

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 87025 OF 2019**

[Arising out of Order-in-Appeal No: 823 (SIIB(I))/2019(JNCH)/Appeal-II dated 16<sup>th</sup> May 2019 passed by the Commissioner of Customs (Appeals),Nhava Sheva, Mumbai – II.]

**Sai Charan Tours & Travels**

4A/5 Prabhunath R Dube Chawl, Shyam Nagar  
Near Devidas Salshinekar Banglow, Jogeshwari East  
Mumbai - 400060

*... Appellant*

*versus*

**Commissioner of Customs (NS-V)**

Jawaharlal Nehru Customs House, Nhava Sheva  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**APPEARANCE:**

Shri P A Augustian, Advocate for the appellant

Shri S B Hatangadi, Assistant Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: A / 86061 /2022**

DATE OF HEARING:

25/08/2022

DATE OF DECISION:

10/11/2022

**PER: C J MATHEW**

This appeal of M/s Sai Charan tours & Travels seeks our

intervention in the terms and conditions for provisional release of seized goods which were upheld in order-in-appeal no. 823 (SIIB(I))/2019 (JNCH)/Appeal-II dated 16<sup>th</sup> May 2019 of Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai – II.

2. The appellant had filed bill of entry no. 9468619/31.12.2018 for import of a brand new 'Toyota Alphard SC 3500 cc' and which, upon determination being found to be 'second-hand' and liable to be proceeded against for violation of policy condition (II)(d)(iv) in chapter 87 of the ITC (HS) classification appended to the Foreign Trade Policy for the relevant period, was seized under section 110 of Customs Act, 1962. On request of the importer, provisional release was permitted subject to payment of duty of ₹ 89,91,892/-, submission of bond equal to value of the goods including duty amount and furnishing of bank guarantee equal to half of duty liability; the appellant herein was also directed to be in compliance with policy condition (II)(iii) of chapter 87 by having the vehicle tested at the Vehicle Research and Development Establishment (VRDE), Ahmednagar under the Ministry of Defence or at the Automotive Research Association of India (ARAI), Pune.

3. According to Learned Counsel for appellant, separate policy conditions have been notified for new vehicles and for used vehicles

and that, in accordance with the licencing note 7 in chapter 87 of the ITC(HS) classification appended to the Foreign Trade Policy, new motor vehicles of FOB value US \$ 40,000/- or more with engine capacity of more than 3000 cc and 2500cc in petrol and diesel variants respectively are permitted for import on production of 'type approval certificate/COP' of an international accredited agency in the country of origin. It is his submission that this has already been complied with and that the stipulation has now been thrust upon them even as proceedings were initiated for alleged import of 'used' vehicle. It was also submitted before us that the vehicle, after clearance on import, had been registered by the competent authority under the Motor Vehicles Act, 1988 without insistence on the condition which, if mandated, would have been. He also submitted that they did make an attempt to get the desired certificate from the two agencies so stipulated but had been met with refusal arising from lack of any authority to do so.

4. Learned Counsel submits that the issue in appeal stands disposed off by the decision of the Tribunal in *Ankineedu Maganti v. Commissioner of Customs, Cochin* [2010 (262) ELT 484 (Tri.-Bang.)] that was subsequently upheld by the Hon'ble High Court of Kerala in *Commissioner of Customs v. Ankineedu Manganti* [2012 (275) ELT 551 (Ker.)]

5. We have heard Learned Authorised Representative who submits that the prescriptions in licensing notes for the relevant chapter in IT (HS) classification are mandatory conditions for release of goods.

6. The only issue before us is the mandate to produce the certificate insisted upon as condition for provisional release from among the prescriptions in the licencing notes pertaining to imported vehicles. The Tribunal, in *Excellent Betelnut Products Pvt Ltd v. Principal Commissioner of Customs, Nagpur* [final order no. A/85233/2022 dated 29th March 2022 disposing off appeal no. C/85127/2022 arising out of order-in-original no. VIII(Cus)25-169/SIIB/Betelnut Borkhedi/2021 dated 30<sup>th</sup> December 2021 passed by the Commissioner of Customs, Nagpur], has held that the powers of the Commissioner of Customs under section 110A of Customs Act, 1962 cannot be interfered with by any circular or instructions. In the impugned order, it has been admitted that the provisional release has been subject to the conditions stipulated in circular no. 35/2017-Cus dated 16<sup>th</sup> August 2017 which traverse beyond the empowerment in section 110A of Customs Act, 1962. It is for the owner of the vehicle to be compliant with law upon provisional release. Furthermore, it is on record that the vehicle has already been registered with the competent authority under the Motor Vehicles Act, 1988. Provisions under the Foreign Trade Policy including licensing norms relevant to

chapter 87 in ITC(HS) classification are intended to ensure that the import of any goods, post-clearance, would not be in breach of the essential requirements of law subject to which motor vehicles may be registered for operation on roads. The policy condition is not one incorporated merely for the sake of regulating imports and exports of the country but to ensure that the imported goods are compliant with the regulatory measures, other than that relating to imports and exports, under the municipal laws of the country. As the impugned vehicle has already been registered with the authorities concerned, it would appear that the vehicle complies with all the stipulations for operation and running on Indian roads. This, in effect, is the sum and substance of the ruling of the Hon'ble High Court of Kerala in *re Ankineedu Manganti* holding that

*'The appeal is filed against the order of the Customs, Excise and Service Tax Appellate Tribunal [2010 (262) ELT 484 (Tribunal)] holding that the confiscation of respondent's vehicle for non production of type approval certificate is untenable. The learned standing counsel appearing for the appellant contended that Import policy requires production of type approval certificate in respect of every model of vehicle imported. However, we notice from the Tribunal's order that the vehicle imported is produced by the world renowned vehicle manufacturer Toyota. It is the further finding that same types of vehicles are imported to India on earlier occasions. In our view type approval certificate is mainly required to ensure that the vehicle is safe and road worthy for public use and it is to be considered by the registering*

*authority while registering the vehicle and not by the Customs authority when it is imported. Besides this, the assumption of the department that the importer has imported the vehicle which is unfit for use on road is also absurd. In fact, in a similar case, the Delhi High Court has upheld the view of the Tribunal because the importer cannot be expected to get what is not possible to obtain. We therefore do not find any merit in the appeal filed by the department. Consequently the appeal is dismissed.'*

7. Accordingly, we hold that the inclusion of this condition as necessary for provisional release is redundant and superfluous and we allow this appeal by expunging the said condition as requirement of provisional release.

*(Order pronounced in the open court on 10/11/2022)*

**(AJAY SHARMA)**  
**Member (Judicial)**

**(C J MATHEW)**  
**Member (Technical)**