CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85024 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-105-15-16 dated 28.09.2015 passed by the Commissioner of Service Tax (Appeals), Pune)

Mahle Filter Systems (India) Private Limited **.... Appellants**
Gat No.410-411, Mauje Urawade
Taluka-Mulshi, District Pune.

Versus

Commissioner of Central Excise **.... Respondent**
Pune - III Commissionerate
ICE House, 41-A, Sasson Road
Opp. Wadia College, Pune – 411 001.

Appearance:

Ms Payal Nahar, Advocate for the Appellants

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/87597/2024

Date of Hearing: 05.11.2024
Date of Decision: 05.11.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Mahle Filter Systems (India) Private Limited, Pune (herein after referred to, for short, as "the appellants") assailing the Order-in-Appeal No. PUN-SVTAX-000-APP-105-15-16 dated 28.09.2015 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of Service Tax (Appeals), Pune.

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

2.2 The appellants are having their factory at Mauje Urawade, in Musli Taluka of Maharashtra and *inter alia*, are engaged in the manufacture of excisable goods viz. oil filters, fuel filters, Hydraulic & Air I.C. filters, falling under Central Excise Tariff Item (CTI) 8421 2300, CTI 8421 2900 and CTI 8421 3100 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. AAACP5890 QXM005 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) all 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 ineligible 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 competent 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 for the disputed period 01.08.2000 to 31.03.2003, seeking for recovery of the Central Excise duty of Rs.31,27,035/- under Section 11A ibid along with interest and also proposed for imposition of penalty on the appellants under Section 11AC ibid. The show cause notice (SCN) dated 25.06.2008 issued in this regard was adjudicated vide the impugned order dated 12.11.2014, wherein the proposals made in the SCN were confirmed. Being aggrieved with the impugned order, the appellants had filed an appeal before the Commissioner (Appeals) who vide impugned order had modified the order of the original authority by confirming the demands to the extent of Rs.26,88,305/- and equal amount of penalty on the appellants. 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 submissions made in the form of paper book submitted by both sides.

4.1 We find that the issue of demand of central excise duty on non-inclusion of sales tax/VAT benefits in the assessable value 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. The relevant extract of the Final Order No.

51633/2023 dated 11.12.2023 decided by the Tribunal in the case of *Mahindra Steel Service Centre Ltd.,* (supra) is as follows:

> ***"10.*** *The contention of the appellant is that when VAT/CST was actually paid to the State exchequer, the question of including the incentive/capital subsidy received from the State Government in the transaction value does not arise as VAT/CST was not exempted on the goods manufactured and cleared by the appellant.*
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> ***11.*** *This issue was considered in favour of the appellant in the interim order dated 21-3-2023 passed in M/s. Harit Polytech Pvt. Ltd. v. Commissioner, Central Excise and CGST-Jaipur [Excise Appeal No. 51011 of 2019, decided on 21-3-2023]/(2023) 13 Centax 264 (Tri. - Delhi)/[2023] 157 taxmann.com 620 (New Delhi) on a difference of opinion having arisen between two learned Members of the Division Bench of the Tribunal. The relevant portions of the order are as follows:*
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> *"20. Under the promotion policy involved in these appeals, the subsidy does not reduce the sales tax that is required to be paid by the assessee. The entire amount of sales tax collected by the assessee from the customers is required to be paid. A portion is deposited through VAT 37B challan issued to the assessee by the State Government as subsidy under the promotion policy and the balance amount is deposited by the assessee in cash through VAT 37A challan. What has been retained by the appellant is basically the subsidy amount and it is not the case of the Department that subsidy amount has to be included in the transaction value.*
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> ** **
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> *25. Merely because subsidy is computed with reference to the tax paid and is a percentage of the tax paid, will not mean that it is directly or indirectly related to the sale of goods and would be an additional consideration. The amount of subsidy to be provided has necessarily to be a definite amount. It could either be a fixed amount or it could depend on certain factors and one factor can be percentage of the tax paid. This would encourage investors to increase commercial production so that they are able to receive more subsidy, but this can possibly have no bearing on the consideration to be received by the appellant so as to include this value in the transaction value.*
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> ** ** **
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> *31. To revert, what has to be examined is whether in a case where the assessee collects Rs. 2500/-towards sales tax and adjusts the sales tax liability of Rs. 1000/- from VAT 37B challan issued by the State Government as subsidy under the promotion policy and deposits the remaining amount of Rs. 1500/- towards sales tax in cash through VAT 37A Challan, then whether this 1000/- can be said to be an additional consideration. The decision of the Supreme Court in Super Synotex India would not be applicable to the facts of the present case as that was a case where 25% of the amount collected as sales tax from the customers was paid by the assessee and the remaining 75% of the amount was retained by the assessee, which amount was treated to be the price of the goods. In the promotion policy involved in the present case, the subsidy does not reduce the sales tax that is required to be paid by the assessee as the entire amount of sales tax collected by the assessee from the customer is paid. The subsidy amount, therefore, cannot be included in the transaction value for the purpose of levy of central excise duty under section 4 of the Excise Act."*
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> *(Emphasis Supplied)*
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> ***12.*** *The reference was, accordingly, answered holding that:*
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> *"32. ** **
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> *a- Subsidy under the promotion policy does not reduce the selling price;*
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> *b- The amount of subsidy under the promotion policy is not an additional consideration;*
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> ** **
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> *d- The subsidy amount under the promotion policy does not affect the selling price of the goods;"*

> ***13.*** *In view of the aforesaid order, the contention of the learned counsel for the appellant that incentive/capital subsidy received from the State Government cannot be included in the transaction value has to be accepted.*
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> ***14.*** *The order dated 31-12-2018 passed by the Principal Commissioner, therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed."*

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 order is given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.   OF 2024
[@ 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)**

O R D E R

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

4.3 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 28.09.2015 passed by the learned Commissioner of Service Tax (Appeals), Pune 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)

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