

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Central Excise Appeal No. 5 of 2017 (O&M)
Date of Decision: 18.04.2017

Commissioner Central Excise, Rohtak ..Appellant

Versus

Saint Gobain Gyproc India Ltd. ...Respondent

**CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL, JUDGE**

Present: Mr. Sourabh Goel, Advocate,
for the appellant.

Mr. Amrinder Singh, Advocate,
for the respondent.

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S.J. VAZIFDAR, CHIEF JUSTICE:

This is an appeal against the order of the Custom and Excise Tax Appellate Tribunal allowing the respondent's appeal against the order of the Commissioner Central Excise (Appeals), Gurgaon.

2. According to the appellant, the following substantial questions of law arise:-

- A) Whether the impugned Final Order No.A/50090/2016-SM[BR] dated 22.01.2016 Annexure A-3 passed by the CESTAT, New Delhi accepting the appeal filed by the respondent against the well reasoned order of Commissioner (Appeals) is perverse, illegal and untenable in the eyes of law?
- B) Whether the learned Tribunal committed a grave error in allowing the appeal filed by the respondent?
- C) Whether the impugned order dated 22.01.2016 passed by the learned Tribunal is against the settled position of law and is therefore, liable to be set aside?

- D) Whether the impugned order dated 21.01.2016 passed by the learned CESTAT, New Delhi is based on surmises and conjectures and is, therefore, liable to be set aside?

In our view a substantial question of law does not arise. The impugned order of the Tribunal is based essentially on facts.

3. The appellant requested the Assistant Commissioner of Central Excise to determine the value of excisable goods namely Gypsum Board in terms of Section 4 of the Central Excise Act, 1944 on account of monthly discounts/quarterly discounts and other concessions given by the respondent to its dealers/depots/customers at the factory gate in regard to the clearance of excisable goods on payment of duty to them. The respondent contended that the final prices after the incentives fluctuate on account of competition in the market. The Assistant Commissioner finalized the provisional assessment concluding that there had been excess payment of Rs.10,05,855/- in the provisional assessment period 01.10.2012 to 31.12.2012. The appellant filed an application for refund with the Assistant Commissioner of Central Excise, Sonapat which was not sanctioned. The question was whether or not the respondents had passed the burden of central excise duty to the customers. The respondents relied upon the credit notes issued by it to its customers in respect of the discounts as well as the certificate of an independent Chartered Accountant certifying that the incidence of duty had not been passed on to the customers. The certificate states that the respondents had paid the excise duty for the period October, 2012 to December, 2012 on provisional basis on the assessable value of invoices raised from the factory and depots; that the

respondents had not passed on any amount of discounts/incentives to their buyers/dealers at the time of clearance of goods on invoices but had issued credit notes later to them for the same on the basis of schemes prevailing during the relevant period; that the respondents had not recovered any amount from its buyers/dealers in respect of the discounts/incentives nor recovered any amount of duty on discounts/incentives.

The credit notes indicated the amount credited to each dealers etc.

4. Mr. Saurabh Goel, the learned counsel appearing on behalf of the appellant relied upon the observations in paragraph-5 of the order of Commissioner (Appeals) that to the question as to whether the credit note included the amount of duty in addition to the amount that related to the discount scheme of value of the goods, the respondent's Advocate answer was that the credit note issued did not cover the duty amount.

5. This, however, was clarified by the respondent before the Tribunal. The respondent stated that its Advocate did not mean that the credit note did not cover the duty amount in the following terms:-

".....The central excise bill payment is adjusted by way of issuance of credit note inclusive of central excise duty. The advocate of the appellant did not mean that credit note did not cover the duty amount whereas the conclusion is that the credit notes, issued for settlement of buyers' account on account of passing of additional discounts, are inclusive of duty elements against future bills payments. Since credit note is not in a form of tax invoice, central excise duty elements cannot be depicted separately upon credit notes issued. The customers/dealers deducted the value of duty and duty elements as shown in the credit notes (shown merged both elements) from the bills and

paid lower amount to the appellant, unjust enrichment does not apply as customers/dealers did not allow passing of burden by deducting from bills. Evidencing the same, sample copies of Central excise invoices, credit notes and ledger accounts of the customers/dealers are attached herewith as Annexure-5".

6. The Tribunal accepted the explanation obviously keeping in mind the other facts and circumstances of the case which we will now refer to.

7. The Tribunal noted that the credit notes had been issued and that the same were adjusted in the books of accounts. The Tribunal also referred to a letter dated 26.07.2013 in which the respondents had informed the Range Superintendent that the refund claimed had been shown as "claims receivable" in the books of accounts under the head "Loans & Advances" and that such claimed amount did not form part of finished goods cleared during the relevant period. It also noted that the respondents had also informed the Refund Sanctioning Authority that the duty amount on account of discount has not been recovered from the dealers/customers. Whether these assertions of fact were correct or not is what fell for the determination of the Tribunal. The Tribunal answered the issue in favour of the assessee. In doing so the Tribunal took into account the relevant factors such as the certificates issued by the independent Chartered Accountants. The Tribunal satisfied itself that the Chartered Accountants had verified the books and on such verification certified that the refund claimed did not form part of the finished goods. The Tribunal conclusion that the appellant had, therefore, not passed on the duty incidence to the dealers/customers cannot be said to be perverse. The Tribunal also found on facts that the

respondent's customers had also issued certificates to the effect that they had not availed any Cenvat credit of Central Excise duty charged by the respondents in their invoices and that the final payment of the goods had been made by the respondents after adjusting the amount mentioned in the credit notes raised by them. It is also important to note the Tribunal's observation that the documents in this regard were produced by the respondent before the authorities but that the same had not been considered in the proper prospective while adjudicating the claim for refund.

8. Mr. Amrinder Singh, the learned counsel appearing on behalf of the respondents also contended that the dealers in turn had not passed on the duty to any other person. In support of this contention he rightly relied upon the fact that the dealers were not registered with the department and therefore, could not issue excisable invoices passing on the duty in turn to their customers.

9. It is clear, therefore, that the appeal raises only disputed questions of fact. The Tribunal on an appreciation of facts came to a conclusion which cannot be said to be perverse or absurd. Accordingly, a substantial question of law does not arise in this appeal.

10. The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

18.04.2017

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|---------------------------|---------|
| Whether speaking/reasoned | √Yes/No |
| Whether reportable | Yes/No√ |