REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 24/11/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70061/2015- dated 06/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

SPS 25/11
Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/811/2007	KRISHNA UDYOG UDYOG VIHAR, VRINDAVAN DISTT- MATHURA(UP)

Name and Address of Respondent: CCE LUCKNOW
7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI.

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALLAHABAD

Appeal No. E/811/2007

(Arising out of Order-in-Appeal No. 174-CE/LKO/2006 dated 30.11.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Lucknow).

For approval and signature:

Hon'ble Shri P.S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Departmental authorities?	:	Yes

M/s Krishna Udyog	Appellant
Vs.	
Commissioner of Central Excise, Lucknow	Respondent

Appearance:

Shri Amit Jain, Advocate with Shri Victor Das, Advocate	for Appellant
Shri Govind K Dixit, Addl. Commr. (AR)	for Respondent

CORAM:

SHRI P.S. PRUTHI, MEMBER (TECHNICAL)
SHRI S.S. GARG, MEMBER (JUDICIAL)

Date of Hearing: 15.09.2015

Date of Decision: ~~.09.2015~~ 6-10-2015

Carvbruta

Final ORDER NO. 70061/2015

Per: P.S. Pruthi

The appellant are engaged in the manufacture of PVC Insulated Winding Wires of Copper classifiable under tariff heading 85.44 of the Schedule to the Central Excise Tariff. The appellant were availing the benefit of SSI exemption Notification No. 175/86 dated 1.3.1986 and paying duty at concessional rate as applicable under this notification. During 2002-03, they submitted a fresh classification list 2/92-93 effective from 21.9.1992 claiming benefit of Notification No. 116/90 dated 16.6.1990. In terms of this notification, the product is chargeable to Nil rate of duty on fulfillment of conditions, inter alia, that such PVC Insulated Winding Wires are made from bars, billets, rods or wires of maximum cross-section dimension exceeding 6mm on which duty of excise has been paid at the rate of not less than Rs.16,200 per Ton and no duty credit thereof has been taken under Rule 57A of the Central Excise Rules. Scrutiny of records revealed that the appellant had purchased copper wires of diameter not exceeding 6 mm and this fact was not reflected in records such as Form-IV Register, Classification list, RT-12 returns. Accordingly, a SCN was issued on 26.9.1996 demanding duty of Rs.13,96,273/- under proviso to section 11A(1) from the period 26.9.1992 to 21.3.1993 and proposing penalty under Rule 173Q. In adjudication proceedings, the demand was confirmed. In appeal proceedings, the Commissioner (Appeals) upheld the Order-in-Original. The appellant are in appeal before us against this impugned Order-in-Appeal.

2. The submissions of the learned Counsel are four fold.

2.1 His first contention is that in production of PVC insulated winding wires, there is no 'manufacture' at all. Therefore, the question of payment of duty does not arise. He relied on Board Circular No. 720/36/2003-CX dated 29.5.2003 clarifying that drawing of wire from wire rods does not amount to manufacture. He relies on *Collector of Central Excise Vs. Technoweld Industries Ltd. – 2003 (155) ELT 209 (SC)*. The learned Counsel contends that the Commissioner (Appeals) has not been given any finding on this plea made by them that the process itself does not amount to manufacture.

2.2 The next argument is that although the PVC winding wire should be made from wire exceeding 6 mm cross-sectional diameter, but this does not mean that the wire exceeding 6 mm cross-sectional diameter should be in the hands of the appellant themselves. He relies on Board Circular No. 2/91/CX-4 dated 2.1.1991 which clarified that, if for the purpose of exemption the input is specified as billet, it cannot be held that exemption would not be available if the input is a wire rod, which is obtained from billets. He also relies on Board Circular No. 93/13/87-CX.3 dated 25.6.1987, which clarified that so long as duty paid bare films which have gone into the manufacture of such lacquered/ laminated/metallised can be proved to have been manufactured out of duty paid plastic material, such lacquered films can also be said to have been manufactured from duty paid plastic material. He relied on the Hon'ble Supreme Court judgment in the case of Tata Oil Mills Co. Ltd. Vs. CCE – 1989 (43) ELT 183 (SC). In this judgment, it was held that soap made from rice bran oil will remain exempted, if instead of rice bran oil, the rice bran fatty acid produced in an outside factory is used because the rice bran oil is first converted into hydrogenated fatty acid.

2.3 On the issue of time bar, it is stated that they filed a classification list claiming the exemption and there was no requirement to file copies of input gate passes. Further, their RT-12 returns were finalized without any objection. He relies on the Hon'ble Apex Court decision in the case of *Commissioner of Central Excise, Jamshedpur Vs. Dabur (India) Ltd. – 2005 (182) ELT 308 (SC)*. In their case the objection arose from the Audit and the show-cause notice was issued on 26.9.1996, i.e. after a period of three years. In such case, extended period cannot be invoked as held by the Hon'ble Allahabad High Court in the case of *Commissioner of Central Excise Vs. Triveni Engineering & Industries Ltd. – 2015 (317) ELT 408 (All.)*.

2.4 Lastly, it is contended that if it is held that the process carried out by the appellant amounts to manufacture and the appellants are not entitled for the exemption, they would still be entitled for the Modvat Credit of the duty paid on the inputs.

3. The learned AR reiterates the findings of the adjudicating authority. He stated that it was only during Audit Scrutiny that it came to light that the Gate Passes of raw material showed that the appellant were using copper wire of diameter not exceeding 6 mm. He further states that it is not a question of manufacturing wire out of wire. The issue here is that the PVC winding wire is a final product, which is exempted only if the input wire exceeds 6 mm cross-dimensional area. Therefore, there is a clear violation of the notification. He also submitted that neither the classification list nor the Form-IV register, nor the RT-12 returns mentioned that they were using wire of cross-dimension less than 6 mm. The approval of classification indicating eligibility of Notification No. 116/90 is obviously pre-supposes observation of conditions of the notification.

4. Heard both sides and considered the submissions.

4.1 Taking the first contention of the learned Counsel for the appellant, we find that the input received in this case is copper wire of cross-dimensional area either exceeding 6 mm or below 6 mm. We would appreciate that no manufacture is involved if the wire of higher cross-dimension is drawn into the wire of lesser cross-dimension. But in the present case, the final product for which exemption is being claimed is PVC Insulated Winding Wire. The input and the finished products are clearly distinct products and are known in the market as such. It would not require much imagination to show that process of making of PVC Insulated Winding Wire from simple wire is a process resulting in a different product and thus amounting to manufacture. Therefore, the judgment cited by the learned Counsel i.e. *Technoworld Industries (supra)* are of no help because in that case the process considered was drawing the wire from a wire-rod. Similarly, the facts in the case of *National Insulated Cable Co. Vs. Commissioner of Central Excise – 1989 (42) ELT 109* are different because in that case the copper strips were insulated with varnish and it was held that the character of copper strips was not changed by this process. In the present case, it is not a simple case of coating. It is a case of sheathing the wire by a process by which the wire gets cover of PVC throughout its length and undoubtedly the PVC wire is a different, commercially known product. The case of *Lenzohm Electrical Engg. Co. Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-II – 2003 (156) ELT 435 (Tri-Mum)*, was different as the issue under consideration was winding of wires in the repair of coils of electrical transformers; thus the facts were different. Therefore, the first contention of the appellant is rejected.

4.2 The second contention is that even if the wire of cross-dimensional section exceeding 6 mm was not in their hands, it does not mean that the same was not the source of the material out of which PVC wire were made. We find from a plain reading of the notification that the exemption on manufacture of PVC Insulated Winding Wire was available only if the input was wire of maximum cross dimensional area exceeding 6 mm of copper. We do not find under the notification any reference to the fact that PVC Winding wire should be made from cross-dimensional area less than 6 mm. This would be a mere presumption and has not been explained by the learned Counsel. Once the conditions of the notification are laid down, we see no reason to deviate from the same. We have seen the judgment in the case of Tata Oil Mills (supra). The facts there were different. There the soap was to be made from rice bran oil whereas the appellant had made it from hydrogenated fatty acid which was made from the rice bran oil. The Hon'ble High Court held that the exemption was clearly for soap manufactured from rice bran oil and not from any other oils. Hydrogenated fatty acid being an intermediate product made from rice bran oil, the Court held that the exemption is admissible. In the present case, there is nothing in the notification No. 116/90, which says that the PVC insulated wire is ultimately made from wire of cross dimensional section less than 6 mm. Therefore this judgment is not applicable to the facts of the present case. Similarly, other judgments would not apply to the facts of the present case. The case of *Triveni Conductors (supra)* is also different. In that case, the assessee had received wire of more than 6 mm dimension which was reduced to less than 6 mm on job-work basis. The Board Circular dated 2.1.1992 would also not apply to the facts of the present case because there the issue was that exemption cannot be denied on the ground that wire was made from an intermediate product i.e. wire rod which in turn was made from a billet which was explicitly included as an input for the benefit of the notification.

4.3 On the issue of time bar, we would agree with the findings of the Commissioner that once the notification benefit is claimed in the classification which is approved by the Central Excise authorities, it goes without saying that the conditions of the notification have to be satisfied. It is not possible for Revenue to know before hand that the condition will not be satisfied. The decision of the Hon'ble Supreme Court in the case of Dabur India Ltd. (supra) is based on the fact that the extended period of limitation would not apply when the classification list has been duly approved. In the present case approval was given for benefit of the notification. But later it was revealed that the condition of the notification approved in the classification list was not observed. Neither the Form-IV register indicated that the appellant were receiving the wires of less than 6 mm dimension; nor the RT-12 returns were shown to us indicating that wire of less than 6 mm dimension were used. The input gate passes are not submitted to the Central Excise authorities with RT-12 returns. In the circumstances, it is impossible for the Central Excise authorities to know that the assessee was using such wire. It was only after audit was conducted that the true facts came to light. Therefore, there is clear suppression of facts in claiming the benefit of notification wrongly. The extended period in such case is invocable. The judgment relied upon in the case of Triveni Engg. is not applicable because the present case is not a mere act of omission but is a definite act of suppression of facts leading to violation of the condition of the notification and consequent evasion of duty. Even if the show-cause notice was issued three years after the period of dispute, the extended period in terms of the legal provisions of Section 11A which provides for issue of show-cause notice within 5 years from the date on which the return is filed would apply in terms of the definition of 'relevant date' under Section 11A. With due respect to the judgment cited by the learned Counsel, we find that the statutory definition of "relevant date" was not considered by the Hon'ble High Court.

4.4 The last plea of the learned Counsel is that the benefit of Modvat Credit on the inputs should be given in case the benefit of exemption is denied. We agree with this contention because had they not availed the benefit of Nil rate of duty under the exemption, Modvat Credit on the inputs would have been available. Therefore, we allow the benefit of the Modvat Credit on the inputs subject to verification by the jurisdictional Assistant Commissioner.

5. Having held that there was mis-statement of facts, the mandatory penalty under Section 11AC is imposable. However, as we have allowed the benefit of Modvat Credit, the mandatory penalty under Section 11AC shall be the amount of duty demanded after allowing the benefit of verified Modvat Credit on the inputs. The duty demand would naturally be restricted to duty on PVC winding wires made out of wires of maximum cross-dimensional section not exceeding 6 mm.

6. Appeal disposed in terms of paras 4.4 and 5 above.

(Pronounced in Court on 6-10-15)

(S.S. Garg)
Member (Judicial)

(P.S. Pruthi)
Member (Technical)

प्रमाणित प्रति / Certified True Copy

[illegible]

[illegible] / Asstt. Registrar
[illegible]
[illegible] / (C.E.S.T.A.T.)
38, [illegible] 211001
38, M. G. MARG, ALLAHABAD-211001