IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 53687 of 2015
Excise Appeal No. 50261-50262 of 2016
Excise Appeal No. 50060 of 2017

[Arising out of Order-in- Original Nos. ALW-EXCUS O-I-O-Com 18-15-16 dated 31.08.2015, ALW-EXCUS O-I-O-Com 26-15-16 dated 30.11.2015 and ALW-EXCUS O-I-O-Com 47-16-17 dated 30.09.2016. all passed by the Principal Commissioner of Central Excise (Alwar), Rajasthan]

M/s. Paramount Communication Ltd. **Appellant**
Shri Arvind Gangwar,

Vs.

Commissioner of Central Excise **Respondent**
Alwar

Appearance:

Shri Bipin Garg, Advocate for the Appellants
Shri M R Sharma, AR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 07.07.2017

FINAL ORDER NO. 55107-55110 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeals are filed against Order-in-Original Nos. ALW-EXCUS O-I-O-Com 18-15-16 dated 31.08.2015, ALW-EXCUS

O-I-O-Com 26-15-16 dated 30.11.2015, ALW-EXCUS O-I-O-Com 47-16-17 dated 30.09.2016. In all the appeals, the issue involved is identical, so, all the appeals are disposed of by this common order for the sake of convenience. The period of dispute is February, 2012 to February 2015.

2. The brief facts of the case are that during the period under consideration, the appellants were engaged in the manufacture of power cables. The goods were cleared on payment of duty. Appellants were also clearing the goods for various Mega Power Projects against International Competitive Bidding by availing full exemption under Notification NO. 12/2012-CE dated 17.3.2012.

3. On 9.11.2013, the officers of the department visited the office premises of the appellants and were of the view that during the process of manufacturing of the finished goods, ‘armoured cable’ or ‘cable at armoured stage’ and sheathed wire were arising which are chargeable to duty and the benefit of captive consumption Notification No. 67/95-CE is not available as the finished goods were cleared without payment of duty. So the charge of clandestine removal was levelled and duty was confirmed.

4. Being aggrieved, the appellants have filed the present appeals.

5. With this background, we have heard Shri Bipin Garg and Shri M R Sharma, learned Counsels for the parties and perused the record.

6. After hearing both the parties and perusing the material on record, we find that identical issue has come up before the Tribunal in the case of ***KEI Industries Ltd. and others vs. CCE, Alwar [Final Order No. 55611-55613/2016 dated 28.11.2016*** where it was observed that:-

> "7. On careful consideration of submissions of both the sides, the short issue emerges before us is whether the appellants are liable to pay the duty on intermediate product i.e. armoured cable, which has been used for manufacture of power cables which is ultimately cleared on payment of duty in the open market and to Mega Power Projects without payment of duty.
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> 8. An identical issue came up before the Tribunal in the case of Thermo Cables Ltd. (supra) wherein this Tribunal observed as under:
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>> ***"4.*** *After considering the submissions, we have found great force in the submissions made by the learned counsel. It is not in dispute that the final products were cleared without payment of duty under Notification No. 6/2006-C.E. which, at Sl. No. 91 thereof, prescribed 'nil' rate of duty for all goods (falling under any chapter) supplied against international competitive bidding. This exemption was subject to the condition that the goods were exempted from basic customs duty and additional duty of customs when imported into India. It is not in dispute that the final products cleared by the assessee without payment of duty during the relevant period satisfied this condition. Against this backdrop, one has to read the provisions of Rule 6(6)(vii) of the CENVAT Credit Rules, 2004. This sub-rule reads as follows :-*

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either —

(i) ... ...

(ii) ... ...

(iii) ... ...

(iv) ... ...

(v) ... ...

(vi) ... ...

(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India and supplied against International Competitive Bidding in terms of Notification No. 6/2002-Central Excise, dated the 1st March, 2002 or Notification No. 6/2006-Central Excise, dated the 1st March, 2006, as the case may be.

From the above provision, it is clear that the appellant did not have any liability under sub-rule (2) to maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and inputs meant for use in the manufacture of exempted goods, nor did the assessee have alternative liability under sub-rule (3) to pay an amount equal to 10% of the value of the exempted goods. This is because their final products were cleared against international competitive bidding in terms of Notification No. 6/2006-C.E. ibid.

5. *Against the above backdrop, one has to examine the scope of Notification No. 67/95-C.E., dated 16-3-1995 (as amended) in so far as the present case is concerned. The opening paragraph of this Notification exempts from payment of CE duty any inputs manufactured in a factory and used within the same factory in or in relation to the* *manufacture of final products. Input must be one of those specified in the first column and the final product must be one of those specified in the second column of the table annexed to the Notification. Admittedly, copper wire is one of the inputs and the power cables manufactured and cleared by the assessee are final products covered by the Notification. However, the Department would like to deny the benefit of this Notification to copper wire manufactured by the assessee and captively consumed in their factory for the manufacture of insulated (power) cables. According to the Revenue, the assessee's claim is hit by the proviso to the Notification, which reads as under :*

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the duty of excise or additional duty of excise leviable thereon or are chargeable to nil rate of duty, other than those goods which are cleared, —

(i) to a unit in a Free Trade Zone, or

(ii) to a hundred per cent Export Oriented Undertaking, or

(iii) to a unit in an Electronic Hardware Technology Park, or

(iv) to a unit in a Software Technology Park, or

(v) under notification No. 108/95-Central Excise, dated the 28th August, 1995, or

(vi) by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in Rule 6 of the CENVAT Credit Rules, 2001.

6. *From the above proviso to Notification No. 67/95-C.E. ibid, it appears that the bar created therein is not applicable to the inputs used in or in relation to the manufacture of exempted final products cleared by a manufacturer of such exempted final products as well as* *dutiable final products. In other words, where the manufacturer manufactures both dutiable and exempted final products and uses the inputs in question in the manufacture of the exempted final products, he is entitled to the benefit of exemption from payment of duty on such inputs in terms of the opening paragraph of the Notification. This right is not hit by the opening portion of the proviso to the Notification as the manufacturer is squarely covered by the exception carved out of the proviso vide clause (vi) under the proviso. The Department, it appears, would like to drive the assessee out of the purview of this exception on the ground that the latter had not discharged the obligation prescribed in Rule 6 of the CENVAT Credit Rules, 2004. We have already held that the assessee did not have any liability under sub-rules (1) to (4) of Rule 6 inasmuch as these sub-rules were not applicable, by virtue of sub-rule (6), to the assessee who were clearing their exempted final products against international competitive bidding in terms of Notification No. 6/2006-C.E. ibid. In other words, a conjoint reading of sub-rule (6) of Rule 6 of the CENVAT Credit Rules, 2004 and clause (vi) under the proviso to Notification No. 67/95-C.E. ibid would show that the assessee's claim for exemption from payment of duty on copper wire under the Notification was not hit by the opening portion of the proviso to the Notification.*

7. *In the result, the assessee was not liable to pay CE duty on copper wire manufactured and captively used in the manufacture of insulated (power) cables in the factory during the material period. The impugned demands and the connected penalties are, therefore, liable to be set aside. It is ordered accordingly."*

9. As facts of the case are not disputed that the appellant is manufacturing final products and clearing the same on payment of duty in the open market and to Mega Power Projects without payment of duty. In that circumstances, the appellant is entitled for benefit of notification No. 67/1995 *ibid* for intermediate

product emerging during the course of manufacture of final product. Therefore, the impugned orders deserves no merits. Hence, the same are set aside.

10. Consequentially, the appeals are allowed with consequential relief, if any. ”

7. In the light of the above decision of the Tribunal on identical facts, we are of the view that the appellant is entitled for benefit of notification No. 67/1995 ibid for intermediate product emerging during the course of manufacture of final product. Therefore, the impugned order deserves no merits, we set aside the impugned order. As a result the appeals filed by the appellants are allowed.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**