

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

Appeal No. C/118 /2006-119 /2006 - CU[DB]

Date 12/01/2009

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

To :
M/S. AIR TRAVEL BUREAU LIMITED.
M-95, CONNAUGHT CIRCUS, NEW DELHI
110001

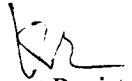
M/S. AIR TRAVEL BUREAU LIMITED.

THE COMMISSIONER OF CUSTOMS

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/03-04** 2009 CU[DB] dated 16.12.08

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

THE COMMISSIONER OF CUSTOMS

INLAND CONTAINER DEPOT, TUGHLAKABAD, NEW DELHI

2. Adv. / Consult

MR.V K AGGARWAL

B-82, LAJPAT NAGAR, PART-2, 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 Publications (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.)

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10 Nidheshak publications, I.P.Estate, new Delhi

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12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava 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-15

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Assistant Registrar
(Customs Appeal Branch)

SUNIL NARIAN, MANAGING DIRECTOR

M/S. AIR TRAVEL BUREAU LIMITED M-95, CONNAUGHT
CIRCUS, NEW DELHI

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

Customs Appeal No. 118-119 of 2006

[Arising out of Order-in-Original No. 09/ 2006 dated 31.1.2006
passed by Commissioner of Customs, New Delhi]

For approval and signature:

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

-
1. Whether Press Reporters may be allowed to see : *NO*
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?
 2. Whether it should be released under Rule 27: *Yes*
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not?
 3. Whether Their Lordships wish to see the fair : *Seen*
copy of the Order?
 4. Whether Order is to be circulated to the : *Yes*
Departmental authorities?
-

M/s. AIR Travel Bureau Ltd.
Mr. Sunil Narain, MD

Appellants

Vs.

Commissioner of Customs
New Delhi

Respondent

Appearance:

Mr. Krishan Kant, Advocate for the Appellants
Mr. L.B. Yadav, DR for the Respondent

CORAM:

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

Date of Hearing /Decision: 16.12.2008

Final

ORDER NO. C/3-4/09

Per M. Veeraiyan (for the Bench):

These appeals against the order of the Commissioner No. 09/ 2006 dated 31.1.2006.

2. Heard both sides
3. Relevant facts in brief are as follows:-
 - a) The appellant company obtained EPCG licence in September, 2002 and imported two numbers of BMW cars at concessional rate of duty of 5% basic Customs duty. The EPCG licence was issued for the 'travel agency'. They were required to fulfil the export obligation of about Rs. 2.06 crores.
 - b) The appellant claimed that they have fulfilled the export obligation and the claim was accepted by DGFT authorities vide communication dated 18.3.04.
 - c) Subsequently on 16.8.04, DRI seized the cars and show cause notice dated 15.2.05 was issued proposing confiscation of the cars and proposing to recover duty foregone on the ground that the conditions of notification as well as conditions of EPCG licence had been violated. The show cause notice makes reference to communication sent to DGFT authorities by the Customs authorities for violation of EXIM policy.
 - d) In pursuance of the show cause notice, Commissioner confiscated the two cars and allowed the same to be redeemed on payment of fine of Rs. 6 lakhs; demanded duty of Rs. 46,76,805/- along with interest. He also imposed a penalty of Rs. 15 lakhs on the appellant company and penalty of Rs. 5

lakhs on the Managing Director of the appellant company who is the other appellant before us.

4.1 Learned advocate for the appellants made the following submissions:

- a) The EPCG licence has been issued for tours and travel purposes; the appellant have utilised the cars imported only for the intended purposes; these cars were added attraction for the foreign tourists to come to India and the appellant rendered the services of arranging /booking tickets, accommodation, site-seeing, and booking train tickets etc.; but for these services rendered by the appellant incremental foreign exchange earnings could not have been achieved.
- b) DGFT authorities have accepted the contention and redeemed the EPCG licence in March, 2004 itself. There has been no proceedings from the DGFT authorities for any violation of EXIM Policy or conditions of EPCG licence. The contention of the department that the value of tax and commission received for hosts of associated services are not to be included as fulfilment of the export obligation attributable to the imported cars under EPCG licence is not acceptable as the views of the DGFT authorities are totally contrary to the claim of the Department.
- c) As per the EXIM policy (para 5.4 of EXIM policy), earnings on export of services from the date of issue of licence can be taken into account for the purposes of fulfilling export obligation. The manner of fulfilling export obligation as prescribed in para 5.4 of EXIM policy within a period of 8 years from the date of issue of licence has been incorporated as one of the conditions in the notification itself.
- d) He therefore submits that the goods have been used only for the intended purposes and that the export obligation has been fulfilled

strictly in terms of said policy and the same have been accepted by the DGFT authorities.

4.2 In support of his submissions, he relied on the Final Order No. C/312/08 dated 12.8.08 of the Tribunal in Customs Appeal No. 573/05 in the case of Somdutt Builders Ltd. and the decisions in the case of the Ginni International Ltd. vs. CCE, Jaipur [2002 (139) ELT 174 (Tri-Delhi)] and in the case of Raja Imports and Exports vs. Collector of Customs, Bombay [2000 (119) ELT 346 (Tri)].

4.3. He also relied on the circular dated 27.12.06 of the DGFT relating to import of cars and EPCG Scheme, wherein it was clarified that the earning in providing hotel accommodation, sale of food and beverages apart from tours should be considered towards discharge of export obligation against vehicles imported under EPCG scheme.

5.1. Learned DR reiterated the findings of the Commissioner and submitted that the appellant has not produced any documents to substantiate that the imported cars have been used for earning foreign exchange as claimed by them.

5.2. He also relied upon the following decisions:-

- (1) M/s. Interglobe Enterprises vs. UOI
[2006 (203) ELT 202 (HC Delhi)]
- (2) CCE Trichy vs. Rukmani Packwel
[2004 (165) ELT 481 (SC)]

5.3. He also submitted that the decision in the case of Somdutt Builders Ltd. relates to notification No. 49/2000-Cus dated 27.4.2000 whereas present case involves the notification No. 44/2000 dated 19.4.2000.

6.1 We have carefully considered the submissions from both the sides. Relevant portion of the exemption notification governing the import under EPCG is reproduced below:-

“ In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table annexed hereto from **so much of the duty of customs** leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) **as is in excess of the amount calculated at the rate of five percent ad valorem** and from the **whole of the additional duty and special additional duty** leviable thereon respectively under Section 3 and 3A of the said Customs Tariff Act.

2. The exemption contained in above paragraph, shall be subject to the following conditions, namely:-

(1) the goods imported are covered by a valid licence issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Export and Import Policy permitting import of goods at the rate of five percent duty and the said licence is produced for debit by the proper officer of the customs at the time of clearance:

Provided that for the import of spare parts, the validity period of the license shall be deemed to be the period permitted for fulfilment of the export obligation in full;

(2) the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binding himself to fulfil export obligation equivalent to five times the CIF value of the goods imported on FOB basis, as specified in the licence, or for such higher amount as may be fixed by the Licensing Authority or for such amount as may be fixed by the Licensing Authority **in terms of clause (i) of Paragraph 5.4 of the Export and Import Policy, 2002-2007, within a period of eight years from the date of issue of licence**, in the following proportions, namely:-

.....

Provided that where the CIF value of licence is not less than Rs.100 crores or where the license is issued to Units in the agri export zones as may be notified by the Director General of Foreign Trade in the Ministry of Commerce and Industry, the export obligation shall be

fulfilled **within a period of 12 years from the date of issue of licence** in the following proportions, namely-

.....

Provided further that where a sick unit notified by the Board for Industrial and Financial Reconstruction (BIF) is subsequently taken over by another unit for revival, the export obligation may be fulfilled within a period of 12 years **from the date of issue of license**:

Provided also that the export obligation of particular block may be set off against the excess exports made in the said preceding block(s);

“Export obligation”,-

- (i) in relation to importers other than those rendering services, means export, to a place outside India, of products manufactured with the use of capital goods imported, assembled or manufactured in terms of this notification:

Provided that export obligation may also be fulfilled by

- (a) export of same product capable of being manufactured with the use of said capital goods; or
- (b) export of same product manufactured in different units of the licence holder; or
- (c) through third party exports made by an exporter or manufacturer on behalf of the licence holder by exporting the same product and in such cases, *inter alia* the Shipping bills shall indicate name of both the third party and the licence holder; or
- (d) Making supplies of same product in terms of sub paras (a) (b) (d) (e) (f) (g) (h) (i) and (j) of paragraph 8.2 of the Export and Import Policy;”

6.2 Learned DR contended that the goods should have been used and export earnings should be attributed to direct use of the goods imported under EPCG licence. We find that the Notification specifically envisages that the export obligation shall be fulfilled in terms of para 5.4 of EXIM Policy 2002-2007.

6.3 We find that the Customs authorities have taken up the matter with the DGFT expressing their views that there is violation of EXIM Policy provisions and it appears that the said view has not been accepted by them.

According to the appellant, not only the DGFT had not accepted the view of the Customs Department but they have also redeemed the EPCG licence after certifying that they have fulfilled the export obligation as prescribed.

6.4 We agree with the contention of the learned DR that the Customs authorities are empowered to look into the compliance of the conditions of the notification independently. However we, in the present case, find that the notification has a link to provisions of the EXIM policy and the understanding of the DGFT authorities on the said provisions cannot be brushed aside without valid reasons.

6.5 Further, we have not been shown that the imported vehicles have been used for any purpose other than those related to travel and tour as stipulated in the EPCG licence. Further, the term tour and travel is a very wide term and it cannot be said that EPCG licence envisaged only the amounts collected by use of imported cars to be accounted towards export obligation under the said licence. If that was the intention, the licence could have been worded entirely differently.

6.6 The submission that even the export earnings from the date of issue of the licence till the date of import of the cars are also to be taken into account for the purpose of computing the export obligation is a debatable point. The export obligation as per the EXIM policy refers to one which is fulfilled using the goods imported. However, a submission was made that the value of export earnings from the date of import of cars are also substantially higher and the same fully covers the export obligation as stipulated under EXIM Policy / EPCG licence. It is also submitted that the said cars are still

being used for the purpose for which they have been imported. Under these circumstances, in so far as this case is concerned, the issue as to whether the export obligation has to be reckoned from the date of issue of licence may be academic in nature.

7. We therefore do not find justification to sustain the order of the Commissioner and, therefore, set aside the same and allow the appeals with consequential relief.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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