CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/168/2009-DB

[Arising out of Order-in-Appeal No. 327/2008 dated 19/11/2008 passed by the Commissioner of Customs (Appeals)]

Commissioner of Customs **COCHIN-CUS** CUSTOM HOUSE COCHIN - 682009	Appellant(s)

VERSUS

SHRI.MOHAN RAMAN 15, 2ND STREET, SHIVAJINAGAR, THANJAVUR, TAMILNADU	Respondent(s)

Appearance:

Dr. J.Harish, Joint Commissioner, AR	For the Appellant
Mr. P.A. Augustian, Advocate FAIZEL CHAMBERS, PULLEPADY CROSS ROAD, COCHIN-682018 KERALA	For the Respondent

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

Final Order No. 20439 / 2019

Date of Hearing: 16/05/2019
Date of Decision: 16/05/2019

Per : P. ANJANI KUMAR

Shri Mohan Raman imported a "Toyota Land Cruiser Prado" and filed a Bill of Entry No.228724 dated 01.08.2008. Customs Authorities proposed confiscation of the vehicle for violation of the condition regarding possession of the vehicle and valuation. A SCN was issued and confirmed by the lower authorities valuing the car at Rs.10,97,556/- while imposing a redemption fine of Rs.2,75,000/- and penalty of Rs.1,37,000/-. Commissioner (A) vide Order No. 108/08 dated 07.10.2008 has accepted the value declared by Shri Mohan Raman and reduced the fine to Rs.1,00,000/- and penalty to Rs.50,000/-. An appeal was filed by the Department holding that the Commissioner (A) erred in accepting the value though the same was arrived following Customs Valuation Rules, 2007 and CBEC Circular No. 495/16/93. This appeal No. C/168/2009 was dismissed by this Bench vide F.O. No.21405-21406/2018 dated 06.09.2018 as the Department has withdrawn the appeal under the Litigation Policy of the Government.

2. Thereafter, the Department filed an application for Restoration of Appeal stating that "Hon'ble CESTAT dismissed the appeal filed by the department on the finding that the department has sought for withdrawal. Further, the Tribunal, by relying on Board's Instruction F.No.390/Misc/116/2017-JC dated 11.07.2018 has held that monetary limit prescribed by the Board in terms of litigation policy is Rs.20,00,00/- However, the amount of Rs.20,00,000/- prescribed in the above instruction pertains to legacy issues relating to Central Excise and Service Tax alone. The monetary limit prescribed by the Board for filing appeal before the Hon'ble CESTAT in customs matters is only Rs.10,00,000/- as per Board Instruction F.No.390/Misc/163/2010-JC dated 30.11.2016. They submitted that the mistake apparent in the order may be rectified." The Tribunal vide Order dated 27.03.2019 recalled its Order dated 06.09.2018 and restored the Revenue's appeal.

3. The learned AR for the department has reiterated the grounds of appeal and submitted that the invoice did not mention the terms (CIF or FOB) etc. purchased order details and payment details etc.; moreover the models shown in the UK Registration "Land Cruiser LC-5 D-4D auto" was also not mentioned and therefore the invoice was not representing the true value of the car. Therefore, the value was rejected in terms of Rule 12 of Customs Valuation Rules, 1962 and the value has been arrived taking into account new tyres, upholstery, retaining charges and other fittings.

4. Learned Counsel for the respondents submits that they have purchased the car of 2003 model on payment of 13,000 USD including the

freight up to Cochin. The respondents also furnished details of contemporaneous imports made at Cochin, Margoa and Mumbai. Commissioner (A) rightly found that the invoice mentions the vehicle name, chassis number, engine number, model number etc. which were found correct by Customs on examination. He relied upon the Hon'ble Supreme Court decision in the case of Eicher Tractors – 2000 (122) ELT 321 (SC) and submitted that the Department had no reason to dismiss the invoice value and arrived at the value arbitrarily without going to the valuation rules in a sequential order. No reasons have been cited for rejecting the value of contemporaneous imports. He also relied upon the following cases:

- *Ahammed Kunhi v. Commissioner of Customs, Chennai – 2007 (218) ELT 270 (Tri. Chennai).*
- *Narayan Nambiar Meloth v. Commissioner of Customs, Cochin – 2009 (233) ELT 77 (Tri. Bang.)*
- *Commissioner of Customs v. Sanjay R. Khushalani – 2010 (251) ELT 42 (Ker.)*
- *Nadeem Gubitra v. Commissioner of Customs, JNCH – 2010 (258) ELT 277 (Tri. Mumbai)*

5. After considering the submissions of both the parties and after perusal of records, we find that Learned Commissioner (A) has followed the Hon'ble Supreme Court's decision in the case of *Eicher Tractor* (Supra). We also find that the original adjudicating authority has simply rejected the value under Rule 12 of Customs Valuation Rules, 2007 but have not given any reasons for not proceeding sequentially as per Customs Valuation Rules, 2007 and particularly as to why the contemporaneous values as submitted by the appellants was rejected. We find that Commissioner (A) has found that the invoice mentions the vehicle name, chassis number, engine number, model number etc. Therefore, the rejection of the invoice without proper basis is incorrect. Therefore, we find that the value arrived at by the authorities is not justified. Coming to the issue of violation of the condition that the vehicle was to be in the possession of importer for a period of one year, we find that the importer has accepted that he has violated the provisions. For the same reason, the vehicle was seized and confiscated and however, the same was realized on payment of fine in lieu of confiscation. Once, the vehicle is allowed to be released on payment of fine in lieu of

confiscation, the violations, if any, has been atoned. Therefore, we find no reason to accept the department's contention in this regard. We find that this Bench in the case of *Narayan Nambiar Meloth* (supra) has held as follows:

> *"10. In respect of Appeal No. C/35/2008 the appellant Shri Narayana Nambiar Meloth challenges the imposition of penalty of Rs. 50,000/- and redemption fine of Rs 1,00,000/-. The appellant actually imported a car with right hand drive. Records revealed that the car was not in his possession for a period of one year. Hence, violation of the policy is clearly established. But, the contention of the appellant is that in a place like Dubai where right hand drive car is not permitted, he could not have possessed such a car for a period of one year. For the above reason, just before coming to India he had purchased the right hand drive car so that he won't violate Indian laws. He also quotes a Latin maxim which means that the law does not asks one to do impossible things. This argument, at best is very specious one. If he could not be in possession of a car with right hand drive for one year in Dubai, he cannot for that reason violate the import policy of India by purchasing the same just before arrival at India. Actually in order not to violate the laws of UAE, the appellant justifies violation of import policy of India. This is not acceptable. The imposition of fine and penalty are justified. Hence, we reject appeal C/35/2008 and uphold the impugned order."*

6. In view of the above, we do not find any merit in the Miscellaneous Application filed by the Revenue. Therefore, the appeal is rejected.

(Operative portion of the Order was pronounced
in Open Court on **16/05/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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