CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

Date of hearing/decision: 1.3.2017

Central Excise Appeal No.57725 of 2013

Arising out of the Order-in-Appeal No.52/BPL/2013 dated 25.2.2013 passed by the Commissioner (Appeals), Central Excise, Bhopal.

C.C.C.E. & S.Tax, Bhopal .. Appellant

Vs.

GEI Industrial System Ltd. … Respondent

Appearance:

Present Shri R.K. Manjhi, A.R. for the Appellant-Revenue
Present Shri Z.U. Alvi, Advocate for the respondent

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52087/2017

Per M.V. Ravindran:

This appeal is filed against the Order-in-Appeal No. 52/BPL/2013 dated 25.2.2013 passed by the Commissioner (Appeals), Central Excise, Bhopal.

2. Heard both sides and perused the record.

3. The issue in short that falls for consideration is that the refund claim of the respondent was rejected by the adjudicating authority. On appeal , the first appellate authority reversed the said decision. The refund claim has arisen on the ground that the appellants have made clearance to M/s Auro Miera Bio Power India Pvt. Ltd. under Exemption Notification No.33/2005-CE dated 8.9.2005 for recovery of 5% of the value of the goods cleared as per the provision of Rule 6(3)(1) of the Cenvat Credit Rules, 2004 and billed the same indicating in the invoice as recovery of the excise duty being pre-printed invoice. The Revenue Department directed the respondent to pay 5% of the amount in cash. The respondent filed refund amount deposited by them in cash.

4. The first appellate authority in the impugned order has categorically recorded that identical issue of the very same respondent has been disposed of in favour of the respondent vide Order-in-Appeal No.BPL/33/2013 dated 30.1.2013, following the said view he allowed the appeal of the respondent.

5. Ld. Counsel for the appellant draws our attention to our Final Order No.50176/2017 dated 9.1.2017 wherein the Department's appeal against the Order-in-Appeal No.BPL/33/2013 dated 30.1.2013 has been rejected.

6. We find it so. Since an identical issue of the same respondent has attained finality in the hands of the Tribunal, we find that the impugned order is correct and legal and does not suffer from any infirmity.

7. The appeal is dismissed as being devoid of merit.

(V. Padmanabhan) Member (Technical)	(M.V. Ravindran) Member (Judicial)

scd/