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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/220 /2008 – SM[BR] Date 18/11/2009

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

To :
SH. ATUL GARG,
R/O 3578/4, 1ST FLOOR,
NARANG COLONY, TRI NAGAR,
DELHI-35.

SH. ATUL GARG, Appellant

Vs

C.C.(PREVENTIVE) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1446 / 2009 –SM[BR] dated 12.11.2009 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)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.
2. Adv. / Consult
MR.PRADEEP JAIN,ADVOCATE
34 GUJRAT VIHAR, VIKAS MARG, DELHI-92
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)
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(SM Appeal Branch)

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

Date of hearing/decision:12.11.2009

Custom Appeal No. 220 of 2008-SM

[Arising out of order-in-Appeal No. CC(A)/Customs/D-II/Preventive/234/2007 dated 17.12.2007 passed by the Commissioner of Customs (Appeals), New Delhi]

For approval and signature:

Hon'ble Shri M. Veeraiyan, Technical Member

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?	NO
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

Shri Atul Garg — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:
Appeared for the Appellant – Shri M.J. Michael, Advocate

Appeared for the Respondent- Shri S.N. Srivastava, SDR

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Order No. 1446/2009 SM(BR)

Per: M. Veeraiyan:

This is an Appeal against the order of Commissioner (Appeals) No. CC(A)/Customs/D-II/Preventive/234/2007 dated 17.12.2007 by which a penalty of Rs.3.00 lakhs imposed by the original Authority was sustained.

2. Heard both sides.

3. The relevant facts, in brief, are that the cigarettes of foreign origin were found and seized from the premises which were taken on rent by the Appellant. The Appellant claimed that the room taken on rent by him was given temporarily to a friend of him, by name Shri Umesh said to be from Calcutta. However, the Appellant was not in a position to furnish the address of his friend in Calcutta. The Appellant was not able to produce any documentary evidence for procuring cigarettes from licit source. In fact, he submitted that the cigarettes did not belong to him that belonged to Shri Umesh. The original Authority confiscated the cigarettes valued at Rs.13,07,920/-. He held that Shri Atul Garg to be the owner of the cigarettes and imposed a penalty of Rs.3.00 lakhs.

4. Ld. Advocate submits that Shri Atul Garg is not the owner of the cigarettes. He has given room temporarily to a friend whose address he was not able to give. Under these circumstances, imposition of penalty was not warranted. Alternatively, he pleaded that the leniency should be shown and penalty should be reduced.

5. Ld. SDR reiterates the findings of the Commissioner (Appeals).

6. I have carefully gone through the submissions from both sides and perused the records of the case. The submission of the Appellant that he gave premises taken by him on rent to a friend

whose address is not known to him without collecting any rent from him and that the cigarettes of foreign origin seized from the said premises belonged to his friend is not acceptable. The original Authority and Commissioner (Appeals) have rightly rejected the contention and held him as having acquired possession and concerned in keeping/dealing with smuggled cigarettes of Bangladesh origin, which was held liable to confiscation under the Customs Act, 1962. Penalty, therefore, is warranted. However, I notice that the goods have since been disposed of by the Department for a price of Rs.6,98,963/-. Considering the entire facts and circumstances of the case and considering the sale price of the confiscated goods, I hold that there is justification for reducing the quantum of penalty imposed on the Appellant. Accordingly, I reduce penalty imposed on the Appellant from Rs.3.00 lakhs to Rs. 1.00 (One lakh).

7. The Appeal is allowed partly in the above terms.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
TECHNICAL MEMBER

RM