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

Appeal No. E/3933/2004-3934/2004 Date 02/09/2008

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

To :
C.C.E. JAIPUR
N.C.R.B., STATUE CIRCLE. C-SCHEME, JAIPUR

C.C.E. JAIPUR Appellant
Vs
M/S GRASIM INDS. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 666-667/08-EX Excise dated 26-5-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registra
(Excise Appeal Branch

Copy to :
1. Respondent
   M/S GRASIM INDS. LTD.
   KHARIA KHANGAR, DISTT. JODHPUR. -307025
2. Adv. / Consult SH. R. RAGHAVAN, ADV., B-6/10, S.J.ENC. N. DELHI-29
3. D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

~~1. M/S GRASIM INDS. LTD.~~
~~KHARIA KHANGAR, DISTT. JODHPUR~~

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.III

Excise Appeal Nos.3933-3934/2004-EX(BR)

(Arising out of order in appeal No.292-293(RM)CE/JPR.II/2004 dated 17.5.2004passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur)

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member(Judicial)
Hon'ble Mr. M. Veeraiyan, 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?	No
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 Central Excise, Jaipur-II — Appellant
(Rep. by Shri S. Kumar, DR)

Vs

M/s Grasim Industries — Respondent
(Rep. by Shri Ravi Raghavan, Advocate)

Coram: Hon'ble Mrs. Archana Wadhwa, Member(Judicial)
Hon'ble Mr. M. Veeraiyan, Member(Technical)

Date of Hearing: 10.7.2008
Date of Decision: 26-8-2008

FINAL ORDER NO. 666-667/08-EX

Per M. Veeraiyan:

These two appeals by the Department arise out of common order in appeal No.292-293(RM)/CE/JPR-II/2004 dated 17.5.2004.

2. Heard both the sides.

3.1 The respondent manufactures cement. They have cleared various types of waste and scrap i.e. machinery scrap, MS scrap, scrap of empty drums, plastic scrap, electrical scrap, copper wire scrap, bearing scrap, cable scrap, aluminium scrap, brass scrap, conveyor belt scrap, rubber scrap, grinding media scrap, blow bar scrap, etc. during the period October, 1995 to July, 1999. Original Authority confirmed the demand of duty of Rs,10,81,736/-; imposed equal penalty on the respondent under Section 11AC; imposed a penalty of Rs.1 lakh on the respondent company under Rule 173-Q; also imposed penalty of Rs.1 lakh on Shri P.K. Jain, Vice President.

3.2 Commissioner (Appeals) held that waste and scrap of metal which has been generated as a result of dismantling of used capital goods, did not arise out of process of manufacture and the same was not excisable and hence set aside the demand to the extent of Rs.5,52,354/- relating to such items. Consequently, he reduced the penalty under Section 11AC to Rs.4,75,335/-. He set aside the penalty imposed under Rule 173-Q. He also reduced the penalty imposed on shri B.K. Jain to Rs.45,000/-.

3.3 The Department is on appeal against the said order of the Commissioner (Appeals).

4. The learned DR reiterates the findings of the original authority and seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

5. The learned Advocate supports the order of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. We have also gone through the grounds of appeal. In the show cause notice, it was alleged that the assessee had taken modvat credit on capital goods in respect of a number of items and after use of such capital goods, these were dismantled and sold as scrap. In terms of Rule 57-S (2)(c) the assessee was required to pay the duty leviable on such waste and scrap. It was also proposed that they were required to pay duty on waste of the packages/containers in which modvatable inputs were received as per the provisions of sub-rule 18(a) of Rule 57-F of Central Excise Rules, 1944.

7. The original authority held that waste and scrap has been generated at the workshop as well as in the plant during the course of repairing and maintenance; and scrap has been generated out of capital goods on which cenvat credit has been taken. Commissioner (Appeals) has held that there was no positive evidence that credit has been availed by the respondents on the Capital Goods dismantling of which resulted in waste and scrap and

therefore, held that the demand in this regard was unsustainable. The goods have been cleared during the period August 1995 to July, 1999 and the same relates to capital goods received during earlier period. The Commissioner's factual finding that there was no evidence about cenvat credit having been taken on the capital goods has not been contested with any evidence. The claim that they would qualify for waste and scrap as manufactured was not correct. The ground was taken that dismantling of capital goods would be the process amounting to manufacture and that a distinct commodity namely waste and scrap came into existence. This is not acceptable. Therefore, the Commissioner's finding that the goods were not held as manufactured and no duty was leviable cannot be faulted. The reduction of penalty in view of the reduction in demand of duty on the above grounds is also justified.

8. In the light of the above, we hold that there is no ground for interfering in the order of the Commissioner (Appeals) and therefore, the appeals by the Department are rejected.

(Order pronounced in the Court on 26/8/08)

(Archana Wadhwa)
Member(Judicial)

(M. Veeraiyan)
Member(Technical)

MPS*