CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Appeal No. E/650/2011

(Arising out of Order-in-Appeal No.55/2010 (H-III) (D) (CE) dt.30.11.2010 passed by CCCE & ST (Appeals-III), Hyderabad)

CCCE & ST, Hyderabad – III ….. Appellant(s)

Vs.

My Home Industries Ltd ….. Respondent(s)

Appearance

Shri C. Mallikarjun Reddy, Advocate for the Appellant.

Shri G. Natarajan, 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: 21.02.2019

Date of Decision: 21.02.2019

FINAL ORDER No. A/30267/2019

[Order per: P.V. Subba Rao.]

1. This appeal is filed by the revenue against Order-in-Appeal No. 55/2010 (H-III) (D) (CE) dated 30.11.2010.

2. The facts of the case in brief are that the respondents herein are manufacturers of "Portland Cement" falling under chapter 25 of Central Excise Tariff Act. They filed refund claim on 04.02.2010 before the Dy. Commissioner of Customs & Central Excise, Nalgonda division. After following due process, the Dy. Commissioner granted the refund. The department filed an appeal before the Commissioner (Appeals) which was rejected by the Commissioner (Appeals), vide the impugned order. Hence, this appeal. The basis of claiming refund by the respondent is on the ground that they have paid excess excise duty of Rs.22,70,254/- on the cement produced in their factory which was cleared to M/s Andhra Pradesh State Housing Corporation Ltd (APSHCL) during the period 01.03.2007 to

24.02.2009 and on the same issue, the Commissioner (Appeals) had vide Order-in-Appeal No. 71/2008 (H-III) dated 30.09.2008 in the case of Sagar Cements Ltd decided in favour of the assessee. The respondent had paid duty on the cement supplied to APSHCL at the rate of Rs.350/MT treating the same as supply to Industrial or institutional supplier in terms of notification 04/2006-CE dated 01.03.2006. At the insistence of the department, the respondent paid differential duty of Rs.50/MT under protest and the department issued show cause notices to confirm the same but transferred the notices to "call book" pending a decision on the appeals filed by the revenue before the Hon'ble Supreme Court against the order of CESTAT in the case of Sagar cements. Following the ratio of the decision of the Sagar Cements, the Commissioner (Appeals) decided the matter in favour of the appellant and accordingly they filed a refund claim which is sanctioned by the original authority and upheld by the first appellate authority.

3. Learned counsel for the respondent would submit that in an identical case, in the case of Penna Cement Industries Ltd, this bench, vide final order A/30099/2019 dated 16.01.2019 rejected the department's appeal and held that assessee/respondents were entitled to refund.

4. Learned departmental representative agrees with the facts of the case and reiterates the submissions in the grounds of appeal.

5. We have considered the arguments on both sides and perused the records. The simple issue to be decided is whether the appellant is eligible for notification 04/2006-CE in respect of cement which they supplied to APSHCL or otherwise. The appellant claimed the benefit of this notification but on the insistence of the department paid the differential duty. After the

matter was decided by the Commissioner (Appeals) relying on the orders of the Tribunal in the case of M/s Sagar Cements Ltd, the respondent claimed refund of the same. Refund was sanctioned by the original authority and was upheld by the first appellate authority. We, therefore, find that both the lower authorities have correctly followed the law and there is no reason for us to interfere with their decision. We, therefore, find no merits in the revenue's appeal and accordingly, reject the same.

6. Revenue's appeal is rejected and the impugned order is upheld.

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

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

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