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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/383 - 384 /2009 – SM[BR] Date 09/12/2010

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

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

C.C.E. KANPUR Appellant

Vs

M/S P & J AROMATICS (UNIT-II), Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1382 -1383 / 2010-SM[BR] dated 29.11.2010 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 P & J AROMATICS (UNIT-II),
GEETA NAGAR, BALKESHWAR AGRA.
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

3. SHRI YOGENDRA KUMAR SINGHAL, AUTHORISED SIGNATORY OF M/S P & J AROMATICS (UNIT-II), GEETA NAGAR, BALKESHWAR AGRA.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.383-384 of 2009-SM

(Arising out of Order-in-Appeal No.418-419/CE/APPL/KNP/2008 dated 17.11.2008 passed by the CCE (A), Kanpur)

Date of Hearing/Decision: 29.11.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)

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

CCE, Kanpur — Appellant

Vs.

M/s.P & J Aromatics — Respondent
Shri Yogendra Kumar Singhal, Authorised Signatory

Present for the Appellant : Shri R.K.Gupta, SDR
Present for the Respondent: Shri Sukriti Das, Advocate

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

Final **ORDER No.** 1382-1383/2010 SM (BV)

PER: M.VEERAIYAN

These are two appeals filed by the department against the order of the Commissioner (Appeals) in setting aside the penalty on the respondent firm and authorised signatory of the respondent firm. Cross objections No. E/CO/79-80/09 filed by the respondents are connected to these appeals.

2. Heard both sides.

3. The relevant facts of the case, in brief, are that the respondent firm is a manufacturer of pan masala/gukha. The central excise officers visited the factory premises on 15.3.08 and conducted stock verification. As against total quantity of "Jeet Gutkha" of 28549 packets, they found only 6325 packets and as against the total quantity of "Andaz Gutkha" 4131 packets, they found only 1182 packets. Shri Yogendra Kumar Singhal, in his statement dated 15.3.08 admitted the shortage but he was unable to give any reason for the shortage. The duty involved amounting to Rs.2,57,562/- was paid on 16.3.05. The original authority confirmed the demand of duty as per show cause notice and imposed equal amount as penalty under Rule 25 of Central Excise Rules, 2002 on the respondent firm and penalty of equal amount under Section 11AC and imposed a penalty of Rs.10,000/- on the authorised signatory of the respondent firm. The respondents filed the appeals before the Commissioner (Appeals) and did not challenge the duty demand and sought relief from the penalties imposed on them. The Commissioner (Appeals) has set aside the penalty imposed on the respondent firm on the grounds that the duty has been paid before issuance of show cause notice and mensrea was absent and there was no corroborative evidence for invoking Section 11AC. He has also set aside the penalty imposed on the authorised signatory.

4. Learned SDR reiterated the findings and reasoning of the original authority and the grounds of appeals. He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

5. Learned Advocate for the respondents strongly supported the order of the Commissioner (Appeals).

6. I have carefully considered the submissions made from both sides and perused the records. The shortage in one case is about 80% as compared to the stock in the books of accounts and in another case the shortage is nearly 70%. The shortage stands admitted and duty involved stands paid and there was no dispute on the liability of the duty before the Commissioner (Appeals). No explanation has been offered by the authorised signatory for the huge shortages. The investigators appear to have not carried out any further investigation in respect of unexplained huge percentage of shortage. No efforts have been made to contact buyers or transporter. No evidence of clandestine removal is relied upon. However, the charge of improper accounting is clearly established. As a manufacturer, the respondent firm is under strict obligation to maintain accounts of the goods manufactured including disposal of the said manufactured goods. Failure to do so clearly attracts penal action under Rule 25 (1) (b) of Central Excise Rules, 2002. In the absence of proper investigation, the ingredients of Section 11AC are not proved but violations attracting Rule 25 (1) (b) are established. Therefore, the Commissioner (Appeals) erred in setting aside the penalty in- toto on the respondent firm.

7. As regards penalty of Rs.10,000/- imposed on the authorised signatory of the respondent firm, no evidence of knowledge on his part or intention to evade payment of duty has been relied upon. Therefore, the order of the original authority in imposing penalty is not sustainable.

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

(a) The order of the Commissioner (Appeals) in so far as the respondent firm is concerned, is set aside and the order of the original authority imposing penalty under Rule 25 is restored. While restoring the order of the original authority, the penalty, in the facts and circumstances of the case, is reduced from Rs.2,57,562/- to Rs.70,000/- under Rule 25. The order of the Commissioner (Appeals) in setting aside the penalty under Section 11AC is not interfered with.

(b) The order of the Commissioner (Appeals) in setting aside the penalty of Rs.10,000/- on the authorised signatory is not interfered with.

9. The cross objections which are merely in support of the order of the Commissioner (Appeals), are also disposed of.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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