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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/3705/2004 - 3707/2004 - EX[DB] Date 09/01/2009

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

To :
C.C.E. CHANDIGARH
THE COMMISSIONER OF CENTRAL EXCISE,
CHANDIGARH, PLOT NO 19, SECTOR 17-C,
CHANDIGARH
C.C.E. CHANDIGARH Appellant
Vs
M/S SWARAJ AUTOMOTIVE LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 26-28/2009- **EX[DB]** dated 10-12-08

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 SWARAJ AUTOMOTIVE LTD.
M/S SWARAF ARTOMOTIVES LTD., FOCAL POINT, NABHA (PUNJAB)
2. Adv. / Consult SH. RAVI RAGHVAN, ADV., B-6/10, S. J. ENCLAVE, N. DELHI-29
3 S.D.R
4 ~~JCDR~~
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.
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
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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

~~M/S SWARAJ AUTOMOTIVE LTD.~~

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:10.12.2008

Central Excise Appeal Nos.3705 to 3707 of 2004

Arising out of the order in appeal No.315-317/CE/CHD/2004 dated 19.7.04 passed by the Commissioner(Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (judicial)

1	Whether Press Reporter 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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant — Respondent.

C.C.E., Chandigarh vs. M/s Swaraj Automotive Ltd.

Appearance:

Shri Surender Shah, Authorized Departmental Representative (DR) for the Revenue and Shri Ravi Raghvan, Advocate for the respondent

Coram : Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No. 26-28/09-EX

Per P.K. Das:

Revenue filed these appeals against the order in appeal No. 315-317/CE/CHD/2004 dated 19.7.04 passed by the Commissioner (Appeals) whereby the Adjudication Orders were set aside. The finding of the Adjudicating Authority is that the respondents cleared M.S. & C.I. scrap without payment of duty, which were generated during the manufacture of dies, jigs, fixture and tooling etc. It is observed that these scraps are chargeable to duty or may be exempted if consumed captively in the factory premises and the scrap so generated classified under sub-heading 7204.90 of the Schedule to the Central Excise Tariff Act, 1985. Commissioner (Appeals) observed that M.S. and C.I. scrap generated during the manufacture of dies, jigs, fixtures and tooling etc. and removed without payment of duty in respect of the inputs on which no Modvat credit was availed by the respondents and would not be liable to duty.

2. Learned DR on behalf of the Revenue reiterates the grounds of appeal. He relied upon the decision of the Hon'ble Rajasthan High Court in the case of UOI vs. Grasim Industries Ltd. -2008 (229) ELT 328 (Raj.).

3. Learned Advocate on behalf of the respondent submits that the wastes have been arising out of the processing of inputs in respect of which no Cenvat credit was availed. He further submits that the items were used in relation to repair and maintenance of work and factory, plant, up-keeping of office buildings. He relied upon the decision of the Hon'ble Rajasthan High Court in the case of UOI vs. J.K. Industries Ltd. – 2008 (223) ELT 342 (Raj).

4. After hearing both sides and on perusal of the record, we find force in the submission of the learned DR. The Hon'ble Rajasthan High Court in the case of Grasim Industries Ltd. (supra), held that any process incidental or ancillary to the completion of a manufactured product also amounts to manufacture. It is not necessary that scrap should emerge in the process of manufacture of an excisable goods only, or in the process of the end-product only. In this connection, the relevant portions of the decision of the Hon'ble Rajasthan High Court in the case of Grasim Industries Ltd. are reproduced below:

> ***"21. Thus, in our view, firstly any process incidental or ancillary to the completion of a manufactured product also amounts to manufacture, and secondly, it is not necessary that the scrap should emerge in the process of manufacture of an excisable goods***

> *only, or in the process of manufacture of the end-product only.*
>
> *23. In our view, it is clear from the record, that this category of scrap is a scrap generated by cutting of plates, sheets, as noticed by the learned Commissioner (Appeals), and obviously also welding electrodes, Mild Steel, Mild Steel Channel, M.S. Angles, beams, cutting tools etc., and this scrap is generated during the course of repair and maintenance of plant and machinery. May be that the parts of machinery, which are replaced, and emerge as scrap may not be excisable, and have been found to be not excisable, but then, the part which is replaced, either as a whole, or in part, is very much a product, coming into existence, as a result of manufacturing process, by using the raw material, being plates, sheets, welding electrodes, steel channels, beams, angles etc., and by using such raw material, and subjecting it to manufacturing process, by giving welding, bending, grinding or finishing etc., a part required to be replaced comes into existence/being which is obviously a spare part of the plant and machinery, a distinct commodity, and is placed in the plant and machinery, as a spare part, or as a replaceable part. In such circumstances, if in the process of manufacturing of such part, the metal waste, or scrap, comes into existence, there can be no escape from the conclusion, that the metal waste or scrap has come into existence, as a result of manufacturing process, within the meaning of Section 2(f), i.e. manufacturing of said spare part, or replaced part of the plant and machinery."*

5. Learned Advocate relied upon the decision of the Hon'ble Rajasthan High Court in the case of J.K. Industries Ltd. whereby it has been held that Rule 57AB and Rule 57S could be invoked only in case the waste material sold was outcome of capital goods on which Modvat credit has been availed by assessee.

6. We find that the in the facts and circumstances of the case, the case of J.K. Industries Ltd. (supra) is not applicable. However, on perusal of the record, we find that the respondents had taken a stand before the Commissioner (Appeals) that the items used in relation of repair and maintenance of work of factory, plant and office building. The learned DR placed a copy of the letter dated 6.11.08 issued by the Superintendent addressed to the learned DR, wherein it is stated that the respondents had mostly used its items for repair and maintenance of dies/jigs , fixtures, tooling etc. It appears that there is a dispute on the use of the items as to whether the items were used in the manufacturing or repairing of the items.

We find that facts are required to be verified in the light of the decision of the Hon'ble Rajasthan High Court ,

7. In view of the above discussions, we set aside the orders and the matter are remanded to the Adjudicating authority to decide afresh on the basis of use of items and in the light of the decision of the Hon'ble High Court in accordance with law.

8. All the appeals are allowed by way of remand.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/