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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/2195/2007 – SM[BR]

Date 04/11/2009

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

To :
M/S RANJAN PROCESSORS (A UNIT OF M/S RANJAN POLYESTERS LTD.)
11-12 STONE, VILL: GUWARDI, DISTT. BHILWARA, RAJASTHAN

M/S RANJAN PROCESSORS (A UNIT OF M/S RANJAN POLYESTERS LTD.) Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1361 / 2009 –SM[BR] dated 30.9.2009 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 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. 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 Kunj, 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
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

Date of hearing/decision: 30.9.2009

Central Excise Appeal No.2195 of 2007-SM

Arising out of the order in appeal No.348 (HKS)CE/JPR-II/2007 dated 6.6.2007 passed by the Commissioner (Appeals II), Customs & Central Excise, Jaipur.

M/s Ranjan Processors .... Appellant

Vs.

C.C.E., Jaipur II .... Respondent

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Appearance:

Ms. Asmita Nayak, Advocate for the appellant(s)
Shri Sunil Kumar, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1361/2009 SM(BR)

Per M. Veeraiyan :

This is an appeal against the order of Commissioner (Appeals) No. 348 (HKS)CE/JPR-II/2007 dated 6.6.2007 by which the order of the original authority demanding duty of Rs.1,98,576/- along with interest and imposing penalty of equal amount under Section 11AC was confirmed.

2. Heard both sides.

3. The relevant facts, in brief, are that on 26.2.2003, the Central Excise Officers visited the factory premises of the appellants and found 37,609.7 metres of man-made fabrics short. The General Manager (Finance) –cum-

authorised signatory, in his statement, explained that the shortage was due to the clerical error in accounting/making entries and that no stock taking has been conducted from April 2002. However, admitting the shortage, they voluntarily paid the entire amount of duty by two instalments, namely, Rs.99,000/- on 28.2.2003 and Rs.99,576/- on 17.3.2003 as they were not able to explain the reasons. A show cause notice dated 5th January 2006 was issued proposing to confirm the duty on the goods found short and proposing imposition of penalty. The original authority confirmed the demand along with interest and imposed equal amount as penalty under Section 11AC . The order stands confirmed by the Commissioner (Appeals).

4. The learned Advocate submits that there is no evidence of any clandestine removal. It was a fact that there was shortage on the date of visit by the officers. The shortage was due to clerical mistake as explained by the General Manager (Finance). She submits that the demand is not justified and at any rate, the invocation of extended period of limitation is not warranted. She also submits that in the absence of any evidence of clandestine removal, the question of invoking the proviso to Section 11AC to impose mandatory penalty does not arise.

5. Learned SDR reiterates the finding and reasoning of the Commissioner (Appeals). He also submits that the shortage is very huge and therefore, the logical conclusion is that the goods have been clandestinely removed. The register relating to production and clearance was not correctly maintained and therefore, Rule 10 of the Central Excise Rules is violated.

6. I have carefully considered the submissions from both sides and perused the record. The shortage of finished goods to the tune of 37,609 metres stands admitted. Whether the shortage is huge or nominal has to be seen in the light of the quantum of production and clearance effected by the company. Learned SDR fairly concedes that the actual stock as per the register is not clear from record. However, he submits that this is huge stock. The controversy whether the shortage is huge or nominal is only academic in nature in the absence of the relevant statistics. It is to be noted that the appellants admitted the shortage and paid duty voluntarily. It is

clarified by the learned Advocate for the appellants that there is no retraction of the statement given by the representatives of appellants and that there is no refund claim filed by them. The obligation to account for the finished goods manufactured by the appellants is a strict obligation. In the absence of discharging the said obligation the duty is demandable and the same stands already paid. At this stage, they cannot be allowed to raise the dispute about the duty demand and the interest liability. However, the allegation of clandestine removal is a serious one. Every case of shortage cannot be presumed to be a case of clandestine removal. The charge of clandestine removal requires to be established by proper investigation. In this case, admittedly, no evidence like any private records indicating clandestine clearance of goods or seizure of clandestinely removed goods from the premises of the dealers etc was relied up on. Therefore, the finding that the goods found shortage should be presumed to have been cleared clandestinely cannot be sustained in the absence of any evidence indicative of such clandestine removal. Undoubtedly, the charge of improper maintenance of accounts is established.

7. In view of the above, the appeal of the party in so far as it relates to demand of duty and order for recovery of interest is concerned, the same is rejected. Penalty of Rs.1,98,576 imposed under Section 11AC is modified as penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules.

8. Appeal is disposed of on the above terms.

(M. Veeraiyan)
Member (Technical)

scd/