CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 633 of 2009

[Arising out of Order-in-Original No. 111/2009 dated 24.08.2009 passed by the Commissioner of Customs, Cochin)]

M/S Charitable Education Society **....Appellant**
Augustain P.A (Adv) Faizal Chambers Pulleppady
Cross Road, Cochin 18

VERSUS

Commissioner of Customs, Cochin-CUS
Custom House, Willingdon Island
Cochin
Kerala
682009

....Respondent

WITH

Customs Appeal No. 693 of 2010

[Arising out of Order-in-Original No. 111/2009 dated 24.08.2009 passed by the Commissioner of Customs, Cochin)]

Commissioner of Customs, Cochin - CUS **....Appellant**
Custom House, Willingdon Island
Cochin
Kerala
682009

VERSUS

....Respondent

Charitable Education Society Mount Zion College Of Engineering And Technology,
Pathanamthitta, Kerala

<u>APPEARANCE:</u>

ShriP.A.Augustian, Advocate for the appellant
Faizelchamers,
Pullepady cross road,
Cochin-682018

ShriK.Murali, Superintendent, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P.V. SUBBA RAO, TECHNICAL MEMBER

FINALORDER NO.21224-21225/2019

DATE OF HEARING:22ndAugust, 2019
DATE OF DECISION: 17th December, 2019

PER: S.S.GARG

This order will dispose of the importer's appeal as well as the appeal filed by the Revenue. The present appeal of the importer is directed against the impugned order dated 24.08.2009 passed by the Commissioner of Customs whereby the Commissioner has re-determined the value of the goods declared as USD 27,520 at 1,60,14,576 CIF and ordered confiscation of the same under Section 111(d) & (m) of the Customs Act, 1962 and allowed the redemption of the goods on payment of fine of Rs.3,00,000/- and duty at appropriate rates. Learned Commissioner has also imposed penalty of Rs.1,50,000/- on the importer under Section 112(a) of the Customs Act, 1962. The Revenue has also filed the appeal on the ground that the redemption fine and penalty imposed by the Commissioner of Customs is less than even 10% of the reassessed value of Rs.1,60,14,576/- and has prayed for enhancing the redemption fine and the penalty.

2. Briefly the facts of the present case are that the appellant (Charitable Education Society) is engaged in running an education institute in Pathanamthitta. The institute is approved by Govt. of India Civil Aviation Department as per Letter dated 21.06.2007 and Letter dated 19.01.2009. In November 2008, the management of the institute decided to import two obsolete aircraft from USA for the purpose of training and they obtained a no objection letter dated 08.12.2008 from the Director General of Civil Aviation. They approached the DGFT for allowing import of the two Aircrafts and the

DGFT allowed the appellant to import one Learjet 24 aircraft and one Learjet 24B aircraft at CIF value of Rs.13,76,000/-. The Chairman of the appellant visited USA and purchased two aircrafts from USA from M/s J&S Aviation, Mineola, DR Lakeland, FL 33801. Thereafter, the appellant filed a Bill of Entry No. 240130 dated 05.02.2009. From the information available in the Directorate of Valuation Database, it appeared that the value declared by the importer is substantially low and the goods were subjected to examination by an independent Chartered Engineer who submitted his report on 25.02.2009 whereby it is certified that the aircrafts are more than 30 years old, unworthy for flying. Chartered Engineer certified value of the aircrafts as 80,000 USD. Alleging undervaluation, the aircrafts were seized under Mahazar dated 06.03.2009 and thereafter, a restraint order was passed directing the appellant not to remove or part with the goods imported under Bill of Entry No. 240130 dated 05.02.2009. Thereafter, Investigating Officer recorded the statement of the Chairman of the appellant on 13.03.2009. Since there was a delay in releasing the aircrafts and the appellant was suffering huge demurrage charge, the appellant requested the respondent to allow provisional release of the goods but the same was not done. Thereafter, the appellant approached the High Court of Kerala and the Hon'ble High Court vide its judgment dated 24.03.2009 directed Customs Authorities to allow provisional release of the goods within one week and as per the Order of the High Court, respondent allowed provisional release of the goods on payment of Customs duty and also took Bank Guarantee and Bond from the appellant. The statement of the Chairman was recorded on 01.07.2009 whereby he admitted that the invoice produced earlier does not include engine and other components and for that reason, he had submitted two invoices for the purpose of valuation and assessment. The appellant produced the original invoice No. 1709 dated 11.10.2008 from M/s J&S Aviation showing total value of the goods as USD 201025 reflecting cost of entire items equivalent to Rs.98,90,438/-. According to Chairman, the said value includes the cost of engines of Learjet 23 aircraft which was not imported by the appellant into India. Thereafter, a SCN dated 03.08.2009 was issued alleging that the declared value cannot be accepted as transaction value. In the SCN, it is also alleged that a Learjet 24 1968 aircraft imported through Nhava Sheva under Bill of Entry No. 657215 dated

23.10.2008 has been valued as Rs.87,35,238/- and it is the lowest among the contemporaneous import. After taking the reply of the appellant, the Adjudicating Authority vide the impugned order held that the value of the aircrafts imported by the appellant are re-determined as Rs.1,60,14,576/- and the appellant was allowed to redeem the goods on payment of fine of Rs.3,00,000 and penalty of Rs.1,50,000/-. Aggrieved by the said order of the Commissioner, the appellant has filed the present appeal.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the impugned order valuing the goods at Rs.1,60,14,576/- is not sustainable in law. He further submitted that the Adjudicating Authority has failed to appreciate the fact that the aircraft was junk and unworthy but useful for the school of AME studies purpose only and there were not enough avionic equipments. He further submitted that adopting value of such goods based on the value of other aircrafts allegedly imported through JNPT, Nhava Sheva without furnishing details of such import is against Customs Valuation Rules. He further submitted that the value of contemporaneous import to assess Customs duty cannot be adopted since said import was made under Risk Management System without examination and on NIL rate of Customs duty. He has also submitted that the redemption fine and the penalty are on the higher side. He further submitted that the value of the aircraft was re-determined by the Adjudicating Authority based on the value of alleged contemporaneous import. However, details of import including airworthiness of the aircraft, details of overhaul, availability of avionic equipments which are crucial to determine the value of an aircraft were not considered by the Adjudicating Authority. He also submitted that even the Adjudicating Authority itself admitted that there is a difference in the year of manufacture of the aircraft imported in Nhava Sheva compared to the aircraft imported by the appellant. He further submitted that M/s Global Aviation, Bhopal has imported identical Learjet aircraft and the Department has cleared it fixing the value at Rs.60,00,000/-. The Learned Counsel further submitted that in spite of this information that Global Aviation, Bhopal has imported identical

aircraft, the Customs did not make any inquiry to find out the truth and loaded the value on the basis of contemporaneous import made at Nhava Sheva Port without ascertaining other particulars.

5. On the other hand, Learned AR defended the impugned order and submitted that the value of the aircraft has been re-determined on the basis of contemporaneous import made at Nhava Sheva Port.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant has imported these two aircrafts after obtaining permission from the Department of Civil Aviation and after getting a license from DGFT. The Department has re-determined the value only on the basis of alleged contemporaneous import through Nhava Sheva where the value was determined at Rs.87,35,238/-. Further, we find that at the time of making the statement, the Chairman of the Institute produced original invoice No.1709 dated 11.10.2008 from M/s J&S Aviation showing total value of the goods at USD 201025 equivalent to Rs.98,90,438/-. Further, we find that the Adjudicating Authority has admitted that there is a difference in the year of manufacture of the aircraft imported in Nhava Sheva compares to the aircraft imported by the appellant. Further, the appellant submitted that identical aircraft imported by M/s Global Aviation, Bhopal and the Department fixed the value at Rs.60,00,000/- but the Department did not make any inquiry about the said import and simply relied upon the alleged contemporaneous import which, according to us, was not identical because the said contemporaneous import was made under Risk Management System without examination and on NIL rate of Customs duty. Further, we find that once the original invoice value has come on record wherein it is cleared that the value of aircraft imported under Bill of Entry No. 240130 dated 05.02.2009 its value is USD 201025 which is equivalent to Rs.98,90,438/-. We find no reason for the Revenue to reject this transaction value. Further, we find that these aircrafts imported by the appellant is a junk and unworthy but useful for school of AME studies and there is not enough avionic equipments as per the report of the Chartered Engineer placed on record.

7. In view of our discussion above, we are of the considered view that the re-determined value of Rs.1,60,14,576/- is not the correct valuation whereas the Customs duty should be assessed as per the invoice value of USD 201025 equivalent to Rs.98,90,438/-. Therefore, we set aside the impugned order and remand the case back to the Customs Authorities to re-assess the value on the basis of original invoices placed on record. As far as imposition of redemption fine of Rs.3,00,000/- and penalty of Rs.1,50,000/- is concerned, we find that the same is appropriate and does not require any modification. Accordingly, both the appeals are disposed of on the above terms.

(Order pronounced in the open court on 17th December, 2019)

(S.S GARG)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Pk/VRG