CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 85871 of 2020
C/Cross/85055 of 2021

(Arising out of Order-in-Appeal No. 611 to 612-GR-VA-2019-JNCH-APPEAL-II dated 23.04.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II)

Commissioner of Customs, Sheva-V **Appellant**
JNPT, Custom House, Nhava Sheva, Raigad 400 707.

Vs.

M/s. Prose Technologies India Private Limited **Respondent**
406/407, 4th Floor, ECO Star, Vishveshwar Nagar,
Behind Udipi Hotel, Goregaon (East),
Mumbai 400 063.

Appearance:

Shri Ramesh Kumar, Assistant Commissioner, Authorised Representative for the Appellant
Shri T. Viswanathan with Shri Akhilesh Kangsia, Advocates, for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 21.07.2022
Date of Decision: 21.07.2022

FINAL ORDER NO. A/85689/2022

PER: SANJIV SRIVASTAVA

This appeal filed by the revenue is directed against order in appeal No. 611 & 612 (Gr. VA)/2020 (JNCH)/Appeal-II dated 23.04.2020 of the Commissioner of Customs (Appeals), Mumbai II. By the impugned order, the Commissioner (Appeals) held as follows:

"16. In view of above, the impugned Orders in assessment dated 05.11.2019 (in respect of 195 Bill of Entry) and dated 03.07.2019 in respect of B/E No 2358707 dated 11.03.2019 passed by the Deputy Commissioner of Customs Gr VA, NS-V, JNCH, Nhava Sheva, Mumbai-II are set aside and Appeal Nos 1238/2019 and 1599 filed by M/s Rosenberger Electronic Co (India) Pvt Ltd are allowed."

2.1 The respondent had filed 196 bill of entry for clearance of imported goods described as Parts of telecommunication equipment under tariff item 85177090. They filed the said bill of entry under self assessment under section 17 (1) of Customs Act, 1962. During verification of assessment in terms of section 17 (2) of the Customs Act, 1962 it was noticed that the declared goods were Antenna with ACC classifiable under tariff item 85176290 as per the Board Instruction No 1/2018-Cus dated 15.01.2018. Accordingly all the bills of entry were assessed under tariff item 8517 6290. The respondent’s paid the duty under protest and requested the original authority for issuance of a speaking order as per Section 17 (5) of the Customs act, 1962. On the request of the respondents the original authority issued speaking orders dated 15.11.2019 and 03.07.2019 rejecting the declared classification under Tariff Item 85177090 of the impugned goods and ordered to re-determine under Tariff Item 85176290.

2.2 The order of assessments dated 15.11.2019 and 03.07.2019 in respect of the said 196 Bill of Entries by the proper officer were challenged by the respondent before the Commissioner (Appeal) who by the impugned order, referred in para 1 above allowed the appeals and upheld the classification as claimed by the importers while filing the Bill of Entries.

2.3 Aggrieved revenue has filed this appeal.

3.1 We have heard Shri Ramesh Kumar, Assistant Commissioner, Authorized Representative for the revenue (Appellant) and Shri T Viswanathan and Shri Akhilesh Kangsiya, Advocates for the Respondent.

3.2 Arguing for the Appellant, learned Authorized Representative reiterated the grounds taken in the appeal filed by the revenue and stated:

- Admittedly classification of identical products has been decided by the Hon'ble Tribunal in the case of Commissioner of Customs (Import), Mumbai vs M/s. Reliance Jio Infocom Ltd in its Final Order No. A/87015-87016/2019 dated 06.11.2019 [2019 (369) ELT 1713 (Tri-

Mum)]. Commissioner (Appeal) in his impugned Order in Appeal No.920-922 dated 10.06.2019 has relied on the aforesaid judgement of the Hon'ble Tribunal and has ordered classification of telecommunication antennas under CTH 85177090.

- Revenue has filed an appeal before the Hon'ble Supreme Court vide CIVIL APPEAL Diary No(s). 14979/2020 wherein the Final Order No. A/87015-87016/2019 [2019 (369) ELT 1713 (Tri-Mum)] has been challenged. On 18.12.2020, the case has been heard by the Hon'ble Supreme Court and the notice

- Hearing of the instant appeal may be deferred till decision of the petition filed by Revenue, is decided by the Hon'ble Supreme Court.

3.3 Arguing for the respondents learned counsels submitted that:

- The imported 'Passive Antenna' have universal application in all cellular technology including 2G/3G/LTE. This is evident from Opinion of Prof. Girish Kumar, Electrical Engineering Department, IIT Bombay.

- Classification of passive antenna for base station stands concluded under Tariff Item 8517 70 90 in favour of the Respondents, by the Hon'ble CESTAT, Mumbai in CC Vs. Reliance Jio Infocomm - 2019 (369) ELT 1713. This view is also taken by the Hon'ble CESTAT Chennai in Reliance Jio Infocomm Vs. CC - 2022 (2) TMI 967 (Annexure 3).

- The WCO's Classification Opinion issued on the basis of its meeting in 62nd Session, September 2018 also supports the classification of passive antenna for base station, under sub Heading 8517.70 as · Parts"

- Parliament has always treated 'aerial and antenna of all kinds' as parts only, as is evident from Heading 85.29. Heading 85.29 covers Parts of Headings 85.25 to 85.28. Sub-Heading 8529.10 by name and description covers 'aerials and aerial reflectors of all kinds'.

- By amendment made vide the Finance Act 2021 whereby a new Tariff Item 8517 71 00 was introduced within Sub-Heading 8517.70 to cover Aerials and aerial reflectors of all kinds; parts suitable for use therewith, w.e.f., 01.01.22, without any change in the Heading 85.17 or sub-Heading 8517.70

- The term "aerial' is an old usage for the relatively new term 'antenna'. Reference is made to IEEE Standard Definitions of Terms for Antennas, published on June 2, 1983 and book titled 'Antennae Theory Analysis and Design, 3rd Edition, Publication by John Wiley & Sons, INC' which refers to aerials and antennae interchangeably and are part.

- Even otherwise, Notification No.25/05-Cus., dated 1.3.2005 (SI. No.15) existing as on date grants exemption to 'aerials or antennae for radio telephony and radio telegraphy' from payment of basic custom duty falling under sub-Heading 8529.10. Applying principle laid down in Jain Engineering reported at 1987 (32) ELT 3 (SC) at para 10, and Johnson & Johnson reported at 1997 (92) ELT 23 (SC) at para 7, exemption to aerials and antennae of sub-Heading 8517.70 is available.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments and in written submissions made by the both the sides.

4.2 Undisputedly both the sides agree that the same issue has been considered by the coordinate bench of CESTAT, in case of Reliance Jio Infocom [2019 (369) ELT 1713 (T-Mum)} and bench have decided the issue in favour of respondents.

4.3 Commissioner (Appeals) has in the impugned order while deciding the appeal observed as follows:

"12. The appellant has placed his reliance on recent decision of the Hon'ble CESTAT Mumbai passed in the case of CC (import) Mumbai vs Reliance Jio Infocomm Ltd [2019 (369) ELT1713 (Tri-Mumbai)]. After comparing tariff heading 8517, 8525, 8527 and 8529 before 1.1.2007 and after 1.1.2007 and discussing relevant

Section Note 2 (a) of Section XVI Chapter Note 2 of Chapter 85 and decision of World Custom Organisation Harmonized System Committee [62nd Session September-2018] the Hon'ble CESTAT has passed the said decision by holding that the correct classification of the antenna for base station is under subheading 85177090 as "parts". The facts and circumstances of the cited case law or identical to the present case therefore the ratio or same is squarely applicable to the present case."

4.4 Thus following the decision of tribunal in case of Reliance Jio Infocomm, Commissioner (Appeals) has decided the classification of *"Passive Antenna for base station"* under heading No 85177090. Learned Authorized representative submitted that revenue has filed the Civil Appeal Diary No 14797/2020 against the order of CESTAT before the Hon'ble Apex Court. The said Civil Appeal has been listed before the Hon'ble Apex Court on 18.12.2020, 05.08.2021, 17.09.2021, 11.11.2021 and 28.03.2022. The order passed by the bench on the last day is reproduced below:

"CIVIL APPEAL Diary No(s). 14979/2020

(Arising out of impugned final judgment and order dated 06-11-2019 in CA No. 85882/2018 06-11-2019 in CA No. 85883/2018 passed by the Custom Excise Service Tax Appellate Tribunal, West Zonal Bench At Mumbai)

COMMISSIONER OF CUSTOMS (IMPORT) Petitioner(s)

VERSUS

M/S RELIANCE JIO INFOCOM LTD. Respondent(s)

(IA No.82614/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.82613/2020-STAY APPLICATION and IA No.82612/2020-CONDONATION OF DELAY IN FILING APPEAL)

Date : 28-03-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.M. KHANWILKAR HON'BLE MR. JUSTICE ABHAY S. OKA

For Petitioner(s) Mr. Balbir Singh LD ASG Mr. Mukesh Kumar Maroria, AOR Mr. Rupesh Kumar, Adv. Mr. Bhuvan Mishra, Adv. Mr. Udai Khanna, Adv.

For Respondent(s) Mr. K. R. Sasiprabhu, AOR (NP) Mr. Vishnu Sharma, Adv. Mr. Tushar Bhardwaj, Adv.

UPON hearing the counsel the Court made the following O R D E R In view of the letter circulated by the learned counsel for the respondent seeking adjournment on the ground of personal difficulty, list the matter after two weeks. Rejoinder filed by the petitioner is taken on record."

From the above it is observed that neither the appeal has been admitted by the Hon'ble Apex Court nor any stay granted by the court. In view of the above we are not inclined to agree with the submissions made by the authorized representative to adjourn the matter till the decision of Hon'ble Apex Court in the Civil Appeal Diary No 14979/2020.

4.5 The issue was again considered by the tribunal in case of Reliance Jio Infocomm vide the order reported at [2022- TIOL-604-CESTAT-Mum] and the bench dismissed the appeals filed by revenue sating as follows:

"17. We also find that Revenue submits that on the basis of Explanatory notes to the HSN the items are complete machines or equipments classifiable under CTH 85176270. The Department submits alluding to the HSN that as per explanation (G) the equipment referred to therein allowed for connection to a wired or wireless communication network or the transmission or reception of speech or other sound, images or other data within such networks. A look at this explanatory notes shows us the following.

"85.17 - Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including

Apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission *or reception apparatus of heading 84.43,85.25,85.27 or 85.28 (+).*

- Telephone sets, including telephones for cellular networks or for other wireless networks:

8517.11 - - Line telephone sets with cordless handsets

8517.12 - - Telephones for cellular networks or for other wireless networks

8517.18

--Other

- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

8517.61 - - Base stations

8517.62 - - Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus

8517.69 - - Other

8517.70 - Parts

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radiotelegraphy, local and wide area networks.

…..

(E) Telephonic or Telegraphic Switching Apparatus.

(1) Automatic switchboards and exchanges.

These are of many types. The key feature of a switching system is the ability to provide, in response to coded signals, an automatic connection between users. Automatic switchboards and exchanges may operate by means of circuit switching, *message switching or packet switching which utilize microprocessors to connect users by electronic means.*

Many automatic switchboards and exchanges incorporate analogue to digital converters, digital to analogue converters, data compression/decompression devices (codecs), modems, multiplexors, automatic data processing machines and other devices that permit the simultaneous transmission of both analogue and digital signals over the network, which enables the integrated transmission of speech, other sounds, characters, graphics, images or other data.

…..

(F) Transmitting and receiving apparatus for radio-telephony and radiotelegraphy.

This group includes:

(1) Fixed apparatus for radio-telephony and radio-telegraphy (transmitters, receivers and transmitter-receivers). Certain types, used mainly in large installations, include special devices such as secrecy devices (e.g., spectrum inverters), multiplex devices (used for sending more than two messages simultaneously) and certain receivers, termed "diversity receivers", using multiple receiver technique to overcome Fading.

(2) Radio transmitters and radio receivers for simultaneous interpretation at multilingual Conferences.

(3) Automatic transmitters and special receivers for distress signals from ships, aircraft, etc.

(4) Transmitters, receivers or transmitter/receivers of telemetric signals.

(5) Radio-telephony apparatus, including radio-telephony receivers, for motor vehicles, ships aircraft, trains, etc.

(6) Portable receivers, usually battery operated, for example, portable receivers for calling, alerting or paging.

(G) Other communication apparatus.

This group includes apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network. Communication networks include, inter alia, carrier-current line systems, digital-line systems and combinations thereof. They may be configured, for example, as public switched telephone networks, Local Area Networks (LAN), Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture.

This group includes :-

(1) Network interface cards (e.g., Ethernet interface cards).

(2) Modems (combined modulators-demodulators).

(3) Routers, bridges, hubs, repeaters and channel to channel adaptors.

(4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).

(5) Codecs (data compressors/decompressors) which have the capability of transmission and reception of digital information.

(6) Pulse to tone converters which convert pulse dialed signals to tone signals.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus, of this heading are also classified here."

12. Corresponding Customs Tariff entries for 8517 are read as under

" - Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

8517 61 00 -- Base stations

8517 62 -- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:

8517 62 10 --- PLCC equipment

8517 62 20 --- Voice frequency telegraphy

8517 62 30 --- Modems (modulators-demodulators)

8517 62 40 --- High bit rate digital subscriber line system (HDSL)

8517 62 50 --- Digital loop carrier system(DLC)

8517 62 60 --- Synchronous digital hierarchy system(SDH)

8517 62 70 --- Multiplexers, statistical multiplexers

8517 62 90 --- Other

…. …."

18. On going through the relevant HSN notes, we find that the apparatus or equipments referred in the notes are complete apparatus and not Populated Printed Circuit Boards of such apparatus. As submitted by the respondent the Network Interface Cards referred to in the notes are not PCB of any transmission or reception apparatus of heading 8517. Network Interface Cards connect the computers to the internet and therefore can be considered to have independent function. Going by the product literature and our discussions as above, we find that the impugned cards are incorporated in and or parts of DWDM equipments.

19. We find that this Bench has gone into the issue of classification of parts or equipment while dealing with the classification of antennas imported by the very same respondent case. This Bench observed that

"Now, a simple analysis of Heading 8517 effective from 1-1-2007, it is clear that the instruments/telephone sets for cellular networks/wireless net works, apparatus both for transmission and reception of voice, images or other data in a wired or wireless network, and "parts" classified under the said heading

broadly placed under three categories of single dash (-). First single dash (-) for telephone sets, including telephones for cellular network or for other wireless network; second single dash (-) for 'other apparatus for transmission or reception of voice, images, or other data including apparatus for communication in wired or wireless network (such as local or wide area network); and the third single dash (-), for "parts". The 'base station' is classified under the second category under CSH 8517 61 00, to which neither side disputes.

42. Revenue, referring to the definition of 'machine' prescribed under Note 5 of Section XVI classified the 'antenna' for base station under second category, as 'machines' for reception, conversion and transmission or regeneration of voice, images or other data including switching and routing apparatus. The Revenue's argument is based on the clarification issued by the Board on 1-1-2018 that antenna is an essential device of a wireless communication system; the information can travel only in the electromagnetic wave form. The antenna radiates the information in the form of electromagnetic wave in an efficient and desired manner to the base station, where the information is picked up by the receiving antenna and passed on to the receiver via transmission line. The signal is demodulated and the original message is then recovered at the receiver. Thus, the wireless communication gets established. It is the contention of the department that since the antenna can generate electromagnetic wave from current and voltages and which can convert electromagnetic wave to current and voltages with these waves impinge on it, therefore, it can be considered as a machine, which independently receives and transmits electromagnetic waves.

43. The respondent's contention, on the other hand, is that the antenna is a passive element. It cannot function on its own unless connected to the base station, Therefore, the same does not fall within the scope and meaning of 'machine' prescribed at Note 5 under Section XVI.

44. In support of their contention that the antenna imported for base station is a passive element, the respondent placed on *record the opinion of Vinod Gandhi & Associates, Government registered Chartered Engineer. Also, they have placed a letter dated 12-11-2018 issued by the manufacturer of antenna i.e. M/s Ace Technology, Korea i.e. antenna supplied by them are passive part of base station i.e. e Node B (Sic). It is clarified that the antenna on its own is not capable of performing any function and when connected, it only transmits and receives only the signals. It is further stated that the antenna is not performing in any other functions like conversion or regeneration of voice, images or other data signals or switching and/or routing of signals. No technical literature has been placed by the Revenue in support of their contention that the imported antenna for base stations are designed to function independently as a machine, contrary to the claim of the Respondent that these are passive elements and can function only when attached to the base station for receiving and sending signals. The Revenue has placed the general information available on net about the multi fold use of e node antenna in 4G & 5G network in the developed wireless cellular technology. Comparing the data placed on the imported goods, we find merit in the contention of the Learned Advocate for the appellant that to be antenna as machine, it needs to be something more than a passive element of receiving and sending electromagnetic waves when attached to a base station. The meaning of 'machine' provided under Note 5 to Section XVI reads as :*

"5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance in the headings of Chapter 84 or 85."

The meaning of 'machine' has to be understood in the context of Heading 8517. This is clear when we read the scope of Heading 8517 as explained under HSN which reads as follows :-

"This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy,

radio-telephony, radio-telegraphy, local and wide area networks."

45. In the present case, the manufacturer of antenna as well as the chartered engineer's certificate, in clear terms clarified that the antenna in question transmits and receives only signals and not performing any other function like conversion or regeneration of voice, images or other data signals and switching/routing of signals. Therefore, the antenna stand alone cannot be considered as a 'machine', attracting classification under Heading 8517.62. Consequently, the observation of the department in the circular dated 15-1-2018 that the Antenna itself is a complete device and has capability of functioning on its own of conversion of electrical signals into electromagnetic waves and vice versa in a wireless communication system cannot be applied to the present goods as it would be complete only when connected to a base station. In the event if the antenna so designed, instead of working as a passive element, besides the above function, it also performs some more functions as in the case of other entries under the same category, its classification under sub-heading 8517 62 may be attracted considering the same as an independent of 'machine'.

46. The Revenue's contention to classify the 'antenna' for base station under sub-heading 8517 62 rests on the ground that as per Note 2(a) of Section XVI, parts which in themselves constitute an article covered by a heading of this section, in all cases are to be classified in their own appropriate heading even if specially designed to work as part of a specific machine. Further it is contended that Antenna is a part of a machine classifiable under Heading 8517, only in the situation when it is not covered by any other headings of the section. As per department, since it is classifiable under 8517 62, hence, not to be considered under sub-heading8517 70 as 'parts'. The said Chapter note reads as follows :

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538, and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548."

47. A simple analysis of Clause (a) of the above Note reveals that parts which are 'goods' required to be classified in the respective headings; in the present case, 'Antenna' being a part of the BTS, hence applying the said Rule, classifiable under Chapter Heading 8517. Revenue's interpretation of the said clause (a) in the present case is that in the event if the goods are not falling under any of the sub-heading of Heading 8517, then only it will be classifiable as 'parts', is incorrect. Clause (b) of the said Note 2 indicates that "other parts", by implication which are not goods, if suitable for use solely or principally with a particular kind of machine of the same heading are to be classified with the machines of that kind or the headings mentioned under the said clause (b) as appropriate. Further, it is mentioned that parts which are equally suitable for use principally with the goods of Heading 85.17 and Headings of 8517 and 8525 to 8528 are to be classified as Headings of 8517. Therefore, antenna since parts of BTS, as held by Hon'ble Supreme Court in Hutchison Essar South Ltd.'s case (supra), therefore, be classified as "parts" under Tariff Item 8517.7090.

20. We also find that Hon'ble Apex Courts has dealt the issue of classification of parts in the case of N.I. Systems India P. Ltd. -

2010 (256) ELT 173 (SC) = 2010-TIOL-52-SC-CUS and held as under:-

"28. For the reason given hereinafter, we hold on the basis of technical material (including the importer's own catalogue and webcast) that Controllers (including embedded controllers) are not merely PCs/ADPMs, but have a specialized structure and specific functions to perform and are therefore classifiable under Chapter 90.

29. Similarly, I.O. Modules and Chassis, which are the subject matter of import in this civil appeal are meant to operate as parts of industrial Process Control equipments like sensors. These I.O. Modules come with software tailored to their specific pre-defined functions. Therefore, one has to see the package in the holistic manner. The package as a whole both hardware and software- constitutes one single functional unit. Accordingly, we hold that I.O. Modules and Chassis are classified as parts and accessories of Automatic Regulating or Controlling Instrument/Apparatus under CTH 9032.90.00."

20. In view of the above, we find that the Department could not support their contention. No technical literature was submitted; in spite of the fact that the imports have been taking place over a period of time. Learned Commissioner (Appeals) has been upholding the contention of the appellants. In one instance Revenue has accepted the order of Commissioner (Appeals). We find that the Department has not drawn any samples and did not obtain technical opinion to support their claim that the impugned goods are complete machines or equipment capable of independent function themselves so as to merit classification under CTH 85176270. On the contrary, the respondents could demonstrate by technical literature; samples and the ratio of judgments cited above that the goods imported by them are Populated Circuit Boards (PCBs) used in PSS 1830 and therefore, the impugned goods are parts of PSS and as such merit classification CTH 85177010. We also find that the appellants have submitted US Customs Rulings on the classification of the impugned goods, though they are not binding on us, they would certainly have a persuasive effect more so in the absence of any *evidence to the contrary. In view of the discussion as above, and considering the fact that Commissioner (Appeals) has been consistent in rejecting the department's claim, we are of the considered opinion that there is no merit in the appeals filed by the Department.*

21. In the result, we uphold the impugned orders and reject the appeals filed by the Department."

4.6 Since the same issue has been considered by the coordinate bench and the appeals filed by the revenue have been dismissed, in our view this appeal also needs to be dismissed.

5.1 The appeal filed by the revenue is dismissed. The cross objections filed by the respondent are disposed of.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Kumar)
Member (Judicial)

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