

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

E/STAY/847-852/2009-EX

Appeal No. : E/871/2009-EX[DB], E/872/2009-EX[DB], E/873/2009-EX[DB], E/874/2009-EX[DB],
E/875/2009-EX[DB], E/876/2009-EX[DB]

Dated: 09/07/2012

Assistant Registrar

C.E.S.T.A.T. New Delhi

To,

C.C.E. JAMMU

OB-32, RAIL Head Complex, Jammu -
180012.

C.C.E. JAMMU

(Appellant)

VS

NORTH SUN ENTERPRISES,

(Respondent)

I am directed to transmit herewith a certified copy of Final Order No. A/782-787/2012-EX[DB],
Stay/MISC Order No. and SO/1042-1047/2012 dated 04/07/2012 passed by the Tribunal under section 35-
C(1) of the Central Excise and Salt Act, 1944.


Assistant Registrar
EXCISE Appeal Branch

Copy To,

1. Respondent

NORTH SUN ENTERPRISES,
INDUSTRIAL ESTATE,
SANNATNAGAR, SRINAGAR (J&K)

2. Advocate(s) / Consultant(s):

DR. H.S. GILL, ADV.,
3355, SECTOR-21, CHANDIGARH

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony,
New Delhi-3

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 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant
Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File


Assistant Registrar
EXCISE Appeal Branch

P. T. C. 2,

- 14. **NORTHERN ENGINEERS,**
INDUSTRIAL ESTATE,
SANNATNAGAR, SRINAGAR (J & K)
- 15. **CHARAG ASSOCIATES,**
PHASE-II, SIDCO, INDUSTRIAL
ESTATE, KHUNMOH, SRINAGAR
(J&K)
- 16. **CHINAR ELECTRICAL POLES,**
PANTHACHOWK, SRINAGAR (J&K),
JAMMU.
- 17. **ZAIN STEEL ENGINEERING
WORKS,**
INDUSTRIAL ESTATE, BARZULLA,
SRINAGAR (J&K)
- 18. **JEHLUM ELECTRICAL
INDUSTRIES,**
NATIONAL HIGHWAY, BYE PASS,
PANTHACHOWK, SRINAGAR (J&K)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 4.7.2012

Stay Application No.847 to 852 of 2009 and Central Excise Appeal No.871 to 876 of 2009

Arising out of the order in appeal No.1-6/CE/App/Jal/09 dated 6.1.2009 passed by Commissioner of Central Excise (Appeals), Jalandhar, Chandigarh.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

C.C.E., J & K, Jammu

... Appellant

Vs.

1. M/s North Sun Enterprises Industrial Estate
2. Northern Engineers
3. Charag Associates
4. Chinar Electrical Poles
5. Zain Steel Engineering Works
6. Jehlum Electrical Industries

.. Respondents

Present for the appellant : Shri R.K.Verma, A.R.
Present for the respondent : Dr. A.S.Gill, Advocate

STAY order No. 1042-1047/2012-EX(BA)
FINAL Order No. A/782-787/2012-EX(BA)

Per Justice Ajit Bharihoke (Oral):

The above referred six appeals involving common issue of law and fact are preferred by Revenue against common order in appeal

No. 1-6/CE/Appl/Jal/09 dated 6.1.2009 whereby the Commissioner (Appeals) allowed the appeals filed by the respective assessee/respondents against respective order in original and set aside the duty demand based upon the denial of cenvat credit availed by the respondents.

2. The respondents are manufacturers of steel tubular poles falling under 7308 90 70 of the schedule to the Central Excise Tariff Act, 1985. They during the relevant period had cleared the final products i.e. steel tubular poles on payment of duty and they also availed cenvat credit on the inputs used for manufacture of tubular pole.

3. The manufacturing process carried out in respect of steel tubular pole is that the manufacturer procures duty paid M.S. Black pipes/tubes of different diameters. These pipes/tubes are cut into sizes as required and the top portion of the pole is manufactured on swaging machine which swages the pipe of higher diameter on lower diameter. Swaging length varies with the size of the pole. After top and middle portion swaging is done, the bottom portion is swaged with the middle portion and the pole of desired size is manufactured. After this process the swaged portion is welded. The steel tubular poles, thus formed are corrected on straightening machine and thereafter the top portion of the steel pole is welded with M.S. cap and bottom portion is provided with base plate.

4. The Department taking note of the judgment of the Supreme Court in the matter of M/s Hindustan Pole Corporation vs. C.C.E. - 2006 (196) ELT 400 was of the view that poles produced and cleared by the respondent were not the result of manufacturing process. Accordingly, the respective respondents were served with show cause notices as to why cenvat credit availed by them may not be disallowed and the demand may not be confirmed against them. The notices also proposed imposition of penalty.

5. The respective jurisdictional authorities vide separate order in original confirmed the duty demand raised in the show cause notices against the respondents.

6. The respondents preferred separate appeals against the respective order in original. The Commissioner (Appeals) vide common impugned order allowed their appeals and set aside the duty demands confirmed against the respondents by respective orders in original.

6. It is against the aforesaid order in appeal passed by the Commissioner (Appeals), the department has preferred these appeals.

7. The question which arises for determination in these appeals are - - (a) whether the process of production of the pole cleared by the respective respondent amounts to manufacture so as to invite levy of excise duty. (b) if the production of pole does not amount to manufacture whether the department is justified in denying the cenvat credit to the respondent despite of their having accepted excise duty on the goods cleared by the respondents.

8. Learned Shri R.K. Verma, A.R. for the appellant has referred to the judgment of the Supreme court in the matter of Hindustan Pole Corporation (supra) and submitted that this issue is no more res integra. As per law laid down by the Supreme Court, the swaging and welding of pipes of different diameters does not amount to manufacture. As such, the electricity poles produced by the respondent were not leviable to excise duty and the respondents were therefore, not entitled to claim cenvat credit under Cenvat Credit Rules, 2004.

9. Dr. A.S.Gill, Advocate appearing for the respondents on the other hand has submitted that in view of the production process discussed above, it is obvious that after swaging and welding of pipes of different diameters, a new product known in the market as electric

pole comes into existence which has a character and was distinct from the pipes of various diameters used as Inputs, as such, the electric poles are the result of manufacturing process. In support of this contention, Dr. Gill has relied upon the judgment of the Supreme Court in the matter of Prachi Industries vs. C.C.E., Chandigarh - 2008 (225) ELT 16 (SC). In the alternative, Dr. Gill, Advocate has submitted that even if for the sake of argument it is assumed that fabrication of pole does not amount to manufacture then also the Department is not justified in disallowing the cenvat credit availed on the input used for manufacture of electric pole for the reason that the respondents had paid excise duty on the final product.

10. We have considered the rival contentions and perused the record as well as the judgments relied upon by the rival parties. The first question which requires determination is whether or not electric poles cleared by the respondent are the result of manufacturing process. In this regard, it is necessary to have a look on the process of fabrication of the electric pole. Admittedly, for fabrication of electric pole, an assessee procures MS black pipes/tubes of different diameters. Those pipes/steel tubes are cut into the required sizes and the top portion of the pole is fabricated on swaging machine which swages the pipe of higher diameter on lower diameter. After top and middle portions swaging is done, the bottom portion is swaged with the middle portion and pole of desired size is manufactured. Thereafter, the swaged portion is welded and the steel tubular pole thus formed are corrected to straightening machine. Thereafter, the top portion of the steel poles is welded with MS cap and bottom portion is provided with base plate to bring about the final product known as steel tubular pole. From this it is evident that the final product cannot be termed as pipe/tube of specific diameter and this product cannot be sold in the market as pipe/tube which are inputs for manufacture of steel tubular pole. Thus in our view

after the processing pipe/tube a distinct product comes into being which is known in the commercial parlance as steel tubular pole which has character and was distinct from MS black Tube/pipes. This process in our view amounts to manufacture and as such we do not find merit in the plea of the Department that steel tubular poles cleared on payment of duty by the respective assesseees were not leviable with excise duty. In our aforesaid view, we find support from the judgment of Supreme Court in the matter of Prachi Industries (supra). Thus the impugned orders of Commissioner (Appeals) cannot be faulted.

11. Even otherwise if for the sake of argument it is assumed that the final products cleared by the manufacturing appellants emerged from a process not amounting to manufacture then also we find it difficult to sustain the impugned order because undisputedly, the appellants used duty paid inputs for the production of their final product which was cleared to the customers on payment of excise duty. Admittedly, the department accepted the excise duty on the final product without any protest nor the appellants were informed that their final products was not subject to excise duty as it emerged from the process not amounting to manufacture as defined under Section 2(f) of the Central Excise Act. Learned Counsel for the respondent department has tried to justify the impugned order disallowing the cenvat credit availed by the appellant on the inputs on the plea that the final product has not emerged from the process which could be termed as manufactured. Such an argument, in our view cannot be sustained as it is against the tenets of equity and justice. The department having accepted the excise duty on the final product cannot be permitted to deny cenvat credit on the inputs used for the manufacture of the final product on such a technical plea. If such an argument is allowed to sustain it would negate the entire object of the cenvat credit scheme

which has been put in place with a view to protect the assessee from double taxation. We are unable to accept the plea of the appellant.

12. As a result of above discussion, we find no merit in the appeals. The appeals as well as stay applications are therefore dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/