

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**New Delhi**

PRINCIPAL BENCH – COURT NO. 1

**Customs Appeal No. 124 Of 2010**

[Arising out of Order-in-Original No. 02/10 dated 12.01.2010 passed by the Commissioner of Customs, Tughlakabad, New Delhi]

**Interglobe Enterprises Limited** : **Appellant**  
Block-2B, DLF Corporate Park, DLF  
Phase-III, Gurgaon, Haryana

Vs

**Commissioner of Customs, New Delhi** : **Respondent**  
Inland Container Depot, Tughlakabad, New Delhi

**APPEARANCE:**

Shri B. L. Narasimhan, Ms. Anjali Gupta and Shri Ashwani Bhatia, Advocates  
for the Appellant

Shri Nikhil Mohan Goyal, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**FINAL ORDER No. 51777/2025**

Date of Hearing:12.08.2025

Date of Decision:20.11.2025

**HEMAMBIKA R. PRIYA**

The present appeal has been filed by M/s Interglobe Enterprises Limited<sup>1</sup> to assail the Order-in-Original No. 02/10 dated 12.01.2010 wherein the Commissioner has confirmed the demand of Rs. 76,28,854/- along with interest and appropriate penalties.

2. The brief facts of the case are that the appellant was engaged in the business of Tours and Travels Services, imported three Cars and claimed the benefit of Notification No. 49/2000 and Notification No. 44/2002 relating to Export Promotion Capital Goods<sup>2</sup> Scheme. The

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**1** the appellant

**2** EPCG

said three cars were imported for rendering 'tour and travel related services' and earn foreign exchange through the services rendered with the help of such cars. Since the appellant was rendering the services as a 'tour operator' and a 'travel agency', the export obligation was fulfilled by rendering various services related to tourism and travelling. On completion of their export obligation, the appellant applied for grant of Export Obligation Discharge Certificate<sup>3</sup> before the Directorate General of Foreign Trade<sup>4</sup>. The DGFT issued the EODC for License No.1 and 2 on 16.09.2004 and 30.08.2005 respectively. However, in respect to License No. 3, the appellant filed an application for issuance of EODC on 16.02.2005 along with all the documentary proofs evidencing fulfilment of export obligation.

3. Meanwhile, the Directorate of Revenue Intelligence<sup>5</sup> initiated investigations regarding the import of Cars and hence the said EODC was kept pending by DGFT. The DRI seized the cars under Section 110 of the Customs Act. The appellant filed the Writ Petition (C) 6. 23162/2005 before the Delhi High Court, and the court ordered the release of the cars on providing bank guarantees.

4. On completion of investigations, Show Cause Notice dated 31.08.2006 was issued demanding the duty on the imported cars and proposed imposition of penalties. The Commissioner of Customs vide the impugned order, confirmed the demand and penalties against the appellant. Aggrieved by the impugned order, the appellant has filed the present appeal.

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**3** EODC  
**4** DGFT  
**5** DRI

5. Learned counsel submitted that during the course of investigations, DRI vide its letter dated 15.02.2006 requested the DGFT to initiate necessary action under the FTDR Act and EXIM policy with respect to the 3 EPCG licenses issued to the appellant. DGFT vide letter F.No. 05/36/21/1208/AM03/EPCG-I/CLA dated 17.02.2006 issued a show cause notice under Section 9(4) of FTDR Act, 1992 initiating action for suo-moto cancellation of the licenses. After considering the facts and circumstances of the case, DGFT vide Order dated 29.11.2006 dropped the proceedings holding that the EODCs in respect of 2 EPCG licenses had been rightly issued.

5.1. Learned counsel for the appellant further submitted that the export obligation had been fulfilled by the appellant within the time granted by the DGFT, Hence, the duty demand was not sustainable.

Learned counsel submitted as follows: -

(i) The appellant had earned foreign exchange and fulfilled the export obligation by providing tour and travel services;

(ii) EODC had been issued by DGFT with respect to License No. 1 and 2. The application with respect to License no. 3 was pending by the DGFT.

(ii) Proceedings initiated by the DGFT at the behest of DRI against the appellant regarding fulfilment of export obligation was dropped holding that it is permissible to discharge export obligation by earning commission on sale of tickets and other related services.

5.2 Learned counsel stated that the DGFT authorities had exercised their jurisdiction and satisfied themselves that the export obligation

had been fulfilled by the appellant within the stipulated time and the bank guarantee had been redeemed. Hence, learned counsel contended that the customs authorities did not have any jurisdiction to sit in judgment over the EODC issued by the DGFT. In this context, he relied on the decision of the Tribunal in **Bestech Hospitalities Pvt. Ltd., Mr. D. Bhandari and Mr. Sunil Satija vs. Commissioner of Customs (Preventive), New Delhi**<sup>6</sup>. He also relied on the judgment of **Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi**<sup>7</sup>, wherein the Hon'ble Supreme Court held that once an advance license had been issued and not questioned by the licensing authority, the customs authorities cannot refuse exemption on an allegation that there was mis-representation. The Supreme Court held that it was for the licensing authorities who were responsible to take steps in this regard. Consequently, in so far as the liabilities under License No. 1 and 2 are concerned, the decision of the licensing authorities was final and binding.

5.3 Learned counsel further added that the appellant had neither violated any condition of Notification No. 49/2000 and Notification No. 44/2002 nor violated any provision under EPCG Scheme. He stated that the requirement was actual use of the capital goods imported under EPCG Scheme to render services to earn foreign exchange, and it was not the requirement that services rendered through the exclusive use of capital goods imported would only be considered for

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**6** Final Order Nos. 51143-51145/2025 dated 05.08.2025 in C/55309-50311/2013

**7** 2003 (151) ELT 254 (SC),

considering fulfilment of export obligation. Further, as per Para 5.1 of Foreign Trade Policy ('FTP') 2002-2007, EPCG scheme permits import of Capital goods for pre-production, production and post production on payment of concessional rate of customs duty, subject to fulfilment of export obligation equivalent to eight times of the duty saved which had to be fulfilled in eight years. Para 5.4 of FTP 2002-2007 further provides that export obligation may be fulfilled by exports of other good(s) manufactured, or service(s) provided by the same firm/company or group company/managed hotel which had the EPCG Authorisation. Thus, learned counsel contended that the policy makes it very clear that export obligation can also be fulfilled by export of other services provided by the same firm. Learned counsel contended that in the present case, the appellant had provided other services for fulfilment of export obligation. Thus, the interpretation taken in the impugned order was against Para 5.1 read with Para 5.4 of the FTP 2002-2007.

5.4 Learned counsel further contended that vide letter dated 27.12.2006 DGFT had clarified that in the working of hotel, tourism and travel service industry, vehicles are part of an overall package drawn by these service providers for tourists and it was practically not possible for these sectors to show export earnings separately from use of these vehicles. The DGFT had also clarified that the view expressed by the DRI cannot be accepted, and that all benefits including all earnings for providing hotel accommodation, sale of food and beverages, apart from transportation of the tourist, should be considered towards discharge of export obligation against vehicles

imported under EPCG scheme. Further, DGFT vide letter F. No. 20/40/2005-06/EPCG.11 dated 29.11.2005 addressed to the appellant had also clarified that EPCG scheme did not stipulate exclusive earnings from the imported car for fulfilling export obligation and that in the cases of EPCG licenses issued for import of cars, the foreign exchange earned by the hotel, travel and tourism activities was eligible for consideration for discharge of export obligation. In this regard, learned counsel relied on the decision of the Tribunal in **M. Far Hotels Limited vs. Commissioner of Customs, Cochin**<sup>8</sup>. He stated that the decision in **Air Travel Bureau Limited vs. Commissioner of Customs, New Delhi**<sup>9</sup> had been affirmed by Delhi High Court in **Commissioner of Customs vs. Air Travel Bureau Limited**<sup>10</sup>, and the subsequent appeal was dismissed by the Supreme Court<sup>11</sup> wherein it was held as follows:-

"6.3 We find that the Customs authorities have taken up the matter with the DGFT expressing their views that there is violation of EXIM Policy provisions and it appears that the said view has not been accepted by them. According to the appellant, not only the DGFT had not accepted the view of the Customs Department but they have also redeemed the EPCG licence after certifying that they have fulfilled the export obligation as prescribed.

6.4 We agree with the contention of the learned DR that the Customs authorities are empowered to look into the compliance of the conditions of the notification independently. However we, in the present case, find that the notification has a link to provisions of the EXIM policy and the understanding of the DGFT authorities on the said provisions cannot be brushed aside without valid reasons

6.5. Further, we have not been shown that the imported vehicles have been used for any purpose other than those related to travel and tour as stipulated in the EPCG licence. Further, the term tour and travel is a very wide term and it

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**8**     **2009 (241) ELT 94 (Tri.-Bang.)**  
**9**     **2009 (237) ELT 283 (Tri.-Del.)**  
**10**    **2010 (260) ELT 78 (Del.)**  
**11**    **2011 (268) ELT A110 (SC),**

cannot be said that EPCG licence envisaged only the amounts collected by use of imported cars to be accounted towards export obligation under the said licence. If that was the intention, the licence could have been worded entirely differently.”

5.5 Learned counsel further submitted that the said cars were imported in the years 2001-2003, when there was no requirement either under FTP or Notification No. 49/2000 or Notification No. 44/2002 that the vehicles imported under EPCG scheme should be registered under Motor Vehicle Act, 1988 as commercial vehicles/Taxi. Notification No. 11 (RE-2006)/2004-2009 dated 14.06.2006 inserted the condition under Para 5.1 of FTP requiring vehicles imported under EPCG scheme to be registered either as a tourist vehicle or any appropriate registration specific to a particular state enabling the vehicle to be used for-tourist purpose. Thus, there was no requirement of registration of cars as commercial vehicles or taxis during the relevant period.

5.6 Learned counsel also submitted that there was no requirement under the subject notifications to produce EODC to prove fulfilment of export obligation. He stated that it is a settled position of law that no extraneous condition can be introduced into any notification and insistence upon such conditions cannot be made by the Revenue. In this regard, learned counsel relied on the decision of the Tribunal in **Commissioner of Customs, Delhi versus Multivac India Pvt. Ltd.**<sup>12</sup>. As regards interest, learned counsel contended that the same cannot be demanded as the customs duty itself was not

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**12 2017 (357) E.L.T. 1148 (Tri-Del.)**

payable. Further, Section 111 (d) and (o) of the Customs Act, 1962<sup>13</sup> do not apply because export obligation has been fulfilled and EODC has been issued/pending issuance for 1 EPCG license, thus there was no violation of any condition of the notification. Learned counsel stated that the demand was time-barred. He added that the cars in question had been imported between 2001-2003 whereas the show cause notice was issued on 31.08.2006, which was beyond the permissible period of six months. The proviso to Section 28(1) providing for the extended period of five years was not applicable in this case as there was no wilful mis-statement or suppression of facts by the appellants at the time of clearance of the goods. In fact, the appellant was under a bona fide belief that the export obligation has to be discharged by the foreign exchange earned out of the services of travel agent provided by the appellant. This bonafide understanding of the appellant was amply supported by the clarifications dated 29.11.2005 and 27.12.2006 issued by the DGFT, and the dropping of the proceedings vide DGFT's order dated 29.11.2006 and the issuance of the EODC by the DGFT to the appellant. He prayed that the appeal may be allowed.

6. Learned authorized representative for the department reiterated the discussions and findings of the impugned order. Learned authorized representative submitted that the customs authorities have the statutory authority to verify compliance of the conditions of an exemption notification, irrespective of DGFT certification, as held in the decision in **Sheshank Sea Foods Private Limited** and

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**13 the Customs Act**

reaffirmed the **Surya Samudra** decision of the Tribunal. Misuse of imported goods and non-attribution of foreign exchange earnings to the use of the Cars amount to breach of conditions, justifying duty recovery, confiscation, and penalties. Learned authorized representative contended that the Tribunal's decision in **Surya Samudra Holiday Resorts Pvt. Lid v. CC (Export) Mumbai**<sup>14</sup> was squarely applicable, holding that foreign exchange must be earned through the direct use of imported capital goods. The facts of the present appeal would indicate that it is a case of fraud and wilful collusion and as fraud vitiates everything. Consequently, learned authorized representative contended that there was no infirmity in the impugned order. In this regard, learned authorized representative relied upon the following decisions:-

- (i) **Commissioner of Customs vs. Candid Enterprises**<sup>15</sup>
- (ii) **Commissioner of Customs, Kandla vs. Essar Oil Limited**<sup>16</sup>
- (iii) **Sravani Impex Private Limited vs. ADG, DRI, Chennai**<sup>17</sup>

6.1 Learned authorized representative contended that the Supreme Court in the case of **Sheshank Sea Foods Private Limited** versus **Union of India**<sup>18</sup> held as follows:-

"9. Section 111(o) states that when goods are exempted from Customs duty subject to a condition and the condition is not observed, the goods are liable to confiscation. The case of the respondents is that the goods imported by the appellants, which availed of the said exemption subject to the condition that they would not be sold, loaned, transferred or disposed of in any other manner, had been disposed of by the appellants. The Customs authorities, therefore, clearly had the power to take action under the provisions of Section 111(0)

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- 14 (2010 (256) ELT 433 (Tri-Mumbai)
  - 15 2001 (130) ELT 404 (S.C.)
  - 16 2004 (172) ELT 433 (S.C.)
  - 17 2010 (252) ELT 19 (A.P.)
  - 18 1996 (88) ELT 626 (S.C.)

10. We do not find in the provisions of the import and Export Policy or the Hand Book of Procedure issued by the Ministry of Commerce, Government of India, anything that even remotely suggests that the aforesaid power of the Customs authorities had been taken away or abridged or that an investigation into such alleged breach could be conducted only by the licensing authority. That the licensing authority is empowered [to] conduct such an investigation does not by itself preclude the Customs authorities from doing so. (emphasis supplied)

11. The communication of the Central Board of Excise and Customs, dated 13th May, 1969 refers to the breach of the condition of a license and suggests that it may not be possible to take action under Section 111(o) in respect thereof. It is true that the terms of the said Exemption Notification were made part of the appellants licences and, in that sense, a breach of the terms of the said Exemption Notification is also a breach of the terms of the license, entitling the licensing authority to investigate. But the breach is not only of the terms of the license; it is also a breach of the condition in the Exemption Notification upon which the appellants obtained exemption from payment of Customs duty and, therefore, the terms of Section 111(o) enable the Customs authorities to investigate."

6.2 Learned authorized representative submitted that the department's case was legally and factually established, and supported by admissible confessions, corroborated by documentary evidence. Hence, the appeals filed by the appellants were devoid of merit and deserve to be dismissed in full.

7. We have heard the learned counsel for the appellant and the learned authorized representative for the department and perused the records.

8. At the outset, we will consider the primary argument of the learned authorized representative that the Tribunal's decision in **Surya Samudra Holiday Resorts Pvt. Lid** versus **CC (Export) Mumbai** was squarely applicable, holding that foreign exchange must be earned through the direct use of imported capital goods. In order to appreciate the said submission, it would be appropriate to examine

the said decision of the Tribunal. The Surya Samudra Resort judgment of this Tribunal primarily dealt with the interpretation and application of Customs and EXIM Policy provisions concerning import under the EPCG (Export Promotion Capital Goods) scheme. **M/s Surya Samudra Holiday Resorts (P) Ltd** imported a Ferrari 575M car under the EPCG scheme, paying concessional duty of 5%. The car was registered as an all-India tourist taxi in Trivandrum but was later transferred to Bangalore. The customs authorities alleged that this transfer violated the conditions of the EPCG license and exemption notifications, arguing the car was not used for the business purpose it was imported for, viz., was to provide transport services to hotel guests in Trivandrum. The key issue before the Tribunal was whether the condition of "installation" of the car as per the license had been met. In the aforesaid decision, the Tribunal concluded that literal installation of a car was impossible since a vehicle is inherently mobile. The "installation" condition was read as the vehicle being put to use for the company's business. The company should demonstrate the goods (car) were used for the business activity it was imported for. The car was meant to be used as a tourist taxi for hotel guests. Further, the Tribunal observed that the changes in the Registration and transfer of the vehicle raised questions as to whether the vehicle continued to be used for business as required. The Tribunal emphasized **the interpretation that export obligations under EPCG should be fulfilled by export of goods (or services in some contexts) manufactured or provided by the license holder directly or through group companies.** Consequently, the Tribunal

upheld the confiscation of the car, recovery of foregone duty along with interest, and imposition of penalties on the company and its officials. The said decision was upheld by the Supreme Court.

9. We now examine whether the facts of the present case are identical to the facts in the **Surya Samudra** case. In **Surya Samudra** case, the imported car was registered as a tourist taxi in Trivandrum and thereafter taken to Bangalore, in violation of the EPCG license conditions. The Sub Regional Transport office, Trivandrum issued a No objection certificate for transfer of the vehicle to Bangalore, and subsequently was registered as a private vehicle. In the instant case, the appellant imported the three cars for rendering 'tour and travel related services and earn foreign exchange through the services rendered with the help of such cars. The cars were registered as private vehicles as per the reports received from the Transport registering authorities in New Delhi and Gurgaon. In this regard, we note that unlike the Surya Samudra case where the car had been transferred to Bangalore by the importer, in the instant case, the cars were available with the appellant. It has been argued before us that the said three cars were registered as private vehicles, and not as commercial vehicles. In this context, we observe that DGFT vide Notification No. 11 (RE-2006)/2004-2009 dated 14.06.2006 inserted the condition under Para 5.1 of FTP requiring vehicles imported under EPCG scheme to be registered either as a tourist vehicle enabling the vehicle to be used for-tourist purpose. The said notification is reproduced hereinbelow:

“GOVERNMENT OF INDIA

MINISTRY OF COMMERCE AND INDUSTRY  
 DEPARTMENT OF COMMERCE  
 NOTIFICATION NO. 11 (RE-2006)/2004-2009 NEW DELHI,  
 DATED 14th June, 2006

S.O. (E): In exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.3 of the Foreign Trade Policy, 2004-09 as amended from time to time, the Central Government hereby makes the following amendments:

xxxxx                xxxxx                xxxxx                xxxxx  
 xxxxx                xxxxx                xxxxx                xxxxx

(i) the total foreign exchange earnings from the hotel, travel & tourism and golf tourism sectors in the current and preceding three licensing years is Rs 1.5 crores or more.

xxxxx                xxxxx                xxxxx                xxxxx

(iii) **the vehicles imported under this scheme shall be registered either as a tourist vehicle or shall have an appropriate registration specific to a particular state enabling the vehicle to be used for tourist purpose.** A copy of the Registration certificate should be submitted to the concerned Licensing Authority as a confirmation of the vehicle having been imported and capital good installed. However, the parts of motor cars, sports utility vehicles/ all purpose vehicles such as chassis etc. cannot be imported under the EPCG Scheme."

This issues in public interest.

Sd/-  
 (K.T. Chacko)  
 Director General of Foreign Trade"

10. From the above, it is apparent that the requirement of the vehicle to be registered as a commercial vehicle was not prescribed as a condition of the said notification till 2006. Admittedly, the said cars were imported in the years 2001, 2002 and 2003. Hence, the registration as private vehicles does not, in any way, deny the benefit of the notification to the appellant.

11. It has also been alleged that the said three cars were not used exclusively used for the purpose of tourism and the foreign exchange was not earned purely from the use of the three vehicles. However, in this context we find that all the 3 vehicles were registered in the name of the appellant company. It is an admitted fact that during the search conducted by DRI, the vehicles were found parked at the basement of the premises of the company at Block 2B, DLF Corporate Bank, DLF Phase-III. Unlike the **Surya Samundra** case where the car had been transferred to Bangalore, in the instant case, the cars were found in the appellant's premises. It is an admitted fact that the 3 cars were imported for tour and travel related services. The export obligation was fulfilled by rendering various services related to tourism and travelling. In this context, we note that the learned counsel for the appellant submitted that the appellant obtained the EPCG licenses for import of cars under the EPCG scheme for rendering the services relating to 'tours and travel. This fact was duly made clear in the application for the EPCG licenses. Terms and conditions sheet of EPCG Licences also mentioned "Product to be Exported-Tour and Travel". There is no dispute over the entitlement of 'tour operators'/Travel Agents' to import cars as capital goods under the prevailing EPCG scheme. Therefore, the appellant had correctly obtained the EPCG licenses for import of cars for rendering the services relating to 'tours and travel.

12. We now address the core allegation as to whether the export obligation had to be fulfilled only by the usage of the imported cars. In this context, we note that the appellant earned foreign exchange by

rendering the services which are similar to the tourism industry viz., GSA commission incentives, expenses, received from airlines, reservation/processing fee etc received from various customers which are related to the services normally provided by a tour operator. We note that the DGFT vide its letter dated 29.11.2005 had clarified to the appellant as reproduced below:

"F.No.20/40/2005-06/EPCG.III/1482

Dated 29/11/2005

To,

M/s Interglobe Enterprises Limited,  
66, Janpath New Delhi

Subject:-Redemption of EO against EPCG licence No.0530131539 dated. 29.1.2001, 0530132427 dated. 20.12.2001 and 0530133947 dated. 12.3.2003.

Sir,

Please refer to your letter of even number dated 28.11.2005 on the subject mentioned above. In this connection, I am directed to inform you that In another issue of seizure of cars by the DRI, Jaipur necessary clarifications have already been issued to DRI through Jt. DGFT, Jalpur, intimating inter-alia-that **'the EPCG Scheme does not stipulate exclusive earnings from the imported car for fulfilling export obligation and, in the cases of EPCG licences Issued for import of cars, the foreign exchange earned by the hotel, travel and tourism activities is eligible for consideration for discharge of export obligation (EO)'**.

Yours faithfully,

(Arvind Kumar)  
Foreign Trade Development  
Officer For Director General of Foreign Trade"

13. This clearly establishes that the foreign exchange earned by the appellant by use of the imported cars and other services as a tour

operator fell well within the parameters of the EPCG Scheme. Further, our attention has been drawn to the letter dated 27.12.2006 issued by DGFT wherein it was clarified as given hereinafter:

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Dt: 27.12.2006

The Joint Director General  
Of Foreign Trade,  
Bangalore

[Kind Attn: Shri M. Balagangadharan, Joint DGFT]

**Subject: Import of Cars under EPCG Scheme - reg.**

Sir,

Please refer to your letter No 07/21/EPCG MISC. Statement/06 dated 3.11 2006 with regard to the DRI communication under their reference No.S/IV/43/2005/861 dated 4.7 2006 received in that office.

2. The matter has been examined in detail. In their communication DRI has raised two issues:-

(i) The cars imported under the erstwhile Policy registered in individual name should first be got registered as tourist and commercial vehicles and foreign exchange earnings after such conversion alone should be considered towards fulfilment of EO.

(ii) Export earnings through alternate products and services, like room rent, income from sale of food, beverages etc. should not be considered towards discharge of EO.

**3. As regards 2(i) above mandatory requirement of registration of cars imported under EPCG as Tourist/Commercial vehicles has been notified on 14.6.2006 and included as a part of the Foreign Trade Policy 2004-09. Prior to this date, there was no such stipulation in the Foreign Trade Policy Therefore, foreign exchange earnings by use of these vehicles not registered as Commercial/Tourist vehicles cannot be denied the benefits of considering the same towards fulfilment / discharge of EO so long as no other misuse/transfer of such a vehicle/registration of such vehicle in the name other than the licence holder is reported.** As regards the mandatory registration of these vehicles as Tourist/Commercial vehicles prior to this date, there appears to be violation of Motor Vehicles Act on account of use of private registered vehicles for commercial purposes. However, this aspect has to be looked into by the Regional

Transport Authority concerned and DRI is at liberty to approach RTA concerned for seeking appropriate action to be taken by that authority on this score.

4. As regards 2 issue at 2(ii) above, in the working of hotel, tourism and travel service industry the vehicles are part of an overall package drawn by these service providers for the tourists. This package may include hotel accommodation, food, beverages and travel cost and charges for utilizing imported vehicles would not be billed separately to the tourist. **It is therefore not practically possible for these sectors to show export earnings separately from use of these vehicles. Therefore, the views expressed by the DRI or this score cannot be accepted and all benefits including all earnings for providing hotel accommodation, sale of food and beverages, apart from transportation of the tourist, should be considered towards discharge of export obligation against vehicles imported under EPCG scheme.** This is however subject to the condition that no part of the sale proceeds have been paid in free foreign exchange to any other service provider for providing add on services for hotel accommodation etc

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6. This issues with the approval of Competent Authority

Yours faithfully

(M.K. Parimoo)  
Joint Director General of Foreign Trade"

14. In view of the clarification, we hold that the appellant had completed his export obligation by providing services related to Travel & Tourism industry.

15. The learned authorized representative has relied on the decision of the **Surya Samundra** case and contended that the decision squarely covers the present case. In order to appreciate the learned authorized representative's submissions, we reproduce the view of the third member hereinafter:-

"I find that para 5.4(i) of the EXIM Policy 2002-07 was amended under the above Notification No. 28 dated 28-1-2004 and accordingly, under the EPCG Scheme, the importer should discharge export obligation by exporting goods capable of being manufactured by the use of the imported capital goods. He had also the option of discharging export obligation by way of export of identical

goods manufactured in different units owned by him. In case he has no manufacturing unit, this option could be exercised by way of export of goods manufactured by his supporting manufacturer having one or more manufacturing units.

The amended para 5.4(i) of the EXIM Policy allowed an alternative, viz, the export obligation could be fulfilled by export of other goods manufactured or service provided by the licence holding company or group company. It is this part of the amended para 5.4(1) of the EXIM Policy, which has been specifically referred to by both sides."

Here it has to be determined as to whether the 'export obligation' of the assessee in respect of the car imported by them under the EPCG Scheme could be fulfilled by way of foreign exchange earnings from the entire hotel business. I have repeatedly referred to the definition of 'export obligation' given under clause (ii) of *Explanation* (4) to Notification 44/2002-Cus. There are umpteen number of judicial decisions holding that the substantive conditions of an exemption notification should be strictly construed. That the importer under EPCG Scheme should discharge his export obligation in respect of the imported capital goods within the prescribed period is one such condition attached to the above notification and the same has to be read with the definition of "export obligation" given under clause (ii) of *Explanation* (4) to the notification. If that be so, the requirement of having to discharge export obligation by way of earning foreign exchange by making use of the imported capital goods is something imperative, which cannot be dispensed with. If there is any clarification of the Board to the contra, it is open to review. The Supreme Court's observation (vide *Commissioner v. Ratan Melting & Wire Inds.* [[2008 \(231\) E.L.T. 22](#) (S.C.) = [2008 \(12\) S.T.R. 416](#) (S.C.)] that a circular which is contrary to statutory provisions has really no existence in law is relevant to this context. If there is any decision of this Tribunal without regard to the aforesaid definition connected with a substantive condition of Notification 44/2002-Cus., the same may not be a valid precedent. In the result, I hold that only such foreign exchange earnings, if any, earned by the assessee out of actual use of the car for rendering the specific service mentioned in the EPCG licence could be reckoned in determining the extent of discharge of export obligation by the assessee.

The learned Member (Technical) of the regular Bench has, in his dissenting order, lucidly brought out the manner in which the car was actually used by the assessee. The vehicle was imported through Mumbai port and taken to Trivandrum in a truck. After getting the vehicle registered at Trivandrum for purposes of the Motor Vehicles Act, the assessee brought the vehicle to Bangalore in the same truck. The car was at Bangalore ever since then, and was never shown to have been used for rendering service to foreign tourists visiting Kerala. Originally the car was

registered as a tourist vehicle. Later it was converted into a private car. Such conversion of the nature of use of the car did not, in any manner, subserve the purpose for which it was imported. The learned counsel has referred to certain facts in his bid to show that the car was used at Bangalore for business purposes of the assessee. These submissions remain to be just *ipse dixit*. It may be true that the DGFT agreed to amend the licence by incorporating therein a Bangalore address which the assessee claimed to be its own. Even this amendment would not improve the case of the assessee vis-a-vis the conditions of Notification 44/2002-Cus. One of the conditions of the notification is that the car should be installed in the premises of the importer. Contextually, I have to consider the rival submissions with reference to "installation" of car. One must have regard to what the apex court observed in the case of *TISCO v. Collector* [[2005 \(181\) E.L.T. 311](#) (S.C.)] - "As the words "instal" or "installed" go to show, much would depend upon the context in which the expression is used in a particular statute and no generalisation can be made." Insofar as a vehicle is concerned, its installation, to my mind, would mean its registration under the Motor Vehicles Act and the Rules framed thereunder. This car was registered at Trivandrum and, therefore, it can be said that it was installed there. The assessee produced a certificate from the Chartered Engineer who certified that the car was installed as per the Registration Certificate. It can, therefore, be said that the condition with regard to installation of capital goods was satisfied by the assessee. But such installation was not enough inasmuch as actual user was fundamental to the EPCG scheme (as observed by the Hon'ble High Court in *Interglobe Enterprises Ltd. v. Union of India* [[2006 \(203\) E.L.T. 202](#) (Del.)] and there was the further substantive condition which required the assessee to use the car in the same premises for rendering service to foreign tourists and earning foreign exchange out of such use. This condition, it is clear, was not complied with by the assessee. In the result, on strict interpretation of the relevant conditions of the notification, I hold that the 'export obligation' in respect of the imported car in this case was liable to be fulfilled only by the earnings through the use of the car in or around the place in which it was installed. "

16. The Supreme Court while upholding the Tribunal order held as follows:-

"This Court has carefully considered the appeals and has gone through the records. The interpretation favoured by the Members in the majority of the Customs, Excise and Service Tax Appellate Tribunal [[2010 \(256\) E.L.T. 433](#) (Tri - Mumbai)], holding that having regard to the facts of these cases, **the fulfillment of export obligation certificate was not determinative, per se, cannot be**

**sustained.** However, having regard to the other factual findings, this Court is of the opinion that the larger interest of justice will be subserved if the impugned order is sustained except to the extent of the slight modification. No substantial question of law arises.

2. The direction to pay penalty imposed upon the Directors/employees of the appellant(s)-Company to the extent of ` 25 lakhs in aggregate is hereby set aside. The balance, if any, may be paid after adjusting the amounts encashed through the Bank Guarantee and the amounts paid subsequently by the appellant(s)-Company.

3. This order is in the circumstances of these cases which shall not be finally determinative of the rights of the appellant(s) in any other pending proceedings. All rights and contentions in that regard are kept open.

4. The appeals are partly allowed in the above terms.”

17. Perusal of the Apex Court decision clearly holds that the Tribunal’s findings that the fulfilment of Export Obligation Certificate was not ‘determinative’ was not sustained. In the context of the instant case, we find that the majority opinion in the said decision of the Tribunal had held that the **holding of EODC issued by the competent authority, viz., DGFT was not determinative of fulfilment of export obligation.** The Apex Court has set-aside this very observation of the Tribunal, on which the Ld AR has placed reliance in the instant case. The term “determinative factor” in a judgment refers to an element, circumstance, or condition that has a decisive influence or directly controls the outcome of the case before the court. It essentially means the cause or consideration that is pivotal in deciding the legal issue or dispute; in other words, it is the “but for” or “because of” factor whose existence or absence conclusively settles the point at issue. It is a crucial element, influence, or circumstance that decisively shapes or controls the nature, outcome, or direction of a situation, decision, or event. The

Courts have interpreted the term "determinative" particularly in the context of contracts, as referring to something that can be brought to an end or terminated, especially at the unilateral will of a party without reference to breach or other circumstances. In legal terminology, "determinative" also means sufficient to decide something, such as a question of fact or law.

18. In the instant case, the holding of the EODCs was determinative of completing their export obligations towards the import of the three cars. We note that copies of logbooks of all the 3 vehicles were submitted to the departmental authorities establishing the use of the said three vehicles for transporting guests and used in other tourism related activities. The Department has led no evidence to the contrary. Hence, we hold that the appellant had completed his export obligation and the issuance of EODCs by DGFT are determinative of the same.

19. Our conclusion is further strengthened by the DGFT clarification dated 27.12.2006 wherein the competent authority with reference to the DRI query of export earnings through alternate products and services like room rent, income from sale of food, beverages etc. had clarified as follows:-

"4. As regards issue at 2(ii) above, in the working of hotel, **tourism and travel service industry the vehicles are part of an overall package drawn by these service providers for the tourists. This package may include hotel accommodation, food, beverages and travel cost and charges for utilizing imported vehicles would not be billed separately to the tourist.** It is therefore not practically possible for these sectors to show export earnings separately from use of these vehicles. **Therefore, the views expressed by the DRI or this score cannot be accepted and all benefits including all earnings for providing hotel accommodation, sale of food and beverages, apart from transportation of the tourist, should be**

**considered towards discharge of export obligation against vehicles imported under EPCG scheme.**

This is however subject to the condition that no part of the sale proceeds have been paid in free foreign exchange to any other service provider for providing add on services for hotel accommodation etc.”

20. Therefore, we find the Supreme Court’s judgment in **Surya Samundra** case does not come to the rescue of the department . The learned authorized representative has also relied on the Supreme Court judgment in **Sheshank Sea Foods Private Limited** wherein the powers of the customs authorities to investigate take action for breach of conditions of exemptions was upheld. In the instant case, we note that the power of the customs authorities to investigate is not under question. What has to be decided here is whether the **Surya Samundra** judgment is squarely applicable to the facts of the instant case, which has been examined in the foregoing paras.

21. It is a settled position of law that once EODC has been issued by DGFT, then the same is deemed to be completion of all export obligations.

22. In view of the above discussions, we set aside the impugned order and allow the appeal, with consequential relief, if any.

*(Order pronounced in the open Court on 20.11.2025)*

**(JUSTICE DILIP GUPTA)**  
PRESIDENT

**(HEMAMBIKA R. PRIYA)**  
MEMBER (TECHNICAL)