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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/2270/2009 AND E / 2317 / 2009 –SM[BR]** Date **21/04/2011**

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

To :
**C.C.E. KANPUR / C. C. E. JAIPUR**
117/7, SARVODAYA NAGAR, KANPUR 208005.

**C.C.E. KANPUR** Appellant

Vs

**M/S S.S.FLAVOURS (P) LTD** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 194 – 195 /2011-SM[BR]** Dated 13.4.2011 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 S.S.FLAVOURS (P) LTD**
5/157, VIKASH SHEEL BHARAT
COMPOUND, T.P. NAGAR, AGRA.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

[2] **M/S JAIN RAFFIA INDUSTRIES LTD.**
G-1002-1003, RIICO INDUSTRIAL AREA,
BHIWADI, DISTT. ALWAR.

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. III**

**Excise Appeal No. 2270 & 2317 of 2009-SM(BR)**

**For approval and signature:**

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

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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? : Yes

2. Whether it should be released under Rule 27 of the 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

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**Excise Appeal No. 2270 of 2009-SM(BR)**

[Arising out of Order-in-Appeal No. 115-CE/APPL/KNP/2009 dated 23.4.2009 passed by the Commissioner of Customs & Central Excise Kanpur]

Commissioner of Central Excise Kanpur — Appellants

Vs.

M/s. S.S. Flavours Pvt. Ltd. — Respondent

**Appearance:**
Shri S.K. Bhaskar, DR for the Appellants
Shri Mayank Garg, Advocate for the Respondent

**Excise Appeal No. 2317 of 2009-SM(BR)**

[Arising out of Order-in-Appeal No. 55(DK)-CE/JPR-I/2009 dated 18.3.2009 passed by the Commissioner of (Appeals) Central Excise Jaipur]

M/s. Jain Raffia Industries Ltd. — Appellants

Vs.

Commissioner of Central Excise Jaipur — Respondent

**Appearance:**
Shri Bipin Garg, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Date of Hearing/decision : 13.04.2011

Final **ORAL ORDER NO. 194 - 195/2011 SM(BR)**

**Per M. Veeraiyan:**

Heard both sides.

2. The facts of the case in Appeal No. 2270, are that the officers visited the premises of the respondents on 3.10.07 and found shortage of finished goods. The authorised signatory in his statement dated 3.10.07 admitted the shortage and stated that the short found goods were cleared from the factory premises without cover of Central Excise invoices and without payment of Central Excise duty and agreed to pay the duty involved. Accordingly the entire duty involved amounting to Rs.1,87,919/- was paid on 5.10.07. The authorised signatory did not retract his statement. Original authority confirmed the demand of duty

and imposed equal amount as penalty. The respondents did not dispute the duty liability before the Commissioner (Appeals) and challenged only the imposition of penalty. Commissioner (Appeals) set aside the penalty.

3. The facts of the case in Appeal No. 2317/09, are that the officers visited the factory premises of the respondents on 4/5.2.2010 and found shortage of finished goods namely woven fabrics. The authorised signatory accepted the shortage and admitted having cleared the same without payment of duty on parallel invoices. The duty involved amounting to Rs.1,57,610/- stands paid on 5.2.2010. There was no retraction of the statement by the authorised signatory. On the other hand, the Director of the respondent company confirmed the removal without payment of duty but claimed the same as mischief of the authorised signatory. The original authority confirmed the demand of duty and imposed equal amount as penalty. The Commissioner (Appeals) has upheld the penalty under section 11AC.

4. Learned SDR reiterated the grounds of appeal.

5. The learned advocate appearing for the M/s. S.S. Flavours submits that the original authority has not given the option to pay the reduced penalty as provided under proviso to section 11AC. He seeks benefit of reduced penalty as held by the Hon'ble High Court of Delhi in the case of K.P. Pouches vs. Union of India reported as 2008 (228 ) ELT 31 (Del).

6. The learned advocate appearing for M/s. Jain Raffia Industries Ltd. submits that the authorities below have not given option to pay the reduced penalty in terms of proviso to section 11AC and he seeks benefit of the same in terms of decision of the Hon'ble High Court in the case of K.P. Pouches cited supra.

7. I have carefully considered the submissions from both sides and perused the records. In both the cases the shortages stand admitted. It has been further admitted that the goods have been cleared without preparing the excise invoices in one case and preparing parallel invoices in other case. Clearance of goods without payment of duty thus stands admitted. The statements have not been retracted. On the other hand, confessional statements have been followed by payment of duty amounts involved in both the cases. The duty demands have not been contested before the Commissioner (Appeals). In cases involving admitted clearance of goods without payment of duty without invoices or using parallel invoices provisions of section 11AC are clearly attracted. Therefore, the order of the Commissioner (Appeals) in setting aside the penalty in the case of SS Flavours is not justified. On the same grounds, the order of the Commissioner (Appeals) in upholding the penalty under section 11AC in the case of Jain Ruffia Industries is fully justified. However, the prayer on behalf of the parties that they should be granted option to pay reduced amounts of penalties in terms of proviso to section 11AC in the light of decision of the High Court of K.P. Pouches cited supra deserves to be accepted.

8. In view of the above, appeals are disposed of as follows:

(a) Appeal of the department No. E/2270/09 is allowed. Order of the Commissioner (Appeals) is set aside and the order of the original authority imposing penalty is restored. However, the respondent is given an option to pay the penalty of Rs.46,979.75 within 30 days from today. If the respondents fails to pay the amount as above within the specific time limit, the penalty payable shall be Rs.1,87,919/-

(b) Appeal No.2317/2009 of M/s. Jain Raffia Industries Ltd. seeking to set aside the penalty under section 11AC is rejected. However, the appellant is given an option to pay a sum of Rs.39,402.50 in terms of proviso to Section 11AC. As the amount already stands paid in pursuance of the stay order, no further penalty is payable.

( M. Veeraiyan )
Member(Technical)

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