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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/1765/2012-EX[DB]
E/S/2413/2012-EX

Dated: **24/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Hindalco Industries Ltd
P.o. Renukoot-231217, District-
sonebhadra (u.p.)

Hindalco Industries Ltd (Appellant)

VS

C.C. & C.E. & S.T.-Allahabad (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/844/2012-EX[DB]**, StayOrder No. **SO/1116/2012** dated **18/07/2012** 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
C.C. & C.E. & S.T.-Allahabad
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ALLAHABAD,211001

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

13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 18.07.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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?	

Excise Appeal No. 1765 of 2012 and
Excise Stay No. 2413 of 2012
(Arising our of order-in-appeal No. 46/CE/ALLD/2012 dated 10.04.2012 passed by the Commissioner (Appeals), Central Excise, Allahabad).

M/s Hindalco Industries Ltd. Appellants

Vs.

CCE, Allahabad Respondent

Present Sh. Hemant Bajaj, Advocate for the appellants.
Present Sh. Nagesh Pathak, AR for the respondent.

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

STAY ORDER NO. 1116/2012-Ex(BR)
FINAL ORDER NO. A/844/2012-Ex (BR)

Per: Rakesh Kumar (Oral)

The appellants are manufacturers of aluminium chargeable to central excise duty. In this case, the department has issued show cause notice for demand of duty amounting to Rs. 5,13,981/- in respect of clearances of Ceramic Filter Scrap, Old & used burnt lubricant oil in drums, Old & used Transformer oil in drums, Scrap of Paper waste, Waste & scrap of old & used combo bag, Waste & scrap of old & used Hoop iron, Waste & scrap of old & used paper spool & cartoon Waste & scrap of stainless steel scrap during the period from April 2010 to October, 2010 on the ground that these are scrap item which are chargeable to central excise duty. The show cause notice was adjudicated by Joint Commissioner vide order in original dated 02.11.2011 by which the duty demand as made in the show cause notice was confirmed alongwith interest and penalty of equal amount was imposed under Rule 25 of the Central Excise Rules, 2002.

2. On appeal, this order of Joint Commissioner was upheld by the Commissioner (Appeals), Central Excise, Allahabad vide order dated 10.04.2012 against which this appeal alongwith the stay application has been filed.

3. Though this matter is listed for hearting of stay application only, after hearing the same for some time, we were of the view that since a short issue is involved, the appeal itself can be taken up for final disposal. Accordingly, the requirement of pre-deposit is waived and with the consent of both the sides the matter is heard for final disposal.

4. Heard both the sides.

5. Shri Hemant Bajaj, Advocate, the ld. Counsel for the Appellants, pleaded that the duty demand has been raised only on the basis of Board's Circular No. 904/ 24/2009-CX dated 28.10.2009 which Board has been

quashed by Hon'ble Allahabad High Court vide judgement dated 18.5.2012 by which Hon'ble High Court has allowed a bunch of writ petition including Civil W.P. No. 11791(M/B) of 2010 titled as **Balrampur Chinni Mills vs. UOI** and various others; that the show cause notice does not even mention the tariff heading under which the duty on these various items is sought to be charged; that in terms of Tribunal's judgement in the matter of **Yamaha Motors India (P) Ltd. vs. CCE, Noida -2010 (259) ELT 400 (Tri. Del.)** waste oil obtained by draining out used lubricants from machinery after a long period of its use is not excisable; that same view has been taken by the Tribunal in the case of **Nahar Spinning Mills Ltd. vs. CCE, Bhopal- 2010 (256) ELT 92 (Tri. Del.)**; that the Tribunal in the case of **VVF Limited vs. CCE, Daman -2009 (248) ELT 593 (Tri. Ahmd.)** has held that waste paper and plastic generated during packing of soaps is not excisable; and that the Apex Court in a recent judgement in the case of **Grasim Industries Ltd. vs. Union of India -2011 (273) ELT 10 (SC)** has held that old and used machinery cleared as waste is not excisable; and that in view of the above judgements, the impugned order upholding the duty demand on the assorted waste is not sustainable.

6. On the contrary, Sh. Nagesh Pathak, ld. AR has argued in support of the impugned order. He submitted that as per Rule 2(h) of the Cenvat Credit Rules, 2004 waste and scrap of inputs generated during the course of manufacture are excisable final product.

7. We have carefully considered the rival submissions. In order to appreciate the contention of ld. AR it would be useful to have a look on the

definition of final product as defined under Rule 2(h) which is reproduced thus:-

> "(h) "final products" means excisable goods manufactured or produced from input, or using input service;"

On reading of above, it is evident that final product is excisable goods manufactured or produced from inputs or using input services. The pre-condition to bring the goods into the definition of final product is that those goods should be excisable. Ld. AR has failed to point out as to under which classification heading of Central Excise Tariff Act the above referred scrap items are covered. Thus, the assorted scrap which does not find mention in the Central Excise Tariff Act cannot be termed as final product subject to levy of excise duty.

8. Thus, we do not find any merit in the department's contention that the assorted waste, in question, is excisable goods attracting central excise duty in view of various judgements relied upon by the appellant and the discussion above. We, therefore, find it difficult to sustain the impugned order levying excise duty on the above referred scrap items. Accordingly, the impugned order is set aside. Appeal as well as stay application are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant