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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/77 /2009 – SM [BR] Date 20/10/2009

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 EMIRATES SKY CARGO, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1287 / 2009-SM[BR] dated 10.9.2009 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 EMIRATES SKY CARGO,
GROUND FLOOR, PUBLIC AMENITIES BUILDING,
IGI AIRPORT TERMINAL II NEW DELHI-110037.

2. Adv. / Consult

NONE;-------------

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
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Assistant Registrar
(SM Appeal Branch)

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

Customs Appeal No.77 of 2009-SM (BR)

[Arising out of common Order-in-Appeal No.CC(A)/Cus/Exp/431/08 dated 19.11.2008 passed by the Commissioner of Customs (Appeals),New Customs House, New Delhi].

Date of Hearing/Decision:10.09.2009

For approval and signature:

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

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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? :
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

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CC, New Delhi ...Appellants

[Rep. by Shri S.N. Srivastava, SDR]

Vs.

M/s.Emirates Sky Cargo ...Respondent

[Rep. by none.]

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

Final Order No. 1287/2009-SM(BR)/Dated:10.09.2009

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty of Rs.20,000/- imposed on the respondent under Section 117 of the Customs Act, 1962 was set aside.

2. After hearing the ld. SDR on behalf of the Revenue and on perusal of he records, I find that the respondent failed to file their EGM 15417/08 before departure of their flight EK-513 dated 9.7.2007, instead of that they used EGM No.15411/08 allotted to M/s. Asiana Airlines in respect of their flight No.OZ 768 dated 9.7.2008. But the respondent drew the attention of the concerned Asstt. Commissioner, Cargo of such mistake. The Original Authority imposed penalty of Rs.20,000/- under Section 117 of the Act, which was set aside by the Commissioner (Appeals).

3. For the proper appreciation of the case, the findings of the Commissioner (Appeals) is reproduced below:-

> " 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 the Appellants as well as by M/s. Asiana Airlines, on the very next day i.e. 10.07.2008. They had also requested for a lenient view. Since, the sudden realization of the omission was quickly brought to the notice of the concerned officer, 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."

4. I agree with the findings of the Commissioner (Appeals). It is seen that the respondent themselves informed the concerned Asstt. Commissioner as well as M/s.Asiana Airlines on the very next day. So,

the Commissioner (Appeals) rightly took a lenient view and dropped the penalty. Hence, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 10.09.2009.

(P.K. Das)
Member (Judicial)

ckp.