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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/126 /2010-127 /2010 - CU[DB], C/177, 179/2010 – CU DB   Date **08/03/2011**

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

To :
M/S. ONKAR INTERNATIONAL PVT. LTD.
H-32, CONNAUGHT CIRCUS, NEW DELHI
110001

M/S. ONKAR INTERNATIONAL PVT. LTD. & OTHERS Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

103-106/11

I am directed to transmit herewith a certified copy of **Final order No.C/[redacted] [redacted] CU[DB]** dated 03.03.2011 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
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029
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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

SH JAYANT MALHOTRA,
6, AURANGZEB ROAD, NEW DELHI.

SH. KARAN VIR SINGH, DIRECTOR,
M/S. ONKAR INTERNATIONAL PVT. LTD.
H-32, CONNAUGHT CIRCUS, NEW DELHI

SH AJAY KUMAR GUPTA,
B-112, HILL VIEW, VASANT VIHAR,
NEW DELHI 110 057.

Assistant Registrar
(Customs Appeal Branch)

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

COURT NO. IV

Date of Hearing : 23.2.2011

Custom Appeal No. 126-127 of 2010

[Arising out of the Order-in-Original No. 04/10 dated 21.1.10 passed by The Commissioner of Customs, New Delhi]

For Approval and signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:	Yes
2.	Whether it would 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 Department Authorities?	:	No

M/s Onkar International Pvt. Ltd.
Shri Karn Vir Singh — Appellant

Vs.

CC, New Delhi — Respondent

Custom Appeal No. 177 and 179 of 2010

(Arising out of Order-in-Original No.4/10 dated 21.1.10 passed by the Commissioner of Customs, New Delhi)

Shri Jayant Malhotra
Shri Ajay Kumar Gupta — Appellant

Vs.

CC, New Delhi — Respondent

Appearance :

Appeared for Appellant : Shri B.L. Narasimhan with Sh. Tarun Chawla, Advocates
Appeared for Respondent : Shri K.K. Jaiswal, SDR

Coram:
Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. C/103-106/11 dated 3.3.11

Per Ashok Jindal:

Two appeals are filed by M/s Onkar International Pvt. Ltd. against the order of demand of duty along with interest and imposing penalty and two appeals are filed by Shri Jayant Malhotra and Shri A.K. Gupta ~~for~~ against imposition of penalty under Section 114A of the Customs Act, 1962.

2. The brief facts of the case are that the Appellant M/s Onkar International Pvt. Ltd. imported cars under EPCG Scheme as service provider under the Tour Operator category at concessional rate of duty and were misusing the same, since the said imported cars were not being used for the intended purpose. It was also alleged that the export obligation with respect to two vehicles have been fraudulently fulfilled from the foreign exchange earned from the air ticketing services and even one of the two cars was sold in violation to the conditions as laid down in EPCG Scheme and relevant Customs Notification. Investigation was started. During the course of investigation, the appellants submitted that as they have obtained export obligation discharged certificate from the DGFT, they have not violated the conditions of the notifications, hence the

proceedings may be dropped. But a Show Cause Notice was issued to the appellants for violation of the Foreign Trade Regulation Rules which was adjudicated and demands were confirmed against the main appellant and penalties were imposed on appellants as well as the co appellants. Aggrieved from the said order, the appellants are before us.

3. Ld. Advocate for the appellant submits that after the fulfilment of export obligation, the appellant submits the application for redemption of EPCG licences. The necessary foreign exchange into the remittance service were duly issued by the authorised dealer showing remittance of ~~proceedings~~ proceeds in foreign exchange and same were submitted to the licencing authority. On being satisfied with the fulfilment of export obligation, the licencing authority issued export obligation discharged certificate and after getting the EODC, the Customs Authorities cancelled the Bank guarantee and the said vehicle was sold. In case of second vehicle the DGFT was pleased to drop the Show Cause Notice after being satisfied ~~with~~ that export obligation has been duly discharged by the appellant. He submitted that in respect of both the vehicles in question, the appellants have discharged their export obligation as per the licence issued under EPCG Scheme. Hence the proceedings under the impugned Show Cause Notice are to be quashed. As the EPCG licence were issued correctly and the appellants have discharged the export obligation also correctly. To support his contention he

placed reliance on **Air Travel Bureau Ltd. Vs. CC** reported in 2010 (26)) ELT 78 (Del.).

4. On the other hand, ld. DR reiterated the impugned order.

5. Heard and considered.

6. After going through the submissions made by both the sides, we find that in the impugned matter in hand before ~~use it~~ us is a fact on record that these cars were imported by the appellants under EPCG Scheme and after discharging their export obligation the DGFT has issued (EODC) Export obligation discharged certificate as per EXIM policy. The cases against the appellants have been made out for violation of Custom notification No. 44/2002 and 55/2003. We have gone through the decision of **Air Travel Bureau Ltd.** (supra) wherein the Hon'ble High Court of Delhi has confirmed the decision of this Tribunal reported in 2009 (237) ELT 283 (Tri.-Del.) wherein this Tribunal has held that the assessee have been able to fulfil the obligation under EPCG licence which was the very condition imposed in the said licence by DGFT. DGFT redeemed the licence and has taken a view that the assessee has fulfilled their export obligation. No doubt the opinion of the DGFT would not be conclusive and any such certificate cannot ~~press~~ stop the power of the authority to reopen even a concluded matter, if it is shown that the such conclusion was vitiated by fraud, concealment of facts or misrepresentation or misdeclaration which ~~was~~ is not seen in ~~that~~ this case. Therefore, the matter was decided in favour of the assessee.

Admittedly, in this case also there is no allegation against the appellants that they have obtained export obligation discharge certificate by way of fraud, concealment of facts or mis-representation or mis-declaration. The certificate from DGFT was after verifying the facts that the appellants have fulfilled the conditions of the notification. Hence, following the decision of **Air Travel Bureau Ltd**. (supra), we find that in these matters also the appellants have been able to discharge their export obligation and obtained the certificate from DGFT after following the provisions of law. Accordingly, no case can be made out against the appellant for violation of customs notifications. In view of the above submissions following the decision of **Air Travel Bureau Ltd.** (supra), we set aside the impugned order and allow ~~both the~~ all the four appeals of the appellants with consequential relief.

(Pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)

RM