

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/2762/2007

Date 01/04/2008

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

To :
M/S KISAN CO-OPERATIVE SUGAR FACTORY LTD
THE GENERAL MANAGER, MAJHOLA, DISTT-
PILIBHIT(UP)
M/S KISAN CO-OPERATIVE SUGAR FACTORY LTD

Appellant

Vs

Respondent

C.C.E. MEERUT II

I am directed to transmit herewith a certified copy of Final order No. 115/08-EX
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

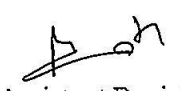
Excise dated 21-2-08


Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
2. Adv. / Consult
MR.KAPIL VAISH
B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.
3. S.D.R.
4. ~~ICDR~~
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 & SERVICE TAX
APPELLATE TRIBUNAL**
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

Excise Appeal No. 2762 of 2007

[Arising out of the Order-in-Appeal No. 186-CE/MRT-II/
2007 dated 08/08/2007 passed by The Commissioner
(Appeals), Customs & Central Excise, Meerut-II.]

For Approval and signature :

Hon'ble Shri S.S. Kang, Vice President

Hon'ble Shri P. Karthikeyan, 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?
2. Whether it would be released under Rule 27 of :
the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not? r d
3. Whether their Lordships wish to see the fair :
copy of the order?
4. Whether order is to be circulated to the :
Department Authorities?

M/s Kissan Co-operative Sugar Factory Ltd. Appellant

Versus

CCE, Meerut – II

Respondent

Appearance

Shri Kapil Vaish, C.A. – for the appellant.

Shri A.N. Sharma, Authorized Representative (SDR) – for the
Respondent.

CORAM : Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri P. Karthikeyan, Member (Technical)

DATE OF HEARING : 04/02/2008.

Final Order No. 115/08-EX Dated : 4-2-08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby demand was confirmed in respect of waste and scrap of old and used capital goods.

2. Contention of appellant is that the demand is confirmed by treating the waste and scrap as goods manufactured in terms of Section 2F of the Central Excise Act. The contention is that during the relevant period there was no rule under the Cenvat Credit Rules for reversal of credit in respect of the waste and scrap of capital goods. The appellant relied upon the following decision of the Tribunal where demand confirmed on same grounds was set aside :

- (i) Madura Coats Pvt. Ltd. vs. CCE, Tirunelveli reported in 2005 (190) E.L.T. 450 (Tri. – Bang.)
- (ii) CCE, Jaipur – II vs. Birla Corporation Ltd. & Ors. reported in 2005 (67) RLT 51 (CESTAT – Del.)
- (iii) Diesel Components Works vs. CCE, Chandigarh reported in 2000 (120) E.L.T. 648 (Tribunal).

3. The contention of appellant is that in the above mentioned decisions, the Tribunal held that scrap and waste arising in course of dismantling old and use parts of old machines is not due to mechanical working of metal in the factory, therefore, the waste and scrap arising of old and used capital goods are not dutiable in absence of any rule.

4. The contention of revenue is that as per the chapter note 8A in Section ~~15~~^{XV} of Central Excise Tariff Act, the waste and scrap question made dutiable. We have gone through the chapter note 8A in Section ~~15~~^{XIV} of Central Excise Tariff Act, which covers the metal waste and scrap arising from the

working of metal and metal goods. The only contention of revenue is that as the scrap in question is arising by cutting of the metal which are definitely usable as such, therefore as per section 2f of the Central Excise Act the same amounts to manufacture. We find we are unable to agree with the contention of revenue. In the present case, the scrap in question is of old and used capital goods and it is not arising out of mechanical working of metals in the factory. The Tribunal in the decisions relied upon by the appellant specifically held that such scrap is not dutiable. In view of this, we find merit in the contention of appellant. Impugned order is set aside and appeals are allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(P. Karthikeyan)
Member (Technical)

PK