CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 86275 of 2024
(on behalf of Respondent)

in

Excise Appeal No. 86969 of 2013

(Arising out of Order-in-Appeal No. BR/99/Th-I/2013 dated 05.02.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I, Mumbai.)

Precision Shapes **.... Appellants**
Plot No.64, Phase-II' Atgaon Industrial Complex,
Mumbai-Nashik Road, Atgaon,
Shahapur Taluka, Thane District, Maharashtra.

VERSUS

Commissioner of Central Goods & Services Tax **.... Respondent**
Thane Rural Commissionerate
4th Floor, Central GST Bhavan
Plot No.24-C, Sector-E,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

WITH

Miscellaneous Application No. 85705 of 2025
(on behalf of Appellants)

in

EXCISE APPEAL No. 86969 of 2013

(Arising out of Order-in-Appeal No. BR/99/Th-I/2013 dated 05.02.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I, Mumbai.)

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VERSUS

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VERSUS

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Bandra (East), Mumbai – 400 051.

APPEARANCE:

Shri Ramnath Prabhu, 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/86850/2025

Date of Hearing: 07.04.2025

Date of Decision: 07.04.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Precision Shapes, Thane (herein referred to as 'the appellants' for short) assailing Order-in-Appeal No. BR/99/Th-I/2013 dated 05.02.2013 (referred to, as 'the impugned order') passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I, Mumbai.

2. The miscellaneous applications being No. E/Misc./86275/2024 and No. E/Misc./85705/2025 have been filed by the Revenue and the appellants, respectively, seeking for change in the name and address of the respondent to "*Commissioner of Central Goods & Services Tax, Thane Rural*" having the office of the Commissionerate at the address "*4th Floor, Central GST Bhavan, Plot No.24-C, Sector-E, Bandra Kurla Complex,*

Bandra (East), Mumbai-400 051", due to change in the territorial jurisdiction after introduction of GST regime vide Notification No.13/2017-C.E. (N.T) dated 09.06.2017 and as the appellants-assessee presently falls in their jurisdiction. As the revised name and address of the respondent correctly reflect the revised jurisdictional departmental authorities under whose jurisdiction the appellants-assessee is functioning for the purpose of Central Excise, the miscellaneous applications are allowed, and the revised name and address of the respondent is duly incorporated in the cause title. Registry is directed to carry out the necessary changes for record purpose.

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

3.2 The appellants are having their factory at Atgaon Industrial Complex, Atgaon Village, Shahapur Taluka of Thane District, Maharashtra and *inter alia*, are engaged in the manufacture of excisable goods viz. M.S. Profiles, M.S. Scrap, falling under Chapters 72, 73 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. AAEFP3993MXM001 and discharge appropriate Central Excise duty liability on removal of the aforesaid final products out of their factory premises.

3.3 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.

3.4 Subsequently, vide Notification No.STR-12.02/CR-102/Taxation-I dated 16.11.2002, the Sales Tax Department of the Government of Maharashtra had 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, seeking for recovery of the Central Excise duty of Rs.2,38,618/- under Section 11A(1) of the Central Excise Act, 1944 along with interest and also proposed for imposition of penalty on the appellants under Section 11AC ibid. The show cause notice (SCN) dated 08.09.2006 issued in this regard was adjudicated vide the Order-in-Original dated 15.02.2007 wherein the proposals made in the SCN were confirmed. Being aggrieved with the said order of the original authority, the appellants have filed an appeal before the Commissioner (Appeals). In disposing the appeal, learned Commissioner (Appeals) Central Excise, Mumbai Zone-I, vide the impugned order dated 05.02.2013, had rejected the appeal by upholding the order of the original authority. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

4. Heard both sides and perused the records of the case. We have also perused the additional written submission made in the form of paper book submitted by both sides.

5.1 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 *Commissioner of Central Excise, Raigad Vs. Uttam Galva Steels*

Ltd. – 2016 (331) E.L.T. 261 (Tri.-Mumbai); *Rational Engineers Pvt. Ltd. Vs. Commissioner of Central Excise, Thane-I* – 2023 (11) TMI 363 – CESTAT Mumbai; and *Kinetic Engineering Ltd., Vs. Commissioner of Central Excise, Nashik* – 2012 (283) E.L.T. 229 (Tri. Mumbai.). 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.

5.2 We further find that in the case of *Mahindra Steel Service Centre Ltd., Vs. Principal Commissioner of CGST & Central Excise, Bhopal* – (2024) 17 Centax 241 (Tri. Del.), against the decision given in favour of the appellant therein in identical set of facts, the Civil Appeal filed by Revenue was dismissed by the Hon'ble Supreme Court , - (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

Validity unknown
Digitally signed by Neetu Khajuria
Date: 2024.04.18
16:25:16 IST
Reason:

6. 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, we are of the considered view that the impugned order passed by the learned adjudicating authority does not stand the scrutiny of law and therefore it is liable to be set aside.

7. In the result, the impugned order dated 05.02.2013 is set aside and the appeal is allowed in favour of the appellants. Miscellaneous applications filed by both parties are also disposed of.

(Operative portion of the order pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM