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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/1572/2001-EX[DB]

Dated: 15/10/2012

Assistant Registrar  
C.E.S.T.A.T. New Delhi  
To,  
M/S. BUDHEWAL COOP. SUGAR  
MILLS LTD.,  
VPO BUDHEWAL NEAR KOHARA,  
DISTT. LUDHIANA

**M/S. BUDHEWAL COOP. SUGAR  
MILLS LTD.**

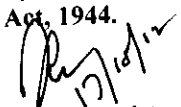
(Appellant)

VS

**C.C.E., CHANDIGARH**

(Respondent)

I am directed to transmit herewith a certified copy of Final Order No. A/1216/2012-EX[DB] dated 10/10/2012 passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

  
Assistant Registrar  
EXCISE Appeal Branch

Copy To,

1. Respondent

CCE, CHANDIGARH

C.R.BUILDING, PLOT NO. 19,  
SECTOR-17-C, CHANDIGARH-17

2. Advocate(s) / Consultant(s):

SH. KULVINDER SINGH, ADV.,  
393-L MODEL TOWN, LUDHIANA

3. **C.D.R**

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

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

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

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

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

13. Office Copy

14. Gaurd File

  
Assistant Registrar  
EXCISE Appeal Branch

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

Date of hearing: 25.06.2012

Date of Decision: 15/10/12

|    |                                                                                                                                       |  |
|----|---------------------------------------------------------------------------------------------------------------------------------------|--|
| 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?                                                                    |  |

Excise Appeal No.E/1572 of 2001

(Arising out of Order-in-Appeal No.224/CE/CHD-I/2001 dated 11.5.2001  
passed by the Commissioner of Central Excise (Appeals), Chandigarh)

M/s.Budhewal Co-op. Sugar Mills Ltd.

...Appellant

Vs.

CCE, Chandigarh

...Respondent

Appearance: Shri Kulvinder Singh, Advocate for the appellant.

Shri Nagesh Pathak, DR for the respondent.

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

FINAL Order No. A7.12.1.6/2012-ET (BA)

**Per Rakesh Kumar:**

The facts giving rise to this appeal are, in brief, as under:-

1.1 The appellants are manufacturers of sugar and molasses. Plant and machinery of sugar manufacturing unit requires regular repair and maintenance which involves replacement of old and worn out parts by the new parts which are sometimes manufactured in the factory workshop itself. The old and worn out parts of the machinery and also the scrap generated in the course of fabrication of parts of the machinery was being sold by the appellant without payment of duty. The department was of the view that this scrap was chargeable to central excise duty. On this basis, a show cause notice dated 16.4.99 was issued to the appellant for demand of duty amounting to Rs.2,09,109/- in respect of the clearances of M.S. Scrap during 1995 to 1997-98 period along with interest thereon under Section 11 AB of Central Excise Act, 1944 and also for imposition of penalty on the appellant under Section 11 AC *ibid*. This show cause notice was adjudicated by the Asstt. Commissioner vide order-in-original dated 27.07.99 by which he confirmed the duty demand of Rs.1,74,332/- along with interest thereon under Section 11 AB and imposed penalty of equal amount on the appellant under Section 11 AC *ibid*. The demand for the remaining amount was

dropped. In the course of proceedings before the Asstt. Commissioner, the appellant pleaded that the entire scrap was of the old and worn out machinery or machinery parts and hence was not excisable, but this plea was not accepted. The appellant filed an appeal before the Commissioner (Appeals) against the Asstt. Commissioner's order, who vide order-in-original dated 11.5.2001 dismissed the appeal in toto. The Commissioner (Appeals) while dismissing the appeal observed that the appellant's plea that the entire scrap was of old and used parts of machinery is not correct, that no duty has been demanded on the quantity of scrap which was found to be in form of old and used parts and machinery and this aspect had been taken into consideration by the original adjudicating authority. Thus, the Commissioner (Appeals) upheld the Asstt. Commissioner's order in respect of the demand of duty, holding that the scrap on which the duty had been demanded was the one which had arisen in the workshop in the course of fabrication of parts of machinery. The appellant filed an appeal before the Tribunal against the Commissioner (Appeals)'s order. The appeal came up for hearing on 16.1.2002 but at that time, no one represented the appellant for hearing. The Tribunal, however, decided the appeal on merits ex parte vide Final Order No.45/2002-B dated 16.01.2002 by which the appeal was dismissed. The Tribunal while dismissing the appeal observed that duty has been demanded

only in respect of the scrap generated in the workshop of the appellant and which had been cleared without payment of duty and that no duty has been demanded in respect of the old and worn out machinery or machinery parts, no longer useable and which had been sold as scrap. The appellant filed an application for restoration of this appeal on the ground that the order was ex parte . The appellant filed misc. application No.33/2002 for restoration of the appeal. It appears that this <sup>application</sup> was not listed for about ten years. This misc. application was listed for restoration before the Tribunal on 24.2.2012. At that time, both the sides were represented. Tribunal after hearing both the sides vide Order No.172/2012-Ex (BR) dated 24.2.2012 recalled the final order no.45/2002-B dated 16.1.2002 and restored the appeal to its original number and ordered for being listed for final disposal on 28.5.2012.

2. The matter was finally listed for fresh hearing on 25.6.2012.
3. Heard both the sides.
4. Shri Kulvinder Singh, Advocate appearing for the appellant, pleaded that the scrap on which the duty has been demanded was in form of old and unuseable machinery and parts thereof, no longer useable and this scrap is not liable to any duty, that the department's contention that the scrap was of the type generated in the workshop in the course of manufacture of parts of

machinery for replacing the old parts is not correct, and that in view of this, the impugned order is not sustainable.

5. Shri Nagesh Pathak, Id.DR, pleaded that the scrap cleared was of two types – the scrap in form of old and unusable machinery and parts thereof and the scrap generated in the workshop in the course of manufacture of parts of machinery, that as is clear from the order-in-original and the order-in-appeal, the Asstt. Commisisoner has demanded duty only on that quantity of scrap which had been generated in the workshop in the course of manufacture of new parts of the machinery and it is this duty demand which has been upheld by the Commissioner (Appeals), that scrap generated in the workshop for making parts of the machinery for replacing the old and worn out parts is chargeable to central excise duty, as held by Hon'ble Rajasthan High Court in the case of **Grasim Industries Ltd. reported in 2008 (229) ELT 328 (Raj.)** and that in view of this, there is no infirmity in the impugned order.

6. We have carefully considered the submissions from both the sides and perused the records.

7. On going through the order-in-original passed by the Asstt. Commissioner and order-in-appeal passed by the Commissioner (Appeals),

we find that the appellant's plea that the entire <sup>scrap</sup> cleared was in form of old and un-useable machinery or parts thereof, and not the scrap generated in course of fabrication of machinery parts has been considered by the Asstt.

Commissioner as well as by the Commissioner (Appeals) and their findings <sup>are</sup>

that while no duty had been demanded on the quantity of scrap in form of old and used machinery/parts, the duty has been demanded only on that quantity of scrap, which according to the department, had been generated in the workshop in the course of manufacture/fabrication of parts of machinery for replacing the old and worn out parts. However, even if the department's contention that the scrap on which the duty has been demanded is that which had arisen in the workshop in the course of manufacture/fabrication of the parts of the capital goods is accepted, in our view, the duty demand would not survive as while this very issue had earlier been decided by the hon'ble Rajasthan High Court in the case of Union of India Vs. Grasim Industries Ltd. Reported in 2008 (229) ELT 328 (Rajasthan) in favour of the department holding that the scrap generated by cutting of plates, sheets, mild steel channels, M.S. Angles, etc. for fabrication of parts of capital goods for replacing <sup>old parts, i.e., ex-useable, on appeal against</sup> this judgement to the Apex Court, the Apex Court vide judgement

— reported in 2011(273) ELT 10 (SC) has set aside the Hon'ble High Court's judgement holding that the scrap generated in the

repair & maintenance workshop of the factory cannot be said to be the scrap generated in a manufacturing process or a byproduct of manufacturing process and hence the same is not excisable. In this regard, paras 14,15 and 16 of the Apex Court judgement are reproduced below:-

“

14. In the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, which is the excisable end product, as since welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc. which are used in the process of repair and maintenance are not raw material used in the process of manufacturing of the cement, which is the end product. The issue of getting a new identity as M.S. Scrap and Iron Scrap as an end product due to manufacturing process does not arise for our consideration. The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process which uses welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc.

15. Learned ASG has placed reliance on the decision of this Court in *CST v. Bharat Petroleum Corpn. Ltd.* (supra). In that case, the assessee purchased sulphuric acid and cotton for the manufacturing of kerosene and yarn/cloth. In the manufacturing process, the acid sludge and cotton waste emerged as a distinct product having commercial identity. The issue before this Court was that whether the assessee can be said to manufacture acid sludge and cotton waste. This Court observed that where a subsidiary product is turned out regularly and continuously in the course of a manufacturing business and is also sold regularly from time to time, an intention can be attributed to the manufacturer to manufacture and sell not merely the main item manufactured but also the subsidiary products. We are afraid, the decision does not help the Revenue because the metal scrap and waste arising out of the repair and maintenance work of the machinery used in manufacturing of cement, by no

stretch of imagination, can be treated as a subsidiary product to the cement which is the main product. The metal scrap and waste arise only when the assessee undertakes repairing and maintenance work of the capital goods and, therefore, do not arise regularly and continuously in the course of a manufacturing business of cement.

16. In view of the above, we cannot sustain the Judgment and Order of the High Court dated 31-7-2008. //

7. In view of the above judgement of the Apex Court, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

[Order pronounced on 10/10/12]

( Justice Ajit Bharihoke )  
President

Ckp.

( Rakesh Kumar )  
Member (Technical )