CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.

Excise Appeal No.58331 of 2013

[Arising out of Order-in-Original No.30/Commr/Meerut-I/2013 dated 28.03.2013 passed by the Commissioner of Customs & Central Excise, Meerut-I.]

M/s. India Polyroads Private Ltd. **Appellant**
808-809, E-block,
International Trade Tower,
Nehru Place,
New Delhi-110 014.

Versus

Commissioner of Central Excise & Customs, **Respondent**
Opposite CCS University,
Mangal Pandey Nagar,
Meerut-I.

<u>APPEARANCE:</u>

Shri Shasvat Arya, Advocate for the appellant.
Shri V.B. Jain, Authorised Representative for the respondent.

<u>CORAM:</u>

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO.50745/2020

DATE OF HEARING:07/02/2020
DATE OF DECISION:17.08.2020

ANIL CHOUDHARY:

The appellant are engaged in the manufacture of polymer based soil stabilizer under sub-heading no.3905 1290 of the Central Excise Tariff. They have set up their unit in the state of Uttrakhand and claimed the benefit of the Area based exemption notification no.50/03-CE dated 10.06.2003, claiming that their unit is located in the Khasra No.162, 164 & 165, Raipur Industrial Area, Bhagwanpur Roorkie, which is notified in the exemption notification. There is no dispute that the goods manufactured by them are covered by this exemption. In terms of the exemption notification no.50/2003-CE in the case of new unit, the exemption was available to the unit, which commenced commercial production on or before 31.03.2010 and as such, unit which commenced commercial production after 31.03.2010 was not eligible for the benefit of this exemption. The respondent filed the declaration intending to avail this exemption on 15.03.2010 and in this declaration, they declared that they have commenced the commercial production. The appellant's unit was visited by the jurisdictional Central Excise Officers on 17.04.2010 and on inspection of the unit, they found that while plant and machinery as declared on 15.03.2010 were installed in the factory premises, the same were not used by them till the date of their visit i.e. 17.04.2010. At the time of their visit, there was no production activity going on, there were no workers and whatever production they had shown for the month of March, 2010, the same had been made through a temporary arrangement by attaching a tank of 2000 litres capacity. On this basis a show cause notice 5.3.2012 was issued to the appellant that they are not eligible for the exemption under notification no.50/2003-CE inasmuch as they did not commence commercial production on or before 31.03.2010 and accordingly, the show cause notice sought recovery of the duty of Rs.72,19,776/- from them for the period from April, 2010 to September, 2011 along with interest thereon under Section 11 AB of the Central Excise Act and proposed imposition of penalty under Section 11 AC of the Central Excise Act, 1944.

2. This above show cause notice was adjudicated by the Commissioner vide order-in-original dated 30.03.2013 by which the above mentioned duty demand was confirmed against the appellant along with interest and besides this, penalty of equal amount was imposed. The Commissioner in this order confirmed the demand on the basis that the appellant did not start production by using the declared machinery and if some alternative

method was used to start the commercial production in March, 2010, the appellant would not be eligible for exemption. Against this order of the Commissioner, this appeal has been filed.

3. Ld. Counsel for the appellant, Shri Shasvat Arya urges that the matter is no longer *res integra* and in the precedent order of this Tribunal in Appeal No.E/53207 of 2015 vide Final Order No.57493/2017 dated 26.10.2017 reported in **2017 (10) TMI 1393 - CESTAT, NEW DELHI**, the issue has been decided in favour of the assessee. This Tribunal has observed and held as follows:-

> *"2. The brief facts of the case are that, during the period under consideration, the assessee-Respondents were engaged in the manufacture of Polymer based soil stabilizer - 'Soiltech'. On 15.03.2010 , they filed their option for availing exemption under notification 50/2003-CE dated 10.06.2003. After installation of plant & machinery, the assessee – respondents started the production on 23.03. 2010. In the factory, they installed the tank of various capacities, but for the initial production, small tank was used. The Adjudicating Authority opined that all machines were not used, so area based exemption cannot be granted and, therefore, demanded duty. But the Commissioner (Appeals) has allowed the claim of the assessee-Respondents by observing that the production was started prior to 31.03.2010 and goods were sold to the buyers. Being aggrieved, the Department has filed the appeal.*
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> *3. After hearing both the sides and on perusal of the material available on record, it appears that undoubtedly, the production was started on 23.03.2010 for manufacture of the polymer based soil stabilizer – "Soiltech". Initially, the assessee-Respondents have used the small tank, as the production was less. Later, as soon as the demand increased, other bigger tanks*

were used for production. When it is so, then we are of the view that the assessee-respondents are entitled or the area based exemption as per Notification No.50/2003-CE dated 10.06.2003. Hence, we decline to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned thereon.

5. In the result, the appeal filed by the Department is dismissed."

4. At the conclusion of the hearing, we had directed both the parties to inform the status report, if any appeal has been filed by the Revenue against the aforementioned final order of this Tribunal, within a period of 10 days. As no such report is filed, it appears that Revenue has accepted the Tribunal's order and no further appeal has been filed. Accordingly, following the precedent order of this Tribunal, we allow this appeal and set aside the impugned order. We further hold that the appellant is entitled to area based exemption under Notification No.50/2003-CE.

[Order pronounced on 17.08.2020]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(**C.L. MAHAR**)
MEMBER (TECHNICAL)

Ckp.