CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85519 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/433/15-16 dated 26th November 2015 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Grindwell Norton Ltd
Plot No G-51, MIDC, Butbori, Nagpur – 441 122 … ***Appellant***

versus

Commissioner of Central Excise
Telangkhedi Road, Civil Lines, Nagpur – 440 001 ***…Respondent***

APPEARANCE:

Shri Viraj Reshamwala, Advocate for the appellant

Ms Prakruti Nigam, Additional Commissioner (AR) Shri Ranjan Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86838/2025

DATE OF HEARING: 06/06/2025
DATE OF DECISION: 27/11/2025

PER: C J MATHEW

M/s Grindwell Norton Ltd is in appeal against order[1] of

[1] [order-in-appeal no. NGP/EXCUS/000/APPL/433/15-16 dated 26th November 2015]

Commissioner of Central Excise & Customs (Appeals), Nagpur for having affirmed the order of the original authority charging them to central excise duty of ₹ 26,58,838 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, besides imposing penalty of like amount under section 11AC of Central Excise Act, 1944.

2. The appellant had exercised option under 'deferred payment scheme' of the Government of Maharashtra being incentive package permitting retention of applicable sales tax for specified period to be remitted to the treasury of the Government of Maharashtra in specified instalments thereafter as stipulated; the scheme was modified in 2002 to enable registrant to prematurely pay the accumulated amount at 'net present value (NPV)' which the appellant herein availed. According to the show cause notice, the appellant was liable to pay sales tax of ₹ 2,26,34,059 but, in accordance with revisions in the scheme, remitted only ₹ 63,42,160 on 15th January 2007 while retaining ₹ 1,62,91,800, which, in terms of section 4(3)(d) of Central Excise Act, 1944 and being sales tax not paid/not payable, could not be abated from 'transaction value' and hence changeable to tax. The original authority confirmed the demand along with other detriments and the confirmation thereof by the first appellate authority has led this appeal before us.

3. Learned Counsel for the appellant submitted that the issue in this dispute stands resolved by several decisions of the Tribunal which have taken into account the decision of the Hon'ble Supreme Court in Commissioner of *Commissioner of Central Excise, Jaipur-II v. Super Synotex (India) Ltd [2014 (301) ELT 273 (SC)]*.

4. We have heard Learned Authorized Representative.

5. The issue for consideration is the legality of recovery of excise duty, allegedly not paid on sales tax that, though initially deferred for deposit, was ultimately written off under the authority of legislation for levy of sales tax. The lower authorities have placed reliance on

> *'in a case where the goods are sold by the assessee, for delivery at the time and place of removal, the assessee and the buyer of the goods are not related and the price is sole consideration for the sale, be the transaction value;'*

in section 4 of Central Excise Act, 1944. That the specified pre-requisites for recourse to 'transaction value' for levy of duties of central excise on the clearances effected during the period of dispute subsists is not in controversy; it is the manner of treatment or derivation of 'transaction value' that is. 'Transaction value' is the value at which the goods are sold by manufacturer and as reflected in the invoice raised for the purpose. Inevitably, the invoice would record the price of the goods, the transportation charges, if any, and the sales tax and other levies as applicable. The specific exclusion of sales tax in the

definition of ‘transaction value’ is not intended to be read as ‘abatement’ because the definition therein is not the mechanism for determination of value. It is abundantly clear from section 4 of Central Excise Act, 1944 that, while the ‘transaction value’, generally the price reflected in the invoice, is to be the default assessable value, for such goods as do not conform to the pre-requisites specified in section 4 of Central Excise Act, 1944, recourse is to be had to Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 that provide the alternative computation of value. There can be no doubt that section 4(1)(a) of Central Excise Act, 1944 governs the clearance of the goods in the manner set out therein. The elaboration of ‘transaction value’ is intended to ensure that the inclusive elements therein do not escape the burden of tax while the excluded elements are not, in any circumstances, to be conflated with the inclusive elements. It would appear that the lower authorities have assigned emphasis to the excluded elements beyond that contemplated in section 4(3) of Central Excise Act, 1944.

6. The lower authorities appear to have been guided by the decision of Hon'ble Supreme Court in *re Super Synotex (India) Ltd* that had dealt with ‘set off’ scheme of the Government of Rajasthan permitting the assessee to retain a substantial component of the sales tax collected without ever having to be remitted to the State Government. Admittedly, the present dispute is not one of ‘set off’

but of deferment which, owing to amendment in that scheme, reduced the permissible period of deferment, as option, to be monetized as ‘net present value (NPV)’ and being nothing but the discounted value of the accumulated amount to be deposited on a subsequent date. It is not retention of sales tax but is entirely new factor enabling Government of Maharashtra to be benefitted by premature access to the said amount. By no means does it constitute tax not payable or tax not paid on goods cleared and may, at best be consideration, for financial accommodation.

7. The issue was considered at length in several decisions of the Tribunal including *Commissioner of Central Excise, Raigad v. Uttam Galva Steels Ltd [2016 (331) ELT 261 (Tri. - Mumbai)]*. In *Rational Engineers Pvt Ltd v. Commissioner v. Commissioner of Central Excise, Thane – I,* that by final order[2] disposed off appeal[3] against order[4] of Central Excise (Appeals), Mumbai Zone – I, an identical issue, and based on submission of the appellant therein on applicability of the decision in *re Utta Galva Steels Ltd* and in *Kinetic Engineering Ltd v. Commissioner of Central Excise, Pune, Nagpur, Nashik [2012 (283) ELT 229 (Tri. - Mumbai)]* countered with canvasing by Learned Authorized Representative that law was settled by Hon'ble Supreme Court in *re Super Synotex (India) Ltd* and in

[2] [no. A/87022/2023 dated 18th October 2023]
[3] [excise appeal no. 85163 of 2013]
[4] [order-in-appeal no. BR/240/Th-I/2012 dated 8th October 2012]

Commissioner of Central Excise, Delhi – III v. Maruti Suzuki India Ltd [2014 (307) ELT 625 (SC)], was decided by the Tribunal thus

> *'4. It is clear from the facts and circumstances of the proceedings that the scheme did not involve retention of any amount on the part of the assessee. On the other hand, it entailed premature payment restricted to the present value, net discounting term for measuring the time value of the money. In effect, what was foregone by the State Government was merely the cost incurred by the assessee for not awaiting the appropriate date of payment for discharge of tax liability.*
>
> *5. A similar dispute had came up before the Tribunal in re Uttam Galva Steels Ltd and it was held*
>
> > *'14. We have gone through the judgment of the Hon'ble Supreme Court in the case of Super Synotex. A perusal of the order would indicate that what was being considered by the Hon'ble Supreme Court was that when a part of the sales tax collected which was permitted to be retained by the manufacturer will form part of the transaction value for determination of excise duty or not. Thus the issue was that the law permits Rs. 100/- to be collected as sales tax which was collected by the manufacturer but law also provided that Rs. 75/- will be retained by the manufacturer and only Rs. 25/- will be paid to the Government. The question was whether Rs. 75/- will form part of the transaction value or not. The issue in all the appeals here is not this but a different. Here the issue involved is that the manufacturer assessees were required to collect certain amount as sales tax which was collected by them. The said amount of sales tax was to be paid after a specified period say 11 to 15 years and in the meantime, was allowed to be retained by the law with the assessees. In 2002, the law was amended by which it became optional for the manufacturer assessees to pay the amount either at the end of stipulated period or at any point of time earlier on the basis of net present value (on the date of prepayment) of the amount of sales tax to be paid at the end of deferral period. We also note that there is no discussion about such a scheme in the Super Synotex judgment of the Hon'ble Supreme Court. The obvious conclusion is that none of the parties who were appearing before the Hon'ble Supreme Court pointed out to the Hon'ble Supreme Court that the issue involved in other appeals is different. It also appears to us that none of such affected appellants/ respondents have argued issue involved*

in their cases as we do not find any arguments which have been advanced before us or which were discussed in the case of Kinetic Engineering by this Tribunal as recorded or discussed in the Hon'ble Supreme Court's judgment. It does not appear that the counsels for the various respondents in the case of Kinetic Engineering were present in the Hon'ble Supreme Court and did explain the differentiating aspect and after hearing them, the Hon'ble Supreme Court dismissed their pleas and passed the said judgment. We also note that the Hon'ble Supreme Court has not finally allowed the appeal of the Revenue but has set aside all the orders passed by the original authority as also the Tribunal and remanded the matter to this Tribunal to decide the issues keeping in view the principles laid down in the said order. In view of the above factual position, we are of the considered view that the issue involved in the present appeals is not decided by the Hon'ble Supreme Court in the case of Super Synotex. However, the principles laid down by the Hon'ble Supreme Court in the case of Super Synotex have to be taken into account while deciding the present set of appeals.'

6. Furthermore, in re Kinetic Engineering Ltd, it was held

'5.5 A combined and harmonious reading of the above instructions make it more than abundantly clear that the consistent stand and understanding of the revenue has always been that the amount of sales tax paid or payable is permissible to be deducted irrespective of the fact whether the sales tax was paid immediately or on a deferred basis and irrespective of the fact whether incentives were provided by the State Government towards sales tax in any manner.

xxxxxx

5.7 A careful reading of the above legal provisions clearly indicates that much emphasis has been placed in the central excise law with regard to the concept of time and place of removal. The law very clearly provides that the value for the purposes of levy of excise duty has to be determined at the time and place of removal for delivery. So, while determining the value at the time and place of removal, the permissible deductions in arriving at the value are also required to be determined at that point of time. In other words, if sales tax is permitted to be abated while determining the assessable value, the deduction towards sales tax will be in respect of sales tax actually paid or actually payable at the time and place of removal of the goods. The word "payable" means "to be paid" or "liable to be paid" as per ordinary dictionary meaning. "Liable to be paid" means, liability in accordance with the law. Therefore, what is permissible to be abated in respect of sales tax is the sales tax, actually paid or actually payable in accordance with the law at the time of removal of the goods. If that liability undergoes any

change subsequently, such alterations/ modifications should not have any impact on the determination of the assessable value. This is for the reason that "certainty in taxation" is a fundamental cannon of taxation; if that cannon is not followed, there will be confusion and chaos in the tax administration. If tax liability is made dependent on a future event, such a law can not be enforced or implemented in a fair and reasonable way. That is the reason why in all the provisions relating to determination of value, right from 1944 onwards, it has been provided in the law that the value has to be determined at the time and place of removal of the goods. In the instant case, the appellants claimed deduction towards sales tax as per the liability at the time of removal of the goods. Subsequently if that liability got altered due to changes in law or for any other reason, such alteration cannot have any impact or effect on the assessable value of the goods, which were cleared much earlier. A perusal of the table listed in the opening paragraph of this order clearly shows that the period of dispute involved was from 1992 to 2007-2008. In other words, the goods were cleared during this period. In all these cases, the sales tax liability applicable at the time of removal of the goods was deferred and the said liability was allowed to be discharged at the net present value of the deferred tax in terms of the changes in sales tax law introduced in November, 2002 in public interest. This change in the liability has nothing to do with the abatement towards sales tax permissible under the central excise law at the time of removal of the goods. All the board's instructions cited supra also clearly points to this fact. The provision for payment of NPV towards discharge of deferred sales tax liability was introduced in the Bombay Sales Tax Act only in 2002 subject to certain terms and conditions. The said provisions as can be seen in para 2.1 above clearly states that the premature payment in place of tax deferred by an amount equal to NPV of the deferred tax can be availed by the sales tax assessee at his option and such payment shall be deemed to be in discharge of the total sales tax liability under the sales tax deferral scheme and the provisions has been introduced in the law in public interest. It would be also relevant to note that the changes in sales tax law made in November 2002, did not alter the rate of sales tax payable nor provided any exemption from payment of sales tax. The only consequence was that it provided an option to the eligible assessee to discharge the deferred sales tax liability by paying its Net Present Value (NPV). It is relevant to note that the said provision did not, in any way, reduce the deferred sales tax liability or amount. What the law provided was that it gave an option to the assessee to discharge the deferred/future liability by paying its present value immediately. An assessee who has cleared the goods from 1992-1993 onwards could not have anticipated that ten years later the Government will introduce a law providing for discharge of duty liability on NPV basis. Therefore, in our view, the appellant cannot be saddled with a tax liability

on account of changes in law, which took place several years after the clearance of the goods.

xxxxx

5.9 The appellants have relied on a number of judicial pronouncements of this Tribunal in support of their contention that sales tax collected and retained by the manufacturer as an incentive does not change the character of amount collected and they remain as sales tax payable, which is eligible for deduction. However, as Civil appeals filed by the department in all these cases have been admitted by the Hon'ble Apex Court, these judgments are in jeopardy till the matter is finally decided by the Hon'ble Apex Court and hence they may not have any precedential value. However, it would be relevant to note that the Hon'ble Apex Court did not stay any of these orders, which implies the law as interpreted in these orders are still valid and enforceable. In all these judgments (cited in para 3.5 supra), the consistent view taken is that abatement of sales tax granted under the state laws or grant of sales tax incentives does not, in any way, affect the admissibility of deduction towards sales tax while determining the value for the purposes of Central Excise levy. We are in respectful agreement with the interpretation of law made in these judgments. On the ether hand, the citations relied upon by the Revenue also do not support the Revenue's case. In the Adhunik Detergents Ltd., case relied upon by the Revenue there was a sales tax exemption available and no sales tax was payable on the goods and, therefore, it was held that deduction as contemplated in Section 4(4)(d) (ii) would not be permissible. The Mewar Textile Mills case relied upon by the Revenue also deals with a case where sales tax exemption was granted. The Bata (India) case referred to by the Revenue dealt with a situation were the tax was not part of the price and, therefore, exclusion of tax was not permitted. In the case under consideration before us, there is no exemption from sales tax. Sales tax is liable to be paid on a deferred basis. An option has been given to the assessee to discharge the entire liability by paying a sum/amount equal to NPV of the deferred tax liability and on such payment the entire deferred tax liability is deemed to be discharged. Since the facts are totally distinct and distinguishable, the judgments relied upon by the Revenue have no relevance to the facts in hand and, therefore, the ratio of these judgments do not apply.

5.10 There are a few judicial pronouncements, which considered the issue of impact on the assessable value on account of changes which take place subsequent to the clearance of the goods and the ratio of these judgments has a bearing on the issues involved in the present case. In Indo Hacks Ltd. v. CCE, Hyderabad, reported in 1986 (25) E.L.T. 69 (Tribunal), a three member Bench of this Tribunal considered the question whether subsequent reduction in

prices after the clearance of the goods from the factory could impact the assessable value already determined. It was held that once the correct assessable value has been declared by the assessee and the goods cleared from the factory, any subsequent reduction in prices cannot be a matter of concern for the Central Excise in determining the correct assessable value or even for determining the valuation for the purpose of claiming exemption. In the case of MRF Ltd. v. CCE, Madras, reported in 1997 (92) E.L.T. 309 (S.C.), the Hon'ble Apex Court held as follows :

> *"Once the assessee has cleared the goods on the classification and price indicated by him at the time of the removal of the goods from the factory gate, the assessee becomes liable to payment of duty on that date and time and subsequent reduction in prices for whatever reason cannot be a matter of concern to the Central Excise Department insofar as the liability to payment of excise duty was concerned. This is the view which was taken by the Tribunal in the case of Indo Hacks Ltd. v. Collector of Central Excise, Hyderabad - 1986 (25) E.L.T. 69 (Tribunal) and it seems to us that the Tribunal's view that the duty is chargeable at the rate and price when the commodity is cleared at the factory gate and not on the price reduced at a subsequent date is unexceptionable. Besides as rightly observed by the Tribunal the subsequent fluctuation in the prices of the commodity can have no relevance whatsoever so far as the liability to pay excise duty is concerned. That being so, even if we assume that the roll back in the price of tyres manufactured by the appellant-company was occasioned on account of the directive issued by the Central Government, that by itself, without anything more, would not entitle the appellant to claim a refund on the price differential unless it is shown that there was some agreement in this behalf with the Government and the latter had agreed to refund the excise duty to the extent of the reduced price."*

Again in the case of Shri Bhagwati SSK Ltd. v. CCE, Pune, reported in 2000 (115) E.L.T. 120 (Tri.) this Tribunal held that fluctuations in price of excisable goods subsequent to clearance of goods would not affect assessable value and liability of excise duty already accrued. In the case of Triveni Engineering & Industries v. CCE, Meerut, reported in 2002 (148) E.L.T. 1041 (Tri.-Del.), this Tribunal considered a case, where sugar was cleared at prices fixed by the Government for levy quota sugar and the prices were subsequently revised by the Government. In that case it was held that assessable value of sugar would be the price at which the sugar was cleared and subsequent revision of price by the Government was held as not an additional consideration so as to form a part of the price. An appeal by the Revenue before the Hon'ble Apex Court against the said decision was dismissed by the Hon'ble Apex Court in CCE v. Triveni Engineering & Industries, reported in 2009 (236) E.L.T. A58 (S.C.). A perusal of all the above judgments clearly indicate that the assessable value and the duty liability have to be determined at the time of the clearances of the goods. Once the assessable value is determined taking into account the various abatements permissible as provided for in the law, the question of re-determination of assessable

value on account of changes that happened subsequent to the clearances, whether on account of changes in the law or otherwise will not be a cause for re-determination of assessable value. In the instant case, a certain amount of sales tax was payable under the sales tax laws when the goods was cleared from the factory and the same was a permissible reduction under the excise law. Much after the clearance of the goods, the sales tax laws were amended to provide for payment of net present value of the sales tax deferred in complete discharge of the sales tax liability. Such changes in sales tax liability on account of changes in sales tax law cannot be a cause for re-determination of the assessable value determined in accordance with the law of central excise as it stood at the time of removal of the goods. Applying the ratio of these judgments to the facts of the present case, we hold that the abatement towards sales tax has to be allowed in terms of the sales tax liability (as per law) at the time of clearance of the goods. Such abatement cannot be subsequently altered or restricted to the net present value of sales tax subsequently paid in complete discharge of such sales tax liability. In other words, there is no cause for re-determination of assessable value on account of changes which arose in the sales tax law much after the clearance of the goods.

5.11 The C.B.E. & C. has issued a number of circulars clarifying the abatement towards sales tax under various situations. These have been discussed in paragraphs 5.1 to 5.4 supra. From these clarifications, it is very evident that the deduction towards sales tax is permissible based on the amount billed or charged from the customers in accordance with the law irrespective of the fact whether the amount is retained by the assessee or incentives are given by the State Government to the assessee in respect of the sales tax so collected. The present stand of the Revenue goes directly against the instructions contained in the circulars issued by the board. The Hon'ble Apex Court in Paper Products Ltd. v. CCE reported in 1999 (112) E.L.T. 765 (S.C.) held that the circulars issued by the C.B.E. & C. are binding on the department and the department is precluded from challenging the correctness of the circulars even on the basis that the same is inconsistent with the statutory provision. A similar view was held by the Hon'ble Apex Court in CCE v. Dhiren Chemicals - 2002 (143) E.L.T. 19 (S.C.). Similarly in the case of Commissioner of Customs, Calcutta & Others v. Indian Oil Corporation Ltd. & Anr. reported in 4 (2002) 2 SCC 1275 (S.C.) = 2004 (165) E.L.T. 257 (S.C.), it was held that the circulars issued by the Board will be binding on the departmental authorities to maintain uniformity in the levy of tax/duty throughout the country. The stand adopted by the Revenue before us is in complete disregard of the clarifications given by the C.B.E. & C. Neither is the Revenue able to show to us any contrary interpretation of the statute either by this Tribunal or by any higher Court. In

view of this position, the arguments put forth by the Revenue have to be negated and rejected.'

7. In view of the decisions of the Tribunal, relating to the peculiarity of the scheme which was prevailed insofar as the impugned order is concerned, we set aside the demand and other detriments to allow the appeal.'

8. In accordance with the above decision, we set aside the impugned order to allow the appeal

(Order pronounced in the open court on 27/11/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*