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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. C/708 /2008-709 /2008 – SM[BR]   Date 25/05/2009

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

To :
(12) M/S BAJAJ SONS,
D-1412, NEW SUBZI MANDI, AZADPUR, NEW DELHI-110033.

M/S BAJAJ SONS, Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 468 -469 / 2009 –SM[BR] dated 12.5.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (PREVENTIVE) AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Appeals No.708-709 of 2008-SM (BR)

[Arising out of common Order-in-Appeal No.84-86/Cus/Appl/Jal/2008 dated 29.08.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:12.5.2009

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see 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?	:	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s. Bajaj Sons & Ors.
...Appellants
[Rep. by Shri S. Malhotra, Advocate]

Vs.

CC, Amritsar
...Respondent
[Rep. by Shri M.M. Singh, DR]

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

Final Order No. 468 - 469/09 Dated:12.05.2009

Per P.K. Das:

Both the appeals are arising out of a common order and, therefore, they are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants imported garlic from Pakistan. They filed Bill of Entry for clearance of

the goods. The appellants submitted Phytosanitary Certificate issued by the Ministry of Food Agriculture & Livestock (Department of Plant Protection), Pakistan. The said consignments were checked for fulfilment of Plant Quarantine requirements/conditions under Plant Quarantine Law. The Plant Quarantine Authorities released the part consignments and raised objections in respect of the balance quantity. The appellants requested the Customs Authorities to allow the re-export of the goods valued Rs.6,54,555/- and Rs.5,82,370/- in respect of the above appeals. The Original Authority rejected the request of re-export and confiscated the goods and ordered to be destroyed at the cost of the appellants in the presence of Customs and Plant Quarantine Authorities. He also imposed penalties of Rs.65,000/- and Rs. 58,000/- respectively. The Commissioner (Appeals) upheld the adjudication order.

3. After hearing both the sides and on perusal of the records, the main contention of the ld. Advocate that the penalties imposed under Section 112 of the Customs Act is not sustainable. He submits that it is not a prohibited item and, therefore, confiscation under Section 111(d) of the Customs Act is not maintainable. I am unable to accept the contention of the ld. Advocate. It is seen that the import of the consignment of garlic would be allowed subject to inspection to Plant Quarantine Authorities. The said authorities disallowed the release of the goods and, therefore, the goods are prohibited items. Thus, the importation of the goods in this

case is prohibited by the Law and, therefore, confiscation under Section 111 (d) of the Act is justified.

4. However, I agree with the submission of the ld. Advocate that quantum of penalties is excessive. It is seen that the imported goods were accompanied with the certificate issued by the competent authority of Pakistan. Thus, it is also noted that part of the consignments were released ~~received~~ by the Plant Quarantine Authorities. I also noted that the appellants already suffered due to destruction of the imported goods involving huge amount.

5. Considering the facts and circumstances of the case, the penalties are reduced to Rs.15,000/- (Rupees Fifteen Thousand only) in each case. Both the appeals are disposed of in the above terms.

Order dictated & pronounced in the open court on 12.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.