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

Dated: 28/11/2017

To

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

Final Order No. A/71681/2017-SM[BR] dated 27/10/2017

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/CROSS/70324/2017	E/70250/2017	**Commissioner of Central Excise and Service Tax-Lucknow** 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH 226001
		Name and Address of Respondent
2		Electricity Pole Manufacturing Unit Civil Sub Division-i, Uppel, Sarojni Nagar,,, LUCKNOW ,U.P.

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

T. K. Srivastava
311, Murli Bhawan,
Ashok Marg,
Lucknow,
Uttar Pradesh

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
CROSS Application No.E/CROSS/70324/2017
APPEAL No. E/70250/2017-EX[SM]

(Arising out of Order-in-Appeal No. 18-19/CE/APPL-LKO/LKO/2017 dated 12/01/2017 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

Commissioner of Central Excise, Lucknow — **Appellant**

Vs.

M/s Electricity Pole Manufacturing Unit — **Respondent**

Appearance:

Shri Pawan Kumar Singh, Supdt (AR) — for Appellant
Shri T. K. Srivastava, Advocate, — for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/10/2017
Date of Decision : 27/10/2017

FINAL ORDER NO.. 71681/2017..........

Per: Anil G. Shakkarwar

Present appeal filed by Revenue is directed against Order-in-Appeal No. 18-19/CE/APPL-LKO/LKO/2017 dated 12/01/2017 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

2. Brief facts of the case are that M/s Electricity Pole Manufacturing Unit was engaged in manufacture of PCC Poles falling under chapter head 680790 of Central

Excise Tariff Act, 1985. It was found that respondent had not filed monthly and quarterly return as they surrendered their registration certificate issued under Central Excise Rules, 2002, on ground that they were availing S.S.I. exemption in term of Notification No. 1/93 dated 25/02/1993. During the period April, 2012 to October, 2012 respondent had cleared 3052 Nos. of PCC Poles valued at Rs.52,70,804/- and during the period November, 2012 to July, 2013 cleared 5047 Nos. of PCC Poles valued at Rs.96,75,099/- without payment of Central Excise duty. Respondent had cleared the above goods without payment of duty claiming the benefit available under the Notification No. 8/2003-CE. It appeared to Revenue that the respondent were not eligible to avail said exemption. Therefore, cause notices were issued to the respondent separately for both the period, for recovery of Central Excise duty amounting to Rs.7,16,619/- for the period April, 2012 to October, 2012 and Rs.13,15,426/- for the period November, 2012 to January, 2013 under Section 11 A(I) of the Central Excise Act, 1944 and equal penalty was proposed under the Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Act, ibid.

3. Both show cause notices were adjudicated by the Additional Commissioner, Central Excise & Service Tax, Lucknow wherein demand of Central Excise duty was confirmed and penalty equal to the confirmed demand was imposed. Aggrieved by the said order, respondent preferred appeal before Learned Commissioner (Appeals). Learned Commissioner (Appeals) has relied on respondent's own case decided by this Tribunal through Final Order No. A/726-727/2012-Ex (BR) (PR) dated 22/06/2012 reported at 2012 (284) E.L.T. 531 (Tri.-Del.) "on reading of Explanation (E) to Notification No.8/2002-CE this Tribunal has come to a decision that the respondents were eligible to avail benefit of the said Notification No. 8/2002-CE." The Learned Commissioner (Appeals) also held that the issue in the appeal filed before him was identical and therefore, he has set aside both the Orders-in-Original and allowed the appeals of respondent. Aggrieved by the said order, Revenue is before this Tribunal.

4. The grounds of appeal of Revenue are that the Larger Bench of this Tribunal in the case of M/s Assistant Engineer (Civil) Vs. Commissioner of Central Excise, Raipur reported at (232) ELT 628 (Tri.-LB) has held that Notification No. 74/93-CE dated 28/02/1993

was not available to Assistant Engineer (Civil) and therefore U.P. Power Corporation Ltd. is not eligible for benefit of Notification No. 74/93-CE dated 28/02/1993.

5. Heard the Learned A.R. for Revenue, who has presented the grounds of appeal.

6. Heard the Learned counsel for respondent who has submitted that Explanation (E) to Notification No. 8/2002-CE is para-materia the same, as Explanation (E) to Notification No. 8/2003-CE and that in their own case this Tribunal has held through above stated case law that the respondent was eligible to avail exemption under Notification No. 8/2002-CE and therefore, the respondents were eligible to avail exemption under Notification No. 8/2003-CE. He has further submitted that the issue involved in the present appeal does not dealt with Notification No. 74/93-CE dated 28/02/1993 and therefore grounds of appeal based on Notification No.74/93-CE cannot sustain.

7. Having considered the rival contentions and on perusal of records, I did not find Notification No.74/93-CE being subject matter of the present appeal. I accept the contention of the learned counsel for respondent that

Explanation (E) of Notification No. 8/2002-CE and Explanation (E) of Notification No. 8/2003-CE are para-materia same.

8. Therefore, applying the decision of this Tribunal in the respondent's own case reported at 2012 (284) E.L.T. 531 (Tri.-Del.), I dismiss the appeal filed by Revenue. The respondent shall be entitled for consequential relief, as per law. Cross Objection also stands disposed of.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

akp

प्रमाणित प्रति/Certified True Copy
28/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001