**IN THE CUSTOMS, EXCISE & SERVICE TAX**
**APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH, CHENNAI**

**Appeal No. E/510/2012**

(Arising out of Order-in-Original No.25/2012 (C) dated 8.10.2011 passed by the Commissioner of Central Excise, Puducherry)

M/s. Nexus Electro Steel Limited Appellant

Vs.

CCE, Puducherry Respondent

Appearance

Shri V. Ravindran, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **13.04.2018**

Final Order No. **41131 / 2018**

**Per Bench**

Brief facts are that the appellants are engaged in manufacture of CRGO core laminations and are registered with the Central Excise Department. They were availing the facility of CENVAT credit on inputs, which according to the department was not eligible for the reason that the processes undertaken by the appellant, which is merely cutting and slitting of sheets / coils as per customers specifications does not amount to manufacture. Show cause notice was issued proposing to recover the wrongly availed credit along with interest and also for imposing penalties. Demand of duty on the finished goods was also raised for which the duty was discharged utilizing the credit availed. After due process of law, the Commissioner confirmed the demand, interest and also imposed penalties. Aggrieved, the appellant is now before the Tribunal.

2. On behalf of the appellant, ld. counsel Shri V. Ravindran submitted that the period involved is from 10/2006 to 11/2006. He submitted that the appellants are engaged in CRGO core lamination and CRGO transfer laminations cut core and they have four different units in Puducherry with independent registration. The show cause notice alleges that the process of cutting and slitting does not amount to manufacture and has not taken cognizance of other processes viz. de-rolling, de-burring and recoiling in addition to cutting and slitting of the said coils. These processes collectively incorporate necessary magnetic and electrical properties into the coils and therefore these processes would amount to manufacture and the appellant has been recognized as manufacturers by issuing registration certificate by the department. Further, the duty on the finished products has been accepted by the department even after conduct of periodical audit of accounts over the past years. In such circumstance, the department after accepting duty on finished products cannot turn around and deny credit to the appellants. He relied upon the decision in the case of

Commissioner of Central Excise Vs. Ajinkya Enterprises – 2013 (294) ELT 203 (Bom.). It is also argued by the ld. counsel that the process was held to be manufacture in the appellant's own case in an Income Tax case vide judgment reported in 2010-TIOL-524-HC-MAD-IT wherein the Hon'ble High Court of Madras held that the appellant undertakes the process of manufacture and therefore is eligible for the deduction under section 80-IB of Income Tax Act, 1961. It was clearly held in the said decision that CRGO laminations shall amount to manufacture. He submitted that the adjudicating authority has relied upon Board's Circular No. 584/21/2001-CX dated 7.9.2001 and the later clarification issued by the Board in Circular No. 211/08/2005-CX dated 2.3.2005 wherein the Board clarified that the process of slitting of coils does not amount to manufacture. The ld. counsel has submitted that the slit coils when used for electrical lamination purposes, the process involved amounts to manufacture and this aspect has not been considered by the Hon'ble High Court of Delhi in the case of Faridabad Iron and Steel Traders Association Vs. Union of India reported in 2004 (178) ELT 1099 (Del.) which was upheld by the Hon'ble Supreme Court reported in 2005 (181) ELT A68 (SC) in the judgment relied by the Board for issuing the Circular. The availment of credit was based on valid cenvatable invoice and duty was paid on the finished products. Therefore, denial of credit on the inputs alleging that it does not amount to manufacture cannot sustain.

3. The ld. AR Shri K. Veerabhadra Reddy reiterated the findings in the impugned order. He argued that the decision given by the jurisdictional High Court in the appellant's own case is with regard to the law relating to Income Tax Act and therefore cannot be applied to the present case. The process of slitting and cutting of coils whether amounts to manufacture was considered by the Hon'ble High Court of Delhi as well as the Hon'ble Supreme Court and held that it does not amount to manufacture. The Board vide its Circular dated 2.3.2005 referred supra has clarified that the process does not amount to manufacture on the basis of the decision of the Hon'ble High Court which was affirmed by the Hon'ble Supreme Court. The demand confirmed is therefore legal and proper.

4. Heard both sides.

5. The issue for consideration is whether the demand / recovery of the credit availed by the appellant alleging that the process does not amount to manufacture is sustainable or not. The appellant have discharged duty on finished products and have also taken Central Excise registration. The accounts were periodically audited by the department. Later, show cause notice has been issued on the basis of the decisions rendered by the High Court of Delhi and Hon'ble Supreme Court alleging that the process does not amount to manufacture and therefore the

appellants are not eligible for credit. The ld. counsel has argued that the jurisdictional High Court in the appellant's own case under Income Tax law wherein it was held that the process undertaken by the appellant amounts to manufacture and therefore they are eligible for the deduction under Income Tax Act. However, the Board Circular No. 211/08/2005 dated 2.3.2005 has clarified that the activity does not amount to manufacture. This clarification is pursuant to the Hon'ble Delhi High Court and Hon'ble Supreme Court's decision. In the present case, without entering into the controversy whether the activity amounts to manufacture or not, as decided in various cases, we are of the view that when Board having issued Circular No. 584/21/2001 dated 7.9.2001 clarifying that the activity amounts to manufacture and collected excise duty, cannot later turn around and deny the credit alleging that the activity is not manufacture. The observation made in Ajinkya Enterprises (supra) is reproduced as under:-

> *"8. We see no merit in the above contentions. As rightly contended by the representative of the assessee appearing in person, till 1st March, 2005 the Revenue has accepted that the activity carried on by the assessee constituted manufacturing activity in view of Board Circular dated 7th September, 2001 and accordingly held that the assessee is entitled to take credit of duty paid on HR/CR coils. It is only because, the Board, on 2nd March, 2005 has withdrawn the Circular dated 7th September, 2001 the Revenue is claiming that the activity carried on by the assessee does not amount to manufacturing activity. The question is, whether on the facts of the present case, the Revenue, based on the Circular dated 2nd March, 2005, is justified in calling upon the assessee to reverse the credit or pay the amount to the extent of the credit liable to be reversed, with interest and penalty?*

*9. It is relevant to note that the Board in its Circular dated 7th September, 2001 had only held that the activity of cutting/slitting of HR/CR coils into sheets or strips constitutes manufacture. Admittedly, the assessee had carried on additional activities such as pickling and oiling on the decoiled HR/CR coils, which is a complex technical process involving huge investment in plant and machinery. Since these additional activities were not considered by the Board in its Circular dated 7th September, 2001, the withdrawal of the said Circular cannot be a ground to hold that the activity carried on by the assessee did not constitute manufacturing activity. It is only on 24th June, 2010, the Board has issued a Circular to the effect that the process of pickling does not amount to manufacture. Therefore, during the relevant period, that is, during the period from 2nd March, 2005 to 31st December, 2005, it could not be said that the issue was settled and that the assessee paid duty on decoiled HR/CR coils knowing fully well that the same were not manufactured goods. If duty on decoiled HR/CR coils was paid bona fide, then availing credit of duty paid on HR/CR coils cannot be faulted."*

6. Taking note of these facts and also the settled decision of law rendered in Ajinkya Enterprises (supra), we are of the considered opinion that when the duty has been discharged by the appellant for a prolonged period, the department thereafter cannot turn around and deny the credit alleging that the process does not amount to manufacture based upon new decisions evolved. Thus, we hold that the impugned order cannot sustain and requires to be set aside, which we hereby do.

7. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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