IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41082 of 2013

(Arising out of Order-in-Original No. 20029/2013 dated 31.12.2012 passed by the Commissioner of Customs (Port-Export), Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Unison Hotels Limited **: Appellant**
Nelson Mandela Road, Vasant Kunj, Phase-II,
New Delhi – 110 070

VERSUS

Commissioner of Customs (Seaport-Export) **: Respondent**
Custom House, No. 60, Rajaji Salai,
Chennai – 600 001

AND

Customs Appeal No. 41083 of 2013

(Arising out of Order-in-Original No. 20029/2013 dated 31.12.2012 passed by the Commissioner of Customs (Port-Export), Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

Umesh Saraf, Managing Director, **: Appellant**
M/s. Unison Hotels Limited
Nelson Mandela Road,
Vasant Kunj, Phase-II,
New Delhi – 110 070

VERSUS

Commissioner of Customs (Seaport-Export) **: Respondent**
Custom House, No. 60, Rajaji Salai,
Chennai – 600 001

APPEARANCE:

Shri Shanmugam T., Advocate for the Appellants

Smt. Sridevi Taritla, Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40598-40599 / 2023

DATE OF HEARING: 23.06.2023

DATE OF DECISION: 21.07.2023

Order : [Per Hon'ble Mr. P. Dinesha]

These appeals are filed by the appellants against the Order-in-Original No. 20029/2013 dated 31.12.2012 passed by the Commissioner of Customs (Seaport-Export), Chennai whereby the Commissioner has ordered confiscation of three cars imported by the appellant under Section 111(d) and 111(o) of the Customs Act, 1962 read with Section 46 *ibid.* and Rules 11 and 14 of the Foreign Trade (Regulation) Rules, 1993, but however, allowed redemption in lieu of the confiscation on payment of a fine of Rs.20,00,000/- under Section 125 of the Act. He also ordered the denial of concessional rate of duty in terms of Notification No. 97/2004-Cus. dated 17.09.2004 and Notification No. 64/2008-Cus. dated 09.05.2008, apart from interest under Section 28AB *ibid.*, penalty under Section 112(a) *ibid.* on both the appellants and also appropriation of Bank Guarantee executed by the appellant towards the demands so raised.

2.1 Facts are not in dispute: the appellant had imported four cars under the EPCG Scheme, namely: -

(i) DL1ZZ 0198 [BMW]

(ii) DL1ZZ 0185 [BMW]

(iii) DL1ZZ 0432 [BMW]

(iv) DL1ZZ 0209 [Honda CR-V]

The vehicles at Sl. Nos. (i) to (iii) above were cleared through Chennai Sea Port and the vehicle at Sl. No. (iv) through Mumbai Sea Port.

2.2 It appears that the importation purportedly was made for use in Tour / Transport / Hotel Related Services of foreign nationals.

2.3 It appears that the Revenue received specific information that the above vehicles were being used as private vehicles for the personal use of the Managing Director of the appellant i.e., the second appellant herein, and his family members, and were not being used for commercial purposes to earn foreign currency for the fulfilment of export obligation, as stipulated in the EPCG Authorization and Scheme.

2.4 Based on the above specific information, it appears that the Customs Preventive Commissionerate, New Delhi initiated investigation followed by a search on 04.03.2011 at the following premises: -

(1) M/s. Unison Hotels Ltd. (The Grand), Nelson Mandela Road, Vasant Kunj, Ph-2, New Delhi.

(2) Residence of Sh. Umesh Saraf, Managing Director of M/s. Unison Hotels Ltd., at W-120, Greater Kaliash-II, New Delhi.

(3) Residence of Sh. Santosh Kanoi, at D-1103, Friends Colony (East), New Delhi.

2.5.1 During the search, one car bearing Registration No. DL1ZZ 0198 was found parked at the residential premises of the second appellant; the same was found to have white number plate.

2.5.2 It appears that the search at Sl. No. (3) was at the residential premises of one Mr. Santosh Kumar Kanoi whereby another vehicle bearing Registration No. DL1ZZ 0185 was found parked and the Officers appear to have found that the said person namely, Mr. Santosh Kumar Kanoi was the brother-in-law of the second appellant.

2.5.3 During their search of the hotel premises, the Revenue appears to have found the other two vehicles bearing Registration Nos. DL1ZZ 0432 and DL1ZZ 0209

2.6 It appears that the officials / search party chose to record statements of some of the employees working in the appellant-hotel, including the second appellant and Mr. Santosh Kumar Kanoi and the drivers, under Section 108 of the Customs Act, 1962.

3. It appears that the following were noticed by the officials: -

(i) The appellant was under an obligation to fulfil export in respect of 'Hotel Related Services'.

(ii) The export obligation was to be fulfilled within a period of eight years from the date of issue of authorization and to be fulfilled by the use of the above imported vehicles / capital goods.

(iii) The firm was to maintain its average of the past three years export performance.

(iv) The annual average of the past export performance for the vehicles imported in 2007 (the cars mentioned at Sl. Nos. (i), (ii) and (iv) *supra*) was Rs.568,685,933.58/- and in respect of the other vehicle which was imported in 2009 (the car mentioned at Sl. (iii) *supra*), was Rs.384,886,148.62/- [paragraph 25(3) of the Show Cause Cum Demand Notice].

(v) All the vehicles were registered to be used as taxi only, registered under "T" Board.

(vi) From the statements recorded, it appeared to the officials that all the imported vehicles were being used exclusively as private vehicles for personal purposes of the second appellant and his family members, in violation of the "T" Board Registration.

(vii) The appellant did not produce documents to support that the said vehicles were used as tourist taxi to earn foreign exchange.

(viii) In respect of the car at Sl. No. (i), they appear to have noticed that the insurance was made as a private car.

(ix) The cars were imported under the EPCG Authorization by mis-declaring that the same were required to provide comfortable road travel services to the high-class guests of any other country in India to earn foreign exchange.

(x) The appellant never used the above vehicles for the intended purposes to earn foreign exchange.

(xi) The total amount of Customs Duty saved in respect of the above vehicles by misusing the EPCG scheme was Rs.96,11,113/- for the vehicles imported through Chennai Port and Rs.9,41,922/- for the other vehicle imported through Mumbai Port.

(xii) The above has resulted in violation of the Foreign Trade (Development and Regulation) Act, 1992, the Foreign Trade (Regulations) Rules, 1993, the Foreign Trade Policy 2004-2009, Hand Book of Procedure, Volume-1 (Foreign Trade Policy 2004-2009), Customs Notification No. 97/2004-Cus. dated 17.09.2004 and Customs Notification No. 64/2008-Cus. dated 09.05.2008, etc.

4. Based on the above, a Show Cause Cum Demand Notice dated 26.08.2011 was issued by the Commissioner, proposing *inter alia* to confiscate all the BMW cars imported against EPCG authorization through Chennai Seaport, to deny the benefit of concessional rate of duty under Notification No. 97/2004-Cus. dated 17.09.2004 and Notification No. 64/2008-Cus. dated 09.05.2008 under Sections 111(d) and 111(o) of the Customs Act, 1962, apart from proposing to charge applicable rate of interest

under Section 28AB and penalty under Section 112(a) *ibid.* on both the appellants.

5.1 It appears that the appellant filed a detailed reply to the above Show Cause Notice rebutting each of the allegations levelled against them. It also appears from their reply, which is placed on record, that: -

(a) They had fulfilled the actual user condition since the vehicles stood registered in the name of the first appellant/firm and just because the cars were under the control of senior level management, the same would in no way violate the requirement of actual user condition.

(b) Under the scheme, capital goods were permitted to be imported at concessional rate of duty on the condition that by using the said goods, the importer would discharge the export obligation equivalent to eight times the duty saved, in eight years from the date of issue of EPCG Authorization and it is nowhere mentioned in the said Scheme that the capital goods so imported could not be used for any other purpose/(s).

(c) The appellant has apparently drawn reference to import of elevators, DG sets, LCDs, washing and kitchen equipment, etc., to contend that it was nowhere contemplated in the said Scheme that the above items should be used for earning requisite foreign exchange and that the use of the above capital goods by the Director / Managing Director or any member of his family is prohibited.

(d) There is no separate requirement for the import of car except that it has to be registered as a tourist vehicle and there was also no requirement under law for maintenance of logbooks. Further, the same is not even a requirement under the FTP or any Customs Notification as to maintenance of logbooks or any other record for the use of cars imported under the EPCG Scheme.

(e) EPCG Scheme permits the import of cars to hotels for such purposes and it is nowhere stipulated that the same are to be used for providing travel agency or tour operator services to guests.

(f) The export obligations are to be fulfilled by providing hotel services only and the fact that the cars were available for providing the service, if required, is only a value addition to the service, which has direct nexus with foreign exchange earning.

(g) The following judicial precedents of co-ordinate CESTAT Benches have been relied by the appellant in its reply:

i. *Indian Hotel Co. Ltd. v. Commissioner of C.Ex., Mumbai [2006 (204) E.L.T. 439 (Tri. – Mum.)]*

ii. *Enjay Hotels P. Ltd. v. Commissioner of Customs, Sheva [2000 (119) E.L.T. 108 (Tri.)]*

iii. *Commissioner of Customs, Mumbai v. Hotel Leela Venture Ltd. [2003 (158) E.L.T. 777 (Tri. – Mum.)]*

iv. *Commissioner of Customs., New Delhi v. Som Dutt Builders Ltd. [2009 (236) E.L.T. 478 (Tri. – Del.)]*

v. *Air Travel Bureau Ltd. v. Commissioner of Customs, New Delhi [2009 (237) E.L.T. 283 (Tri. – Del.)], appeal against which was dismissed by the Hon'ble High Court as reported in 2010 (260) E.L.T. 78 (Del.); affirmed by the Hon'ble Supreme Court in 2011 (268) E.L.T. A110 (S.C.).*

vi. *M Far Hotels Ltd. v. Commissioner of Customs, Cochin [2009 (241) E.L.T. 94 (Tri. – Bang.)]*

(h) Without prejudice to the above, the eight year period for fulfilling the export obligation under the EPCG Scheme has to be reckoned from the date of Authorization and not from the date of import.

(i) The EPCG authorizations were issued in 2007 and 2009 in terms of the conditions under the Scheme.

The appellant had time up to 2015 and 2017 respectively to fulfil their export obligations. The appellant had already approached the DGFT authorities with the record pertaining to fulfilment of export obligations through providing hotel services in a composite manner, which is duly acknowledged by the letter of the Zonal Director General of Foreign Trade (DGFT) dated 07.09.2012, indicating that the appellant had duly satisfied the conditions of the FTP.

5.2 Thus, the appellant had requested not to confiscate the cars imported by them, not to demand any duty for the same reasons and also not to charge consequential interest. They also apparently requested for dropping of the proposed penalty against both the appellants as well.

6. In adjudication, it appears that the Commissioner of Customs (Seaport-Export) considered the reply filed by the appellant, but however, vide Order-in-Original dated 31.12.2012 proceeded to confirm the demands proposed in the Show Cause Notice.

7. It is against this order that the present appeals have been filed by the appellants, before this forum.

8. Heard Shri Shanmugam T., Ld. Advocate for the appellants and Shri S. Balakumar, Ld. Assistant Commissioner for the Revenue.

9. After hearing the rival contentions, we find that the only issue to be decided by us is: whether the first appellant has satisfied the export obligation upon import of cars under the EPCG Scheme?

10. We have perused the documents placed on record and we have also carefully considered the orders relied upon during the course of arguments.

11.1 From a perusal of the Show Cause Notice and the impugned Order-in-Original, we find that three cars were imported under the EPCG Scheme in 2007 and another one in 2009. A sample Condition Sheet is placed in the appeal memorandum at page 63, the relevant portion of which is reproduced for the sake of convenience and reads as under: -

"Office of Jt. Director General of Foreign Trade
A-WING, Indraprastha Bhawan, I.P. Estate, New Delhi–110 002

CONDITION SHEET

ANNEXURE – A

Attached to EPCG Authorisation No: 0530143860 Dated : 11.06.2007

1. This Authorisation has been issued under Chapter 5 of Foreign Trade Policy 2004-2009 and carries an export obligation to export to GCA countries and realise the export proceeds in freely convertible currency and is subject to the conditions as laid down in Chapter 5 of Foreign Trade Policy and Procedures (Vol.I) 2004-2009 and/or The authorisation holder shall supply goods to categories carried under para 8.2 (a), (b), (d), (f), (g) and (j) of the policy.

2. The firm is under obligation to Export Item

S.No.	*ITCHS Code*	*Export Item Name*
1	*87032291*	*Hotel related services. CAR MODEL: BMW 730Ls Diesel 2993cc, RHD With Accessories*

worth US$ 577,876.51 i.e. 8 times the duty saved of Capital Goods on FOB basis within a period of 8 years (12 years in case duty saved is Rs. 100 Crore or more) from the date of issue of authorisation. The Export Obligation shall be fulfilled by the use of the Imported Capital Goods.

3. The firm is also required to maintain its average of the past three years export performance of the same and similar products mentioned in Para 2 above. The annual average of the past export performance is Rs.568,685,933.58.

4. …

5. …

6. Import of Capital Goods under this authorisation shall be subject to actual user condition. … …."

11.2 From the above it is clear that the import of cars at a concessional rate of duty was permitted subject to the above conditions, that is to say, *inter alia,* to fulfil the obligation eight times the duty saved within a period of eight years from the date of issue of Authorization, the importer was also required to maintain its average of the past three years export performance of the same and similar products mentioned in paragraph 2 above and the 'actual user' of vehicles.

12. We have also perused the application dated 18.03.2011 filed by the appellant addressed to the Zonal Director General of Foreign Trade (DGFT) requesting for redemption of EPCG Authorization, enclosing various documents. The appellant has also placed on record its letters dated 22.08.2012 addressed to the same authority (i.e. Zonal DGFT) wherein, in furtherance of their earlier request (vide application dated 22.03.2011), they have requested for issuance of EODC on fast track basis, thereby enclosing FIRCs for having generated foreign exchange for the years 2007-08 and 2009-10 for the three vehicles. They have also annexed thereto a certificate by a CA / Cost Accountant with regard to their foreign exchange earnings.

13. The appellant has also filed a communication issued by the Foreign Trade Development Officer to the Assistant Commissioner, New Customs House, IGI Air Port, New Delhi, dated 07.09.2012 requesting for details of current status of investigation, along with the follow-up letters dated 06.02.2015, 17.07.2015 and 16.02.2016.

It is a fact borne on record that the said authority i.e., the office of the DGFT, did not receive any responses to any of their communications referred to *supra.*

14.1 In the case of *M/s. M Far Hotels Ltd. (supra),* decided by the co-ordinate Bangalore Bench of the CESTAT, the following ratio emerge: -

> *"11. On going through that letter it is seen that the DRI requested the DGFT to issue clarification saying that export earnings through alternate products and services like room rent, income from sale of food beverage should*

> *not be considered towards the discharge of Export obligation. This point has not been accepted by the DGFT as it would be very difficult to show export earnings separately because of the use of the vehicle. In the overall package of the hotel, the use of the vehicle also would be included. In other words, the package includes very many things including the use of the vehicle. From the clarification, it is clear that it is not very necessary that the appellants have to show the amount of foreign exchange earned because of the exclusive use of the car, due to practical difficulties.* ***The appellants also have stated that in many cases, they may allow the use of the vehicle as complement to Tourists. In those cases, they may not be billing them separately. And it would be very difficult and there will be practical difficulties in showing the earnings which are done exclusively through the use of the car. We do not find any merit in the contention that the vehicle was registered in the name of the Director, for his personal use. The Director is an official of the hotel and when it is registered in the name of the Director, we do not find anything is wrong. In any case, the vehicle had been registered as a Contract Carriage even on 30-01-2006.*** *The installation certificate had been delayed. On account of that, it is not fair to deny the benefit of the exemption notification. Even the DGFT circular directing vehicles to be used for tourist purpose has been issued on 07-05-2008.* ***On going through the DGFT circular as well as the clarification given which we had already reproduced, it is seen that in these matters a broader view has to be adopted. Moreover, there is time for fulfillment of export obligation up to 2011. It is also very premature on the part of the Customs to have demanded duty from the appellants. The appellants have applied for the EODC certificate and if the DGFT authorities consider their request and if they issue the EODC certificate to the appellants then it is not for the Customs authorities to question the same. In view of all these points we do not find any merit in the impugned order. There is no justification for imposition of any penalties. It is stated that the said vehicle has been attached to the corporate office. These things are all not grounds for demand of duty and imposition of heavy penalties. Hence, we set aside the impugned order and allow the appeals with consequential relief.***"

(Emphasis supplied)

14.2 From the above, it is clear that the issuance of Show Cause Notice, etc., appears to be premature since on the date of issuance of the Show Cause Notice i.e., 26.08.2011, the appellant had time up to 2015/2017 to fulfil their export obligations.

15.1 We find it useful at this juncture to refer to the order of the Delhi Tribunal in the case of *M/s. Air Travel Bureau Ltd. (supra)*. Brief facts, as noted by the Ld. Bench, are reproduced below: -

> *"3. Relevant facts in brief are as follows :-*
>
> *(a) The appellant-company obtained EPCG licence in September, 2002 and imported two numbers of BMW cars at concessional rate of duty of 5% basic Customs duty. The EPCG licence was issued for the 'travel agency'. They were required to fulfill the export obligation of about Rs. 2.06 crores.*
>
> *(b) The appellant claimed that they have fulfilled the export obligation and the claim was accepted by DGFT authorities vide communication dated 18-3-04.*
>
> *(c) Subsequently on 16-8-04, DRI seized the cars and show cause notice dated 15-2-05 was issued proposing confiscation of the cars and proposing to recover duty foregone on the ground that the conditions of notification as well as conditions of EPCG licence had been violated. The show cause notice makes reference to communication sent to DGFT authorities by the Customs authorities for violation of EXIM policy.*
>
> *(d) In pursuance of the show cause notice, Commissioner confiscated the two cars and allowed the same to be redeemed on payment of fine of Rs. 6 lakhs; demanded duty of Rs. 46,76,805/- along with interest. He also imposed a penalty of Rs. 15 lakhs on the appellant-company and penalty of Rs. 5 lakhs on the Managing Director of the appellant-company who is the other appellant before us."*

15.2 After hearing the rival contentions, the CESTAT has held as under: -

> *"6.4 We agree with the contention of the learned DR that the Customs authorities are empowered to look into the compliance of the conditions of the notification independently. However we, in the present case, find that the notification has a link to provisions of the EXIM policy*

and the understanding of the DGFT authorities on the said provisions cannot be brushed aside without valid reasons.

6.5 Further, we have not been shown that the imported vehicles have been used for any purpose other than those related to travel and tour as stipulated in the EPCG licence. Further, the term tour and travel is a very wide term and it cannot be said that EPCG licence envisaged only the amounts collected by use of imported cars to be accounted towards export obligation under the said licence. If that was the intention, the licence could have been worded entirely differently.

6.6 The submission that even the export earnings from the date of issue of the licence till the date of import of the cars are also to be taken into account for the purpose of computing the export obligation is a debatable point. The export obligation as per the EXIM policy refers to one which is fulfilled using the goods imported. However, a submission was made that the value of export earnings from the date of import of cars are also substantially higher and the same fully covers the export obligation as stipulated under EXIM Policy/EPCG licence. It is also submitted that the said cars are still being used for the purpose for which they have been imported. Under these circumstances, in so far as this case is concerned, the issue as to whether the export obligation has to be reckoned from the date of issue of licence may be academic in nature.

7. We therefore do not find justification to sustain the order of the Commissioner and, therefore, set aside the same and allow the appeals with consequential relief."

15.3 It appears that the Revenue preferred an appeal against the above Order before the Hon'ble High Court of Delhi and the Hon'ble High Court vide its judgement dated 03.08.2010 as reported in *2010 (260) E.L.T. 78 (Del.)*, after considering the submissions, has followed its earlier judgement in the case of *M/s. Interglobe Enterprises Ltd. v. Union of India [2006 (203) E.L.T. 202 (Del.)]* and held as under: -

"4. This Court in the case of Interglobe Enterprises Ltd. v. Union of India & Ors. - 2006 (203) E.L.T. 202 (Del.) was concerned with almost identical issue namely use of imported cars by travel agency. This Court was concerned with the same Interpretation and in the process decided as to how such imported cars could be of more use to a

travel agency for fulfilling the EPCG Scheme. Perusal of the Judgment would show that the Revenue on the one hand and the assessee on the other hand had come out with extreme positions in support of their respective submissions, whereas, the assessee argued that the only answer for the assessee was to show fulfillment of export obligation and whether in this process, imported goods were used or not was not relevant.

5. On the other hand, submission of the Revenue was that the export obligation should be fulfilled with the direct use of the imported items namely cars in the said case. Both the interpretations were not accepted, the Court took a balance of view by interpreting the EPCG policy in the following manner :-

> *"The true position appears to us to be that while capital goods may or may not be capable of generating convertible foreign exchange by their independent use as is the position in the case of the lift in a hotel or the cars imported by the travel agent, the least that the importer must demonstrate is that the goods were put to use for the business activity for which the same were imported. The Scheme does not in our view envisage imports where the goods are not meant for use in the business activity of the importer nor can the goods be diverted for some other use without violating the conditions of actual user which is fundamental to the Scheme."*

6. Once we apply this yardstick to the facts of the present case, the conclusion would be that the respondents have been able to fulfill the obligation under EPCG license as pointed above, which was the very condition imposed in the said license by the DGFT. DGFT has redeemed the license and has taken the view that the respondents have fulfilled their export obligation. No doubt, the opinion of the DGFT would not be conclusive and any such certificate cannot press the power of the authority to reopen even a concluded matter if it is shown that the such conclusion was vitiated by fraud concealment of facts or misrepresentation or misdeclaration as held by the Apex Court in Sheshank Sea Foods Pvt. Ltd. v. Union of India & Ors. - (1996) 11 SCC 755 = 1996 (88) E.L.T. 626 (S.C.). However, in the present case, the appellants have not been shown that there is any fraud, concealment of facts or misrepresentation or misdeclaration on the part of the respondents.

7. We, thus, are of the opinion that no substantial question of law arises. These appeals are accordingly dismissed."

15.4 The Revenue had preferred SLP against the above judgement of the Hon'ble Delhi High Court, which was dismissed by the Hon'ble Supreme Court, as reported in *2011 (268) E.L.T. A110 (S.C.).*

16.1 From the above, it is clear that the importer should be able to demonstrate that the goods were in fact put to use for the business activity for which the same was imported. That is to say, the importer should not violate the conditions of actual user.

16.2 From the documents placed on record by the appellant, we find that the appellant has declared substantial income in foreign exchange, which is not disputed by the Revenue, though they have proceeded from different perspectives, but going by the above ruling, all other points are immaterial except the actual user test, which according to us stood satisfied by the appellant. The very fact that there is foreign exchange earned is itself sufficient to hold so. When the appellant submitted its application for EODC on 22.03.2011 by contending that it has fulfilled the export obligations, the concerned authority namely, the Office of the DGFT, appears to have duly acknowledged both the fact of the appellant fulfilling the conditions as well as the requesting for discharge certificate. This fact has not been specifically denied by the Revenue anywhere in the impugned order.

17.1 We find that in the case of *M/s. Goldfinch Hotels Pvt. Ltd. v. Commr. of Cus. (Acc & Exports), Mumbai [2015 (328) E.L.T. 282 (Tri. – Mum.)]*, the co-ordinate Mumbai Bench was seized of a more or less identical situation wherein cars imported under EPCG were confiscated and the Revenue had also relied upon statements including that of drivers. But however, the Ld. Bench has observed that:-

- There was no condition stipulating to park the vehicle imported under the EPCG Scheme at a particular place and mere parking of the vehicle at a particular place could not be considered as a violation of actual user condition.

- No conclusive inference could be drawn from the version of the driver.
- None of the statements recorded contained any positive admission that the appellant therein actually intended to import the car only for the personal use of its MD.
- The records did not dispute the fact that the said vehicles were actually registered in the name of the appellant therein for "tourist purpose".
- The Ld. Bench drew support from the decision of the Hon'ble Supreme Court in *M/s. Vadilal Chemicals Ltd. v. State of Andhra Pradesh [2005 (192) E.L.T. 33 (S.C.)]* and the decision of the Hon'ble Kerala High Court in *M/s. M Far Hotels Ltd. v. Union of India [2011 (270) E.L.T 158 (Ker. HC)]* to hold that the benefits conferred under the FTP therefore could not be denied to the appellant therein since neither the FTP nor the exemption Notification lay down the nature of day-to-day record to be maintained by the importer in respect of foreign exchange earned from the imported capital goods.

17.2 On appeal by the Revenue against the above order, the Hon'ble Bombay High Court vide its judgement dated 30.01.2017 as reported in *2017 SCC Online Bom 6626* has dismissed the appeal.

18. We find that more or less similar views were expressed in the other orders of co-ordinate Benches relied upon by the appellant.

19. Further, the allegations as to violation of vehicle registration, etc., are the concerns of the relevant authorities, which is not the domain of the Customs authorities. Any violation with regard to vehicle registration, insurance, etc., could only be looked into by such authorities who have jurisdiction over the same and, in any case, nothing is brought out on record as to the Customs authorities informing such violations which are alleged, to the concerned State authorities.

20.1 From the documents placed on record before us, we find that other than mere allegations, the Revenue has not placed on record any documentary evidence in support of its allegations. Moreover, they have not even justified that the violations alleged against the appellants were in fact violating either the conditions in the Scheme or FTP or any other relevant Acts or Rules. This assumes importance since we are guided by the ratio in the orders referred to *supra* wherein it has been held that a violation should be of the conditions as prescribed under the relevant Acts or Rules or Scheme and that too, such violations should only be considered in the context of non-fulfilment of export obligation at the end of the completion of the prescribed period to fulfil such obligation and not before the expiry of the said period.

20.2 In view of the above, we are of the view that the allegation levelled by the Revenue as to violation / non-fulfilment of export obligations was too premature and in any case, the appellant had declared its foreign exchange earnings as well, which were not considered nor discussed in the impugned order.

21. In view of the above, we do not find any justification in ordering confiscation for non-fulfilment of export obligations by the appellant. Consequently, the penalty levied against the appellants are also without justification and hence, the same stand deleted.

22. We therefore set aside the impugned order and allow the appeals.

(Order pronounced in the open court on 21.07.2023)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd