

**SUPREME COURT OF INDIA**

Variety Metals Private Limited

Vs.

Collector of Central Excise, Pune

C.A.No.767 of 1999

(S. H. Kapadia, S. N. Variava and Dr. AR. Lakshmanan JJ.)

03.11.2004

**ORDER**

1. This Appeal is against the Order of the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT"), Mumbai dated 15th June, 1998. The Appellants were purchasing metal scrap from the market. Among the metal scrap that they were purchasing were scrap of brass and copper utensils which fall under Tariff Item 7418.10. By virtue of Notification No. 178/88 dated 13th May, 1988 brass and copper utensils were exempted from duty.

2. The Appellants availed of Modvat deemed credit even on these items. Therefore, a show cause notice was issued to them stating that the item purchased by them was exempted from duty and thus they were not entitled to deemed credit under the Modvat Scheme. Their reply was not accepted and it was held that they were liable to pay a sum of Rs. 2, 00, 911/- for the period from 3rd August, 1992 to 30th December, 1992 and a sum of Rs. 2, 92, 594/- from 1st January, 1993 to 30th June, 1993. Against this Order an Appeal was filed before CEGAT. CEGAT, following the decision of its Larger Bench, has dismissed the Appeal by the impugned Order.

3. We see no substance in the submission that duty had been paid on the sheets which were utilised in making brass and copper utensils. The product purchased by the Appellants were not sheets. They purchased scrap of brass and copper utensils. On these items admittedly no duty was payable. In our view, CEGAT is right in upholding the Order that Appellants were not entitled to Modvat deemed credit.

4. The Appeal stands dismissed. There will be no order as to costs.