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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/4635/2004 – SM[BR] Date 01/06/2009

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

To :
U.P.STATE SUGAR CORPORATION LTD
SAKOTI TANDA, DISTT. MEERUT
250223

U.P.STATE SUGAR CORPORATION LTD — Appellant
Vs
C.C.E.MEERUT I — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 497 / 2009 –SM[BR] dated 14.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E.MEERUT I
   UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.4635 of 2004-SM (BR)

[Arising out of Order-in-Appeal No.383-384-CE/MRT-I/2004 dated 28.05.2004 passed by the Commissioner of Central Excise (Appeals), Meerut-I]

Date of Hearing/ Decision:14.05.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
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? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

M/s. U.P. State Sugar Corporation Ltd. . ...Appellants
[Rep. by Shri Bipin Garg, Advocate]

Vs.

CCE, Meerut-I ...Respondent
[Rep. by Shri R.K. Verma, DR]

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

Final Order No. 497/09-SM (BR)/Dated:14.05.2009

Per P.K. Das:

Duty was demanded on the clearances of the capital goods/parts/components/accessories became scrap due to wear and tear on replacement of the parts and accessories etc. The show cause notice dated 22.4.2009 proposed demand of duty of Rs.1,29,306/- on the clearance of the waste and scrap payable under Rule 3 (3) of Cenvat Credit Rules, 2001. The Original Authority confirmed the demand of duty, which was upheld by the Commissioner (Appeals).

2. Ld. Advocate submits that during the period 2000-2001 and 2001-2002, there was no provisions for payment of duty on the clearance of waste and scrap of capital goods. He relied upon the decisions of the Tribunal in the cases as under:-

(a) Trivani Engg. And Industries Ltd. Vs. CCE
2007 (216) ELT 39 (Tribunal-Delhi)

(b) Triveni Engg Industries
2007 (217) ELT 275 (Tribunal-Delhi)

(c) Commins India Ltd. Vs. CCE
2007 (219) ELT 911 (T-M)

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants cleared waste and scrap classifiable under the Central Excise Tariff and, therefore, they are liable to pay duty.

4. After hearing both the sides and on perusal of the records, it is seen from the show cause notice that the appellants, during the relevant period, cleared waste and scrap generated due to wear and tear of plastic goods/parts/components/accessories became scrape due to wear and tear. The Tribunal in the case of Rajasthan Spg. & Wvg. Mills Ltd. Vs. CCE, Jaipur reported in 2006 (193) ELT 601 (Tribunal-Dehi) held that removal

of scrap of capital good, demand of duty is not sustainable as there was no provisions under the Act and Rules, during the relevant period. In the case of Triveni Engg. & Industries (supra), it has been held that the provisions of payment of duty on waste and scrap of capital goods was introduced only in 2005.

5. In view of that as there was no provisions to raise the demand on clearance of waste and scrap of capital goods, during the relevant period, and therefore, demand of duty is not sustainable. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open Court on 14.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.