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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/512 /2006 - CU[DB] Date 12/10/2010

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

To :
COMMISSIONER OF CUSTOMS

THE COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, C.R.BUILDING, THE MALL, AMRITSAR 143001

COMMISSIONER OF CUSTOMS Appellant

Vs

M/S ATM INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/154/ 2010 CU[DB]** dated 01.10.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent

   M/S ATM INTERNATIONAL

   D-163 FOCAL POINT, JALANDHAR
2. Adv. / Consult

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
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing: **23.9.2010**

Custom Appeal No. 512 of 2006

[Arising out of Order-in-Appeal No.24/Cus/2005 dated 27.07.2005 passed by the Commissioner of Customs, Amritsar]

For approval and signature:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)
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

CC, Amritsar — Appellant

Vs.

M/s.ATM International — Respondent

Appearance:

Appeared for the Appellant – Shri I. Beg, DR

Appeared for the Respondent - None.

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

Final Order No. C/154/10

Per M. Veeraiyan :

Heard the ld. SDR.

2. None appears for the respondent in spite of notice. On earlier occasions also, none represented the respondent.

3. By the impugned order, Commissioner held that goods valued at Rs.1,60,11,879/-are liable for confiscation and as these goods have already been exported, no order of confiscation has to be passed. He imposed penalties on the respondent and several other persons. The appeal of the department is limited to the decision of the Commissioner in not imposing redemption fine after holding that the goods are liable for confiscation.

4. Heard the ld. SDR, who reiterates the grounds of appeal.

5. It is not disputed that the impugned goods stand exported. The goods were not available for confiscation having been already exported out of the country and goods could not be seized. Confiscation is taking over the ownership of the goods. The availability of the goods is not certain and the whereabouts are also not certain. The goods are definitely not in India. Section 125 of the Customs Act which envisages allowing redemption of the goods confiscated reads as under :-

> "Section 125. **Option to pay fine in lieu of confiscation** (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods[or, where such owner is not known, the person from whose possession or custody such goods have been seized],

an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imported under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

6. In the present case, the question of department granting option to redeem the goods does not arise as the goods are not available for confiscation. It is not a case where the goods were seized and provisionally released to the party on execution of bond with bank guarantee or other security. The question of granting option of redemption on payment of fine does not arise. In the light of the above, we do not find any infirmity in the Commissioner not ordering for confiscation of goods which are not available for confiscation.

7. Appeal is disposed of in the above terms.

(M.V. Ravindran)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

RM