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

SL. No	Appeal No.	Appellant	Respondent	Arising out of	Advocate S/Sh/Ms.
1.	E/669/2005	Priya Hosieries	CCE, Coim-batore	OIA No.161/2005-CE dt. 29.6.2005-by CCE (A), Coimbatore	M. Karthi keyan
2.	E/670/2005	Priya Garments	-do-	OIA No.160/2005-CE dt. 29.6.2005-by CCE (A), Coimbatore	-do-
3.	E/671/2005	The Carnataka Knitting Co.	-do-	OIA No.162/2005-CE dt. 29.6.2005-by CCE (A), Coimbatore	-do-
4.	E/672/2005	M.V. Exports	-do-	OIA No.163/2005-CE dt. 29.6.2005-by CCE (A), Coimbatore	-do-
5.	E/673/2005	PVS Knittings	-do-	OIA No.164/2005-CE dt. 29.6.2005-by CCE (A), Coimbatore	-do-
6.	E/674/2005	PVS Knittings	-do-	OIA No.165/2005-CE dt. 29.6.2005-by CCE (A), Coimbatore	-do-
7.	E/733/2005	Ajay Vijay Industries	-do-	OIA No.175/2005-CE dt. 6.7.2005-by CCE (A), Coimbatore	S.Muthu venkatra man
8.	E/758/ 2005	Bhairav Overseas	-do-	OIA No.176/2005-CE dt. 6.7.2005-by CCE (A), Coimbatore	-do-
9.	E/764/2005	Anbu Garments	-do-	OIA No. 157 & 158/2005-CE dt. 24.6.2005-by CCE (A) Coimbatore	V. Ravindran
10.	E/765/2005	Anbu Garments	-do-	-do-	-do-
11.	E/792/2005	Priya Garments	-do-	OIA No. 237/2005-CE dt. 31.8.2005-by CCE (A) Coimbatore	M. Karthi keyan
12.	E/813/2005	K.N. Tex	-do-	OIA No. 185/2005-CE dt. 12.7.2005-by CCE (A) Coimbatore	Ms.Radhik a Chandra sekar
13.	E/478/2006	K.N. Tex	-do-	OIA No. 21/2006-CE dt. 23.3.2006-by CCE (A) Coimbatore	-do-
14.	E/201/2006	Anbu Garments	-do-	OIA No. 291/2005-CE dt. 3.1.2006-by CCE (A) Coimbatore	V. Ravindran
15.	E/350/2006	Popular Hosiery Factory	-do-	OIA No. 11/2006-CE dt. 22.2.2006-by CCE (A) Coimbatore	M. Karthi keyan
16.	E/351/2006	Popular Hosiery Factory	-do-	OIA No. 10/2006-CE dt. 22.2.2006-by CCE (A) Coimbatore	-do-

Customs, Excise & Service Tax Appellate Tribunal

For the Respondent: Shri K. Veerabhadra Reddy, JC (AR)

CORAM :

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

Date of hearing/decision : 14.09.2017

FINAL ORDER Nos. 42095 – 42110 /2017

Per B. Ravichandran

These 16 appeals are on common disputed issue regarding liability of the appellants to Central Excise duty on intermediate goods [processed fabrics] manufactured by them and captively used in the manufacture of final products [knitted garments]. The appellants were availing exemption as a small-scale industry in terms of Notification No.8/2003-CE, dated 01.03.2003 effective from 01.042003. The said notification covers knitted garments manufactured and cleared by the appellants. However, the notification does not cover processed fabrics manufactured and captively used by the appellants. The appellants claimed exemption for this processed fabrics captively consumed in terms of Notification No.67/1995-CE, dated 16.03.1995.

2. Revenue held a view that the appellants are not eligible for exemption under Notification No. 67/1995-CE as the final product, namely, knitted garments, are not discharging any Central Excise duty and are exempted. Invoking the stipulation of proviso of the said notification, Revenue held that the exemption shall not apply to them.

3. Accordingly, proceedings were initiated against all the appellants to demand and recover Central Excise duty on the processed fabrics. The original authority held against the appellants. On appeal, the original orders were affirmed. Aggrieved, the appellants are before us.

4. The learned counsel appearing for all the appellants submitted that the facts of the present cases were admitted and there is no dispute on this. The tax liability of the intermediate products captively consumed in the manufacture of final product, which are exempted, has been the subject-matter of decision by the Hon'ble Supreme Court in M/s. *Ambuja Cement Ltd. Vs Commissioner of Central Excise, Chandigarh* reported in *2015 (326) E.L.T.13 (S.C.)*. He submitted that the issue disputed is no more sustainable and the matter stands resolved in their favour as per the ratio laid down by the apex court.

5. The learned Authorised Representative strongly contested the appeals. He submitted that the appellants availed exemption for the final product, namely, knitted garments in terms of Notification No.8/2003-CE. The said notification clearly stipulates that the manufacturer shall not avail the credit of duty on inputs under Rule 3 or 11 of Cenvat Credit Rules, 2002, paid on inputs used in the manufacture of specified goods cleared for home consumption, for the specified aggregate value of first clearance. That being so, the appellants cannot avail credit under Cenvat Credit Rules, 2002. The question of fulfilling obligation under Rule 6 of the said Rules

does not arise. He, thus, distinguished the ratio of the Hon'ble Supreme Court for application to the present facts of the case. He further relied on the decision of the Tribunal in the case of *M/s. Kunnath Textiles Vs Commissioner of Customs & Central Excise, Cochin* reported in *2008 (229) E.L.T.628 (Tri.-Bang.)*.

7. We have heard both sides and perused the appeal records. We note that the duty liability of the appellants for intermediate goods [processed fabrics) used in the manufacture of exempted final products [Knitted Garments] cleared/availing SSI exemption is the point of dispute. In a similar situation, the exemption available to cement clinker used in the manufacture of cement, which was cleared without payment of duty availing area-based exemption was the subject-matter of discussion by the Hon'ble Supreme Court in the case of *M/s. Ambuja Cements Ltd.* (supra). The Supreme Court observed as under:-

> **"12.** In the present case, we find that the Clinker is used as input for production of Cement and Cement is exempted from the excise duty. Therefore, by virtue of this proviso insofar as Clinker is concerned, Exemption Notification would not apply. However, the matter does not end here inasmuch as the proviso itself is not applicable under certain circumstances as mentioned therein, viz., in respect of those goods which are cleared under six circumstances. We are concerned here with clause (vi) which states that if goods are cleared by a manufacturer of dutiable and exempted final products after discharging the obligation prescribed in Rule 6 of the Cenvat Credit Rules, 2001, then proviso would not apply. Therefore, the outcome of this case depends upon the answer to the question as to whether in the instant case, the appellants are discharging the obligation prescribed in Rule 6 of the Cenvat Credit Rules.
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> **13.** On facts, there is no dispute that appellants have discharged the 'obligation' prescribed in Rule 6 of the Cenvat Credit Rules. The respondent have not even disputed the same.
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> **14.** The case set up by the appellant therefore, was that since the exempted goods ('Cement') is cleared by the appellant who is a manufacturer of (a) 'dutiable final products' ('Clinker'); and

(b) 'exempted final products' ('Cement') after discharging the "obligation" prescribed in Rule 6 of the Cenvat Credit Rules, 2001, clause (vi) of the notification applies. In such a case, exemption is available in respect of 'Clinker' which is captively consumed in the manufacture of 'Cement' as per the opening part of the Notification. The Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT') has disallowed the exemption in respect of 'Clinker' as claimed above.

15. As per the CESTAT, Rule 6 applies only if some final product is partly exempt and partly dutiable. However, we do not find any such restriction in Rule 6 which contemplates the situation where a manufacturer produces (a) final products which are chargeable to duty, as well as; (b) exempted goods. The Rule does not provide that the same final product should be partly dutiable and partly exempted. On the contrary, this Rule relates to taking of Cenvat credit in respect of 'inputs'.

16. This Rule is not applicable as such in its totality since taking of Cenvat credit is not in issue in these cases. On the other hand, relevance of this Rule is only to the extent of 'obligation' contained in the said Rule which is to be discharged. A plain reading of clause (vi) of the notification would show that it only contemplates a situation where 'a manufacturer manufactures both dutiable as well as exempt final products'. There may be different final products manufactured by the same manufacturer. The final products may be made out of the same product or out of different products. Clause (vi) does not contemplate that the manufacturer should manufacture only 'one final product' or that if he manufactures only one product that product itself should be both dutiable and exempted. The basis adopted by the CESTAT that the 'same final product' should be partly dutiable and partly exempt, is neither a requirement of clause (vi) nor a requirement of Rule 6."

8. The learned Authorised Representative contested the application of the above decision and contended that the facts will not apply to the present case. We have carefully considered the said claim. We note that the intermediate products involving both the cases were manufactured and captively consumed by the manufacturer. The final products are exempt on the condition either due to location of the Unit or the turnover of the Unit. In both the cases, the intermediate product is not eligible for exemption as applicable to the final product. Both the parties claimed exemption for the intermediate products in terms of Notification No. 67/1995-CE. As such, we find that facts are *pari materia* in both the disputes.

Hon'ble Supreme Court on detailed examination of the legal provision to proviso clause of the Notification No.67/1995 gave a finding that the said exemption to the intermediate products is available.

9. On a careful consideration, we note the decision of the Tribunal in *M/s.Kunnath Textiles* (supra) did not deal with the proviso and the legal implication of the said proviso to the notification as discussed in the decision of the apex court in *M/s. Ambuja Cements Ltd.* (supra). The Tribunal decided the applicability to Notification No.67/1995-CE to the goods not covered under Notification No.8/2003-CE, being intermediate products. Though, the exemption was held not available, the issue regarding the proviso and more specifically the implication of clause (vi) of the provisio under Notification No.67/1995 was not discussed to lay down any ratio. We find the Hon'ble Supreme Court examined the said provisio and laid down the legal position in *M/s. Ambuja Cements Ltd.* (supra).

10. On careful consideration of the discussion as above, we note that the exemption available to intermediate products in the present case cannot be denied, following the ratio of the apex court. We, therefore, set aside the impugned orders and allow the appeals.

(Dictated and pronounced in court)

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(B. Ravichandran)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

ksr
15.09.2017

Customs, Excise & Service Tax Appellate Tribunal

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