CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 52506 & 52510 of 2016

(Arising out of Order-in-Appeal Nos. BHO-EXCUS-002-APP-405-15-16 dated 11.03.2016 and BHO-EXCUS-002-APP-406-15-16 dated 11.03.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur**)**

DATE OF HEARING : 31.10.2017
DATE OF DECISION : 31.10.2017

M/s Bharat Sanchar Nigam Ltd. …. Appellants
(Rep by Sh. Himanshu Khemuka, CA)

VERSUS

CCE, Raipur …. Respondent
(Rep. by Sh S.K. Bansal, DR)

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

FINAL ORDER NO. __57670-57671/2017_______

PER JUSTICE (Dr.) SATISH CHANDRA :

Both the appeals have been filed by the assessee-Appellants against the order-in-appeal nos. BHO-EXCUS-002-APP-405-15-16 dated 11.03.2016 and BHO-EXCUS-002-APP-406-15-16 dated 11.03.2016 respectively, passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur. The period in dispute is March, 2011 to September, 2013. Since common issue is involved in both the appeals, they are disposed of by this consolidated order.

2. The brief facts of the case are that, the assessee-Appellants are a Government of India Undertaking and providing the communication services. For that purpose, they had manufactured Microwave Tower. The dispute relates to the applicability of the Rules regarding valuation of the product manufactured by the assessee-appellants which is neither used in the production nor manufacture of final product, but consumed for the purpose of erection of tower. In the absence of any specific rule being applicable for the purpose of valuation, residuary clause under the said Rules and particularly which is comprised under Rule 11 is sought to be applied by the Department and the same is sought to be challenged by the assessee-appellants.

3. With this background, we have heard Shri Himanshu Khemka, learned Chartered Accountant for the assessee-Appellants and Shri S.K. Bansal, learned DR for the Revenue.

4. After hearing both sides and on perusal of the material available on record, it appears that the issue involved in the present appeals has come up before the Tribunal in the assessee-Appellants' own case [**M/s Bharat Sanchar Nigam Ltd. vs CCE, Raipur,** Final Order No. 56901/2017 dated 28.09.2017], wherein it was observed that :

"4. After hearing both sides and on perusal of material available on record, it appears that for the earlier period, the issue has come up before the Tribunal in assessee's own case – M/s Bharat Sanchar Nigam Ltd. vs. CCE, Raipur-I (Final Order No. 55558-55563/2017 dated 24.07.2017) where it was observed that-

> **"4. After hearing both sides and on perusal of material available on record, it appears that the matter relates to the year 2010 and obviously is governed by the Central excise Valuation (Determination of Price of Excisable Goods), Rules 2000. The Rule 8 thereof provides that:**
>
> > **"Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be 110% of the cost of production or manufacture of such goods."**
>
> **Rule 11 provides that:**
>
> > **"If the value of any excisable goods cannot be determined under the preceding rule of the said Rules, the value shall be determined using reasonable means consistent with the principles and general provisions of the said rules and sub – section (1) of Section 4 of the Central Excise Act."**
>
> **Since the goods are not consumed in the production or manufacture of other articles, the question of ascertaining the value by referring to the cost of the product or manufacture of such goods would not arise.**
>
> **5. From the record, we find that for the subsequent period, in the identical facts and circumstances of the case, the Commissioner in his order No. 357-CE/RPR/APPL/RPR/2015/2596 dated 21.10.2016 has granted relief to the assessee-appellants.**
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> **6. It may be mentioned that the Hon'ble Supreme Court in the case of PCC Pole Factory vs. CCE, 2003 (158) ELT 429 (SC), allowed the claim of the assessee-appellants where PCC Poles were used for transmission of the electric energy. There was no further activity of manufacture and no business was carried out by the Electricity Board. Identically, in the instant case, the towers were**

> **used by the assessee-appellants for only transmission of the signals without carrying out any further business activity."**

The above ratio was followed by the Tribunal in the assessee-Appellants' own case for the earlier period [**M/s Bharat Sanchar Nigam Ltd. vs CCE, Raipur-I**, Final Order No. 55558-55563/2017 dated 24.07.2017].

5. By following our earlier decisions (supra) and considering the totality of the facts and circumstances of the case, we set aside the impugned orders and allow the appeals.

6. In the result, the appeals filed by the assessee-Appellants are allowed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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