# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# MUMBAI

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 88045 of 2013**

(Arising out of Order-in-Original No. 09/NG/COMMR/Th-II/2013 dated 07.05.2013 passed by the Commissioner of Central Excise, Thane-II)

**Radiant Industries** **.... Appellants**
Gala No. 2, High Tech Industrial Estate,
Old Satpati Road, Palghar, Dist. – Thane

Versus

**Commissioner of Central Excise, Thane-II** **.... Respondent**
4th Floor, Navprabhat Chambers, Dadar (W),
Mumbai – 400 028

**WITH**

**Excise Appeal No. 88046 of 2013**

(Arising out of Order-in-Original No. 09/NG/COMMR/Th-II/2013 dated 07.05.2013 passed by the Commissioner of Central Excise, Thane-II)

**Khubilal Jain** **.... Appellant**
Gala No. 2, High Tech Industrial Estate,
Old Satpati Road, Palghar, Dist. – Thane

Versus

**Commissioner of Central Excise, Thane-II** **.... Respondent**
4th Floor, Navprabhat Chambers, Dadar (W),
Mumbai – 400 028

APPEARANCE:

Shri Stebin Mathew a/w Ms. Dishya, Advocates for the Appellants

Shri Xavier P. Mascarenhas, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85301-85302/2025**

Date of Hearing: 11.11.2024

Date of Decision: 10.03.2025

***Per: M.M. Parthiban***

These appeals have been filed by M/s Radiant Industries, Palghar and Shri Khubilal Jain (hereinafter referred together as 'the appellants', for short) against Order-in-Original No. 09/NG/COMMR/Th-II/2013 dated 07.05.2013 (referred to, for short, as 'the impugned order') passed by the Commissioner of Central Excise, Thane-II.

2.0 Brief facts of the case are as follows: -

2.1 The appellants are engaged in the activity of drawing and re-drawing of copper strips/patta/patti and re-drawing of copper rods into copper wires. The appellants were of the understanding that such activity carried out by them does not amount to manufacture and therefore neither took Central Excise registration nor paid the central excise duty. The officers of the Central Excise department visited the appellants' factory on 09.09.2006, and were of the view that those activities undertaken by the appellants amount to manufacture of excisable goods and accordingly, conducted detailed investigation resulting in seizure of raw materials and finished goods under Panchanama proceedings dated 09.09.2006 and 10.09.2006. During the investigation, the department also recovered various documents from the appellants' premises and recorded statements from persons concerned including transporters, alleging clandestine removal of goods by the appellants without payment of central excise duty. On completion of the investigation, show-cause notices dated 08.03.2007 and 27.01.2009 were issued, and adjudication of the same vide Order-in-Original dated 31.08.2009 resulted in confirmation of the demands proposed in the SCNs. In the first round of litigation, the appellants had filed an appeal before the Tribunal against the order dated 31.08.2009 confirming the demands and the Tribunal after examining various issues involved in the case, remanded the matter back to the original authority for de-novo adjudication with specific direction to examine whether copper patta/patti obtained by drawing copper flats is a manufactured product in the light of Note 1(g) to Chapter 74 of the Central Excise Tariff Act, 1985. Further, the Tribunal also directed the Commissioner to give specific findings, whether the resultant product assume the character of 'articles of other headings' or group, and if so, its respective classification/heading under the Central Excise Tariff.

2.2 In the de-novo adjudication order dated 07.05.2013 (which is impugned herein), the original authority had confirmed the duty demands under Section 11A of the Central Excise Act, 1944, along with interest; and upheld the confiscation of goods, by allowing the same for release on payment of redemption fine in lieu of confiscation. Further, the original authority had also imposed penalties on the appellants and the persons concerned with the removal of goods in an illegal manner under Section 11AC ibid and Rule 26 of the Central Excise Rules, 2002.

2.3 Feeling aggrieved with the impugned order, the appellants preferred these appeals before the Tribunal.

3. Heard both sides and perused the case records.

4. In the Final Order No. A/293-295/2012/EB/C-II dated 11.04.2012 passed by the Tribunal, the original authority was required to examine two specific issues viz. applicability of Note 1(g) to Chapter 74 for classification of the product and to decide whether the activity undertaken by the appellants amounted to manufacture for the purpose of due discharge of central excise duty. In the impugned order, the Commissioner dealt with issues on the process of manufacture and classification of the products, as follows:

> *"94….I find that Heading 7409 of the Central Excise Tariff covers 'copper plates, sheets and strip, of a thickness exceeding 0.15mm; in coils or otherwise'. This is the only entry available under Chapter 74 wherein all types of copper plates, sheets and strip, irrespective of its length, width and thickness, will get covered. Therefore, the copper flat obtained as raw material and copper patta/patti obtained after re-drawing will fall under the heading 7409.*
>
> *95.The position regarding classification of the patta/patti being the above, now what is to be examined is whether the re-drawing of copper flats into patta/patti is a process of manufacture and whether it is necessary that the resultant product must fall under a different heading than under the heading which the raw material falls for the said process to be considered as a process of manufacture.*
> *Section 2(f) "manufacture' includes any process,….*
>
> *96….If by application of labour and skill an object is transformed to the extent that is commercially known differently, it will suffice to say that manufacture has taken place for the purpose of Central Excise….Further, the Hon'ble Supreme Court in the case of Laminated Packings (P) Ltd. Vs. Collector of C.Ex. – 1990 (49) E.L.T. 326 (S.C.) – had held that if the substance and the resultant product after processing are two distinct commercial commodity, the manufacture can be said to have taken place even if both continue to fall under the same Tariff entry or Heading…*
>
> *97. …The copper patta/patti have a different use than the copper flat. Copper flats and copper patta/patti are two different and distinct commodities and it is marketable as such. In view of the foregoing I come to the conclusion that the process re-drawing of Copper Patta/Patti from Copper flats carried out by the assessee amount to manufacture even though copper flats and copper patta/patti is classifiable under the same Tariff heading."*

5. In this regard, we find that Chapter 74 of the Central Excise Tariff Act, 1985 covers the goods viz. 'copper and articles thereof'. This chapter covers in its purview copper and its alloys, and certain articles thereof. These include broadly three categories of goods, viz., (i) refined and unrefined copper; copper waste and scrap; alloys, powders and flakes of copper covered under headings 7401, 7402, 7403, 7404, 7405 and 7406 (ii) goods of intermediate nature, such as copper bars, rods, profiles; copper wires, plates, sheets, strips, foils etc. covered under headings 7407, 7408, 7409, 7410 and (iii) articles of copper such as copper tubes, copper pipes, copper tube or pipe fittings covered under headings 7411 and 7412. The expression used for certain terms such as bars, rods, profiles, wires, plates, sheets, strips and foils are explained in Note 1 to Chapter 74; Chapter Note 1(g) provides detailed description of the various products that could be covered under the phrase 'plates, sheets, strip and foil' of copper. The heading 7407 specifically covers copper bars, rods and profiles. Similarly, the heading 7408 covers copper wire. Similarly, the copper plates, sheets and strips are covered under heading 7409. Articles of copper are covered under heading 7411 and 7412. Further Chapter Note 2 state that "*In relation to products of heading 7411, the process of drawing or redrawing shall amount 'manufacture'*."

6. Learned Commissioner upon examination of the facts of the case had decided that both the copper flats and copper patta/patti is classifiable under the same heading 7409. In coming to such an conclusion he had relied upon the definition of 'manufacture' given under Section 2(f) of the Act of 1944, to state that by application of labour and skills when a product is transformed to the extent it is commercially known differently, irrespective of the fact that both the products, one used as 'input' and the other resultant product as 'final product', being classified under the same tariff entry or heading, a new product has been manufactured on which excise duty is to be paid. He also relied on the judgement of the Hon'ble Supreme Court in the case of *Laminated Packing (supra)* in his above conclusion.

7. In order to examine the above issue in dispute, the relevant extracts of the Central Excise Tariff Act, 1985 are given below for ease of reference:

***Central Excise Tariff Act, 1985***

***"2. Duties specified in the First Schedule and the Second Schedule to be levied. -*** *The rates at which duties of excise shall be levied under the Central Excise and Salt Act, 1944 (1 of 1944) are specified in the first Schedule and the Second Schedule.*

*xxx xxx xxx*

***General rules for the interpretation of this Schedule***

*Classification of goods in this Schedule shall be governed by the following principles:*

*1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions…."*

On careful perusal of the above provisions of Central Excise Tariff Act, 1985 and General Interpretative Rules (GIR), it clearly transpires that for goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Central Excise Tariff Act, 1985. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus gives precedence to this while classifying a product. Rules 2 to 6 provide general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Central Excise Tariff Act. In the absence of any statutory definition, or any guideline provided by the statute, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8.1 For better appreciation of the products covered under the specific chapter and heading, we have also referred to the relevant tariff entries in the First Schedule to the Central Excise Tariff as follows:

*"Chapter 74*

***Copper and articles thereof***

*Notes:*

*1.In this Chapter, the following expressions have the meanings hereby assigned to them:*

*xxx xxx xxx*

*(g)* ***Plates, sheets, strip and foil***

*Flat-surfaced products (other than the unwrought products of heading 7403), coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are:*

*(i) of a rectangular (including square) shape with a thickness not exceeding one-tenth of the width,*

*(ii) of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings.*

*Headings 7409 and 7410 apply, inter alia, to plates, sheets, strip and foil with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings.*

*xxx xxx xxx*

*2. In relation to products of heading 7411, the process of drawing or redrawing shall amount to 'manufacture'.*

| **Tariff Item** | **Description of goods** |
|---|---|
| | |
| (1) | (2) |
| **7409** | *COPPER PLATES, SHEETS AND STRIP, OF A THICKNESS EXCEEDING 0.15 MM* |
| | *- Of refined copper :* |
| 7409 1100 | -- In coils |
| 7409 1900 | -- Others |
| | *- Of copper-zinc base alloys (brass) :* |
| 7409 2100 | -- In coils |
| 7409 2900 | -- Others |
| | *- Of copper-tin base alloys (bronze) :* |
| 7409 3100 | -- In coils |
| 7409 3900 | -- Others |
| 7409 4000 | - Of copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver) |
| 7409 9000 | - Of other copper alloys" |

From the details of the description of the products provided under chapter heading 7409 of the Central Excise Tariff, we find that copper plates, sheets and strip of a thickness exceeding 0.15mm are classifiable under heading 7409. Chapter note 1(g) of Chapter 74 also describe the scope of coverage of the goods as those flat surfaced copper products of solid rectangular shape having cross-section of a uniform thickness; plates, sheets, strip with specified patterns stated therein and such products which have been perforated, corrugated, polished or coated. However, it is also to be noted that such products do not assume the character of articles or products of other headings. Learned Commissioner in paragraph of 97 of impugned order had compared the weight of the copper flats and copper patta/patti to come a conclusion that the process of re-drawing the copper flat had undergone transformation to the extent that the thickness and weight was reduced considerably and physically and commercially a new product has emerged. We find that the weight of the product, or the reduction of dimensions from a particular size to another size, is not the pre-requisite for classification of the product under chapter heading 7409. Thickness of the product, being above 0.15mm is the key determinative factor for classification of the product under chapter heading 7409. We also find that process of 'drawing or re-drawing' is not mentioned as a process amounting to manufacture for the product of chapter heading 7409 and such process would amount to manufacture of products only in respect of chapter heading 7411. Hence, the conclusion arrived at by the learned Commissioner does not have any legal basis for classification of the disputed goods under chapter heading 7409.

8.2 We further find that the judgement of Hon'ble Supreme Court in the case of Laminated Packings (P) Ltd. (supra) has been given in the context of the 'lamination' of kraft paper with polyethylene amounting to manufacture, and on the basis that 'laminated kraft paper' is distinct, separate and different goods known in the market as such from the 'kraft paper'. In the present case, the facts are entirely different as the process of 'drawing or re-drawing' have not been mentioned as a process amounting to manufacture for the subject goods of chapter heading 7409, but such process amounted to manufacture only for products of chapter heading 7411. It is also not brought out on record in the impugned order, as to how a new product has been brought into the appellants factory and by what processes, as in the case of Laminated Packings (P) Ltd. (supra) which has been relied upon by the Commissioner. Further, learned Commissioner had brushed aside the documentary evidence given by the appellants in respect of machinery, electricity consumption and had not discussed these aspects with any independent evidences to state irrespective of such usage of machinery, electricity consumption the goods have been considered as processed which amounted to bringing into a new product. Therefore, we find that the impugned order does not stand for legal scrutiny.

8.3. We find that the learned Commissioner had relied upon the panchanama proceedings dated 09/10.09.2006 to state that the assessee – appellants were engaged in drawing copper products. Further, he also relied upon the statements of employees of the appellants company viz. Shri Dinesh G. Sanghvi, Manager and Shri Harikesh Doodhnath Ram Watchman to conclude that the appellants were carrying out the process of drawing copper rods and flats. Further, learned Commissioner had also stated that the fact of mentioning of 'copper rod' as finished product in Annexure-B to the Panchnama dated 09/10.09.2009 is an innocuous and apparently inadvertent mistake which does not have any bearing on the merits of the case. On careful examination of the wordings of Panchnama dated 10.09.2006, at page 2 in lines 4 to 7, mentioning "*The officers along with us took a round of the factory premises where it was observed that this company was engaged on drawing of copper flats*."; and, the headings given at Annexure-B about stock of inputs and finished goods lying in the factory premises as "*INPUTS (RAW MATERIALS): COPPER FLATS*"; "*FINISHED GOODS: Copper Patta*"; "*FINISHED GOODS: PATTI*", it clearly transpires that the narration of the independent panchas/ witnesses are merely a mention of the drawing of copper flats, without any supporting facts and as they had simply witnessed the officers drawing the inventory of goods while visiting the factory. Nothing specific has been mentioned about the machinery, processes undertaken to treat the activity of drawing to be treated as a process and to state that manufacturing has been undertaken by the appellants, to treat the same as independent evidence. Further, the adjudicating authority cannot depend on part of such panchanama which is convenient to the department and leave the other part where it is factually incorrect, to dismiss it as an inadvertent mistake. since it is not supporting their case. In other words, any evidence in order to rely upon the same for proving a case, has to be taken in its entirety. In view of the above, we are of the considered opinion that the impugned order did not examine the issues in proper perspective and failed to prove the allegation of clandestine removal for confirmation of demands raised in the SCNs.

8.4 It is submitted by the Learned Counsel for the appellants that the adjudicating authority had not examined the witnesses whose statements were relied upon, as per the provisions of the statute. In the impugned order at paragraph 122, the learned Commissioner had stated that denial of cross examination of the witness is immaterial in case of confessional statements, and he did not give any specific reason as to why he is not inclined to accede to the request of the appellants' for cross examination except stating that it is not the absolute right of the appellants. In this context, we find that the Hon'ble Delhi High Court, in the case of *J&K Cigarette Vs. Collector of Customs - 2009 (242) E.L.T. 189 - 2011 (22) S.T.R. 225 (Del.)*, while dealing with Section 9D(1) of the Central Excise Act, 1944 have held that the procedure as prescribed in the statute is required to be followed for proving the truth of the statement. The said decision of the Hon'ble Delhi High Court has also been relied upon by the Hon'ble Punjab & Haryana High Court, in the case of *G-Tech Industries v. Union of India - 2016 (339) E.L.T. 209 (P & H)*. We find force in the submissions of the Learned Counsel for the appellants that the adjudicating authority has not followed the procedures prescribed under Section 9D of the Act of 1944. We are also in agreement with the appellants that the statements of witnesses cannot be relied upon as Learned Adjudicating authority had not conducted cross-examination. In a similar case of Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II – (2024) 16 Centax 503 (Tri. – Bom.) wherein reliance was placed on the statements recorded by the departmental officers, for which the adjudicating authority did not give opportunity for cross examination, this Tribunal had held that such statements cannot be taken as admissible evidence and the demand of duty was dropped. The said decision of the Tribunal was also upheld by the Hon'ble Supreme Court in Civil Appeal Diary No. 4161 of 2024, decided on 04.03.2024.

8.5 We also find that in the case of *Collector of Central Excise Vs. Technoweld Industries* - 2003 (155) E.L.T. 209 (S.C.), the Hon'ble Supreme Court have held that there is no manufacture of a new product, It was also held that the process of drawing wire from wire rods did not amount to manufacture. The relevant paragraphs of the said judgements is extracted and given below:

> *"8. We are unable to agree with the submission. It is to be seen that the initial product was a wire rod. The ultimately product is also a wire. All that is done is that the gauge of the rod is made thinner and the product is finished a little better. In our view the earlier decisions of the Tribunal are correct. There is no manufacture of a new product. Merely because there are*

*two separate entries does not mean that the product becomes excisable. The product becomes excisable only if there is manufacture.*

*9. In this view of the matter, we see no reason to hold otherwise. Accordingly, all the appeals are dismissed."*

9. On the basis of above discussions, decisions of the Tribunal and judgements of the Hon'ble Supreme Court, we are of the considered view that the impugned order does not legally sustain and therefore, the same is liable to be set aside.

10. In the result, the impugned order dated 07.05.2013 is set aside and the appeals filed by the appellants are allowed in their favour.

(Order pronounced in open court on 10.03.2025)

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**
**MEMBER (TECHNICAL)**

*Sinha*