

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

C/598/2008-DB

[Arising out of No. 140/2008 dated 30/04/2008 passed by
the Commissioner of Customs (Appeals), Cochin.]

The Commissioner of Customs

CUSTOM HOUSE
COCHIN – 682 009.
KERALA

Appellant(s)

Versus

SHRI CHALATHATTU

ABDUL NASAR,

NAJUMA MANZIL, CHELARI,
KANNADIPARAMBA,
KANNUR, KERALA

Respondent(s)

Appearance:

Dr. J. Harish, AR

For the Appellant

Mr. Raghavendra, Advocate
(No vakalatnama)

For the Respondent

Date of Hearing: 12/07/2018

Date of Decision: 16/07/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No: 20961 / 2018

Per : P. ANJANI KUMAR

Shri Chalathattu Abdul Nasar, the respondent, filed a Bill of Entry No.190259 dated 5.12.2006 for clearance of imported Mercedes Benz E220 CDI AT white with a declared CIF value of SGD 47733 and with declared assessable value of

Rs.14,00,510/-. Thereafter, the respondent submitted a letter requesting to reconsider the declared value stating that the amount of SGD 47733 was the showroom rate of new vehicle during 2001 which was declared in the Bill of Entry by mistake and he was ready to accept the department's valuation after depreciation. The price was determined in terms of Rule 8 of Customs Valuation Rules, 1988 along a percentage of deprecation at 58% and adding Rs.42,000/- on account of the extra fittings like CD changer, power steering, power windows, power mirror, alloy wheels, RCR and Rs.80,000/- for refurbished items like tyres-Rs.20,000/-; upholstery – Rs.30,000/-; metallic paint-Rs.30,000/-. The respondents have filed an appeal before the Commissioner (A) and have submitted another invoice dated 15.3.2005 showing the value of USD 6200. The Commissioner (A) held that though the assessing officer has correctly invoked the Rule 8 of Customs Valuation Rules, 1988, they have failed to arrive at the price on the basis of which is available in India. The appellants produced evidence that in 2006, same model car was traded in India at Rs.7,80,000/- and Rs.8,30,000/-. The learned Commissioner (A) has accepted the value and accordingly, modified the assessing order. The Department has preferred an appeal against this order.

2. The Department has contended that as per Rule 5(1) of the Custom (Appeals) Rules, 1982 an appellant shall not be entitled to produce before the Commissioner (A) any evidence other than the evidence produced by him during the course of proceedings before the adjudicating authority and as per Rule 5(3) of the Custom (Appeal) Rules, 1982 even in such an exception cases Commissioner (Appeals) cannot take into consideration any evidence so produced, unless the adjudicating authority or an officer authorized on his behalf has been allowed a reasonable opportunity to examine such evidence and to produce any evidence in rebuttal of the evidence produced by the appellants. In the instant case, the circumstances enumerated in Rule 5 (1) (a) to (d) do not exist. Hence, it was not proper and legal on the part of the Commissioner (A) to take into consideration the evidence produced by the party and that too without giving an opportunity to the assessing officer. The department has also expressed doubts about the genuineness of the invoice produced by the respondents before the Commissioner (A) contending that the invoice submitted by the respondent before the Commissioner (A) was for USD 6200 vide invoice dated 15.3.2005. In case, the invoice was in existence at the time of import, it is not understood as to why the respondent

has not submitted it at the time of import/assessment and as to why it was submitted at the appellate stage after one year and two months after import. Moreover, the purchase of vehicle was in Singapore and the original invoice produced at the time of import indicated the price in Singapore dollars whereas the invoice produced at a later date was showing the amount in US dollars raising suspicion about the genuineness of the invoice. The Commissioner (A) held that the original authority had erred in rejecting the actual cost of Rs.3,50,000/- which had been invested by the respondents in acquiring the vehicle, as no such claim had ever been made by the respondent before the assessing officer. Even assuming that the new invoice is genuine, the value at the prevailing rate in dollar would come to Rs.2,72,490/- contrary to the claim of the respondent themselves that they have invested an amount of Rs.3,50,000/-. Therefore, the department contended that the Commissioner (A)'s order was not legal and proper and needs to be set aside.

3. The learned counsel for the respondents has stated that the Commissioner (A) has correctly arrived at the value of the imported car and has given them due relief. The Commissioner (A) has given a clear finding on the imported car and has opined that in 2006, the same model car was traded in India at

Rs.7,80,000/- and Rs.8,30,000/-. Therefore, the assessable value arrived at Rs.8,44,283/- was exorbitant.

4. Heard both sides and perused the records. On going through the impugned order, it is seen that the respondents have for the first time submitted another invoice showing the price at USD 6200 before the appellate authority. The same was not pleaded before the original assessing officer. Moreover, though it was stated in the Order-in-Appeal that the respondent has produced evidence that in 2006 the same model car was traded in India at Rs.7,80,000/- and Rs.8,30,000/-, the price at a reasonable correlation to the invoice submitted by the respondent at the appellate stage; however, the details of invoices were not given. We find that the assessing officer has *prima facie* accepted the submission of the respondents that the value was declared wrongly at the time of import on the basis of original value in 2001 and the assessing officer has allowed depreciation of 58%. Therefore, the reasonableness of the assessing order is not in doubt. We find that the respondents have submitted a fresh evidence to the appellate authority, which was not under consideration before the assessing officer. In this context, a reading of Section 5 of the said Rules is required and the same is reproduced as under:

“5. Production of additional evidence before the [Commissioner] (Appeals). —

(1) The appellant shall not be entitled to produce before the [Commissioner] (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the adjudicating authority, except in the following circumstances, namely :-

- (a) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority;
- (c) where the appellant was prevented by sufficient cause from producing before the authority any evidence which is relevant to any ground of appeal; or
- (d) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Commissioner] (Appeals) records in writing the reasons for its admission.

(3) The [Commissioner] (Appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity –

- (a) to examine the evidence or documents or to cross-examine any witness produced by the appellant; or
- (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the powers of the [Commissioner] (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.”

4.1 As submitted by the department, it is a clear case where the Commissioner (A) has entertained a new evidence even though the conditions under sub-rule (1) of Rule 5 (1) (a) to (d) are not satisfied and he has also not given any records in writing for such admission.

4.2 In view of the above, we find that the order of learned Commissioner (A) requires to be modified to that extent and the matter should necessarily go to the original assessing authority for a proper evaluation of the claim of the respondent with the available evidence and following due processes of law.

5. In view of the above, the appeal is allowed by way of remand to the original adjudicating authority (assessing officer).

(Order was pronounced in Open Court on **16/07/2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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