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

Appeal No. C/956 /2005-957 /2005 - CU[DB] Date 10/11/2008

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

To :
M/S SPRINT SERVICES PVT LTD
803, LUK KUSH TOWER, SINDHI SOCIETY,
CHEMBUR, MUMBAI - 400071

M/S SPRINT SERVICES PVT LTD Appellant
Vs
C.C AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/579-580/08-CUS. DATED 25.08.08

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 AMRITSAR, CUSTOM HOUSE, C R BUILDING,
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3. S.D.R
4. J.C.D.R.
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8. Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. Nidheshak publications. I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

17 SHRI SANJAY AGARWAL, 803/804, LUK KUSH TOWER,
SINDHI SOCIETY, CHEMBUR, MUMBAI

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.1, NEW DELHI.

Customs Appeal No.956-957/05-Cus(Br)

(Arising out of order in original No. 21/Cus/2005/2070 dated 9.6.2005 passed by the Commissioner of Customs, Amritsar)

Date of Hearing/ Decision: 25.8.2008

For approval and signature:

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

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	No
4	Whether Order is to be circulated to the Departmental authorities?	Yes

1.M/s Sprint Services Pvt Ltd.,
2.Shri Sanjay Agarwal, Director

Appellant
(Rep. by Shri Hari Shankar, Advocate)

Vs

CC, Amritsar

Respondent
(Rep. by Shri Vijay Kumar, DR)

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final ORDER No. C/579-580/08.

Per P.K. Das:

Both the appeals are arising out a common order and therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants imported 31 cars under a valid licence issued by the DFGT under the Export Promotion Capital Goods (EPCG) Scheme. Out of that, 25 cars were released and thereafter the said cars were seized on the ground that the said cars were used in the open market in violation of conditions of licence. The matter was settled by the learned Settlement Commission at Mumbai and immunities from fine, penalty and prosecution were also granted in respect of 20 cars. The seizure of the remaining 5 cars is pending before the Commissioner of Customs for re-export. Subsequently, the balance 6 cars were lying uncleared at ICD, Ludhiana, which had been seized by the DRI and subject-matter of present appeal. The Commissioner of Customs by the impugned order confiscated these 6 cars and imposed redemption fine of Rs.20 lakhs and penalty of Rs.20 lakhs on the Appellant No.1 and penalty of Rs.10 lakhs on Shri Sanjay Agarwal, Director of the Company, Appellant No.2 herein.

3. The learned Advocate on behalf of the Appellants, submits that 25 cars were released and thereafter it was found that the said cars were used in irregular manner in violation of the conditions of the licence. He submits that

the present appeal relates to confiscation of 6 cars, which are still lying with the Customs authorities and no Bill of Entry was filed. He drew the attention of the Bench to relevant portion of the adjudication order wherein it has been observed that these 6 cars were imported for mis-utilizing the EPCG Scheme. It is the contention of the learned Advocate that the seizure and confiscation of the goods were on the basis of anticipation that the said cars would be mis-utilized, which is not permissible under the law. He also cited several cases laws.

4. The Learned DR on behalf of the Revenue, reiterates the findings of the Adjudicating Authority. He submits that the appellant misused the EPCG licence in respect of earlier 25 cars. Therefore, the Adjudicating Authority rightly confiscated the balance 6 cars in order to avoid further misuse of the licence. He relied upon the decision of the Hon'ble Supreme Court in the case of CC, Kolkata vs. Grand Prime Ltd., reported in 2003 (155) ELT 417 (SC).

5. After hearing both sides and on perusal of the record, we find that 6 cars are still lying with the Customs and no Bill of Entry was filed and the goods were not assessed under Exemption Notification. The cars were brought under valid EPCG licence issued by the DGFT, for use in rent-a-cab service. Notification No. 49/2000-Cus dated 27.4.1000 permitted import of capital goods under valid EPCG licence issued by the DGFT subject to fulfilment of the condition of Export Obligation. The learned DR submits that the appellant was directed to file the necessary papers including bill of entry in

order to clearance of their imported cars. It is seen from the order of the Commissioner that these 6 cars were confiscated on the presumption that the appellant may misuse the EPCG Scheme. In this connection, the learned Advocate referred to CBEC Circular No. 75/99-Cus dated 10.11.1999 wherein it has been observed that mere issuance of EPCG licence does not mean that permission of the scheme has become operational. In our view, the goods were not cleared under the EPCG Scheme and therefore, it is not proper to hold that the importer is liable to penal action for non-fulfilment of the obligation under the Scheme.

6. The Adjudicating Authority heavily relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta vs. Grant Prime Ltd., -2003 (155) ELT 417 (SC). The facts, in the case of Grant Prime Ltd., (supra) are that the importer imported and cleared 5 consignments of raw silk without payment of duty under forged advance licence subject to the condition that the imported goods after conversion had to be re-exported. It was found that the said goods had been sold in the open market without discharging the export obligation. The importer subsequently imported another two consignments under the said advance licence. The said consignments were awaiting clearance, the investigation was conducted by the Directorate of Revenue Intelligence. The importer did not turn up to release the goods and they were not traceable. The exporter moved writ application before the Hon'ble High Court for re-export. The Hon'ble High Court directed the Tribunal to decide the matter. The Tribunal allowed the re-export.

The Hon'ble Supreme Court set aside the order of the Tribunal. It has been observed that the actual party (i.e. importer) never came forward, which gives rise to suspicion that the importer and exporter were same or they were active in collusion. It has also been observed by the Hon'ble Court that the licence, against which the import took place, was found to contain forgery.

7. We find that the facts of the present case are totally different. The Appellant herein imported the goods under valid EPCG licence issued by the DGFT. Further, the Appellant attended the proceedings in respect of seizure of 25 cars. The appellant also approached before the ld. Settlement Commission to settle the dispute of seizure of 20 cars. The appellant also paid the duty thereon and the ld. Settlement Commission granted immunity from penalty, fine and prosecution. Thus, the case of Grand Prime Ltd., (supra) is not applicable in the present case. The Hon'ble Supreme Court in the case of Union of India vs. Sampat Raj Dugar – 1992 (58) ELT 163 (SC) held that the goods were covered by the valid import licence at the time of import and licence cancelled later, importer was not paying for the goods and abandoning them, exporter continues to be the owner of the goods and entitled to ask for their re-export unless proved to be a party to fraud. In the case of Titan Medical Systems Pvt. Ltd., vs. Collector of Customs, New Delhi -2003 (151) ELT 254 (SC), the Hon'ble Supreme Court held that once advance licence was issued and not questioned by the licensing authority, the Customs Authorities cannot refuse exemption on an allegation that there was any mis-representation. If there was any mis-representation, it was for the licensing

authority to take steps in that behalf.

8. In view of the above discussions, we are unable to accept the confiscation of 6 cars, covered by a valid licence at the time of import, which are lying with the Customs Department and no Bill of Entry was filed. We find that the impugned order is not sustainable and it is set aside. Accordingly, both the appeals are allowed with consequential relief.

[Dictated and pronounced in the open Court]

[M. Veeraiyan]
Member [Technical]

[P.K. Das]
Member [Judicial]

Ckp