CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21466 of 2015

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-091-15-16-C.E dated 15.07.2015 passed by the Commissioner of Central Excise (Appeals-I), Cochin.)

M/s. Orkla India Private Limited,
IV/547-D, Rayons Quarters Road,
Chelamattam,
Okkal P.O., Perumbavoor,
Ernakulam.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Office of the Commissioner of Central Excise and Customs, Cochin Commissionerate,
CR Buildings,
I.S. Press Road,
Cochin – 682 018.

Respondent(s)

With

Central Excise Appeal No. 22290 of 2015

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-091-15-16-C.E dated 15.07.2015 passed by the Commissioner of Central Excise (Appeals-I), Cochin.)

M/s. Orkla India Private Limited,
IV/547-D, Rayons Quarters Road,
Chelamattam,
Okkal P.O., Perumbavoor,
Ernakulam.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Office of the Commissioner of Central Excise and Customs, Cochin Commissionerate,
CR Buildings,
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Cochin – 682 018.

Respondent(s)

APPEARANCE:

Mr. Harish Bindumadhavan, Advocate for the Appellant

Mr. Sanjay Venkat, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20820-20821 /2025

DATE OF HEARING: 09.05.2025
DATE OF DECISION: 09.05.2025

PER : DR. D.M. MISRA

These two appeals are filed against respective Orders-in-Appeal No. COC-EXCUS-000-APP-091-15-16-C.E dated 15.07.2015 passed by the Commissioner of Central Excise (Appeals-I), Cochin. Since, involved common issues are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant, inter alia, engaged on job work basis quilting activities for M/s. Eastern Mattresses Pvt. Ltd., as well as some other manufacturers of mattress in Kerala. Alleging that the process undertaken by the appellant resulted into manufacture show-cause notice was issued to them on 18.03.2010 for the period from March 2009 to December 2009 demanding duty of Rs.8,14,907/- along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order they filed appeal before the learned Commissioner (Appeals) who had rejected the appeal. Another show-cause notice was issued to the appellant for the subsequent period on the same goods from January 2010 to

March 2010 on 25.01.2011 demanding duty of Rs.3,23,636/- with interest and penalty. On adjudication, the demand was dropped; Revenue filed an appeal before the learned Commissioner (Appeals) who in turn allowed the Revenue's appeal.

3. At the outset, the learned advocate for the appellant has submitted that the appellant received Polyurethane foam ("PUF") sheets/rolls, cloth and threads from various mattresses manufacturers. These are fed into stitching machines which is installed in the appellant's premises and the stitching is carried out as per the design provided by the customers. The resultant product is a semi-finished quilt in running length which are rolled and sent to the customers for further manufacturing. At the customers end these are cut into size which is in turn used in the manufacture of mattresses. It is their contention that the stitching activity rendered by the appellant does not result into manufacture. A show-cause notice was earlier issued to the appellant on 07.03.2008 alleging that the quilting process undertaken by them since does not amount to manufacture, service tax was required to be paid on the job-work charges collected under the taxable category of 'Business Auxiliary Services' for the financial year 2005-2006 and 2006-2007. Consequent to confirmation of the demand by order dated 14.05.2009, the appellant had discharged service tax on the job-work process undertaken by them. It is his contention that since the activity has already been held to be leviable to service tax under 'Business Auxiliary Services', hence alleging that the same activity also result into manufacture is bad in law. In support, they have referred to the judgment of the Tribunal in the case of Osnar Chemicals Pvt. Ltd. V. CCE, Bangalore –II [2009 (240) ELT 115 (Tri. –Bang.)] which has been upheld later by the Hon'ble Supreme Court in the case of CCE, Bangalore – II V.

Osnar Chemical Pvt. Ltd. [2012 (276) ELT 162 (S.C.)] also they placed reliance on the following judgments in support of their case:

a. CCE, Thane-I v. Spectron Engineers Pvt. Ltd. [2020 (33) GSTL 223 (Tri. –Mum.)]
b. Ericsson India Pvt. Ltd. v. CCE, Pondicherry [2007 (212) ELT 198 (Tri. – Chennai)
c. Ericsson India Pvt. Ltd. v. CCE, Jaipur – I [2013 (94) ELT 599 (Tri. –Del.)

3.1. Further, he has submitted that the activity undertaken by them does not amount to manufacture inasmuch as the process of stitching quilt in running length cannot be said resulting to manufacture. In support, they have referred to the judgment in the case of Commissioner of C.EX., Chennai-II Vs. Tarpaulin International 2010 (256) E.L.T. 481 (S.C.) and also Commissioner of Central Excise, Cochin Vs. Kitex Ltd., 2016 (338) E.L.T. 174 (S.C.). Further, they have submitted that the product manufactured by them is not marketable unless the quilts of running length are cut to size and have their edges bound. In support, they have referred to the judgment in the case of Commissioner of Central Excise, Jaipur Vs. Meca Quilts Ltd. [2000 (119) ELT 497 (Tribunal)] and Commissioner of C. Ex., Chandigarh Vs. Samsung Acrycot Ltd. [2001 (132) E.L.T. 766 (Tri. –Del.) which has been maintained by the Hon'ble Supreme Court subsequently. Further, the learned advocate has submitted that since the activity undertaken by them is job work therefore, the appellant is entitled to the benefit of Notification No. 214/1986-CE dated 25.03.1986. Further, he has submitted that the classification adopted by the Revenue under CETA 94.04 is incorrect and the correct classification of the product is under CETA 5811 in view of the Circular No. 903/23/2009 dated 20.10.2009. Besides, they have also argued that the semi-finished quilt manufactured by them falling under CETA 5811 is exempted vide Notification No. 30/2004-CE dated 09.07.2004.

Also, the learned advocate has submitted that the method of valuation adopted by the Department is erroneous, arbitrary and hence untenable in law.

4. The Learned AR for the Revenue has reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The short question involved in the present appeals for consideration is whether the activity undertaken by the appellant results into manufacture and the appellant are required to discharge central excise duty of the manufactured product.

7. Undisputed facts of the case are that initially the appellant was issued the demand notice on 07.03.2008 alleging that the activities of quilting i.e. stitching of quilts carried out by the appellant on job work basis does not result in the manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944 and the job charges received by the appellant is leviable to service tax under the category of 'Business Auxiliary Services' as per Section 65(19)(v) of the Finance Act, 1994. The said show-cause notice was confirmed by the Department vide Order-in-Original No. 25/2009 ST dated 14.05.2009 holding that the activity of stitching of quilts in their premises does not result into manufacture and accordingly service tax is payable under 'Business Auxiliary Services'. Consequent to the said order of the Department, the appellant continued to discharge service tax for the activities of quilting in their premises.

8. We find that the entire raw materials namely Polyurethane foam ("PUF") sheets/ rolls, cloth and threads were sent by the principal manufacturers/customers to the appellant. The PUF is

sandwiched between the cloth and stitched using stitching machine as per the design provided by the customers and the resultant product is a semi-finished quilt in running length which is returned to the customers for further manufacturing of mattresses. It is clear that what emerges after stitching is running length quilts, which is not marketable as held in the case of CCE, Jaipur v. Meca Quilts Ltd. (Supra) and hence, cannot be considered as 'excisable goods' attracting excise duty. Besides, we find that already the Department has held the view that the activities undertaken by the appellant resulted into rendering of services by 'Business Auxiliary Services' as defined under Section 65(19)(v) of the Finance Act, 1994; therefore, same activities cannot be said to be resulted into manufacture. This view has been expressed by the Tribunal in the case of Osnar Chemicals Pvt. Ltd. v. CCE, Bangalore-II (Supra). This Tribunal held as follows:

> "5. … …Further, the point that the appellants pay Service Tax on the process is also very relevant. It is not proper on the Department to levy Service Tax and Excise Duty on the same process simultaneously. Once the appellant pays Service Tax on the said process and the Department has not objected to it, then there is no question of treating the process as amounting to manufacture and levying the same to the Central Excise Duty… ….."

9. The said judgment has later been upheld by the Hon'ble Supreme Court. Besides it is also not in dispute that after stitching the Polyurethane foam ("PUF") with the cloths, quilts emerged in running length had been cleared to the principal manufacturer who is in turn use the same in the process of manufacture of mattresses. Thus, the activities carried out by the appellant cannot be considered as resulting into 'manufacture' attracting of excise duty in view of the judgments referred as above.

10. In the result the impugned orders are set aside and the Appeals are allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in Open Court
on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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