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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/4120/2004 - EX[DB]   Date 07/01/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S PCC POLE FACTORY
CHHATISGARH STATE, ELECTRICITY BOARD,
BISHRAMPUR DISTT. SURGUJA (C G)
M/S PCC POLE FACTORY   Appellant
Vs
C.C.E. RAIPUR   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 19/2009- **EX[DB]** dated 01-01-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. RAIPUR
   DHAMTARI ROAD, TIKRAPARA, RAIPUR
2. Adv. / Consult
   NONE

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI (PRINCIPAL BENCH) NEW DELHI

Excise Appeal No.4120 of 2004-Excise Branch

[Arising out of Order-in-Appeal No.244/RPR-I/2003 dated 07.07.2003 of the Commissioner of Central Excise & Customs (Appeals), Raipur (CG)]

Date of Hearing/ Decision:22.12.08

For approval and signature:

Hon'ble Mr.D.N. PANDA, JUDICIAL MEMBER

Hon'ble Mr.RAKESH KUMAR, Member (Judicial)

M/s. P.C.C. Pole Factory ...Appellant
[Rep. by None.]

Vs.

CCE, Raipur ....Respondent
[Rep. by Shri S. Srivastava, DR]

CORAM: Hon'ble Mr. D.N. PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

FINAL Order No...19/09-EX/Dated:22.12.2008

Per D.N. PANDA:

When the matter was called, none appeared on behalf of the appellant. We have gone through the case records. The issue before the ld. Commissioner (Appeals) was as stated in para 9 of the order, which reads as under:-

> *"9. The questions to be decided in the instant appeal are (i) whether the dispute relates to refund of duty as stated by the appellant before the Appellate Tribunal (ii) whether the Assistant Commissioner, Bilaspur was not competent to adjudicate the dispute (iii) whether the demand of duty could be adjusted against any refund due to the appellant and (iv)*

whether their appellant were required to pay differential duty."

2. The ld. Commissioner (Appeals) in para 10 has held that if there is any refund arises, that is to be governed by separate proceeding without being set off against any other demand. The ld. Commissioner, therefore, gave the following conclusion:-

> *" I note that the Assistant Commissioner had in a separate proceeding rejected the refund claim of Rs.77,859,74 which was paid in excess in terms of the approved value, vide Order-in Original No.74/95 dated 9/14.8.94 on the ground of time bar. The appellant had filed an appeal No.270/95 against the said order which was also rejected by the Commissioner (Appeals) vide Order-in-Appeal No.600-CE/BPL/2000 dated 31.03.2000. Thus, it is evident that the appellant had pursued the appellate remedy against their claim of refund in a separate proceeding. Therefore, the amount of the claim, which was found non-refundable, cannot be adjusted against the amount to be recovered from the appellant. Thus, it is evident that the dispute under this appeal pertains to demand of duty and not of refund as submitted by the appellant before the Appellate Tribunal."*

3. In view of the aforesaid decision, the ld. Commissioner concluded that the appeal of the appellant has failed.

4. Ld. DR appearing on behalf of the Revenue submits that the duty liability was finally discharged consequent upon finalisation of provisional assessment. Therefore, there is no question of any adjustment of any surplus refund.

5. We have gone through the reasoning given by the ld. Commissioner but none having ~~been~~ appeared on behalf of the appellant

to explain the case, we are of the view that the appellant is not prepared to follow the procedure of the Law. For non-prosecution of appeal, we dismiss the same.

Order dictated & pronounced in open court on 22.08.2008.

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

AJ