

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

E/120/2010 & E/110/2010

(Arising out of Order-in-Appeal No. 64/2009 dated 07.12.2009 passed by the Commissioner of Central Excise, (Appeals), LTU, Chennai).

M/s. Areva T & D India Ltd.,

Appellant/Respondent

Vs.

CCE & ST, LTU, Chennai

Respondent/Appellant

Appearance

Shri Joseph Prabakar, Advocate,
for the Appellant

Shri Arul C. Durairaj, Supdt. (AR)
for the Respondent.

CORAM :

Hon'ble Smt. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing/Decision: 14.11.2017

FINAL ORDER No. 42931-42932/2017

Per: B. Ravichandran

Both Revenue as well as the assessee are in appeal against the order dated 07.12.2009 of Commissioner (Appeals) of LTU, Chennai. Appellant-assessee are engaged in the manufacture of various types of electrical relays which are liable to Central Excise duty. These relays are also used in further manufacture of control

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panels which were cleared on payment of duty. The appellant-assessee cleared some quantity of control panels without payment of duty claiming exemption under Notification No. 6/2002 dated 01.03.2002 and No. 6/2006 dated 01.03.2006. The exemption is available to supplies made to Mega Power Projects. There is no dispute on this exemption. For the relays which are manufactured and captively used in the manufacture of control panels which are cleared without payment of duty, the Revenue sought to deny the exemption under Notification No. 67/95-CE dated 16.03.1995. The Revenue held a view that since the final product did not suffer duty, the exemption for captive consumption shall not apply. The claim of the assessee-appellant that they are falling under excluded category listed in the same Notification on the ground that they have complied with the provisions of Rule 6 of Cenvat Credit Rules, 2004, has not been accepted by the Revenue. The lower authorities held that since the appellant-assessee did not discharge 10% amount on the value of the exempted clearances (control panels), they have to pay Central Excise duty on the relays captively consumed.

2. The Ld. Counsel for the appellant-assessee submitted that the conditions of Notification No. 67/1995-CE were complied with and they are covered by the exclusion clause of (vi). The said exclusion is applicable when the assessee complies with the condition of Rule 6 of Cenvat Credit Rules. In the present case, they have complied with the same. The compliance need not be



only by payment of an amount. He submitted that the lower authorities have erred in holding against the assessee-appellant.

3. The Ld. AR for the Revenue submitted that the Revenue is in appeal against the dropping of demand for the extended period on the appeal by the assessee-appellant. He further submitted that the lower authorities examined the facts of the case and held against the assessees. The exclusion clause under Notification No. 67/1995 will stand fulfilled only on discharging duty in terms of Rule 6. Since the appellant-assessee did not pay any duty, the lower authorities are correct on merits.

4. We have heard both sides and perused the appeal records.

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

Sanjit

Excise & Service Tax Appellate Tribunal

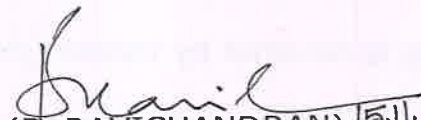


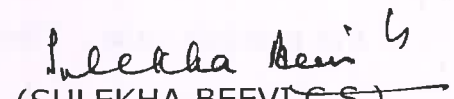
proceeded to confirm the demand on the ground that the appellant did not discharge the obligation of the said Rule. We find that the conclusion of the original authority is self-contradictory.

5.2 On careful consideration of the facts of the case and submissions of the appellants, we note that the ^{eligibility} ~~ability~~ 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 ^{legally} ~~not~~ sustainable. Accordingly, the same is set aside. The appeal by the appellant-assessee is allowed and the appeal by the Revenue is dismissed.

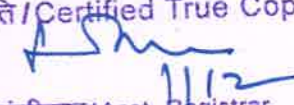
(Order dictated and pronounced in the Open Court)


(B. RAVICHANDRAN) 16.11.17
MEMBER (TECHNICAL)


(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB



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