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

Appeal No. E/36/2009

(Arising out of Order-in-Original No. 17/2008-CE-HYD-Commr. dated 26.08.2008 passed by Commissioner of Customs & Central Excise, Hyderabad-III)

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

Vs.

M/s Electronics Corporation of India Ltd., **…..Respondent(s)**

Appearance
Smt. B.V. Siva Naga Kumari, Commissioner (AR) for the Revenue.
Shri P.V.B. Chary, Advocate for the Assessee.

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

Date of Hearing: 08/08/2018
Date of Decision: 08/08/2018

FINAL ORDER No. A/30936/2018

[Order per: M.V. Ravindran]

This appeal is filed by the Revenue against Order-in-Original No. 17/2008-CE-HYD-Commr. dated 26.08.2008.

2. Heard both sides and perused the records.

3. Revenue in the grounds of appeal, is seeking to modify of the order of the Adjudicating Authority to that extent, the Adjudicating Authority has not imposed equivalent penalty under Section 11AC of the Central Excise Act, 1944 and that the language of the lower authority on the interest part is also incorrect.

4. Learned Commissioner (AR) draws our attention to the Order-in-Original and submits that Order-in-Original was passed in *denovo* proceedings on direction of the Tribunal. It is her submission that the reasoning may be corrected and penalty may be imposed.

5. Learned Counsel submits that the very same Order-in-Original was contested by the appellant/assessee on merits in appeal No. E/908/2008 and was heard and decided by the Tribunal in Final Order No. A/30223/2018 dated 31.01.2018. He produces the copy of the said order and submits that the Tribunal has set aside the demand of duty for the extended period but confirmed the demands within the limitation period and remanded the matter back to the Adjudicating Authority to re-determine the quantum of duty and also the Tribunal has set aside the penalty imposed under Rule 25.

6. On perusal of Final Order dated 31.01.2018, we find it so. The Bench has recorded clearly the entire issue in para 8 of the said order, the bench has accepted assessee's contention holding there is no case on merits, set aside demands confirmed by invoking the

extended period on the ground that the earlier notices were issued on the same issue. Since the entire Order-in-Original was contested by the assessee and the demand and penalties are set aside, the appeal filed by the Revenue for imposing penalty does not survive. Revenue needs to be rejected.

7. In view of the fact that, the appellants/assesse's appeal has already been disposed against the same Order-in-Original in their favour, we find no merits in the appeal filed by the Revenue and the appeal stands rejected.

(Order pronounced & dictated in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….