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

Dated: **07/07/2015**

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. **C/A/52097-52098/2015-CU[DB]** dated **13/05/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4)** of the **Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/Stay/164/2010, C/MISC/22/2011, C/ROM/54727/2014	C/24/2010	**NIJHAWAN TRAVELS PVT. LTD.** F-53, Bhagat Singh Market, New Delhi
2	C/Stay/176/2010, C/ROM/54726/2014	C/28/2010	**SHRI SHAM NIJHAWAN, MANAGING DIRECTOR OF** M/S NIJHAWAN TRAVELS SERVICE PVT. LTD. A-1/1, VASANT VIHAR, NEW DELHI-110057
			Name and Address of Respondent
3			-C.C.(PREVENTIVE) New Custom House, Near I.G.I. Airport, new Delhi 110037.
4			-C.C.(PREVENTIVE) New Custom House, Near I.G.I. Airport, New Delhi 110037.

Other Appellants and Respondents as per Annexure

Copy To
5Advocate(s) / Consultant(s):

Verma Kant & Associates
704, Nilgiri Apartment,
9, Barakhamba road,
New Delhi

6 Bar Association, CESTAT, Delhi
7 Director Publications, Customs, Excise, I.P. Estate, Delhi
8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
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, Satellite Road, Ahmedabad-15
12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
15 C.D.R. **16** Office Copy **17** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing: 13.05.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal Nos.C/24 & 28/2010-CU[DB]

[Arising out of Order-in-Original No.21/2009, dated 30.10.2009 passed by the C.C.(Preventive), New Delhi]

M/s. Nijhawan Travels Pvt. Ltd. & others — Appellant

Vs.

C.C.(Preventive), New Delhi — Respondent

Appearance
Shri Krishna Kant, Advocate - for the appellant

Shri R.K. Gupta, DR - for the respondent

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order Nos. 52097-52098/2015, dated 13.05.2015

Per Mr. R.K. Singh:

Appeals have been filed against Order-in-Original No.21/2009, dated 30.10.2009 in terms of which Mercedes Car SL 500 was confiscated under Section 111(d) and 111(o) of the Customs Act 1962 giving an option to redeem the same on fine of Rs.10 lakhs. In addition, a duty demand on the said car amounting to Rs.51,86,378/- along with interest was also confirmed and penalty of Rs.5 lakhs was imposed on the appellant-assessee. Penalty of Rs.5 lakhs was also imposed on Shri Sham Nijhawan, Managing Director of the appellant-assessee.

2. The brief facts of the case are that the appellant/assess had imported the said car under EPCG licence on payment of concessional rate of duty. During investigation, it was found that the said car was not being used as per the terms and conditions of EPCG licence as per the evidence to that effect in the form of its registration of car, statements of various persons like the employees of the appellant/assesse, the driver, security guard, etc. Thus, for violation of the condition of EPCG licence, the said car was confiscated and differential duty along with interest demanded and penalties imposed as above.

3. The appellants have contended that the impugned adjudication order is issued in violation of the principles of natural justice in-as-much-as they were not given an opportunity of being heard. They also added that they also wanted the cross-examination of various persons, whose statements were relied upon. They further contended that the export

obligation period is not yet over and therefore action of Revenue was pre-mature and there was no violation of the condition of EPCG licence.

4. We have considered the contentions of the appellants. Without going into the merits of the case, we do find that in the impugned order, the adjudicating authority has noted that "*hearing to all noticees was fixed on 15.09.2009, but none of them appeared for hearing. No request for adjournment of the P.H. was sought for*" and "*therefore it is felt that sufficient opportunities have been provided to them in view of the provisions of Section 122(A) of the Customs Act, 1962*". The appellants have contended that they never received the notice for personal hearing although in their Written Submissions, they had clearly requested for personal hearing. We perused the letter dated 12.09.2009, fixing the personal hearing for 15.09.2009. There is no indication on that letter whether it was sent by registered post. There is no evidence of its delivery to the appellants either. The appellants have clearly asserted that the said letter was never received by them. The Commissioner has noted in the impugned order that "*sufficient opportunities have been provided to them*" but in reality only one opportunity for personal hearing was provided vide the said letter dated 12.09.2009 which the appellants have asserted they never received. In these circumstances, we hold that the impugned order has been passed in violation of the principles of natural justice and therefore the same is set aside and the cases are remanded to the adjudicating authority for *de novo* adjudication after giving an opportunity of being heard to the appellants. The request for cross-examination should also be

considered and dealt with as per law while issuing the *de novo* adjudication order. The appeals are disposed of by way of remand as above.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK