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# Allowability of Excise Duty Paid – A Summary of Two Decisions

August 21, 2020 | [2020] 118 taxmann.com 435 (Article)

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Excise duty had always been a significant cost for manufacturing organisations during the pre-GST period and deduction for the same while computing the total taxable income, as per Section 43B of the Income-tax Act, 1961 (Act) had always been a vexed issue.

The Hon'ble Supreme Court of India (SC) in last few years had pronounced two important decisions clarifying the position with respect to deduction for excise duty paid by the assessee while computing the total taxable income. In this article, we have summarised these two decisions of SC for the reader's ready reference.

**CIT v Modipon Ltd [2017] 87 taxmann.com 275 (SC):**

The question involved in this case was regarding deduction for advance payment of excise duty in the Personal Ledger Account (PLA), while computing the total taxable income for the assessment year (AY), as per Section 43B of the Act.

The facts in brief were that the assessee had claimed deduction for the balance lying in the PLA as on the last day of the accounting year, while computing the total taxable income, as per Section 43B of the Act. The same was added back while computing the total taxable income of the next accounting year to avoid any double taxation. The said practice was consistently followed by the assessee and was also accepted by the Income-tax authorities, right from the AY 1984-85 being the AY from which Section 43B of the Act was introduced till the AY 1998-99 except the AY 1993-94 and the AY 1996-97 to the AY 1998-99 (being the AYs under consideration).

In light of this fact pattern, SC had to decide whether advance payment of excise duty in the PLA lying unutilised as on the last day of the accounting year, constituted actual payment of excise duty, for the purposes of Section 43B of the Act, or not?

To answer this question, SC had a look at the regulatory framework governing the levy of excise duty and observed that the deposit of excise duty in the PLA was a statutory requirement and the same was required to be adjusted against the excise duty payable on the goods cleared by the assessee from its factory premises. Further, it was observed that no withdrawal was permitted from the PLA except on an application made to the Commissioner who was required to record his reasons before allowing the assessee to withdraw the amount from the PLA. Additionally, it was also observed that the self-removal scheme and the payment of excise duty under the Central Excise Act, 1944 read with Central Excise Rules, 1944 clearly showed that the deposits made in the PLA stand credited to the excise authorities and the assessee had no domain over such amounts. SC then even looked at the purpose of introduction of Section 43B of the Act which was to plug the loophole in the Act that allowed deduction for any tax liability, under any law for the time being in force, on accrual basis without requiring the assessee to deposit the said tax liability with the relevant tax authorities.

Thus, having regard to the object behind the enactment of Section 43B of the Act coupled with the fact that the assessee had no control over the deposits made in the PLA, SC held that the legislative intent of Section 43B would be achieved by allowing deduction to the

assessee for advance payment of excise duty in the PLA, lying unutilised as on the last day of the accounting year, notwithstanding that the same was adjusted against the excise duty payable on the goods cleared by the assessee from its factory premises from time to time.

**Maruti Suzuki India Ltd v CIT [2020] 114 taxmann.com 129 (SC)**

The facts in brief were that the assessee was engaged in the business of manufacture and sale of cars and also in trading of spares and components thereof. The assessee had purchased raw materials/ inputs for the manufacture of cars and had paid excise duty on the purchase price of such raw materials/ inputs. As per Rule 57A of the Central Excise Rules, 1944, the assessee was entitled to modvat credit of the excise duty so paid – which was kept in a separate account maintained as the RG- 23 register. The assessee could utilize this modvat credit for the payment of excise duty at the time of clearance of cars manufactured by it from its factory premises. For e.g. if the assessee had purchased steel being raw material for the manufacture of cars of Rs. 100 and had paid Rs. 10 as excise duty, which was reflected in the invoices raised by the steel manufacturer, the assessee could utilise the said Rs. 10 as modvat credit towards the payment of excise duty on cars manufactured, at the time of clearance of such cars from its factory premises. Therefore, if the car was worth Rs. 200 and excise duty payable thereon was @ 10%, the assessee could utilise the modvat credit of Rs. 10 towards part payment of excise duty of Rs. 20, at the time of clearance of such car from its factory premises, while making direct payment for the remaining amount of Rs. 10.

The question that arose was whether modvat credit of Rs. 69,93,00,428 lying unutilised in the books of accounts of the assessee as on 31 March 1999 can be claimed as a deduction while computing the total taxable income for the said year, as per Section 43B of the Act, or not? In other words, whether excise duty paid on the purchase price of raw materials/ inputs, lying unutilised in the form of modvat credit in the books of accounts of the assessee as on 31 March 1999, can be treated as good as the excise duty paid for the purposes of Section 43B of the Act, or not?

SC noted that the crucial words in Section 43B of the Act were **'any sum payable by the assessee by way of tax, duty, cess or fee'** and hence it was pertinent to examine whether unutilised balance of modvat credit as on the last day of the accounting year was **actually the sum payable by the assessee, or not.**

In relation thereto, SC had a look at the regulatory framework governing the levy of excise duty and observed that the taxable event was manufacture/ production of excisable articles and the payment of excise duty was related to the removal of such articles from the factory premises.

Hence, SC held that the liability to pay excise duty on raw materials/ inputs purchased by the assessee was on the manufacturer of such raw materials/ inputs and not on the assessee. Accordingly, modvat credit availed by the assessee of excise duty paid on the purchase price of raw materials/ inputs was not actually the sum payable by the assessee by way of tax, duty or cess.

Further, SC said that merely because the assessee paid the cost of raw materials/ inputs which included excise duty does not mean that the assessee was the one who was liable to pay excise duty on such raw materials/ inputs. It was simply the incidence of excise duty that had shifted from the manufacturer to the purchaser and not the liability to pay excise duty.

Thus, SC held that the payment of excise duty on the purchase price of raw materials/ inputs, lying unutilised in the form of modvat credit in the books of accounts of the assessee as on 31 March 1999 was not an allowable deduction while computing the total taxable income for the said year, as per Section 43B of the Act.

At this stage, we would like to draw the reader's attention to the commentary on Section 43B of the Act – Kanga & Palkhivala's – The Law and Practice of Income Tax – Eleventh edition, where the learned author on page 1313 with regard to this decision of SC has noted as under:

> ".....This decision has resulted in a double-disallowance to the assessee, since the modvat credit is disallowed under s 43B in the year in which he avails of it, and if it remains unutilised, he can never claim it as a deduction even though he has actually paid that amount. It must be remembered that s 43B is an exception to this Chapter and seeks to disallow deductions that are "otherwise disallowable" under this Chapter. In other words, s 43B cannot be used to disallow deductions that are not hit by it. The assessee must either be allowed to claim the entire modvat credit as a deduction under s 37 and not be allowed a deduction for paying excise duty utilising the credit, or he must be allowed to claim the unutilised portion alone. The Supreme Court also failed to note that it had earlier held that unutilised modvat credit and excess advance excise paid are allowable in the year in which these amounts are set off against excise liabilities...."

Additionally, we would also like to draw the reader's attention to the decision of the Delhi High Court (HC) against which the assessee had preferred an appeal before SC:

> "43. It must be noted at this stage that after hearing the arguments on 21st September 2017, an affidavit dated 6th November 2017 has been filed by the Assessee pointing out that out of the total amount of unutilized MODVAT credit of Rs. 69,93,00,428, an amount of Rs. 15,73,38,110 pertains to goods already consumed and which were, therefore, not includable in the closing stock of raw materials and inputs as on 31st March 1999. It is pointed out that this was noted by the CIT (A) in para 9.16 of the appellate order and that this finding was not questioned by the Revenue. **It is accordingly submitted that even if the Revenue's contention on the interpretation of Section 43B was accepted, the Assessee is unquestionably entitled to deduction of the aforementioned amount of Rs. 15,73,38,110.** It is further pointed out that out of the aforementioned unutilized MODVAT credit claimed as a deduction by the Assessee for the AY 1999-00, a further amount of Rs. 14,96,79,029 represents additional or countervailing duty which has been paid by the Assessee directly to the Customs Department on the import of raw materials, components and the inputs. This, according to the Assessee, is borne out by the RG-23 (Part-II) Register maintained by the Assessee and verified and audited from time to time by the excise authorities. It is asserted that the said amount "has actually been paid by the Appellant to the customs authorities (and not to the Appellant's suppliers)" and therefore, this amount should also be allowed under Section 43B of the Act.
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> 44. The Court would only like to observe that it would be for the AO to give effect to the order pertaining to the aforementioned amounts paid by the Assessee to be made in respect of those goods already consumed as on 31st March 1999 and in respect of additional countervailing duty paid directly to the customs authorities. If indeed such payment has been made, the credit for the same would be allowable as a deduction under Section 43B of the Act."

When we read the aforesaid extract, Para no. 44 created confusion in our minds i.e. is the Delhi HC of the view that out of the total unutilised balance of modvat credit of Rs. 69,93,00,428 for which deduction was claimed by the assessee, modvat credit of excise duty paid on the purchase price of raw materials/ inputs already consumed by the assessee of Rs. 15,73,38,110 and customs duty paid on the import of raw materials/ inputs to the customs authorities of Rs. 14,96,79,029, should be allowed as a deduction while computing the total taxable income, as per Section 43B of the Act?

If 'Yes', then this aspect is not emerging out of SC decision i.e. our reading of SC decision seems to suggest that no such relief was allowed by the Delhi HC. Further, had this been the case, then from our reading of SC decision, we are not clear as to why the assessee sought relief with respect to the entire balance of unutilised modvat credit of Rs. 69,93,00,428 when the Delhi HC had allowed deduction as mentioned

in Para no. 44. It is interesting to note that the Income-tax authorities had not preferred an appeal against the said decision of the Delhi HC, which in a way highlights that no relief was allowed by the Delhi HC.

Thus, it becomes critical to examine whether the decision of SC has overruled/ annulled the decision of the Delhi HC, or not, with respect to the aspect discussed in Para no. 44? In other words, the question that still remains in our minds is: whether the entire balance of modvat credit of Rs. 69,93,00,428 lying unutilised in the books of accounts of the assessee as on 31 March 1999, has been confirmed as disallowed while computing the total taxable income, as per Section 43B of the Act, or only the unutilised balance of modvat credit attributable to the closing stock of raw materials/ inputs i.e. raw materials/ inputs not consumed by the assessee, is disallowed?

**Conclusion:**

Though these decisions were rendered in the context of law that existed before GST coming into effect, the same may assist in taking appropriate positions with respect to deduction for the amount lying in the electronic cash ledger and the input tax credit lying unutilised as on the last day of the accounting year, under the GST regime.

Further, one will have to also evaluate the impact of Section 145A of the Act which was inserted with effect from 1 April 2010 and was not on the statue books during the AYs which were under consideration in the above decisions before SC.

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