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

Appeal No. E/253/2009

(Arising out of Order-in-Appeal Nos. 78 to 80/2008 (H-IV) CE dated 15.12.2008 passed by Commissioner of Customs, Excise & Service Tax (Appeals-II), Hyderabad)

Commissioner of Central Excise & Customs, Hyderabad - IV .....**Appellant(s)**

Vs.

M/s Victory Electricals Ltd., ...**Respondent(s)**

Appearance
Shri Guna Ranjan, Superintendent (AR) for the Appellant.
Shri M.N. Bharati, 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: 16/11/2018
Date of Decision: 16/11/2018

FINAL ORDER No. A/31546/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No. 78 to 80/2008 (H-IV) CE dated 15.12.2008.

2. Heard both sides and perused the records.

3. The facts, in brief, of this case are that the appellants are manufacturers of Electrical Transformers which are supplied to various Distribution Companies of Andhra Pradesh State Electricity Board (APSEB) against approved Tenders. As per the tender conditions, the appellants are required to supply the goods as per the purchase orders and in case of delay in the supply schedules, the value of the goods shall be reduced by 0.5% per week of delay subject to a maximum of 5%. During the period February, 2007 to February, 2008, though the appellants cleared the goods as per the tender price, they received reduced payments owing to the delay in the supply of the goods as per the tender conditions. The appellants filed refund claims on the ground that the transaction value was lower than the contract price and that they had received the payment including the duty on the transaction value. Vide the impugned order, the lower authority rejected the claim on the ground that amount deducted towards delayed supply of goods is in the nature of penalty which is not a deductible amount for arriving at the transaction value as per Section 4(3)(d) of the Central Excise Act, 1944. It was also observed that the value at which transformers of certain specification are supplied against the price mutually agreed upon and quoted in the purchase orders becomes the amount payable by the buyers which becomes the transaction value. Reliance in this regard was placed on the following case laws:-

(i) *Bhartia Cutler Hammer Ltd., Vs CCE, New Delhi* [1998 (99) E.L.T. 436 (Trib)]

(ii) *CCE, Calicut Vs. BPL Telecom Ltd.,* [2003 (157) ELT 35 (Tri.-Bang.)] and

(iii) *Jalan Refractories (P) Ltd., Vs. CCE, Jaipur* [2001 (138) ELT 327 (Tri. – Chennai)].

4. Learned Counsel submits that self same issue in appellant's own case was referred to a Larger Bench and the Larger Bench on hearing the matters at Chennai, accepted the contentions of the appellants and the issue is decided in their favour. He produces the copy of the same.

5. On perusal of the said decision of Larger Bench we do find it so. The issue involved in this case is now decided in favour of the respondents herein. Respectfully following the same, we hold that the impugned order is correct and legal and we uphold it. Appeal filed by the revenue is rejected.

(Order dictated & pronounced in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….