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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/178 /2009 – SM[BR] Date 03/08/2009

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

To :
C.C. (EXPORT) NEW DELHI
AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037
C.C. (EXPORT) NEW DELHI Appellant

Vs

M/S JET AIRWAYS (I) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 852 / 2009 –SM[BR] dated 21.7.2009 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
   M/S JET AIRWAYS (I) LTD.
   ROOM NO. 217, EXPORT BUILDING, CARGO COMPLEX, IFI AIRPORT, NEW DELHI 110037
2. Adv. / Consult SHRI B.S. BIST REP;
   M/S RESPONDENT;------------------

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 & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CUSTOMS APPEAL NO. 178 OF 2009-SM

[Arising out of Order-in-Appeal No. CC(A)/Cus/Exp/25/09 dated 21.1.2009 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

For approval and signature:

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

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 would 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

C.C., New Delhi — Appellant

Vs.

M/s. Jet Airways (I) Ltd., — Respondents

Appearance:

Shri S.K. Bhaskar, D.R. for the revenue;
Shri B.S. Bist, Rep. for the respondent

Coram:

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

Date of hearing/decision: 21st July, 2009

FINAL ORDER NO. 853/2009-SM(BR) **dated** 21.7.09

Per P.K. Das:

Revenue filed this appeal against Order of the Commissioner (Appeals) whereby penalty of Rs. 30,000/- imposed on the respondents was set aside.

2. Learned D.R. reiterates the grounds of appeal. He submits that the respondents used wrong EGM number in respect of their flight No. 9W582 dated 28.5.2008. He further submits that the respondents detected the mistake and informed the department and, therefore, Commissioner (Appeals) set aside the penalty. It is his submission that the respondents contravened the provisions of Customs act by wrong use of EGM number and, therefore, penalty is imposable. He relied upon the decision of the Tribunal in the case of CCE, Kolkata-I vs. Gurdian Leisure Planners Pvt. Ltd., reported in 2007 (6) STR 32 (Tri. – Kolkata)

3. Learned Representative on behalf of the respondents reiterates the findings of the Commissioner (Appeals).

4. After hearing both sides and on perusal of the records, for the purpose of proper appreciation of the case, finding of the Commissioner (Appeals) is reproduced below:-

> "4. From the brief facts of the case as obtaining from the subject OIO, the omission regarding the incorrect filing of EGM was brought to the notice of concerned AC, Cargo by M/s.

British Airways on 11.11.2008 as well as by appellants on 10.11.2008. Since, the said mistake was brought to the notice of the department by the department by the respective Airlines on their own, it appears a case of inadvertent mistake. Accordingly, I am inclined to take a lenient view by setting aside the penalty imposed on the Appellants vide the subject OIO.

5. In view of the above, the OIO is set aside and the appeal filed by the Appellants is allowed by setting aside the penalty of Rs. 30,000/- imposed under Section 117 of the Customs Act, 1962."

5. I find that the mistake was detected by the respondents and informed the department on their own. The case relied upon by the learned D.R. is not applicable in the present facts and circumstances of the case. In any event, after considering facts and circumstances of the case and the fact that the respondents detected the mistake and, therefore, imposition of penalty is not warranted. Accordingly, I do not find any reason to interfere with the order of the Commissioner (Appeals). Appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK