AUTHORITY FOR ADVANCE RULINGS

(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)

NEW DELHI

PRESENT

Mr. Justice P.V. Reddi (Chairman)
Mr. J.K. Batra (Member)
Mr. J. Khosla (Member)

19th Day of November 2009

Ruling No. AAR/CE/05/2009
In
Application No. AAR/CE/05/2009

Name and address of the Applicant	:	M/s Lapp India Pvt. Ltd. 98, J&K, Jigani Industrial Area Phase-II, Bangalore South - 560105
Commissioner concerned	:	Commissioner of Central Excise Bangalore-I, C.R.Building, Queen's Road Bangalore-560 001
Present for the applicant	:	Shri Deepak Kumar Jain, Authorised Representative Shri Sriram, Company Representative
Present for the Commissioner concerned	:	Sh. V.K.Saxena, Jt. CDR Sh. Sumit Kumar, SDR

RULING

[By Mr. J.K.Batra]

M/s Lapp India Pvt. Ltd., Bangalore, the applicant, is a 100% subsidiary of M/s Lapp Holding Asia PTE Ltd., Singapore. The applicant is engaged in the manufacture and sale of electrical cables classifiable under tariff item 8544 60 90 of the Central Excise Tariff. The applicant has been paying excise duty on electrical cables so manufactured and cleared by it

for home consumption. With a view to supplement its existing manufacturing capacity, the applicant has proposed –

(a) to procure from other manufacturers electrical cables in running length packed in large spools,
(b) to rewind such cables and cut them into cables of standard length,
(c) to subject such cables to quality test to check whether the cable meets the standards / specifications and
(d) to pack the cables, after cutting, in small cartons/packages for delivery to customers

2. The applicant has sought a clarification whether the aforesaid activity proposed to be undertaken by it would amount to "manufacture". The application for advance ruling was admitted under Section 23 D(2) of the Central Excise Act, 1944 and the question for ruling is as follows:

> *"Whether the activity of cutting specified varieties of cables received by the applicant into prescribed lengths, testing thereof and packaging amounts to manufacture in terms of clause (f) of section 2 of the Central Excise Act, 1944 read with note 6 of Section XVI of the First Schedule to the Central Excise Tariff Act, 1985?"*

3. During the course of hearing, it has been clarified on behalf of the applicant that a ruling is being requested in respect of insulated single core cables made of copper and having a cross-sectional area of upto 16 square millimeters. The cables would be received in lengths varying between 2,000 mts. to 10,000 mts. and would be cut into standard lengths of 100 mts., 300 mts., or 500 mts., as the case may be. The cables as received before and after cutting would remain classified under tariff item No. 8544 60 90 of the Central Excise Tariff.

4. The applicant has contended that since the proposed activity will involve conversion of "an incomplete or unfinished cable (from running

length) to complete or finished cable (cut into desired length)", the activity would amount to "manufacture" in terms of Note 6 of Section XVI of the Central Excise Tariff. The applicant has also referred to the judgement of the Hon'ble Supreme Court in the case of Kores India Ltd. Vs Commissioner of Central Excise, Chennai wherein the Supreme Court considered the activity of conversion of jumbo rolls of typewriters/telex ribbons of 210 mts. or more in length to ribbons of standard lengths of 10 mts. or 5 mts. by cutting and spooling machines as amounting to "manufacture" for the purposes of levy of Central Excise duty. The applicant has also drawn our attention to a number of other judgements of the Hon'ble Supreme Court, High Courts and the CESTAT wherein the processes of slitting and cutting of different materials have been held to be not amounting to manufacture of any new commodity. The applicant has stated that the position of law as to whether the activity of cutting, testing and packing of electrical cables would amount to manufacture is unclear and has thus sought a ruling in the matter.

5. On behalf of the Revenue, the Commissioner of Central Excise has observed in his comments that the proposed activity of conversion of incomplete cables (running length) to complete/finished cables (desired length) is covered under the purview of Note 6 of Section XVI and thus shall amount to manufacture. However, in his subsequent comments forwarded vide letter dated 12th October, 2009, the Commissioner has observed that the applicant has not placed any material on record which can help in ascertaining as to whether the goods (cables in running length) are

incomplete/unfinished or complete/finished. During the course of oral hearing, on a specific query being raised, it has been stated on behalf of Revenue that mere cutting of cables in running length, subjecting them to test and packing them in smaller packs would not amount to manufacture.

6. The question that needs to be answered is whether the activity of cutting specified varieties of cables received by the applicant into prescribed lengths, testing and packaging thereof amounts to "manufacture" in terms of clause (f) of Section 2 of the Central Excise Act, 1944 read with note 6 of Section XVI of the First Schedule to the Central Excise Tariff Act, 1985. Clause (f) of the said Section (2) of the Excise Act, reads as follows:

(f) "manufacture" includes any process, -

(i) incidental or ancillary to the completion of a manufactured product;
(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) as amounting to manufacture; or
(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.

7. It is well settled through a series of judgements of the Hon'ble Supreme Court and High Courts in the context of the aforesaid clause (f) that manufacture can said to have taken place only if the processing to which an item is subjected to results in the emergence of a different

commodity having its distinct character, use and name and it should be commercially known as such. The question whether a particular process is a process of manufacture or not, has to be determined naturally having regard to the facts and circumstances of **each case** and having regard to the well known criteria laid down by the Supreme Court in its various decisions.

8. The applicant receives single core insulated electrical cables in lengths varying between 2000mts. to 10000 mts. The cables are cut into fixed standard lengths of 100 mts., 300 mts. or 500 mts., depending upon the orders received from the customers. After testing and packing, the goods are delivered to the customers. It is apparent from the processing that has been carried out on cables of running length received by the applicant that there has not been any change in the character, use or name of the item. The cable has not lost its identity. The goods received into the factory and delivered to the customers after processing have not undergone a transformation to such a degree which could be sufficient to conclude that a different commercial commodity having a different name, character or usage has emerged.

9. On the point whether there was manufacture, the following judgements deserve to be noticed:

(i) It has been held by the Supreme Court that process of slitting/cutting of jumbo rolls of plain tissue paper/aluminum foil into smaller sizes, does not amount to manufacture as the characteristic of the product before and after processing remains the same (*Commissioner of Central Excise, New Delhi vs. SR Tissues Pvt. Ltd.)*[1]

[1] 2005(186) ELT 385 (SC)

(ii) Madras High Court has ruled that the process of cutting of jumbo rolls of graphic art films into sheets of various sizes called flats does not amount to manufacture (*Computer Graphics Pvt. Ltd Vs Union of India)*[2]

(iii) CESTAT, Bangalore Bench has held that mere cutting the sheets which are already known as "Scrotch Brite Scouring Pad/Scrub pad" and which has got the abrasive does not bring about a change in the character of the item. No new product has arisen on mere cutting of the item into small pads.(*Birla 3 M and Another Vs Commissioner of Central Excise).*[3]

(iv) CESTAT Mumbai Bench has held that cutting of pipes to the required length does not change the character or classification and hence does not amount to manufacture (*EPC Irrigation Ltd Vs Commissioner of Central Excise, Aurangabad)*.[4]

(v) The Supreme Court has held that mere cutting (of industrial laminates) or punching holes so that they may fit into the electrical instruments/appliances does not amount to manufacture.(*Collector of Central Excise, Hyderabad Vs Bakelite Hylam Ltd).*[5]

(vi) However, the Supreme Court held in the case of *Kores India Ltd Vs Commissioner of Central Excise, Chennai*[6] that cutting of jumbo rolls of typewriter/telex rolls wound/spooled on the metal spools and blister packed would amount to manufacture.

10. In the decisions cited by the applicant as also the Revenue, the general underlying principle that has been followed is that mere cutting or slitting (of paper, graphic art films, metallic sheets, coil etc.) does not amount to manufacture for the purpose of Section 2 (f) of the Central Excise Act, 1944. In the SR Tissues case (supra), the Supreme Court observed thus:

> *"In the present case, the tribunal was right in holding that the characteristics of the tissue paper, in the jumbo roll are not different*

[2] 1991 (52) ELT 491 (Mad.)
[3] 2005 (187) ELT 101 (Tri – Bang.)
[4] 2002 (139) ELT 84 (Tri-Mumbai)
[5] 1997 (91) ELT 13 (SC)
[6] 2004 (174) ELT 7 (SC)

from the characteristics of the tissue paper after slitting and cutting, in the table napkins, in the toilet rolls and in the facial tissues." "……. we hold that no new product had emerged on winding, cutting/slitting and packing. The character and the end-use did not undergo any change on account of the above mentioned activities and, therefore, there was no manufacture on first principles"

Further, it was held that there was no deemed manufacture under Section 2(f) of the Act because slitting and cutting of toilet tissue paper on aluminum foil has not been treated as a 'manufacture' by the Legislature whereas under Note 13 to Chapter 48, the cutting and slitting of thermal paper is deemed to be 'manufacture.'

11. In the case of M/s Kores India Ltd., it has been decided by the Hon'ble Supreme Court that cutting of jumbo rolls of typewriter/telex ribbons of 210 mts. or more in lengths into ribbons of standard length of 10 mts and 5 mts. wound/spooled into metal spools would amount to manufacture. It is however, noticed that the analogy sought to be adopted by the applicant from the judgement of the Hon'ble Supreme Court in the case of Kores India Ltd cannot be made applicable to the case of the applicant since the facts in the two cases are substantially different. In the case of Kores India Ltd., as has been observed from the judgement of CESTAT which was the subject matter of appeal before the Supreme Court, what was received in the unit were jumbo reels of ribbon which "are neither typewriter ribbons nor telex ribbons as are known to the market". Conversion of jumbo ribbons into spool form is as per requirement of consumers in different spools to suit typewriter machines like Godrej M-12, Remington Standard, Halda Standard etc. The CESTAT further observed that "ribbons in the form in which they are

received…. cannot be supplied to the various customers by merely reducing the length by cutting. The product becomes a saleable commodity in the market only when it is spooled according to the desired sizes which is suitable to the particular model and make of the machine. Hence the product which emerges after spooling and packing namely a typewriter /telex ribbon has acquired a new and distinct identity from the jumbo rolls, which has now become a specific commodity namely typewriter/telex ribbons in spools of specified lengths". The Hon'ble Supreme Court has affirmed the factual findings recorded in this case by observing that the processing resulted in coming into existence of a commercial product having distinct name, character and use. Apart from the difference in facts, the Section Note in the present case (which will be discussed hereinafter) also makes the ratio of this decision inapplicable. In the case of applicant no doubt cables of running length are cut into standard lengths. However, it is nobody's case that without such cutting, the cables cannot be put to their intended use. Unlike in the case of typewriter ribbons which necessarily have to be in spools of specified shape to be inserted in different models of various brands of typewriters, there is no such requirement in the case of electrical cables processed by the applicant. In fact, during the course of hearing, the applicant's counsel has stated that the cables in standard lengths delivered by them to the customers could again be cut into smaller lengths for use depending upon the requirement for a specific purpose by the end customer. In this background the decision of Kores India Ltd., does not support the case of the applicant. It appears to us that the decision of the Supreme Court in S R Tissues case

(supra) is more directly in point.

12. Now, we have to consider Note 6 to Section XVI. – Whether it admits of an interpretation that conversion of incomplete or unfinished cables (from running length) to complete or finished cables (cut into desired lengths) would amount to manufacture. The said note 6 reads as follows:

> *In respect of goods covered by this Section, conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article (including 'blank', that is an article, not ready for direct use, having the approximate shape or outline of the finished article or part, which can only be used, other than in exceptional cases, for completion into a finished article or a part), into complete or finished article shall amount to 'manufacture'.*

As may be observed this provision read with definition of manufacture as given in clause (f) of Section 2 of Central Excise Act, 1944 provided for a 'deeming' definition of "manufacture" for the purposes of levy of Central Excise duty. In other words note 6 is intended to cover such situations wherein the processing/transformation may not naturally amount to manufacture by bringing into existence a new product having a different character, name and usage. An essential requirement for applicability of note 6 that needs to be satisfied is that the article which is sought to be "converted" should be 'incomplete or unfinished'. The applicant would receive cables in running length classified under item 8544 60 90 of the Central Excise Tariff as "electric conductor". In the facts before us, it has not been explained how this is an "incomplete or unfinished" article. The applicant has submitted that the cables in running length are of no use to the customer as such & these need to be cut into standard lengths (of 100 mts, 300 mts or 500 mts) in order to be sold to the consumers and this

makes the electric cables in running length as incomplete and unfinished. We are unable to be persuaded to agree with the interpretation of the applicant in this behalf. These cables after being cut into lengths of 100 mts, 300 mts or 500 mts. would, if so required, be further reduced in length by the customers to suit their specific needs. Length of the cable especially when the minimum unit is in hundreds of metres, therefore, is not a relevant criterion to render the electric conductor of heading 8544 60 90 as an incomplete or unfinished article. In this view of the matter the cables in running length obtained by the applicant for cutting cannot be identified as incomplete or unfinished articles. Since the basic requirement of note 6 of its being applicable to incomplete or unfinished articles is not fulfilled, the said note 6 cannot be invoked to bring the process of cutting electric cables into shorter length, testing and repacking as amounting to manufacture for the purposes of levy of excise duty under Central Excise Act, 1944.

13. We may in this context refer to some examples given in the Explanatory Notes to the Harmonized System of Nomenclature which forms the basis of both the Customs and the Central Excise Tariffs. In Rule 2 of the Rules for Interpretation of the Harmonized System it has been stated that “any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article …….” Note 6 of Section XVI of the Central Excise Tariff is in line with the aforesaid rule 2(a) of the Rules for Interpretation of the Harmonized System in as much as it provides that

conversion of such incomplete or unfinished article to a complete or finished article shall amount to manufacture for the purposes of levy of Central Excise duty. In the Explanatory notes relevant to the said rule 2(a), following examples of "incomplete machines" having the essential features of a complete machine have been specified –

(a) a photographic camera or a microscope presented without its optical elements.
(b) a motor vehicle not fitted with the wheels or tyre and battery
(c) passenger coaches not fitted with seats.
(d) a bicycle without saddle and tyres.

In the background of these examples, a cable in running length which is intended to be cut to shorter lengths cannot be said to be an incomplete article. And as observed earlier cables received in running length of 2000 mts. and above and intended to be cut into length of 100 mt. or more cannot be categorized as unfinished cables either.

14. In the circumstances the question posed by the applicant that is whether the activity of cutting specified varieties of electric cables into desired lengths, testing and packaging thereof amounts to manufacture under the Central Excise Law has to be answered in the negative.

Accordingly, ruling is given and pronounced on this the 19th day of November, 2009.

Sd./-	Sd./-	Sd./-
(J.K.Batra)	**(P.V.Reddi)**	**(J.Khosla)**
Member	**Chairman**	**Member**