CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/808/2009

(Arising out of Order-in-Appeal No. 36/2009 (H-I) CE dated 21.05.2009 passed by Commissioner of Customs, Excise & Service Tax (Appeals-I), Hyderabad)

Commissioner of Customs, Central Excise
& Service Tax, Hyderabad - I **…..Appellant(s)**

Vs.

Premier Plastics Industries **…..Respondent(s)**

Appearance
Shri P. S. Reddy, Assistant Commissioner (AR) for the Appellant.
Shri B. Venugopal, Advocate for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 24/05/2018
Date of Decision: 24/05/2018

FINAL ORDER No. A/30618/2018

[Order per: M.V. Ravindran]

This appeal is filed by the Revenue against Order-in-Appeal No. 36/2009 (H-I) CE dated 21.05.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that in the case in hand, the respondents are manufacturers of H.D.P.E pipes falling under Chapter 39 of the Central Excise Tariff Act 1985, cleared pipes to Sri. Satya Sai Central Trust, claiming exemption from payment of appropriate duty under Notification No. 06/2002- CE as amended by Notification No. 47/2002- CE. Lower Authorities were of the view that the exemption availed is incorrect, accordingly show cause notice dated 18.08.2008 was issued for demanding duty on clearances of such pipes during the period 26.10.2005 to 14.04.2006, confirmed the demand along with interest, seeking imposed penalties. The respondents contested the matter before the authorities. The Adjudicating Authority confirmed the demands raised along with interest and imposed penalties. On an appeal, the First Appellate Authority by the impugned order has set aside the Order-in-Original relying upon the various decisions of the predecessor in his office.

4. Learned Departmental Representative takes the Bench through the entire case records and submits that the pipes which are cleared by the respondent are used not only for the pipes for delivery of water from its source to the water treatment / supply plant and further also. It is his submission that the benefit of notification can be extended only till the treated water is stored, but not storage beyond

the first storage point. It is his submission that the case in hand, the pipes are used for distribution of water beyond the first storage facility would not be eligible for the exemption. He would strongly rely upon the Board Circular No. 127/01/2006-CX vide letter F. No. 167/18/2005-CX.4 dated 05.06.2006.

5. Learned Counsel appearing for the respondent submits the issue is settled by the decision of the Tribunal in the case of *Commissioner of Central Excise, Kolkata-III Vs. Electrosteel Casting Ltd.,* [2009 (235) ELT 757) (Tri. – Kolkata.)] and upheld by the Apex Court by dismissing the civil appeal filed by the Revenue, as reported at [2009 (244) ELT A18 (S.C.)]. He would also submit that identical issue came up before the Tribunal in the case of *CCE, C & ST (A-III) Hyderabad Vs. IVRCL Infrastructures & Projects Ltd.,* [2009 (240) ELT 606 (Tri. – Bang.)] and submits that the issue was decided in favour of the respondent therein; IVRCL was similarly placed as is the respondent herein. It is his submission that this judgement of the Tribunal in the case of *IVRCL Infrastructures & Projects Ltd.,* is upheld by the Apex Court by dismissal of civil appeals filed by the Revenue, as reported at [2016 (336) ELT A134 (S.C.)].

6. On careful consideration of submissions made and perusal of records, we find that the First Appellate Authority has correctly followed the law settled by the Tribunal and upheld by the

Apex Court in an identical set of facts. The facts in this case are not disputed i.e. respondent clears pipes availing benefit of Notification No. 06/2002 - CE as amended by Notification No. 47/2002 -CE; the pipes are undisputedly used for distribution of water from the storage point. The Bench finds that identical issue being decided by the Tribunal in the case of IVRCL Infrastructures & Projects Ltd., (supra) and Electrosteel Casting Ltd., (supra) view which has been upheld by the Apex Court, it is to be held that the issue is now squarely covered in favour of the respondent. We hold that the appeal filed by the Revenue needs to be rejected and the impugned order needs to be upheld.

7. The impugned order is upheld as correct, legal and does not suffer from any infirmity. The appeal of the Revenue stands rejected.

(Operative part of this order was pronounced in open court on conclusion of hearing)

P. VENKATA SUBBA RAO	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi….