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

Customs Appeal No. 54232, 54233 of 2014
Customs Appeal No. 55372, 55640 of 2014

[Arising out of Order-in-Appeal No. DLI-Custm-I & G-Com-046-14-15 dated 11.7.2014. passed by the Commissioner of Customs (Appeals) New Delhi]

Shri Sunil Bajaj, Director **Appellant**
Shri Suresh Sundaram, Director
Arun Kumar Gupta
Futura Travels Ltd.

Vs.

Commissioner of & Customs **Respondent,**
New Delhi

And

Commissioner of & Customs **Appellant,**
New Delhi

Vs.

Futura Travels Ltd. **Respondent**

Appearance:

Shri S Vasudevan, Advocate for the Appellants assessee
Shri Govind Dixit, AR for the Respondent Revenue

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 14.09.2017
Date of Decision : 09.10.2017

FINAL ORDER NO. 57096-57099 /2017

Per: V. Padmanabhan:

The present appeals are filed against the order in Appeal No. DLI-Custm-I & G-Com-046-14-15 dated 11.7.2014.

2. Brief facts of the case are that M/s. Essar Infrastructure Holdings Ltd. (EIHL) now known as 'Arya Infrastructure Holding Ltd.', a company of Essar Group registered in Republic of Mauritius got an aircraft Hawker 850 XP Serial No. 258819, on lease basis on 24.8.2007. Shri Suresh Sundram, authorised signatory and Director in the appellant company, M/s. Futura Travels Ltd. (FTL), (which is a group company of M/s. Essar Group) paid the amount and signed the lease agreement on behalf of the company. The aircraft first time was imported into India on 21.10.2007 at IGI, New Delhi by M/s. EIHL but the aircraft left on 27.11.2007 for FDR fitment required as per CAR Civil Aviation regulations. On 26.1.08 the aircraft returned after fitment at Mumbai Airport. As per another lease agreement entered into by FTL on 20.2.2008 the aircraft finally came at Mumbai and on 19.4.2008 the aircraft was imported by the appellant and duty was paid at Mumbai by FTL.

3. The department is of the view that duty is payable retrospectively w.e.f. 20.2.2008 when the lease agreement was entered

into by M/s. Futura Travels for the aircraft. Accordingly, aircraft was confiscated and allowed redemption with redemption fine and penalty. The department also levied penalties on Shri Suresh Sundaram and Shri Sunil Bajaj, Directors. Being aggrieved, the present appeals have been filed.

4. It is the view of the department that date of 20.2.2008 must be substituted by 21.10.2007 when the aircraft came first time. So, department has also filed the cross appeals.

5. With this background, we have heard Shri S Vasudevan and Shri Govind Dixit, learned Counsels for the parties.

6. Shri Vasudevan, learned Counsel submits on the strength of written submissions that

(i) aircraft was taken on lease initially by EIHL and finally by M/s. Futura Travel Ltd. from M/s. Cessna Finance Corporation, USA. He submits that as per Rule 58 (6)(a) of Indian Aircraft Rules, 1920, the aircraft can be imported into India without payment of duty for a period of six months though it is registered in foreign country. The said Rule is as under:

> ***"58 (6)(a)*** *No customs duty shall be levied on an aircraft not registered in India which is brought into India for the purpose of a flight to or across India, which it is not intended to register in India and which it is intended to remove from India*

within six months from the date or entry, provided that the person in charge, makes a written declaration to that effect to the Customs Collector on arrival.

(b) *In the case of an aircraft in respect of which such a declaration has been made and which is not removed from India within six months the duty leviable in respect of it shall be paid to the Customs Collector before the aircraft is again flown.*

(7) *A full refund of the customs duty, if any, paid on the import of an aircraft by air into India shall be granted if the same is exported by air within six months of the date of its arrival;*

Provided –

(a) *That the claim for such refund is made at the time of export from a customs aerodrome;*

(b) *That the identity of the aircraft is established to the satisfaction of the Customs Collector; and*

(c) *That payment is demanded within six months from the date of export."*

(ii) It is the submission of the learned Counsel that when the aircraft came into India for the first time on 21.10.2007, it was registered in foreign country. It stayed in India for less than six months. Again the aircraft left for FDR fitment and subsequently returned to India after fitment on 26.1.08 after a short period. Finally, as per the lease agreement dated 20.2.2008, the aircraft was taken on lease by M/s. Futura Travels and duty was paid.

(iii) Learned Counsel further submits that in 2007, an application was submitted before DGCA, Delhi by FTL, for the permission to fly the aircraft for non scheduled operations (NSOP) in India. But the said permission was given only in year 2008 when the aircraft was in the possession of M/s. Futura Travels on lease basis. Learned Counsel submits that duty demand retrospectively with effect from 21.10.07 is not demand.

(iv) Alternatively, the learned Counsel submits that if the Customs duty is paid retrospectively, they will be entitled to draw back since the aircraft was subsequently sent out on 14.4.2008 as per the ratio of the law in the case of ***Sedco Forex vs. CC Mumbai [2001 (135) ELT 625 (*****Tri-Mum)**] as upheld by Apex Court in ***[2005 (179) ELT A 39 (SC***)]. So he submits that if duty is paid retrospectively, the duty draw back will be entitled to the appellant and there would be no revenue gain.

(v) Learned Counsel submits that appellant has been held liable to pay the duty when it entered into the final agreement on 20.2.2008. Aircraft was imported by FTL into India on 19.4.2008 and duty paid on 13.7.2008. Prior to that date the appellant did not import the aircraft .

(vi) Learned Counsel further submits that by the impugned order, liability has been fixed jointly and severely as mentioned in the show cause notice. He submits that duty liability can be made only severely and not jointly. For this purpose, he relied on the ratio of ***JK Pharma vs. CC Mumbai [2004 (166) ELT 407 (Tri-Mum)]*** as well as in the case of ***Chemicos vs. CCE, Meerut [2012 (281) ELT 121 (Tri-Del)]*** .

(vii) The appellant has also taken the alternative plea of lack of jurisdiction for Commissioner (Cus), New Delhi to demand the Customs duty since FTL imported the aircraft into India at Mumbai. As per the lease agreement dated 20.2.2008, aircraft finally arrived on 19.4.2008 at Mumbai, so jurisdiction lies in Mumbai, but in the instant case, show cause notice was issued by Delhi.

(viii) Lastly he made a plea that the impugned order be set aside and penalties are not leviable, same can be withdrawn. In another appeal, he gives the written submission.

7. On the other hand Shri Govind Dixit learned Counsel for Revenue relies on the Rule 58(6)(a) (supra). He submits that intention of EIHL was to have the aircraft on lease basis from the very beginning. First time aircraft came to India but without any FDR

equipment. He submits that in the instant case, authorised signatory Shri Suresh Sundaram, had given a cheque and also negotiated with the concerned persons on behalf of Company. He submits that in the impugned order, the demand of duty is wrongly made from 20.2.2008 but it was imposable on arrival of aircraft on 21.10.2007. Hence, when the department filed the present appeal. He relied on para 36.2, 37.1 and 40 of the impugned order.

8. He also submitted that originally aircraft arrived in Delhi, from which date the department is demanding duty. Moreover in the year 2007, the applicant have sought for permission for flying before DGCA only in Delhi. So the plea of the appellant that Delhi Customs had no jurisdiction is not sustainable in this regard.

9. The learned DR also submitted a written brief dated14.9.2017 in which he urged the following points:

(i) The Essar Group of which M/s. Futura (appellant), was a part, always had the intention to register the Aircraft in India, which was a direct violation of the conditions of Rule 58(6) (a) of the Aircraft Rules. M/s. Essar Group thorugh their letter dated 26.12.2007 had informed the DGCA that M/s. Futura Travels Ltd. (an M/s. Essar Group of Company) had inducted one Hawker 850 XP (Serial No. 258819) aircraft to operate under Non-Scheduled Air Transport (Passenger) Services. The Aircraft at that time was undergoing modifications at

Hawker Pacific, Singapore to meet the DGCA's requirements for registration in India.

(ii) The cost of fitments in Singapore was US$ 84.000/- on the basis of invoice recovered by Customs during investigation. Remittance details regarding this cost was provided by the appellant during the investigation The cost of the fitments was over and above the invoice price of the Aircraft i.e. lease payment, which was not informed by the appellant to the Customs authorities with an intent to evade payment of Customs duty. In the show cause notice, the department has relied upon the CESTAT's decision in the case of Jagson International Ltd. vs. Commissioner of Customs, New Delhi and the Supreme Court's decision in the case of Garden Silk Mills to demand customs duty on the impugned Aircraft from 21.10.2007 (when the Aircraft was first brought into India in the name of M/s. EIHL an Essar Group Company).

(iii) The Show cause notice unambiguously brings out that the Essar Group, of which the M/s. Futura Travels Ltd. is a part, clearly intended to register the impugned Aircraft in India, which was a clear cut violation of Rule 58(6) (a) of the Aircraft Rules. Accordingly, the show cause notice was issued to demand Customs duty under Section 28(4) of the Customs Act, 1962, confiscation of the Aircraft under section 111(m) and 111(o) of the Customs Act, 1962 and imposition of penalty under section 112 (a) and Section 114 (A) of the Customs Act, 1962. The Essar Group's intention to register the Aircraft in India, is clear from the role of Shri Suresh Sundaram, authorised signatory of the Essar Group of Companies and Director of M/s. Futura Travels Ltd. (appellant) which has been adequately brought out in paragraphs 13 to 18 of the Adjudication order.

(iv) The AR for Revenue while supporting the order of the Adjudicating Authority specifically relied upon the following paragraphs of the said Order namely paragraphs 34.1, 35, 35.1, 36.2, 36.3, 37.1, 38, 39, 39.2, 40, 40.1, 40.2 and 41.

(v) Shri Suresh Sundaram admitted in his statement that Bill of Entry should have been filed for import of the Aircraft which was a mistake and also that another Surety Bond also should have been filed in April, 2008 in the name of the Appellant when the lease was in the name of the appellant which too was a mistake. Shri Sundram in his statement also admitted that a Bill of Entry under Section 46 of the Customs Act, 1962, too should have been filed after receiving permission and importing the aircraft for NSOP. That is why they paid the Customs Duty of Rs.13,19,25,108/- (Rupees thirteen crores, nineteen lacs, twenty five thousand and one hundred eight). The plea of the appellant that they did not register the Aircraft in India since the suitable Indian type pilot was not available, has been rejected by the

Adjudicating Authority on the ground that Capt. Abhinav Singh, a pilot who initially flew the aircraft into India was an employee of the Essar Group. The Adjudicating Authority after discussing the grounds as mentioned above has passed a well reasoned impugned order which deserves to be wholly upheld.

10. We have heard both sides and considered the material available on record. The summary of key dates and events leading to the impugned order is summarised below:

DATE	**EVENT**
Aug.2007	EIHL entered into short term lease agreement with Jet Finance
21.10.2007	Aircraft imported into India by EIHL and surety bond filed with Commissionerate, IGI, New Delhi
27.11.2007	Aircraft sent to Singapore by EIHL via Bangkok for FDR Fitments as per CAR regulations.
26.01.2008	Aircraft returned after fitment at Mumbai Airport (EIHL is importer on record)
Feb, 2008	Sale of Aircraft by Jet Finance to Cessna Finance Corporation.
20.02.2008	FTL enters into a long term lease agreement with Cessna for the Aircraft
14.04.2008	Aircraft sent out of India to Tehran by EIHL
16.04.2008	Request by EIHL to Addl Commissioner, IGI, New Delhi to cancel surety bond
19.04.2008	Aircraft imported by FTL through Mumbai
22.04.2008	Surety bond submitted to Addl. Commissioner, IGI Airport, New Delhi
12.07.2008	Aircraft sent to Muscat

13.07.2008	Aircraft brought back to India
26.07.2008	Bill of entry filed by FTL at Mumbai
07.11.2008	NSOP No. 30/2008 granted to FTL

11. From the sequence of events as above, it is evident that the initial import of the aircraft was by EIHL on 21.10.2007 at Delhi. The aircraft was allowed to be imported in terms of Rule 58(6) of the Aircraft Rules which provide for import without payment of customs duty for a period up to 6 months in cases where there is no intention to register the aircraft in India. The claim of the appellant is that the surety bond executed at the time of this import was cancelled on 16.4.2008 after the aircraft was sent out to Tehran on14.4.2008. Since the aircraft imported under Rule 56 (^6) of Aircraft Rules stands exported, there is no ground for demand of duty.

12. The subsequent import of the aircraft was interestingly not by EIHL but by the appellant, in the present case FTL. The import also happened at Mumbai. Investigations were undertaken by customs Department at Mumbai which resulted in the FTL filing the bill of entry for import of such aircraft on 26.7.2008 and payment of the customs duty for such import. In terms of the permission granted by DGCA, the aircraft was permitted to be used for non-scheduled operations w.e.f.7.11.2008.

13. The adjudicating authority in the impugned order has held that the aircraft was originally imported in Delhi on 21.10.2007 with the declaration that there was no intention to register the same in India. Such a declaration was false in as much as it was the intention of the Essar group to register the aircraft in India as has been up subsequently done by FTL. Since EIHL and FTL are both group companies of the ESSAR group, he has demanded the customs duty on the aircraft for violation of the declaration made under Rule58(6) of the Aircraft Rules, considering the date of import as 21.10.2007 when the aircraft first landed in Delhi, She also held that Commissioner (Cus) Delhi had the jurisdiction to adjudicate this matter.

14. The main allegation in the SCN is that at the time of first import of the aircraft on 27.10.2007 by EIHL a declaration in the form of surety bond was submitted by EIHL in which it has been claimed that there was no intention to register the aircraft in India. During the course of investigation by customs, S/Shri Suresh Sundaram and Sunil Bajaj, Directors in the Essar Group Companies admitted in their statements that the Essar Group had the intention to take the same aircraft for NSOP in India. Therefore adjudicating authority has ordered confiscation of the aircraft and charged custom duty for violation of Rule 58(6)(a) of Aircraft Rules.

15. We are of the view that intentions are to be inferred from the conduct of the concerned persons and not only from their statements. The aircraft imported by EIHL on 21.10.2007 stands exported on 14.4.2008, within the period of six months as per the provisions of Rule 58(6) ibid. There is nothing on record to show that EIHL has filed any application to register the aircraft in India. Hence we are convinced that EIHL cannot be held liable for contravention of Rule 58(6) ibid. Consequently there is no justification to order confiscation of the aircraft and demand of customs duty from EIHL.

16. The impugned order has demanded the customs duty on the aircraft jointly and severally from EIHL as well as FTL. FTL, appellant, has argued that demand cannot be made jointly and severally against FTL and EIHL. We agree with this contention in the light of the case laws cited, Customs duty can only be demanded from the person liable to pay the same.

17. FTL's further contention is that the import of the aircraft by them was at Mumbai on 19.4.2008. The earlier import of the aircraft was not by FTL but by a different legal entity., EIHL. For such import at Mumbai, only the Commissioner (Customs) Mumbai has the jurisdiction to adjudicate any issues connected thereon. Since the SCN in the present case has been issued by Commissioner Customs, New

Delhi, it has been submitted that the impugned order has been passed without restriction.

18. We find considerable force in the contention raised by FTL. FTL and EIHL are 2 different legal entities. Even if the same individual person signs as the authorised signatory of both the companies, the acts are by two different legal persons. Consequently for any act of omission or commission by one legal person, the other legal person cannot be held liable. We also agree with the contention that FTL has imported the aircraft on 19.4.2008 at Mumbai. For any act of omission or commission with reference to this import, the jurisdiction will lie with the Customs Authorities at Mumbai. Commissioner Customs Delhi cannot claim jurisdiction over such matters, in the absence of any order from the competent authority granting such jurisdiction to her.

19. To conclude we find that there is no justification to confiscate the aircraft and demand customs duty from EIHL. FTL imported the same aircraft in Mumbai. Hence Commissioner(Cus) Delhi does not have the jurisdiction to demand customs duty from FTL. There is also no basis for raising duty demands jointly and severally from two legal persons.

20. Revenue has filed appeals contending that duty demands are to be made with effect from 21.10.2007 as against 20.2.2008 made in the impugned order. Since we are of the view that duty demand itself is

not sustainable against FTL, we find no merit in the appeals filed by Revenue.

21. In the result, the impugned order is set aside and the appeals filed by FTL and their Directors are allowed. Revenue appeals are dismissed.

(Pronounced in the open Court on 09.10.2017)

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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