CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 50523 of 2015

[Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-738-14-15 dated 12.11.2014 passed by the Commissioner (Appeals), C.E. & Cus., Chandigarh-II]

Kirat Fabricators **......Appellant**
Industrial Growth Centre,
Samba, Jammu & Kashmir 184121

VERSUS

Commissioner of Central Excise And Service Tax, Jammu **......Respondent**
OB 32, Rail Head Complex,
Jammu, Jammu & Kashmir 180012

APPEARANCE:

Mr. Rajesh Gupta, Chartered Accountant for the Appellant
Mr. Narinder Singh and Mr. Yashpal Singh, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60851/2025

DATE OF HEARING: 10.07.2025
DATE OF DECISION: 10.07.2025

S. S. GARG :

The present appeal is directed against impugned order dated 12.11.2014 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh-II, whereby the learned Commissioner (Appeals) has rejected appeal of the appellant and upheld the order-in-original.

2. Briefly stated facts of the present case are that the appellant was engaged in activities pertaining to fabrication of Steel Tubular Poles falling under Chapter Sub-Heading 73089070 of the first schedule to the Central Excise Tariff Act, 1985. The appellant applied for registration and obtained the same to manufacture of goods falling under Chapters 73 & 82 of the Central Excise Tariff Act, 1985, which included Steel Tubular Poles and to avail benefit of Notification No. 56/2002-CE dated 14.11.2002. Vide the said registration, the appellant was entitled to manufacture various items falling under the above said Chapters except 'Steel Tubular Poles' and therefore, since inception the appellant neither charged central excise duty nor deposited the same and did not claim any benefit under Notification No. 56/2002-CE in this regard. Subsequently, the department took a stand on the basis of the judgment of Hon'ble Apex Court in the case of Hindustan Poles Corporation vs. CCE, Calcutta – 2006 (196) ELT 400 (SC), wherein the Hon'ble Apex Court held that the activity of merely joining pipes with one with another of different dimensions to obtain a pole of desired length can, by no stretch of imagination, be brought within the category of manufacture as this process neither changes the basic identity nor the original character of pipes nor makes it a new product, as defined under Section 2(f) of the Central Excise Act, 1944. Subsequently, the Hon'ble Apex Court in the case of Prachi Industries vs. CCE, Chandigarh – 2008 (225) ELT 16 (SC) took a contrary view and held that joining of duty paid pipes of different diameters by swaging & welding would amount to manufacture.

Further, the Tribunal in the case of CCE, Jammu vs. North Sun Enterprises Industrial Estate – 2012 (284) ELT 75 (Tri. Del.) has held that the process undertaken by the appellant in the manufacture of Steel Tubular Poles amounts to manufacture. The department issued a show cause notice dated 09.09.2013 to the appellant and after following the due process, the demand along with interest and penalty was confirmed by the original authority and on appeal, the same was upheld by the learned Commissioner (Appeals). Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Consultant for the appellant submits that the show cause notice was issued as a result of change in the opinion of the department that the fabrication of 'Steel Tubular Poles' amounted to manufacture; since the department did not grant registration to the item 'Steel Tubular Poles', the appellant did not deposit the duty and also did not charge the same from their customers; even if the department opined that duty was payable on the 'Steel Tubular Poles' manufactured by the appellant, the appellant was eligible to claim benefit of Notification No. 56/2002-CE. He further submits that the appellant has been punished for no fault on their part. He also submits that this issue has been considered in the appellant's own case for the earlier period by the Tribunal which vide its **Final Order No. 60433/2024 dated 19.07.2024 in Excise Appeal No. 53783 of 2014** has remanded the matter back to the original authority with directions. He further

prays that the present case also needs to be remanded on the same lines as has been done in earlier case.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that identical issue has been decided by the Tribunal in the appellant's own case (cited supra) for the earlier period, wherein the Tribunal after considering the submissions of both the parties, has held in para 4 & 5 as under:

> *"**4.** Heard both sides and perused the records of the case. We find that the appellant had applied for registration on 13th May, 2009; the Department did not give registration for the impugned item i.e. "Steel Tubular Poles"; subsequently, after the judgment of the Tribunal in the case of North Sun Enterprises Industrial Estate (supra), Department issued show cause notice. We find that as the law in this case has been laid down by the Hon'ble Apex Court, it cannot be held that the appellants are not required to pay the applicable duty on Steel Tubular Poles; however, we find that the appellants cannot be penalized for no fault of them just because the judicial pronouncements altered the status of fabrication of Steel Tubular Poles holding that the fabrication of the same amounted to manufacture. Therefore, we find that the Department has not made any case for invocation of extended period of limitation and for imposition of penalty under Section 11AC of the Central Excise Act, 1944. Therefore, we are of the considered opinion that the appellants are liable to pay duty on the Steel Tubular Poles manufactured by them during the impugned period; the demand is liable to be restricted to the normal period. Moreover, we find that the appellants have given the necessary information in terms of Notification No. 56/2002 in the year 2009 itself and therefore, the benefit of Notification cannot be denied to them. We follow the ratio of this Bench's decision in the case of Kay Kay Fabricators (supra) with identical facts and circumstances and hold that even if the appellants were required to pay duty*

during the normal period, they would be eligible for refund as applicable under Notification No. 56/2002. In order to calculate the duty and the applicable refund for the impugned period, the case requires to travel back to the Deputy/ Assistant Commissioner as the case may be.

5. *In the result, the appeal is partly allowed by way of remand; the Deputy/ Assistant Commissioner, as the case may be, shall calculate the duty for the normal period and the amount of refund that is payable to the appellants in terms of Notification No. 56/2002; balance of demand, if any, after adjusting the refund, shall be made good by the appellant along with interest; in case the amount refundable is more, the same shall be refunded to the appellants as per law."*

7. Therefore, by following the ratio of the above cited decision, we remand the matter back to the original authority with the same directions as cited supra in *para 5* of the earlier order.

8. In result, the appeal is allowed by way of remand.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi