IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. E/15/2011 and E/439/2012

(Arising out of Order-in-Appeal No.92/2010 dated 23.9.2010 and Order-in-Appeal No. 37/2012 dated 24.7.2012 both passed by the Commissioner of Central Excise (Appeals), LTU, Chennai)

M/s. Alstom T&D (India) Ltd. & Schneider Electric
Infrastructure Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Respondent

Appearance

Shri Joseph Prabhakar, Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **20.03.2019**

Final Order Nos. **40580-40581 / 2019**

Per Bench

After hearing both sides, we find that the issue stands covered by the decision of the Tribunal in the case of Areva T&D India Ltd. Vs. Commissioner of Central Excise, LTU, Chennai as reported in 2017-VIL-983-CESTAT-CHE-CE.

2. Brief facts are that the appellants are engaged in manufacture of various types of relays falling under CETA 85364900 which are cleared for home consumption as well as for export under Letter of Undertaking. They also clear relays for captive consumption for manufacture of control panels falling under Chapter Heading 85371000 of CETA, 1985 without payment of duty under Notification 67/95-CE dated 16.3.1995. The control panels in turn are cleared for home consumption on payment of duty to export markets under LUT as well as under exemption Notification 6/2006-CE dated 1.3.2006 (Sl. No. 91) as amended, without payment of duty. These control panels are cleared to Mega Power Projects which are exempt under Notification 6/2002 and 6/2006. The department was of the view that they are not eligible for the benefit of Notification 67/95 as they have not complied with the conditions stipulated therein. The issue stands covered by the decision cited above. The relevant portion is extracted as under:-

> *"5.1 The facts of the case are not in dispute. The appellant-assessee cleared the control panels availing exemption to Mega Power Projects. For such exemption, the appellant-assessees have complied with the provisions of Rule 6 of Cenvat Credit Rules, 2004. They are falling under the category of clause (vii) of Rule 6 (6) (vii). It is apparent that the provisions of Rule 6 with reference to reversal of credit or payment on a fixed percentage amount on the value of the exempted goods have no application to the facts of the present case. The appellant-assessee is covered by clause (vii) of the said Rules. This, which has been admitted in the original order dated 26.12.2008. In fact, the original authority*

categorically recorded that the Rule prescribing the obligation is not applicable to the clearances now under dispute. However, he proceeded to confirm the demand on the ground that the appellant did not discharge the obligation of the said Rule. We find that the conclusion of the original authority is self-contradictory.

5.2 On careful consideration of the facts of the case and submissions of the appellants, we note that the eligibility of the appellant-assessee for exemption under Notification No. 67/1995 cannot be disputed. They have followed the provisions and complied with the provisions of Rule 6 and all the connected requirements of the Notification No. 67/1995. We find that the ratio and findings of the lower authorities are not legally sustainable. In this connection, we have also referred to the decision of the Tribunal in the case of Bharat Aluminium Co. Ltd. Vs. CCE, Raipur -2017 (345) ELT 685 (Tri.-Del.), wherein similar dispute was decided.

6. In view of the above discussion and analysis, we find that the impugned order is not legally sustainable. Accordingly, the same is set aside. The appeal by the appellant-assessee is allowed and the appeal by the Revenue is dismissed."

3. Following the said decision, we are of the considered opinion that the demand cannot sustain. The impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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