

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
Regional Branch, Allahabad

Dated: 19/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70991/2016-EX[DB] dated 13/10/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application Appeal Name and Address of Appellant

1 E/1713/2007 BALAJI WIRES (P) LTD.
PLOT NO. 139, 139A, 139-B, 141 & 142
ANAND INDUSTRIAL ESTATE, MOHAN
NAGAR, GHAZIABAD.

Name and Address of Respondent

2 -C.C.E. GHAZIABAD
C.G. O. Complex-II, Kamla Nehru
Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s):

NISHANT MISHRA AND
SUDARSHAN SINGH ADVOCATES
B2-3/4-31, SAROJANI APARTMENTS,
SAROJANI NAIDU MARG,
ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

12 The ICAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. Ltd. (taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD
Ground, Near Karkardooma Court, Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

27/10/16
ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.E/1713/2007-[DB]

Arising out of Order-in-Original No.12/COMMR./GZB/2007 dated 15.03.2007
passed by Commissioner of Central Excise, Ghaziabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

M/s Bala Ji Wires Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Ghaziabad

...RESPONDENT (S)

APPEARANCE

Shri Nichant Mishra Advocate for the Appellant (s)
Shri Pawn Kumar Singh Supdt. (A.R.) for the Department

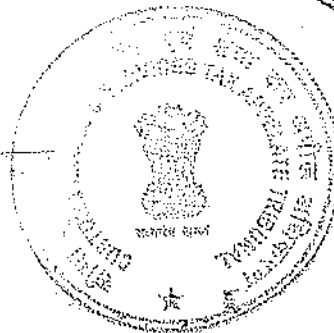
CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 06.06.2016

DATE OF PRONOUNCEMENT : 13-10-2016

FINAL ORDER NO. 70991/2016



Per Mr. Anil Choudhary :

The appellant, M/s Balaji Wires Pvt. Ltd. are manufacturer of G.I. Wire, Drawn G.I. Wire etc., is in appeal against Order-in-Original No.12/COMMR./GZB/2007 dated 15.03.2007 passed by Commissioner of Central Excise, Ghaziabad.

2. The issue in this appeal is whether the appellant procuring duty paid Black Wire and subjecting it to process of galvanization & clear the same, does it amount to manufacture.

3. The appellant purchases requires duty paid Drawn Black Wire/Wire rods and take Cenvat credit on the same being common input and, thereafter, undertakes mainly the following three processes: -

(a) some quantity of Wires are drawn and cleared as Black Wire on payment of appropriate Excise duty,

(b) some quantity of input black wire, the process of galvanization followed by drawing the wires into a lower gauge ^{for} charge is carried out and the same is cleared out as drawn G.I. Wire on payment of appropriate Excise duty,

(C) On the remaining quantity of black wire, the same is galvanized and cleared by reversal of an amount under Rule 6 of the Cenvat Credit Rules.

4. On scrutiny of the ER-1 returns, it appeared to Revenue that the process of subjecting the black Wire to galvanization and its clearances as mentioned in para (c), above amounts to

manufacture and accordingly, vide letter dated 11.04.2005, directed the appellant to deposit differential Excise duty @ of 4% (12%-8%) for the period October, 2004 to February, 2005 and @ of 6% (16%-10%) and Education Cess @ 2% for the subsequent period along with interest. In reply, the appellant took the categorical stand that galvanization of Wire does not amount to manufacture and also placed reliance on the CBEC Circular No.19/19/94-CX dated 09.02.1994, clarifying in Para-3 that galvanization does not amount to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944. Further, the goods did not fall in the category of exempted goods and accordingly, they were required to be reversed Cenvat at the time of clearances. Thereafter, SCN dated 27.10.2005 was issued. It appeared to Revenue, that if the explanation of the appellant that the process does not amount to manufacture, is accepted, then the goods in question cannot be treated as dutiable at all and accordingly, the appellant was not entitled to take Cenvat Credit on the inputs used in the manufacture of such goods (galvanization of Black Wire). It further appeared to Revenue that the appellant have taken Cenvat Credit on entire quantity of inputs, namely Black Wire and Zinc and used the same for the manufacture of dutiable as well as for goods subjected to only process of galvanization. The appellant have wrongly taken credit of the duty paid on Black Wire and Zinc used in the process of galvanization, should have been reversed at the time of clearances. But, the appellant reversed only

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prescribed percentage of amount under rule 6(3)(b) of CCR, 2004. Further, the appellant had taken Cenvat Credit of Education Cess on Black Wire and Zinc but no amount of Education Cess has been reversed. Thus, a case of short reversal of duty is made out and, accordingly, the SCN proposed to recover Cenvat Credit amounting to Rs.35,91,092/- including Education Cess short reversed during the period October, 2004 to February, 2005 along with penalty and also proposed to recover Rs.75,28,997/- including Education Cess allegedly short paid by them, during the period March, 2005 to 19th September, 2005 as well as penalty was also proposed. Further, the amount of Excise duty of Rs.40 lakh debited by them under protest in the RG-23A part-II on 30.09.2005 and 07.10.2005 was proposed to be appropriated.

5. The appellant contested the SCN by stating that galvanization simplicitor did not amount to manufacture and the demand was confirmed on contest for both the period. For the period October, 2004 to March, 2005, the amount proposed Rs.35,91,092/- was confirmed as short paid on clearance of G.I. Wire under the provisions of Rule 14 of the CCR, 2004. Further, for the period March, 2005 to 19th September, 2005 Excise duty amounting to Rs.48,47,331/- including education cess was confirmed as short paid under the provisions of Rule 6 & 8 of Central Excise Rules, 2002. And further, the amount deposited earlier was appropriated Rs.40,00,000/-. Penalty of equal amount is also

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imposed along with charging of interest. Being aggrieved, the appellant preferred appeal before this tribunal.

6. The learned counsel Mr. Nishant Mishra appearing for the appellant urged, galvanisation simplicitor does not amount to manufacture. Further, there is no averment in the show cause notice that galvanization amounts to manufacture. Merely, because there is a separate Tariff entry with effect from 01 March, 2005, it cannot be said that black Wire galvanization have become dutiable. Relying on the ruling of the Apex Court in CCE Vs. Technoweld Industries reported in 2003 (155) ELT 209(SC), where it is held that in absence of any manufacture, the product does not become excisable merely, because there is a separate tariff entry. Reliance was also placed on the ruling of this Tribunal in the case of Geekay Wires Pvt. Ltd Vs. CCE reported at 2007 (80) RLT 396, wherein it was held that conversion of galvanized standard wires out of G.I. Wires does not amount to manufacture. The learned counsel also urges that the show cause notice is misconceived and bad and it ignores the CBEC Circular No.19/19/94-CX which is binding on the Revenue Officers. The learned counsel also placed reliance on the ruling of Hon'ble Supreme Court in the case of CCE Vs. S.R. Tissues Pvt. Ltd reported at 2005(186) ELT 385(SC), wherein relying on the two fold test for deciding, whether the processes is that of manufacture – first, whether by the said process, a different commercial commodity comes into existence or whether the

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identity of the original commodity ceases to exist; secondly, whether the commodity, which was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence, will be of no commercial use but for the said process. Applying the aforementioned test to the facts in S.R. Tissues, where the activity of slitting/cutting of jumbo rolls of plain tissue paper/aluminium foil into smaller size was held, does not amount to "manufacture" on the principle that character and end-use did not undergo any change on account of winding, cutting/slitting and packing. It was also held that mere mention of a product in a tariff heading, not necessarily implies that said product was obtained by process of manufacture. Also held that just because raw materials and finished products come under two different headings, it cannot be presumed that process of obtaining finished product from such a raw material automatically constitute manufacture.

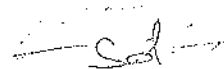
7. The learned A.R. for Revenue relies on the impugned order.
8. Having considered the rival contentions, we take notice that prior to 01.03.2005, both plated or coated wire with zinc and un-plated wire were listed in heading 7217 and subsequent to March 01, 2005 under the 8 digit Tariff, Black wire was listed under heading 72171010 and G.I. Wire under heading 72172010. We hold that process of galvanization simpliciter does not amount to manufacture and accordingly the whole show



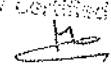
cause is misconceived, demanding Central Excise duty from the appellant. Further, we hold that the appellant have rightly paid duty by reversal of credit under the provisions of Rule 6(3)(b) of Cenvat Credit Rules, 2004. We also hold that the show cause notice is misconceived as it ignores the CBEC Circular, wherein it has been said that galvanization of black wire does not amount to manufacture. Accordingly, we set aside the impugned order and allow the appeal with consequential benefits to the appellant, if any.

(Pronounced in the open Court...13.10.16...)


(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

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