TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/670 /2008 – SM[BR] Date 03/05/2010

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 DEEPS TOOLS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 462 / 2010 –SM[BR] dated 27.4.2010 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 DEEPS TOOLS PVT. LTD.
   320-321, INDSL. AREA-A,
   LUDHIANA (PB)
2. Adv. / Consult
   NONE;--------------

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15 TAXINDIAONLINE. COM. PVT.LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD,VASANT KUNJ, NEW DELHI-70.

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

SINGLE MEMBER BENCH

Date of hearing/decision: 27.4.2010

Central Excise Appeal No.670 of 2008-SM

Arising out of the order in appeal No.708/CE/CHD/REV/LDH/2007 dated 19.12.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

C.C.E., Ludhiana .... Appellant

Vs.

M/s Deeps Tools Pvt. Ltd. .... Respondent

Appearance:

Shri S.K. Bhaskar, Authorised Departmental Representative (JDR) for the Revenue and none for the respondent

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 462/2010-SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No.708/CE/CHD/REV/LDH/2007 dated 19.12.2007 vide which the appeal of the Department against the order of the original authority dated 12.12.2006 was rejected.

2. None appeared for the respondent in spite of notice. Heard the learned DR who reiterates the grounds of appeal.

3. I have carefully considered the submissions and perused records. The relevant facts are that the respondents use copper wire for hanging the spanner in nickel solution for electroplating. After repeated use, the copper wire which is not usable any further is cleared as copper scrap. Show cause notice was issued alleging that copper scrap has arisen during the course of manufacture and therefore, duty is payable and penalty is imposable. The original authority dropped the proceedings on the show cause notice, after accepting the contention of the party both on merits and on the issue of limitation. On appeal by the Department, the Commissioner (Appeals) rejected the appeal and upheld the order of the original authority. The Department has thus filed appeal against the concurrent findings of the authorities below which are in favour of the assessee. The reliance placed on the Section 2(f)(1) of the Central Excise Act , according to which, the manufacture includes any process incidental or ancillary to the completion of manufactured product is misplaced. The general concept of manufacture should be tested with reference to the raw material used, the nature of processes undertaken, whether the processes result in emergence of a distinct product having different characteristic and end use. The emerging new product should also be marketable. Merely because the scrap has been marketed, the same cannot be held to have emerged as a result of manufacture. The finding of the original authority which stand upheld by the Commissioner (Appeals) on this aspect calls for no interference.

4. The appeal by the Department, which is against the concurrent findings of the authorities below which are in favour of the assessee, is rejected.

(M. Veeraiyan)
Technical Member

scd/