CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 5

Customs Appeal No. 87360 of 2016

[Arising out of Order-in-Appeal No. MUM-CUSTM-SXP-61&62/2016-17 dated 17.06.2016 passed by the Commissioner of Customs (Appeals), Mumbai-I, Mumbai.]

Umesh Shraf **.... Appellant**
Managing Director of Unison Hotels Ltd.
Nelson Mandela Road
Vasant Kunj, Phase-II
New Delhi – 110 070.

Versus

Commissioner of Customs (Export-II) **.... Respondent**
New Custom House
Shoorji Vallabhdas Road, Ballard Estate,
Mumbai, Maharashtra – 400 001.

WITH

Customs Appeal No. 87361 of 2016

[Arising out of Order-in-Original C.A.O. No. 16/2025-26/CAC/CC(E)/AH/ADJN-EXP dated 22.05.2025 passed by the Commissioner of Customs (Export), Mumbai Zone-I, Mumbai.]

Unison Hotels Limited **.... Appellant**
Nelson Mandela Road
Vasant Kunj, Phase-II
New Delhi – 110 070.

Versus

Commissioner of Customs (Export-II) **.... Respondent**
New Custom House
Shoorji Vallabhdas Road, Ballard Estate,
Mumbai, Maharashtra – 400 001.

Appearance:

Shri T. Shanmugam, Advocate for the Appellants

Shri Mahesh Patil, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86103-86104/2026

Date of Hearing: 20.08.2026

Date of Decision: 11.09.2026

Per: M.M. PARTHIBAN

These appeals have been filed by M/s. Unison Hotels Limited, New Delhi i.e., appellant-importer and Shri Umesh Saraf, Managing Director of M/s. Unison Hotels Limited (herein after, referred together as "the appellants", for short) assailing the Order-in-Appeal No. MUM-CUSTM-SXP-61&62/2016-17 dated 17.06.2016 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai-I, Mumbai.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2 The appellant-importer company is *inter alia*, engaged in providing hotel-related services and for this purpose they require imported vehicles as capital goods. Therefore, they had applied under Export Promotion Capital Goods (EPCG) scheme before the DGFT authorities for issue of EPCG authorization for import of four cars availing import duty concession under the said EPCG Scheme. The appellant-company was issued with EPCG Authorizations one among them is No. 0530143858 dated 11.06.2007. On the above basis, the appellant-importer company had imported four cars, one out of which is (i) DL1ZZ 0209 [Honda CR-V] imported and cleared though Mumbai Sea Port; and the other three cars viz., (ii) DL1ZZ 0198 [BMW] (iii) DL1ZZ 0185 [BMW] (iv)DL1ZZ 0432 [BMW] were cleared through Chennai Sea Port by utilizing EPCG Authorization No. 0530143860 dated 11.06.2007

2.3 On the basis of specific information that the above vehicles were being used as private vehicles for the personal use of the Managing Director of the appellant i.e., the first appellant herein, and his family members, and were not being used for commercial purposes to earn foreign currency for the fulfilment of export obligation, as stipulated, further necessary action was taken by the department for conduct of detailed investigation. On completion of the investigation, separate Show Cause Notices (SCNs) in respect of the vehicles imported through Mumbai and Chennai were issued.

2.4 SCN dated 30.08.2011 was issued for demand of duty of Rs.9,41,922/- along with interest in respect of one car imported through Mumbai Sea port and proposal for imposition of penalty on the appellant-importer company and Shri Umesh Saraf in respect of car imported through Mumbai. In adjudication of the said SCN, the Joint Commissioner of Customs, Mumbai had confirmed the duty demand of Rs. 9,41,922/- along with interest and ordered for confiscation of the imported car for violation of the provisions of Section 111(d) and 111(o) of the Customs Act, 1962 and allowed the same on payment of redemption fine of Rs.7,00,000/-; besides this he also imposed penalty on the appellant-importer company for Rs.1,50,000/- and the appellant Shri Umesh Saraf at Rs.1,00,000/-. Being aggrieved by such order of the original authority, the appellants have filed appeal before the learned Commissioner of Customs (Appeals), who by passing the impugned order had upheld the order of the original authority and rejected the appeals filed by the appellants. Feeling aggrieved by the impugned order, the appellants have filed these appeals before the Tribunal.

3. Learned Counsel for the appellants submitted that on the identical facts of the case in respect of three cars imported through Chennai Sea Port, after detailed examination of the facts and the judicial decisions cited by them, the issues under dispute have been decided by the Co-ordinate Bench of Tribunal vide Final Order Nos. 40598-40599/2023 dated 21.07.2023 in their favour. Since the disputed issues are identical in both cases, they pleaded that on the above basis, these appeals may also be decided.

4. Learned Authorised Representative appearing for Revenue, reiterated the findings made in the impugned order and submitted that adjudged demands are sustainable.

5. We have heard both learned Counsel appearing for the appellants and learned Authorized Representative of the Department and perused the case records and the synopsis given in the form of written submissions.

6. The issue for consideration before the Tribunal lies in the narrow compass of examining whether there exists any violation of EPCG Authorization conditions issued to the appellants resulting in non-fulfillment of the conditions of notification No. 97/2004-Customs dated 17.09.2004 through which the appellants have availed import duty concessions for import of one Honda CR-V Rvi MT car as aforesaid; and whether confirmation of adjudged demands upheld by the learned Commissioner (Appeals) in the impugned order are sustainable or not.

7. We find that the identical issues under dispute have been examined by the Co-ordinate Bench of the Tribunal at Chennai in respect of three cars imported by the self-same appellants. The allegations raised by the department and the findings of the Tribunal as recorded in the Final Order Nos. 40598-40599/2023 dated 21.07.2023 are extracted and given below:

"2.1 Facts are not in dispute: the appellant had imported four cars under the EPCG Scheme, namely: -
(i) DL1ZZ 0198 [BMW]
(ii) DL1ZZ 0185 [BMW]
(iii)DL1ZZ 0432 [BMW]
(iv)DL1ZZ 0209 [Honda CR-V]
The vehicles at Sl. Nos. (i) to (iii) above were cleared through Chennai Sea Port and the vehicle at Sl. No. (iv) through Mumbai Sea Port.

2.2 It appears that the importation purportedly was made for use in Tour / Transport / Hotel Related Services of foreign nationals.

2.3 It appears that the Revenue received specific information that the above vehicles were being used as private vehicles for the personal use of the Managing Director of the appellant i.e., the second appellant herein, and his family members, and were not being used for commercial purposes to earn foreign currency for the fulfilment of export obligation, as stipulated in the EPCG Authorization and Scheme.

2.4 Based on the above specific information, it appears that the Customs Preventive Commissionerate, New Delhi initiated investigation followed by a search on 04.03.2011 at the following premises: - (1)M/s. Unison Hotels Ltd. (The Grand), Nelson Mandela Road, Vasant Kunj, Ph-2, New Delhi. (2)Residence of Sh. Umesh Saraf, Managing Director of M/s. Unison Hotels Ltd., at W-120, Greater KaliashII, New Delhi. (3)Residence of Sh. Santosh Kanoi, at D-1103, Friends Colony (East), New Delhi.

2.5.1 During the search, one car bearing Registration No. DL1ZZ 0198 was found parked at the residential premises of the second appellant; the same was found to have white number plate.

2.5.2 It appears that the search at Sl. No. (3) was at the residential premises of one Mr. Santosh Kumar Kanoi whereby another vehicle bearing Registration No. DL1ZZ 0185 was found parked and the Officers appear to have found that the said person namely, Mr. Santosh Kumar Kanoi was the brother-in-law of the second appellant. 2.5.3 During their search of the hotel premises, the Revenue appears to have found the other two vehicles bearing Registration Nos. DL1ZZ 0432 and DL1ZZ 0209

2.6 It appears that the officials / search party chose to record statements of some of the employees working in the appellant-hotel, including the second appellant and Mr. Santosh Kumar Kanoi and the drivers, under Section 108 of the Customs Act, 1962.

3. It appears that the following were noticed by the officials: -
(i) The appellant was under an obligation to fulfil export in respect of 'Hotel Related Services'.

(ii) The export obligation was to be fulfilled within a period of eight years from the date of issue of authorization and to be fulfilled by the use of the above imported vehicles / capital goods.
(iii) The firm was to maintain its average of the past three years export performance.
(iv) The annual average of the past export performance for the vehicles imported in 2007 (the cars mentioned at Sl. Nos. (i), (ii) and (iv) supra) was Rs.568,685,933.58/- and in respect of the other vehicle which was imported in 2009 (the car mentioned at Sl. (iii) supra), was Rs.384,886,148.62/- [paragraph 25(3) of the Show Cause Cum Demand Notice].
(v) All the vehicles were registered to be used as taxi only, registered under "T" Board.
(vi) From the statements recorded, it appeared to the officials that all the imported vehicles were being used exclusively as private vehicles for personal purposes of the second appellant and his family members, in violation of the "T" Board Registration.
(vii) The appellant did not produce documents to support that the said vehicles were used as tourist taxi to earn foreign exchange
(viii) In respect of the car at Sl. No. (i), they appear to have noticed that the insurance was made as a private car.
(ix) The cars were imported under the EPCG Authorization by mis-declaring that the same were required to provide comfortable road travel services to the high-class guests of any other country in India to earn foreign exchange.
(x) The appellant never used the above vehicles for the intended purposes to earn foreign exchange.
(xi) The total amount of Customs Duty saved in respect of the above vehicles by misusing the EPCG scheme was Rs.96,11,113/- for the vehicles imported through Chennai Port and Rs.9,41,922/- for the other vehicle imported through Mumbai Port.
(xii) The above has resulted in violation of the Foreign Trade (Development and Regulation) Act, 1992, the Foreign Trade (Regulations) Rules, 1993, the Foreign Trade Policy 2004-2009, Hand Book of Procedure, Volume-1 (Foreign Trade Policy 2004- 2009), Customs Notification No. 97/2004-Cus. dated 17.09.2004 and Customs Notification No. 64/2008-Cus. dated 09.05.2008, etc.

4. Based on the above, a Show Cause Cum Demand Notice dated 26.08.2011 was issued by the Commissioner, proposing inter alia to confiscate all the BMW cars imported against EPCG authorization through Chennai Seaport, to deny the benefit of concessional rate of duty under Notification No. 97/2004-Cus. dated 17.09.2004 and Notification No. 64/2008-Cus. dated 09.05.2008 under Sections 111(d) and 111(o) of the Customs Act, 1962, apart from proposing to charge applicable rate of interest under Section 28AB and penalty under Section 112(a) ibid. on both the appellants.
……….
10. We have perused the documents placed on record and we have also carefully considered the orders relied upon during the course of arguments.

11.1 From a perusal of the Show Cause Notice and the impugned Order-in-Original, we find that three cars were imported under the EPCG Scheme *in 2007 and another one in 2009. A sample Condition Sheet is placed in the appeal memorandum at page 63, the relevant portion of which is reproduced for the sake of convenience and reads as under: -*

"Office of Jt. Director General of Foreign Trade
A-WING, Indraprastha Bhawan, I.P. Estate, New Delhi–110 002
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CONDITION SHEET

ANNEXURE – A
Attached to EPCG Authorisation No: 0530143860 Dated : 11.06.2007

1. This Authorisation has been issued under Chapter 5 of Foreign Trade Policy 2004-2009 and carries an export obligation to export to GCA countries and realise the export proceeds in freely convertible currency and is subject to the conditions as laid down in Chapter 5 of Foreign Trade Policy and Procedures (Vol.I) 2004-2009 and/or The authorisation holder shall supply goods to categories carried under para 8.2 (a), (b), (d), (f), (g) and (j) of the policy.

2. The firm is under obligation to Export Item

S.No.	*ITCHS Code*	*Export Item Name*
1	*87032291*	*Hotel related services. CAR MODEL: BMW 730Ls Diesel 2993cc, RHD With Accessories*

worth US$ 577,876.51 i.e. 8 times the duty saved of Capital Goods on FOB basis within a period of 8 years (12 years in case duty saved is Rs. 100 Crore or more) from the date of issue of authorisation. The Export Obligation shall be fulfilled by the use of the Imported Capital Goods.

3. The firm is also required to maintain its average of the past three years export performance of the same and similar products mentioned in Para 2 above. The annual average of the past export performance is Rs.568,685,933.58.

4. …

5. …

6. Import of Capital Goods under this authorisation shall be subject to actual user condition. … …."

11.2 From the above it is clear that the import of cars at a concessional rate of duty was permitted subject to the above conditions, that is to say, inter alia, to fulfil the obligation eight times the duty saved within a period of eight years from the date of issue of Authorization, the importer was also required to maintain its average of the past three years export performance of the same and similar products mentioned in paragraph 2 above and the 'actual user' of vehicles.

12. We have also perused the application dated 18.03.2011 filed by the appellant addressed to the Zonal Director General of Foreign Trade (DGFT) requesting for redemption of EPCG Authorization, enclosing various documents. The appellant has also placed on record its letters dated 22.08.2012 addressed to the same authority (i.e. Zonal DGFT) wherein, in furtherance of their earlier request (vide application dated 22.03.2011), they have requested for issuance of EODC on fast track basis, thereby enclosing FIRCs for having generated foreign exchange for the years 2007-08 and 2009-10 for the three vehicles. They have also annexed thereto a certificate by a CA / Cost Accountant with regard to their foreign exchange earnings.

13. The appellant has also filed a communication issued by the Foreign Trade Development Officer to the Assistant Commissioner, New Customs House, IGI Air Port, New Delhi, dated 07.09.2012 requesting for details of current status of investigation, along with the follow-up letters dated 06.02.2015, 17.07.2015 and 16.02.2016.
It is a fact borne on record that the said authority i.e., the office of the DGFT, did not receive any responses to any of their communications referred to supra.

14.1 In the case of M/s. M Far Hotels Ltd. (supra), decided by the co-ordinate Bangalore Bench of the CESTAT, the following ratio emerge: -
……
14.2 From the above, it is clear that the issuance of Show Cause Notice, etc., appears to be premature since on the date of issuance of the Show Cause Notice i.e.,26.08.2011, the appellant had time up to 2015/2017 to fulfil their export obligations. 15.1 We find it useful at this juncture to refer to the order of the Delhi Tribunal in the case of M/s. Air Travel Bureau Ltd. (supra). Brief facts, as noted by the Ld. Bench, are reproduced below:
….

15.1 We find it useful at this juncture to refer to the order of the Delhi Tribunal in the case of M/s. Air Travel Bureau Ltd. (supra). Brief facts, as noted by the Ld. Bench, are reproduced below: -
………
15.2 After hearing the rival contentions, the CESTAT has held as under: -
……..
15.3 It appears that the Revenue preferred an appeal against the above Order before the Hon'ble High Court of Delhi and the Hon'ble High Court vide its judgement dated 03.08.2010 as reported in 2010 (260) E.L.T. 78 (Del.), after considering the submissions, has followed its earlier judgement in the case of M/s. Interglobe Enterprises Ltd. v. Union of India [2006 (203) E.L.T. 202 (Del.)] and held as under: -
……

15.4 The Revenue had preferred SLP against the above judgement of the Hon'ble Delhi High Court, which was dismissed by the Hon'ble Supreme Court, as reported in 2011 (268) E.L.T. A110 (S.C.).

16.1 From the above, it is clear that the importer should be able to demonstrate that the goods were in fact put to use for the business activity for which the same was imported. That is to say, the importer should not violate the conditions of actual user.

16.2 From the documents placed on record by the appellant, we find that the appellant has declared substantial income in foreign exchange, which is not disputed by the Revenue, though they have proceeded from different perspectives, but going by the above ruling, all other points are immaterial except the actual user test, which according to us stood satisfied by the appellant. The very fact that there is foreign exchange earned is itself sufficient to hold so. When the appellant submitted its application for EODC on 22.03.2011 by contending that it has fulfilled the export obligations, the concerned authority namely, the Office of the DGFT, appears to have duly acknowledged both the fact of the appellant fulfilling the conditions as well as the requesting for discharge certificate. This fact has not been specifically denied by the Revenue anywhere in the impugned order.

17.1 We find that in the case of M/s. Goldfinch Hotels Pvt. Ltd. v. Commr. of Cus. (Acc & Exports), Mumbai [2015 (328) E.L.T. 282 (Tri. – Mum.)], the co-ordinate Mumbai Bench was seized of a more or less identical situation wherein cars imported under EPCG were confiscated and the Revenue had also relied upon statements including that of drivers. But however, the Ld. Bench has observed that:-

- *There was no condition stipulating to park the vehicle imported under the EPCG Scheme at a particular place and mere parking of the vehicle at a particular place could not be considered as a violation of actual user condition.*
- *No conclusive inference could be drawn from the version of the driver.*
- *None of the statements recorded contained any positive admission that the appellant therein actually intended to import the car only for the personal use of its MD.*
- *The records did not dispute the fact that the said vehicles were actually registered in the name of the appellant therein for "tourist purpose".*
- *The Ld. Bench drew support from the decision of the Hon'ble Supreme Court in M/s. Vadilal Chemicals Ltd. v. State of Andhra Pradesh [2005 (192) E.L.T. 33 (S.C.)] and the decision of the Hon'ble Kerala High Court in M/s. M Far Hotels Ltd. v. Union of India [2011 (270) E.L.T 158 (Ker. HC)] to hold that the benefits conferred under the FTP therefore could not be denied to the appellant therein since neither the FTP nor the exemption Notification lay down the nature of day-to-day record to be maintained by the importer in respect of foreign exchange earned from the imported capital goods.*

17.2 On appeal by the Revenue against the above order, the Hon'ble Bombay High Court vide its judgement dated 30.01.2017 as reported in 2017 SCC Online Bom 6626 has dismissed the appeal.

18. We find that more or less similar views were expressed in the other orders of co-ordinate Benches relied upon by the appellant.

19. Further, the allegations as to violation of vehicle registration, etc., are the concerns of the relevant authorities, which is not the domain of the Customs authorities. Any violation with regard to vehicle registration, insurance, etc., could only be looked into by such authorities who have jurisdiction over the same and, in any case, nothing is brought out on record as to the Customs authorities informing such violations which are alleged, to the concerned State authorities.

20.1 From the documents placed on record before us, we find that other than mere allegations, the Revenue has not placed on record any documentary evidence in support of its allegations. Moreover, they have not even justified that the violations alleged against the appellants were in fact violating either the conditions in the Scheme or FTP or any other relevant Acts or Rules. This assumes importance since we are guided by the ratio in the orders referred to supra wherein it has been held that a violation should be of the conditions as prescribed under the relevant Acts or Rules or Scheme and that too, such violations should only be considered in the context of non-fulfilment of export obligation at the end of the completion of the prescribed period to fulfil such obligation and not before the expiry of the said period.

20.2 In view of the above, we are of the view that the allegation levelled by the Revenue as to violation / nonfulfilment of export obligations was too premature and in any case, the appellant had declared its foreign exchange earnings as well, which were not considered nor discussed in the impugned order.

21. In view of the above, we do not find any justification in ordering confiscation for non-fulfilment of export obligations by the appellant. Consequently, the penalty levied against the appellants are also without justification and hence, the same stand deleted."

7. On examining the documents placed in the appeal records, more particularly EPCG Authorization No. 0530143858 dated 11.06.2007 issued by the Joint DGFT, New Delhi/DGFT authorities, we find that the conditions specified therein are identical to the EPCG authorization dealt in with other three cars referred to in the Final Order dated 21.07.2023 passed by the Co-ordinate Bench of the Tribunal. The relevant extract of the said EPCG authorization relevant to this case is given below:

"Office of Jt. Director General of Foreign Trade
A-WING, Indraprastha Bhawan, I.P. Estate, New Delhi–110 002

CONDITION SHEET

ANNEXURE – A

*Attached to EPCG Authorisation No: 05301438**58** Dated : 11.06.2007*

1. This Authorisation has been issued under Chapter 5 of Foreign Trade Policy 2004-2009 and carries an export obligation to export to GCA countries and realise the export proceeds in freely convertible currency and is subject to the conditions as laid down in Chapter 5 of Foreign Trade Policy and Procedures (Vol.I) 2004-2009 and/or The authorisation holder shall supply goods to categories carried under para 8.2 (a), (b), (d), (f), (g) and (j) of the policy.

2. The firm is under obligation to Export Item

S. No.	*ITCHS Code*	*Export Item Name*
1	*87032291*	***HONDA CR-V***
		(Item List Description – HONDA CR-V RV I MT)

*worth **US$ 162,457** i.e. 8 times the duty saved of Capital Goods on FOB basis within a period of 8 years (12 years in case duty saved is Rs. 100 Crore or more) from the date of issue of authorisation. The Export Obligation shall be fulfilled by the use of the Imported Capital Goods.*

3. The firm is also required to maintain its average of the past three years export performance of the same and similar products mentioned in Para 2 above. The annual average of the past export performance is Rs.568,685,933.58.

4. …

5. …

6. Import of Capital Goods under this authorisation shall be subject to actual user condition. … …."

Considering the factual matrix of the case in this appeal in respect of one Honda CR-V Rvi MT car is exactly similar to the facts of the other three BMW cars imported by the self-same appellants, we are of the considered opinion that this Bench of the Tribunal cannot decide the disputed issue differently than the one that has already been decided by the Co-ordinate Bench of the Tribunal in the case of self-same appellants.

8.1 We also find that with respect of import of Honda CR-V Rvi MT car by utilizing Advance Authorization No. 0530143858 dated 11.06.2007, the appellants-importer have submitted the installation certificate dated 27.02.2008; Certificate of Registration with Registering Authority of the State/Union Territory viz., Transport Department of Delhi Administration dated 08.02.2008 mentioning that the said car bearing Registration No. DL 1ZZ 0209 is of vehicle class "Tourist Taxi Deluxe" to the DGFT Authorities vide their letter dated 22.08.2012. The certificate of foreign exchange earnings towards export obligation have also been submitted by the appellant and their request for issue of EODC was pursued with the DGFT authorities vide letters dated 06.05.2013, 14.05.2013, 10.06.2013, 05.08.2013. The DGFT had issued the EODC/Redemption letter in respect of Advance Authorization No. 0530143858 on 11.01.2024. Therefore, non-compliance with the conditions of EPCG scheme in respect of imports made in respect of Honda CR-V Rvi MT car in Advance Authorization No. 0530143858 under notification No. 97/2004-Customs dated 17.09.2004 cannot legally sustain, inasmuch as the competent authorities i.e., DGFT have issued the EODC in favour of the appellants. Though such EODC was not available at the time of adjudication of the case in the impugned order, it was mentioned by the appellants before the original authority that the importer company has fulfilled the export obligations and the same was confirmed by the DGFT vide their letter no, 05/35/021/106/AM-08/EPCG-II CLA dated 07.09.2012. It is an undisputed fact that EODC has been granted by DGFT in respect of Advance Authorization No. 0530143858 on 11.01.2024.

8.2 We further notice that the appellants had submitted the requisite details for obtaining EODC with DGFT authorities vide their letter dated 22.08.2012. However, the same was issued by the DGFT authorities only on 11.01.2024. Therefore, non-production of EODC at the time of adjudication before the original authority and during the appellate proceedings before the learned Commissioner of Customs (Appeals) was beyond their control, as the same was not issued by the competent authorities.

9. In view of the foregoing discussions and analysis, we are of the considered view that the impugned order to the extent it had upheld confirmation of the duty demands along with imposition of redemption fine and penalty on the appellants are not legally sustainable.

10. In the result, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in open court on 11.09.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha