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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/475 /2006 - EX[DB] Date 19/11/2009

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

To :
M/S TRIVENI ENGG. & INDS. LTD.
UNIT DEOBAND, DISTT. SAHRANPUR
M/S TRIVENI ENGG. & INDS. LTD. Appellant
Vs
C.E.C. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1242/ 2009 EX[DB]** dated 16-11-09 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD
3. C.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)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

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

Appeal No.475/2006-Excise Branch

[Arising out of Order-in-Appeal No.203-CE/MRT-1/2005 dated 28.11.2005 passed by the Commissioner of Central Excise (Appeals), Meerut-I]

Date of Hearing/ Decision:03.11.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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

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M/s. Triveni Engg. & Indus. Ltd. ...Appellants
(Rep. by Shri Rajesh Chibber, Advocate)

Vs.

CCE, Meerut ....Respondents
(Rep. by Shri Sansar Chand, SDR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. D.N. Panda, Member (Judicial)

FINAL Order No. 1242/09 Dated:03.11.2009

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) dated 28.11.2005.

2. Heard both sides.

3. The appellants had cleared and sold M.S. Scrap/M.S. Scrap (Turnings), generated by dismantling of worn out machinery, furnace, vessels, pipelines and structures of iron and steel. Show cause notices were issued alleging that the said scrap sold by them known in common trade parlance as waste and scrap of iron and steel products were clearly different in terms of its characteristics and usages and therefore classifiable under Chapter sub-heading No.7205.90. The Note No.8(a) of Section-XV of Central Excise Tariff Act was also relied upon to allege that the said products have arisen during the course of manufacture.

4. The show cause notice clearly recorded the submission of Shri T.C. Sharma, Law Officer that the scrap generated was out of old and used machinery purchased/installed before April, 1994 and hence, no duty has been paid as no credit was taken. The Original Authority held that the goods were manufactured and classifiable as scrap and irrespective of whether the Cenvat credit has been taken or not, the appellant has to pay duty and accordingly, confirmed the demand of duty of Rs.21,71,820/- along with interest and imposed equal amount of penalty. The Commissioner (Appeals) upheld the order and it has also been observed by him that the Cenvat credit has been taken on the capital goods, which has been dismantled and sold as waste and scrap.

5. Ld. Advocate submits that they are manufacturer of sugar. They are not the manufacturer of iron and steel products. They have only dismantled, in the course of repair and maintenance, old machinery, which were not useable any further and the scrap generated during the

course of dismantling was sold. The disputed goods have arisen out of capital goods on which Cenvat credit was not taken by them. Therefore, the question of treating them as waste and scrap arisen during the course of manufacture does not arise. He relies on the decision of the Tribunal in the case of Commissioner of Central Excise, Jaipur Vs. Birla Corporation Ltd. reported in 2005 (181) ELT 263 (Tribunal-Delhi), wherein it has been held that the waste and scrap ~~manufacture of~~ generated during the course of dismantling or repair will not amount to manufacture of goods. He also relies upon the decision of the Hon'ble High Court of Rajasthan in the case of Hindustan Zinc Ltd. reported in 2008 (225) ELT 50 (Rajasthan).

6. Ld. SDR draws our attention to the order of the Original Authority and submits that as a result of repair and maintenance of the plant, three types of waste and scrap of iron and steel were generated viz. (i) old and discarded machine parts as such or broken or cut to pieces (ii) old used pipes/vessels structures etc. that become unserviceable/unusable due to erosion & corrosion and (iii) M.S. Turnings that generated during manufacture of machinery items, captively consumed. He submits that the irrespective of waste or scrap, they also availed Modvat credit, the duty is payable as goods manufactured and the waste and scrap shall fall under Tariff Heading No.72.04.

7. We have carefully considered the submissions from both the sides and perused the records. The show cause notices clearly propose the demand of duty on the scrap and waste arisen during the course of

dismantling and during the course of repair and maintenance of old and used machinery. The show cause notices had not brought out that waste and scrap has arisen during the course of manufacture of any iron and steel products was sought to be levied to duty under Heading No.72.04. Further, it is clearly recorded that the waste and scrap in dispute has arisen out of capital goods, on which credit has not been taken.

8. Under these circumstances, we are in agreement with the claim of the appellant that the scrapping of the capital goods when they become unuseable or when they are dismantled the scrap arising cannot be treated as generated during the course of manufacture and Section Note relied upon by the Department has no relevancy to such operations of dismantling of old and used machinery.

9. In view of the above, we are in agreement with the view of the ld. Advocate that the case is covered by the decision of the Tribunal in the case of Birla Corporation Ltd. cited supra.

10. The impugned orders are set aside and the appal is allowed with consequential relief as per law.

Order dictated & pronounced in open court on 3.11.2009.

(M. Veeraiyan)
Member (Technical)

(D.N. Panda)
Member (Judicial)

Ckp.