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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/4613/2004 - EX[DB]

Date 17/11/2008

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

To :
M/S RAIL FAB
VILL. DHUDIANWAL OPP. R.C.F. KAPURTHALA

M/S RAIL FAB — Appellant
Vs
C.C.E. JALANDHAR — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 875/08-**EX[DB]** dated 12-11-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JALANDHAR
   PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult
   MR.SUDHIR MALHOTRA
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

3 C.D.R
~~I.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 - 3
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.
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12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/4613/04

[Arising out of Order-in-Appeal No.316/CE/JAL/04 dt.26.7.04 passed by the Commissioner(Appeals),Jalandhar)

For approval and signature:
Hon"ble Mr. D.N.PANDA, MEMBER JUDICIAL
Hon'ble Mr. RAKESH KUMAR, 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?	
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. Rail Fab — Appellant

Versus

CCE, Jalandhar — Respondent

Appearance

Shri Sudhir Malhotra, Adv. for the appellant
Shri M.M.Singh, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 10.11.08
FINAL Order No. 875/08-EX

Per D.N.Panda:

Heard both sides.

2. Ld. Counsel for the appellant submits that the scrap arose in the course of manufacture of water tank by the appellant were sent to job worker for conversion of the same and to manufacture useful goods for the appellant so that the appellant shall be able to use such manufactured goods in the water tank ultimately manufactured for the Railways. He submits that the scrap was converted by the job worker and that resulted with duty free goods in terms of Notification No.214/86. He further submits that since job worker was not liable to pay the duty, the appellant using the goods of job worker should not suffer from duty. In support of his contention, he relied upon the decision of the Larger Bench in the case of Wyeth Laboratories Ltd. vs CCE, Bombay reported in 2000(120)ELT.218. Relying upon the judgment he submits that the scrap was generated as inputs and such inputs were only sent for processing by the job worker.

2. We are unable to trace from the appellate order whether the contentions made by learned Counsel as above were advanced before the ld. appellate authority. We have noticed from the impugned order dt.26.7.04 at page 3 that the order dt.29.6.04 passed by the self same authority holding duty liability on clearance of waste of alluminium effected from the

factory of the Appellant was subject matter of appeal before the Tribunal in appeal No.4579/04 and that appeal was disposed of on 7.2.05 holding in favour of the appellant.

3. In view of the aforesaid position and finding that the first appellate order is a non-speaking order on the points raised as aforesaid and similar such matter of the appellant was decided by Tribunal as above, we send the matter back to the ld. appellate authority to consider the prayer of the appellant in the light of Notification No.214/86 and the Larger Bench decision cited supra as well as decision of Tribunal in Appeal case No.E/4579/04 disposed on 7.2.05.

4. In view of our aforesaid observation we send the matter back to the learned appellate authority to do justice to the appellant giving them reasonable opportunity of hearing and decide the matter on the touch stone of law.

Order dictated in the open Court.

(D.N.Panda)
Member Judicial

(Rakesh Kumar)
Member Technical

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