CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 56868 of 2013

[Arising out of Order-in-Original No. 37/CE/COMMR/DM/RTK/2012-13 dated 15.02.2013 passed by the Commissioner of Central Excise, Rohtak (Haryana)]

M/s Kapoor Print Pack India P Ltd. **......Appellant**
203, HSIDC Industrial Estate, Phase Ibarhi,
Ganaur, Sonepat, Haryana-131101

VERSUS

Commissioner of Central Excise, Rohtak **......Respondent**
SCO 6 to 8 & 10, Sector-1, HUDA Market,
Rohtak, Haryana-124001

APPEARANCE:

Shri Prabhat Kumar, Advocate for the Appellant
Shri Aniram Meena and Shri Shantanu Kumar Meena, 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. 61399/2025

DATE OF HEARING: 31.07.2025
DATE OF DECISION: 18.09.2025

P. ANJANI KUMAR:

M/s Kapoor Print Pack India Ltd., the appellants, are engaged in the manufacture of 'Printed Plastic Laminated Rolls' falling under CETH 39209939; 39239090 & 48119094; the appellant availed CENVAT credit of the duty paid on the final products; the credit so availed was utilized to pay duty on the final products cleared by them. A show cause notice dated 17.12.2009, was issued to the appellants seeking to deny a credit of Rs.1,37,02,702/- utilized by them during May 2007 to 09.05.2008 for the reason that Hon'ble Apex Court in the case of Metlex India Pvt. Ltd. – 2004 (165) ELT 129 (SC) held that lamination of plastic films does not amount to manufacture and as the final product is not dutiable, CENVAT credit cannot be availed. Commissioner of Central Excise, Rohtak vide OIO dated 15.02.2013 confirmed the denial of CENVAT credit demanded and recovery of the same along with interest and equal penalty. Hence, this appeal.

2. Dr. Shri Prabhat Kumar, learned Counsel for the appellant submits that the impugned order is improper and illegal; the process carried out by the appellants amount to manufacture; the case of M/s Metlex India Pvt. Ltd. (supra) is not applicable as the facts are different and he relies on Dhruv Industries Ltd. – 2019 (365) ELT 644 (Tri. Chan.) affirmed by Hon'ble Supreme Court – 2021 (378) ELT A19 (SC) and Markwell Paper Plast Pvt. Ltd. – 2012 (285) ELT 76 (Tri. Del.). Learned Counsel further submits that demand for the period 01.03.2008 to 09.05.2008 cannot be sustained after the amendment to Note 16 of Chapter 39 of CETA, vide Finance Bill 2008, deeming that the process of lamination is lacquering in relation to the products of the Headings 3920 & 3921 amounts to manufacture; thus, denial of CENVAT credit of Rs.37,72,414/- for the period 01.03.2008 to 09.05.2008 is not justified. He further submits that Department has accepted the duty on the final products and therefore cannot dispute the availment of CENVAT credit on the inputs; even if finished item is not 'manufactured goods', there is no infirmity if duty is paid on them. He relies on the following cases:

- Gujarat Petrosynthese Ltd. – 1998 (102) ELT 293 (Tri.)
- Tata Iron & Steel Co. Ltd. – 2007 (209) ELT 392 (Tri. Mumbai)
- CCE Vs Hindustan Everest Tools Ltd. – 2004 (176) ELT 209 (CESTAT New Delhi)
- CCE Vs M.P. Telelinks Ltd. – 2004 (178) ELT 167 (CESTAT New Delhi)
- Natural Vitamins Ltd. – 2005 (179) ELT 326 (CESTAT New Delhi)
- Crompton Greaves Ltd. – 2008 (230) ELT 488 (Tri. Mumbai)
- Heat Shrink Technologies Ltd. – 2007 (220) ELT 437 (Tri. Mumbai)
- Stumpp Scheule & Somappa Ltd. – 2005 (191) ELT 1085 (Tri. Bang.)

3. Learned Counsel further submits that even in case the CENVAT is denied, the duty paid on final products may be adjusted towards recovery of credit as held in Pharmanza (India) – 2009 (237) ELT 488 (Tri. Ahmd.) and the balance be refunded after the adjustment. He submits that the entire demand is time barred as extended period cannot be invoked in the absence of any fraud, collusion etc. with intent to evade payment of duty; moreover, the issue being concerning interpretation of legal provisions, extended period cannot be invoked and penalty and interest cannot be demanded as held in Fibre Foils Ltd. – 2005 (190) ELT 352 (Tri. Mumbai) and Whiteline Chemicals – 2008 (229) ELT 95 (Tri. Ahmd.).

4. Learned Authorized Representative for the Department reiterates the findings of the impugned order. He relies in the case of Metlex (I) Pvt. Ltd. – 2004 (165) ELT 129 (SC).

5. Heard both sides and perused the records of the case. In the instant case, Revenue seeks to recover the CENVAT credit availed by the appellants for the reason that the final product manufactured and cleared by them on payment of duty is not excisable to duty.

The show cause notice and the impugned order are silent on as to what would happen to the duty paid by the appellants on the final product. The appellants have been regularly filing the ER-1 Returns and at no point of time payment of duty on the final products has been objected to. Revenue seeks to rely on the decision of the Hon'ble Apex Court in the case of Metlex India Pvt. Ltd. (supra) wherein it was held that the appellants therein merely laminate or metallise the duty paid film; the end product remains a film even after lamination and metallisation; no new distinct product comes into existence and therefore, no manufacture is involved. Learned Counsel for the appellants, on the other hand, submits that the case of Metlex India (supra) is not applicable to the facts of the present case as in the case of Metlex India, it was the Revenue who canvassed that the process amounts to manufacture; Hon'ble Apex Court held that the burden of proof to show manufacture is on the Revenue. He submits that Hon'ble Supreme Court in the case of Dhruv Industries Ltd. (supra) has held that the process amounts to manufacture. We also find that Tribunal in many cases held that metallising and lamination amounts to manufacture. Therefore, we are not inclined to accept the contention of the Revenue. We find that Tribunal in the case of Paper Products (supra) held as follows:

> **4.3** It was further emphasized by the appellant that as a result of production on conversion of one film into another, a new product known to the market "packing materials" emerges and accordingly, it is explicit that the packing materials manufactured by them amount to manufacture and accordingly prays for setting aside the impugned order and allow the appeal with consequential relief.
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> **5.** The learned Commissioner (AR) appearing for the Revenue reiterates the findings of the impugned order and relies upon the ruling of the

> *Metlex (India) Pvt. Ltd.* (supra) as well as the C.B.E. & C. Circular and Government of India's intimation, mentioned hereinbefore, and prays for upholding the impugned order.
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> **6.** Having considered the rival contentions, we are of the view that the process/conversion undertaken by the appellant amounts to manufacture in the light of ruling of the co-ordinate Bench decision of this Tribunal in the case of *Markwell Paper Plast Pvt. Ltd.* (supra). Thus, the appeal is allowed with consequential relief, if any.

6. We further find that appellants have been paying central excise duty on the final products and were filing ER-1 Returns; Revenue has never objected to such a practice; therefore, we find that it is not open to the Revenue to issue show cause notice invoking extended period. Moreover, the issue involves interpretation of the provisions of law and for that reason too, extended period cannot be invoked.

7. In view of the above, the appeal is allowed.

(Order pronounced in the open court on 18/09/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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