CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85122 of 2015

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-15-14-15 dated 30.09.2014 passed by the Commissioner of Central Excise & Service Tax, Pune-III)

M/s Uniklinger Ltd. **.... Appellant**
Gut No.1240, S.No.140,
Vadu Budruk, Koregaon Bhima,
Dist. Pune – 412 218.

Versus

Commissioner of Central Excise & Service Tax, Pune-III **.... Respondent**
41-A, ICE House, Sassoon Road,
Pune – 411 001.

APPEARANCE:

Shri Sanjay Dwivedi, Advocate for the Appellant

Shri P.K. Achrya, 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/87617/2024

Date of Hearing: 16.12.2024
Date of Decision: 16.12.2024

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants, having their factory located at Pune, are engaged *inter alia*, in the manufacture of Gasket Sheets, falling under Chapter heading 6812 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 discharge appropriate duty liability on removal of the said final products out of their factory premises. In this case, the Government of Maharashtra had announced the scheme of deferment of sales tax viz., Package Scheme of Incentives, 1993 outlined in the resolution No. IDL-1093/(8889)/IND-8, dated 07.05.1993. In terms of the said scheme, the eligible units were permitted to collect the amount of sales tax from buyers at the time of sale of the goods, but to pay it to the Government after a specified duration.

Accordingly, a 'Certificate of Entitlement' was issued by the sales tax department, permitting the appellants to defer the sales tax amount for the specified period. In terms of the Entitlement Certificate, the appellants were required to deposit the sales tax in five equal instalments after a period of 10 years. During the currency of the said scheme, the Government of Maharashtra came up with another scheme in November,2002 providing an option to the units availing the scheme of deferment of sales tax, to make pre-mature re-payment of sales tax liability on the basis of Net Present Value (NPV), as per the prescribed formula. During course of audit of the books of account, the department observed that the appellants had received the benefit of Rs. 96,59,035/- on account of pre-mature re-payment of the sales tax liability accrued during the year 2005-06 at NPV on the clearances of excisable goods effected during the period 2003-04 to 2005-06. It was further by the audit wing of the department that the difference between the actual sales tax collected from the customers and the payment made at NPV is retained by the assessee and is shown as 'income' in the respective annual accounts for the period 31.03.2006. The department had interpreted that such sales tax amount retained by the appellants is in the nature of additional consideration, which should be considered as part of the assessable value as per the provisions of Section 4 of the Central Excise Act, 1944. On the basis of such understanding, show cause proceedings were initiated against the appellants, which were culminated into the adjudication order dated 26.09.2014 (impugned herein), wherein the learned Commissioner of Central Excise, Pune-III, has confirmed Central Excise duty along with interest and also imposed penalty on the appellants, as proposed for recovery in the SCN. Feeling aggrieved with impugned order, the appellants have filed the present appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. 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 *Harit Polytech Pvt. Ltd. & others Vs. Commissioner of Central Excise & CGST, Jaipur* – 2023-TIOL-235-CESTAT-DEL 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/industrial 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. We further find that in the case of Mahindra Steel Service Centre Ltd. (supra), 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, as discussed in those referred cases, 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.

4. Therefore, the impugned order 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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