

**Ordnance Factory Vs. Cce**

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

**Decided On :** Oct-16-2003

**Reported in :** (2004)(91)ECC49

**Judge :** A T V.K., P Chacko

**Appellant :** Ordnance Factory

**Respondent :** Cce

**Judgement :**

1. The appeal filed by Ordnance Depot is restored to its original number after recalling our Final Order No. 243/03-B dated 24.3.2003 as the Committee on disputes has allowed the Appellants to pursue their appeal before the Tribunal in its meeting held on 29.5.2003.

2. Shri U.S. Bhatt, learned Advocate, submitted that Ordnance Factory, a unit of Ministry of Defence, Government of India, manufacture arms and ammunition and parts thereof which are exclusively meant for defence purpose and are exempt from payment of duty under Notification No. 62/95-CE dated 16.3.1995; that during the manufacture of arms & ammunition some scrap of brass, iron & steel is generated; that usable scrap is sent to job workers like India Smelting and Refining Company and Rastriya Metal Industries for conversion into strips which are subsequently used by the Appellants for the manufacture of cup for ammunition meant for defence purpose only; that for conversion of scrap into strip on job work they availed benefit of exemption Notification No. 70/92 dated 17.6.92

after giving necessary undertaking to the Asst.

Commissioner having jurisdiction over the factory of the job workers; that the Commissioner under the impugned Order has confirmed the Central Excise duty amounting to Rs. 4,77,43,191 and penalty of Rs. 4,48,27,813. The learned Advocate, further, submitted that waste and scrap is covered under exemption Notification No. 62/95 as the same is intended for consumption by the members of Armed Forces or by Ordnance Factory; that main reason for sending outside for job work is for getting the same converted into broad size of strip simply because Ordnance factory does not have capacity of conversion of brass scrap into strips. He finally mentioned that the demand is also time barred as the department was aware about their sending scrap to the job worker as they had filed undertaking with the Asst. Commissioner having jurisdiction over the factory job workers and they had also informed about sending the scrap to the job workers to the Asst. Commissioner, Jabalpur under their letter dated 5.9.1995.

3. Opposing the prayer Shri Vikas Kumar, learned SDR, submitted that the benefit of Notification No. 62/95 is not available in respect of scrap as the same is cleared by them outside the Ordnance Factory to the job worker for manufacturing brass strip; that the extended period of time limit is also applicable as they had neither declared such waste and scrap in their classification nor they have informed the department about removal of scrap without payment of duty; that their letter dated 5.9.95 was never received in the Divisional Office, Jabalpur; that in any case the said letter nowhere mentioned that scrap will be cleared without payment of duty.

4. We have considered the submissions of both the sides. It is admitted fact that waste and scrap is cleared by the Appellants to their job workers for converting the same into strip. The issue whether sending of brass scrap and getting the same converted into strip by the job worker will be covered by exemption provided under Notification No.62/95 can be decided only after hearing both the sides in details. The said notification exempts all the goods, if produced in Ordnance Factory, belonging to Central Government and intended for consumption by the members of Armed Forces of the Union or by such Ordnance Factory. Prima facie the scrap in question is neither intended for consumption by members of Armed Forces or

Ordnance Factory as the same is cleared outside the factory to the job workers. The Appellants have, therefore, not made out strong prima facie case in their favour. We, therefore, direct them to deposit Rs. 1 crore within 8 weeks from today. On complying with this direction there will be waiver of remaining amount of duty and the entire amount of penalty and the recovery of the same will remain stayed during the pendency of the appeal. The matter is posted for reporting compliance on 31st December, 2003.

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