TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/482 - 483 / 2008 -SM[BR] Date 26/08/2008

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

To :
MR. JASPREET SINGH JOLLY
KL 6/3E, BLDG NO.2,FLAT NO.1,
P.O.ROAD,KALAMBOLI, NEW MUMBAI-410218.

[2]MR. M. S. RAKSHA RAM GOPAL HOUSE,
GOKUL EXTN, MSR ROAD, BANGALORE- 540054
KARNATAKA.

MR. JASPREET SINGH JOLLY Appellant
Vs
C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1197 – 1198/ 2008-SM [BR] dated 22.8.2008 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
(SM Appeal Branch)

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

Customs Appeals Nos.482-483/08-SM (DR)

[Arising out of Order-in-Original No.24/2008 dated 19.03.2008 and Order-in-Original No.25/2008 dated 19.3.2008, both passed by the Commissioner of Customs, New Delhi]

Date of Hearing/ Decision: 23.07.08
Date of Decision: 22.8.08

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.		No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
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. Mr. Jaspreet Singh Jolly
2. Mr.M.S. Raksha ...Appellants
[Rep. by Ms. Kanchan Kaur, Advocate]

Vs.

CC, New Delhi ...Respondent
[Rep. by Shri Sumit Kumar, DR]

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

Final Order No. 1197-1198/08 SM(BR) /Dated:

Per P.K. Das:

Common issue is involved in both the appeals and, therefore, both the appeals are taken up together for disposal.

2. The relevant facts of the case, as on record, in brief, are that both the Appellants imported one Unit "Brand New Car HUMMER H2, Right Hand Drive" each from Dollar Auto Works, Dubai, U.A.E. It has been alleged that the Appellants failed to fulfil certain conditions as laid down in the Import Licensing Note of Para 2 (II) (a) (iv) and Para2 (II) (c) of ITC (HS) Policy. The Commissioner of Customs ordered confiscation of the cars under Section 111(d) of Customs Act, 1962 and imposed redemption fine of Rs.5,50,000/- and penalty of Rs.2,25,000/- under Section 112 (a) (i) of the said Act in each appeal.

3. Ld. Advocate submits that the Adjudicating Authority observed that the Appellants had not furnished "Type Approval Certificate –COP" from International Accredited Agency notified vide Policy Circular No.26 dated 9.2.2004. She submits that the Circular No.26 dated 9.2.2004 does not indicate the country of manufacture of the vehicle of USA and, therefore, the allegation is without any basis. She submits that the Appellants furnished the certificate from the manufacturer of the vehicle. Regarding violation of Para 2 (II) (a) (iv) of the Import Licensing Note to Chapter 87 of Policy, she drew the attention of the Bench to the sale invoice of the supplier. It is contended that the shipment was originated from USA and transmitted at Gulf and Thailand for final destination and there is no violation of the Policy. She submits that there is no violation of the Policy and the Appellants imported the goods in a bona fide

manner and, therefore, confiscation, imposition of redemption fine and penalty are not warranted.

4. Ld. DR on behalf of the Revenue reiterates the findings of the Adjudicating Authority. He submits that if the Circular No.26 dated 9.2.2004 does not indicate the country of manufacture of vehicle of USA, the Appellant should have taken the advice from DGFT for the purpose of observing the procedure. He further submits that it is revealed from the Bill of Lading that the Vehicle was imported from Thailand, which is clear violation of the Policy. In this connection, he drew the attention of the Bench to the relevant portion of the Policy. He also relied upon the decision of the Tribunal.

5. After hearing both the sides and on perusal of the records, it is seen that Notification No.34/(RE-2003)/2002-2007 dated 9.2.2004 issued by Ministry of Commerce and Industry provides import of new vehicles in terms of para 2 (II) (c) of the Licensing note of Chapter 87 of ITC (HS) Policy, at the time of customs clearance, a Type Approval Certificate/COP of an international agency from the country of origin, including a notorized English thereof, shall be furnished. This Type Approval Certificate shall stipulate that the vehicle to be imported complies with all the ECE Regulations for the complete vehicle. The international accredited agencies will be notified separately. In terms of the said Notification No.34/(RE-2003)/2002-2007 dated 9.2.2004,

Ministry of Commerce & Industry issued Policy Circular No.26/(RE-2003)/2002-2007 dated 9.2.2004.

6. The contention of the ld. Advocate is that in this case, the country of manufacturer is U.S.A., which is not mentioned in Policy Circular No.26 dated 9.2.2004. The ld. DR had not disputed this fact. The ld. DR contended that as per Foreign Trade Policy (2004-2009), Para 9.6 of Chapter-9, the Appellant should have request seeking clarification on any provisions of importability of items issued I.T.C. (HS) may be made to DGFT. I do not find force in the submission of the ld. DR. It has been alleged that the Appellant failed to produce Type Approval Certificate/COP of accredited agency as notified under Policy Circular No.26 dated 9.2.2004. The country of manufacturer U.S.A. is not mentioned in the said Circular and, therefore, the allegation falls through. The ld. Advocate contended that the manufacturers of the Motor vehicles in USA followed a system of Self-Certification of Vehicles. The appellant submitted copy of Conformity of Production (COP) issued by the manufacturer General Motor Corporation, U.S.A., certified the conformity the Vehicle Hummer H2 met. The Tribunal in the case of Shri J.S. Gujratl & Another Vs. Commissioner of Customs, New Delhi, vide Order No.1840-1841/07-SM (BR) dated 26.12.2007 held as under:-

> "5. In the ratio of the above orders and noting that the importer has been asked to fulfil the condition which is impossible for him to fulfil, 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 law."

Hence, the allegation of violation of Para-2 (II) (C) of Licensing Note read with Policy Circular No.26 dated 9.2.2004 is not maintainable and it is set aside.

7. Regarding the violation of Para-2 (II) (a) (iv) of the Licensing Note of Chapter 87 of the ITC (HS) Policy, which provides that the vehicle shall be imported from the country of manufacture. It is revealed from the Bill of Lading that the vehicle was loaded at Thailand. There is no evidence produced by the Appellants that the vehicles were imported from USA. So, the confiscation of the vehicles on this ground is justified.

8. In view of the above discussions, it is held that confiscation of the vehicles for violation of Para 2 (II)(a) (iv) of the import Licensing Note to Chapter 87 of the ITC (HS) Policy is upheld. Considering the facts and circumstances of the case, the redemption fine and penalty are reduced to Rs.2,00,000.00 and Rs.1,00,000.00 respectively in each appeal. Both the appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 22/8/2008

(P.K. Das)
Member (Judicial)

Ckp.