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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/272 /2008 – SM [BR] C/ STAY /806/20083 Date 12/12/2008

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

To :
SH SANJAY DUTT
S/O LATE SHRI SUNIL DUTT, 1101, 11TH FLOOR,
IMPERIAL HERITAGE, NARGIS DUTT ROAD, PALI
HILL, BANDRA(W] MUMBAI
SH SANJAY DUTT Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1595 /2008- **SM[BR]&S/650/08** dated 18.8.2008 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.C. SUBBA REDDY, ADVOCATE
D-312 A, KAILASH INDUSTRIAL COMPLEX, VEER SAVARKAR ROAD OFF L.B.S.MARG, VIKHROLI(WEST), MUMBAI400079
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
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

Court- IV

Date of hearing: 18.8.2008

C/Stay/806/2008-SM(BR)
C/Appeal No.272/2008-SM(BR)

(Arising out of Order-in-Original No. 59/2007 arising from F.No. VIII(ICD)6/AUI/TKD/07/08 dated 27.12.2007 passed by the Commissioner of Customs ICD Tughalakabad, New Delhi.)

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? Yes

No

Shri Sanjay Dutt S/o Late Shri Sunil Dutt Appellant/Applicant
(Rep. by Mr. C. Subba Reddy, Advocate)

Vs.

C.C. (ICD), New Delhi Respondent
(Rep. by Shri Sansar Chand, DR)

Coram: Hon'ble Mr. P.K. Das, Member (Judicial)
Stay order No. 650/08-SM (DB)
Final Order No. 1595/08 - SM (BR)

Per: P.K. Das

After hearing both the sides and on perusal of the records, it is seen that the issue involved in this case is in narrow compass and, therefore, after granting stay, the appeal is taken-up for hearing.

2. The Appellant filed this appeal against the imposition of penalty of Rs. 5,00,000.00 under Section 112(b) of the Customs Act, 1962.

3. The relevant facts of the case, in brief, are that M/s Vacation Travels and Tours (P) Ltd., New Delhi imported several cars by paying concessional rate of Customs duty of 5% adv. under Export Promotion Capital Goods (i.e. EPCG) Scheme. It has found that the said company was not using the imported cars for the purpose of rendering the tour and travel services and transported the cars to the individuals/companies for their personal use and violating the "actual user" condition and evading huge amount of Customs duty.

DRI Officers found one of the imported car Porsche Cayenne S/9 car bearing registration No. DL 2FAC 9000 from the premises of the appellant and duly seized by them. The Commissioner of Customs, in the impugned order, imposed penalty of Rs. 5,00,000.00 on the appellant. The finding of the Commissioner is that the appellant had full knowledge of the fact that Porsche car used by him imported under EPCG Scheme and he rendered himself liable to a penalty such section 112 (b) of Customs Act, 1962.

4. Ld. Advocate on behalf of the appellant submits that the appellant used the car in terms of hire-purchase agreement and paid Rs. 30 Lakhs by demand draft to M/s Vacation Tours & Travels (P) Ltd. The appellant in his statement dated 18.11.2005, stated that he was never told anything about EPCG Scheme. The main contention of the ld. Advocate is that the impugned order was passed without giving proper opportunity of hearing. In this regard, the ld. Advocate drew the attention of the Bench the relevant portion of the order, as under :-

> "Personal hearing in the case was fixed for 28.11.2007. The noticee or his Advocate did not

appear for personal hearing. The advocate vide his letter dated 26.11.2007 stated that they may be supplied with the correspondences made by the DRI during the investigations and responses received from DGFT by DRI; and that only after receipt of these documents his client would be in a position to make a reasonable and effective representation against the charges contained in the show cause."

5. Ld. D.R. on behalf of the Revenue re-iterates the finding of the Commissioner. He submits that in this case other co-noticees settled their case before the Settlement Commission. He also submits that documents requested by the appellant have not been relied upon in show cause notice. The appellant adopted dilatory tactics to delay the proceeding.

6. After hearing both the sides and on perusal of records, it is seen that the Appellant requested for the copy of the documents in connection with the proceedings. It is also noted that the hearing was fixed on one occasion and the Appellant requested to provide the documents. No further opportunity of personal hearing was

granted. The essence of justice is that fair hearing must be given to the parties to state their case and view. Fairness is a flexible, pragmatic and relative concept, not a rigid and ritualistic. In the instant case, the appellant by letter dated 26.11.2007 requested to supply documents. So, the Commissioner should have informed the rejection of request to the appellant before decision.

7. Accordingly, the impugned order is set-aside and the matter is remanded back to Adjudicating Authority to decide afresh after giving proper opportunity of hearing in accordance with law. The appeal is allowed by way of remand.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta