REGISTERED / AD

FAX : 011-26108426

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

Dated: 01/11/2012

To
1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. A/1274/2012-EX[DB] dated 11/10/2012

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of **the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/424/2005	**INSULATORS AND ELECTRICALS COMPANY** 1 TO 8 & New Industrial Area Mandi-Deep Distt-Raisen M.P.	**C.C.E Bhopal** Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011

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Copy To
1. Advocate(s) / Consultant(s):

A. H. Ansari
C-134, KOH-E-FIZA, BDA
COLONY,
BHOPAL,
MADHYA PRADESH
462001

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2. C.D.R 3. Office Copy 4. Guard File

5. Bar Association, CESTAT, Delhi **6.** Director Publications, Customs, Excise. I.P. Estate, Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Appeal No.424 Of 2005

(Arising out of Order-in-Appeal No.586-CE/BPL/2004 dated 29.07.2004 passed by the CCE(A), Indore)

Date of Hearing/Decision: 11.10.2012

For approval and signature:
Hon'ble Mr.Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Insulators & Eletricals Co. — Appellants

Vs.

CCE, Bhopal — Respondent

Present: Shri A.H.Ansari, Advocate for the Appellant
Present Shri R.k.Verma, DR for the respondent

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Mr.Rakesh Kumar, Member (Technical)

FINAL **ORDER No.** A/ 1274/2012-ExC(BP)

Per: Rakesh Kumar

The appellant are manufacturer of electrical insulators. In the course of manufacture of electrical insulators among other waste and scrap, the waste in the form of used fire brick and asbestos sheet waste arises. The point of dispute in this case is as to whether used fire brick and asbestos sheets cleared as waste and scrap from the factory are chargeable to duty or not? The CCE(Appeals) was of the view that broken waste and scrap of fire bricks is chargeable to duty under heading 6901.90 and of asbestos sheets are chargeable to duty under chapter 6804.20 and on this basis, he upheld the demand of duty on these items under Rule 3 (5A) of the Cenvat Credit Rules, 2004 on the ground that capital goods cenvat credit had been taken in respect of fire bricks and asbestos sheets. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both sides.

3. Shri A.H.Ansari, Advocate, learned Counsel for the appellant pleaded that neither fire brick waste nor as asbestos sheet waste is covered under sub heading of Central Excise Tariff Act, that the same are not excisable, that during the period of dispute i.e. from 1.10.2001 to 31.03.2003, there was no provision in the Cenvat Credit Rules, that cenvat credit availed capital goods cleared from the factory as waste and scrap would attract duty, that such a provision came with effect from 16.5.2005 only while period of dispute is prior to 16.5.2005 and that in view of this, the impugned order is not correct.

4. Shri R.K.Verma, learned AR, for the respondent, defended the impugned order by reiterating the finding of the Commissioner (Appeals) in the impugned order.

5. We have considered the submissions made from both sides. We find that while the department seeks to charge duty on the fire brick's waste under sub heading 6901.90 and asbestos sheets waste under heading 6804.20, On going through these headings, we find none of these sub headings cover waste and scrap. In fact there is no heading in chapter 69 to cover waste and scrap of

ceramic materials and similarly, sub heading 68.04 also does not cover waste and scrap of asbestos sheets, ~~articles~~. In view of this, we are of the view that fire brick scrap and asbestos sheets are not excisable. Moreover during the period of dispute there was no provision in the Cenvat Credit Rules, that when cenvated capital goods are cleared as waste and scrap, an amount of equal to duty on sale price of such waste and scrap would be chargeable to duty. Such provision was intended by inserting Rule 3 (5A) with effect from 16.5.2005 while the period of dispute in this case is prior to this date. In view of this, the impugned order is not sustainable. The same is set aside and appeal is allowed.

(Justice Ajit Bharihoke)

President

(Rakesh Kumar)
Member (Technical)

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