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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/2048/2007 – SM[BR] Date 29/05/2009

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

To :
M/S BALKISHAN INDS. LTD.
SP-923, RIICO INDL. AREA, BHIWADI, RAJASTHAN

M/S BALKISHAN INDS. LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 494 / 2009 –SM[BR] dated 6.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kuni. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.2048 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.89(GRM)CE/JPR-I/07 dated 10.04.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:6.5.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	No
2.	Whether it should 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?	: yes

M/s. Balkishan Indus. Ltd. .....Appellants

[Rep. by Ms.Nupur Maheshwari, Advocate]

Vs.

CCE, Jaipur-I ...Respondents

[Rep. by Shri R.K. Verma, DR]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 494/09-SM(BR)/Dated:06.05.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants applied to the jurisdictional Central Excise Officers for extension of order of permission to store the inputs outside the factory premises on 23.5.2005. Therafter they made several correspondences for extension of order of permission. On 12.01.2006, the preventive officers visited the appellants' factory and found that the appellants cleared the inputs during the period 28.10.2005 to 4.1.2006 on the basis of the outward gate passes and found stored outside the factory. At the instance of the Central Excise Officers they reversed the credit. A show cause notice dated 23.5.2006 was issued proposing to demand the duty of Rs.5,60,388/- and to appropriate the said amount as deposited by them and also to impose penalty along with confiscation of the impugned orders. The Original Authority dropped the demand of duty and confiscation of the seized goods. He imposed penalty of Rs.50,000/-. Commissioner (Appeals) upheld the adjudication order.

2. After hearing both the sides and on perusal of the records, I find that the appellants applied for extension of order of permission on 23.5.2005 to store the goods outside the factory premises as provided under the Rules.

4. Ld. Advocate on behalf of the appellants submits that they got the permission for storing the goods outside the factory premises. They applied for extension of permission and they made several correspondences for extension of permission with the concerned officers. They were under the impression that the extension for permission was granted. The Original Authority while dropping the confiscation proceedings held as under:-

> " I find that the use of the inputs were not disputed and the goods in question were ultimately used in the

manufacture of the final products. I also find that the question of confiscation of the inputs stored outside the factory would arise only in a situation when such goods were intended to be cleared without payment of duty and without accounting for it. In the present case, neither the inputs so stored in the godown were found in excess of the quantity recorded in the statutory records nor it is the case that inputs were lying unaccounted. It cannot therefore be deduced that there was any mensrea to suppress the clearances. Consequently, the question of confiscation of goods cannot arise and there appears no contravention of the provisions of Rule 3(5) Cenvat Credit Rules, 2004. Therefore, there remains no ground for penalty under Section 11AC of Central Excise Act, 1944. The above findings gains strength from the ration of decision in Manglam Enterprises reported in 2003 (159) ELT 393 (Tribunal-Mumbai). The deviations from normal practice necessitated by business exigencies are no ground for denial of legally available facility."

5. On perusal of the impugned, order, it is seen that the appellants also reversed the credit at the instance of the central excise officers. The inputs were stored on the basis of outward gate passes. In any event, the appellants should not suffer due to delay in issuing the order of extension of permission. It is noted that the removal of inputs was duly recorded by the appellant. Hence, the imposition of penalty is not warranted. Accordingly, the penalty is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 6.5.2009.

(P.K. Das)
Member (Judicial)

Ckp.