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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

STAY Application No. : E/Stay/265/2012, E/Stay/303/2012, E/Stay/350/2012
Appeal No. : E/260/2012-EX[, E/292/2012-EX[DB], E/342/2012-EX[DB]

Dated: **07/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
POOJA FLEXIPACKS,
A-66/1, G.T. KARNAL ROAD,
INDUSTRAL AREA,DELHI

POOJA AGENCIES (Appellant)

VS

C.C.E. DELHI I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No.A/655-657/2012 & S.O.NO. 892-894/12 **-EX[DB]** dated 05-6-2012 passed by the Tribunal under section

Assistant Registrar
EXCISE Appeal Branch

Copy To,

1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Advocate(s) / Consultant(s):
R.K.JAIN & ASSOCIATES
610, POADMA TOWER-1, RAJENDRA
PLACE, N DELHI

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

P.T.O.-2

14. SHRI BALAJI TRADING CO.
A-908, SHASTRI NAGAR, DELHI.-

15. POOJA AGENCIES
284-85/4, KATRA PERAN, TILAK
BAZAR, KHARI BAOLI, DELHI.

16. SH. A.K. MISHRA, ADV.,
1, CSC-6, FIST FLOOR,
PARK PLAZA, BEHIND SHAKTI
APARTMANTS, SECTOR-9, ROHINI, DELHI-85

17. SH. K.S. GUPTA, CCN.
N-223, LGF, GREATER KAILASH PART-I
N. DELHI -48

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

COURT NO. II

E/Stay/265, 303, 350/2012 in & Central Excise Appeal No. 260, 292 & 342/2012

[Arising out of Order-in-Original No. 06/D-I/2011 dated 31.10.2011 passed by the Commissioner, Central Excise, Delhi-I, New Delhi]

Date of Hearing/decision: 5th June, 2012

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Shri Balaji Flexipacks,
M/s. Shri Balaji Trading Co.,
M/s. Pooja Agencies — Appellants

Vs.

CCE, Delhi-I — Respondent

Present for the Appellant : Shri A.K. Mishra, Shri Bipin Garg & Shri K.S. Gupta, Advocates
Present for the Respondent : Shri Sunil Kumar, D.R.

Coram: Hon'ble Justice Shri Ajit Bharihok, President;
Hon'ble Shri Rakesh Kumar, Technical Member

STAY ORDER No. 892-894/2012-EX (BR)
FINAL ORDER NO. A/655-657/2012-EX (BR)

Per Justice Ajit Bharihoke:

These appeals are directed against the order of Commissioner (Adjudication) passed on 31.10.2011 whereby he has imposed penalty of Rs. 10 lakhs on M/s. Balaji Trading Co., Rs. 3 lakhs on M/s. Pooja Agencies, & Rs. 10,000/- on M/s. Balaji Flexipacks respectively under Rule 25 of Central Excise Rules, 2002. Plea taken by Shri K.S. Gupta, learned Counsel for M/s. Balaji Trading Co. and Shri Bipin Garg, learned Counsel for M/s. Pooja Agencies and Shri A.K. Mishra, learned Advocate for M/s. Balaji Flexipacks is that they are traders not registered with excise department, as such the adjudicating authority had fallen in error in imposing penalty under Rule 25 of Central Excise Rules.

2. In order to appreciate the contention of counsels for the appellants it would be proper to have look upon Rule 25 of Central Excise Rules, 2002 which is reproduced below:-

"**RULE 25. Confiscation and penalty**. – (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production oir storage of any exciable goods without having applied for the registration certificate required under section 6 of the Act; or

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [rupees two thousand], which ever is greater.

(2)..................................."

3. On reading of the aforesaid Rule it is evident that under this rule penalty can be imposed only on producer, manufacturer, registered person of a warehouse, or registered dealer. It is not the case of the prosecution that the appellants herein are producer, manufacturer, registered person of a warehouse or registered dealer. Therefore, in our considered view Rule 25 of Central Excise Rules, 2002 is not attracted in this case. Otherwise also the issue is covered by the order of Coordinate bench of this Tribunal in the case of M/s. Dhanlaxmi Garments vs. CCE, Surat – I, reported in 2009 (235) ELT 523 (Tri.-Ahmd.). As such, order of the Commissioner imposing penalty on the appellants cannot sustain.

3. In view of the above, impugned order is set aside. Appeals are allowed.

(JUSTICE AJIT BHARIHOKE)
PRESIDENT

(RAKESH KUMAR)
TECHNICAL MEMBER

RK