

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.1

Excise Appeal No.76101 of 2016

(Arising out of Order-in-Original No.39/COMMR/CE/KOL-III/2015-16 dated 28.03.2016 passed by Commissioner, Central Excise, Kolkata-III.)

M/s. Rohini Udyog

(Bhawanipur, P.O.-Bsirhat College, Dist.-North 24 Parganas, West Bengal-743412.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Aditya Dutta, Advocate for the Appellant (s)

Shri B.K.Singh, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

FINAL ORDER NO. 76385/2025

DATE OF HEARING : 15.05.2025

DATE OF DECISION : 23.05.2025

Per : RAJEEV TANDON :

The appellants have been issued show cause notice for an amount of Rs.97,97,383/-, towards demand of Central Excise duties.

2. The appellant is manufacturer of PCC Poles and supplies the finished goods exclusively to West Bengal State Electricity Distribution Company Limited (WBSEDCL). Such PCC Poles are manufactured by mixing sand, cement and stone chips upon a binding of MS rods. During the course of scrutiny of the assessee's record, the audit team found

some such poles lying outside the factory premises. The number of such poles were ascertained as 650 pieces and reportedly manufactured during September 2013. They were kept outside the factory premises allegedly for space constraint. The show cause notice while admitting the said position contends that such removals were not reflected in the daily stock account for the month of September 2013 nor any invoice under Rule 11 of the Central Excise Rules, 2002, was issued for the removal of the said goods on which no duty was paid. During the course of department's investigation, it was informed by the appellant and as recorded in the notice, that these poles would be removed after about a month and were in respect of a specific project - Order No.PNC/SE(S)/PCC Pole/2013-14/Rohini/8M/17 dated 10.04.2013, meant to be supplied to WBSIEDCL.

3. The Revenue has therefore charged the appellant that the said goods were removed by them without payment of appropriate duty as required in terms of Rule 4 of the Central Excise Rules and without recording such removals in the DSA in terms of Rule 10 of the Rules *ibid* and without issue of invoices required to be issued in terms of Rule 11. It is noted in the notice itself that upon being pointed out the appellant made good the duty leviable thereon.

4. Next contention in the notice concerns alleged shortage in the DSA for the period 2009-10 to 2012-13. The notice records "it transpired from the purchase orders that out of every 100 PCC Poles manufactured by the said assessee, one such pole would be subjected to traverse strength itself." This testing is in accordance with IS

specifications – IS 1678-1960 and is so done to ascertain whether the pole breaks under pressure as required. The manufactured lot is only acceptable upon successful results of such a test. We notice from records that though the purchase order state testing, in effect, it is only a pre-delivery inspection/quality control which can only be conducted after complete manufacture of a set of 100 PCC Poles. It is also a fact that if the test is successful, no further work is required to be done on the balance 99 Poles of the lot. The notice further mentions that the manufactured goods – PCC Poles were embossed with a mark symbol “WBSEDCL”, which would indicate that the goods belong to West Bengal State Electricity Distribution Company Limited. We note from records that the appellant has always contended that the said mark was not a brand mark, but only indicated that the property belonged to WBSEDCL and that the goods were manufactured as per the requirements of WBSEDCL. In view of the fact that the manufactured goods carried the mark WBSEDCL the department alleged that WBSEDCL was the owner of the goods and goods were sold under specification as specified by the owner and therefore alleged undervaluation on the part of the appellant pointing out that the goods required to be assessed at prices supplied by WBSEDCL.

5. We have heard the Ld.Advocate for the appellant and Ld.AR for the department and perused the case records.

6. The pre-inspection requirement is statutorily mandated for acceptance of the manufactured goods and is carried out as a certification of the pre-delivery inspection. Such broken poles are unfit

for use for transmission of electric lines and are only required to be dumped, as the same cannot be sold and carried no market value even by way of scrap. It is therefore the case of the appellant that such rejected PCC Poles are not entered in the DSA.

7. As for 650 number of PCC Poles lying outside the factory premises it has been submitted before us that because of shortage of space and being sizeable in size, the same were placed alongside the boundary wall of the factory premises and required duty thereon has been paid. For the contention of duty liability on the broken poles amounting to Rs.2,46,722/- we are not in agreement with the contention of the Revenue. For such 933 broken poles worked out in accordance with the number of poles supplied to WBSEDCL during the period 2008-09 and 2013-14 (upto November), it is not disputed that the products have no market value. The products cannot be considered as manufacture till the stress test is successfully undertaken, hence no duty would be payable on such destroyed goods lost in the testing process. In this regard, we note that the appellant has also contended that they admitted their lapse by not applying for remission of duty under Section 5 of the Central Excise Act in respect of such destroyed/damaged poles. For this reason we are of the view that there is no revenue implication for this and we do not find any malafide on the part of the appellant in the matter.

8. For the third issue regarding department's contention for denying SSI exemption Notification No.8/2003 for the period 2008-09 to 2012-13 (Annexure C to show cause notice) demanding a duty of

Rs.80,85,514/- we do not find any merit in the plea of the Revenue that embossing with WBSEDCL, rendered the manufactured goods as branded products, thereby denying them the SSI exemption. As per the Notification No.8/2003-CE dated 01.03.2003 the definition of brand or trade name is as follows:-

*"brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the **course of trade** between such specified goods and some person using such name or mark with or without any indication of the identity of that person,"*

14. The embossing cannot be considered as a brand name and it would only seek to indicate exclusivity to suggest that such poles belong to WBSEDCL. It is also on record that WBSEDCL for themselves are not engaged in selling of such PCC Poles to other persons in the course of trade. Therefore, the said mark is indicative only of the sole ownership and exclusivity of use of such PCC Poles by WBSEDCL.

15. As for the amount of Rs.12,72,706/- for the period 2009-10 to 2012-13 (Annexure-D of show cause notice refers) the demand has been raised on account of mismatch in the ER-1 and ER-3 Returns filed by the appellant. The appellant concedes that they were not able to reconcile these figures. However, herein it is noted that the show cause notice has been issued to the appellant incorporating the extended period of limitation. It is an admitted position that the ER-1 was regularly filed on which basis, the show cause notice itself has been

issued. Under these circumstances no clause for suppression/misstatement can be invoked and extended period of limitation will not be applicable. It is therefore clear that the period upto January 2013 is barred by limitation and therefore the demand for the period 2009-10 to 2013-14 upto November 2013 on this count would not survive.

16. With reference to the issue regarding SSI exemption, this Tribunal in the case of **Shruti Art Pvt.Ltd. v. Commissioner of Central Excise, Mumbai-I [2019 (369) ELT 986 (Tri.-Bom)]** had noted that the appellant was manufacturing diaries for LIC, which were not traded by LIC, as admissible to SSI benefit. In the present case too following the said ratio, the appellant cannot be denied this concession. As for the product lost due to testing of the manufactured goods, the hon'ble apex court in the case of **ITC Ltd. v. Collector of Central Excise, Patna [2003 (151) ELT 246 (SC)]**, did not rule out non-levy of duty on damaged/destroyed goods during testing.

17. In view of our discussions and findings above, we set aside the order of the lower authority and allow the appeal filed.

(Order pronounced in the open court on 23.05.2025.)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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