CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/875/2008-DB

[Arising out of Order-in-Appeal No. 178/2008 dated 25/08/2008 passed by the Commissioner of Central Excise, Bangalore]

Mysore Electrical Industries Ltd. Tumkur Road, Yeshwantpur, Bangalore	**Appellant(s)**

Versus

Commissioner of Central Excise, **Service Tax And Customs** **Bangalore-II** PB 5400 CR Building, Queens Road, Bangalore – 560 001 Karnataka	**Respondent(s)**

Appearance:

Mr. A.S. Monnappa, Advocate No.128, 3rd Stage, Vinayaka Layout, Vijayanagar, Bangalore – 560 040 Karnataka	For the Appellant
Mrs. Kavitha Poduval, Superintendent (AR)	For the Respondent

Date of Hearing: 12/02/2018
Date of Decision: 12/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20283 / 2018

Per: V. PADMANABHAN

The present appeal is against the Order-in-Appeal No. 178/2008 dated 25.08.2008. The appellant, manufacture HT & LT panels falling under

Chapter 85 and cleared the part of the goods to the Department of Space, Satish Dhawan Space Centre, SHAR, Sriharikotta by availing the exemption of duty in terms of Notification No. 10/1997 CE dated 01.03.1997. As per the requirement of Rule 6(3) (b) of the Cenvat Credit Rules, 2004, the appellant was required to reverse an amount of 10% of the value of the exempted goods. Even though the appellant reversed such amount, the Department was of the view that the value should be determined by including the part amount also. Accordingly differential duty of Rs. 11,011/- (Rupees Eleven Thousand and Eleven only) was demanded by the lower authorities against which the present appeal has been filed.

2. With the above background, we heard Mr. A.S. Monnappa, learned advocate appearing for the appellant as well as Mrs. Kavita Poduval on behalf of the Revenue.

3. We find that the issue is no longer *res integra* and has been settled in favour of the appellants in several decisions in the case of *Areva T & D India Ltd. Vs. Commissioner of C. Ex., LTU, Chennai - 2010 (261) E.L.T. 488 (Tri.-Chennai),* the Tribunal observed as follows:

> *"2. The case of the department against the assessees is that during the period of dispute namely Feb'06 to June'06, Rule 6(3) of Cenvat Credit Rules, 2004, would require that a manufacturer of both dutiable and exempted goods not maintaining separate accounts shall pay an amount equal to 10% of value of the exempted final products, rejecting the contention of the assessees based upon the Tribunal's order cited supra, on the ground that the rule was amended only on 1-8, providing the manufacturer to pay an amount equal to ten percent of the total price,*

excluding sales tax and other taxes, if any, paid on such goods, of the exempted final products charged by the manufacturer for the sale of such goods at the time of their clearance from the factory. However, we find that the decision in CCE, Hyderabad v. Koya & Co. Construction Pvt. Ltd. (supra) was rendered prior to the amendment of Rule 6(3) of CCR, 2004, wherein the Tribunal uphold the Commissioner's order holding that (i) cost of transportation, (ii) laying, (iii) jointing, (iv) testing and (v) commissioning could not be considered to be elements of the price of goods at the factory gate and rejecting the department's contention that the assessee should be subjected to 8% amount on price attributable to the above elements. Following the ratio of the decision cited supra, we set aside the impugned order, by holding that the elements of freight and insurance charges do not form part of the assessable value for the purpose of payment of 8% amount in terms of Rule 6(3), and allow the appeal."

*B*y following the decision of the Tribunal (supra) the impugned order is set aside and appeal is allowed.

(Order was pronounced and dictated
in Open Court on **12/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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