CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20334 of 2017

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-30 & 31-16-17 dated 26.12.2016 passed by the Principal Commissioner of Central Excise, Bangalore - I]

M/s. Wilber Chemicals
Plot No. 111, Sy. No. 27 & 32,
Bandenallasandra Industrial Layout,
Bommasandra, Jigani Link Road,
Anekal Taluk
Bangalore – 560 105 ....**Appellant(s)**

VERSUS

The Principal Commissioner of Central Excise, Bangalore - I
Post Box No. 5400, C.R. Buildings
Bangalore – 560 001 ....**Respondent(s)**

APPEARANCE:

Mr. Akbar Basha, Chartered Accountant for the Appellant
Mr. Rajashekar B.N.N., Superintendent (AR) for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER NO. 20600 / 2026

Date of Hearing: 29.10.2025
Date of Decision: 28.04.2026

PER: P.A. AUGUSTIAN

The issue in the present appeal is whether the activity undertaken by the Appellant during the period from 20.02.2012 to 11.08.2015 amounts to manufacture and whether demand can be confirmed by invoking the extended period of limitation.

2. The brief facts are alleging that the Appellant is manufacturing 'Epoxy Resin' classifiable under Chapter Heading 3907 of the Central

Excise Act, 1985 and sold the same without payment of duty, show cause notice dated 02.02.2016 was issued demanding excise duty along with interest and also proposing penalty. Thereafter another show cause notice was issued on 01.09.2016 for the period from August 2015 to July 2016. Adjudication Authority as per the impugned order confirmed the demand against both the show cause notices and also demanded interest. Further against the first show cause notice, penalty of an equal amount was also imposed. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Chartered Accountant (CA) for the Appellant submits that the Appellant is involved in trading of chemicals for granites, fiber glass meshes, resin bond abrasives, epoxy resins, hardeners, colours and other chemicals. In respect of trading of epoxy resins, hardeners, colours and other chemicals, it is purchased in barrels and the same are sold in smaller containers ranging from 1 kg to 5 Kgs as per the requirements of the customers. As regarding 'Epoxy Resin', it is only stirred to reduce viscosity and packed into small containers without change in the name, character or use. Regularly hardeners and colours are also purchased from the manufactures and after transferring from larger barrels into small cans, thereafter they are packed in corrugated cartons and dispatched. Mixing is done as per the final products for Granite polish by the customers. However, as insisted by the Department, Appellant took Excise Registration and paid due amount under protest for the period from August 2015 to July 2016.

4. As regards manufacturing, Learned Chartered Accountant submits that the definition "manufacture" under Section 2(f) of Central Excise Act, 1944 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 note 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 the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling 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.

5. Learned Chartered Accountant further submits that from the above definition of the manufacture, it is clear that definition provided under the Central Excise Act, 1944 is an inclusive definition. Further submits that Appellant is undertaking only repacking activity and according to the definition repacking amounts to deemed manufacture only when it is covered under Third Schedule to Central Excise Act, 1944. In the present case, the product has been classified under Chapter Heading 3907. As the said product classified under Chapter Heading 3907 does not find mention as deemed manufacture as provided in Third Schedule to Central Excise Act, 1944 and even there is no Chapter note wherein it is stated that labeling or relabeling or packing or repacking amount to manufacture in this Chapter to consider the repacking of the product as manufacture. The finding is made based on the Section note, however section note provides the interpretation to classify the product under proper head and the same cannot be considered to treat the activity as manufacture.

6. Learned Chartered Accountant further submits that Adjudicating Authority has relied on the statements made by Shri. Vivian Philip Lewis, Proprietor of M/s. Klaus Specialties, who claims to be manufactures of similar products. In the statement, Shri. Vivian Philip Lewis has explained the process undertaken to manufacture the products. In this regard, the Learned Chartered Accountant submits that the activity performed by M/s. Klaus Specialities are different and unrelated to the activities undertaken by the Appellant. While the products maybe the similar, the processes undertaken are different. It can be seen that the impugned order has confirmed the demand on wrong facts. Apart from above, the Appellant's request in Para 15 to the

show cause notice (SCN) reply for cross-examination of Shri. Vivian Philip Lewis of M/s. Klaus Specialties was denied. Adjudication Authority merely confirmed the demand on third party statement. Thus, relying on the statement of proprietor of M/s. Klaus Specialities cannot be made applicable to the present case. Learned Chartered Accountant also relied on the judgment of Hon'ble Supreme Court in **Union of India Vs. Delhi Cloth and General Mills Co. Ltd. - 1977 (1) E.L.T (J 199) (S.C)** wherein it is held that every change is not manufacture and that the transformation should result in a new and different article emerging having distinctive name, character or use. In Appellant's case, as a result of processing, there is no final product or output which differs from the raw material put into process, in terms of name, characteristics or usage. Thus, the process involved cannot be construed as manufacturing. In the present case, the product is merely repacked and sold. Hence there is no change in name character or use of the said product. Accordingly, the activity undertaken by the Appellant cannot be considered as manufacture to confirm demand.

7. Learned Chartered Accountant further submits that even if it is held that the activities carried out by the Appellant amounts to manufacture, the Appellant is eligible for CENVAT credit on the inputs used in manufacturing. If the subject activities are liable for excise duty, the Cenvat credit on inputs used in manufacturing should be allowed to be taken as credit. Therefore, if the Final product is dutiable then any input used in manufacturing of such product is to be allowed as credit and credit cannot be denied. This view is supported in the case of **Formica India division Vs. CCE- [1995 (77) E.L.T. 511 (S.C.)],** wherein it is held that when the demand is confirmed the benefit, if any which would have been claimed if it was liable should be extended. Applying the same rationale, in number of cases, the credit on inputs used is given when it is finally held to be dutiable. Learned Chartered Accountant also draws our attention to the statement of summary of cenvat credit available for the period 2012-13 to 2014-15 certified by the Chartered Accountant which was submitted along with reply to show cause notice (SCN). Further, submits that in the case of **Indian**

Oxygen Ltd. Vs. Collector of CE -1995 (80) ELT 573 (Tri) it was held that Modvat credit permissible at the stage of demand of duty for short levy or non-levy goods are ultimately held to be liable to duty.

8. Learned Chartered Accountant as regards the computation of duty, since the sales figure considered by the Department for proposing the demand includes local VAT /CST paid by them the same is required to be excluded. Further, apart from Epoxy Resin, Appellant undertook trading of granites, glass meshes, resin bond abrasives etc., in this regard there is no allegation in the subject show cause notice (SCN). However, the turnover of these trading items is also included while computing the proposed demand. Hence, the same is required to be reduced. Learned Chartered Accountant also submits that the notice while computing the proposed demand considered the turnover of hardeners and colours also, wherein there is no allegation of manufacture of these products. Hence the turnover of hardeners and colours are required to be removed. Further submits that in few of the cases, Appellant have supplied only 'epoxy resin' without hardeners and colours and even without any process. Hence turnover of sale of only 'Epoxy resin' is required to be reduced, further the learned Chartered Accountant to substantiate, draws out attention to the detailed computation sheet certified by the Chartered Accountant.

9. Further for extending cum-duty benefit, learned Chartered Accountant submits that even if the activity amounts to manufacture, Appellants have not collected the duty amount separately from the customers, which is very much clear from the invoices raised by them to customer. Hence, if they are liable to pay duty the benefit of cum-duty is required to be extended.

10. As regards the demand confirmed by invoking extended period of limitation and penalty, learned Chartered Accountant submits that the Appellants were under the belief that repacking of product does not amount to manufacture. However, finding in the impugned order is given on the ground that from the material, documentary evidences and the statement recorded, it appears that Appellant have manufactured

and removed the excisable goods without obtaining registration and without payment of duty. Learned Chartered Accountant submits that the allegation is only with regard to contravention of provisions. However, it does not bring out any intention of evading the payment of duty by wrongful availment of credit. The details of manufacture and removal are also evident from their records and returns submitted to the State Commercial Tax authorities. Further submits that conscious or deliberate withholding of information by the Appellant when he knew otherwise is required to be proved to invoke the proviso and the mere inaction, failure or negligence on his part is not enough, more so further when there was scope for doubt whether the goods were dutiable or not and when there was scope for a different interpretation. Thus, there is no suppression of facts and when there is no intention to evade payment of duty, the demand confirmed by invoking extended period of limitation is unsustainable. The subject show cause notice (SCN) is issued covering the period from 2011-12 to 2015-16 (upto 11.08.2015) on 02.02.2016. The due date for filing ER-1 return for the period January 2015 is 10.02.2016 and accordingly the demand if any need to be made within a period of one year from the relevant date. Since the show-cause notice is issued on 01.09.2016, any demand prior to January 2014 is time barred and penalty imposed on the Appellant is also unsustainable. In this regard, learned Chartered Accountant also relied on the following decisions:

a. **Collector V. Chemphar Drugs and Liniments - 1989 (40) ELT 276 (SC)**
b. **Padmini Products V. Collector - 1989 (43) ELT 195 (SC)**
c. **Tamil Nadu Housing Board V. Collector - 1994 (74) ELT 9 (SC)**
d. **Pushpam Pharmaceuticals Co. V. Collector - 1995 (78) ELT 401 (SC)**
e. **CCE VS. HMM Ltd. - 1995 (76) ELT 497 (SC)**

f. **RaiBhadurNarain Sigh Sugar Mills Vs. UOI - 1996 (88) ELT 24 (SC)**

g. **Ispat Industries Limited Vs. CCE, Raigarh reported in 2006 (199) ELT 509**.

h. **Rajasthan Spinning & Weaving Mills (2009 (238) ELT. 3 (S.C.)**

i. **Commissioner of Central Excise, Vapi Vs. Kisan Mouldings Ltd. - 2010 (260) E.L.T 167 (S.C).**

j. **Andaman Timber Industries Versus Commissioner of C. Ex., Kolkata-II 2015 (324) E.L.T. 641 (S.C.)**

k. **Aswani & Co. Versus Commissioner of Central Excise, Delhi-I 2015 (327) E.L.T. 81 (Tri. - Del.)**

11. As regards second show cause notice, during the period from August 2015 to July 2016, the Appellant manufactured and cleared 'epoxy resins' valued at Rs.2,74,78,611/- classifying them correctly under Chapter Heading 39073010 but paying duty under protest since, the matter was still pending with Adjudicating Authority.

12. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and submits that it is an undisputed fact that the Appellant is engaged in the manufacture of 'Epoxy Resin' which is used in polishing the Granite Slabs to obtain proper shining on the polished slabs. Learned AR also explained the process of manufacture adopted by the Appellant.

13. As regards allowing Cenvat credit already available by Appellant for set off towards the duty payment liability against them, learned AR submits that since Appellants have furnished a Chartered Accountant certificate on 05.10.2016 for claiming the credit of Rs.78,07,038/- for the period February 2012 to December 2014 along with the invoice wise list for the period 06.01.2011 to 31.12.2014, the Appellant has not produced any documentary evidence to substantiate their claim for availing credit. Further, Appellant is eligible for credit only where

invoices are within one year from the date of taking credit, subject to satisfaction of the proper officer. Since no documentary evidence was produced, the claim for credit for the period 06.01.2011 to 31.12.2014 was rejected as being beyond the one-year limit under the proviso to Rule 4(1) of the Cenvat Credit Rules, 2004.

14. In rejoinder, Learned Chartered Accountant submits that the CENVAT Credit register with complete invoice details, nature of purchases /services, and duty /tax element was furnished. However, the Adjudicating Authority has not specified what further documentary evidence was required. Further, on the one-year time limit, learned Chartered Accountant submits that the Appellant was under a bona fide belief that their activity was not manufacture, they neither registered themselves nor paid duty, and hence did not avail credit. However, once the Department, retrospectively demanded duty alleging manufacture, appellant does not accept this, assuming but not admitting manufacture is established, then the duty liability raised, retrospectively must be accompanied by the benefit of CENVAT credit for the same period, without limitation, as a vested right.

15. Heard both sides perused the records.

16. We find that as per Section 2(f) of the Central Excise Act, 1944, definition of 'manufacture' includes activity incidental or ancillary to the completion of a manufactured product. However, in the present case, Appellant has purchased 'epoxy resin', 'hardener', and colour in bulk from suppliers which were marketable products and merely repacked into smaller containers and it does not amount to any incidental process of manufacture. The Appellant purchases these goods and repacks them into with smaller quantities, However, there is no change in name, character or use, the above activities amount only to repacking of bulk material into smaller containers without any transformation, hence the activity undertaken they do not constitute "manufacture" under section 2(f) of the Central Excise Act, 1944. Further we find that the Adjudicating Authority has adopted the activity as manufacture based on the section note XVII and said section note is applicable for

classification purpose and 'Epoxy Resin' the impugned goods is classifiable under Chapter sub-Heading 39073010 of the First Schedule to the Central Excise Tariff Act, 1985. The said section note cannot be made applicable to decide whether it amounts to manufacture, in the absence of any mention of the activity undertaken by the appellant amounts to manufacture in the section note. Further 'epoxy resin' is not related to any product in the Fourth Schedule (MRP Valuation) and only if specified in relation to any goods in the Section or Chapter Notes of the Fourth Schedule, it amounting to manufacture. As regards the goods specified in the Third Schedule, wherein the activity involving packing or repacking of such goods in a unit container or labelling 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 is considered as manufacture, as 'epoxy resins', 'hardeners', and 'colours' are not specified in the Third Schedule to the Central Excise Tariff Act, 1985, the deeming provision under Section 2(f)(iii) is also inapplicable. Since the activities amount only to repacking of bulk material into smaller containers without any transformation, they do not constitute "manufacture" under section 2(f) of the Central Excise Act, 1944.

17. In view of the above discussion we find that the impugned order is unsustainable and liable to be set aside, Accordingly, impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 28.04.2026)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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