CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 40763 of 2018

(Arising out of Order-in-Appeal No. 144/2017(CTA-II) dated 30.09.2017 passed by Commissioner of Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. GE T&D India Ltd. **...Appellant**
(Formerly known as Alston T&D India Ltd.),
FSSC Building, 19/1, GST Road,
Pallavaram,
Chennai – 600 043.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, 2054/1,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. Joseph Prabhakar, Advocate
For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41432 / 2025

DATE OF HEARING : 04.11.2025
DATE OF DECISION : 05.12.2025

Per Mr. VASA SESHAGIRI RAO

This appeal is directed against Order-in-Appeal No. 144/2017 (CTA-II) dated 30.09.2017, passed by Commissioner(Appeals-II), Chennai which upheld the Order-in-Original No. LTUC/693/2016-DC dated 28.11.2016

wherein a demand of ₹10,89,545/- under Section 11A(1) of CEA 1944 confirmed , along with interest under Section 11AA and equal penalty imposed under Rule 25 of the Central Excise Rules, 2002, on the ground that the Appellant incorrectly availed the benefit of Notification No. 67/95-CE on relays captively consumed in the manufacture of Control Panels cleared under Notification No. 12/2012-CE without payment of duty.

2. The facts briefly stated are that M/s. GE T&D India Ltd (hereinafter referred to as 'the Appellant') manufactures Relays (Chapter 85) and uses them captively in the manufacture of Control Panels (CH 8537). Control Panels are cleared (i) on payment of duty for home consumption, (ii) under exemption Notification No.12/2012-CE, and (iii) for export under LUT.

2.1 Exemption was claimed by the Appellant for the Captive consumption of the relays under Notification 67/95-CE and the Department denied the exemption on the ground that the final products (Control Panels) were also cleared under an exemption (Notification 12/2012-CE), and therefore proviso to Notification 67/95-CE barred captive-exemption.

2.2 A Show Cause Notice No. LTUC/222/2015/ADC dated 05.08.2015 was issued on the relays captively

consumed, which was confirmed by the Adjudicating Authority whereby duty, interest and Penalty was confirmed as detailed in Para 1 above. The Commissioner (Appeals) upheld the same in appeal.

2.3 Aggrieved once again, the present appeal has been filed before this Tribunal.

3. The Ld. Advocate Mr. Joseph Prabhakar, appeared for the Appellant and the Ld. Authorized Representative Mr. M. Selvakumar, appeared for the Department.

4. We have heard both the sides and perused the Appeal records, relevant notifications, the provisions of Rule 6 of the CENVAT Credit Rules, and judicial precedents.

5. The following points arise for our Consideration, as to: -

i. Whether exemption under Notification No. 67/95-CE is available on relays captively consumed in the manufacture of control panels, when such panels are partly cleared on payment of duty and partly under Notification No. 12/2012-CE?

ii. Whether the Appellant can be said to have satisfied the "obligation under Rule 6 of CENVAT Credit Rules, 2004" for the purpose of proviso (vi) to Notification No. 67/95-CE? and,

iii. Consequentially, whether the demand, interest and penalty can survive?

Exemption under Notification No. 67/95-CE dated 16.03.1995: -

6.1 The first and central question that falls for determination is whether the Appellant is entitled to the benefit of captive consumption exemption under Notification No. 67/95-CE dated 16.03.1995 as amended, in respect of relays manufactured and used captively in the manufacture of control panels, when such final products are (i) cleared on payment of duty, (ii) exported under LUT, and (iii) cleared without payment of duty under Notification No. 12/2012-CE dated 17.03.2012.

6.2 There is no dispute that the relays are manufactured within the factory of the Appellant and are used within the factory of production for the manufacture of control panels. The relays also fall within the scope of "all goods falling under the First Schedule to the Central Excise Tariff Act, 1985" as mentioned in column (1) of the Table to

the Notification No. 67/95-CE and do not fall in the list of excluded inputs (such as LDO, HSD, motor spirit *etc*.). On a plain reading of the main body of the Notification, the relays clearly satisfy the conditions for captive exemption.

6.3 The Department's objection stems only from the proviso to the Notification, which states that nothing in the Notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt or chargeable to nil rate of duty, other than those falling under certain specified categories, including clause (vi) – "by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in Rule 6 of the CENVAT Credit Rules".

6.4 On a harmonious reading of the main part of Notification No. 67/95-CE with proviso (vi), it is evident that the bar in the proviso is not absolute: where the manufacturer is producing both dutiable and exempt goods and discharges the obligation under Rule 6 of CCR, the captive exemption on inputs is expressly saved.

6.5 We further note that captive exemption under Notification No. 67/95-CE is a part of the scheme to avoid cascading duty on in-house intermediates; that scheme

cannot be lightly defeated merely because some final clearances avail a separate benefit under a general exemption notification. The Tribunal in Appellant's own case pertaining to an earlier period (Final Orders of this Bench) has already accepted this position, holding that clearances under such project/specific exemptions do not, per se, strip the assessee of Notification No. 67/95 benefit.

6.6 In view of the above, on the first issue, we hold that the Appellant's relays, captively consumed in the manufacture of control panels, are in principle covered by the main body of Notification 67/95-CE, and the only surviving question is whether the Appellant satisfies the saving clause (vi) of the proviso – which brings us to Issue (2).

Issue 2 (Para 5(ii)): Whether the Appellant has discharged the obligation under Rule 6 of CENVAT Credit Rules so as to fall within proviso (vi) to Notification 67/95-CE?

6.7 The Appellate authority has proceeded on the ground that the Appellant has "not discharged the obligation under Rule 6 of the CCR" and therefore cannot claim the protection of clause (vi) of the proviso for the reason that the Appellant has not paid 10% of the price of the

exempted goods, nor maintained separate accounts for dutiable and exempted final products and not taking credit on the inputs used in the exempted goods.

6.8 We find that Rule 6(6)(vii) of CCR 2004 listed specific scenarios where the obligations of credit reversal under Rule 6(2) and 6(3) did not apply. These exceptions included:

Mega Power Projects awarded in terms of Notification No. 12/2012-CE: Excisable goods supplied for the purpose of setting up a mega power project were exempt from the reversal requirement. This means a manufacturer supplying these goods was not required to reverse the CENVAT credit, even if the final product (the electricity) was exempt.

6.9 It is also important to note that in Appellant's earlier proceedings on an identical issue, this Tribunal has granted relief after being satisfied that the Appellant was operating within the Rule 6 framework and that there was no case of improper availment of credit. The Department has accepted those orders. On the doctrine of consistency and judicial discipline, it would not be open to us now to ignore that settled factual and legal position in the Appellant's own case, in the absence of any new material.

6.10 In these circumstances, we are unable to agree with the conclusion of the lower authority that the Appellant has "not discharged" obligations under Rule 6 of CCR, 2004. On the contrary, given the factual position and the Tribunal's own earlier view in Appellant's favour on the same pattern of clearances, we hold that the Appellant falls within proviso (vi) to Notification 67/95-CE.

Accordingly, we answer Issue (2) in favour of the Appellant.

Issue 3 (Para 5(iii)): Sustainability of demand, interest and penalty

6.11 Once we hold that captive exemption under Notification No. 67/95-CE is available to the relays captively used in the manufacture of control panels cleared on payment of duty, under Notification No. 12/2012-CE and for export, the very foundation of the duty demand of Rs.10,39,545/- collapses. Accordingly, the demand of duty is liable to be set aside on merits.

6.12 With the principal demand itself not surviving, the consequential levy of interest under Section 11AA also cannot survive.

6.13 As regards penalty under Rule 25 of the Central Excise Rules, 2002, we note that the entire issue is one of

interpretation of overlapping notifications and the interplay with Rule 6 of CCR. The Appellant has acted in a transparent manner, recorded all transactions in statutory returns, and followed the same pattern of clearances that were already subjected to earlier proceedings ending in their favour before this Tribunal. There is nothing on record to indicate any element of fraud, suppression or wilful misstatement. In such circumstances, imposition of penalty is wholly unwarranted.

6.14 Based on our above findings, we therefore hold that the demand, interest and penalty are unsustainable and are liable to be set aside.

7. We find that it is an already decided issue in the Appellants own case *M/s. Alstom T & D India Ltd. (formerly known as Areva T & D India Ltd.) Versus The Commissioner of GST & Central Excise, Chennai 2023 (9) TMI 863 - CESTAT CHENNAI* and *M/s. Alstom T&D (India) Ltd. & Schneider Electric Infrastructure Ltd. Appellant Versus Commissioner of GST & Central Excise Chennai 2019 (3) TMI 2034 - CESTAT CHENNAI* and *M/s. Areva T&D India Ltd. Versus Commissioner of Service Tax, Chennai 2018 (4) TMI 1944 - CESTAT CHENNAI* for different periods wherein it has been held as follows.

"6. We find that the issue stands covered by the decision of the Tribunal in the appellant's own case as reported in 2019-TIOL-1265 CESTAT-MAD. The relevant part reads as under: -

2. Brief facts are that the appellants are engaged in manufacture of various types of relays falling under CETA 85364900 which are cleared for home consumption as well as for export under Letter of Undertaking. They also clear relays for captive consumption for manufacture of control panels falling under Chapter Heading 85371000 of CETA, 1985 without payment of duty under Notification 67/95-CE dated 16.3.1995. The control panels in turn are cleared for home consumption on payment of duty to export markets under LUT as well as under exemption Notification 6/2006-CE dated 1.3.2006 (Sl. No. 91) as amended, without payment of duty. These control panels are cleared to Mega Power Projects which are exempt under Notification 6/2002 and 6/2006. The department was of the view that they are not eligible for the benefit of Notification 67/95 as they have not complied with the conditions stipulated therein. The issue stands covered by the decision cited above. The relevant portion is extracted as under: -

> *"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 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.*
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> *5.2 On careful consideration of the facts of the case and submissions of the appellants, we note that the eligibility 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.*
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> *6. In view of the above discussion and analysis, we find that the impugned order is not legally*

> *sustainable. Accordingly, the same is set aside. The appeal by the appellant-assessee is allowed and the appeal by the Revenue is dismissed."*
>
> *3. Following the said decision, we are of the considered opinion that the demand cannot sustain. The impugned orders are set aside and the appeals are allowed with consequential relief, if any."*

8. In light of our detailed findings recorded *supra* and considering that the issue stands settled in the Appellant's own cases for earlier periods by consistent decisions of this Tribunal, which have neither been distinguished nor reversed, judicial discipline requires us to follow the same view. We therefore set aside the impugned Order-in-Appeal No. 144/2017(CTA-II) dated 30.09.2017, passed by Commissioner (Appeals-II), Chennai.

9. The appeal is allowed with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 05.12.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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