FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 20/09/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71134/2017-SM[BR] dated 19/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1925/2008	**Pole Unit (u.p.power Corporation Ltd.)** Now Dvvnl(Pole Unit), Yamuna Bank Power House, Etmaddaula, AGRA U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Copy To
3Advocate(s) / Consultant(s):

AMIT MAHAJAN AND
SIDDHRATH SHUKLA
21,CY CHINTAMANI ROAD,
DARBHANGA
COLONY,ALLHABAD-211002

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1925/2008-EX[SM]

(Arising out of Order-in-Appeal No. 189-CE/APPL/KNP/2008 dated 30/04/2008 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s Pole Unit (U. P. Power Corporation Ltd.) **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Shri Amit Mahajan, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision : 19/09/2017

FINAL ORDER NO. 71134/2017

Per: Anil Choudhary

The issue in this appeal is, whether the appellant who had deposited the tax, as their claim for being exempt under Notification No. 74/93-CE dated 28/02/1993, was not accepted by the Department and subsequently when the matter came to be settled by the Hon'ble Supreme Court and the appellant applied for refund, whether the same has been rightly rejected on the ground of limitation.

2. The brief facts are that the appellant is a unit of U. P. State Electricity Board and presently after reorganization unit of U. P. Power Corporation Ltd. The appellant manufactures

Electricity Poles, which are wholly for their own use and no part of the poles manufactured are cleared to outsiders. As there was an adverse order by the Hon'ble Allahabad High Court not accepting the appellant as the state government factory and the matter was subjudice before the Hon'ble Supreme Court, the Department insisted for payment of tax. Accordingly, the appellant paid tax on the poles cleared for their own use for the period November, 2005 to March, 2006. Subsequently Hon'ble Supreme Court vide its order dated 02/05/2006 in the case of Commissioner *Versus* Electricity Pole Manufacturing (A Unit of U. P. State Electricity Board) reported at 2006 (202) E.L.T. A-144 dismissed the appeal of Revenue holding that since the entire capital of U. P. State Electricity Board was provided by U. P. State Government and although this board was not "State" within the meaning of Article 12 of the Constitution of India, it was the State Government undertaking and hence was eligible for full exemption under Notification No. 74/93-CE dated 28/02/1993. Subsequently vide Order-in-Appeal No. 141-143/CE/Allahabad/2006 dated 22/12/2006, the learned Commissioner (Appeals), Allahabad with respect to the other units of the U. P. State Electricity Board engaged in manufacture of PCC Poles, following the ruling of Hon'ble Supreme Court, held that the appellant is entitled to the benefit of Exemption Notification No. 74/93-CE dated 28/02/1993.

3. Pursuant to the Hon'ble Supreme Court order and also the order in appeal dated 28/12/2006. The appellant filed refund claim for the period November, 2005 to March, 2006. On 17/09/2007, which was adjudicated vide OIO dated 31/01/2008 and the claim was rejected on the ground of limitation under the provisions of Section 11B read with Explanation No. B (f) under the Central Excise Act, 1944.

4. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal upholding the Order-in-Original dated 31/01/2008.

5. Being aggrieved the appellant is in appeal before this Tribunal. The learned Counsel for the appellant argued that it is an admitted fact that applicability of Notification No. 74/93-CE dated 28/02/1993 was under constant litigation, in dispute between the parties. The matter was finally settled by the Hon'ble Supreme Court by its order dated 02/05/2006, which was followed in the Order-in-Appeal in appellant's own case for other units dated 22/12/2006. Therefore it is also an admitted fact that the duty was paid under protest, as Department was not accepting their declaration declaring the goods exempt under Notification No. 74/93-CE dated 28/02/1993. The learned Counsel further states that the claim for refund arose, pursuant to settlement of the law declaring that they are not liable to pay duty, therefore, the duty paid by them acquired the character of

Revenue deposit. For refund of Revenue deposit, there is no limitation. Further, the learned Counsel relies on the ruling of Hon'ble Allahabad High Court in the case of Wimco Ltd. *Versus* Union of India reported at 1989 (43) E.L.T. 628 (Allahabad) wherein under the fact that the assessee had claimed set off of duty after clearance of goods, which was not allowed by the Department in spite of appellate order. The Hon'ble High Court, under such circumstances, held that the delay, if any was attributable to the revenue in implementation of the notification. The benefit under which became available, from the moment the notification was issued, limitation provided in Section 11B(1) is not applicable to goods which were entitled to exemption. Therefore, even assuming that there was some delay, it could not stand in way of the petitioner (assessee).

6. The learned A. R. for Revenue have relied on the impugned order.

7. Having considered rival contentions and on perusal of the facts on record, I hold that under the facts and circumstances, the appellant have deposited the duty under protest. Secondly, in view of the exemption notification being held applicable in favour of the appellant, subsequently by Hon'ble Supreme Court order, the amount of duty deposited acquired the character of revenue deposit. Further, I hold that there is no limitation for refund of Revenue deposit. Accordingly, the appeal is allowed with consequential benefits

to the appellant and the impugned order is set aside. I, further, direct the Adjudicating Authority to grant the refund within a period of 45 days from the date of receipt of a copy of this order along with interest, as per rules.

(Dictated & Pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

Certified True Copy
04/10/2017
Asstt. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001