CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH, COURT NO. 2

Customs Appeal No. 20573 of 2019

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-111 to 112/2018-19 dated 02.04.2019 passed by the Commissioner of Customs (Appeals), Cochin]

Centre For Wildlife Studies
Apt – 224, Rajnigandha, Garden Apartments,
21, Vittal Mallya Road, Bengaluru (Bangalore),
Karnataka – 560 001, India.
Represented by its Managing Trustee,
Dr. K. Ullas Karanth. … ***Appellant***

versus

Commissioner of Customs
Wellingdon Island, Cochin – 682 009. ***...Respondent***

WITH

Customs Appeal No. 20574 of 2019

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-111 to 112/2018-19 dated 02.04.2019 passed by the Commissioner of Customs (Appeals), Cochin.]

Dr. Ullas Karanth
403, Seeboo Apartments,
26-2, Aga Abbas Ali Road, Bangalore – 560 042 … ***Appellant***

versus

Commissioner of Customs
Wellingdon Island, Cochin – 682 009 ***...Respondent***

APPEARANCE:
Mr. Hari Radhakrishnan, Advocate for the Appellant.
Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent.

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR P A AUGUSTIAN, MEMBER (JUDICIAL)

Final Order Nos. 20532 - 20533 / 2025

Date of Hearing: 13/03/2025
Date of Decision: 13/03/2025

Per : C J MATHEW

In these appeals of M/s Centre for Wildlife Studies and of Dr K Ullas Karanth, against order[1] of Commissioner of Customs (Appeals), Cochin, challenge is to the consequences of finding that 'post-importation condition', in clearance of 'Mitsubishi Pajero' valued at US$ 27,960 (₹ 12,04,419/-), that *vide* bill of entry no. 8642/28.12.1998, had been allowed the benefit of 'nil' duty in accordance with *ad hoc* exemption[2] issued under section 25 of Customs Act, 1962, of re-sale except with prior approval had been breached.

2. Learned Counsel for the appellants, conceding that entitlement to exemption was subject to the condition of use solely by the importer without alienation except in accordance with the procedure prescribed and that the vehicle did get registered in the name of the individual-appellant on 20th April 2008, submitted that, in initiating the proceedings, it had been conveniently overlooked that, from as early as 12th October 2007, they had been corresponding with customs authorities for permission to proceed with sale. He drew our attention to the final permission for transfer issued on 9th June 2008.

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[1] [order-in-appeal no. COC-CUSTM-000-APP-111 to 112/2018-19 dated 2nd April 2019]
[2] [notification no. 62 dated 30th July 1998 issued from F.No. 460/75/97-Cus.V]

3. According to him, proposals in the show-cause notice for recovery of duties of customs of ₹ 13,40,621/- under section 28 of Customs Act, 1962, along with applicable interest thereon, and for imposition of penalty upon confiscation of the said vehicle, were borne on alleged breach of condition of exemption by subsequent sale. He submitted that the show-cause notice was issued well beyond the period permitted for recovery, *i.e.* from date of payment of duty, under section 28 of Customs Act, 1962. He further submitted that, in the light of the customs authorities being aware of the said transfer, there was also no scope for invoking the extended period of limitation and the breach of the condition in the said exemption is merely technical as they had, in their letters of 1st October 2007 and subsequently, intimated their willingness to pay applicable duty with irregularity, if any, remedied by final permission to effect transfer. He contended that, though the change in registration had occurred on 20th April 2008, the *ex-post facto* approval for transfer precluded penal action.

4. We have heard Learned Authorized Representative (AR), who submitted that breach of condition in exemption notification by transfer was not rectifiable and, therefore, confiscation under section 111 of Customs Act, 1962, as also imposition of penalties under section 112 of Customs Act, 1962, was correct in law.

5. There is no doubt that the vehicle had been permitted for import without payment of duty subject to use by the importer which is seen to have been breached inasmuch as the vehicle had

been transferred to the individual appellant herein on 20th April 2008 prior to sanction of Central Government so to do. At the same time, there is no doubt from the correspondence of appellant with customs authorities about intention to discharge appropriate duties of customs as prelude for transfer to the individual appellant. It is also on record that permission for such transfer had been accorded on the 9th June 2008 barely less than two months after the vehicle had been transferred and that substantial time had elapsed from intimation of intention to transfer.

6. The limited issue in these appeals is the appropriateness of imposition of penalty and, that too, in circumstances in which every fact pertinent to the utilization of the vehicle was not suppressed from the authorities. There is no evidence of the use of the vehicle for any purpose other than that intended at the time of import or even after the transfer. The transfer of the vehicle before formal permission was accorded by the Central Government is, at best, a technical irregularity. Consequently, there is no justification for retention of the penalty imposed on the two appellants. The impugned order is thus set aside and appeals allowed to that extent.

(*Operative part of the order pronounced in open court on conclusion of hearing*)

(P.A. AUGUSTIAN)
Member (Judicial)

(C J MATHEW)
Member (Technical)

hr/Sasidhar