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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/1001/2007 – SM[BR] Date 27/11/2008

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

To :
M/S JANKI PROCESSORS LTD.

(NOW JANKI CORP. LTD.), BHILWARA RAJASTHAN

M/S JANKI PROCESSORS LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1531 /2008- **SM[BR]** dated 6.11.2008

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 II

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult

   MR.K.K ANAND

   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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 - 3
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
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-1
15 Office Copy
16 Guard file

Assistant Registrar

(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I

Excise Appeal No. 1001 of 2007 -SM

[Arising out of Order-in-Appeal No. 40-41(HKS)CE/JPR-II/2007 dated 01.02.2007 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur].

Date of Hearing/Decision : 06.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, 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.	:	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 Janki Processors Limited (now M/s Janki Corp. Limited) — Appellant

Vs.

CCE, Jaipur-II — Respondent

Appearance:

Mr. Hemant Bajaj & Ms. Asmita Nayak, Advocates for the appellant.
Mr. S. K. Panda, Authorized Representative for the respondent.

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1531/08-SM (BR)

Per Jyoti Balasundaram:

In this case duty payment of Rs. 1,78,773/- has been confirmed against the appellant herein who is engaged in the manufacture of grey fabrics on account of shortage of 33106.20 meters of processed manmade fabrics and penalty equal to duty imposed upon them. The appellants do not dispute the shortage and therefore, the demand is not disputed. They however dispute the charge of clandestine removal of semi finished goods as well as imposition of penalty.

2. I have heard both sides. The explanation offered by the appellant for the shortage of processed man made fabrics detected on the date of search by the preventive officer is that they were sending another defective goods for removal of defects. However, this plea has not been substantiated with reference to entries made for sending defective goods for removal of such defects or physical availability of the quantity found short. Therefore, in the absence of valid reasons for the shortage the finding thereof cannot be faulted. Since the liability to duty is not disputed, the same is required to be upheld and imposition of penalty on the appellant is justified, and the further argument that the penalty may be reduced, cannot be accepted in the light of the decision of the Apex Court in the case of Union of India vs. Dharmendra Textile Processors reported in 2008 – TIOL-192-SC-CX-LB, holding that there is no discretion to reduce penalty under section 11AC of the Central Excise Act, 1944.

3. I, therefore, uphold the impugned order and reject the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]