CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 629 OF 2010

[Arising out of the Order-in-Original No. 21/Commr./HKC/2010 dated 30/07/2010 passed by The Commissioner of Customs (Preventive), New Delhi]

Commissioner of Customs, (Preventive), **Appellant**
New Customs House, Near IGI Airport,
New Delhi –110 037.

VERSUS

Shri Rakesh Kumar Wadhawan, Director of M/s Privilege Airways Private Limited, **Respondent**
3rd Floor, Dheeraj Arma, Anant Kanekar Marg,
Bandra East, Mumbai – 51.

APPEARANCE

Shri Nagendra Yadav, Authorized Representative (DR) – for the Department
None – for the respondent.

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 59915/2024

DATE OF HEARING/DECISION : 17.12.2024

JUSTICE DILIP GUPTA

The department has filed this appeal to assail that part of the order dated 30.07.2010 passed by the Commissioner that drops the proceedings initiated against Rakesh Kumar

Wadhawan[1], Director of M/s Privilege Airways Private Ltd. under section 112 (a) of the Customs Act, 1962[2].

2. It transpires from the records that the aircraft imported by M/s Privilege Airways Private Ltd.[3] as non scheduled operator (passenger) permit was used privately by the Director of Privilege Airways. The records also indicate that aircraft was actually purchased by M/s GE Capital Services India but ultimately a tri-partite agreement dated 22.02.2008 was entered between Housing Development Infrastructure Ltd., M/s Privilege Airways and GE Capital Services India for exclusive use of the aircraft for Housing Development Infrastructure Ltd. but it was actually used by the common Directors of Privilege Airways and Housing Development Infrastructure Ltd.

3. The Commissioner has dropped the proceedings initiated against Rakesh Kumar Wadhawan for imposition of penalty under section 112 (a) of the Customs Act for the reason that the show cause notice failed to discuss and disclose the circumstances under which Rakesh Wadhawan had knowingly committed any act which led to the violation of the provisions of the Customs Act. The Commissioner has also observed that penalty cannot be imposed merely on the ground that a person is on the Board of the Directors of the Company which has violated some provisions of the Customs Act. To arrive this conclusion, the Commissioner

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1. the respondent
2. the Customs Act
3. Privilege Airways

has placed reliance upon the decision of the Supreme Court in **Brindavan Beverages** versus **CCE**[4].

4. The contention sought to be raised in the appeal is that Rakesh Wadhawan was aware of the fact that the aircraft will not be used for the purpose mentioned therein and, therefore, the provisions of section 112 (a) of the Customs Act will be applicable.

5. No one has appeared on behalf of the appellant.

6. We have heard the learned authorized representative appearing for the department and perused the records.

7. It is not possible to accept the contention advanced by the learned authorized representative appearing for the department. As noted by the Commissioner, the show cause notice does not even disclose the circumstances under which Rakesh Wadhawan knowingly or willfully committed any act, but leading to the violation of the provisions of the Customs Act.

8. Such being the position, there is no merit in the appeal. It is, accordingly, dismissed.

(Dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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4. 2007 (213) E.L.T. 487 (S.C.)