Authorized Representative for the Respondent

With

Excise Appeal No. 86763 of 2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-004-15-16 dated 30.04.2015 passed by the Commissioner of Central Excise & Service Tax, Panaji, Goa)

Commissioner of Central Excise & Service Tax **.... Appellant**
ICE House, EDC Complex, Patto Plaza,
Panji, Goa- 403 001.

Versus

Essae Teraoka Pvt Ltd **.... Respondent**
Chalta No. 10, Street No. 8,
Chandrawada, Fatorda, Goa- 403 602.

Appearance:

Shri P.K. Acharya, Authorized Representative for the Appellant

Shri Anand N., Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87572-87573/2024

Date of Hearing: 05.07.2024

Date of Decision: 05.07.2024

Per: S.K. MOHANTY

Feeling aggrieved with the Order-in-Original No. GOA-EXCUS-000-COM-004-15-16 dated 17.04.2015 (hereinafter, for short, referred to as "the impugned order"), passed by the learned Commissioner of Central Excise & Service Tax, Goa, both the assessee-appellants as well as Revenue have filed these appeals before the Tribunal.

2.1 The background facts of the case, leading to these appeals, are summarised herein below:

2.2 The assessee-appellants are engaged *inter alia,* in the manufacture of excisable goods viz., Electronic Weighing Machines and Parts thereof, falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. As a manufacturer of excisable goods, the assessee-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 Value Added 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 VAT 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 assessee-appellants 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 assessee-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 assessee-appellants. The show cause notices issued in this regard were adjudicated upon by the learned Commissioner vide the impugned order dated 17.04.2015, wherein the proposals made in the SCNs with regard to confirmation of Central Excise duty along with interest within the normal period of limitation (one year) was confirmed and the demand proposed for recovery beyond the normal period was dropped. Besides, the impugned order has also dropped the proposals made in the SCN for imposition of penalty on the assessee-appellants under Section 11AC of the Central Excise Act, 1944. Insofar as confirmation of the Central Excise duty demand along with interest for the normal period of one year, the assessee-appellants had preferred the appeal, being number E/86616/2015 before the Tribunal. Revenue has assailed the impugned order, insofar as it had dropped the demands proposed for recovery beyond the normal period of limitation and also dropping of the proposal for imposition of penalty under Section 11AC *ibid.*

Appeal filed by Revenue has been assigned with the number as E/86763/2015.

3. Heard both sides and perused the case records, including the additional written submission made at the time of hearing of appeals.

4. We find that the learned adjudicating authority in the impugned order has dropped the proposed demand made in the SCNs for the extended period of limitation. In support of dropping of the proposed demand beyond the normal period of limitation, the learned adjudicating authority has held that the entire issue arising out of the present dispute is within the knowledge of the department and that the appellant-assessee 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. We are in agreement with such observation made by the learned adjudicating authority. It is not the case of Revenue that the appellant-assessee had suppressed the material facts from the department regarding receipt of the incentive amount from the state government exchequer. On the basis of the records/books of accounts maintained by the appellants, since the incentive amount was considered by the authorities in the State government for retention, it cannot be said that the appellant-assessee had indulged into the activities, concerning fraud, suppression, wilful mis-statement etc. Therefore, we are of the considered view that the learned adjudicating authority has correctly dropped the proposals made in the SCN, beyond the normal period of limitation prescribed under Section 11A of the Central Excise Act, 1944. Therefore, we do not find any merits in the appeal filed by Revenue and accordingly, the same is dismissed.

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 assessee-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 confirmed the adjudged demands on the assessee-appellants and therefore, the impugned order, insofar as it has confirmed the adjudged demands on the assessee-appellant is set aside and the appeal is allowed in their favour.

6. In the result, the appeal filed by the assessee-appellants is allowed and the appeal filed by Revenue is dismissed.

(Operative part of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM