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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/4234/2004-4235/2004 Date 18/07/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. MEERUT-I

UNIVERSITY ROAD, MANGAL PANDEY NAGAR,
MEERUT
C.C.E. MEERUT-I Appellant

Vs

M/S BANSAL TECHNOCRATS Respondent

I am directed to transmit herewith a certified copy of **Final order No.**488-489/2008- **Excise** dated 17-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
1. M/S BANSAL TECHNOCRATS, D-10, INDL. AREA,
DELHI ROAD, SAHARANPUR (UP)
2. Adv. / Consult SH. ALOK ARORA, ADV.,
82, MISSION COMPOUND,
OPP. TELEPHONE EXCHANGE
SAHARNPUR (UP)
3. C.D.R.
4. ~~J.C.D.R.~~
5. Bar association. CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity, Indirapuram - 201010.Ghaziabad. DT, U.P
10. Nidheshak publications, I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj. New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

16. SHRI DEVENDRA KUMAR BANSAL, PARTNER OF M/S BANSAL
D-10, INDL AREA, DELHI ROAD, SAHARANPUR

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing: 16.7.2008

Central Excise Appeal Nos.4234-4235 of 2004

Arising out of the Order in appeal No.390-391/CE/MRT-I/2004 dated 28.5.04 passed by the Commissioner (Appeals), Central Excise, Meerut I.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No.
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant		Respondents
C.C.E., Meerut I	vs.	M/s Bansal Technocrats Shri Devendra Kr. Bansal

Appearance:

Shri Sanjay Kumar, Authorized Departmental Representative (DR) for the Revenue and Shri Alok Arora, Advocate for the respondent(s)

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Order No. 488-489/08-EX

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals) vide which he has extended the benefit of cum-duty-price to the respondent, while confirming the demand of duty and has set aside the penalty on them on the ground that the entire duty was paid before issuance of show cause notice, Revenue has filed the present appeals.

2. After hearing both the sides, we find that the assessee has taken a specific stand that duty was not being paid by them under bona fide belief that the exemption continues being available to them. However, we find that the period involved is 1999-2000 whereas the fact of non-payment of duty came to light of the officers only on the day of visit in the factory on 18.9.2001. It was then the appellant realized the mistake and paid duty. As such, they are liable to some penalty. However, taking into account the Delhi High Court decision in the case of C.C.E. vs. Malbro Appliances Ltd. – 2007 (79) ELT 109 (Del.) we modify the Commissioner (Appeals) order and impose penalty to the extent of 25% of the amount of duty required to be paid by the assessee.

3. As regards the amount of duty required to be paid, the appellate authority has already extended the benefit of cum-duty-price to the respondents and has ordered for re-quantification.

We do not find any infirmity in the above view of the appellate authority. No merits are accordingly found in the above submission of the Revenue.

4. Similarly, we do not find any justification for imposing any separate penalty as to the respondent, who is partner of the unit. Revenue's appeals on this count fail.

5. Except for enhancement of penalty to 25% of the duty to be re-quantified, Revenue's appeals do not succeed on other point.

(The operative part of the order was pronounced in the open Court)

17/7/08

(Archana Wadhwa)
Member (Judicial)

17/7/08

(M. Veeraiyan)
Member (Technical)

scd/