# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# WEST ZONAL BENCH AT MUMBAI

**APPEAL NO: C/313/2009**

[Arising out of Order-in-Appeal No: PI/VSK/284/2008 dated 26th December 2008 of Commissioner of Central Excise (Appeals), Pune - I.]

JHS Taigene Electrical Co Pvt Ltd … ***Appellant***

*versus*

Commissioner of Central Excise
Pune – I …***Respondent***

*Appearance:*

Ms Lakshmi Menon, Advocate for appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for respondent

**CORAM:**

**Hon'ble Shri Anil Choudhary, Member (Judicial)**
**Hon'ble Shri C J Mathew, Member (Technical)**

**Date of hearing: 12/01/2018**
**Date of decision: 12/01/2018**

**ORDER NO: A/86245 / 2018**

*Per: C J Mathew*

Appellant, M/s JHS Taigene Electrical Co Pvt Ltd, is a 100% export oriented unit approved under the Foreign Trade Policy manufacturing 'alternator housings' from castings that are imported without payment of duty by availing notification no. 52/2003-Cus dated 31st March 2003. Order-in-appeal no. PI/VSK/284/2008 dated 26th December 2008 of Commissioner of Central Excise (Appeals), Pune upheld the duty liability of ₹1,54,213 under section 28 of Customs Act, 1962 and penalty imposed under section 114A of Customs Act, 1962 for wrongful availment of exemption notification in the import of 5234 nos. of castings that were not used in the manufacturing process.

2. We have heard Learned Counsel for appellant and Learned Authorised Representative.

3. The appellant had availed the benefit of exemption notification at the time of import and their eligibility at that stage is not deniable. The proceedings arose from the alleged failure to use these castings in the manufacture of goods. It is on record that the 'castings' were subject to machining as all other inputs – imported or domestically procured – were. Upon undergoing machining, which is a stage in the manufacturing process, these were rendered as scrap. Consequently, the finding that these were not used in manufacture is patently unacceptable.

4. The unit operates under a scheme that extends exemption from duty in return for the obligation to export and the obligation is denominated on the basis of value of imports. The value of the

impugned goods are included in the export obligation even if these were not fitted within the goods that were exported. Hence, the objective of the scheme and the exemption notification have not been deviated from in the clearance of the outcome of machining as scrap. Clearance of scrap arising from deployment of imported inputs is acknowledged in the exemption notification. The denial of exemption fails to be sustained by law.

5. Accordingly, the impugned order is set aside and appeal allowed.

*(Pronounced in Court)*

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| **(Anil Choudhary)** | **(C J Mathew)** |
| ***Member (Judicial)*** | ***Member (Technical)*** |

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