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

Appeal(s) Involved:

**C/666/2012-DB**

[Arising out of No. 206/2011 dated 17/11/2011 passed by CC(Appeals), Cochin]

**NALAPURAPPATIL ABDULLA**
BERIKULAM PO, NILESHWAR, KASARGOD

Appellant(s)

**Versus**

**C.C-COCHIN-CUS**
CUSTOM HOUSE
COCHIN
KERALA
682009

Respondent(s)

**Appearance:**

Shri P.A. AUGUSTIAN ADV,
FAIZEL CHAMBERS, PULLEPADY CROSS ROAD, COCHIN
KOCHI
KARALA

For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR) — For the Respondent

Date of Hearing: 17/07/2018
Date of Decision:___________

**CORAM:**
**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**
**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

## Final Order No. / 2018

**Per : P. ANJANI KUMAR**

The appellants have imported used Toyota Landcruiser, Model 2005 declaring a value of Rs.7,85,326/-. On examination of the vehicle by Customs, it was found that the vehicle was Toyota Land Cruiser Amazon TD whereas the invoice described the same as Toyota Land Cruiser and does not mention the words “Amazon TD”; there were some discrepancies in the Bill of Lading and invoice; therefore the Department sought to reject the declared assessable value and enhanced it to Rs.13,83,150/- on the basis of list price taken from the website of Toyota UK. The Order-in-Original was issued by the Additional Commissioner imposing a redemption fine of Rs.4 lakhs and a penalty of Rs.1,50,000/- on Shri Nalapurappatil Abdulla. Commissioner(Appeals) vide order No.206/2011 has confirmed the findings of the Order-in-Original. Hence this appeal.

2. The learned counsel for the appellant submitted that though the transaction value was rejected, the value nearest in time available in the form of imports at other ports was not considered. The submissions on the value were also not considered. Value taken from website is neither acceptable nor is as per the guidelines. The original adjudicating authority has given a finding that the profit of margin on this model car is around Rs.5.9 lakhs and thus the redemption fine of Rs.4 lakhs was justified. They have relied upon the decision of the Tribunal in Aggarwal Distributors (P) Ltd. Vs. CC, New Delhi [2000(117) ELT 49 (Tri.)] wherein it was held that the Department reliance on the document displayed on internet is totally misplaced for the reasons that it is not known as who has introduced the said document on the internet; what is the nature of the price indicated in the said document and whether it was for a retail price or a wholesale price.

3. Learned AR has given a written submission reiterating the findings of the Order-in-Original and Order-in-Appeal and stressed on the

fact that the importer did not produce any document to substantiate how the supplier in Dubai had valid title of the goods which was in UK, placing reliance on the Hon'ble High Court of Mumbai in the case of Commissioner (Imports) Vs. Ganji Maltiah [2010(259) ELT 58 (Bom.)]. Since the vehicle was imported from UK, the list price available with UK Toyota was taken and 15% trade discount was duly given.

4. Heard both sides and perused records.

5. We find that Department has made out a good case for rejection of the transaction value for the reasons that there was differences in the Bill of Lading and invoice whereas the invoice was issued by M/s. World Wide Motors, Dubai, UAI on 08/11/2009. The Bill of Lading dt. 29/12/2009 showed the shipper to be one Mrs. T. William, Dial House, West Midlands, UK and the port of loading to be Felixstone and port of discharge as Cochin. The details of the shipper were not available on the invoice and there was some mention of advance payment in the invoice. Having rejected the transaction value, the valuation has to be done sequentially from proceeding from Rule 4 to 8 of the Customs Valuation Rules, 2007. We find that Commissioner(Appeals) has given a clear finding that the adjudicating authority has not exactly ruled out the applicability of Rules 4 to 8. However it was obvious from the facts of the case that these rules are not applicable. Hence the reliance on Rule 9 is not questionable. The Department has taken a stand that as the issue

involved is of import of used car any reference to identical or similar goods is not possible. Therefore the Department was in its right to recourse the Rule 9 of the Customs Valuation Rules, 2007. We also are in agreement with the Department's contention that having established the fact of wrong description, the burden has shifted to the import in the absence of any documentary evidence to substantiate the correctness or otherwise of the invoice, valuation under Rule 9 is quite acceptable. It is seen that the Department has placed reliance on the list price as is available on the internet from Toyota UK since the car was imported from UK, it was obvious that the Department has taken the listed prices from the UK website. Due discount of depreciation was allowed to arrived at the value of the car at the time of import.

6. The importer placed relied on Aggarwal Distributors (P) Ltd. case (supra); CC-I Vs. Aasu Exim Pvt. Ltd. [2018(11) GSTL 226 (SC)]; CC, Calcutta Vs. South India Television (P) Ltd. [2007(214) ELT 3 (SC)]; CC, ICD, TKD, New Delhi Vs. DM International [2009(237) ELT 306 (Tri. Del.)]; Sound N. Images Vs. CC [2000(117) ELT 538 (SC)]; Motor Industries Co. Ltd. Vs. CC [2009(244) ELT 4 (SC)] and D'Souza Lawrence Vs. CC(Appeals), Cochin [2007(215) ELT 400 (Tri. Bang.)]. We have gone through the case laws cited but find that the case laws cited are not on the same issue and may not be thus any help to the cause of the appellants. However going by the ratio of the judgment of this Bench in D'Souza Lawrence (supra), we reduce the redemption fine to Rs.2 lakhs (Rupees

two lakhs only) and penalty to Rs.50,000/- (Rupees fifty thousand only) while maintaining that the other parts of the impugned order are sustainable. Therefore in view of the above, the appeal is allowed to the extent of reduction of redemption fine and penalty.

(Order was pronounced
in Open Court on **..........................**)

**P. ANJANI KUMAR**
**TECHNICAL MEMBER**

**S.S GARG**
**JUDICIAL MEMBER**

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