

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

Appeal No. C/642 /2007-SM[BR]

Date 04/03/2008

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

To :
VANDEEP MINOCHA
MRS. KANCHAN KAUR DHODI, D-78 DEFENCE
COLONY, NEW DELHI-110024

VANDEEP MINOCHA

Appellant

C.C. (ICD) NEW DELHI

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.376 /2008 -SM[BR] dated 29.1.2008 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

K
Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.

2. Adv. / Consult

MR.KANCHAN KAUR DHIDI
D-78, DEFENCE COLONY, NEW DELHI-110024

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

K
Assistant Registrar
(SM Appeal Branch)

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

Customs Appeal No.642 of 2007-SM (BR)

[Arising out of order in appeal No.38/07 dated 27.08.2007 passed by the
Commissioner of Customs, New Delhi]

Date of Hearing/ Decision:29.1.2008

For approval and signature:

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

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- | | | |
|--|---|---|
| 1. Whether Press Reporters may be allowed to see
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982. | : | } |
| 2. Whether it should be released under Rule 27 of the
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not? | : | |
| 3. Whether Their Lordships wish to see the fair copy
of the Order? | : | |
| 4. Whether Order is to be circulated to the Departmental
authorities? | : | |
-

Shri Vandeeep Minocha

...Appellants
[Rep. by Ms. Kanchan Kaur, Advocate.]

Vs.

CC, New Delhi

Respondent
[Rep. by Mr. A.K. Rastogi, DR.]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 376/02-SM (BR) Dated: 29.1.2008

Per P.K. Das:

Heard both sides and perused the records.

2. The appellant filed this appeal against confiscation of "Brand New Car Right Hand Drive Toyota Lexus LS 460", imposition of redemption fine and penalty. The allegation is that the Type Approval Certificate TS COP of the International Accredited Agency as notified under Policy Circular No.26 dated 9.2.2004 is not available. The adjudicating authority confiscated the car under Section 111 (d) of Customs Act, 1962 with option to redeem the same on payment of redemption fine of Rs.4,00,000/- and penalty of Rs.2,00,000/-.

3. It is seen that this Tribunal on the identical issue vide Final order No.1840-1841/2007-SM (BR) dated 26.12.2007 set aside the impugned orders and allowed the appeals in the case of Shri J.S. Gujral Vs. Commissioner of Customs. The relevant portion of the said order is reproduced below:-

4. Learned Counsel has drawn my attention to the decisions of this Tribunal in the case of Althaf Shoes Pvt. Ltd. Vs. CC (Im.), JCH, Nhava Sheva reported in 2005 (188) ELT 504 (Tribunal-Mumbai), which has been followed in the case of M/s. Metro Palace Hotel Pvt. Ltd. Vs. CC (Imports), Mumbai-II, Final Order No.A/294/IV/SMC/WZB/2006 dated 16.1.2006, both relating to import of vehicles. In the case of Althaf Shoes Pvt. Ltd. (supra) it has been held that liability to produce the Homologation Certificate in terms of ITC Public Notice 4 (RE-2001)1997-2002 dated 31.3.2001 provided for import of new car, shall be upon the dealer and not upon the importer. In the case of M/s. Metro Palace Hotel Pvt. Ltd. (supra), the same view has been reiterated and that the benefit has been extended even in the absence of homologation certificate.

5. In the ratio of the above orders and noting that the importer has been asked to fulfill the condition which is impossible for him to fulfill, namely, procuring Type Approval Certificate from the International Accredited Agency which has declined to issue the certificate for the reasons stated in its reply on 7.2.2007, I hold that the confiscation and penalty are not sustainable and hence, set aside the impugned orders and allow the appeals with consequential relief, if any, due to the appellants, in accordance with the law.
4. Respectfully following the decision of the Tribunal in the case of Shri J.S. Gujral (supra), I set aside the impugned order and the appeal is allowed with consequential relief.

(Order dictated & pronounced in open court on 29.1.2008.)

(P.K. Das)
Member (Judicial)

Ckp.