**Collector of Central Excise Vs. Devi Enterprises**

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**SooperKanoon Citation** : sooperkanoon.com/11665

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-08-1997

**Reported in** : (1998)(97)ELT126TriDel

**Appellant** : Collector of Central Excise

**Respondent** : Devi Enterprises

**Judgement** :
1. This appeal is directed against the order of 23-2-1989. The respondents cleared waste and scrap of brass as turning scrap during the period December, 1986 to June, 1987. It is alleged that the respondents ought to have paid duty on such scrap since the terms of Rules 57F(4), scrap would be cleared only on payment of duty.

3. The only ground on which the respondents are required to pay duty on such scrap is that the Notification 172/84-C.E. is not available to them since such scrap ought to have been cleared on payment of duty under Rule 57F(4). Notification 172/84-C.E. exempts copper scrap subject to certain conditions. There is no dispute in regard to the conditions as such. The only dispute is that in terms of Rule 57F(4) such scrap attracts duty. It is true that any waste arising from the processing of input, in respect of which credit has been taken, can be removed only on payment of duty or without payment of duty where it belongs to such class or category of waste as the Central Government may from time to time notify or be destroyed in the presence of proper officer. The expression be removed on payment of duty as if such waste is manufactured in the factory can only mean

removal on payment of appropriate duty. Appropriate duty in this case under Notification 172/84-C.E., dated 1-8-1984 at the material time was Nil. Therefore, while Rule 57F(4) mandated that such scrap could be removed on payment of duty, Notification 172/84 made it clear that such duty was nil duty and, therefore, scrap could be removed on payment of such appropriate duty. In view of this it is not correct to hold that the Notification 172/84 is not available because of stipulation under Rule 57F(4). We also agree with the learned Advocate that since Notification incorporating a clause denying such exemption in case credit was taken already was issued only on 2-11-1987, it would not have retrospective effect as has been clarified by the Tribunal in the case of Perfect Circle Victor Ltd. v. CCE, Aurangabad reported in 1997 (93) E.L.T. 286 (Tribunal). In view of the reasons mentioned above, we uphold the impugned orders and reject the appeals.