



Advance deposit of central excise duty in the personal ledger account amounts to actual payment of duty under Section 43B of the Income-tax Act and hence eligible for deduction – Supreme Court

Background

Recently, the Supreme Court in the case of Modipon Ltd.¹ (the taxpayer) held that the advance deposit of central excise duty in the Personal Ledger Account (PLA) amounts to actual payment of duty within the meaning of Section 43B² of the Income-tax Act, 1961 (the Act). Therefore, the taxpayer is entitled to the benefit of deduction of the said amount. The Supreme Court observed that once the advance excise duty is deposited in the PLA, the taxpayer had no control over the amounts deposited in the fund and the taxpayer was also not entitled to withdraw any amount therefrom without the approval of the authorities.

Facts of the case

- From the Assessment Year (AY) 1984-1985, the taxpayer has been claiming deduction under Section 43B of the Income-tax Act, 1961 (the Act) in respect of excise duty on payment into PLA, including the closing balance of the PLA at the end of each accounting year. The taxpayer had been adding back the closing balance of the preceding year 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 taxpayer had been all along accepted by the tax department from the AY 1984-1985 up to the AY 1998-1999 except for the four assessment years under consideration.
- The taxpayer contended that the advance payment of excise duty into the PLA is a mandatory requirement of the Central Excise Rules, 1944, from which adjustments are made from time to time. The amount deposited in the PLA is irretrievably lost, and refund can be claimed by the taxpayer only after making an application to the relevant tax authority.
- The taxpayer relied on various decisions³ wherein the courts allowed such deduction and no appeal had been filed by the tax department to the Supreme Court against these decisions. According to the taxpayer, having accepted these rulings, the tax department could not seek to agitate the same issue in another taxpayer's case.
- The tax department contended that though levy of excise is on the manufacture of excisable goods, actual payment of duty is at the stage of removal. The advance duty paid in PLA is adjusted/debited from time to time, against clearances/removal made by the taxpayer. 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 the taxpayer to the benefit of deduction under Section 43B of the Act.
- Therefore, the amount of advance deposit does not represent actual payment of duty so as to entitle the taxpayer to the benefit of deduction under Section 43B of the Act.

¹ CIT v. Modipon Ltd (Civil Appeal No. 19763 of 2017) – Taxsutra.com

² As per Section 43B of the Act, deduction which is otherwise allowable under the Act, *inter alia*, for tax, duty, cess or fee under any law for the time being in force only on actual payment thereof, even for taxpayers following the mercantile method of accounting. If the payment is made within the due date for furnishing return of income for the relevant tax year, the deduction is allowed in the same tax year. Else, the deduction is allowed in the year in which such sums are actually paid.

³ CIT v. Maruti Suzuki India Ltd. [2013] 212 Taxman 603 (Del), CIT v. Happy Forgings Ltd. (ITA No. 590 of 2007) (P&H), CIT v. Raj and San Deeps Ltd [2007] 293 ITR 12 (P&H)

Supreme Court's decision

- Notwithstanding the acceptance by the tax department of the practice adopted by the taxpayer in all the AYs except for the present appeal under dispute and in 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 tax department cannot be debarred from the present proceedings merely because of its acceptance of the practice of accounting adopted by the taxpayer or its acceptance of the decision of the two High Courts in question.
- On merits of the case, the Supreme Court held that the advance deposit of central excise duty constitutes actual payment of duty within the meaning of Section 43B of the Act and therefore, the taxpayer is entitled to the benefit of deduction of the said amount on account of the following reasons:
 - Deposit of central excise duty in 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 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 the taxpayer to withdraw any amount from the PLA.
 - In reference to Rule 173G of the Central Excise Rules, it indicates a strict and vigorous scrutiny to be exercised by the central excise authorities with regard to manufacture and removal of excisable goods by the taxpayer.
 - The self-removal scheme and payment of duty under the Act and the Rules clearly show that upon deposit in the PLA the amount of such deposit stands credited to the Revenue with the taxpayer having no domain over the amount(s) deposited.
- In various cases⁴, the Karnataka High Court and Andhra Pradesh High Court 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 taxpayer constitute taxable income of the taxpayer. It was held that the amount deposited could be utilised only for the purpose specified. The High Court held that the deposits made, though a part of the sale proceeds of the taxpayer, did not constitute taxable income at the hands of the taxpayer.
- The Delhi High Court has also taken the view that the purpose of introduction of Section 43B of the 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, the taxpayer was entitled to claim deduction without actually paying the tax to the State. The legislative intent would be achieved by giving the benefit of a deduction to the taxpayer 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.
- The decisions of the two High Courts in favour of the taxpayer which have attained finality in law; and no contrary view of any other High Court being brought to the notice of the court. Therefore, 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 Act and, therefore, the taxpayer is entitled to the benefit of deduction of the said amount.
- Accordingly, the Supreme Court dismissed the present appeals and affirmed the orders of the High Courts of Delhi and Calcutta impugned in the present appeals.

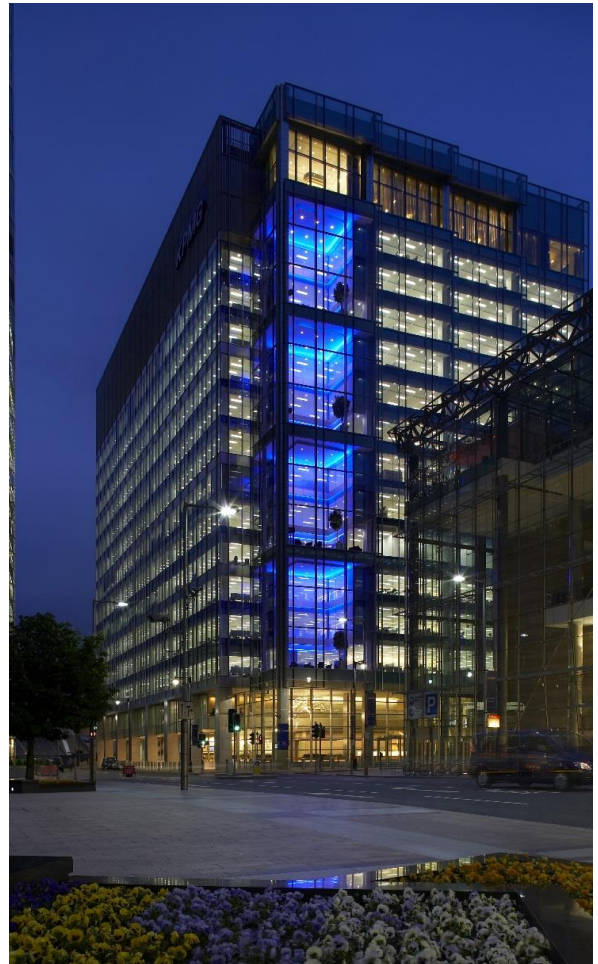
Our comments

The Supreme Court observed that the deposit of central excise duty in the PLA is a statutory requirement. It is a procedure designed to bring in orderly conduct in the matter of levy and collection of excise duty when both manufacture

⁴ CIT v. Pandavapura Sahakara Sakkare Karkhane Ltd. [1992] 198 ITR 690 (Kar), CIT v. Nizam Sugar Factory Ltd [2002] 253 ITR 68 (AP)

and clearances are a continuous process. Once the advance excise duty is deposited in the PLA, the taxpayer has no control over it, and such amount can be withdrawn only by filing an application before the relevant authority. Therefore, the advance deposit of central excise duty constitutes actual payment of duty within the meaning of Section 43B of the Act, and the taxpayer is entitled to the benefit of deduction of the said amount.

Recently, various indirect taxes such as excise duty, service tax, VAT, sales tax, etc., have been replaced with Goods and Services Tax (GST). The observations of the Supreme Court in the present case may equally apply while interpreting the law under GST regime.



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