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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/169 /2011-170 /2011 - CU[DB]

Date 19/10/2011

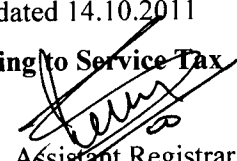
Assistant Registrar
C.E.S.T.A.T, New Delhi

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

Appellant
Vs
Respondent

C.C. (ICD) NEW DELHI

I am directed to transmit herewith a certified copy of **Final order No.C/453-454/ 2011 CU[DB]** dated 14.10.2011 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.S.K.PAHWA,ADV
D-75, AMAR COLONY, LAJPAT NAGAR-IV,
NEW DELHI-110024.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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 - 110005
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
14. SUNIL NARAIN, CHAIRMAN & MG. DIRECTOR,
M/S AIR TRAVEL BUREAU LTD.,
M-95, CONNAUGHT CIRCUS NEW DELHI.


Assistant Registrar
(Customs Appeal Branch)

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

Date of Hearing : 11.10.2011

Custom Appeal No. 169-170 of 2011

[Arising out of common Order-in-Original No. 17/2011 dated 24.3.2011 passed by the Commissioner of Customs, New Delhi]

Coram:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Hon'ble Shri Mathew John, Technical Member

1.	Whether Press Reporter 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?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

Air Travel Bureau Ltd.
Sunil Narain, Chairman & Mg. Director

Appellants

Vs.

CC, New Delhi

Respondent

Appearance:

Appeared for Appellant : Shri S.K. Pahwa, Advocate

Appeared for Respondent : Shri Sonal Bajaj, SDR

Coram:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Hon'ble Shri Mathew John, Member (Technical)

Final Order No. C/453-454/11 dated 11.10.11

Per **Mathew John:**

The Appellants are running a travel agency. For the purpose of their business they imported five cars, of BMW make, under EPCG Licenses availing exemption under Notification 44/2002-Cus dated

19.4.2002. As per the condition in the notification and the Import Control Policy permitting import of such cars, the Appellants were required to achieve foreign exchange realisation equal to 5 times the value of the imported capital goods within eight years from import. According to the Appellants they achieved this target of foreign exchange realisation and on the basis of documents produced by them, DGFT issued Export Obligation Discharge Certificates. These certificates were produced before Customs authorities for discharge of the bond executed by the Appellants when goods were imported.

2. The Customs authorities however started an investigation whether the export obligation was properly discharged. During investigation they found that the imported cars were mostly used for free services and unspecified trips and the export obligation was shown to be discharged out of foreign exchange earned by the Appellants by other means not relatable to the cars imported. On this ground a Show Cause Notice demanding duty to the extent of exemption availed at time of import and also proposing confiscation of the cars under section 111(d) and 111(o) of the Customs Act as also penalties under section 112 and 114 of Customs Act, was issued. The SCN was adjudicated by the impugned order confirming duty demand to the extent of 1,73,42,571/- along with interest. Further penalty of Rs. 1,73,42,571/- under section 114A of the Customs Act on the company and penalty of Rs. 35,00,000/

under section 112 (a) of Customs Act was imposed on Shri. Sunil Narain, Director of the company. The Appellants are challenging this order before the Tribunal.

3. It is the contention of the Appellants that a case booked on identical facts by the department was set aside by the Tribunal vide order in their own case reported at 2009 (237) ELT 283. They quote a few other decisions of the Tribunal and the decision of Delhi High Court in the case of **Interglobe Enterprises Ltd Vs. UOI-** 2006 (203) ELT 202 and argue that there is no requirement to demonstrate one to one correlation between service rendered using the cars and the foreign exchange realized by them.

4. Ld. Counsel for the Appellants points out that there is a decision of the Kerala High Court in similar matter reported as **CC Vs. Kumarakam Lake Resorts** – 2011 (268) ELT 153 (Ker.) where the Hon'ble High Court held that the Export Obligation Discharged Certificate was not issued properly and for that reason duty demanded from the importer was confirmed by the High Court. But the Counsel submits that the facts of this case are different from that in the case of **Kumarakam Lake Resorts**. In that case the cars were registered in the name of the Director and the Managing Director of the Company and the vehicles were used for rendering services in the form of pick up from the airport and dropping

back to the airport to those tourists who occupied two presidential suits of the hotel. The case made out was that foreign exchange realisation from the occupants of the said two suits was only US\$ 54,851 as compared to the stipulated obligation of US\$ 4,02,381/- for the relevant period. In this case, he points out that it is an admitted fact that the cars were registered in the name of the company and it was used for the stated purpose. The department has conducted investigation with many persons who availed of such services as is recorded in para 18 of the impugned order. It is pointed out that in this case there is no allegation that the foreign exchange realised falls short of the obligation prescribed under the Import Export Policy. He argues that if a company operating hotel business imports laundry machines under the EPCG Scheme, it will be unreasonable to expect foreign exchange realisation to be demonstrated from charges levied by the use of such laundry machines. He argues that the use of the imported cars in question is also of a similar nature. The Appellants do not bill separately for the use of imported cars and therefore it is not possible to demonstrate foreign exchange realisation exclusively attributable to the use of the cars. He submits that there is no such requirement stipulated either in the custom notification providing exemption from customs duty or the Import Export Policy which allows free import of such cars. Therefore, his submission is that they have properly discharged the export obligation put on them and the demand confirmed by the impugned

order is not maintainable. He fairly concedes that the cars were not registered as tourist vehicles as was the case in the case of **Kumarakam Lake Resorts**. But he takes us through the order of the Kerala High Court and explains that the High Court has not taken a very serious view of the fact that the cars were not registered as tourist vehicles. According to him, the order of the High Court of Kerala is on account of the fact that the cars were registered in the names of the Director and Managing Director and those cars were generally not used in providing services for earning foreign exchange which is not a situation in the case of the Appellants.

5. The Id. SDR fairly concedes that there is some difference between the facts of the case of **Kumarkam Lake Resorts** (supra) and the facts in the present case. However, he still feels that the foreign exchange realisation cannot be attributed exclusively to the use of the imported cars. He points out that the cars were used without billing and the Appellants did not maintain any register to show any correlation between the use of the cars and realisation of foreign exchange made by the Appellants and therefore he argues that this is a case of misuse of the EPCG Scheme for import of luxury cars.

6. We have gone through the decision of Kerala High Court in the case of **Kumarakam Lake Resorts** as also the decision ~~in the case~~ of Delhi

High Court in the case of the Appellants. In the first place the facts are some what different in the two cases. The Appellants are providing service in the category of travel agency, booking air tickets and providing support services as compared to the case of **Kumarakam Lake Resorts** which was providing services ^{of} ~~at~~ a hotel. Cars are an essential item for providing the service of travel agency. Revenue is arguing that foreign exchange earning should be generated by the "exclusive" use of the cars. ~~There~~ ^{There} ~~where~~ is no such word ~~is~~ seen in the Customs notification or Import Export Policy. The fact~~s~~ that the cars were not registered as a tourist vehicle and the Appellants did not bill for the use of car separately cannot be fatal for claiming the customs duty exemption, though there may be a slight irregularity in the matter which can be decided only if the matter is examined with reference to the terms of contracts and the laws applicable to use of Motor Vehicles, which matter is not before this Tribunal. Further once the matter has been decided by the jurisdictional High Court there is no scope for taking a different view in the present case. Therefore, we allow these appeals with consequential relief, if any, to the Appellants.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)

RM