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Comet Brass Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-03-2005

Reported in : (2005)(189)ELT62Tri(Mum.)bai

Judge : A Wadhwa, S T C.

Appellant : Comet Brass Industries

Respondent : Cce

Judgement :

1. After allowing the stay petition un-conditionally, we proceed to hear the appeal itself inasmuch as the issued is covered by the Larger Bench decision of the Tribunal.

2. A short issue involved is as to whether the appellants can clear the waste and scrap generated in their factory to their job worker for conversion into ingots and return the same to the appellant's factory without payment of duty in terms of notification 214/86 CE. As per the decision of the Larger Bench in the case of Wyeth Laboratories Ltd. v.Collector of Central Excise, Mumbai reported in 2000(120) ELT 218(Tri-LB), such waste and scrap can be cleared to the job worker's factory for further conversion and it is not obligatory on the part of the assessee to clear the same on payment of duty. It is seen that the lower authorities have though referred to the above decision of the Larger Bench, but have chosen to adopt the minority view as expressed in the said decision. It is observed that judicial propriety required the lower authority to follow the law laid

down by the Larger Bench.

Entire purpose of settling down the disputed issue is defeated if the majority decisions are not followed by the field formation thus enforcing the assessee to approach the higher litigation.

3. In view of the law declared by the Larger Bench, Commissioner order is set aside and appeal is allowed with consequential relief to the appellant. Stay petition also gets disposed off.

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