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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/524 /2006 - CU[DB] Date **16/01/2012**

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

To :
M/S BALAJI ENTERPRISES

C/O MANISH PUSHKARNA
46,BANK ENCLAVE,NEW DELHI

M/S BALAJI ENTERPRISES Appellant

Vs

CC JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/15/ 2012 CU[DB]** dated 13.01.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
CC JAIPUR
NCR BUILDING,STATUE
CIRLCE,C SCHEME,JAIPUR

2. Adv. / Consult

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Customs Appeal No.524 of 2006

Date of Hearing: 24.08.2011.

[Arising out of Order-In-Appeal No.215(HKS)/CUS/JPR-II/ /2006, dated 12.04.2006 issued by CCE, Jaipur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporters 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 the 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

M/s Balaji Enterprises — Appellants
Versus
CC, Jaipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Present for the Appellants - None
Present for Respondent – Shri Amrish Jan, SDR

Final **Order No.** C/A/15/12-Cus. **Dated :** 13.1.2012

Per Ms. Archana Wadhwa:

On matter being called, nobody appeared on behalf of appellants. They have filed written submissions which we have gone through. We have also heard ld. SDR.

2. As per facts on regard, gold bars were seized from the residential premises of Shri D.R.Jain on 23.04.97. Subsequently proceedings were initiated for imposition of penalty against them for confiscation of gold bars. Order-in-Original dtd. 22.05.98 ordered absolute confiscation of the gold bars and imposed penalty of Rs.50,000/- on them.

3. The said order was challenged before the Tribunal along with stay petition which was disposed of vide stay order dtd. 7.08.98 directing the appellants to deposit an amount of Rs.50,000/-. The same was deposited by the appellants. Subsequently vide final order dtd. 18.10.99, the impugned order for confiscation of gold bars and imposition of the penalty, was set aside and the matter was remanded. In de-novo proceedings, the Commissioner (Customs) passed Order-in-Original dtd. 11.12.2001 permitting release of 21 gold biscuits. However, no penalty was imposed by the Commissioner.

4. The said order of Commissioner was challenged by the Revenue before the Tribunal and the appeal was dismissed vide final order 11.01.2003.

5. In the meanwhile, the 21 gold biscuits were sold by the department on 09.03.2001 for Rs.10,33,263/-. When the proceedings attaining finality, the appellants applied for refund of pre-deposit of Rs.50,000/- deposited for release of gold bars. The same was subsequently released to the appellants.

6. The dispute in the present appeal is relates to interest on the pre-deposit, subsequently refunded to the appellant and on the amount of sale proceeds of the confiscated goods subsequently given to the appellants.

7. As regards, the interest on the refund of sale proceeds of confiscated goods are concerned, the Commissioner has observed that the issue stands covered by the Tribunal's decision in the case of Overseas Trading Corporation reported in 2006(195)ELT242(Tri.Del.). After going through the said judgement, we find that it stands held that there is no provision for grant of interest on refund of sale proceeds of the confiscated goods.

8. For arriving at the above finding, the Tribunal has relied on Hon'ble Supreme Court's decision in the case of Miles India Ltd. reported in 1987(30)ELT641 laying down that the authorities created by a statute are governed by the provisions of statute. We agree with the above decision laying down that in as much as there is no provision regarding payment of interest in respect of sale proceeds of confiscated goods, the same cannot be ordered. We accordingly reject the appellants' appeal on the above ground.

9. As regards, the payment of interest on the refund amount of pre-deposit, we note that though it is the ld. SDR's contention that refund of pre-deposit was applied on 20.08.2005 and the same refunded on 26.09.2005 but we find that Commissioner has not given any finding on the same and has rejected the appeal

only on the point of interest on refund of sale proceeds. In as much there is no finding by Commissioner(Appeals) on the above point, we find it deem fit to remand the matter to the Appellate Authority for giving an appropriate decision on the same after considering the relied upon judgements by the appellants.

10. The appeal is partly rejected and partly remanded in above terms.

(Pronounced in the Open Court on 13/1/15)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

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