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

E/991/2006

(Arising out of Order-in-Original No. 28/Commr/06 dated 26.10.2006 passed by the Commissioner of Central Excise (Appeals), Tirunelveli).

M/s. Parvenu Industries Ltd. : Appellant

Vs.

CCE, Tirunelveli : Respondent

Appearance

Shri S. Murugappan, Adv.,
For the appellant

Shri L. Paneerselvam, AD\C (AR)
For the respondent

CORAM

Hon'ble Shri D.N.PANDA, Judicial Member
Hon'ble Shri MADHU MOHAN DAMODHAR, Technical Member

Date of Hearing/Decision: **07.03.2017**

FINAL ORDER No. 40435/2017

Per: D.N.Panda,

The only dispute in this appeal is whether the intermediate PP strips manufactured by the SSI appellant falling under Chapter 38 of the CETA,75 ultimately used in the manufacture of woven sacks which were finished goods is exempted in terms of Notification No.67/95-CE dated 16.03.1995.

2.1 Appellant explains that, no doubt it is a SSI and manufactures woven sacks as its final product. Being a SSI it avails the benefit of exemption on its clearances following the ceiling prescribed by law. For clearances, beyond the ceiling, duty was paid. In order to manufacture the final products PP strips were manufactured and covered by Chapter 39 of CETA, 75 and dutiable. But such goods being input to manufacture of woven sacks was intermediate and in terms of Notification 67/95-CE dated 16.03.95, such intermediate goods being input manufactured in the factory of appellant and used in manufacture of final product by the appellant in its own factory satisfies the condition of column 3 of the Table appended to the said Notification and exempt. This entitles the appellant to get exemption for the reason that it is not covered by the tariff heading 24.36, 37.06 or 27.10.11,2710.12,2710.13 or 2710.19. So also the intermediate is not classified under 27.10 of CETA, 75.

2.2 It is further explained by the appellant that the goods which are intermediate are nothing but input falling under Column 2 of the Table appended to the Notification and gave rise to the final goods listed in col. 3 of the said Table. In view of the clear mandate of manufacture of the intermediate input in the own factory of the appellant and used the same in the manufacture of the final product in the same factory that entitles the appellant to get the benefit of Notification No. 67/95-CE. Contentions of the appellant flows from the said notification which reads as under:

Notification No. 67/95-CE dated 16 Mar. 1995

"Capital goods and inputs captively consumed within the factory of production

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In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts -

(i) capital goods as defined in rule 57Q of the Central Excise Rules, 1944 manufactured in a factory and used within the factory of production;

(ii) goods specified in column (2) of the Table hereto annexed (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in column (3) of the said Table;

from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) :

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export Oriented Undertaking or to a unit in an Electronic Hardware Technology Park or to a unit in a Software Technology Parks), which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty.

Explanation. - For the purposes of this notification 'inputs' does not include -

(i) packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products;

(ii) packaging materials or containers, the cost of which is not included in the assessable value of the final products under section 4 of the Central Excises and Salt Act, 1944 (1 of 1944).

TABLE

S.No.	Description of inputs	Description of final products
(1)	(2)	(3)
1.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, - (i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act; (ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act; (iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) of the Schedule to the said Act; (iv) high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, - (i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act; (ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act; (iii) woven fabrics classifiable under Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.

3. Revenue on the other hand says that the final goods manufactured being exempt, the intermediate manufactured by the appellant shall not be exempted in terms of the above Notification.

4. Heard both sides and perused the records.

5. It is an established fact from record that what was the input used by the appellant for manufacture of woven sacks was PP strips manufactured in its own factory and that was input for the final products ie., woven sacks. The input was thereby an intermediate manufactured in the factory of the appellant and was not at all covered by the barring clauses contained in (i), (ii) and (iii) and (iv) of Col.2 of the Table appended to the Notification No.67/95-CE dated 16.03.1995. Not being covered by the barring clauses, such input was used in the manufacture of the finished goods not barred by clauses (i), (ii) and (iii) of Col.3 of the Table appended to the above said Notification. It is mandate of the notification that when conditions attached to column 2 and 3 of the Table appended to the Notification are satisfied, grant of the notification is undeniable. At this stage, Revenue says that the appellant should be denied under the proviso to the notification. Such contention fails to get appreciation for the reason that the goods are neither exempt nor

subject to nil rate of duty by virtue of appellant's status as SSI whose clearances were otherwise dutiable. Accordingly, appeal is allowed.

(Dictated and pronounced in open Court)

10/03/17	10/3/2017
(MADHU MOHAN DAMODHAR)	(D.N. PANDA)
TECHNICAL MEMBER	JUDICIAL MEMBER

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