CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20630 of 2016

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-360/2015-16 dated 21.01.2016 passed by the Commissioner of Customs (Appeals), Cochin.)

Kanakaparambil Suresh
R/o Kanaka Parambil House,
Kappur P.O.,
Palghat – 679 552.

Appellant(s)

VERSUS

Commissioner of Customs,
Customs House,
Cochin.

Respondent(s)

APPEARANCE:

Mr. Baby M.A., Advocate, for the Appellant

Mr. K. Vishwanatha, Superintendent (AR), for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20555 /2024

DATE OF HEARING: 26.06.2024
DATE OF DECISION: 26.06.2024

PER : R. BHAGYA DEVI

This appeal is filed by the appellant Shri Kanaka Parambil Suresh against the Order-in-Appeal No. 360/2015-16 dated 21.01.2016.

2. Brief facts are that the appellant had imported Toyota Celsior Car model 1994 vide Bill of Entry No.113291 dated 29.01.2002, which was assessed to a value of Rs.5,25,485.82 and corresponding duty of Rs.9,30,992/-. Subsequently, a letter dated 20.03.2009 was received from the Commissioner of Customs (Import), Special Intelligence and Investigation Branch, Mumbai based on which a show-cause notice dated 21.03.2014 was issued under Section 28(1) and Section 124 of the Customs Act, 1962, which has resulted in the impugned order. The Commissioner (Appeals) observing that there is ample evidence in tampering the chassis Number of the imported car and mis-declaring the year of manufacture, upheld the order of the original authority. Accordingly, the value of the car was redetermined as Rs.10,86,735/- and the car was confiscated under Section 111(m) of the Customs Act, 1962. The car was allowed to be redeemed on payment of fine of Rs.2,00,000/- and penalty of Rs.1,00,000/- under Section 112(a) of the Customs Act, 1962. The appellant is in appeal before us against imposition of redemption fine and penalty.

3. The learned counsel on behalf of the appellant submitted that the differential duty demanded in the show-cause notice was dropped by the original authority for the reasons that the demand was time barred under Section 28 of the Customs Act, 1962 which was upheld by the Commissioner (Appeals) in the impugned order. In view of the above it is submitted that the entire show-cause notice is barred by limitation. It is also argued that once the demand is set aside, the question of imposition of penalty or redemption fine does not arise.

3.1 The learned counsel also objected the redetermination of value on the ground that the value cannot be redetermined at a belated stage and it is also not done as per the Customs Valuation Rules as laid down by the Supreme Court in the case of **Eicher Tractors Ltd. Vs. Commissioner of Customs, Mumbai: 2000 (122) E.L.T 321 (S.C.)**. Finally, he requested that the redemption fine and penalty to be reduced.

4. The Authorised Representative on behalf of the Revenue vehemently argued that the Economic Offence Wing Crime Branch of Mumbai Police on investigation into evasion of Customs duty on imported cars as per the directions of the Hon'ble High Court of Bombay had found that the above disputed car imported by the appellant, the chassis number was tampered with. In their examination report dated 28.07.2008, it was stated that the chassis number of the subject vehicle is UCF-20-0141459 and after restoration it was found that the actual chassis number was UCF20-0142459. Based on the above, it was found that the declared year of manufacture which was 1994 was actually 2001. In view of the above, the original authority had rightly redetermined the value. Since it is a case of tampering and mis-declaration, there was no time limit under Section 124 for issuing show-cause notice for confiscation of the goods. The Revenue also relied on decision of the Hon'ble High Court of Calcutta in the case of **All India General Transport Corporation Ltd. vs. CCE and C, W.B. Calcutta: 2000 (126) ELT 541 (Cal.)** dated 11.09.1974 wherein it was held that there is no time limit prescribed under Section 124 of the Customs Act. Accordingly, the redemption fine and penalty imposed by the authorities below needs to be upheld.

5. Heard both sides. The Hon'ble High Court of Bombay while hearing the case of Sushmita Sen vs. MGM in Writ Petition No.1064/2007 directed the Economic Offences Wing, Crime Branch Mumbai to investigate the alleged evasion of customs duty on imported cars based on forged documents in 48 cases. The appellant's case was one among them. The Mumbai police vide letter dated 08.05.2010 informed the customs Cochin that the vehicle Toyota Celsior having Chassis No. UCF 20-0141459 which was cleared vide Bill of Entry No.113291 dated 29.01.2002 was registered with the RTO showing the year of manufacture as 2001. They had also enclosed the examination report M(T) No.1516408 dated 28.07.2008 of Directorate of Forensic Science Laboratories, Home Department, State of Maharashtra which stated that 'the Chassis Number of the subject vehicle as received is UCF 20-0141459; but after restoration, it was found that the Chassis Number of the vehicle had been tampered with and the actual Chassis Number was UCF 20-0142459'. The Mumbai police also intimated that the year of manufacture of vehicle was 10.09.1998 as against the declared year of manufacture as 1994 and the list price of the said vehicle was JPY 5.415 million. Accordingly, a notice was issued to the appellant under Section 124 of the Customs Act, 1962 and the goods were confiscated under Section 111(m) and redemption fine and penalty was imposed under Section 112(a) of the Customs Act, 1962.

5.1 Let's examine Sections 111 and 124 of the Customs Act, 1962, which reads as:

Section 124. Issue of show cause notice before confiscation of goods, etc. -

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

(a) is given a notice in [1][writing with the prior approval of the officer of Customs not below the rank of [2][an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

[3][**Provided** further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]

Section 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation: -

(m) [2][any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-Section (1) of Section 54.

5.2 Section 124 reproduced above does not provide any limitation for issuance of show-cause notice for the purpose of confiscation or imposition of penalty. In view of the mis-declaration and the fact that there is no time limit envisaged in the above Sections 111(m) or 124 for issuance of the notice, the plea of the appellant that the notice is time barred cannot be accepted. The reliance placed on by the counsel in the case of

Commissioner of Customs, Mumbai vs. M.M.K. Jewellers: 2008 (225) E.L.T. 3 (S.C.) is not applicable as it was a notice issued under Section 28 and penalty imposed under Section 114(A) of the Customs Act, 1962.

5.3 Based on the report received from the Mumbai Police, it is evident and beyond doubt that the car imported was mis-declared by tampering the chassis number and the value was also determined based on the mis-declared year of manufacture. The authorities below were right in redetermining the value at Rs.10,86,735/- in terms of Rule 5 of the Customs Valuation Rules, 1988. And accordingly, we uphold the impugned order, however, taking into consideration various settled decisions, we reduce the redemption fine to Rs.1,00,000/- (Rupees One Lakh Only) and the penalty to Rs.50,000/- (Rupees Fifty Thousand Only). The impugned order is modified to the above extent and Appeal is partly allowed.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Tr/rv