REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.19763 OF 2017
(Arising out of S.L.P.(C) No.29816 of 2011)

COMMISSIONER OF INCOME TAX II ...APPELLANT(S)

VERSUS

M/S MODIPON LTD. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 19767 OF 2017
(ARISING OUT OF S.L.P. (C) NO.16633 OF 2012)

CIVIL APPEAL NO.19768 OF 2017
(ARISING OUT OF S.L.P. (C) NO. 15939 OF 2012)

CIVIL APPEAL NO.19769 OF 2017
(ARISING OUT OF S.L.P. (C) NO. 29817 OF 2011)

CIVIL APPEAL NO.19770 OF 2017
(ARISING OUT OF S.L.P. (C) NO. 31209 OF 2011)

J U D G M E N T

RANJAN GOGOI,J.

1. Leave granted in all the Special Leave Petitions.

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.

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)?"

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.

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.

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 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 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 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

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

compelling good reason or public interest 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.

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

6 (2008) 8 SCC 739

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

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

7 198 ITR 690 (Kar.)
8 253 ITR 68 (AP)

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 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.

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 Central Excise 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 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 are made on subsequent

clearances/removal effected from time to time.

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 the Central Excise Act and, therefore, the assessee is entitled to the benefit of deduction of the said amount.

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

.....................,J.
(RANJAN GOGOI)

.....................,J.
(NAVIN SINHA)

NEW DELHI
NOVEMBER 24, 2017

ITEM NO.1501 COURT NO.3 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.19763 of 2017 arising out of Petition(s) for Special Leave to Appeal (C) No(s). 29816/2011

(Arising out of impugned final judgment and order dated 27-01-2011 in ITA No. 768/2004 passed by the High Court Of Delhi At New Delhi)

COMMISSIONER OF INCOME TAX II Petitioner(s)

VERSUS

M/S MODIPON LTD. Respondent(s)
([HEARD BY : HON. RANJAN GOGOI AND HON. NAVIN SINHA, JJ.]RESPONDENT CAUSE TITLE MAY BE SHOWN AS "M/S MODIPON LTD.")

WITH
Civil Appeal No.19767 of 2017 @ SLP(C) No. 16633/2012 (XVI)
Civil Appeal No.19768 of 2017 @ SLP(C) No. 15939/2012 (XIV)
Civil Appeal No.19769 of 2017 @ SLP(C) No. 29817/2011 (XIV)
Civil Appeal No.19770 of 2017 @ SLP(C) No. 31209/2011 (XIV)

Date : 24-11-2017 These matters were called on for pronouncement of judgment today.

For Petitioner(s)
Mrs. Anil Katiyar, AOR

For Respondent(s)
Mr. U.A. Rana, Adv.
Mr. Himanshu Mehta, Adv.
Mr. Satendra Kr. Rai, Adv.
For M/S. Gagrat And Co, AOR

Mr. Jagdish Kumar Chawla, AOR

Hon'ble Mr. Justice Ranjan Gogoi pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Navin Sinha.

Leave granted in all the special leave petitions.

The appeals are dismissed in terms of the signed reportable judgment.

(SUKHBIR PAUL KAUR) **(ASHA SONI)**
AR CUM PS **BRANCH OFFICER**

(Signed reportable judgment is placed on the file)