IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. E/1498,1501,1618/2008 [DB]
E/Cross/315/2008

[Arising out of Orders in Appeal No. 44 and 45/BPL/2008 dated 28.04.2008, passed by Commissioner (Appeals), Central Excise & Service Tax, Bhopal]

Commissioner of Central Excise & ST., Bhopal ….Appellant

vs.

The Executive Engineer (Works) MPSEB ….Respondent

and

The Executive Engineer (Works) MPSEB ….Appellant

vs.

Commissioner of Central Excise & ST., Bhopal ….Respondent

Appearance:

Shri R.K. Manjhi, DR for the Appellant - Revenue
Ms. Shreya Dahiya, Advocate for the Respondent- Assessee

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 09.01.2017

FINAL ORDER NO. 50443-50445/2017/ 2017 -EX [DB]

Mr. Justice (Dr.) Satish Chandra

The present appeals have been filed against the impugned Orders-in-Appeal No. 44 and 45/BPL/2008 dated 28.04.2008.

2. Heard Shri R.K. Manjhi, ld. DR for the Revenue and Ms. Shreya Dahiya, ld. Advocate for the assessee.

3. In the impugned orders, the Commissioner (Appeals) has followed the order passed by the Tribunal and in view of the settled legal position, set-aside the impugned Order-in-Original. The Commissioner (Appeals) has also directed that refund claim for the period prior to 08.01.1991 is time-barred. He held that assessee-appellant is entitled for refund of excise duty for the subsequent period i.e. from 08.01.1991.

4. The issue involved in these three appeals is identical and is related to chargeability of excise duty on transformed structural materials. It has been held by the Hon'ble Supreme Court, in the assessee's own case, [*reported as 2015 (324) ELT A196 (SC)*] held that the processing of structural materials out of MS Rods and MS channels by cutting, punching etc. does not amount to manufacture. The issue having been settled on merits, there is no doubt that the assessee will be eligible for refund. However, in the present refunds, the issue of time-bar has arisen. In both the impugned orders, the Commissioner (Appeals) has held that in view of the letter of protest dated 08.01.1991, the refund claim for the period prior to 08.01.1991 has to be held as time-barred.

5. Ld. Counsel for the assessee submits that in respect of Jabalpur Division, MPSEB, there was correspondence between the Divisional Engineer, Jabalpur and the department at Jabalpur, in which it has been categorically intimated that excise duty is being paid under protest and the registration has been taken under protest. She brings to our notice a letter dated 27.04.1978 sent by the Divisional Engineer

(Workshop) MPSEB, addressed to Superintendent Excise, M.O.R., Jabalpur, in which it is intimated that payment of duty is made under protest. Since the date of the letter is 27.04.1978, ld. Counsel submits that the refund claim will be payable even prior to 08.01.1991, as held by the Commissioner (Appeals).

6. We have perused the copy of letter referred by the ld. Counsel. Since, there has been protest in respect of Jabalpur Division, the refund if any, pertaining to Jabalpur Division, will be payable even prior to 01.01.1991. However, the issue needs to be re-examined by the Original Adjudicating Authority to decide the eligibility of refund, in the light of the submissions made by the ld. Counsel.

7. In view of the peculiar facts and circumstances of the case as mentioned above, the appeals filed by the Revenue are dismissed and the appeal filed by the assessee (E/1618/2008) is remanded for de-novo decision on time-limit. We make it clear that the issue already stands decided by the Apex Court in favour of the assessee. Cross objection also disposed of.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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