

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066  
EXCISE APPEAL BRANCH

Appeal No. E/3143/2004

Date 12/11/2007

Assistant Registrar  
C.E.S.T.A.T, New Delhi

To :  
C.C.E. INDORE  
MANIK BAGH PALACE, P.O.-10, INDORE (M.P.)

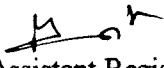
C.C.E. INDORE

Appellant

M/S S.V. ELECTRICALS LTD.

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 564/07-EX. dated 04-10-07  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S S.V. ELECTRICALS LTD.  
89, INDL. AREA No. 1, A.B. ROAD,  
DEWAS (M.P.) 455001

2. Adv. / Consult

SH. JITENDER SINGH, ADV.,  
F-21, GITANJALI ENCLAVE,  
N. DELHI-17

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

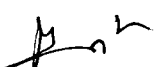
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
NORTH BENCH AT DELHI  
APPEAL NO. E/3143/04**

(Arising out of Order-in- Appeal No. 109-CE/IND/APPL.II/04 dtd. 17.3.2004  
passed by the Commissioner of Central Excise & Customs(Appeal.II) Indore )

For approval and signature:

**Hon'ble Jyoti Balasundaram, Vice President**

**And**

**Hon'ble K.K.Agarwal, Member(Technical)**

- =====
1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
  2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : *Yes*
  3. Whether Their Lordships wish to see the fair copy of the Order? : seen
  4. Whether Order is to be circulated to the Departmental authorities? : Yes
- =====

Commissioner of Cen.Excise, Indore : Appellant

VS

M/s. S.V.Electricals Ltd. Respondent

Appearance

Shri A.N.Sharma, Jt.D.R. for Appellant

None for respondents

**CORAM:**

**Ms. Jyoti Balasundaram, Vice President**

**And**

**Mr.K.K.Agarwal, Member(Technical)**

**Date of decision 4/10/07**

*Final* ORDER NO. *564/2007 EX* .....

**Per : Jyoti Balasundaram**

The Revenue is aggrieved by the order of lower Appellate Authority who has held that Electric Lamp caps damaged in the course of manufacture fall for

classification under sub-heading No.8539.00 of the Schedule to the Central Excise Tariff Act, 1985 which interalia covers electric lamps. According to the Revenue, the damaged electric lamp caps will be classifiable under sub-heading 7602.00 as Aluminium Scrap and Central Excise duty is leviable @ 20%.

2. Department relies upon Section XV to the Tariff which deals with articles of base metal and which defines waste and scrap as "metal waste and scrap from manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage cutting-up, wear or other reasons." According to the department, damaged goods are mainly made of aluminium and are therefore metal goods and they are definitely not usable as such for the reason that it has not been shown to be capable of being used as a part of the electric lamp. We agree with the Revenue that the evidence relied upon by the respondents to support the claim that it is usable is only the letter of a trader who is not actual user of the goods and therefore his averment that the damaged caps are sold to cottage industry for manufacture of lamps is not sufficient for the purpose of holding that the metal goods in question namely the damaged lamp caps are usable as such.

3. We, therefore, accept the contention of the Revenue that the goods in question are waste and scrap of aluminium under sub-heading No.7602.00, set aside the impugned order and allow the appeal in the above terms.

**K.K.Agarwal**  
**Member(Technical)**

**Ms. Jyoti Balasundaram**  
**Vice President**