IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 3.4.2017

Appeal No. E/56460/2013-DB

(Arising out of Order-in-Appeal No. 128(RDN)CE/JPR-II/2012 dated 21.12.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Modern Insulators Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

<u>Appearance</u>

Shri Ankit Totuka, Advocate - for the appellant

Shri M.R. Sharma, D.R. - for the respondent

CORAM:**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 52731/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal dated 21.12.2012.

2. The brief facts of the case are that the appellant was engaged in the manufacture of insulator which were supplied to its customers M/s Power Grid Corporation of India Ltd. At the instance of the buyer an optional testing was formed in the factory premises of which separate bills were raised and the same were paid by the appellant. The issue in the present appeal is **"whether testing**

carried out by the appellant at the instance of buyer is includible in the assessable value of the goods cleared or not." The department has not allowed the claim of the appellant. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Ankit Totuka and Shri M.R. Sharma, ld. Counsels for the parties.

4. After hearing both the parties, it appears that the identical issue has come up before the Tribunal in the case of ***CCE, Raipur Vs. Bhaskar Ispat Pvt. Ltd.*** – 2004 (167) ELT 189 (Tri.-LB), where it was observed that :

> "**4.** The issue before us is to decide whether the additional testing charges at the request of customer and borne by the customer, are includible in the assessable value of the goods for the purpose of Central Excise duty. We find that the Tribunal in the case of *Shree Pipes Ltd.* v. *Collector of Central Excise,* reported in 1992 (59) E.L.T. 462 (Tribunal) held that such additional testing charges born by the customer and which are optional, are not includible in the assessable value of the goods. Revenue filed appeal against this decision and the Hon'ble Supreme Court dismissed the appeal, reported in 1992 (61) E.L.T. A63 (S.C.) - *C.C.E.* v. *Shree Pipes Ltd.* This decision was followed by the Tribunal in the case of *CIMMCO Ltd.* v. *Collector of Central Excise, Jaipur*, reported in 1994 (74) E.L.T. 687 (Tribunal). The appeal filed by the Revenue against this decision was dismissed by the Hon'ble Supreme Court, reported in 1996 (84) E.L.T. A167 (S.C.) - *C.C.E.* v. *CIMMCO Ltd.* The Tribunal further followed the decision in the case of *Shree Pipes Ltd.* (supra) and in the case of *Hindustan Development Corporation Ltd.* v. *C.C.E., Calcutta,* reported in 1996 (85) E.L.T. 58 (Tribunal) and the appeal filed by the Revenue was dismissed by Hon'ble

Supreme Court reported in 1996 (86) E.L.T. A162 (S.C.) - *C.C.E.* v. *Hindustan Development Corporation Ltd.*

5. By following our earlier order (supra), we find no reason to sustain the impugned order. Hence, the same is hereby set aside.

7. In the result, the appeal filed by the appellant is allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

RM