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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/160 /2008-SM[BR] Date 25/08/2008

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

To :
M/S TRINETRA OVERSEAS

5989/1, SAYAM KUTIR,
1ST FLOOR, BLOCK NO-3,
DEV NAGAR, KAROL BAGH,
NEW DELHI-110005

M/S TRINETRA OVERSEAS Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1186 /2008 –SM[BR] dated 11.4.2008

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

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. 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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH NEW DELHI

Customs Appeal No.160 of 2008-SM (BR)

[Arising out of common Order-in-Original No.5/08 dated 23.1.2008 passed by the Commissioner of Central Excise (Appeals), New Delhi]

Date of Hearing/ Decision:11.04.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? :

NO

...Appellants

M/s. Trinetra Overseas ...Appellants

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

Vs.

CC, New Delhi ...Respondent

[Rep. by Shri B.S. Suhag, DR]

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

Final Order No. 1186/2008 SM (BR)/Dated:11.4.2008

Per P.K. Das:

The Appellant filed this appeal against confiscation of imported "Brand New Car Toyota Lexus SC-430 Right Hand Drive" under Section 111 (d) of

Customs Act 1962 with option to redeem the same on payment of redemption fine of Rs. 4 Lakhs and penalty of Rs.1,50,000/- under Section 112 (a)(i) of the Customs Act, 1962.

2. As per provisions of Para-2 (ii) (c) (i) of the Import Licensing Notes to Chapter 87 of the ITC (HS), the Type Approval Certificate needs to be issued from an agency in the country of origin. It has been alleged that the Appellants imported the car and failed to comply with the above provisions.

3. The learned Advocate submits that on identical issue, the Tribunal in the case of Shri J.S. Gujral & Another Vs. CC, New Delhi by Final Order No.1840-1841/07-SM (BR) dated 26.12.2007 set aside the confiscation of the car. She drew the attention of the Bench to letter dated 7th February, 2007 whereby it is stated that the Japanese Government does not issue a certificate as required under the said provisions. She also submits that the Appellants submitted Type Approval Certificate issued by the Test Agency Service Public Federal, Belgium.

4. The learned DR on behalf of the Revenue reiterates the findings of the Commissioner. He submits that it is admitted position that the Appellants failed to comply with the conditions of the Policy and the confiscation of car is justified.

5. After hearing both the sides and on perusal of the records, I find that the present case is covered by the decision of the Tribunal in the case of Shri J.S. Gujral & Another (supra). The relevant portion of the said decision is reproduced below:-

2. I have heard both the sides and perused the records. I find that both the importers had applied to the International Accredited Agency, namely, Ministry of Land, Infrastructure and Transport, Tokyo, Japan, which was the specified International Accredited Agency as seen from at S.No. 313 of Policy Circular No.26 (RE-2003)/2002-2007 dated 9.2.04 issued in pursuance of Department of Commerce Notification No.34 dated 9.2.2004 for issue of requisite certificate. A letter by Shri J.S. Gujral was written on 7.3.07 and reminder sent on 30.4.07 and Shri M.P.S. Gujral wrote to the Accredited Agency on 15.1.07. The Ministry of Land, Infrastructure and Transport, *Tokyo, Japan replied to Shri M.P.S.* Gujral on 7.2.07 that :

> "Japan has its own system of law and regulations related to motor vehicles. We, the Ministry of Land, Infrastructure and Transport, judge if motor vehicles comply with all the Japanese technical standards concerning safety, environment, etc. and grant type designation or type approval for those motor vehicles. Please note that not all the Japanese technical regulations harmonize with the ECE regulations. This means that only a part of the Japanese technical regulations harmonize with the ECE regulations. Therefore, the Japanese government doesn't issue a certificate which states that a motor vehicle complies with all ECE regulations. For this reason, we regret to inform you that we can't provide you with the documents you requested for.
>
> As we are not familiar with the Indian customs clearance system, it's difficult for us to give you advice regarding this matter. We are very sorry that we can't meet your request."

3. In the case of Shri J.S. Gujral, there was no response from the agency. The import of Shri J.S. Gujral was on 17.5.07 while import of Shri M.P.S.Gujral was on 23.3.07. Both importers had filed bill of entry only after applying to the International Accredited Agency and only after the Agency had replied that they would not be in a position to issue certificate (replied to Shri M.P.S.Gujral). In this situation, the question is only as to whether the importer can be asked to do the impossible. It is well settled maxim that law cannot ask the person to do impossible – '*lex non cogit ad impossibilia*'.

4. Learned Counsel has drawn my attention to the decisions of this Tribunal in the case of Althaf Shoes Pvt. Ltd. vs. CC (Imp),JCH, Nhava Sheva reported in 2005 (188) ELT 504 (Tri- Mum) 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 16.1.06, 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 31.3.01 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 7.2.07, 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.

6. In the present case, the Appellant imported the car from Japan. Ld. Advocate produced the similar evidences as recorded in the above decision. Respectfully following the decision of the Tribunal in the case of J.S. Gujral & Another (supra), the impugned order is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 11.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.