

A

COMMISSIONER OF INCOME TAX II

v.

M/S MODIPON LTD.

(Civil Appeal No. 19763 of 2017)

NOVEMBER 24, 2017*

B

[RANJAN GOGOI AND NAVIN SINHA, JJ.]

Income Tax Act, 1961:

C

s.43B – Deduction under – Entitlement – In respect of excise duty paid in advance in the Personal Ledger Account (PLA) – Held: Upon deposit in the PLA, the amount of such deposit stands credited to the revenue with the assessee having no domain over the amount(s) deposited – Therefore, advance deposit of central excise duty constitutes actual payment of duty within the meaning of s.43B and hence assessee is entitled to the benefit of deduction of the said amount – Central Excise Act, 1944 – Central Excise Rules, 1944 – r.173G.

D

Dismissing the appeals, the Court

E

HELD: 1. The present challenge is entertainable so long as it discloses a substantial question of law or an issue impacting public interest or the same has the potential of recurrence in future. The Revenue cannot be shut out from the present proceedings merely because of its acceptance of the practice of accounting adopted by the assessee or its acceptance of the decision of the two High Courts in question. An adjudication of the question(s) arising cannot be refused merely on the above basis.[Para 8][89-C-D]

F

G

2.1 Deposit of Central Excise Duty in the PLA is a statutory requirement. The Central Excise Rules, 1944, specify a distinct procedure for payment of excise duty leviable on manufactured goods. It is a procedure designed to bring in orderly conduct in the matter of levy and collection of excise duty when both manufacture and clearances are a continuous process. Debits against the advance deposit in the PLA have to be made of amounts of excise duty payable on excisable goods cleared during the previous fortnight. The deposit once made is adjusted against

H

* Judgment incorporating therein subsequent order dated 23/2/2018 passed by a Bench of Hon'ble Mr. Justice Ranjan Gogoi and Hon'ble Mrs. Justice R. Banumathi.

the duty payable on removal and the balance is kept in the account for future clearances/removal. No withdrawal from the account is permissible except on an application to be filed before the Commissioner who is required to record reasons for permitting an assessee to withdraw any amount from the PLA. Sub-rules (3), (4), (5) and (6) of Rule 173G indicates a strict and vigorous scrutiny to be exercised by the central excise authorities with regard to manufacture and removal of excisable goods by an assessee. The self removal scheme and payment of duty under the Act and the Rules clearly shows that upon deposit in the PLA the amount of such deposit stands credited to the Revenue with the assessee having no domain over the amount(s) deposited. [Para 9][89-E-H; 90-A]

Radhasoami Satsang v. C.I.T. (1992) 193 ITR 321 (SC);
C.I.T. v. Excel Industries Ltd. (2013) 358 ITR 295 (SC);
C.K. Gangadharan and Anr. v. C.I.T. (2008) 8 SCC 739;
 [2008] 11 SCR 52 – referred to.

2.2 Having regard to the object behind the enactment of Section 43B, it would be consistent to hold that the legislative intent would be achieved by giving benefit of deduction to an assessee upon advance deposit of central excise duty notwithstanding the fact that adjustments from such deposit are made on subsequent clearances/removal effected from time to time. [Para 11][90-E-F]

C.I.T. v. Maruti Suzuki India Ltd. (2013) 212 Taxman 603 (Del.); *Punjab & Haryana High Court in C.I.T. v. Happy Forgings Ltd.* ITA No. 590 of 2007 decided by the Punjab & Haryana High Court on 11.07.2008;
C.I.T. v. Raj and San Deeps Ltd. (2007) 293 ITR 12;
C.I.T. v. Pandavapura Sahakara Sakkare Karkhane Ltd. 198 ITR 690 (Kar.); *C.I.T. v. Nizam Sugar Factory Ltd.* 253 ITR 68 (AP) – approved.

3. The High Courts of Delhi and of Punjab & Haryana were justified in taking the view that the advance deposit of central excise duty constitutes actual payment of duty within the meaning of Section 43B of Income Tax Act and, therefore, the assessee is entitled to the benefit of deduction of the said amount. [Para 12][90-G-H; 91-A]

A

Case Law Reference

(1992) 193 ITR 321 (SC) referred to Para 6

(2013) 358 ITR 295 (SC) referred to Para 6

(2013) 212 Taxman 603 (Del.) approved Para 6

B

(2007) 293 ITR 12 approved Para 6

[2008] 11 SCR 52 referred to Para 6

198 ITR 690 (Kar.) approved Para 10

253 ITR 68 (AP) approved Para 10

C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 19763 of 2017.

From the Judgment and Order dated 27.01.2011 of the High Court of Delhi at New Delhi in ITA No. 768 of 2004

D

WITH

C. A. Nos. 19767, 19768, 19769 and 19770 of 2017.

K. Radha Krishnan, Sr. Adv., H. R. Rao, Ritesh Kumar, S. A. Haseeb, Ms. Anil Katiyar, Advs. for the Appellant.

E

Ajay Vohra, Sr. Adv., V. P. Gupta, Jagdish Kumar Chawla, Anunab Kumar, U. A. Rana, Himanshu Mehta, Avirat Kumar, M/s. Gagrat and Co., Advs. for the Respondent.

The Judgment of the Court was delivered by

F

· **RANJAN GOGOI, J.** 1. Leave granted in all the Special Leave Petitions.

G

2. Four of the present appeals involve the same assessee, i.e., M/s Modipon Ltd. and are in respect of the Assessment Years 1993-1994, 1996-1997, 1997-1998 and 1998-1999 respectively. The fifth appeal is in case of another assessee, i.e., Paharpur Cooling Towers Ltd. and pertains to the Assessment Year 1996-1997.

H

3. The question involved in all the appeals is the same and may be formulated as hereunder:

“Whether the assessee is entitled to claim deduction under Section 43B of the Income Tax Act, 1961 in respect of the excise duty

paid in advance in the Personal Ledger Account (“PLA” for short)?” A

4. Before delving into the question formulated one significant fact common to the appeals involving the assessee-Modipon Ltd. may be noted. From the Assessment Year 1984-1985 (from which assessment year Section 43B of the Income Tax Act, 1961 came into force), the assessee has been claiming deduction under the aforesaid provision of the Income Tax Act in respect of the balance amount in the PLA at the end of each accounting year and the assessee had been adding back the same amount as part of the taxable income in the immediately succeeding accounting year in order to avoid double deduction. The aforesaid practice consistently adopted by the assessee had been all along accepted by the Revenue from the Assessment Year 1984-1985 up to the Assessment Year 1998-1999 except for the four assessment years under consideration. B C

5. Shri K. Radha Krishnan, learned senior counsel for the Revenue has urged that though levy of excise is on manufacture of excisable goods, actual payment of duty is at the stage of removal. The advance duty paid in the PLA is adjusted/debited from time to time, against clearances/removal made by the assessee. Unless such clearances/removal are made and excise duty is debited from the advance deposit there is no actual payment of duty so as to entitle an assessee to the benefit of deduction under Section 43B of the Income Tax Act which contemplates deduction only against actual payment as distinguished from accrual of liability. It is urged on behalf of the Revenue that the amount in deposit is akin to a loan and under the provisions of Central Excise Rules, part or whole of the said amount can be refunded to the assessee. It is further submitted that under Rule 21 of the Central Excise Rules, 1944, at any time before removal, the Commissioner or the other authorities prescribed therein may remit duty in respect of manufactured goods lost or damaged or otherwise unfit for consumption or marketing. The amount of advance deposit, therefore, does not represent actual payment of duty so as to entitle an assessee to the benefit of deduction under Section 43B. Accordingly the orders of the High Courts challenged in the appeals are liable to interference. D E F G

6. In reply, Shri Ajay Vohra, learned senior counsel appearing for the assessee has submitted that the practice followed by the assessee in claiming deduction for the balance amount in the PLA at the end of each H

A accounting year and adding back the same as part of the taxable income
in the immediately succeeding accounting year really makes the dispute
between the parties academic as the revenue implication, in any event,
is nil. Shri Vohra has submitted that the aforesaid practice has been
B accepted by the Revenue for the Assessment Years 1984-1985 to 1998-
1999 except for the four assessment years in question. There is no
compelling reason to reopen the issue and, therefore, to maintain
consistency the issue may be resolved in favour of the assessee. Reliance
in this regard has been placed on decisions of this Court in *Radhasoami*
*Satsang vs. C.I.T.*¹ and *C.I.T. vs. Excel Industries Ltd.*² Shri Vohra has
C further submitted that the very same issue had been decided in favour of
the assessee by two High Courts i.e. Delhi High Court in *C.I.T. vs.*
*Maruti Suzuki India Ltd.*³ and Punjab & Haryana High Court in *C.I.T.*
*vs. Happy Forgings Ltd.*⁴ and *C.I.T. vs. Raj and San Deeps Ltd.*⁵ There
has been no appeal by the Revenue against any of the said decisions of
the High Courts. Neither there is compelling good reason or public interest
D involved so as to reopen the issue. It is submitted that the decisions
rendered by the Delhi and Punjab & Haryana High Courts, on merits,
would commend for acceptance. Accordingly, it is submitted that, in the
absence of strong compelling reasons, on the ratio of the decision in
*C.K. Gangadharan and Anr. vs. C.I.T.*⁶ the present appeals ought to not
be entertained any further.

E 7. On merits it has been submitted by Shri Vohra that under Section
3 of the Central Excise Act, the event for levy of excise duty is the
manufacture of goods though the duty is to be paid at the stage of removal
of the goods. Pointing out the provisions of Rule 173G of the Central
Excise Rules, 1944 it is submitted that the advance deposit of central
F excise duty in a current account is a mandatory requirement from which
adjustments are made, from time to time, against clearances effected.
Though, sub-rule (1)(A) contemplates refund from the current account,
such refund can be granted only on reasons being recorded by the
concerned authority i.e., the Commissioner on the application filed by
the assessee. Refund is not a matter of right. The amount deposited in

G

¹ (1992) 193 ITR 321 (SC)

² (2013) 358 ITR 295 (SC)

³ (2013) 212 Taxman 603 (Del.)

⁴ ITA No. 590 of 2007 decided by the Punjab & Haryana High Court on 11.07.2008

⁵ (2007) 293 ITR 12

⁶ (2008) 8 SCC 739

H

the PLA is irretrievably lost to the assessee, it is argued. Payment of central excise duty takes place at the time of deposit in the PLA, though the deposit is on the basis of an approximation and the precise amount of duty qua the goods removed is ascertained at the stage of removal/clearances. The said facts, according to the learned counsel, would not make the deposit anything less than actual payment of duty.

8. We have considered the submissions made on behalf of the parties. Notwithstanding the acceptance by the Revenue of the practice adopted by the assessee-Modipon Ltd. in all the assessment years except for the ones under dispute as enumerated above and the absence of any challenge to the decisions of the Delhi and the Punjab & Haryana High Courts, the present challenge would still be entertainable so long as it discloses a substantial question of law or an issue impacting public interest or the same has the potential of recurrence in future. The Revenue cannot be shut out from the present proceedings merely because of its acceptance of the practice of accounting adopted by the assessee or its acceptance of the decision of the two High Courts in question. An adjudication of the question(s) arising cannot be refused merely on the above basis. We will, therefore, have to proceed to answer the merits of the challenge made by the Revenue in the present appeals.

9. Deposit of Central Excise Duty in the PLA is a statutory requirement. The Central Excise Rules, 1944, specify a distinct procedure for payment of excise duty leviable on manufactured goods. It is a procedure designed to bring in orderly conduct in the matter of levy and collection of excise duty when both manufacture and clearances are a continuous process. Debits against the advance deposit in the PLA have to be made of amounts of excise duty payable on excisable goods cleared during the previous fortnight. The deposit once made is adjusted against the duty payable on removal and the balance is kept in the account for future clearances/removal. No withdrawal from the account is permissible except on an application to be filed before the Commissioner who is required to record reasons for permitting an assessee to withdraw any amount from the PLA. Sub-rules (3), (4), (5) and (6) of Rule 173G indicates a strict and vigorous scrutiny to be exercised by the central excise authorities with regard to manufacture and removal of excisable goods by an assessee. The self removal scheme and payment of duty under the Act and the Rules clearly shows that upon deposit in the PLA

A the amount of such deposit stands credited to the Revenue with the assessee having no domain over the amount(s) deposited.

B 10. In C.I.T. vs. Pandavapura Sahakara Sakkare Karkhane Ltd.⁷ and C.I.T. vs. Nizam Sugar Factory Ltd.⁸ cited at the Bar, the High Courts of Karnataka and Andhra Pradesh respectively had occasion to consider as to whether the amounts credited to the Molasses Storage Fund out of the sale proceeds of molasses received by the assessee constitute taxable income of the assessee. Under the scheme, the assessee had no control over the amounts deposited in the fund and the assessee was also not entitled to withdraw any amount therefrom without the approval of the authorities. Further the amount deposited could be
C utilized only for the purpose specified. In those circumstances, the High Court held and in our view correctly, that the deposits made, though a part of the sale proceeds of the assessee, did not constitute taxable income at the hands of the assessee. We do not see why the same analogy would not be applicable to the case in hand.

D 11. The Delhi High Court in the appeals arising from the orders passed by it has also taken the view that the purpose of introduction of Section 43B of the Income Tax Act was to plug a loophole in the statute which permitted deductions on an accrual basis without the requisite obligation to deposit the tax with the State. Resultantly, on the basis of
E mere book entries an assessee was entitled to claim deduction without actually paying the tax to the State. Having regard to the object behind the enactment of Section 43B and the preceding discussions, it would be consistent to hold that the legislative intent would be achieved by giving benefit of deduction to an assessee upon advance deposit of central excise duty notwithstanding the fact that adjustments from such deposit
F are made on subsequent clearances/removal effected from time to time.

G 12. The above discussions, coupled with the peculiar features of the case, noticed above i.e. consistent practice followed by the assessee and accepted by the Revenue; the decisions of the two High Courts in favour of the assessee which have attained finality in law; and no contrary view of any other High Court being brought to our notice, should lead us to the conclusion that the High Courts were justified in taking the view that the advance deposit of central excise duty constitutes actual payment of duty within the meaning of Section 43B of Income Tax Act and,

⁷ 198 ITR 690 (Kar.)

⁸ 253 ITR 68 (AP)

therefore, the assessee is entitled to the benefit of deduction of the said amount. A

13. We, therefore, dismiss the appeals and affirm the orders of the High Courts of Delhi and Calcutta impugned in the present appeals.

Kalpana K. Tripathy

Appeals dismissed. B