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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

Date **27/06/2012**

Appeal No. E/1958-1959/2005 - EX[DB]

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

To :
C.C.E LUCKNOW

7-A, ASHOK MARG, LUCKNOW

C.C.E LUCKNOW Appellant

Vs

M/S ELECTRICITY POLE MANUFACTURING Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/726-727 2012 EX[DB]** dated 22-6-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S ELECTRICITY POLE MANUFACTURING
UNIT, SUB-DIVISION-I, UPSEB
(U.P. POWER CORPN. LTD.),
SAROJINI NAGAR , LUCKNOW

2. Adv. / Consult
MR.SATYA PAL SINGH,COUNSEL
B-133, BGS BLOCK, TIS HAZARI, DELHI.-110054

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

Assistant Registra
(Excise Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 22.6.2012

Central Excise Appeal No.1958, 1959 of 2005

Arising out of the order in appeal No.115-CE/05 and & 114-CE/05 dated 10.3.2005 passed by Commissioner of Central Excise & Service Tax (Appeals), Lucknow.

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

C.C.E., Lucknow ... Appellant

Vs.

Electricity Pole Manufacturing, Unit, Sub-Divisional-I, UPSEB (U.P. Power Corpn. Ltd.) .. Respondent

Present for the appellant : Shri R.K. Verma, A.R.
Present for the respondent : Shri S.P. Singh, Advocate

FINAL Order No. A/726-727/2012-Ex(BR)

Per Justice Ajit Bharihoke (Oral):

By this order, we propose to dispose of above two appeals preferred by Revenue against the respective orders in appeal passed by the Commissioner (Appeals) involving same parties and similar question of law and facts.

2. Briefly stated the facts relevant for disposal of these appeals are that M/s Electricity Pole manufacturing, Unit, Sub-Division I, UPSEB

(now known as U.P. Power Corporation Ltd.), Sarojini Nagar, Lucknow is engaged in the manufacture of PCC poles falling under sub-heading 6807.90 of the Central Excise Tariff Act, 1985. During the period with effect from January 2002 to June, 2002 which is the subject matter of appeal No.E/1958/2005, the respondent cleared PCC poles valued at Rs.16,12,925/- at nil rate of duty claiming benefit of SSI exemption under said Notification No.8/2001-CE dated 1.3.2001. Similarly, during the period July, 2002 to December 2002, the respondent cleared PCC poles valued at nil rate of duty claiming the benefit of exemption under notification No.8/2002-CE dated 1.3.2002. As per Explanation (E) of the said Notifications, SSI exemption is available to the manufacturer where the specified goods are manufactured in the factory belonging to or maintained by the Central Government or by the State Government or by a State Industrial Corporation, or by a State Small Industrial Corporation or by the Khadi and Village Industrial Corporation, based on value of excisable goods cleared from such manufacturing factory alone.

3. The Department was of the view that the respondent was not eligible for claiming benefit under the above Notifications as the appellant manufacturing unit is owned and controlled by the UPSEB, an autonomous body, which alone have other manufacturing units located in the State of U.P. Thus, clearance value of the electricity pole manufactured by all of the units at UPSEB was liable to be clubbed together as per para 2(vii) of the Notification. Accordingly, the respondent was served with show cause notices calling upon him to pay the short paid central excise duty amounting to Rs.2,58,068/- for the period January 2002 to June 2002 and Rs.2,69,959/- for the period July 2002 to December 2002 and imposition of penalty under Rule 173 Q of the Central Excise Rules, 2001 was also proposed. The respondent contested the Notice. The jurisdictional authority after

considering all the facts confirmed the demands raised by the respective show cause notices and imposed penalty.

4. Being aggrieved of the order in original, the respondent preferred appeals and the Commissioner (Appeals) after hearing the parties relies upon the earlier judgment of the CEGAT in the respondent's own cases took the view that respondent was entitled to exemption under the notification and set aside the impugned orders in original. Aggrieved of the above referred orders passed by the Commissioner (Appeals) the Department has approached the Tribunal in appeal.

5. The short issue involved in this case is whether the respondent is entitled to exemption under notifications in question.

6. Shri R.K. Verma, learned A.R. for the Department submits that SSI exemption under Notification No.8/201-CE dated 1.3.2001 and 8/2002-CE dated 1.3.2002 is available to a manufacturer who opts for the scheme under notification provided that aggregate value of clearance of all excisable goods for home consumption by a manufacturer from one or more factories does not exceed Rs.3 lakhs in the preceding financial year. The exemption to this rule is provided in Explanation (E) to the Notification which provides that where the specified goods are manufactured in a factory belonging to or maintained by the Central Government or by a State Government, or by a State Industries Corporation, or by a State Small Industries Corporation or by the Khadi and Village Industries Commission, then the value of excisable goods cleared from such factory alone shall be taken into account. Learned A.R. submitted that the respondent is a Lucknow unit of UPSEB (UP Power Corporation Ltd.) which also have various other manufacturing units in different parts of the State. Since UPSEB (UP Power Corporation Ltd.) is autonomous body it cannot be equated with the State and as such it cannot said that the respondent

is a factory owned or maintained by the State of UP, as such, the respondent is not eligible for the benefit of Explanation (E) to the Notification No.8/2001 and 8/2002. In support of this contention, learned A.R. has relied upon the judgment of the Larger Bench of this Tribunal in the matter of Assistant Engineer (Civil) vs. C.C.E., Raipur – 2008 (232) ELT 628 (Tri-LB) wherein the Tribunal while dealing with the appeal on behalf Chhattisgarh State Electricity Board relating to eligibility of exemption under Notification No.74/93-CE dated 28.2.1993 held that Electricity Board is not a Department of the State Government, as such, the Chhattishgarh State Electricity Board is not entitled for exemption under notification. It is submitted that the ratio of the above referred of Larger Bench is squarely applicable to the facts of this case , as such, the impugned orders are liable to be set aside.

7. Learned Shri S.P. Singh , Advocate for the respondent on the contrary has argued in support of the impugned orders and submitted that the judgment relied upon the Revenue is not applicable to the facts of this case for the reason that language of Notification No.74/93-CE dated 28.2.93 is different from the language of Notifications which are subject matters of these appeals.

8. We have considered the rival contentions and perused the material on records. Explanation (E) to the Notification in questions read thus:

> where the specified goods are manufactured in a factory belonging to or maintained by the Central Government or by a State Government, or by a State Industries Corporation, or by a State Small Industries Corporation or by the Khadi and Village Industries Commission, then the value of excisable goods cleared from such factory alone shall be taken into account.

On bare reading of the Explanation it is evident that benefit of this provision under the Notifications would be available to the respondent which is a manufacturing unit of UPSEB (now known as UP Power Corporation Ltd.) only if it is established that the respondent is owned or maintained by State Government. Learned Counsel for the respondent has drawn our attention to copy of the Gazette Notification No.151/P-1/2000-24, Lucknow 14 January 2000 whereby it has been notified that Uttar Pradesh Power Corporation Limited is a Government company as the State Transmission Utility. It is not disputed that the respondent M/s Electricity Pole Manufacturing unit is a Lucknow manufacturing unit of UP Power Corporation Ltd. which was earlier known as UPSEB. Thus, there is no reason to dispute that the respondent is a manufacturing unit owned and controlled by the State Government. As such, the case of respondent is squarely covered under Explanation (E) to the above referred Notifications. That being the case, we do not find any infirmity in the impugned orders of Commissioner (Appeals) which may call for interference by the Tribunal.

9. The appeals are, therefore, dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/