IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. E/50 & 51/2009

(Arising out of Orders-in-Appeal No. PI/241/08 dated 18.11.2008 and No. PI/242/08 dated 19.11.2008 passed by the Commissioner of Central Excise (Appeals), Pune-I).

M/s Premium Energy Transmission Ltd.	Appellant

Vs.

Commissioner of Central Excise, Pune-I	Respondent

Appearance:

Ms. Manasi Patel, Advocate	for Appellant
Shri D.S. Chavan, Supdt. (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 26.03.2018

Date of Decision: 19.04.2018

ORDER NO. **A/86135-86136/2018**

Per: Ramesh Nair

The case of the department is that the appellant is not eligible for exemption Notification No. 6/2002-CE dated 1.3.2002, Notification No. 3/2004-CE dated 8.1.2004, Notification No. 108/95-CE dated 28.8.1995 and Notification No. 10/97-CE dated 1.3.1997. The allegation of the department is that in respect of exemption scheme under Notification No. 3/2004-CE, the appellant could not produce proper certificate by the competent authority, certificate does not appear Collector's signature. Certificate not in the name and address of the assessee, Chinchwad unit. In this regard, the adjudicating authority found that the certificate and details are correct but it could not correlate invoices' description with certificate. As regards the Notification No. 108/95-CE, allegation in the show-cause notice is that certificate is not in name and address of the appellant's Chinchwad unit. Finding of the adjudicating authority is that there is no correlation to invoices and certificate. As regards Notification No. 10/97-CE, the allegation made in the show-cause notice is that certificate is not in the name and address of the Chinchwad unit. However, in the adjudication order/Commissioner (Appeals) order, it was found that that there is no correlation of the invoices and certificate. Accordingly, the adjudicating authority confirmed the demand and the Commissioner (Appeals) has upheld the same. Therefore, the present appeals.

2. Ms. Manasi Patil, learned Counsel appearing on behalf of the appellant fairly concedes that as regards Notification No. 6/2002-CE, the amount involved is only Rs.4272/-, which the appellant had admittedly paid along with interest. Therefore, they are not contesting this portion of the impugned order. As regards the issue relates to Notification No. 3/2004-CE, she submits that the certificate was submitted before the adjudicating authority along with reply in the show-cause notice, the same was again submitted before the Commissioner (Appeals). She submits that from the details appearing on certificate vis-à-vis relevant invoices, the

correlation is clearly established. Therefore, Notification No. 3/2004-CE is clearly admissible. As regards the Notification No. 108/95-CE, she submits that the goods cleared was used for intended purpose. The correlation between certificate and invoices established. All the documents were submitted before the adjudicating authority as well as the Commissioner (Appeals). As regards the allegation that the address of Chinchwad unit is not mentioned, she submits that the certificate shows the address of Banglore office. As regards the Notification No. 10/97-CE dated 1.3.1997, she submits that the goods were supplied and used for the intended purpose. Correlation between the certificate and the invoices is established. The certificate shows the address of Chennai office. Therefore, there is no discrepancy in the documents. Hence, the exemption cannot be denied.

3. Shri D.S. Chavan, learned Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that condition of the notification should be strictly followed and in absence of non-compliance of the conditions, benefit of exemption notification cannot be allowed. He placed reliance on the following judgments: -

(a) *Starlite Indus. (I) Ltd. – 2014 (304) ELT 111 (Tri-Mum)*

(b) *Elcot Hitech Tool Room Ltd. – 2005 (186) ELT 581 (Tri-Chennai)*

(c) *DEE Development Engineers Ltd. – 2004 (178) ELT 452 (Tri-Del).*

(d) *Flex Industries Ltd. – 2005 (192) E:T 628 (Tri-Del).*

4. We have carefully considered the submissions made by both sides. We find that there is a minor discrepancy in the documents. Learned Counsel took us to all the relevant documents wherefrom we find that the description of the goods clearly tallied between the certificate issued by the Project Authority and the description appeared in the invoices issued by the appellant. Therefore, the correlation between the details appearing in the certificate and details appearing in the invoice is clearly established. As regards the address of the Chinchwad Unit, it is immaterial whether the address of their office or manufacturing unit is mentioned. It is obvious that though appellants have manufacturing unit at one place but the business is conducted from various offices across the country. Therefore, so long the certificate bears the name of the appellant, a different address of the appellant mentioned in the certificate does not debar the appellant from availing the exemption notification. The whole objective of the exemption notification is that the goods so manufactured and supplied should be used for a particular project for which proper certificates were issued, therefore, the substantial benefit of exemption notification cannot be denied, otherwise the whole purpose of the notification will get defeated, if the excise duty is charged on the supply of a particular project, whereas the Government has intention not to charge any duty. On perusal of the records which we have gone through, we do not find any serious discrepancy, which establishes that the goods have not been supplied for the intended purpose. Accordingly, we need not to discuss any judgment as the present case is based on its own fact, which established that the supply made by the

appellant is eligible for the various exemption notification claimed by them.

5. Therefore, the impugned orders are set aside and the appeals are allowed.

(Pronounced in Court on 19.04.2018)

(C.J. Mathew)	**(Ramesh Nair)**
Member (Technical)	**Member (Judicial)**

Sinha