CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 2852 & 2853 of 2011 and 55351 of 2013

(Arising out of Order-in-Original No. 45-46/2011(CE) dated 18.08.2011 and 72-73/2012(CE) dated 29.10.2012 passed by the Commissioner of Central Excise, Jaipur)

DATE OF HEARING : 10.01.2017
DATE OF DECISION : 10.01.2017

M/s KEC International Ltd. …. **Appellants**
(Rep by Sh. Amit Jain, Adv.)

VERSUS

CCE, Jaipur-I …. **Respondent**
(Rep. by Sh. H.C. Saini, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50327/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeals are filed by the assessee-Appellants against the Order-in-Original No. 45-46/2011(CE) dated 18.08.2011 and 72-73/2012(CE) dated 29.10.2012 passed by the Commissioner of Central Excise, Jaipur. Since the issue in all the appeals is identical, they are disposed of by this common order for the sake of brevity.

2. The period in dispute in the present appeals is October 2009 to June 2010; July 2010 to May 2011 and June 2011 to February 2012.

3. The brief facts of the case are that the assessee-Appellants are engaged in the manufacture of Galvanized Transmission Line Tower falling under Chapter 730820 of the First Schedule to the Central Excise Tariff Act, 1985. The assessee-Appellants paid the duty on the value of the towers which includes the value of nuts, bolts and washers procured from the suppliers. They manufactured the components i.e angles, plates, channels, flats, bars, round and rods, and used them as parts with the supplied items for the erection of towers. The assessee-Appellants have cleared only parts of towers from the factory and not nuts, bolts and washers which were supplied directly at the project site. However, in some cases nuts, bolts and washers were received in the factory and cleared along with other tower parts. Show cause notice was issued alleging that the value of nuts, bolts and washers etc. directly purchased from the manufacturer and delivered at the site should be included in the value of galvanized tower materials. Accordingly, duty was demanded by the Department. Being aggrieved, the assessee-Appellants have filed the present appeals for the above mentioned periods.

4. With this background, we have heard Shri Amit Jain, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Department.

5. After hearing both sides and on perusal of the record, it appears that assessee-Appellants have got the order from the Power Grid Corporation and other buyers for supply of erected and assembled tower at the specified sites. They manufacture/fabricate the component and galvanize them for use in Transmission Line Towers. These fabricated angles, plates, channels, flats, bars, round and rods after completion of the above process are assembled and in this process nuts, bolts, washers etc. are used for jointing the plates, angles, channels, flats, round and rods for completion of final product i.e. 'Transmission Line Tower'. After assembling Transmission Line Towers, the same are tested and inspected in the factory and then cleared. During the

course of arguments, the learned counsel for the assessee-Appellants submits that the towers were erected and nuts, bolts and washers etc. were used at the site only. It was never assembled in the factory, so there is no question for testing of the Transmission Line Towers. He submits that nuts, bolts and washers etc. were received at the site directly.

6. On the other hand, the learned Commissioner mentioned in the impugned order that towers are erected at the factory. Thus, there is a contradiction about the facts whether the towers were erected either in the factory or at the site. In the show cause notice also, it has been mentioned that the towers were erected at the site. Thus, there is a contradiction mentioned in the show cause notice and the impugned order. When it is so, then matter needs to re-examine again.

7. Needless to mention that in the Central Excise Act, 1944, the leviability of the excise duty is different for the towers which are assembled in the factory than those erected at the site and come out as an immovable structure. From the impugned order, it appears that the authorities below have not examined the issues properly in a right perspective. We, therefore, set aside the impugned order and remand the matter to the adjudicating authority for denovo adjudication in the light of the above observations but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional documents, if any, as per law.

8. In the result, the appeals filed by the assessee-Appellants are allowed by way of remand.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)	**(JUSTICE Dr. SATISH CHANDRA)**
MEMBER (TECHNICAL)	**PRESIDENT**

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