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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/1467/2006-SM[BR] Date 29/08/2008

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

To :
CCE,JAIPUR-I
NCRB STATUE CIRCLE,C SCHEME JAIPUR

CCE,JAIPUR-I Appellant
Vs
M/S JAIN RAFFIA IND LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No 1223/ 2008 –SM [BR]**. dated 12.8.2008 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 JAIN RAFFIA IND LTD
   G-1002-1003,RIICO INDL AREA,BHIWADI (RAJ)
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
3. S.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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

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

COURT-IV

Date of hearing: 12.8.2008

E/Appeal No. 1467/2006-SM(BR)

(Arising out of Order-in-Appeal No.26/MPM/CE/JPR-I/06 dated 03.02.2006 passed by the Commissioner (Appeals-I) Central Excise, Jaipur)

For approval and signature:

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

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1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
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?

N

C.C.E. Jaipur-I Appellant/Applicant
(Rep. by Shri S. Gautam, DR)

Vs.

M/s Jain Raffia Industries Ltd., Respondent
(Rep. by Shri Mayank Garg, Advocate)

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

Final Order No. 1223/08 - SM (BR)

Per: P.K. Das:

Heard both sides and perused the records.

2. The Adjudicating Authority confirmed the demand of duty of Rs. 1,57,610.00 and appropriated the said amount as the Respondent already deposited. He also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944. Commissioner (Appeals) set-aside the penalty as the Respondent deposited the duty before issue of show cause notice. He has followed the Larger Bench decision of the Tribunal in the case of Machino Montell (I) Pvt. Ltd. 2004 (62) RLT 709 (Tri-LB). The ld. DR submits that the allegation in this case is clandestine removal of goods. He also submits Hon'ble Punjab & Haryana High Court overruled the decision of the Larger Bench of the Tribunal.

3. The ld. Advocate on behalf of the Respondent submits that the case is covered by the decision of the Hon'ble High Court of

Punjab & Haryana in the case of Union of India vs. T.P.L. Industries Ltd. reported in 2007 (214) ELT 506 (Raj.) I find that Commissioner (Appeals) decided the matter without examining the facts of case following the decision of the Larger Bench of the Tribunal, which is overruled by the Hon'ble High Court. So, the impugned order is not sustainable. Accordingly, the impugned order is set-aside and the matter is remanded back to Commissioner (Appeals) to decide afresh after considering the facts and law of the case. The appeal is allowed by way of remand.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta