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

Appeal No. E/1210/2006-SM[BR] Date 11/03/2008

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S SHREYANS IND LTD. Respondent

I am directed to transmit herewith a certified copy of Final order No.392 /2008 –SM [BR] dated 28.1.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S SHREYANS IND LTD.
   VILL. MALIKPUR, AHMEDGARH, DISTT. SANGRUR
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 Publictions (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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No.1210 of 2006-SM (BR)

[Arising out of order in appeal No.31/CE/APPL/CHD/2006 dated 25.1.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:28.1.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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?	:	
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	

CCE, Ludhiana ...Appellants

[Rep. by Mr.A.K. Rastogi, SDR.]

Vs.

M/s. Shreyans Industries Ltd. Respondent

[Rep. by Mr.H. Bajaj, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.392/08-SM(BR)/Dated:28.1.2008.

Per P.K. Das:

The Revenue filed this appeal against the order-in-appeal No.46/CE/SB/2005 dated 29.8.2005 passed by the Commissioner of Central Excise (Appeals), Ludhiana whereby demand of duty on clearance of old and used 'press felt' were set aside.

2. Ld. DR on behalf of the Revenue submits that it is evident from the show cause notice that the respondent cleared old and used paper pulp which were used by the customers as Press Felt. He submits that the Commissioner (Appeals) proceeded on the basis that the respondents cleared waste and scrap of Press Felt, which is contrary to the evidence. He further submits that in terms of Cenvat Credit Rules, the respondent is liable to pay duty on clearance of the capital goods as such. In this case, the respondent cleared old and used capital goods and, therefore, they are liable to pay duty after allowing the deductions on depreciations as provided under Rule 57 S(2) of the erstwhile Central Excise Rules, 1944. He relied upon the decision of the Tribunal in the case of Steel Authority of India Ltd. Vs. CCE, Raipur – 2007 (208) ELT 367 (T0D).

3. Ld. Advocate on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that the respondent cleared old and

used Press Felt. There is no provision for payment of duty thereon. He relied upon the decision of the Tribunal as under:-

(1)M/s. Nakodar Coprn. Sugar Mills Ltd. Vs. CCE, Jalandhar
2007-TIOL-1952-CESTAT-DEL

(2)Commissioner of Central Excise, Nagpur Vs. Windals
Precisions Pvt. Ltd.
2007-TIOL-1886-CESTAT-MUM

(3)The Commissioner of Central Excise, Belapur
Vs. Reforms Machine Tools Ltd.
2007-TIOL-1572-CESTAT-MUM.

4. After hearing both the sides and on perusal of the records, it is seen from the show cause notice that as per sample invoices the respondents cleared old and used Press Felt and not as scrap. Therefore, the finding of the Commissioner (Appeals) that the respondent cleared waste and scrap of Press Felt is erroneous. However, it is seen from the show cause notice that the respondent stated that when Felt becomes scrap, the same were dumped in the scrap yard and disposed of from there. It is also stated that the waste and scrap generated out of worn out/obsolete machinery and parts due to wear and tear is not dutiable even if Modvat/Cenvat has been availed. In any event, the clearance of old and used Press Felt is not dutiable as held by the Tribunal in the various cases. The Tribunal in the case of M/s.Windals Precisions Pvt. Ltd. (supra) held that there is no requirement of payment of duty on the sale of used machinery. It cannot be treated as clearance of

capital goods as such. It has also been held that the Board's Circular cannot override the statutory provisions. Therefore, duty cannot be demanded on the clearances of old and used Press Felt. Hence, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal is rejected.

Order dictated & pronounced in the open court on 28.1.2008.

(P.K. Das)
Member (Judicial)

Ckp.