(2015) 05 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal Nos. 24, 28 Of 2010

M/s. Nijhawan Travels Pvt. Ltd. And Ors. APPELLANT

Vs

C.C. (Preventive), New Delhi RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:
Customs Act, 1962 — Section 111(d), 111(o), 122(A)

Citation : (2015) 05 CESTAT CK 0005

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Krishna Kant, R.K. Gupta

Final Decision : Disposed Of

Judgement

1. Appeals have been filed against Order-in-Original No.21/2009, dated 30.10.2009 in terms of which Mercedes Car SL 500 was confiscated under

Section 111(d) and 111(o) of the Customs Act 1962 giving an option to redeem the same on fine of Rs.10 lakhs. In addition, a duty demand on the said

car amounting to Rs.51,86,378/- along with interest was also confirmed and penalty of Rs.5 lakhs was imposed on the appellant-assessee. Penalty of

Rs.5 lakhs was also imposed on Shri Sham Nijhawan, Managing Director of the appellant-assessee.

2. The brief facts of the case are that the appellant /assess had imported the said car under EPCG licence on payment of concessional rate of duty.

During investigation, it was found that the said car was not being used as per the terms and conditions of EPCG licence as per the evidence to that

effect in the form of its registration of car, statements of various persons like the employees of the appellant/assesse, the driver, security guard, etc.

Thus, for violation of the condition of EPCG licence, the said car was confiscated and differential duty along with interest demanded and penalties

imposed as above.

3. The appellants have contended that the impugned adjudication order is issued in violation of the principles of natural justice in-as-much-as they were

not given an opportunity of being heard. They also added that they also wanted the cross-examination of various persons, whose statements were

relied upon. They further contended that the export obligation period is not yet over and therefore action of Revenue was pre-mature and there was

no violation of the condition of EPCG licence.

4. We have considered the contentions of the appellants. Without going into the merits of the case, we do find that in the impugned order, the

adjudicating authority has noted that ""hearing to all noticees was fixed on 15.09.2009, but none of them appeared for hearing. No request for

adjournment of the PH. was sought for' and ""therefore it is felt that sufficient opportunities have been provided to them in view of the provisions of

Section 122(A) of the Customs Act, 1962"". The appellants have contended that they never received the notice for personal hearing although in their

Written Submissions, they had clearly requested for personal hearing. We perused the letter dated 12.09.2009, fixing the personal hearing for

15.09.2009 There is no indication on that letter whether it was sent by registered post. There is no evidence of its delivery to the appellants either. The

appellants have clearly asserted that the said letter was never received by them. The Commissioner has noted in the impugned order that ""sufficient

opportunities have been provided to them"" but in reality only one opportunity for personal hearing was provided vide the said letter dated 12.09.2009

which the appellants have asserted they never received. In these circumstances, we hold that the impugned order has been passed in violation of the

principles of natural justice and therefore the same is set aside and the cases are remanded to the adjudicating authority for de nova adjudication after

giving an opportunity of being heard to the appellants. The request for cross-examination should also be considered and dealt with as per law while

issuing the de nova adjudication order. The appeals are disposed of by way of remand as above.

