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

E/659/2007

(Arising out of Order-in-Original No. 7/2007 dated 30.5.2007 passed by the Commissioner of Central Excise, Puducherry)

M/s. Marshal Power and Telecom (India) Ltd. Appellant

Vs.

CCE, Puducherry Respondent

Appearance

Shri N. Viswanathan, 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: **09.05.2017**

Final Order No. 40683/2017

Per Ms. Sulekha Beevi C.S.

The appellants were registered as 100% EOU. They procured capital goods and raw materials without payment of duty on the basis of CT-3 certificate in terms of Notification No.1/1995-CE dated 4.1.1995. Though they commenced the production, they did not export any finished goods. The appellants had executed B17 Bond for Rs.10,00,000/- on 28.4.1997 which was revised to Rs.20,00,000/- on 9.10.2000.

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The LOP expired on 26.2.2000 and no objection was issued by the Development Commissioner on 15.1.2001. The officers of DGCEI visited the unit on 14.10.2003 and found that the appellants were indulging in clandestine removal of finished goods which were manufactured using the duty-free raw materials as well as capital goods. A show cause notice was issued alleging the same. The appellants approached the Settlement Commission admitting the duty liability with regard to the finished goods and the amount settled was paid by them being the duty on the finished goods. Thereafter, a show cause notice was issued demanding duty on inputs and capital goods procured by them under CT-3 Certificate availing exemption under Notification No.1/95-CE invoking section 59 of the Customs Act, 1962 and Rule 196 of the Central Excise Rules, 1944. After due process of law, the adjudicating Commissioner confirmed the duty liability along with interest and imposed penalties. Being aggrieved, the appellant is now before the Tribunal.

2. On behalf of the appellant, learned counsel Sh.N.Viswanathan submitted that the appellant had admitted the duty liability on the finished goods before the Settlement Commission and had discharged the duty on the finished goods. It is seen from the show cause notice that the raw materials as well as the capital goods on which duty has been

now demanded are the same raw materials and goods which have been used by the appellants in manufacture of finished goods. That, therefore, as per clause 5 of the Notification, the appellants are eligible for the exemption of raw materials / capital goods. He submitted that the appellants had also paid depreciated value on the capital goods along with interest to the tune of Rs.9,65,757/- as on 5.11.2001. He also argued that the appellant has a good case on limitation. The Annexures to the show cause notice would show that the period involved is from 1997 to 2001 and the show cause notice has been issued after more than seven years which is dated 29.6.2006. That the department was already aware with regard to the show cause notice on the finished goods and also that the appellant had approached the Settlement Commission. That, therefore, the show cause notice issued after a prolonged period of seven years is unsustainable.

3. On behalf of Revenue, learned AR Shri B. Balamurugan submitted that the appellant have procured the goods under CT-3 certificate by availing the duty exemption under Notification No. 1/95. That, therefore, even if they have paid the duty on the finished goods, they are liable to pay duty on the inputs and capital goods used for manufacture of the finished goods. With regard to the issue of limitation, he submitted that the said ground is not applicable to the violation

of the conditions in Notification No. 1/95. That since it is a continuous obligation, the show cause notice issued after a period of seven years is sustainable.

4. We have heard both sides. The issue that poses for consideration is whether the raw materials/capital goods used for manufacture of finished products have been subjected to duty as per the order of the Settlement Commission are liable to duty or not. On perusal of the records, it is seen that the raw materials as well as capital goods which form part of the Annexure to the show cause notice are the same inputs as well as capital goods which have been used in the manufacture of finished goods. Admittedly, the said finished products have been subjected to duty by the order passed by the Settlement Commission. As ordained in section 32M of the Central Excise Act, 1944, every order of settlement shall be conclusive as to the matters stated therein and no matter covered by such order can be ordinarily reopened under that Act or any other law for the time being in force. Viewed in this light, when the duty on finished goods has been settled by the Settlement Commission, there can be no further liability on the raw materials utilized and consumed in manufacture of the said finished goods. It is also not the case of the department that raw materials were cleared "as such". When raw materials have been used up in manufacture of finished goods and duty

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liability on the latter having been settled and paid, demand of duty on the former would surely amount to double taxation. Further, the appellant on 5.11.2001 has already paid duty to the tune of Rs.9,65,757/- on depreciated value of capital goods, at the time of debonding, which was accepted by the Assistant Commissioner, a further show cause notice invoking extended period is unsustainable. Clause 5 and 6 of Notification No.1/95 reads as under:-

> "5. Notwithstanding anything contained in this notification, the exemption contained herein shall also apply to the said goods used for the purposes of production, manufacture, processing or packaging of articles in a user industry and such articles (including rejects, waste, scrap and remnants arising out of such production, manufacture, processing or packaging of such articles) even if not exported out of India are allowed to be cleared outside the user Industry under and in accordance with the Export-Import Policy and subject to such other limitations and conditions as may be specified in this behalf by the said Board or the said Committee, as the case may be, on payment of appropriate duty of excise :
>
> Provided that goods which have been repaired, reconditioned or reengineered shall not be allowed to be cleared outside the user industry.
>
> 6. Without prejudice to any other provisions contained in this notification, where it is shown to the satisfaction of the Assistant Collector that user industry has been permitted to clear any of the said goods for being taken outside to any other place in India by the said Board or the said Committee, as the case may be, in accordance with the Export-Import Policy -
>
> (a) such clearance of capital goods, material handling equipment, office equipment and captive power plants or as the case may be, captive generating sets may be allowed on payment of an amount equal to the excise duty leviable on such goods on the depreciated value thereof and at the rate in force on the date of payment of such duty;
>
> (b) such clearance of used packing materials such as cardboard boxes, polyethylene bags of a kind unsuitable for repeated use, may be allowed without payment of any excise duty;
>
> (c) such clearance of goods [other than those specified in clauses (a) and (b) above] may be allowed on payment of excise duty leviable on such goods, on the full value at the time of their clearance from the

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factory of manufacture and at rates in force on the date of payment of such excise duty.

Explanation. - The depreciation in respect of goods covered by clause (a) shall be allowed for the period from the date of commencement of commercial production of the unit or the date of receipt of the goods in the unit, whichever is later, till the date of payment of duty."

5. From the above, it can be seen that even if the goods are not exported, the exemption as per the Notification is eligible if the finished goods are cleared on payment of appropriate excise duty. In the present case, undisputedly, the appellants have paid the excise duty on the finished goods. Therefore, the duty liability on the finished products have attained finality as per the order of the Settlement Commission dated 6.9.2007. Taking note of these facts, we are of the opinion that the department was all through aware of the show cause notice as well as the proceeding pending with regard to the demand of duty on the finished goods. In spite of that, there has been a delay of seven years in issuing the show cause notice demanding duty on inputs as well as capital goods. The contention raised by Revenue that since it is a continuous one, the time limit / limitation cannot be applied in the present case cannot be accepted for the reason that the department would very well have covered the same issue regarding the demand of duty on inputs / capital goods in the show cause notice issued for demanding duty on finished goods. Therefore, we find that the demand is barred by limitation.

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6. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)	**(SULEKHA BEEVI C.S.)**
Member (Technical)	Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

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सहायक पंजीकार / Asst. Registrar
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