CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

DIVISION BENCH
COURT NO. I

APPEAL NO. C/55065/2014-CU[DB]

[Arising out of Order-in-Appeal No. ASR-CUS-PVR-APP-71-14-15 dated 30.04.2014 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of hearing/decision: 24.04.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Smt Paramjit Kaur : **Appellant(s)**

VS

C.C., Amritsar : **Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. Virender Prabhakar, Advocate
Present for the Respondent(s): Mr. G.M. Sharma, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 62276/2018

Per : Devender Singh

The appellant is in appeal against the impugned order dt. 30.04.2014.

2. Brief facts of the case are that the appellant filed a Bill of Entry No. 7994992 dt. 20.09.2012 for the clearance of used Hummer (sports utility vehicle) of USA origin falling under Customs Tariff

Heading No. 87032491 under Transfer of Residence Rules. The declared value of the goods was US$ 12712.50 on FOB basis and claimed basic customs duty payable @75% in terms of Notification No. 012/2012-Cus dt. 17.03.2012. The appellant at the time of seeking clearance did not have in her possession purchase invoice from dealer nor manufacturer's catalogue showing price prevalent in the year 2003. A system generated loan document negotiated with the bank was produced by the appellant. The adjudicating authority assessed the car at US$ 16702.20 (by taking the price indicated in loan document of 2003 minus depreciation @70% in terms of Board's Circular No. 493/124/86-Cus.VI dt. 19.11.87) and after including miscellaneous charges of US$ 663.20 in the assessable value with basic custom duty @100% after ignoring appellant's claim for allowing the benefit of VAT and Trade Discount. The value declared by the appellant was rejected in terms of Rule 12 of Custom Valuation Rules 2007 and the assessable value was enhanced to Rs. 1432639.23. The duty of Rs. 24,85,202/- was determined to be payable. On appeal, the Commissioner (Appeals) set aside the order and directed assessment to be done on FOB value of US$ 15820 after including other charges of US$ 663.20. The contention for excluding loan amount, sale tax etc. was accepted. The appellate authority ordered that invoice price with accessories was to be the basis of assessable value. Aggrieved from the impugned order, the appellant has filed this appeal.

3. Ld. Advocate for the appellant submitted that the assessing officer did not allow the benefit of Trade Discount @15% as was

prescribed in the Board Circular of 1964. He also pleaded that inland haulage charges from the port to CFS Ludhiana were also not excluded from the price. It was also contended that the prices of the parts supplied by the manufacturer and the dealer margin were also not excluded from the price.

4. On the other hand, Ld. A.R. submitted that the invoice was produced by the appellant only at the stage of Commissioner (Appeals) and the same formed the basis of valuation in the impugned order. On the basis of that invoice, maximum depreciation of 70% as prescribed by the Board Circular of 1993 had been given. The miscellaneous charges, which had been included in value, are all pre-importation. He also contended that maximum depreciation for second hand cars had been given to the appellant.

5. Heard both the sides and perused the record.

6. We find that the appellant had imported used Hummer car under Transfer of Residence Rules. At the time of initial assessment, the appellant did not produce the purchase invoice from dealer and only produced the system generated document for the loan taken for purchase of the said vehicle. In the proceedings before the first appellate authority, the appellant produced the dealer invoice. The first appellate authority, on the basis of the said invoice produced by the appellant, had allowed the depreciation of 70% as the said vehicle was more than four years old. Admittedly, the maximum permissible depreciation of 70% has been allowed in the terms of Board Circular of 1993. The appellant’s contention is that trade

discount, allowance for VAT refund and for inland haulage charges should also be deducted from the price. The basis for trade discount is 1964 Circular of the Board. On reading of the Circular F.N. 3/23/62-Cus-VI dt. 21.01.1964, we find that the trade discount is meant for the motor cars, which are directly imported from a foreign country by passengers, diplomats and foreign nations. It is evident that it is meant for direct shipment of new cars. As the appellant in this case has brought a used car, the Board Circular of 1964 is not applicable for such cars. The plea of giving deduction of VAT refund in the foreign country also is not acceptable as maximum allowable depreciation of 70% has been given, which is as per the Board Circular of 1993. Besides, the VAT refund for a car more than 7 years old does not make sense. As for the plea of miscellaneous charges, disallowed by the Commissioner (Appeals), we find that those charges are meant for cost of transportation, loading/unloading and handling charges upto importation. The appellant's plea that Inland Haulage Charges within India of about Rs.45000/- should be deducted is not tenable because these charges have not been included in the charge. The Ld. Advocate too could not show that such charges were included in the value. As for the dealer's margin, we find that the question of considering such margin can be there for a new car and not for a used car. As for deduction for parts/accessories fitted by dealer, we find that the vehicle was fitted with these and assessment has rightly done on basis of invoice submitted by the appellant declaring the price of US$ 52735.43 including these parts/accessories.

7. In view of the above, we find no infirmity in the order of Ld. Commissioner (Appeals) and the same is upheld.

8. In the result, the appeal filed by the appellant is dismissed.

(Operative part pronounced in the court)

(Ashok Jindal)
Member (Judicial)

(Devender Singh)
Member (Technical)

RAS'