

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 12399 OF 2018

[Arising out of OIA-CCESA-SRT-APP-PS-952-954-2017-18 dated 28/03/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-DAMAN(Appeal)]

**COMMISSIONER OF CENTRAL EXCISE AND
SERVICE TAX-DAMAN**

3rd Floor...Adarsh Dham Building, Vapi-Daman Road,
Opp. Vapi Town Police Station, Vapi,
Gujarat-396191

Appellant

Vs.

N L PACKAGING PVT LTD

Survey No. 297/1/2, Orient Compound,
Sayali, Silvassa, Dadra & Nagar Haveli UT

Respondent

Appearance:

Shri Rajesh R Kurup, Superintendent (AR) for the Appellant
Shri Anil Kumar Mishra, Advocate for the Respondent

CORAM:

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

HON'BLE MR. Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10635/2025

Date of Hearing : 11.02.2025
Date of Decision : 08.08.2025

Dr. AJAYA KRISHNA VISHVESHA

The Commissioner of Central GST & Central Excise Daman Commissionerate is in appeal against the Order-in-Appeal No. CCESA-SRT(APPEAL)/PS-952-954/2017-18 dated 28.03.2018 (impugned order). Vide the said impugned order, the Commissioner (Appeals) has set aside the Order-in-Original passed by the Adjudicating Authority and allowed the appeal of M/s. N L Packaging Pvt Ltd. (hereinafter referred to as the Respondent).

1.1 The issue in brief is that the department, based on the investigation conducted against the respondent inter alia, upheld that they have short

paid Central Excise duty amounting to Rs. 10724867/- during the period 2013-14 (up to August-2014) on the clearances of excisable goods manufactured for the supplier of raw material on job work basis. The Original Adjudicating Authority, relying on the grounds taken in the show cause notice, confirmed the entire demand and also imposed the equal penalty under Section 11AC(1)(c) of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. The Original Adjudicating Authority, after going through various submissions and perusal of the records, noted that the Respondent had done certain job work in respect of various customers like M/s. Angles Aluminium Corporation, M/s. HK Enterprises, M/s. Lismontagens Pvt Ltd and M/s. Lloyd Insulation (India) and examined the processes which were undertaken by the Respondent in relation to aluminium and the raw material supplied free of cost by above mentioned customers. However, while they have paid Central Excise duty on the job charges, the value of the raw material supplied free of cost by the supplier of the raw material, was not included in the assessable value for the purpose of payment of Central Excise duty. He also examined whether the process undertaken by the Respondent amount to manufacture or otherwise. The main contention of the Respondent before the Adjudicating Authority was that they were manufacturing aluminium sheets or strips falling under CETH 7606 and not foils falling under CETH 7607. The Respondent also clarified that such sheets and strips were used for cladding or jacketing of pipes and laminating with Polysurlyne and the lamination of inner layer serves as a moisture and heat barrier as a protective coat only and did not change the nature or use of sheet. Therefore, the respondent asserted that the activity undertaken by them does not amount to manufacture of any new product. The Original Adjudicating Authority took into account the process of lamination undertaken on the aluminium coils / strips / foils which were used in false ceiling, corrugated sheets, partitions and pipe jacketing etc. He held that the process of de-coiling, slitting and lamination of aluminium sheets /

strips as per specification of buyers / Principal Manufacturer / supplier amounts to converting of the raw material into new different article with different identity and characteristic. On appeal, in the impugned order, the Commissioner (Appeals) has mainly examined two aspects involved in the issue. Firstly, whether the processes being carried out by the respondent on jumbo rolls of aluminium coil (goods) amount to manufacture or otherwise. Secondly, he also examined whether Chapter Note 3, which provides provisions in relation to products of heading 7607 could be made applicable to the facts of the case or otherwise.

1.2 In so far as the first issue is concerned, relying on the judgment of **M/s. C. G. Laminator Vs. CCE New Delhi** 2017 (3) TMI 1000 CESTAT-New Delhi and also in the case of **M/s. Commissioner of Central Excise Jaipur vs. M/s. Pitamber Coated Paper Ltd** 2015 (4) TMI 567 he held that the processes undertaken by the respondent would not amount to manufacture. With regard to the second issue, he had gone through certain documents produced by the respondent in the course of appeal to come to the conclusion that the aluminium coils received by them were always having thickness of more than 0.4 mm and were classifiable under 7606 and not 7607. Further, Chapter Note 3 of Chapter 76 would not be applicable for 7606 as it is only applicable for 7607. On this count also, the demand is not sustainable. He also made an observation that department did not verify this crucial aspect as regard the thickness despite it having bearing on the applicability of the Chapter Note. He has also perused letter dated 29.09.2015 sent to the department intimating this facts much before the issuance of Show Cause Notice. Therefore, having regard to the challans submitted by the appellant, he inferred that the thickness of the aluminium coil was of more than 0.2 mm.

2. The Revenue appeal against the impugned order is mainly on the ground that the Commissioner (Appeals) has not appreciated the fact of the

activities carried out by the respondent on the coils received, as the said activities have in fact resulted into new saleable and marketable product as per the aluminium coils which were laminated with polycraft / polysurlyne which resulted into a new product Aluminium Laminate (by which name it was marketed) and this new product is having totally different characteristics and use as described and that the case law relied upon by the Commissioner (Appeals) is not tenable. The department also felt that the Commissioner (Appeals) holding that the thickness of the aluminium coil is more than 0.2 mm is not correct in as much as delivery challan, which was produced before the Commissioner (Appeals) is nothing but an afterthought as the same cannot be verified when the goods were consumed. The Learned AR, apart from reiterating the grounds taken by the Revenue in their appeal, also submits that activities undertaken by them amount to manufacture. He relied inter alia on the following order in support of the argument that activity of coating on the aluminium coils received shall amount to manufacture:-

- (a) **Foilpack Industries Vs. CCE Jamm** - 2018 (384) E.L.T. 1058 (Tri.-Chan.) –
- (b) **Commissioner Vs. Paper Products Ltd** - 2015 (320) E.L.T. A200 (Bom.)
- (c) **Markwell Paper Plast Pvt Ltd Vs CCE, Noida** - 2012 (285) E.L.T. 76 (Tri.-Del.)
- (d) **Kores India Ltd Vs. CCE, Chennai** - 2004 (174) E.L.T. (S.C.) 2014
- (e) **Paper Products Ltd vs. CCE, Mumbai-III** – (304) E.L.T. 145 (Tri. Mumbai)

3. On the other hand, by way of the respondent's submission, Chapter Note 3 to Chapter 76 would be applicable only to foils falling under 7607 whereas as in their case, since the thickness of the material is more than 0.2 mm they cannot be considered foils and thus the Chapter Note 3 to Chapter

76 would not be applicable. He also pointed out that the respondents have been taking up the matter of verification with the Investigating Authority as well as Adjudicating Authority in support of their claim that the thickness of the sheets is more than 0.2 mm but despite that, department has not conducted any specific enquiry to ascertain the thickness of the sheets. The Commissioner (Appeals) has rightly held that the thickness is more than 0.2 mm. He further submits that in terms of Chapter Note 1D of Chapter 76 of the Central Excise Tariff Act, both the heading 7606 and 7607 will apply inter alia to plates, sheets, and foils with patterns (for example grooves, ribs, chequers, tears, buttons, lozenges) and such products which have been perforated, corrugated, polished or coated, if they do not thereby, assume the character of articles or products of other headings. He has relied on various case laws and primarily on the law laid down in the case of **Commissioner of Central Excise Hyderabad-II Vs. M/s. Aldec Corporation** - 2005 (9) TMI 82 wherein under similar facts, it was held that the process would not amount to manufacture. The paragraphs of the said Ruling relied by the respondent are at Paragraph no. 08 and 09 which are as follows:-

8. before dealing with the rival contentions of the parties, we reproduce hereinbelow the relevant headings of the Chapter 76 of the Central Excise Act, 1985:

<i>Chapter 76 : ALUMINIUM & ARTICLES THEREOF</i>		
<i>Heading No.</i>	<i>Sub-Heading</i>	<i>Description of Goods</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
76.06		<i>Aluminium plates,sheets (including circles) and strip, of a thickness exceeding 0.2 mm</i>
	7606.20	<i>Of aluminium alloys</i>
76016		<i>Other Articles of Aluminium</i>
	7616.10	<i>Nails, tacks, staples, screws, bolts, nuts etc.</i>
	7616.90	<i>Others</i>

9. The basic question which needs to be answered in the present case is - whether M/s. Aldec Corporation, M/s. VPI and M/s. SREW were engaged in the manufacture of an Independent identifiable distinct product, in terms of manufacture and marketability. Chargeability is different from liability to pay duty. Chargeability arises on manufacture under Section 3 of the said 1944 Act. Liability to pay excise duty depends on classification. Therefore, there is a difference between the concept of "chargeability" and the concept of "classification". Levy is a constitutional concept as held in the case of **Union of India & Others v. Bombay Tyre International Ltd.** reported in AIR 1984 SC 420. Therefore, under the Excise law, chargeability, classification, valuation and exemption are different and distinct concepts. In the case of **Moti Laminates Pvt. Ltd. v. Collector of Central Excise, Ahmedabad** reported in 1995 (76) E.L.T. 241, this Court has held that Section 3 levies duty on all excisable goods, provided they are manufactured or produced. Therefore, where the goods are specified in the Schedule, they are excisable goods but whether such goods can be subjected to duty would depend on whether they were produced or manufactured by the person on whom duty is proposed to be levied. The expression "produced or manufactured" has been explained to mean that the goods so produced must satisfy the test of marketability. Therefore, it is open to an assessee to prove that even though the goods in which he is carrying on business is excisable, being mentioned in the Schedule, it could not be subjected to duty if it does not constitute "goods", either because they are not produced or manufactured or if they have been produced or manufactured, they were not marketed or capable of being marketed. In short, the twin test contemplated by the Excise law is that the goods must not only be manufactured but they also should be capable of being marketed. In the case of **Commissioner of Central Excise, Goa and Chennai v. M.R.F. Ltd., Chennai** reported in (2005) 2 SCC 733, this Court held that although the basic commodity was a tyre cord and the final product was a rubberised nylon tyre cord, the intermediate product, namely, dipped nylon tyre cord, could constitute a separate identifiable product in terms of manufacture and marketability. In that case, on the question of marketability, the matter had to be remitted to the Commissioner (Adjudication). In the case of **Hindustan Zinc Ltd. v. Commissioner of Central Excise, Jaipur** reported in 2005 (181) E.L.T. 170, this Court held that emergence of silver chloride by filtering sulphates from mixture of zinc chloride was a process which amounted to manufacture. However, no evidence was led by the department to show that the silver chloride which emerged out of the said process was capable of being sold in the market and, therefore, although the department succeeded in making out a good case on manufacture, it failed on marketability for want of evidence. In the said case, this Court found that silver chloride was an independent identifiable product. However, the department had failed to lead evidence as

*to whether the silver chloride which was sold in the market having 75% silver content and the silver chloride which emerged as a by-product in filtering sulphate from mixture of zinc chloride had the same quantity of pure silver. It was found that the silver chloride which emerged by filtering sulphate from zinc chloride had only 50-53% silver whereas silver chloride sold in the market had 75% content of silver. Since the department had failed to prove marketability, this Court did not accept the contention of the department that a new product had emerged. Further, whether an article as envisaged by Section 2(f) has been manufactured or not solely depends on whether the article in question satisfies the test as laid down in the relevant chapter heading or sub-heading and is known as such in the commercial community. The coverage of the respective chapter headings has to be determined in the light of the section notes and chapter notes. Further, when an article is specified with reference to the raw material like "Articles of Aluminium", the general use to which an article is capable of, will be relevant. [See: **Airgrill Industries v. Commissioner of Central Excise** reported in 2001 (132) E.L.T. 646 (T) affirmed by this Court in 2002 (141) E.L.T. A90)]. Lastly, the question whether a process, taken singly or jointly, constitutes "manufacture" on first principles or under Section 2(f) has to be determined having regard to the facts and circumstances of each case. The definition of "manufacture" as per Section 2(f) includes any process incidental or ancillary to the completion of a manufactured product. For example, painting of steel furniture is incidental or ancillary to the manufacture of steel furniture. But if the steel furniture is sold without painting and if painting is done after the furniture is sold then painting will not amount to manufacture.*

4. Heard both the sides and perused the records.

4.1 The two issues that are required to be decided are (i) whether in the facts of the case, the respondents were undertaking certain activities on the raw materials received from the principal manufacturers / suppliers / customers which amount to manufacture or otherwise? and (ii) whether the laminated aluminium sheets would be classified under CETH 7606 or CETH 7607 of the Central Excise Tariff Act, 1985. While the Commissioner (Appeals) in his impugned order has held that the process undertaken did not amount to manufacture and also held that the thickness of the raw material they received i.e. aluminium coils which were subsequently cut into sheets and coated with certain chemicals cannot be considered as foil having

thickness of less than 0.2 mm. Therefore, the demand, as considered by the original adjudicating authority was set aside on both counts, firstly by holding that the processes undertaken did not amount to manufacture and secondly, on the ground that the Chapter Note 3 to Chapter 76, relied upon by the department, was not applicable as the thickness is less than 0.2 mm.

4.2 On perusal of Show Cause Notice, we find that while there is a great deal of discussion on the various activities undertaken on the raw materials received by the respondent to suggest that there is an emergence of a new product namely Aluminium Laminate / Polysurlyne coated Aluminum Foil with CETH 7607 under 1876072096, the Show Cause Notice has mainly relied upon the fact that as per Chapter Note 3 of Chapter 76, the process of cutting, slitting, printing of aluminum foil shall amount to 'manufacture'. Therefore, the grounds taken in Show Cause Notice was that the processes carried out by the respondent in respect of 'coils' of suppliers shall amount to 'manufacture'. Essentially, the charges as framed at para 14.1 – 14.2 of the Show Cause Notice would show that the job work undertaken by the respondent resulted in manufacture of Aluminium Laminate / Polysurlyn coated Aluminum Foil falling under 7607 2096 and since there is a Chapter Note 3 to Chapter 76 applicable to the products of 187607, the process shall amount to manufacture.

4.3 We find that the Commissioner (Appeals) has taken into consideration letter dated 07.08.2015 sent to Investigating Range Officer, Silvassa, and certain challans furnished by the appellant and based on the perusal of the same, categorically held that the thickness of the raw material 'sheet' supplied by the respondent was more than 0.2 mm. The department has not been able to produce any cogent evidence to support that these invoices, challans etc. were fake or bogus. In fact, merely contesting that these challans were produced before the Commissioner (Appeals) for the first time and not at the time of investigation would not take away the fact that the

Commissioner (Appeals) has examined certain documents mentioned above and also taken them into account. There were repeated arguments, taken up before the Investigating Authority as well as Adjudicating Authority to the effect that the department should carry out investigation to ascertain the thickness of the sheet. However, no more investigation was conducted. Therefore, finding fault with the observation and decision of the Commissioner (Appeals) as regards the thickness, in the backdrop of not having any cogent and pressing evidence to the contrary by the Revenue, is of no consequence and the issue of thickness stands settled. We further note that since the issue, which the department took into account, was that it was the raw material falling under the category of coil when the specific charges were levelled at para 14.1, classifying the Aluminum Laminate / Polysurlyne coated Aluminum Coil under heading 7607 2096. At this juncture the products, which are covered under CETH 7606 are as under: "Aluminum Plates, Sheets and Strip of thickness exceeding 0.2 mm" whereas under CETH 7607 it covers "Aluminum Foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm". Thus, the dividing line between products of CETH 7606 and 7607 is that the product will not be covered under 7607 if the thickness is more than 0.2 mm. Further, if it is not covered under 7607 then the deeming manufacturing provisions in terms of chapter note 3 to chapter 76 shall not be applicable. Therefore, on this count itself, the demand is not sustainable.

4.4 Chapter Note 3 to Chapter 76 reads as under:-

"In relation to the products of Heading 7607, the process of cutting, slitting and printing of aluminium foils shall amount to "manufacture"."

Since, there is no manufacture on cutting / lamination of sheets which are less than 0.2 mm, there cannot be a levy under Central Excise.

4.5 It is also pertinent to mention here that the argument of the appellant that the respondent has himself classified his product under CETH 7607, therefore, the respondent is estopped from asserting that his product does not fall under CETH 7607. We do not agree with the submission made by the learned Authorised Representative for the department because Hon'ble Supreme Court has held in **Dunlop India vs. UOI** reported in 1983 (13) ELT 156 (SC) that in view of the absence of chargeability and levy under Section 3, for erroneous use of CETH 7607 in their invoices and erroneously paying duty only on job charges, such errors cannot be a ground for promissory estoppel.

4.6 In the impugned order, the Commissioner (Appeals) has gone beyond the Show Cause Notice, since, in the impugned order, Commissioner (Appeals) has also examined the alternative plea that the processes being undertaken does not amount to manufacture. We also examined the same keeping in view the grounds taken by the Revenue as also by the Respondent.

4.7 The Respondents mainly cited judgment of **Commissioner of Central Excise vs. M/s. Aldec Corporation** and **Shreeji Laminators** cited (supra). The Hon'ble Supreme Court in the case of **Aldec Corporation** has examined 'whether in the facts of the case the activities undertaken in respect of raw material amounted to manufacture or otherwise.

4.8 Hon'ble Supreme Court has held in the M/s. **Aldec Corporation** case that "Lastly, the question whether a process, taken singly or jointly, constitutes "manufacture" on first principles or under Section 2(f) has to be determined having regard to the facts and circumstances of each case. The definition of "manufacture" as per Section 2(f) includes any process

incidental or ancillary to the completion of a manufactured product. For example, painting of steel furniture is incidental or ancillary to the manufacture of steel furniture. But if the steel furniture is sold without painting and if painting is done after the furniture is sold then painting will not amount to manufacture.”

4.9 Applying the above tests to the facts of the present case we find that the process of cutting / slitting / coating of sheets of 7606 with a very thin polycraft or polysurlyne layer after being supplied for job-work is not incidental or ancillary to the manufacture of aluminium coils hence it will not amount to manufacture.

4.10 In case of **M/s. Shree Jee Laminators vs. CCE Delhi** 2017 (3) TMI 1000 – CESTAT New Delhi, it has been held that since the basic material HDPE Fabrics are coated with LDPE, the description of the final product does not change and there is no process which has been undertaken by the appellant which is incidental or ancillary to the completion of manufactured product as the HDPE Fabrics coated with LDPE remains laminated HDPE Fabrics and hence process of lamination cannot be held as a manufactured product attracting Central Excise duty. In the instant case also after cutting, slitting of jumbo rolls of aluminium coil into the aluminium sheets remains aluminium sheets. Even after lamination / polysurlyne coating, the product remains the same and no new product with different characteristics is emerged.

4.11 In **M/s. Central Excise, Jaipur vs. Pitamber Coated Paper Ltd** – 2015 (4) TMI 567 Hon’ble Supreme Court sustained the findings of the Tribunal that on coating uncoated paper, an article with different name commercially may have emerged but it is not a distinct article with different character or use and therefore no manufacturing process was involved.

4.12 We are also of the view that the reasoning given by the first Adjudicating Authority that aluminium sheets cannot be used without lamination and thus, aluminium sheets become saleable and marketable only after the work of lamination with a very thin layer of polycraft and polysurlyne cannot be accepted and it cannot be said that the aluminium sheets are sold in such form only and coating is must in all cases.

4.13 The term 'manufacture' has been defined under Section 2 (f) of Central Excise Act, 1944, which includes any process

- (i) incidental or ancillary to the completion of a manufactured product
- (ii) which is specified in relation to any goods in the section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 (5) of 1986 as amounting to manufacture; or
- (iii) which, in relation to the goods specified in Third Schedule involves packing or repacking of such goods in a unit container or labeling or relabeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

4.14 Therefore, before an activity can be called manufacture, it should satisfy two tests. Process should be incidental or ancillary to the completion of a manufactured product and such product should be specified in the Chapter Notes as amounting to manufacture.

4.15 In view of the above discussion, it is clear that the process of cutting / slitting / coating of sheets of CETH 7606 with very thin polycraft or polysurlyne layer after being supplied for job work in the present case, is not incidental or ancillary to the manufacture of aluminium coils, hence it will not amount to manufacture. It is also clear that the product in the present case is covered under CETH 7606 and not under CETH 7607. Therefore, the

process of cutting, slitting and printing of aluminium sheers shall not amount to manufacture.

In view of the above discussion and observations we are of the view that the impugned order passed by the learned Commissioner is liable to be upheld whereas the appeal is liable to be rejected.

5. Consequently, the appeal is rejected.

(Order pronounced in the open Court on 08.08.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)