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# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
## EXCISE APPEAL BRANCH

Appeal No. E/909 /2005 - EX[DB]

Date **08/08/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

**C.C.E. DELHI I** — Appellant

Vs

**M/S SUPER WIRE DRAWING** — Respondent

I am directed to transmit herewith a certified copy of **Final order No.703/ 2011 EX[DB]** dated 04-8-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**

1. Respondent
**M/S SUPER WIRE DRAWING**
12,DLF, INDUSTRIAL AREA,
NAJAFGARH ROAD, NEW DELHI

2. Adv. / Consult
**MR.V. LAXMIKUMARAN**
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I**

**Excise Appeal No. 909 of 2005**

[Arising out of Order-in-Appeal No. 164/CE/ DLH/2004 dated 14.12.2004 passed by the Commissioner of Customs & Central Excise (Appeals), Delhi I ]

**For approval and signature**:

Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. M.V. Ravindran, Member (Judicial)

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|---|---|---|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : | No |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | No |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | Seen |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | Yes |

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Commissioner of Central Excise
Delhi — Appellants

Vs.

M/s. Super Wire Drawing — Respondent

**Appearance**:

Shri K. P. Singh, DR for the Appellants
Shri B.L. Narasimhan , Advocate for the Respondent

**CORAM**: Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing/decision : 21.7.2011

FINAL **ORAL ORDER NO. 703/2011-EX**

**Per M.V. Ravindran (for the Bench)**:

This appeal is filed by Revenue against order-in-appeal No. 164/CE/ DLH/2004 dated 14.12.2004.

2. The relevant facts that arise for consideration are that the respondents herein availed Cenvat credit of duty on inputs i.e. copper wire / copper wire rods and are engaged in the manufacturing of copper wire and copper strips. Show cause notice dated 11.2.2004 was issued to the respondents for seeking reversal of Cenvat credit availed on the ground that the activity of wire drawing does not amount to manufacture as held by the Apex Court. The respondents contested the matter before the adjudicating authority who confirmed the demands along with interest and imposed penalties.

3. Aggrieved by such an order, the respondents preferred the appeal before the Commissioner (Appeals). The Commissioner (Appeals) set aside the order-in-original relying upon the decision of the Tribunal in the case of PSL Holdings Ltd. vs. CCE reported at [ 2003 (156) ELT 602 (Tri-Mum) and Board's Circular dated 29.5.2003.

4. Learned DR would submit that as per Apex Court judgement in the case of Technoweld Indsutries [2003 (155) ELT 209 (SC), the

activity of drawing wire does not amount to manufacture, any Cenvat credit of the duty paid on inputs is not eligible as per the provisions of Rule 6(1) of Cenvat Credit Rules, 2002. It is his submission that since the respondents has availed the Cenvat credit which is not eligible during the relevant period, the order of the adjudicating authority is correct and should be restored by setting aside the impugned order as the period involved in this case is between the 27.3.2003 to 31.12.2003, a period wherein the judgement of the Apex Court squarely applies.

5. Learned Counsel appearing on behalf of the respondent would submit that respondents had cleared their final product on payment of duty on value addition though not taxable and it is not disputed by the revenue. It is his submission that the Board's Circular dated 26.7.2006 wherein Rule 16 was amended retrospectively allows credit in the case of wire drawing units. He would also draw our attention to the judgement of Co-ordinate Bench in case of Venus Wire Industries Pvt. Ltd. vs. CCE, Raigad reported at [ 2008 (224) ELT 495 (Tri-Mum)].

6. We have considered the submissions made at length by both sides and perused the records.

7. It is not in dispute that the demand of duty which has been confirmed by the adjudicating authority and set aside by the learned Commissioner (Appeals) is in respect of Cenvat credit availed by the assessee-respondent on the inputs used for drawing of wire. It is also not disputed that the final product cleared by the respondent-assessee is

on payment of appropriate duty during the relevant period. We find that the learned Commissioner (Appeals) has correctly come to the conclusion that the disallowment of Cenvat credit is not in accordance with the law for more than one reason. First of all, the duty discharged by the appellant on the final product, will in a way amount to reversal of Cenvat credit taken and the ratio of the order of the Tribunal in the case of Venus Wire Industries cited supra, will squarely apply in this case. Secondly the CBEC Circular dated 26.7.2006 also talks about regularisation of credits availed on inputs and duty paid on wires drawn by a retrospective amendments. We find that para 4.4 of the said CBEC Circular will apply in this case. In view of this, we do not find any merits in the appeal filed by the Revenue.

8. Hence, the appeal is rejected. The Cross Objection filed by the assessee being in support of the impugned order is also disposed of.

( Dr. C. Satapathy )
Technical Member

( M.V. Ravindran )
Member (Judicial)

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