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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/573 /2005 Date 20/08/2008

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

To :
THE COMMISSIONER OF CUSTOMS, NEW DELHI
NEW CUSTOMS HOUSE, NEAR IGI AIRPORT, NEW DELHI

THE COMMISSIONER OF CUSTOMS, NEW DELHI Appellant
Vs
M/S SOM DUTT BUILDERS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/312/08 dated 12.8.08

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
   M/S SOM DUTT BUILDERS LTD
   56-58, COMMUNITY CENTRE, EAST OF KAILASH, NEW DELHI
2. Adv. / Consult S.K. Pahwa,D-75,Amar Colony,
   Lajpat Nagar IV, N.Delhi
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 Delhi -
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 60017
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 - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Customs Appeal No. 573 of 2005

[Arising out of Order-in-Appeal No. 122-R/2005 dated 12.5.2005 passed by the Commissioner of Customs (I&G), New Delhi]

Date of Hearing/ decision: 12.08.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CC, New Delhi — Appellant

Vs.

M/s Som Dutt Builders Limited — Respondent

Appearance:

Mr. L.B. Yadav, DR for the Appellant
Mr. S.K. Pahwa, Advocate for the respondent.

CORAM: Mr. Justice S.N. Jha, President
Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No C/312/08

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner 122-R/2005 dated 12.5.2005.

2. Heard both sides.

3. The respondent runs a Hotel industry in Kanpur. They were issued EPCG license applicable to hotel service sector; they imported three Mercedez Benz cars in 2001 totally valued about Rs. 1.1 crore and they were required to meet "export obligation" to the tune of five times value of the imported goods within eight years. The Department issued a show cause notice alleging that they have not shown separate income in foreign exchange attributable to three Mercedez Benz cars imported by them and seeking to demand duty. However, Commissioner after examining the reply and hearing the party came to the conclusion that there was no violation of the conditions of EPCG license. The Department is in appeal against the said order.

4. Learned DR reiterates the grounds of appeal. He draws our specific attention to the fact that the cars have not been registered for use commercial vehicle under the Motor Vehicles Act. They have also not maintained separately the income earned by use of the said cars.

5. Learned Advocate for the respondent submits that their hotel is of five star facility. Mercedez Benz Cars were an added attraction and usable only by affluent guests. Many times the vehicles are used for pick up and drop from and to the Airports and used by the foreign guests as and when they require. They have not maintained any separate records for income for the cars. However, as a service industry, they have more than met the export obligation by earning required foreign exchange. They have already intimated the Customs Department about their fulfilling the export obligation. There was no requirement of registration of the vehicle as a tourist vehicle. Only recently the DGFT vide their Circular No. 7 dated 7.5.2008 has directed that even in respect of cars imported in the past when their export obligation discharge certificate has not been obtained as on 30.6.22008, the vehicles were required to be registered as tourist vehicle by 31.08.2008.

6. We have carefully considered the submissions from both sides. We have not been shown any violation of any specific provision of EXIM Policy and the EPCG licence or violation of any specific condition of the exemption notification governing the imports of car for the service sector. The relevant portion of the Commissioner's finding dropping the proceedings are re-produced below:-

> "25. The principal allegations of the Department are that the importer had stated that the purpose of the import of these cars would be 'service to be provided to hotel, foreign guest in hotel industry'. It has been further alleged that this service should have been provided to foreigners at the hotel in Kanpur. The record of 'Taxi Hire Income' for the period 26.7.01 to 10.1.2003 did not reflect the revenue from the said three imported cars. On this basis it has been alleged that these three Mercedez cars have not been used for the purpose intended. It has additionally being alleged that these cars were registered for private/ personal use with the licensing authority under Motor Vehicle Act and not for commercial use.
>
> 26. Neither the Import Policy nor the Customs Notfn. 49/2000-Cus dated 27.4.2000 lay down the nature of record to be maintained by the licensee in respect of foreign exchange earned from the imported capital goods. It is nowhere provided that details of each journey undertaken or name of foreign guest who used the car or the amount and mode of payment should be recorded. The only requirements are that the required incremental foreign exchange be earned in a specified period and that the imported goods should not be sold or in any way parted with. In any case the Department has not produced any proof that the cars have been used for any other purpose or have been sold. There is nc bar to a car meant for private use being used to transport commercially important guests. In any case foreign guests staying in hotels do not pay separately for travel from Airport to hotel. This is a complementary facility provided by hotel to their guests. In the nature of the hotel industry a major part of their marketing strategy is to interact with major tour group operators who provide bulk business and such interaction is at the convenience of the tour operator and not the hotel which is the buyer.
>
> 27. The importers are required to use imported cars for earning incremental foreign exchange as required under EPCG scheme. The Customs Hotfn. or the Export Import Policy do not prescribe the nature of record to be maintained by the importer. The service provided has been given the freedom to use the imported cars in whatever way he considers best to earn the incremental foreign exchange. The cars have not been sold or in any way alienated to any other person by the importer. Merely because the cars are registered in Delhi and are registered for personal use is not sufficient evidence. The importers have since started maintaining detailed records of foreign exchange earning.
>
> 28. In these circumstances there is no violation of the requirement of the EPCG scheme or the Customs notification. The show cause notice is dropped"

7. We have not been shown any evidence to contradict the above finding on facts by the Commissioner. In these circumstances, the appeal by the Department is rejected.

[Dictated and pronounced in the open Court on 12.08.2008]

(Justice S.N. Jha)
President

[M. Veeraiyan]
Member [Technical]

[Pant]