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

COURT NO. I

DATE OF HEARING : 17/10/2017.
DATE OF DECISION : 17/10/2017.

Excise Appeal No. 57197 of 2013

[Arising out of the Order-in-Original No. 35/RPR-I/2013 dated 01/02/2013 passed by The Commissioner (Appeals), Customs & Central Excise, Raipur.]

CCE & ST, Raipur — Appellant

Versus

M/s Prakash Industries Ltd. — Respondent

Appearance

Shri H.C. Saini, Authorized Representative (DR) - for the appellant.

None – for the Respondent.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 57334/2017 Dated : 17/10/2017

Per. B. Ravichandran :-

The Revenue is in appeal against order dated 01/02/2013 of Commissioner (Appeals – I), Raipur. The respondent was engaged in the manufacture of Sponge Iron, MS Bloom/Billets, Silico Manganese, Skull, End Cuttings are liable to Central Excise duty. It was noticed that the respondent also manufactured Fly Ash Bricks, using the Fly Ash arising in the manufacturing process. The dispute in the present case is relating to duty liability on Fly Ash Bricks manufactured by the respondent. The impugned order held that the respondent manufacturing Fly Ash Bricks in their factory premises, used in civil construction which is exempted by Notification No. 1/2011-CE (NT) dated 17/02/2011 issued under the provision of Section 11C of the Central Excise Act, 1944. The said notification exempted goods manufactured at site of construction for use in construction work at such site. Fly Ash Bricks are admittedly covered by the notification as the period involved is falling within the period of exemption given by the notification. However, the Revenue is aggrieved by the fact that the impugned order did not give a finding regarding the fulfillment of condition for such exemption as given in para 2 of the said notification.

2. The learned AR submitted that the impugned order should have recorded clearly that the benefit of Cenvat credit availed was reversed by the respondent/assessee. The fact that the respondent/assessee availed service tax credit by engaging contractors in making the Fly Ash Bricks is recorded in the impugned order. In such situation, the exemption should have been allowed only on fulfillment of the condition. None appeared for the respondent in spite of notice.

3. On perusal of the appeal records, we note that while on merit, the respondent may be eligible for exemption under Notification 11C, the condition mentioned in para 2 of the said

notification regarding reversal of Cenvat credit availed, if any, taken on inputs should have been specifically examined and recorded before extending the benefit of notification. To this limited extent, we find that the impugned order is not sustainable. Accordingly, we direct the Original Authority to examine the application of the said exemption notification to the respondent alongwith the conditions thereto. The appeal by the Revenue is allowed by way of remand.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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