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REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. E/533/99-NB(SM)

Dated : 9/2/01

CEGAT  
NEW DELHI  
To,

M/s Janta Ball Bearing stores,

1079, Bara Bazar,

Kashmere Gate Delhi-6

In the matter of :

M/s Janta Ball Bearing Stores Appellant

vs.

CCE New Delhi Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/206/01-NB(SM)  
Dated : 5-2-2001 passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

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NB(SM)

1. CCE New Delhi
2. CCE / COT (Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs: New Delhi
4. Adv. / Consult. Sh. Nareen Mullick Adv.  
B-388, Meera Bagh
5. S.D.R New Delhi -63
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s Census Publication

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CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL  
NEW DELHI:

Appeal No. E/533/99--NB(SM)

(Arising out of Order-in-Appeal No. 97 (SSR)/CE/DLH/98  
dt.26.11.98 passed by the Commissioner of Customs  
(Appeals), New Delhi)

M/s. Janta Ball Bearing Store .. Appellants  
(Rep. by Shri Naveen Mullick, Advocate)

vs.

C.C.E. New Delhi .. Respondents  
(Rep. by Shri K. Panchatcharam, JDR)

FINAL Order No. A/206/01/NB GSPM/  
dt: 01.02.2001

Per K.K. Bhatia, Member (T):

The brief facts in this case are that the appellants, M/s. Janta Ball Bearing Store, Kashmere Gate, Delhi were registered as a Trader under Rule 174 of the Central Excise Rules, 1944. Consequently, they were entitled to issue invoices under Rule 57GG to pass on modvat credit to their customers. They availed modvat credit of Rs.50,310/- on the strength of the duplicate copy of the invoice No.942278 dt. 22.10.94 issued by M/s. HMT Bearing Ltd., Hyderabad who are the manufacturers of the Ball Bearings. The credit was availed by them on the strength of this invoice during the month of February, 1995 and they filed their monthly return of Feb., 1995 with the Central Excise authority on 7.3.95. They issued a sale invoice No.21 dt. 1.2.95 under Rule 57GG and passed on the modvat credit of the aforesaid amount in favour of M/s. G.R. Mechanical (P) Ltd., New Delhi. In August, 1995, they were asked to produce duplicate

copy of the purchase invoice issued by M/s. HMT Bearings Ltd., Hyderabad on the strength of which they had taken the modvat credit and passed on the same under Rule 57GG. The appellants pleaded that the duplicate copy of the purchase invoice had been lost on 22.8.95 when their Accountant was bringing it for defacing. They stated that they had also lodged an FIR for this incidence. However, they were issued a Show Cause Notice dt. 18.9.95 by the Asst. Commissioner of Central Excise, MOD-VI, New Delhi, in which it was alleged that they had contravened the provisions of Rule 57GG inasmuch as they had entered the goods in the RG.23-D Register, issued a sale invoice and passed on the modvat credit of Rs.50,310/- without having the duplicate copy of the purchase invoice with them and thereby they made themselves liable for penal action under Rule 173Q. Accordingly, they were called upon to show cause why the penal action should not be taken against them under Rule 173Q.

2. The above proceedings culminated in the Asst. Commissioner of Central Excise, MOD-VI, New Delhi passing an Order dt. 1.12.95 in which he held that the party had contravened the provisions of Rule 57GG and therefore, he imposed a penalty of Rs.25,000/- on them under Rule 173Q.

3. The party filed an appeal but the same was rejected by Commissioner (Appeals), New Delhi vide his Order dt. 26.11.98.

4. The present appeal is against the above order of the Commissioner (Appeals). I have heard Shri Naveen Mullick, Advocate for the appellants and Shri

K. Pachatcharam, JDR for the Revenue. The ld. Advocate for the appellants submits that the departmental authorities have not denied them the modvat credit availed on the strength of duplicate copy of invoice (which was subsequently lost) issued by the manufacturers - M/s. HMT Bearings Ltd., Hyderabad. The receipt of the goods covered by this invoice, their sale to the buyers, payment of duty on the goods and further passing on the modvat credit to the buyers is also not in dispute. It is contended that the goods were indeed received by them under the duplicate copy of the invoice issued by the manufacturers which got lost subsequent of the receipt of the goods and taking of the modvat credit in their RG.23-D. Under these circumstances, since bonafides of the appellants are not in challenge, there is no warrant to impose any penalty on them. It is further contended by the ld. Counsel for the appellants that neither of the lower authorities in their respective orders have indicated as to what particular provision of Rule 57GG is violated by the appellants and under which particular provision of Rule 173Q, the penalty is liable to be imposed on them. The ld. JDR for the Revenue reiterates the findings of the lower authorities and pleads for upholding the imposition of the penalty on the appellants.

5. I have carefully considered the submissions made before me. As rightly contended by the ld. Counsel for the appellants, the receipt of the impugned goods and the payment of duty on them received under the duplicate copy of the manufacturers' invoice is not in dispute. The

Department is also not challenging the availment of the modvat credit under the manufacturers' invoice and subsequent passing on the same to their buyers under the invoice issued by them under Rule 57GG. During the course of hearing when specifically asked, the Id. JDR representing the Revenue was not able to indicate as to which provision of Rule 57GG as it stood at the relevant time, is violated by the appellants which would call for imposition of penalty under Rule 173Q. Even otherwise, it is well settled that when the benefit of the main legal provision under the statute is not sought to be denied to a party, there would be no warrant to impose penalty on them. In view of this therefore, the penalty imposed on the appellants cannot be sustained and the same is accordingly set aside.

6. The appeal is allowed.

(Announced and dictated in the Court)

(K.K. Bhatia)  
Member (Technical)

MS.  
5.2.01