

**Collector of Central Excise Vs. Hitech Cable**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-20-1995

**Reported in :** (1996)(86)ELT88TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Hitech Cable

**Judgement :**

1. This is an appeal filed by the department against the order of Collector (Appeals), New Delhi dated 4-5-1994.
2. Ld. DR stated that the dispute relates to the excisability of short length wires etc. claimed as waste and scrap of insulated wires and cables by the Respondent. A waste is either a waste of cable or waste of PVC or a combination of both. Hence, the test to be applied is as to which of the material predominates on the basis of interpretative Rule 2(b) read with Rule 3(b).
3. Furthermore, the Board had laid down a procedure for clearance of scrap and according to this procedure either the wire pieces must not be of length exceeding 12 inches or the scrap could be burned to remove insulation or it could be hammered and pressed to render it unfit for use. Therefore, only such cut pieces as are of the above type or subjected to the above processes could be allowed to be cleared as waste and scrap. In the present cases what is sought to be cleared are in fact short lengths of wires which can be put to other uses. Hence, the order of the Collector (Appeals) was required to be set aside and the matter remanded

to the adjudicating authority to decide the classification and duty liability in the light of Board's instructions.

4. The Ld. Counsel stated that the issue in dispute has not been stated correctly by the Ld. D.R. The case only relates to waste and scrap, and not to wires or cables of short length, capable of other uses .

5. In fact what the Respondents are manufacturing are insulated cables in accordance with the customer's specifications and the waste generated including even very short lengths cannot be put to any other normal use of wire or cables.

6. Furthermore, the issue relating to excisability of the waste and scrap of insulated wires and cables has already been decided by the Tribunal in the case of Finolex Cables reported in 1995 (9) R.L.T. 19 (CEGAT-B1) and the same has been held as non-excisable. It was therefore, his submission that the case is squarely covered by the above order of the Tribunal and its ratio may be applied to the present case.

7. The Ld. Counsel further stated that they have not contested the dutiability of short lengths which are marketable as cables (and not scrap) and are always cleared on payment of prescribed excise duty.

These short lengths are not to be confused with scraps of cables. The scrap is not marketable as cables and only includes unserviceable/defective pieces. The present case is only about waste and scrap.

8. We have considered the above submissions. We observe that the Ld.

Counsel is correct in pointing out that issue relating excisability of waste and scrap is already covered by the Tribunal's order in the case of Finolex Cables (supra), and therefore such waste and scrap was required to be considered as non-excisable in terms of the aforesaid order of the Tribunal.

9. At the same time in case the quantity of material cleared or sought to be cleared contains short lengths of wires capable of being sold or sold or actually sold as cables and wires, then such a quantity would not be covered by the aforesaid

order of the Tribunal.

10. It is worth repeating and emphasising that marketable short lengths of cables are not to be confused with the cable waste cleared or presented for clearance as such and disposed of as waste.

11. It is also open to the department to ensure that the Board's circular is duly enforced and only what is really waste is cleared or allowed to be cleared duty free (being non-excisable).

12. In the present case however, the show cause notice refers only to waste and scraps of wires and cables generated during the course of manufacture of wires and cables and the impugned orders also relate only to scrap and waste of wires and cables. Therefore, following the ratio of the Tribunal's orders in the case of Finolex Cables, we reject the department's appeal.

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