

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86196 of 2016

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-275 to 285-2015-16 dated 25.02.2016 passed by the Commissioner (Appeals), Pune Appeal-II CX. at Goa, Central Excise & Customs, Goa)

Commissioner of Central Excise & Service Tax

.... Appellant

ICE House, EDC Complex,
Patto Plaza, Panaji
Goa – 403 001.

Versus

West Coast Ingots Private Limited

.... Respondent

Plot No.1, Kundaim Industrial Estate
Goa – 403 115.

AND

Excise Appeal No. 86200 of 2016

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-275 to 285-2015-16 dated 25.02.2016 passed by the Commissioner (Appeals), Pune Appeal-II CX. at Goa, Central Excise & Customs, Goa)

Commissioner of Central Excise & Service Tax

.... Appellant

ICE House, EDC Complex,
Patto Plaza, Panaji
Goa – 403 001.

Versus

Mohit Steel Industries Private Limited

.... Respondent

Kundaim Industrial Estate
Goa – 403 115.

WITH

Excise Appeal No. 86215 of 2016

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-275 to 285-2015-16 dated 25.02.2016 passed by the Commissioner (Appeals), Pune Appeal-II CX. at Goa, Central Excise & Customs, Goa)

Commissioner of Central Excise & Service Tax

.... Appellant

ICE House, EDC Complex,
Patto Plaza, Panaji
Goa – 403 001.

Versus

Mandovi Castings Private Limited

.... Respondent

Plot No.341, Kundaim Industrial Estate
Goa – 403 115.

Appearance:

Shri C.S. Vinod, Authorized Representative for the Appellant

Shri C.S. Biradar, Advocate for the Respondents.

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86232-86234/2025

Date of Hearing: 20.03.2025
Date of Decision: 20.03.2025

PER : M.M. PARTHIBAN

These appeals have been filed by the Commissioner of Central Excise & Service Tax, Goa (herein after, referred to as "the appellant", for short) in pursuance to Review Order dated 03.05.2016 passed by the Committee of Commissioners of Central Excise, Goa and Kolhapur assailing the Order-in-Appeal No. GOA-EXCUS-000-APP-275 to 285-2015-16 dated 25.02.2016 (herein after, referred to as "the impugned order") passed by the Commissioner (Appeals), Pune Appeal-II CX. at Goa, Central Excise & Customs, Goa in respect of sales tax/VAT benefits availed by M/s Mohit Steel Industries Private Limited, Goa; M/s West Coast Ingots Private Limited, Goa; and M/s Mandovi Castings Private Limited, Goa (herein after, referred together as "the respondents") under Goa VAT Deferment-cum-Net Present Value Compulsory Payment Scheme, 2005, and its inclusion in assessable value for payment of excise duty in clearance of excisable goods manufactured by them.

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

2.2 The respondents assesseees are having their respective factories at Kundaim Industrial Estate, Goa and *inter alia*, are engaged in the manufacture of excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985. As a manufacturer of excisable goods, each of the respondents are duly registered with the Central Excise department and also discharge appropriate duty liability on removal of the 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 Goa Government's investment promotion and industrialization efforts undertaken with an objective to promote expansion of industries in the State of Goa, issued under Notification No. 4/5/2005-Fin(R&C)(13). The State government had framed 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. Each of the respondent assessee is 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 respondent 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 for the disputed period, seeking for recovery of the Central Excise duty along with interest under Section 11A *ibid* and also proposed for imposition of penalty under Section 11AC *ibid* on the respondents assessees. The various show cause notices

(SCNs) issued in this regard was adjudicated by the original authority, wherein the proposals made in the SCNs were confirmed. Being aggrieved with respective orders of the original authority, the respondent assesseees have filed appeal before the Commissioner (Appeals) who vide common impugned order, passed against all the respondents assesseees, had set aside the orders of the original authority and allowed the appeal filed by the respondent assesseees. Feeling aggrieved with the impugned order, the Revenue has preferred these appeals before the Tribunal

3. Heard both sides and perused the records of the case.

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 *NPV scheme*, 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.*

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:*

"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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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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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."
(Emphasis Supplied)

12. *The reference was, accordingly, answered holding that:*

"32. **

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a- Subsidy under the promotion policy does not reduce the selling price;

b- The amount of subsidy under the promotion policy is not an additional consideration;

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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.*

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 No. 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 JURISDICTIONCIVIL 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, 2024Validity unknown
Digitally signed by
Nestor M. George
Date: 2024.04.05
16:25:16 +05'30'
Reason:

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 various adjudication orders passed by the original authority in confirmation of demands is liable to be set aside.

5. Therefore, the impugned order dated 25.02.2016 passed by the learned Commissioner (Appeals), Pune Appeal-II CX. at Goa, Central Excise & Customs, Goa is upheld and the appeals filed by Revenue is dismissed.

(Operative portion of the Order pronounced in the open court)

S.K. Mohanty
Member (Judicial)

M.M. Parthiban
Member (Technical)

SM