

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

**Excise Appeal No. 1794 of 2010**

(Arising out of Order-in-Appeal No. AGS(125)65/2010 dated 24.06.2010  
passed by Commissioner of Central Excise & Customs, Aurangabad)

**M/s P.S.C. Pole Factory**

**.....Appellant**

MSEDCL, Rahri (Kh) (413705),

Taluka: Rahuri, District: Ahmednagar

*VERSUS*

**Commissioner of Central Excise,  
Aurangabad**

**.....Respondent**

Town Centre, N-5, CIDCO,  
Aurangabad - 431003

**Appearance:**

None for the Appellant

Shri A.B. Kulgod, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/88555 / 2018**

Date of Hearing: 11.12.2018

Date of Decision: 11.12.2018

**Per: S.K. MOHANTY**

This appeal is directed against the impugned order dated 24.06.2010 passed by the Commissioner (Appeals), Central Excise & Customs, Aurangabad.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of P.S.C. Poles falling under Chapter Heading No. 68.10 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had claimed the benefit of duty exemption provided under Notification No. 74/93 – C.E. dated 28.02.1993 on the ground that their factory manufacturing the excisable goods belongs to State Government and as such, the requirement of the conditions of Notification have been duly complied with for claim of the benefit from

payment of central excise duty at 'nil' rate. However, the department had denied the benefit of duty exemption claimed by the appellant, holding that the factory did not belong to State Government and poles are used for captive consumption in meeting the requirement of electrification.

3. None appeared for the appellant, despite notice. Heard the learned AR for Revenue and perused the case records.

4. We find that by relying upon the decision of Larger Bench of the Tribunal in the case of Asstt. Engineer (Civil) Vs. Commissioner of Central Excise, Raipur – 2008 (232) ELT 628 (Tri.-LB), the Commissioner (Appeals) has rejected the appeal filed by the appellant. The relevant paragraphs in the decision of Larger Bench are extracted herein below:

*"9. It was submitted that the decision in Electricity Poles Manufacturing (supra) was upheld by the Supreme Court in Civil Appeal No. 1827 of 2001 vide [2006 \(202\) E.L.T. A144 \(S.C.\)](#). From the text of the order, it appears that the appeal of the Department was summarily dismissed observing that Court found no reason to interfere with the order. It is well settled that summary dismissal of SLP/Civil Appeal by the Supreme Court does not amount to affirmation of the judgment/order of the Court/Tribunal appealed against, on merit. It merely means that the Supreme Court declined to interfere in the matter. As a matter of fact, learned DR appearing for the Revenue pointed out that the issue involved in the case of Electricity Poles Manufacturing related to SSI Exemption and, therefore, the fact that the Supreme Court did not interfere with the Tribunal's Order has little significance.*

*10. Be that as it may, as seen above, the Notification lays down twin conditions, and unless both the conditions are satisfied exemption cannot be claimed. Admittedly, Chhattisgarh State Electricity Board is not a Department of the Government. Merely because 100% capital is owned by State Government does not make it a body at par with the State Government. Hence the PCC poles manufactured in the factories which admittedly belong to the Electricity Board does not qualify for exemption. That apart, the intended or actual user of the poles also being the Board itself, and not any Department of the State Government, the other condition is also not fulfilled."*

5. On perusal of the case records, we find that the appellant's establishment cannot be considered as a government department for the purpose of availment of the benefit provided

under the Notification dated 28.02.1993 (supra). Thus, denial of the duty exemption provided under the said notification in the impugned order cannot be faulted with.

6. Therefore, we do not find any merits in the appeal filed by the appellant. Accordingly, same is dismissed.

(Dictated and pronounced in the open court)

**(S.K.Mohanty)**  
**Member (Judicial)**

**(Sanjiv Srivastava)**  
**Member (Technical)**

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