(2012) 06 BOM CK 0156

In the Bombay High Court

Case No : Central Excise Appeal No. 64 of 2012

Commissioner of Central Excise and Customs APPELLANT

Vs

EMI Transmission Ltd. RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Citation : (2013) 292 ELT 329

Hon'ble Judges : R.Y. Ganoo, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Pradeep S. Jetly with Jitendra B. Mishra, for the Appellant; Padmavati Patil instructed by y M.H. Patil, for the Respondent

Judgement

1. Whether the CESTAT was justified in deleting the duty confirmed and penalty levied u/s 11AC for the period beyond one year from the date of issuance of the show-cause notice is the question raised in this appeal. Relevant facts are that: during the period from 7th July 2001 to 19th December 2001, the assessee supplied goods to the Transmission Corporation of Andhra Pradesh by availing exemption under Notf. No. 108/95, as it was a project financed by the Japan Bank of International Corporation (''JPIC'' for short). It is not in dispute that on the date on which supplies were made, all the parties proceeded on the footing that JPIC was an international organization and that the assessee was entitled to the benefit of the notification. It is only by a letter dated 4th January 2002, the Transmission Corporation of Andhra Pradesh intimated to the assessee that JPIC was not a notified international organization and, hence, benefit of Notification No. 108/95 is not available to the assessee.

2. If supplies were made by the assessee during the period from 7th July 2001 to 19th December 2001 on the basis of the representations made by Transmission Corporation of Andhra Pradesh and subsequently it is found that the representation made by the Transmission Corporation was erroneous, the assessee could not be penalised. In these circumstances, no fault can be found with the decision of the CESTAT in deleting the demand of duty and penalty for

the period beyond the normal period. In the result, we see no merit in the appeal. Hence, the appeal is dismissed with no order as to costs.

