

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75370 of 2015

(Arising out of Order-in-Original No. 10/Commr/CE/KOL-II/Adjn/2014-15 dated 08.01.2015 passed by the Commissioner of Central Excise Commissionerate M. S. Building, Custom House, 15/1, Strand Road, Kolkata-700 001)

M/s. The New Engineering Company

: Appellant

2/4, Haldar Para Lane,
Howrah-711 101 (W. B.)

VERSUS

Commissioner of Central Excise, Kolkata-II

: Respondent

2nd Floor, M. S. Building, Custom House,
15/1, Strand Road, Kolkata-700 001

APPEARANCE:

Shri Deepto Sen, Advocate
Shri Shovit Patel, Advocate for the Appellant

Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. 77344/2025

DATE OF HEARING / DECISION: 26.08.2025

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein the demand has been confirmed against the appellant for the period from January 2013 to February 2014 by issuance of Show Cause Notices dated 27.12.2013 and 01.08.2014.

- i. The Appellant is a proprietorship concern with Shri Partha Pratim Chatterjee as the proprietor. The Appellant had set up its unit in the year 1990 for manufacture of spares*

and components of engineering goods as per job order.

- ii. The Appellant entered into an agreement with M/s. Eveready Industries India Ltd. for packing of 2 or 4 rechargeable batteries along with charger in a blister packs or blister pack of 2 or 4 AA/AAA rechargeable batteries and branding them as "Eveready Ultima" or "Uniross/Power Bank" respectively.*
- iii. In terms of the agreement, M/s Eveready Industries India Ltd. used to procure the following items:*
 - unbranded battery chargers falling under tariff item 8504 4030 of the CETA, 1985 from small scale manufacturers,*
 - imports branded rechargeable batteries falling under tariff item 8507 3000 of the Customs Tariff Act, 1975 from China.*
 - various packing material such as blisters, blisters cards, 3-D holograms etc.*
- iv. Thereafter, the aforesaid items were supplied to the Appellant. The Appellant in its own premises and using its own labours undertook the activity of packing and branding and supplied the same to the Appellant. An employee of the M/s Eveready Industries India Ltd. was posted on the premises of the Appellant to ensure proper checks and to coordinate dispatches.*

- v. **Proceedings Against Eveready** The department issued a SCN dated 29.05.2009 to M/s Eveready Industries Limited proposing to demand duty on that ground that the activity of activity of packing of rechargeable battery along with charger and branding the same amounts to "manufacture" under Section 2(f) of the Central Excise Act, 1944.
- vi. The said SCN was adjudicated, and the demand proposed was confirmed vide OIO dated 02.12.2009. Being aggrieved by the said order M/s Eveready Industries India Ltd. preferred an appeal before this Tribunal being Excise Appeal No. 130/2010.
- vii. Vide order dated 20.06.2011 this Hon'ble Tribunal waived of the requirement of pre-deposit of duty, interest and penalty and stayed the recovery of the same during pendency of the appeal by prima facie observing that M/s Eveready Industries India Ltd is not the manufacturer.
- viii. It is only thereafter that the department proceeded against the Appellant to demand the duty.
- ix. **SHOW CAUSE NOTICES (SCN) AND CONFIRMATION OF DEMAND** In the instant case, SCN dated 27.12 2013 was issued under Section 11A (4) of the CEA, 1944 proposing to demand central excise duty amounting to Rs 3,04,36,955/- along with applicable interest and penalty under Section 11AC for the period January 2013 to August 2013 on the ground that the Appellant had clandestinely manufactured and cleared a product known as "Eveready Ultima" and "Uniross/Power Bank" without

payment of central excise duty. Penalty under Rule 27 of the Central Excise Rules, 2002 was also proposed.

- x. Another Show Cause Notice dated 01.08.2014 under Section 11A(7A) of the CEA, 1944 was issued to the Appellant proposing to demand central excise duty amounting to Rs. 1,28,46,136/ along with applicable interest and penalty under Section 11AC for the period September 2013 to February 2014 on the self-same ground.*
- xi. The SCN was alleged that a new product i.e., "Eveready Ultima", "Uniross/Power Bank" came into existence on account of activity performed by the Appellant with the help of raw materials supplied by the Eveready.*
- xii. It was alleged that by affixing the brand name and lending his premises to the Eveready for conducting quality check operations at different stages has rendered the product marketable. Therefore, the activity of packing of rechargeable batteries along with chargers and branding the same is a process "incidental or ancillary to the completion of a manufactured product" and hence amounts to "manufacture" under Section 2(f) of the CEA, 1944. Reliance was placed on Note 6 of the Section 16 of the 1st Schedule to the Central Excise Tarriff Act, 1985 read with Section 2(f) (ii) of allege that packing amounted to manufacture.*
- xiii. Demand proposed in the SCN dated 27-12-2013 and notice dated 01-08-2014 was confirmed by the vide OIO dated 08-01-2015.*

xiv. *Apart from the instant SCN, the following SCNs for subsequent and previous periods were issued to the Appellant. The demand proposed were confirmed by individual orders. The said orders have been set aside by this Hon'ble Tribunal vide FINAL ORDER No. 77474-77477/2023 dated 08-11-2023 by holding that the activity of packing rechargeable batteries along with charger does not amount to manufacture:*

SCN Date	Period	Appeal No.
14.07.2011	July 2006 to June 2011	Excise Appeal No. E/396/2012
28.02.2013	July 2011 to December 2012	Excise Appeal No. E/75002/2014
	January 2013 to February 2014	Instant Appeal
05.02.2015	March 2014 to August 2014	Excise Appeal No. E/75049/2017
21.07.2015	September 2014 to February 2015	
11.01.2016	March 2015 to July 2015	
15.06.2016	August 2015 to December 2015	

xv. **WRIT PETITION BEFORE HIGH COURT**

The Appellant preferred a writ petition being WP No. 7175(W) of 2015 before the Hon'ble Calcutta High Court challenging the constitutional vires of the amended Section 35F of the Central Excise Act, 1944 wherein pre-deposit for filing appeals was made mandatory.

- xvi. *The Appellant also prayed before the Hon'ble High Court to allow filing of an appeal against OIO dated 08-01-2015 without any pre-deposit on holding that the amended provision would not apply to case instituted/initiated before 06-08-2014.*
- xvii. *The Hon'ble High Court vide interim order dated 30.03.2015 allowed the Appellant to prefer an appeal without pre-deposit. Accordingly, this appeal was filed.*
- xviii. *Subsequently, the Appellant sought to withdraw the writ petition before the Hon'ble Calcutta High Court. Vide order dated 21-07-2025, the Hon'ble Court directed the Appellant to make necessary pre-deposit.*
- xix. *Thereafter, the Petitioner made pre-deposit of Rs.32,46,232/- being 7.5% of the duty amount confirmed by the impugned OIO.*
- xx. *The Hon'ble High Court vide its order dated 28-07-2025, took note of the fact that the Appellant has made necessary pre-deposit and disposed the writ petition as withdrawn.*

2. The Ld. Counsel appearing on behalf of the appellant submits that the appellant had gone before the Hon'ble High Court for waiver of the mandatory pre-deposit under Section 35F of the Central Excise Act, 1944, but they withdrew their appeal and made the necessary pre-deposit and therefore, the appeal be heard on merits.

3. It is further submitted that the issue is no longer res integra as the same has been decided by this Tribunal in their own for the subsequent and previous periods vide Final Order No. 77474-77477 of 2023 dated 08.11.2023. Therefore, the appellant

prays that the impugned order be set aside and the appeal be allowed.

4. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

5. Heard the parties and considered their submissions.

6. We find that in the appellant's own case on an identical issue for the previous and subsequent periods, this Tribunal has already examined the issue, vide Final Order No. 77474-77477 of 2023 dated 08.11.2023, and observed as under: -

"9. We find that the issue to be decided in these appeals is whether the activity undertaken by the Appellants would amount to 'manufacture' or not as defined under Section 2(f) of the CEA, 1944. The word 'manufacture' is defined in Section 2(f) of the CEA, 1944, the relevant portion of the definition is extracted hereunder for the purpose of reference: "manufacture" includes any process, – (i) incidental or ancillary to the completion of a manufactured product; and (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) amounting to manufacture; or as (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacturer shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of

excisable goods, but also any person who engages in their production or manufacture on his own account. 9.1. The Appellant submits that in order to consider an activity as amounting to 'manufacture' there should be a new product with a distinct name, character and use must come into existence. We observe that the Hon'ble Supreme Court in Servo-Med Industries Pvt. Ltd. vs. CCE, Mumbai, 2015 (319) ELT 578 (SC) has laid down certain criteria as to when an activity can be regarded as manufacture or not under provisions of CEA 1944 . The same are summarized below: (i) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category. (ii) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process. (iii) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are the Brakes India case and cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place. (iv) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place. 9.2. In the present case we observe that after undertaking the activity of packing the chargers with the batteries and labelling them no different commercial commodity comes into existence. The

goods viz. the charger and batteries remain exactly the same even after they are put together in a blister pack. In light of the decision of the Hon'ble supreme Court cited above, we hold that the activity of mere packing of rechargeable batteries along with battery chargers and labelling the same as "Eveready Rechargeable/Ultima" and "Uniross/Power Bank" does not amounts to manufacture.

9.3. We observe that the Appellant has placed their on the following rulings where the activity of packing has been held as not amounting to "manufacture" under the provisions of CEA, 1944: · In *Commissioner of Central Excise vs. M/s Sony Music Entertainment India Pvt Ltd*, 2010-TIOL-46-HC-MUMCX, the Hon'ble Bombay High Court was considering a situation where the Appellant imported recorded audio and video discs packed in boxes of 50 and after receipt of the said material in its factory, it packed each individual disc in transparent plastic cases known as jewel boxes, an inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole was then shrink wrapped and sold. In such circumstances the question arose whether the activity of packing imported compact discs in a jewel box along with inlay card would amount to manufacture under section 2(f) of the CEA, 1944. The Hon'ble High Court by upholding the ruling of the Hon'ble CESTAT held that the activity of packing does not amount to manufacture. [Ref to pg. no. 25 of the *Compilation of Cases*] · Again, in *Commissioner of Central Excise, Faridabad – II vs. Kapoor Lamp Shade Company (Factory Shop)*, 2016-TIOL-962-HC-P&H-CX, the Hon'ble Punjab and Haryana High Court was dealing with a situation where the respondent used to procure various components of lamp shades and chandeliers from different sources and thereafter would pack the same in cartons and put

its logo. The revenue raised the duty demand on the premise that the assembly of various components of lamp shades and chandeliers amounts to manufacture of the lamps and light fittings covered by the CEA, 1944. The Hon'ble High Court upheld that ruling of the Hon'ble CESTAT by holding that procuring of manufacturing items and packing them with its own brand name by the respondent does not amounts to creation of a new product which may invite the duty. · In M/s Electropneumatics& Hydraulics (I) P Ltd vs. Commissioner of Central Excise, Mumbai – IV, 2016 (11) TMI 1091 – CESTAT Mumbai, the Tribunal was considering whether packeting of pre-determined quantity of various O Ring & U Cap seals in plastic bags would amount to manufacture. The Tribunal held the question of considering packeting as manufacture does not arise as the O Ring & U Cap seals were already marketable when the supplier/manufacturer had manufactured the same and cleared to Appellant. It was held that: "Subsequent packeting of pre-determined quantity of these in a plastic bag has not made the products further marketable. In the absence of any note to the chapter that packeting of pre-determined quantity would amount to manufacture, this activity in our view cannot be considered as a manufacturing activity." · In Sony Enterprises vs. Commissioner of C. Ex., Mumbai – IV, 2018 (364) ELT 411 (Tri-Mumbai), the Appellant used to purchase various goods from several manufacturers and was thereafter checking, testing, branding and packing the same with "CONA" brand name. The department contended the said activity amounts to manufacture in terms of Note 6 to Section XVI of Central Excise Tariff Act, 1985. In such factual circumstances, the Tribunal made the following findings: "From the reading of the above provisions, we observed that

in respect of Chapters 84 and 85 of Central Excise Tariff, any activity which converted unfinished or incomplete product into finished or complete article shall amount to manufacture. In the facts of the present case, which is not under dispute that the appellant are purchasing manufactured goods and they are only carrying out quality tests, branding and packing of the goods for marketing purpose. These processes cannot be said that it contributes for converting incomplete or unfinished goods to the complete and finished article for the reason that neither any further assembly is carried out nor any mechanical process which make a unfinished goods or incomplete product into complete and finished product. The product purchased by the appellant is already complete and finished. Merely a quality test, which is nothing but by connecting with the power plug for checking whether it is working or not but by this quality test there is no transformation of the product, which is already in the fully manufactured form, therefore all the electrical goods purchased by the appellant are completely in manufactured form, therefore in our considered view this so called activity of quality testing, branding and packing of the already manufactured goods will not be covered by Note 6 of Section XVI of the Central Excise Tariff, therefore we hold that the appellant is not engaged in the manufacturing of the goods, they are only doing trading activity of bought out goods".

· TI Diamond Chain Limited vs. Commissioner of C. Ex., Chennai – II, 2000 (126) ELT 790 (Tribunal) maintained by the Hon'ble Supreme Court in 2001 (130) ELT A259 (Supreme Court).

· Dalmia Industries Ltd vs. Commissioner of C. Ex., Jaipur, 1999 (112) ELT 305 (Tribunal) maintained by the Hon'ble Supreme Court in 2005 (184) ELT A37 (Supreme Court).

· Narang Latex & Dispersions Pvt Ltd vs. Commr. of C. Ex., Mumbai

– VI, 2001 (134) ELT 482 (Tri-Mumbai) maintained by the Hon'ble Supreme Court in 2002 (139) ELT A302(Supreme Court). · M/s 3M India Ltd vs. Commissioner of Central Excise, Bangalore – III, 2023-VIL-125-CESTAT-BLR-CE 9.4. We observe that the decisions cited above are squarely applicable in this case. In light of the discussions above, we hold that the activity of mere packing and labelling work which resulted into emergence of "Eveready Recharge" and "Uniross/Power Bank" cannot be termed as "manufacture" under Section 2(f) of the CEA, 1944. 9.5. We further observe that Section 2(f)(ii) of the CEA, 1944 deems certain processes as amounting to manufacture, if there is a Section Note or a Chapter Note deeming the processes as amounting to manufacture. In the present case, neither under Section XVI nor under Chapter 85 there are any notes deeming activity of packing or repacking as amounting to manufacture. Further, in terms of Section 2(f)(iii) of the CEA, 1944 goods specified in 3rd schedule to the CEA, various processes like packing or repacking, labelling or relabelling is deemed to be the manufacturing process. This sub-section would only apply to the goods specified in the 3rd schedule to the CEA, 1944. We observe that the goods falling under heading 8504 or 8507, in the present case are not specified in the 3rd schedule of the CEA, 1944. In light of the above, we hold that the activity of mere packing and labelling undertaken by the Appellant would not amount to "manufacture" in terms of Section 2(f) of the CEA, 1944. Accordingly, we hold that the demand confirmed in the impugned order dated 02.12.2009 is not sustainable. Since the demand is not sustainable, the question of demanding interest and imposing penalty does not arise. Accordingly, we set aside the impugned order dated 02.12.2009 and allow the appeal No.130 Of 2010, filed by the

Appellant M/s Eveready Industries. 10. Regarding the three appeals filed by the Appellant M/s New Engineering Company, we observe that the Appellant has entered an agreement with M/s. Eveready Industries India Ltd for packing of 2 or 4 rechargeable batteries along with charger in a blister packs and labelling them as "Eveready Recharge/Ultima" and "Uniross/Power Bank". In terms of the agreement, M/s. Eveready Industries India Ltd. procure the following items: · unbranded battery chargers falling under tariff item 8504 4030 of the CETA, 1985 from small scale manufacturers, · branded rechargeable batteries falling under tariff item 8507 3000 of the Customs Tariff Act, 1975 imported from China. · various packing material such as blisters, blisters cards, 3-D holograms etc. Thereafter, the aforesaid items were supplied to the Appellant. The Appellant in its own premises, using its own labourers undertook the activity of packing and labelling and supplied the same to the Appellant. An employee of M/s. Eveready Industries India Ltd. was posted on the premises of the Appellant to ensure proper checks and to coordinate dispatches. The department issued a SCN dated 29.05.2009 to M/s Eveready Industries Limited proposing to demand excise duty on that ground that the activity of packing of rechargeable battery along with charger and labelling the same amounts to "manufacture" under Section 2(f) of the Central Excise Act, 1944 and M/s Eveready Industries Limited being the real manufacturer is liable to pay the excise duty. The said SCN was adjudicated, and the demand proposed was confirmed vide OIO dated 02.12.2009. Being aggrieved by the said order M/s Eveready Industries India Ltd. preferred an appeal before this Tribunal being E/130/2010. Vide order dated 20.06.2011 this Tribunal has waived of the requirement of pre-deposit of duty, interest and

penalty and stayed the recovery of the same during pendency of the appeal by prima facie observing that M/s Eveready Industries India Ltd is not the manufacturer. It is only after issuing the order waiving the pre deposit by the Tribunal the department proceeded against the Appellant and demanded central excise duty from the job worker. Three Show cause Notices were issued and the demands raised in the Notices were confirmed as mentioned in para 2 supra. 11. In their appeals, the Appellant stated that that the activity of packing and labelling undertaken by them does not amount to manufacture as defined under Section 2(f) of the Central Excise Act, 1944. Accordingly, they contended that the demands confirmed in the impugned orders are not sustainable. 12. In paras 9 to 9.5 supra, the issue has been discussed and held that the activity undertaken by the Appellant would not amount to manufacture as defined under Section 2(f) of Central Excise Act, 1944. The same discussion holds good for the Appellant also, since they are the job workers who have undertaken the activity of packing and labelling. Thus, we hold that the demand of central excise duty from the Appellant M/s New Engineering Company is not sustainable, as the activity undertaken by them does not amount to 'manufacture' as defined under Section 2(f) of CEA, 1944. Since, the demand itself is not sustainable, the question of demanding interest and imposing penalty on the Appellant does not arise. Accordingly, we set aside all the three impugned orders and allow all the three appeals filed by the Appellant M/s New Engineering Company."

7. As the issue has already been settled in favour of the appellant in their own case supra, therefore, following the same, we hold that the impugned demand is not sustainable against the appellant.

Accordingly, the demand against the appellant is set aside.

8. Consequently, no penalties are imposable on the appellant.

9. In the result, we set aside the impugned order and allow the appeal, with consequential relief, if any.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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