

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

Appeal No. C/186 /2009 - CU[DB]

Date **24/06/2011**

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

To :
M/S CARGO CARE,
37-LIG FLATS, PUL PEHLADPUR,
DELHI SURAJKUND ROAD, NEW DELHI-44.
M/S CARGO CARE,

Appellant
Vs
Respondent

C.C. NEW DELHI (IMPORT & GENERAL)

I am directed to transmit herewith a certified copy of **Final order No.C/262/ 2011 CU[DB]** dated 17.06.2011
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

C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ,
NEW DELHI - 110 070.

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 -

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 (Harvana)

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

12. Office Copy

13. Guard file


Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.III

C/Appeal No.186/2009

(Arising out of order No.8/Policy/MKG/09 dated 6.2.2009 passed by
the Commissioner of Central Excise, New Delhi)

Date of Hearing: 2.6.2011

For Approval and signature:

Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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- | | | |
|----|--|-------------|
| 1. | Whether Press Reporters may be allowed to see
The order for publication as per Rule 27 of the
CESTAT(Procedure) Rules, 1982? | <i>Yes</i> |
| 2. | Whether it would be released under Rule 27 of
the CESTAT (Procedure) rules, 1982 for
publication in any authoritative report or not? | <i>No</i> |
| 3. | Whether their lordships wish to see the fair
copy of the order? | <i>Seen</i> |
| 4. | Whether order is to be circulated to the
Department Authorities? | <i>No</i> |
-

M/s Cargo Care

Appellants

Vs

CC, New Delhi

Respondent

Appeared for the Appellant: Shri Mayank Garg, Advocate

Appeared for the Respondent: Shri Sheo Narayan Singh, Jt.CDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER C/262/11

Per Mathew John:

This appeal is against the order suspending the licence granted to the appellant to function as Customs House Agent. The licence was suspended w.e.f. 23.1.2009. After suspension, the appellant was given a post decision hearing on 27.2.2009. Thereafter, the Commissioner (Appeals) issued the impugned order dated 6.3.2009 confirming the earlier suspension order dated 23.1.2009. The main charge against the appellant is seen in para 10 of the impugned order which is reproduced below:-

"10. As per the submission of the CHA, DRI authorities were asked to intimate the status of investigations with regard to role of CHA. DRI vide letter dated 27.2.2009, inter-alia intimated that Shri Jatinder Kumar, 'G' Card holder of the CHA had admitted in his statement dated 18.2.09 that he is 'G' card holder in M/s Cargo Care; that he has been working for M/s Fantastic Cargo Movers a partnership firm of Shri Vijay Sagar and Shri Gaurav Gupta; that Shri Sushil Malik (Prop. M/s Cargo Care) had sublet his licence to him and M/s Fantastic Cargo Movers for Rs. 5,000/- per month; that he had handled 20 import consignments of the following companies at ICD, Tughlakabad:

1. M/s M. M Enterprises
2. M/s A.P. Enterprises
3. M/s I'con Enterprises
4. M/s Western Traders
5. M/s Teanu Creation
6. M/s Om Sales Corporation
7. M/s S.K. Trade Corporation
8. M/s Avtaar Traders
9. M/s Jyoti International

- 2. The order brings out that the appellant was sub-letting his licence to other persons who acted as CHA on his behalf.
- 3. While the charge against the appellant is a serious one, the procedure to be followed in dealing with such matters as laid down by CBEC Circular No. 9/10 dated 8.4.2010 has not been followed in as much as, a final notice for revocation of the of the licence is not issued even after 28 months. The norm laid down in the said circular for issue of such notice is nine months from the date of receipt of the report regarding offence committed.
- 4. Since the licence of the appellant stands suspended for more than 28 months without final disclosure of the evidence and without final hearing in the matter, we consider it proper to restore the licence of the appellant as an interim measure. It is made clear that this order is without prejudice to the right of the department to issue notice for final suspension or revocation and to pass appropriate order after considering the submissions of the appellant.
- 5. The appeal is thus allowed by setting aside the impugned order.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*