

**AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
NEW DELHI**

The 30th Sept. 2011

Ruling AAR/07/CE/2011

In

Application No. AAR/44/CE-I/08/2009

Applicant : M/s Delta Power Solutions India Pvt. Ltd.,
Plot No. 28, Sector-34, EHTP, Gurgaon
Haryana-122001

Commissioner
Concerned : The Commissioner of Central Excise
Chennai-II Commissionerate,
692, MHU Complex, Nandanam, Anna Salai,
Chennai-600035

Present for the
Applicant : Shri Ravi Gupta, Manager,

Present for the
Commissioner : Shri Sumit Kumar, SDR

Ruling

(By Y.G. Parande)

M/s Delta Power Solutions India Pvt. Ltd., the applicant, is a wholly owned Indian subsidiary company of a foreign company M/s DET International Holdings Limited, Cayman Island and DET Video Technology Ltd., Tortola, British Virgin Islands. The applicant has filed an application under Section 23 C of the Central Excise Act, 1944 seeking an advance ruling regarding its liability to pay excise duty in respect of operations performed by it on battery cells for their clearance as battery bank.

2. The applicant proposes to import battery cells of two volts each, store the battery cells in a customs bonded store room and effect supplies of battery banks

comprising 24 battery cells inserted in battery cabinets along with base stand and connectors etc. After ascertaining the comments of the concerned Commissioner, the application was admitted under Section 23D of the Central Excise Act 1944. The questions on which advance ruling is sought are -

Q. 1 Whether the nature of activity is trading or manufacturing?

Q. 2 What is the excise classification for 'battery bank' assembled in a rack with connectors and can an excise invoice be raised for the clearance of 'battery bank'?

Q. 3 Can the imported VRLA batteries be charged in the bonded warehouse before being cleared from warehouse?

Q.4 Can refund of SAD u/s 3(5) of Customs Tariff Act, 1975 be claimed?

3. During the course of arguments it was observed that the facts given by the applicant were inadequate to enable the Authority to give a ruling. The Departmental Representative further pointed out that the applicant is having manufacturing / distribution facilities at several places in the country apart from Chennai. In the circumstances the applicant was called upon to file an affidavit describing the entire range of operations connected with the batteries from the stage of their importation to their clearance for supply to their customers.

4. The applicant then filed an affidavit, a copy of which was made available to the Departmental Representative also. The applicant, while explaining the details of the operations undertaken by its various units at different places, requested that the question on which a ruling was sought from the Authority be confined to the activities of the applicant at Chennai. It was explained that the applicant intends to import Valve Regulating Lead Acid (VRLA) battery cells of two volts each from China and warehouse the same in the Customs bonded warehouse. After receiving an order from the customers, the batteries would be cleared from the bonded warehouse to a non-bonded area adjacent to the bonded warehouse. The battery cells would be tested in this area and recharged, if required, by using the battery charging points in the non-bonded warehouse. The individual battery cells are inserted manually with a

mechanical fixture (a kind of lever press) into the cabinets of mechanical shelves. Each shelf contains 4 cabinets and six shelves constitute the containers for the battery bank of 24 battery cells. The batteries are not connected and such connections are made by the customer at the site itself. A battery bank of 48 volts consists of –

1. 6 mechanical shelves having capacity to insert 4 battery cells in each shelf.
2. 24 battery cells (2V each).
3. Bus bars and connectors
4. Accessories (screws, connectors, cover etc.)
5. Packing material i.e., wooden pallet, corrugated boxes etc.

5. The process of connecting in series the various batteries is simple, without the use of any sophisticated device. It is the contention of the applicant that the manner of clearance of battery cells as aforesaid does not bring into existence any new manufactured product and hence it is not liable to pay any excise duty in respect of the processing undertaken by it. According to the applicant, it is engaged in a process of purchase and sale of batteries and hence required to take registration as a central excise dealer. The applicant also requested that it is primarily interested in a ruling on the question whether the activity undertaken by it amounts to manufacture or not. The applicant is not pressing for a ruling on other related questions.

6. The Commissioner of Central Excise, Chennai-II Commissionerate, the concerned Commissioner, in his comments on the application, has explained that as per the flow chart submitted by the applicant, it is importing two volts battery cells (electric accumulators) and the goods are classified under heading 85072000. The applicant procures the cabinet, base stand, metal connectors and clamps locally. They arrange 4 cells in a cabinet and such cabinets consist of 24 cells wrapped together to form a battery bank which is then placed on wooden pallets for convenience of transportation. The clamps and metal connectors are separately packed and sent along with the battery bank to their customers. According to the

Commissioner, “though a commercial nomenclature has been given by the dealer as battery bank it is nothing but a cluster of batteries (electric accumulators – 85072000). As such there is no new product (that has) emerged but a cluster of a product handled in a specific arrangement and cleared. Hence it is opined that the activity and the goods under question is not a kind of manufacture but trading only”. In his subsequent affidavit dated 12th April, 2011, Commissioner has reiterated the activity undertaken by the applicant without any comments on the question whether it amounts to manufacture or not.

7. The Departmental Representative (DR), however, has submitted that the processes undertaken by the applicant on the batteries will lead to the emergence of a new, distinct and separate product. He pointed out that an exact classification in the name and style of “battery bank” has not been provided in the Schedule to the Central Excise Tariff Act. However, keeping in view the nature and use of the product, if it is used as an integral part of a power supply system, it merits classification under the headings 85.04 of the Central Excise Schedule. It was further indicated that as per note 6 of Section XVI of the Central Excise Schedule conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article into a complete or finished article shall amount to manufacture. The goods cleared from the premises are different from those which were received therein; therefore, as per the law laid down by the Apex Court, it is a new product. Series of activities taking place in the bonded warehouse result in the manufacture of a new product. Further, the applicant is undertaking manufacture in its Rudrapur factory and batteries are subjected to the same processes as in Chennai and it has been held as amounting to manufacture. Even the process of charging will also result in a product with a different name, character and use compared to the imported product. The goods cleared from the non-bonded portion of the warehouse are not what is received on payment of Customs duty from the Customs bonded warehouse and is a new product as per law laid down by the Apex court. The DR has therefore concluded that the activities in question may be

termed as “manufacture”. He relied upon the following judgments in support of his contention

India Cine Agencies Vs Commissioner of Income Tax, Madras [2009 (233) ELT 8 (SC)]

Kores India Ltd. Vs CCE, Chennai [2004 (174) ELT 7 (SC)]

Sirpur Paper Mills Vs CCE, Hyderabad [1998(97) ELT 3 (SC)]

UOI Vs. Delhi Cloth Mills [1997 (92) ELT 315 (SC)]

Moti Laminates Vs CCE, Ahmedabad [1995 (76) ELT 241 (SC)]

Dy. Commr. of Sales Tax Vs. Coco Fibres [1991 (53) ELT 515 (SC)]

Bhor Industries Vs CCE [1989 (40) ELT 280 (SC)]

Empire Industries Vs UOI [1985 (20) ELT 179 (SC)]

UOI Vs Delhi Cloth and General Mill [1977 (1) ELT J199 (SC)]

CESTAT's Final Order No. 815-817 dated 7/12/2010 in Xerox India Ltd. Vs CCE, Meerut II.

8. The matter was heard afresh in view of the change in the constitution of the Authority.

9. The applicants explained the processes undertaken by them and stated that they now sought a ruling on questions 1 and 2 only, in relation to the activity undertaken by them at Chennai.

10. The D.R. reiterated the earlier submissions and argued that the test to be applied in adjudging whether or not the relevant processes amounted to manufacture was to consider if they resulted in the emergence of a product that had a different character, name and use. He submitted that in the case at hand the input was batteries and output was a battery bank, which had a distinct name, character and use. The process undertaken by the applicant was not merely cosmetic and what was supplied was different from what was imported. That both the inputs and the output were classifiable under the same tariff heading did not make any difference as held in CCE, Meerut Vs Kapri International [2002 (142) E.L.T. 10 (S.C.)], nor did it

matter that certain components such as connectors were supplied separately. It also did not matter that the final assembly may happen at the customer's site. He relied upon CESTAT Larger Bench order in Mahindra & Mahindra Ltd Vs. CCE, Aurangabad, Chandigarh, Kanpur & Chennai (2005 (190) ELT 301). He also submitted that the fact that charging facilities existed in the applicant's premises was sufficient for determining whether the process amounted to manufacture. It was not relevant to see whether the batteries were actually charged in each case as such verification was neither required nor relevant.

11. There is no dispute as regards the facts. Battery cells of two volts each approximating in size to a car battery are imported, checked for their charge, charged wherever necessary, inserted into six shelves of 4 metallic cabinets and 24 battery cells are cleared as a "battery bank" along with connectors, clamps, stand, screws, bus bar etc. The central issue for determination is whether the putting together of the batteries into a "battery bank", by the process summarized in para 4 above, can be said to result in a product that has a different character, name and use, thus qualifying it to be called manufacture.

12. The question as to what constitutes manufacture has received judicial attention in a large number of cases, some of which have been listed above. The essence of the definition of manufacture, as has been held by the Supreme Court, is that for a process to be called "manufacture", it must result in a transformation of the material worked upon into a new product that has its own character, name and use as commercially understood. Further, there cannot be any hard and fast rule and the determination must be made having regard to the facts and circumstances of each case. In *Empire Industries Vs. UOI* {1985 (20) ELT 179 (SC)} the Supreme Court made the following observation:

To constitute manufacture it is not necessary that one should absolutely make out a new thing because it is well-settled that one cannot absolutely make a thing by hand in the sense that nobody can create matter by hand, it is the transformation of a matter into something else and that something else is question of degree, whether that something else is a different commercial

commodity having its distinct character, use and name and commercially known as such. In other words, if by application of labour and skill an object is transformed to the extent that it is commercially known differently, it will suffice to say that manufacture has taken place for the purpose of Central Excise. The degrees of transformation and labour and skill spent are irrelevant. Therefore, the question of 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 test laid down by the Supreme Court in various decisions.

In *Union of India Vs. Delhi Cloth Mills* {1977 (1) E.L.T. (J 199) (S.C.)} while dealing with the scope of “manufacture”, the Constitution Bench of the Supreme Court quoted with approval the following passage from an American judgment:

Manufacture implies a change, **but every change is not manufacture** and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use (emphasis added).

In *Ujagar Prints Etc. Vs UOI and others* [1988 (38) E.L.T. 535 (S.C.)], a five Judge bench of the Supreme Court, while reaffirming the view taken in *Empire Industries*, observed as follows:

The prevalent and generally accepted test to ascertain that there is ‘manufacture’ is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be border-line cases where either conclusion with equal justification be reached. Insistence on any sharp or intrinsic distinction between ‘processing’ and ‘manufacture’, we are afraid, results in an over simplification of both and tends to blur their interdependence in cases such as the present one.

13. The question that needs answer in this case is whether the battery bank that is supplied by the applicant has a name, character and use which is distinct from the batteries that comprise it. It is undisputed that the applicant describes the item as battery bank and that is the name under which it is sold. The expression “battery bank” appears to refer collectively to a battery assembly. Let us also see if there is

any change at all in the character and use of the batteries. The item that is worked upon is a battery cell (technically called an accumulator) classifiable under heading 8507 of the Schedule to the Central Excise Tariff Act which covers “Electric accumulators including separators therefor, whether or not rectangular (including square)”. After completion of the operations carried out on the item what is cleared from the “factory” is the same battery cells (accumulators) - but arranged in mechanical shelves. The connectors, clamps, bus bar and other such materials are cleared as such. McGraw Hill Dictionary of Technical Terms (Fifth edition) defines battery to mean a direct-current voltage source made up of one or more units that convert, inter alia, chemical energy into electrical energy. Similarly, the Explanatory Note to heading 8507 covering electric accumulators states:

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. **A number of accumulators may also be assembled in a larger container** (emphasis added)

It is clear from the above that the function and use of the batteries – whether in single units or in a bank of multiple batteries - remains the same and that is to supply power as per requirement. A battery bank would, therefore, appear to be nothing but a unit consisting of a number of cells connected in series or in parallel, to provide the required voltage and current requirements of the connected load. In other words, it is a number of batteries acting as one battery. The composition of a battery bank will obviously vary with the current and voltage requirement of the connected load. It cannot thus be argued that the process of putting two or more batteries would result in a transformation that alters the basic character and functions of batteries. Even from a classification perspective, the classification of the battery in the mechanical shelves still remains the same i.e. under heading 8507. In this view of the matter, no new product can be said to have come into existence and no manufacture can be said to have taken place.

14. We note that in all the cases cited, the final products that emerged had a character and functions which were distinct and different from the materials/components that went into the manufacture.

In Kores India Ltd, the Court held that cutting, spooling, blister packing and sealing of telex/typewriter ribbons from jumbo rolls amounted to manufacture. They observed that the resultant product was an identifiable article having distinct character, name and use. The function and use of both the products were distinct and not interchangeable. In India Cine Agencies a similar view was taken by the Court in relation to conversion of jumbo rolls of photographic film into smaller rolls/flats.

In Sirpur Paper Mills the issue turned upon the excisability of paper making machinery which was erected at site. The Court held that the erection of paper making machinery by using some duty paid bought out and some locally fabricated components amounted to manufacture as the machine was a new marketable commodity that was something different from the components that went into it. The machinery thus had character and functions quite distinct and different from its constituent components.

In the Coco fibres case, the question was whether the conversion of green coconut husk into coconut fibre amounted to manufacture. The Court, after considering the process, held that fibre was a commodity distinct from husk, recognized as such in commercial parlance and therefore the process amounted to manufacture. Here again the transformation resulted in a product which had a distinct name, character and use.

In the Xerox case, the question was whether assembly of photocopiers and printers from components amounted to manufacture. The Tribunal answered this question in the affirmative. It noted that it was not the case of the appellants that the modules or the parts imported could themselves be used as copiers or printers and it was only upon the assembly of the imported modules and parts along with indigenous parts and accessories that the machines became functional.

15. In the case at hand, it is not the case that the function and use of the resultant product, i.e. battery bank is different from its constituents i.e. individual batteries. The function remains the same and it is to supply power of the required specifications.

16. The other cases cited mainly relate to the relevance of marketability as a criterion for determining whether a process or a set of processes amount to manufacture. It has been held that in order to qualify as excisable goods, the goods must be marketable i.e. they must be capable of being bought and sold. For instance, in Bhor Industries, it was held that crude PVC sheets/films used in the manufacture of adhesive tapes, insulating tapes and jute laminates could not be regarded as 'goods' for levy of central excise duty as it did not satisfy the test of marketability. Similarly, in Moti Laminates, it was held that phenol formaldehyde, arising in the course of manufacture of laminated sheets, could not be considered as dutiable goods as it had little or no shelf life and lacked marketability. Since the question of marketability is not at issue in the case at hand, one need not dwell on this aspect.

17. In another limb of his arguments, the Departmental Representative has relied upon note 6 to Section XVI of the Schedule to contend that the processing of the battery in the aforesaid manner amounts to manufacture. The said note 6 reads:

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 approximately the shape or outline of the finished article or part, and 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'.

Some examples of incomplete or unfinished articles in the HSN Explanatory Notes are a motor vehicle not yet fitted with wheels or tyres and battery, a bicycle without saddle, passenger coaches not fitted with seats, locomotives not fitted with a power unit, etc. Clearly the activities carried on batteries in the facts of the case do not attract the provisions of said note 6. A two volts battery cannot be considered as an incomplete or unfinished article; it is fully finished and capable of being used as such for application requiring a two volts charge with the specified capacity (Ah-ampere

hours). That two or more batteries might be joined into a battery bank does not make any difference to this conclusion. Therefore, going by the examples set out in the explanatory notes and the purpose for which note 6 was inserted, conversion of battery cells into a battery bank cannot be deemed to be “manufacture” for purposes of levy of excise duty.

18. The Departmental Representative has also contended that the process of charging the batteries itself amounts to manufacture. He has not provided any justification or explanation for such an averment. In the case before us the batteries are already charged, only in cases where the quantum of charge dips below a certain level, a battery needs to be partially re-charged. The accumulators (storage batteries) are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operation, charging and discharging, can be repeated for the life of the accumulator. This process of charging cannot be said to result in the manufacture of an accumulator.

19. As described in the HSN notes, two volts battery is an accumulator and so also a number of batteries assembled in a larger container. The only difference is that in the case of a single battery it is of two volts and has specified capacity in terms of ampere hours. As a battery bank of 24 batteries, it has voltage of 48 volts and has a large capacity rating. It is true, as contended by the DR, that it is not necessary that tariff classification must change for a process to qualify as manufacture. However, the first point of determination has to be whether the process meets the tests laid down by the Supreme Court. We find that in the present case there is no transformation that brings about a fundamental change in the character and use of the goods. The name remains the same (i.e. accumulator, although an assembly of batteries is called a battery bank), the character and usage remain the same (i.e. provide direct current to an appliance though of differing magnitude etc.) Applying the

tests specified by the Apex Court, it cannot be said that a new article has emerged having a different name, character or usage. The activities undertaken do not amount to “manufacture” for the purpose of levy of excise duty.

20. In the circumstances, we are of the view that the activities performed at the Chennai facility of the applicant in respect of imported battery cells as described in para 4 cannot be said to amount to “manufacture” under Section 3 of the Central Excise Act, 1944 and the ruling is given accordingly. In view of this ruling, the other question becomes redundant and needs no answer.

Sd/-

(Y.G. Parande)
Member

Sd/-

(P.K.Balasubramanyan)
Chairman