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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

Date 02/06/2008

Appeal No. E/1654/2006-SM[BR]

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

To :
M/S J.K DRUGS & PHARMACEUTICALS LTD.
4TH FLOOR,LINK HOUSE,3 BAHADUR SHAH ZAFAR
MARG, N DELHI

M/S J.K DRUGS & PHARMACEUTICALS LTD. Appellant

Vs

CCE,MEERUT-II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 842 /2008 –SM[BR] dated 21.5.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   CCE,MEERUT-II

2. Adv. / Consult SHRI V.N.SHUKHLA ADV
   B- 6 /10 , SAFDARJUNG ENCLAVE
   NEW DELHI-110029

3. S.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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. II

Excise Appeal No. 1654 of 2006-SM

[Arising out of Order-in-Appeal No. 09/CE/MRT-II/ 2006 dated 19.1.2006 passed by Commissioner of Central Excise (Appeals), Meerut II]

For approval and signature:

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

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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? : Yes
4. Whether Order is to be circulated to the Departmental authorities? : No

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M/s. J.K. Drugs & Pharmaceuticals Ltd. Appellant

Vs.

Commissioner of Central Excise
Meerut II Respondent

Appearance: Mr. V.N. Shukla, Advocate for the Appellant
Mr. B.S.Suhag, DR for the Respondent

Date of decision : 21.5.2008

Final **ORDER NO. 842/08-SM(BR)**

Per S.S.Kang:

Heard both sides. Appellant filed this appeal against the impugned order whereby the demand in respect of sale of scrap of capital goods was confirmed.

2. The contention of the appellant is that the scrap in question was of capital goods on which no credit has been availed. Even before the Commissioner (Appeals) in the grounds of appeal this plea was specifically taken. Inspite of this, the Commissioner (Appeals) dismissed this appeal. The contention is that scrap is of capital goods on which no credit can be taken, therefore, the appellants are not liable to pay any duty.

3. The contention of the Revenue is that during the relevant period as per the provisions of Rule 57S(2) of the Central Excise Rules, the manufacturer has to pay duty on the value of scrap. As the appellant pleaded that on capital goods no credit has been availed, but failed to produce any evidence in support of this plea, hence the demand is rightly placed.

4. In this case, the demand is confirmed against the waste and scrap of the capital goods. The contention of the appellant is that on the capital goods credit has not been availed by the appellant. This factual position

can be verified from the records maintained by the appellant whether any credit has been availed in respect of capital goods of which the scrap has been cleared and as the appellant put the plea before the Commissioner (Appeals) only, the adjudicating authority has not gone into it. The impugned order is set aside and the issue regarding dutyability of scrap of capital goods in question is remanded back to the adjudicating authority to decide the matter afresh after affording an opportunity to the appellant. The appeal is disposed of by way of remand.

(Pronounced in the open Court)

(S.S. Kang)
Vice President

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