

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

REGIONAL BENCH - COURT NO. I

Miscellaneous Application No. 97948 of 2014
(on behalf of Respondent)

in

EXCISE APPEAL No. 88675 of 2014

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-003-14-15 dated 21.05.2014
passed by the Commissioner of Central Excise & Service Tax, Pune.)

ISMT Limited

Jejuri Morgaon Road, Kolvihire Village,
Purandhar Taluka, Pune District,
Jejuri – 412 303, Maharashtra.

.... Appellants

VERSUS

**Commissioner of Central Excise & Service Tax
Pune-III Commissionerate**

41-A, ICE House, Sasson Road,
Opp. Wadia College, Pune – 411 001.

.... Respondent

WITH

EXCISE APPEAL No. 88672 of 2014

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-004-14-15 dated 21.05.2014
passed by the Commissioner of Central Excise & Service Tax, Pune.)

ISMT Limited

Plot No. B-13, MIDC Area,
Baramati Taluka, Pune District,
Maharashtra.

.... Appellants

VERSUS

**Commissioner of Central Excise & Service Tax
Pune-III Commissionerate**

41-A, ICE House, Sasson Road,
Opp. Wadia College, Pune – 411 001.

.... Respondent

WITH

EXCISE APPEAL No. 88675 of 2014

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-003-14-15 dated 21.05.2014
passed by the Commissioner of Central Excise & Service Tax, Pune.)

ISMT Limited

Jejuri Morgaon Road, Kolvihire Village,
Purandhar Taluka, Pune District,
Jejuri – 412 303, Maharashtra.

.... Appellants

VERSUS

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

Shri Rajesh Ostwal, 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/87637-87638/2024**

Date of Hearing: 13.12.2024

Date of Decision: 13.12.2024

PER: M.M. PARTHIBAN

These appeals have been filed by M/s ISMT Limited, Jejuri, Maharashtra and their other unit M/s ISMT Limited, MIDC Area, Baramati Taluka (herein referred together as 'the appellants' for short) assailing Order-in-Original No. PUN-EXCUS-003-COM-003-14-15 and Order-in-Original No. PUN-EXCUS-003-COM-004-14-15, both dated 21.05.2014 (referred together, as 'the impugned orders') passed by the Commissioner of Central Excise & Service Tax, Pune-III Commissionerate, Pune.

2. The miscellaneous application has been filed by the appellants seeking for submission of additional grounds in respect of the details furnished regarding their annual instalments amount paid to the State Sales Tax authorities under the Net Present Value Deferred Sales Tax incentive scheme, in order to state that part of the demand is incorrectly confirmed on them. Considering that the additional grounds are in connection with the adjudged demands confirmed in the Order-in-Original No. PUN-EXCUS-003-COM-003-14-15 dated 21.05.2014, the miscellaneous application is allowed and are taken as a part of the appeal records.

3.1 The brief facts of the case, leading to these appeals, are summarised herein below:

3.2 The appellants are having their two factories, one at Jejuri Morgaon Road, Kolvihire Village, Purandhar Taluka of Pune District, Maharashtra and another at B-13, MIDC Industrial Area of Baramati Taluka of Pune District, which *inter alia*, are engaged in the manufacture of excisable goods viz. Mseamless tubes and pipes, falling under Chapter 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 Nos. AAACJ9917AXM001 & AAACJ9917AXM002 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 vide Certificate No. JD/PNE/1988/DEFERRAL/EC-2794/C.P.-24 dated 02.01.2007 in respect of Jejuri unit; and Certificate No. JD/PNE/1988/DEFERRAL/EC-30704/C.P.-25 dated 02.01.2007 for the Baramati unit. 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.98,04,127/- in respect of Baramati unit and Rs.2,52,03,820/- in respect of Jejuri unit of the appellants, 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 notices (SCNs) issued in this regard were adjudicated vide aforesaid two Orders-in-Original both dated 21.05.2014 wherein all the proposals made in the SCNs were confirmed. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals 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.) and the clarification issued by CBEC vide Circular No.679/70/2002-CX dated 04.12.2002. 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.), the Co-ordinate Bench of the Tribunal have examined the issue under disputed in the present case and have held that the sales tax incentive amount cannot be considered as additional consideration for demand of central excise duty. The relevant paragraphs of the said order is extracted and given below:

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.

Against the decision of the Tribunal given in favour of the appellant therein, department had filed Civil Appeal which was dismissed by the Hon'ble Supreme Court as reported in (2024) 17 Centax 242 (S.C.). The extract of the said judgement 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

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 orders 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 orders dated 21.05.2014 is set aside and the appeals are allowed in favour of the appellants. Miscellaneous application filed by appellants is also disposed of.

(Operative portion of the order pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)