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

Appeal No. E/1022/2006-SM[BR]

Date 06/02/2008

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

To :  
CCE LUDHIANA  
F BLOCK RISHI NAGAR LUDHIANA

CCE LUDHIANA

M/S JAY BEE WOLLEN MILLS

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No274/2008-SM[BR]. dated 21.1.2008  
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

M/S JAY BEE WOLLEN MILLS

B IV 543 BRAHAMPURI LUDHIANA

2. Adv. / Consult

NONE-----

3. S.D.R.

4. ~~J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE  
TAX APPELLATE TRIBUNAL,  
WEST BLOCK NO. 2, R.K. PURAM,  
NEW DELHI**

**COURT -II**

**CENTRAL EXCISE APPEAL No. 1022 OF 2006-SM**

[Arising out of Order-in-Appeal No. 75/CE/APPL/Chd/2006 dated 31.01.2006 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	 w
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

CCE, Ludhiana

Appellant

Vs.

M/s. Jay Bee Woollen Mills

Respondents

Appearance:

Shri Sumit Kumar, DR, for the appellant,  
None for the respondents,

Coram:

**Hon'ble Mr. S.S. Kang, Vice President**

**Date of Hearing: 21.1.2008**

FINAL ORDER NO. 274/68-SM(BR) dated 21.1.2008

**Per S.S. Kang:**

Heard learned D.R. as none appeared on behalf of the respondents in spite of notice.

2. Revenue has filed this appeal against impugned order whereby the Commissioner (Appeals) has upheld the adjudication order whereby no penalty was imposed on the respondents.

3. Case of the Revenue is that the respondents wrongly availed deemed credit and, when it was pointed out to the respondents the same had been debited. Contention of the Revenue is that, as the respondents has wrongly availed deemed credit they are liable to penalty. I find that in this case there is no evidence or allegation in the show cause notice that the respondents availed wrong deemed credit with an intention to evade payment of duty. Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Steel Strips Ltd., reported in 2008 (221) ELT 193 (P&H) has held that in case the credit was taken wrongly but not utilized and there is no evidence that the same has been done with an intention to evade payment of

duty penalty is not imposable. In view of the above I find no infirmity in the impugned order. Therefore, appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)  
VICE PRESIDENT

Dated 22<sup>nd</sup> January, 2008

RK