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

Appeal(s) Involved:

C/20195/2019-DB

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-86-2018-19 dated 05/02/2019 passed by Commissioner of Central Tax , COCHIN(Appeal)]

Babu John
R/o Modiyuzathilveedu Angadical Puthencavu
P O Chengannur
ALLEPPEY
KERALA
00

Appellant(s)

Versus

C.C-Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN
KERALA
682009

Respondent(s)

Appearance:

MR. P.A.AUGUSTIAN, ADVOCATE
FAIZEL CHAMERS, PULLEPADY CROSS ROAD,
COCHIN-682018

For the Appellant

MR. MADHUP SHARAN, ASST. COMMISSIONER (AR)

For the Respondent

Date of Hearing: 16/05/2019
Date of Decision:12/09/2019

CORAM:

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

Final Order No.20712/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 30.01.2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant filed Bill of Entry No.7437785 dated 31.07.2018 for the clearance of one used motor cycle under TR facility with a declared value of AED 24,500.00 (C&F). The SIIB of the Customs Department investigated the case for suspected violations in the import. The adjudicating authority on completion of the due process found that the appellant has not fulfilled the condition for availing the relaxation from import conditions and is also not eligible for TR facility for the import of the said vehicle. He had also found that the declared value of the imported motor cycle was very low and accordingly, the adjudicating authority re-determined the value of the impugned order. The adjudicating authority had also found that in respect of the goods imported and cleared under Baggage Declaration No. 3079 dated 01.08.2018, the appellant had declared only very lesser value and therefore the same was also re-determined and differential duty was confirmed.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the appellant was in abroad for 28 years and for his final settlement in India brought house hold items and a used Honda motor cycle (bike) under Transfer of residence (TR). House hold items were subject to adjudication and released on payment of fine and penalty. As per the impugned order, the adjudicating authority had rejected the value assessed by them initially and also rejected the value of the used bike imported by the appellant. Learned Counsel during the course of argument submitted that the following issues arise in the present appeal:

(i) Whether second adjudication proceedings initiated vide impugned order related to house hold items brought by appellant is sustainable since it was released at the time of import by paying additional duty, fine and penalty.

(ii) Whether appellant is entitled to claim the benefit of TR.

(iii) Whether the bike was in possession of appellant for one year to claim the benefit of TR.

(iv) Whether the allegation of undervaluation of house hold items and bike just based on the declaration by mistake in insurance policy issued when the bike was in abroad is sustainable.

(v) If the bike is found liable for confiscation, whether it can be ordered for absolute confiscation.

4.1. Learned Counsel further submitted that the appellant had imported the house hold goods by availing the benefit of TR and the goods were subject to valuation by adjudicating authority at the time of import. After proper assessment of the goods brought by the appellant under baggage mode, it was allowed to redeem on payment of Customs duty as per the re-assessed value and on payment of redemption fine of Rs.20,000/- and personal penalty of Rs.15,000/-. He further submitted that as per the Hon'ble Apex Court in the case of *Mohan Meakin Ltd. Vs CC, Cochin* reported in *2000 (115) ELT 3 (SC)]*, the Apex Court held that it was obligatory on the part of adjudication authority to find out the market value of goods imported and collect all duty and charges payable before releasing the goods on payment of redemption fine. Fresh proceeding against redeemed goods irrespective of under which sub-clause of Section 111, the adjudication made is *ab initio* void. He further argued that fresh proceedings and confiscation of very same house hold item is illegal and unsustainable. For the second issue, the Learned Counsel for the appellant submitted that the appellants are entitled to claim the benefit of TR and the denial of the benefit on the ground that appellant had imported one motor cycle in 2009 under TR is not tenable in law. He further submitted that as per the Import Policy, NRIs are permitted to bring one vehicle which was in possession of the individual for a period of one year in abroad and as per Section 3(ii) such importer is entitled to import only one vehicle. He further submitted that the adjudicating authority has wrongly interpreted the restriction to mean that import one vehicle in the life time whereas as per the Policy, Indian passenger transferring his residence after minimum stay of 2 years or more is entitled to claim the benefit of TR and the only restriction is regarding import of fire arms which can be imported only once in the life time but there is no such restriction with regard to the motor vehicle.

4.2. As far as next issue is concerned, he further submitted that as per the various documents produced by the appellant including sale letter issued by the owner of the goods M/s Al Zulal General Land Transport supported with receipt voucher clearly shows the sale of the vehicle on 07.03.2017 for an amount of 24500 Dhs. The possession certificate issued by RTA Dubai under Government of Dubai shows the previous owner of the vehicle i.e. M/s Al Zulal General Land Transport and transfer certificate shows that the licensing authority issued transfer certificate in the name of the appellant on 08.03.2017. He further submitted that these documents have been issued by the sovereign authority and there is no allegation by the Customs that the said documents are not genuine. He further submitted that the vehicle was imported under Bill of Entry dated 31.07.2018 which clearly shows that it was in his possession for more than a year therefore the appellant is eligible to claim TR.

4.3. The next submission of the Learned Counsel is that the appellant declared the value of the bike as Rs.4,79,408/- and the Customs duty payable by the appellant is Rs.8,09,241/- but the authorities, in the impugned order, has assessed the value as Rs.19,67,895/- and the duty demand for the bike is Rs.33,21,807/-. He also submitted that the on road price of used 2012 model bike in 2018 will be Rs.52,89,702/- whereas the same brand new motor bike GL 1800 available in India and the on road price is Rs.26,88,000/- which includes cost of its import, Customs duty @ 169% road tax and other expenses. He further submitted that since the bike is manufacture by Honda and any person can ascertain the price of bike by searching on internet but the Customs authority did not find the value of contemporaneous import during the year 2012 of the same vehicle. He further submitted that during the investigation, the appellant had categorically stated that the said value is the actual transaction value and there is no allegation that the appellant had paid any amount over and above the said value to reject the declared value. He further submitted that if the declared value was not acceptable then the Customs should have resorted to value as per the Customs Valuation Rule and as per the judgment of the Hon'ble Apex Court in large number of cases which has consistently held that the value of contemporaneous import of the very same bike should have been considered by extending the depreciation as applicable on the import price of the same model bike imported in 2012. He further submitted that as per the Customs Data Bank, the import price of the same bike in 2012 was 19,000 USD only and by extending the benefit of depreciation @ 54%, the assessable value of the bike in 2018 will be Rs.5,99,127 which is very close to the declared value of Rs.4,79,408/- whereas the respondent has adopted the imaginary value of Rs.19,67,895/-. Learned Counsel also referred to the decision of the Hon'ble Apex Court in the case of *Eicher Tractors Ltd. Vs CC, Mumbai [2000 (122) ELT 321 (SC)]* and also referred the case of *Sounds N Images Vs Collector of Customs reported in 2000 (117) ELT 538 (SC)* wherein the Hon'ble Apex Court has consistently held that the charge of undervaluation must be established through proper methods under the law and that burden cannot be shifted to the importer. Further, the Learned Counsel argued that confiscation of the goods as well as the bike is not sustainable in law because the goods are not prohibited goods. He referred to the decision of this Tribunal in the case of *Gurudev Udham Vs CC, Cochin,* Final Order No. 21413/2017 dated 09.08.2017 wherein it has been held that there is no reason to order confiscation of motor vehicles.

5. On the other hand, Learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record as well as the various decisions relied upon by the appellant, we find that in the case of house hold items they were subject to adjudication and released on payment of fine and penalty then the second adjudication proceedings initiated by the impugned order related to house hold items are not sustainable in law in view of the judgment of the Hon'ble Apex Court in the case Mohan Meakin Ltd (supra). Further, we find that the appellant has proved on record that he is entitled to claim the benefit of TR because as per the Import Policy, the appellant is entitled to bring vehicle after staying abroad for the minimum period of 2 years. In the present case, the appellant has proved that he is staying abroad for the last many years. Further, we find that the finding of the adjudicating authority that the appellant also brought one motor vehicle in 2009 and therefore he is not entitled to bring one more motor vehicle in 2018 is correct as per the Import Policy. Further, we find that the appellant has proved on record by various documents issued by the sovereign authority in Dubai that he purchased the

said vehicle from M/s Al Zulal General Land Transport on 07.03.2017 and transfer certificate was issued in the name of the appellant on 08.03.2017 and he has imported the said vehicle vide Bill of Entry dated 31.07.2018 which clearly shows that he was in possession of the vehicle for more than a year and therefore he is eligible to claim TR. Further, we find that the vehicle is manufactured by Honda and it is freely importable and the price is available on internet also and the appellant has also produced Customs Data wherein the import price of the same GL 1800 bike in 2012 was 19,000 USD only and if we give the benefit of depreciation, the assessable value in 2018 will Rs.5,99,127/- which is very close to the declared value Rs.4,79,408/- whereas the Customs had adopted an imaginary value of Rs.19, 67,895/- based on some insurance documents filed in abroad by mistake by the appellant. Further, we find that the Hon'ble Apex Court in the case of Eicher Tractors (supra) held in Para 13 & 14 as under:

*"**13.** That Rule 4 is limited to the transaction in question is also supported by the provisions of the other Rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India." If the phrase 'the transaction value' used in Rule 4 were not limited to the particular transaction then the other Rules which refer to other transactions and data would become redundant.*

***14.** It is only when the transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules.*

6.1. Further, we find that as per the settled law, the charge of under valuation must be established through proper method under the law and the burden cannot be shifted to the importer whereas in the present case, the Department has failed to prove the charge of under valuation whereas the appellant by producing documents on record has proved that he has purchased the said vehicle in 2017 and that sale letter is also on record and as per the sale letter, the appellant has rightly declared the value of the bike as AED 24,500/- Further, the Department has not brought any material on record to show that the documents produced by them are not genuine document and that there was some transfer of illegal considerations from the appellant to the seller in Dubai.

7. In view of our discussion above, we are of the considered view that the impugned order is not sustainable in law and therefore we set aside the same and direct the Customs authority to release the said vehicle on payment of Customs duty as per the declared value of the bike. The appeal is accordingly allowed in the above terms.

(Order was pronounced
in Open Court on **12/09/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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