**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

E/00302/2009

[arising out of Order-in-Appeal No.83/2009, dated 23.03.2009 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s. THE IMPERIAL TRADING COMPANY — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI — RESPONDENT

E/00445/2010

[arising out of Order-in-Appeal No.152/2010, dated 30.04.2010 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s. THE IMPERIAL TRADING COMPANY — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI — RESPONDENT

E/00506/2010

[arising out of Order-in-Appeal No.186/2010, dated 31.05.2010 passed by the Commissioner of Central Excise (Appeals), Madurai]

M/s. THE IMPERIAL TRADING COMPANY — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI — RESPONDENT

E/00302/2009,
E/00445/2010 &
E/00506/2010

Appearance:

For the Appellant Shri M. Kannan, Adv. Adv.

For the Respondent Shri R. Subramaniyan, AC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing/decision **15-09-2017**

FINAL ORDER NO. 42084 - 42086/2017

Per B. Ravichandran:

These three appeals were on the common dispute on valuation of PSC Poles for electricity distribution. The appellants entered into a contract with Kerala State Electricity Board (in short, M/s. KSEB) for manufacture and supply of PSC Poles to various circles in Trivandrum. The dispute in the present appeals relate to the includibility of charges shown under the headings safe handling, loading, transportation, unloading, stacking of PSC poles. Revenue held a view that these charges form part of assessable value, as the sale is at the destination of M/s. KSEB. The appellant contested the view stating that the contract clearly shows the base price of PSC Poles, handling and transportation charges separately. As such, the value of duty demand on PSC Poles should be the base price only.

2. The cases were adjudicated by the original authorities and the orders were upheld by the appellate authority on duty demand. In two cases, the first appellate authority set aside the penalties. The

Customs, Excise & Service Tax Appellate Tribunal learned counsel appearing for the appellant submitted that when the base price of the PSC Poles is available, the duty is correctly paid on such base price. The appellant undertook loading, transport and unloading as part of contract and the same is not liable to Central Excise Duty. He strongly contested the demand for extended period as the valuation of PSC Poles manufactured and cleared by the appellant have been the subject-matter of dispute on the various decisions. For instance, he referred to an early proceeding, which resulted in Order-in-Appeal, dated 14.09.1995. He submitted that there is no case for suppression, willful mis-statement, as the issue has been agitated in the past also. Accordingly, he requested for setting aside of demand for extended period and also penalty.

3. The learned Authorised Representative Shri R. Subramaniyan reiterated the findings of the lower authorities. He drew our attention to the terms of the contract, which clearly brings out the fact that the ~~same~~ sale is completed only upon safe delivery of PSC Poles at the designated depots of clients. The appellant is responsible for safe transport and delivery. As such, the cost for handling and transport should form part of the assessable value.

4. We have heard both sides and perused the appeal records.

5. On perusal of the contract, dated 23.04.2005, we note that though the basic price of PSC poles at the appellant's yard as well as transportation, loading, unloading, stacking charges are shown

separately, the terms of the contract clearly indicate that the appellant has to safely deliver/stake-up these goods at the intended destination as informed by the client. Even, insurance for safe delivery is the responsibility of the appellant. It shows that the sale is effectively concluded at the destination of the client's depot. Accordingly, the transportation charges including loading, unloading, stacking charges will necessarily form part of the assessable value in terms of section 4 of Central Excise Act, 1944. We have no reason to differ with the findings of the lower authorities on this factual and legal issue.

6. However, we note that the valuation of PSC Poles manufactured and cleared by the appellants have been the subject-matter of dispute on earlier occasions. Admittedly, in such situations, there is no scope for including suppression of fact, intention to evade payment of duty against the appellant. Accordingly, we hold that while appellant is liable to pay Central Excise duty as confirmed by lower authorities, the said demands shall be restricted to the normal period only. On the same reason, penalty imposed on the appellant is also set aside.

7. The learned counsel for the appellant further pleaded for calculating the duty liability, if any, based on cum-duty valuation. He submitted that the Central Excise duty is calculated only on the base price shown separately. Accordingly, he pleaded for re-calculation of duty liability on transportation/handling charges as no excise duty was

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collected on this. The differential value should be considered as value inclusive of duty. If advised, the same can be verified with documentary evidence by the Jurisdictional officer. On satisfactory verification, ~~of~~ the differential value, can be considered as inclusive of Central Excise duty and no duty separately has been collected on this value. The authorities may consider recalculation of duty liability. The appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
15-09-2016

Customs, Excise & Service Tax Appellate Tribunal

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