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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/176 /2010 – SM[BR] Date 30/06/2011

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

To :
MR. T S KALYANARAMAN
294, KALYAN EXTENSION, PUNKUNNAM TRICHUR,
KERALA.

MR. T S KALYANARAMAN Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of Final order No. 364/2011-SM[BR] dated 26.4.2011 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.

18-7-11
ISSUED ON

2. Adv. / Consult
MR.P.A.AUGUSTIAN,ADV
FAIZEL CHAMBERS,PULLEPADY CROSS ROAD,COCHIN-682018

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street. T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd. 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Customs Appeal No. 176 of 2010 (SM)

[Arising out of the Order-in-Original No. 05/10 dated 21/01/2010 passed by The Commissioner of ICD, TKD, New Delhi.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities?	:

T.S. Kalyanaraman Appellant

Versus

CCE, ICD, New Delhi Respondent

Appearance

Shri P.A. Augustin, Advocate – for the respondent.

Ms. Rim Jhim Prasad, Authorized Representative (SDR) – for the appellant.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 28/04/2011.

Final Order No. 364/2011 SM (BR) Dated :

Per. Rakesh Kumar :-

For import of a new car, "type approval certificate/COP" of an international accredited agency from the country of origin or an "EC type approval certificate/certificate of COP", of an accredited agency from any member state of European Union, including a notarized English translation thereof, is required to be furnished by the importer and this approval stipulates that the vehicle imported complies with all the ECE regulations for the complete vehicle. The accredited agencies have been notified vide Policy Circular No. 26 dated 9/2/2004. As per the Policy Circular dated 9/2/04, the accredited agency in case of import of car from Japan was the "Ministry of Land, Infrastructure and Transport". The appellant in this case, in respect of import of car from Japan, did not produce the required type approval certificate pleading that in spite of efforts they could not get the same. The Jurisdictional Commissioner vide order-in-original dated 09/10/07 ordered confiscation of the car under order A.O. No. 46/07 with option to be redeemed on payment of redemption fine of Rs. 3,50,000/-. The Adjudicating Authority also imposed penalty of Rs. 1,80,000/- under Section 112 (a). The appellant filed an appeal to Tribunal against the Commissioner's order on the ground that in a similar case of import of car from Japan, the same customs house had allowed its clearance without fine or penalty ~~though~~, pleading that Hon'ble Delhi High Court in the case of **CC, New Delhi vs. J.S. Gujral** reported in **2009 (235) E.L.T. 414 (Del.)**, where a car had been imported from Japan and the required certificate from the accredited agency for Japan could not be produced, has held that since the importer had applied to the accredited agency of Japan for issue of the type approval certificate and the accredited agency declined to issue such certificate, the condition of production of the type approval certificate/COP from the accredited agency cannot be insisted. The Tribunal vide final No. 53/09 – SM (BR) dated 7/1/09 set aside the Commissioner's order and remanded the matter for denovo adjudication in the light of Hon'ble Delhi High Court's judgment in the case of **CC, New Delhi vs. J.S. Gujral** (supra). Matter was adjudicated denovo vide order-in-original dated 21/1/10 by which distinguishing the appellant's case from the case of J.S. Gujral, the Commissioner again ordered confiscation of the car with option to redeem on fine of Rs. 2,00,000/- and beside this, penalty of Rs. 50,000/- was imposed. The Commissioner while ordering confiscation observed that while in the case of J.S. Gujral, the importer had applied to the accredited agency in Japan prior to the import but they had declined to issue such a certificate, in the present case, the records do not show that the appellant had applied to the Accredited Agency for the type approval certificate and agency had declined to issue the same. Against this order of the Commissioner, this appeal has been filed.

2. Heard both the sides.

2.1 Shri P.A. Augustian, Advocate, the learned Counsel for the appellant, pleaded that the ratio of Hon'ble Delhi High Court in the case of **CC, New Delhi vs. J.S. Gujral** (supra) is that when in the case of import of cars from Japan as per the JGFT Policy Circular, the accredited agency for issue of the required certificate is Ministry of Land, Infrastructure and Transport, Japan and the Ministry of Land, Infrastructure and Transport in Japan had declined to issue such a certificate stating that it does not issue a certificate which states that motor vehicle complies with all the ECE certificate and thus, when in case of import of cars from Japan, the condition of production of the type approval certificate from the Accredited agency cannot be fulfilled, the same cannot be insisted, that this ratio of Hon'ble Delhi High court in the case of J.S. Gujral is applicable to the present case also, as in this case also the import is from Japan and the accredited agency would not issue the certificate even if an application is made in this regard, that this judgment of Hon'ble Delhi High Court has been followed by Hon'ble Kerala High Court in the case of **CC, Cochin vs. Sri Ankineedu Manganti** (Customs appeal No. 11 of 2010) decided on 28/5/10, that since the condition of producing the type approval certificate/COP from the accredited agency from Japan cannot be fulfilled, in accordance with the Hon'ble Delhi High Court's judgment, the import of the car should have been allowed without imposing any fine and penalty and it is not material as to whether the appellant had applied to the accredited agency prior to the import or not and that in view of this, the impugned order is not correct.

2.2 Mrs. Rimjhim Prasad, the learned Departmental Representative defended the impugned order by reiterating the Commissioner findings and emphasized that in this case no evidence has been produced by the importer that he had applied to the Accredited agency in Japan for issue of the issue of type certificate/COP, that judgment of Hon'ble Delhi High Court in the case of J.S. Gujral would have been applicable only if that by the importer had applied to the accredited agency and that agency had declined, while in this case there is no evidence and in view of this the car has been correctly confiscated and the redemption fine has been correctly imposed. She also pleaded that the facts of the other two cases decided by Hon'ble Kerala High Court and Hon'ble Madras High Court are also different.

3. I have carefully considered the submissions from the Departmental Representative and perused the records.

4. In terms of the Exim Policy for import of new car, the importer at the time of custom clearance, is required to produce a type approved certificate/COP issued by international accredited agency from the country of origin or EC type certificate/certificate of COP, of an accredited agency from any member state of European Union, including a notarized English translation thereof, and that this type approval certificate must stipulate that the vehicle to be imported complies with all the ECE Regulations for the complete vehicle. The accredited agencies have been notified vide policy Circular No. 26/06 dated 9/2/2004. In this case the car had been imported from Japan and the accredited agency for issuing the type approval certificate/COP, as per the DGFT's Circular dated 9/2/04 is the Ministry of Land, Infrastructure and Transport, Japan. In the case of **CC, New Delhi vs. J.S. Gujral** (supra) decided by Hon'ble Delhi High Court where the car had been imported from Japan and the importer had applied to the accredited agency i.e. Ministry of

Land, Infrastructure and Transport, Japan for issue of the type approval certificate/COP, the agency declining to issue she a certificate had stated as under :-

> "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."

Taking note of the above reply from the Ministry of Land, Infrastructure and Transport, Japan, Hon'ble Delhi High Court observed that in case of import of car from Japan, the condition of producing type approval certificate from the accredited agency certifying that the vehicle complies with all the ECE regulations cannot be fulfilled and following the maxim Lex non-cogit ad impossibilia, which means that the law cannot ask a person to do the impossible, held that in such a case, the condition of production of type approval certificate cannot be insisted and on this basis, set aside the order of confiscation of penalty. I am of the view that the ratio of Hon'ble Delhi High Court, which is jurisdictional High Court in this case, squarely applies to the present case. In view of this, the Commissioner's order confiscating the car and imposing penalty is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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