

THE REVENUE MIDAS

(By S.Jaikumar, G.Natarajan, M.Karthikeyan)

"Manufacture" is the nucleus of the Central Excise. Even though the term "manufacture" is the sum and substance of the levy, the relevant section 2(f) of the Central Excise Act, by way of its inclusive definition, has only made it an endless labyrinth. Over decades, we have witnessed innumerable wayfarers losing their direction in the hazy maze and ultimately ushered out by the judicial pronouncements. One of such recent casualties, the activity of wire drawing, is the feedstock of this article.

Wire drawing is an activity by which metal rods are drawn into wires, by forcing them through a series of holes of gradually decreasing diameter through a succession of dies, to achieve desired thickness, rather thinness. The issue as to whether the activity of drawing wire from the parent wire rods, would amount to manufacture or not, has undergone a topsy-turvy journey, in various legal fora. There were contrary decisions on the subject, pronounced by various Benches of the Honourable Tribunal. On its part, the Board clarified that the activity of drawing wire from wire rods would amount to manufacture, vide its Circular No.570/7/2001 dated 16/02/2001. Based on the same, the Revenue brigade launched a nationwide charge upon the wire drawers and brought them under the net. Subsequently the Honourable Supreme Court in the case of M/s. Techno Weld Industries as reported in 2003 (155) ELT 209 (SC), held that the process of wire drawing from the wire rods would not amount to manufacture, thus putting the confusion at rest. The department has also accepted the said judgment and issued a Circular No.720/36/2003 dated 29/05/2003, reversing its earlier stand, and clarified that the process of wire drawing from wire rods would not amount to manufacture. From the above, it could be seen that the excisability of wire drawing had undergone a thorough roller coaster. (Now, the process of drawing/re-drawing has been defined as "manufacture" under Section XV of the Central Excise Tariff Act, by virtue of the Finance Act 2004).

Based on the Boards' earlier Circular dated 16/2/2001, wherein the said process was clarified to be a manufacturing activity, most of the wire drawing community were registered with the Excise department and were paying excise duty on the drawn

wires. While paying so, they were also availing the CENVAT credit on their raw materials viz., wire rods.

Now to the crux of the issue. With the advent of the above said Circular dated 29/05/2003, wherein the Department clarified that the process of wire drawing does not amount to manufacture, the Revenue came up with a whimsical proposition. Throughout the nation, show cause notices were issued to the wire drawing community, demanding the reversal of CENVAT Credit availed on their raw materials viz., wire rods, for the period starting from 29/05/2003. The basis of the said demand is that, as the process of wire drawing does not amount to manufacture with effect from 29/05/2003 (date of issuance of the second Circular), the wire drawers are not eligible to avail the CENVAT Credit on the wire rods, which are used for a non-manufacturing activity. In other words, the Department alleged that the drawn wires are not "excisable goods" and thus are not "final products" as per the CENVAT Credit Rules and hence they are not entitled for availment of CENVAT Credit on their "inputs" under the CENVAT Credit Rules. On one hand, the Department gleefully accepts the duty paid on the drawn wires but on the other hand proceeds to deny the CENVAT Credit on their inputs (i.e. wire rods), based on the above said funny interpretation. There are also show cause notices invoking the proviso to Section 11A of the Central Excise Act, alleging suppression of facts and proposing furious penalties. It is a cruel truth that, even the departmental officers were not aware of the said Circular, till the insertion of Section note 10 to Section XV of the CETA, 1985, by the Finance Act, 2004. To cover up their lapse, notices are issued by invoking the larger period. When the taxmen themselves are not aware of the said Circular, how can one expect the trade to know about the same, that too, when the same has not been communicated as a Trade Notice in many places? Majority of the show cause notices thus issued are decided against the trade based on the legal maxim, " Ignorance of law is not an excuse!!!

As always, the rescue has come from the Honourable Tribunal of Bangalore, in the case of M/s. Stumpp Schedule and Somappa Ltd & M/s. SKF India Ltd. Vs. CCE, Bangalore (yet to be reported) in Appeal Nos. E/1100/2004 and E/1377/2004 dated 17/03/2005. In the said case, the Honourable Tribunal has held that, MODVAT/CENVAT Credit shall be available on the wire rods, from which the wires were drawn and cleared on payment of duty, irrespective of the fact as to whether

such process amounts to manufacture or not. While deciding so, the Honourable Tribunal has also referred to the Tribunals' decision in the case of M/s. M.P.Telelinks Limited as reported in 2004 (178) ELT 167, wherein it has been held that,

"If the Department levies and collect the Central Excise duties on the goods cleared from the factory, they cannot claim for the purpose of allowing the CENVAT Credit that the process of manufacture have not taken place".

This recent judgment is definitely the oxygen to the countless casualties (wire drawers), lying in the Intensive Care Units.

Before parting...

While denying the CENVAT Credit on wire rods to the wire drawers, based on the above said amusing logic, the Revenue has gone one step further by issuing Show Cause Notices to various recipient-manufacturers of such drawn wires, denying the CENVAT Credit on such drawn wires. Here the argument of the Revenue is that, as the drawn wires are not "excisable goods", the duty is ought not to have been paid on such drawn wires at the suppliers' end and hence they cannot be called as "Excise Duty". As it is not an "Excise Duty" at the suppliers' end, the recipient-manufacturers are not entitled to the CENVAT Credit of the same. May be it will take some more time for the Hon'ble Tribunal to address this issue.

We feel this greedy proposition justifies the title of this article.