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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/2291/2005-2293/2005 - EX[DB]   Date **15/05/2012**

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

To :
M/S RPG TRANSMISSION LTD.
29-30, COMMUNITY COMERCIAL CENTRE, VASANT
VIHAR, NEW DELHI
110057

M/S RPG TRANSMISSION LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/569-571 2012 EX[DB]** dated 08-5-12 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions 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. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

14. SH. SHANKY AGARWAL, ADV,
C/O APPELLANT.

Assistant Registrar
(Excise Appeal Branch)

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

Date of Hearing/decision:8.5.2012

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeals Nos. E/2291, 2292 and 2293 of 2005
(Arising out of Orders-in-Appeal No.23-26-CE/BPL/2005 dated 31.03.2005 of the Commissioner of Central Excise (Appeals-II), Bhopal).

M/s. RPG Transmission Ltd. ...Appellant

Vs.

CCE, Bhopal ...Respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Appearance:
Shri B.L. Narsimahan, Advocate and Shri Shanky Agarwal, Advocate for the appellant.
Shri I. Beg, AR for the respondent.

FINAL Order No. A/.569-571/2011-EX (DB)

Per Justice Ajit Bharihoke:

M/s. R.P. G. Transmission Ltd., the appellant herein have preferred the above referred three appeals against the order of the Commissioner (Appeals), whereby three appeals filed by the Department have been disposed of.

2. Main contention of the ld. Counsel for the appellant is that the impugned order is vague and one cannot make out after reading as to what the Commissioner (Appeals) wanted to convey and what is the finding.

3. In order to appreciate the aforesaid contention, it would be useful to have a look on the finding given by the Commissioner (Appeals), which are reproduced below:-

> "3. Findings and Decision:- After carefully going through the grounds of appeal by Revenue and the submissions made by the party, I take up for decision of the grounds of cross objection filed by the party as under:-
>
> I) The entire issue relating to the past period in dispute when the process of galvanization was not included as amounting to a process of manufacture, duty was being paid by the party and

passed on to their buyers and was also recovered by them and therefore the aspect of unjust enrichment was also involved.

II) I am at all not convinced with the party's contentions that their final goods are not excisable goods being subsequently becoming part of immovable property. What they actually remove being only parts which are movable and notified goods under the Central Excise Tariff Act, how they are subsequently used and after such usage whether they become movable or immovable property is not the subject matter of appeal in the instant case. If the party is accepted, then any goods which subsequently become part of immovable property have to be treated as non-excisable. Hence, I dismiss the contentions of the party on this ground.

III) Moreover, as had correctly contended in the grounds of this appeal filed by another Commissioner, Central Excise, Bhopal and with which I am in full agreement in view of Hon'ble Apex Court's latest decision on the same subject in Man Structurals Ltd. reported in [2001 (130) ELT 401 (SC) as also reiterated in their another decision reported in [2003 (152) ELT (A) 88 (SC), I do not find any substance in the party's arguments to the contrary.

IV) In my final Order-in-Appeal No.54-CE/BPL/04 dated 20.02.2004 in the case of M/s. Executive Engineer (Workshop) MPEB Nayagaon Jabalpur in their appeal no.475-CE/BPL/APPL/98 filed against the Order-in-Original of the adjudicating authority confirming demand of duty on the same goods, even when no aspect of unjust enrichment was involved therein as the same goods were used for self-consumption, I had already held as regards the subject processes undertaken on the said disputed goods as amounting to the process of manufacture and which now I affirm in the instant appeal also:-

"the appellant contended that they are not selling the tower parts which are embedded to earth at various places by the appellant himself, that no new commodity had come into existence due to various processes undertaken by them on the raw materials and hence they are not liable to pay any central excise duty. In appeal before me also the appellant reiterates the same contentions, refuting the liability for payment of duty, by obliquely quoting several decisions of various appellate fora.

(i) I have carefully gone through the records of the case, the pleadings of the appellant and various decisions of juridical and other appellate fora quoted by them, on similar other issues, regarding marketability etc. I find that any goods subject to any processes with a view to make the end use different from the original use which they might be capable of in that condition – brings into existence new excisable goods.

(ii) In the instant case, the duty paid on the raw materials falling under Ch.72, have been brought with a view to convert them into parts of transmission towers falling under Ch.73. Such raw materials is cut to specific Engineering drawing and design specifications and are being subjected to several processes, even though not amounting to manufacture. Subsequently, such parts of transmission towers, which have now become parts of special technological structures, are arranged in a systematic way to assemble at various places for firmly embedded to earth. Thus prior to their being embedded to earth permanently, the raw materials had lost its original uses and have now transformed itself into parts of technological structures. Hence, their subsequently, being made part of permanent immovable structures after such site assembly by nuts and bolts, does not make them still to be treated as mere angles, channels, rods, etc. in which shape and intended use they are generally put.

(iii) As such, the newly manufactured or produced goods are nothing but excisable goods and are to be treated as parts of transmission towers and not as original raw material. It appears that this aspect has not been discussed in any of the case laws quoted by the appellant. Since parts of transmission towers are very well covered under Ch. Heading 73, the said goods have become excisable goods liable to discharge payment of appropriate duty. I hold accordingly.

(iv) In view of my above findings, I hold that the appellant had correctly discharged duty on the finished goods manufactured by them which are very well covered under Section 2(f) of the Act and are nothing but excisable goods".

(V) In view of my above categorical findings on merits after considering all the aspects including the CESTAT's decisions in appeal wherein the above aspect had not been considered, I have no hesitation in holding that the Orders-in-Original dated 12.02.2004 and 25.3.2004 of the then Commissioner, Central Excise, Bhopal quoted by the party in their defence should also need be reviewed without any further loss of time and merely because the said Orders-in-Original contain views which were favourable to the party, cannot ipso facto make the same decision automatically applicable to the instant appeal before me.

(VI) As regards the decision on peripheral issue of conclusion of notional interest on advances/deposits received by the party from their customers which was also the subject matter of the proceedings initiated by show cause notice dated 17.11.98 at sr.no.4 of the table above, I find that the ground for issue of issue cause notice was not at all tenable in the absence of any proof having been mentioned or relied upon in the show cause notice to the effect that such interest on advances/deposits have had the actual effect of depressing the contractual sales value. Hence, as held by CEGAT in the matter reported in 1999 (107) ELT (76), 1999 (110) ELT (897), 2000 (122) ELT (780) and 1999 (112) ELT (860). In view of the legal position, I have no hesitation in quashing the show cause notice as well as the consequential review appeal. Accordingly, I quash the proceedings initiated in this regard.

The above revenue appeals are disposed off accordingly. "

4. On bare reading of the aforesaid finding, it is not clear what the actual finding is and what the Commissioner (Appeals) wanted to convey. Therefore, we find it appropriate to set aside the impugned order and remand

the matter back to the Commissioner (Appeals) for deciding the appeal of the department afresh. Accordingly, the impugned order is set aside. The appeals are accordingly allowed and the matter is remanded back to the Commissioner (Appeals) for deciding afresh.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.