IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/86680/2016

[Arising out of Order-in-Appeal No: CD/226/M-III/2016 dated 21st March 2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

Principal Commissioner of Central Excise
Mumbai – II …***Appellant***

versus

Industrial Engineers and Consultants Pvt Ltd …***Respondent***

Appearance:

Ms Trupti Chauhan, Assistant Commissioner (AR) for appellant

Ms Lalita Phadke, Advocate for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**17/11/2017**
Date of decision:	**17/11/2017**

ORDER NO: ____________________________

Revenue is in appeal against the decision of the Commissioner of Central Excise (Appeals), Mumbai Zone – II in order-in-appeal no. CD/226/M-III/2016 dated 21st March 2016 which set aside the order of the original authority requiring the respondent M/s Industrial Engineers and Consultant Pvt Ltd to pay Central Excise duty of ₹ 11,81,724, along with interest thereon, and imposed penalty of like amount under section 11AC of Central Excise Act, 1944 read with rule 15(2) of CENVAT Credit Rules, 2004. Appellant had availed CNEVAT credit on various goods that were claimed to have been procured for export which according to the original authority, was not manufacture as defined in section 2(f) of Central Excise Act, 1944. The first appellate authority had placed reliance on the decision of the Hon'ble High Court of Madras in *Ford India Pvt Ltd v. Assistant Commissioner of Central Excise, Chennai [2011 (272) ELT 353 (Mad.)]*.

2. The appeal of Revenue relies upon the decision of the Hon'ble Supreme Court in *Satnam Overseas Ltd v. Commissioner of Central Excise, New Delhi [2015 (318) ELT 538 (SC)]* which held that goods could not be held to have been manufactured merely because of value addition unless covered within the definition of 'manufacture' and the original identity undergoes transformation and it becomes a distinct new product thus.

> *'19. It follows from the above that mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also under goes transformation and it becomes a distinctive and new product.'*

The decision of the Hon'ble Supreme Court in *Empire Industries Ltd v. Union of India [1985 (20) ELT 179 (SC)]* was also cited.

3. Learned Counsel appearing for the respondent insists that the process amounts to manufacture with reference to note 6 of section XVI of the Schedule to the Central Excise Tariff Act, 1985 and relies upon decisions of the Hon'ble Supreme Court in *Laminated Packings (P) Ltd v. Commissioner of Central Excise [1990 (49) ELT 326 (SC)]* and many others of the Tribunal.

4. Before examining the rival contentions, it is appropriate to take note of the findings of the first appellate authority which is

> '*5. The appellant has undertaking fabrication, re-coiling, cutting, welding etc. as indicated in the appeal memorandum. After carrying out these processing, the goods were exported. These processed goods are used in the installation/erection of Towers. The goods were exported under bond by executing LUT. They complied with the legal formalities required under LUT. Inward foreign exchange is also brought by these export. The above processing and manufacturing by the appellant conforms to the definition of 'Manufacture' as defined in Section 2(f) of the Central Excise Act, 1944. Since they have exported the goods, they are entitled to the cenvat credit for all items except paints.'*

5. Though the original authority has rendered an elaborate analysis of the law and the reason for not accepting the contention of the noticee, the manner in which the first appellate authority has set that

finding aside, as noted *supra*, leaves room for doubt about the extent of scrutiny of the rival claims that was undertaken. The contentions of the respondent do not appear to have been among the factors that weighed with the first appellate authority.

6. In these circumstances, it is proper that the impugned order, in the absence of adequate justification, be set aside and remanded back to the first appellate authority.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*