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

Appeal No. E/1752 & 2229/2012-EX(SM)

[Arising out of Order-in-Appeal No. 07&08/RPR-II/2012 dated 05.03.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Raipur].

The Executive Engineer Civil ....Applicants

Vs.

C.C.E. Raipur ....Respondent

Appearance:

Shri Abhishek Jaju, Advocate for the Appellants
Shri Dharam Singh, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 23.01.2017

FINAL ORDER NO. 51917-51918/2017-EX(SM)

Per V. Padmanabhan:

The appellant is a state Electricity board and is engaged in the manufacture of RCC poles classifiable under chapter 6810. The appellant claimed exemption from payment of excise duty for RCC poles under notification 74/93-CE dated 28.02.1993 which grants exemption to goods manufactured by the factory belonging to State Government where such goods are intended for use by any Department of that government. Excise duty demands amounting to Rs.1,71,782/- as well as Rs.4,31,756/- were confirmed against the appellant for different periods along with interest as well as penalties. Aggrieved by the impugned orders the present appeal has been filed.

2. Shri Abhishek Jaju, Advocate for the Appellants and Shri Dharam Singh, DR for the Respondent were heard.

3. The Ld. Counsel submitted that the issue stand decided against them by the Larger Bench in the case of ***Assistant Engineer (Civil) vs. CCE Raipur 2008 (232) ELT 628 (Tri-LB).*** He further submitted that they are in appeal only agitating against penalty imposed on the two impugned orders. He also submitted that since the issue was a disputed one, which attained finality only with the decision by the Larger Bench, there can be no justification for imposition of the penalty on the appellants.

4. Ld. DR reiterated the impugned order.

5. Both the sides agree that the issue of refund stands decided against the appellant. In the decision of the Larger Bench in the cited case, it has as been decided that the State Electricity Board is in the same position a department of the State Government and hence are not eligible for notification no. 74/93-CE.

6. I note that the issue of the benefit under notification no. 74/93-CE was a disputed one. Different benches of the Tribunal have passed contradictory orders which required the constitution of a Larger Bench to resolve the issue. Such issue also stands resolved against the appellant. In view of the above discussion, I do not find any reason for imposing penalty on the appellant by raising charge of suppression.

7. In view of the above discussion, demand of excise duty as well as interest are upheld. The penalties imposed are set aside.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu