CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 53207 of 2015

(Arising out of Order-in-Appeal No. DDN/EXCUS/000-/APPEAL-I/12/2015-16 dated 23.04.2015 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut**)**

DATE OF HEARING : 26.10.2017
DATE OF DECISION : 26.10.2017

CCE, Dehradun …. Appellant
(Rep by Sh. M.R. Sharma, DR)

VERSUS

M/s India Polyroads Pvt. Ltd. …. Respondents
(Rep. by Sh Rahul Tangri, Adv.)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 57493/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the Department against the Order-in-Appeal No. DDN/EXCUS/000-/APPEAL-I/12/2015-16 dated 23.04.2015 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut. The period in dispute is July 2012 to March 2013.

2. The brief facts of the case are that, during the period under consideration, the assessee-Respondents were engaged in the manufacture of polymer based soil stabilizer - 'Soiltech'. On 15.03.2010 they filed their option for availing exemption under Notification No. 50/2003-CE dated 10.06.2003. After installation of plant & machinery, the assessee-Respondents started the production on 23.03.2010. In the factory, they installed the tank of various capacities, but for the initial production small tank was used. The adjudicating authority opined that all machines were used, so area based exemption cannot be granted and, therefore, demanded duty. But the Commissioner (Appeals) has allowed the claim of the assessee-Respondents by observing that the production was started prior to 31.03.2010 and goods were sold to the buyers. Being aggrieved, the Department has filed the appeal.

3. With this background, we have heard Shri M.R. Sharma, learned DR for the Department and Shri Rahul Tangri, learned counsel for the assessee-Respondents.

4. After hearing both sides and on perusal of the material available on record, it appears that, undoubtedly, the production was started on 23.03.2010 for manufacture of the polymer based soil stabilizer - 'Soiltech'. Initially, the assessee-Respondents have used the small tank, as the production was less. Later, as soon as the demand increased, other bigger

tanks were used for production. When it is so, then we are of the view that the assessee-Respondents are entitled for the area based exemption as per Notification No. 50/2003-CE dated 10.06.2003. Hence, we decline to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned thereon.

5. In the result, the appeal filed by the Department is dismissed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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