**Prakash Fabricators and Vs. C.C.E.**

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**SooperKanoon Citation** : sooperkanoon.com/16050

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

**Decided On :** Jun-17-1999

**Reported in** : (2000)(117)ELT690TriDel

**Appellant** : Prakash Fabricators and

**Respondent** : C.C.E.

**Judgement** :

1. These are five appeals filed by M/s. Prakash Fabricators & Galvanizers Pvt. Limited. Under Miscellaneous Order No. 79/99-B1, dated 29-4-1999, the cause title has been changed to M/s. JSL Refractories Limited.

2. We have heard Shri S.U. Jagesha, learned Consultant for the appellants. Shri R.D. Negi, learned Senior Departmental Representative is present for the respondent Revenue.

3. The matter relates to the fabrication of parts of transmission tower by the appellants from the raw materials supplied by M/s. Jyoti Structurals Limited. The appellants were availing the benefit of small scale exemption under Notification No. 175/86-C.E. and during the relevant time when the goods were procured from the small scale unit, a higher notional credit was available to the customers, in this case, M/s. Jyoti Structurals Limited who had supplied raw materials.

4. Both the sides agreed that similar matter between the same parties for earlier period had come up before the Tribunal in the appellants own appeal bearing No.

E/730/91-B1 and under their Final Order No.E/1113/98-B1, dated 21-7-1998, appeal had been allowed. The operative part of the order is extracted below : "It is settled law that the job worker who receives raw materials and job charges from the principal manufacturer is the manufacturer under the terms of central excise law. Although the Assistant Collector referred to this very judgment of the Supreme Court in the case of Ujagar Prints, he did not follow the ratio thereof. Once the job worker is held to be manufacturer, then the benefit of any Notification, which is available to him, cannot be denied merely because the buyer is a person who is not capable of benefitting under that Notification. Notification No. 175/86 does not say this except where the goods bear brand name of the buyer who is not eligible to the benefit of that notification. This is not the charge as per the show cause notice which relies upon a trade notice, contents of which do not follow the Supreme Court's cited judgment.

It is futile for the Collector to have gone into the Rule 57F(2) which permitted only processing to be undertaken by the job worker and not complete manufacture of any goods. His hypothetical examples are equally of no relevance.

On perusal of the orders and the case law, it is clear that the orders do not sustain and, therefore, are to be set aside. We do so and allow this appeal. Directions are made for consequential relief." 5. Following the aforesaid Tribunal's decision, all these five appeals are allowed. Ordered accordingly.