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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/1488/2005-EX[DB]

Dated: **25/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
RECRON SYNTHETICS LTD.
A/10-A/27,UPSIDC Industrial area
Kailash Nagar Karchana Allahabad

RECRON SYNTHETICS LTD. (Appellant)

VS

C.C.E Allahabad (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/856/2012-EX[DB]** dated **17/07/2012** 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. <u>Respondent</u>
C.C.E Allahabad
38,M.G.Marg, civil Lines, Allahabad

2. Advocate(s) / Consultant(s):
V. Laxmikumaran
5,Jangpura Extension,Link Road,New Delhi-110014

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

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

Date of Hearing/Decision: 17.07.2012

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?	

Excise Appeal No.E/1468 of 2005

(Arising out of Order-in-Appeal No.660/CE/APPL/KNP/04 dated 31.12.2004 of the Commissioner of Central Excise (Appeals), Kanpur)

M/s. Recron Synthetics Ltd. ...Appellant

Vs.

CCE, Allahabad ...Respondent

Appearance: Shri B.L. Narsimhan, Advocate for the appellants.
Shri A.K. Jain, Jt. CDR for the respondent.

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

FINAL Order No. A/856/2012-Ex (BR)

Per Rakesh Kumar:

The appellant are manufacturers of Polyester Filament Yarn . During the period from September, 1994 to September, 1998, they cleared the scrap of Iron, Steel and Cable without payment of duty. The Department was of the view that in respect of clearances of the scrap, the appellant were required to pay duty under Rule 57 S(2)(c) of Central Excise Rules, 1944, as this scrap was of old and used capital goods in respect of which modvat credit had been taken and hence, at the time of clearance of this scrap, in terms of the provisions of Rule 57S(2)(c), excise duty as specified thereunder was required to be paid. On this basis, a show cause notice was issued for demand of duty to the tune of Rs.9,37,448/- alongwith interest and also for imposition of penalty. The show cause notice was adjudicated by the Addl. Commissioner vide order-in-original dated 8.6.2000 by which the demand as made in the show cause notice was confirmed along with interest and besides this, penalty of equal amount was imposed on the appellant under Rule 173Q of the Central Excise Rules, 1944. On appeal against this order of the Addl. Commissioner, the appeal was dismissed by the Commissioner (Appeals) vide order-in-appeal dated 31.12.2004. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri B.L. Narsimhan, Advocate, ld. Counsel for the appellant, pleaded the impugned order is liable to be set aside for the reason that the scrap which was cleared by the appellant was not used in respect of any cenvatable item. Expanding on the arguments, Shri Narsimhan submitted that sofar as the scrap comprising of steel, iron and M.S. Scrap, Aluminium Scrap, etc., ~~Scrap~~ is concerned, those related to the capital goods regarding which the appellant had not taken modvat credit at any given time. As regards cable scrap, ld. Counsel for the appellant has contended that the cable scrap was of the cables pertaining to old plant of the appellant, which was de-commissioned in the year 1991 when there was no provision for availing of modvat credit on capital goods. Thus, ld. Counsel has summed-up that the appellant have not taken modvat credit in respect of the capital goods which were sold as scrap in the market and as such, Rule 57S(2)(c) has no application in this case. Thus, he has pressed for setting aside the impugned order.

4. Shri A.K. Jain, learned Jt. CDR on behalf of the Revenue, on the contrary has argued in support of the impugned order. He has contended that the Commissioner (Appeals) has rightly rejected the appeal for the reason that the plea taken by the appellant is only an after-thought and is not substantiated by any documentary evidence. Shri A.K. Jain submitted that the appellant did

not produce any evidence to show that they had not availed modvat credit in respect of the goods which ultimately resulted in scrap cleared by them.

5. We have considered the rival contentions and perused the impugned order including the order-in-original. The Commissioner (Appeals) in the impugned order has dealt with the plea of the appellant in following manner:-

> " I have carefully gone through the Order-in-Original, grounds of appeal and written statement submitted at the time of personal hearing and case laws cited by the Appellants. The Appellants have submitted that the Scrap cleared by them is non-excisable and not liable to the Central Excise duty. They have also contested for the invocation of extended period of limitation. Waste and scrap of metals are dutiable if generated during manufacture or mechanical working of metals. Further, scrap would be liable to duty if it is known as scrap in commercial parlance and are marketable. The scrap in the instant case was known as scrap and it was marketable also. The Appellants have neither intimated the Department regarding the sale of the scrap neither they have followed the procedure laid donw under Central Excise Rules, 1944. Hence, the extended proviso had been rightly invoked. I agree with the findings of Adjudicating Authority being legal and justified."

6. On perusal of the above, it is evident that the Commissioner (Appeals) has not discussed the submission of the ld. Counsel of the appellant to the effect that Rule 57 S(2)(c) has no application to the facts of this case. On going through the order-in-original also, we find that the concerned adjudicating authority has not cared to find out the origin of the scrap in order to determine whether or not the appellant had availed modvat credit on the original items which were sold as scrap. There being no finding in this regard,

in the order-in-original or the order-in-appeal, we find it difficult to accept the contention of the Department that Rule 57S(S)(c) is applicable and the appellant was required to pay the duty to the tune of Rs.9,37,448/- . Shri A.K. Jain, Joint CDR has submitted that since neither the original adjudicating authority nor the appellate authority has gone into the core issue whether or not the appellant had taken modvat credit on the capital goods which were subsequently sold as scrap, it would be appropriate to remand the matter back for fresh adjudication. Ordinarily, we would have accepted this contention. However, in the instant case, the show cause notice was issued to the appellant in the year 1999 and it related to the period from 1994 onwards. Almost 13 years have gone by the date of show cause notice, therefore, likelihood of the evidence being available is not there.

7. In view of the discussion above, we find it difficult to sustain the impugned order. The appeal is accordingly accepted and the impugned order is set aside.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.