CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH

Customs Appeal No. 50330 of 2019 [SM]

[Arising out of Order-in-Appeal No. CC (A) CUS/D-I/ACC/Import/75/2018 dated 08.03.2018 passed by the Commissioner of Customs (Appeals), New Delhi]

Shri Vikram Tokas **...Appellant**
KH No. 1831, Rangpuri,
New Delhi-37

VERSUS

Commissioner of Cutoms (General) ,
New Delhi **...Respondent**
New Customs House,
Near I.G.I. Airport,
New Delhi-110037

APPEARANCE:

Mr.Navneet Panwar, Advocate for the Appellant
Mr.Ravi Kapoor, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 28.12.2021
PRONOUNCED ON : 09.03.2022

FINAL ORDER No.50251/2022

RACHNA GUPTA

Present appeal has been filed to assail Order-in-Appeal No. CC (A) CUS/ D-I/ACC/Import/75/2018 dated 8th March, 2018 vide which the penalty imposed upon Mr. Vikram Tokas, the present appellant, has been confirmed and his appeal has been rejected.

2. Relevant facts for the present adjudication are as follows:

The Directorate of Revenue Intelligence, Delhi Zone received an intelligence about one Shri Sumit Walia to have been involved along with his associates in importing high end luxury cars from various foreign suppliers by mis-declaring those as new. During investigation various searches were conducted at his associates' premises and several incriminating documents were recovered. From those documents and various voluntary statements of all concerned, during investigation it was observed that a Land Rover sports car bearing tampered Chassis No. SALLSAA238A149171 has been imported by Shri Sumit Walia in the name of his front man Shri Kunal Kapoor from an intermediary firm M/s. A.K. International (I.E.) Ltd., London, who is neither the manufacturer nor the authorized dealer but has apparently procured/purchased a stolen vehicle from some unverifiable source and exported the same mis- declaring the car as new and under-valuing the same with intent of evading payment of duty and intent of wrongly availing the benefit of Notification No. 21/2002-Customs dated 01.03.2002.

2.1 The present appellant was found to have accepted the said vehicle from said Shri Sumit Walia. Accordingly, vide Show Cause Notice No. 741 dated 18.12.2012, the said Land Rover was proposed to be confiscated. Customs duty of Rs.42,90,772/- was proposed to be demanded from Shri Sumit Walia and Shri Kunal Kapoor. Penalty was proposed to be imposed upon them. Penalty under Section 112 of Customs Act was also proposed to be imposed upon the present appellant.

2.2 The said proposal was initially confirmed vide Order-in-Original No. 119/ADC/GMK/ACC Import/2014 dated 10.12.2014.

The appeal thereof has been rejected vide order under challenge. Still being aggrieved the appellant is before this Tribunal.

3. I have heard Shri Navneet Panwar, learned Counsel for the appellant and Shri Ravi Kapoor, Authorized Representative for the Department.

4. It is submitted on behalf of the appellant that the order-in-appeal has been passed under utter disregard to the principle of natural justice as the ex-parte decision has been passed against the appellant without appreciating the fact that the appellant had neither imported nor financed nor purchased nor even got registered the vehicle in question in his name. He not even filed any document before the Customs Authority nor abetted the importer for purchase of the said car. The imposition of penalty upon him is therefore unreasonable and is accordingly, prayed to be set aside. Finally, submitting that DRI is not the competent officer to issue the impugned show cause notice that the appeal is prayed to be allowed.

5. To rebut these submissions, learned Authorized Representative has submitted that the sufficient evidence has duly been appreciated by Commissioner (Appeals), which proves that the appellant was actively involved knowingly and intentionally from the very beginning, in cohort with Shri Sumit Walia in the fraudulent import of the Land Rover which was imported in contravention of the Customs Act, 1962. The car has been held to be liable for confiscation. The penalty under Section 112 of the Customs Act, 1962 has rightly been imposed upon the appellant. Appeal is accordingly, prayed to be dismissed.

6. After hearing the rival submissions and perusing the records, I observe and hold as follows:

The appellant admittedly runs a petrol pump. There is no denial of appellant, despite retracting his earlier statement, that Shri Sumit Walia was running a business of sale and purchase of cars including that of high end luxury imported cars from his premises of petrol pump. This is also admitted by the appellant that he knew that Shri Sumit Walia with his associate Shri Kunal Kapoor is importing such cars in the name of different persons instead of importing in their own name. Despite having knowledge of such modus operandi of Shri Sumit Walia, the plea of the appellant is not reasonable that he had no knowledge about wrong intent of Shri Sumit Walia for evading the relevant customs duty on such cars. The appellant, despite having knowledge of fraudulent imports by Shri Sumit Walia agreed to purchase the Land Rover in question to be imported by said Shri Sumit Walia through the same modus operandi. These admitted facts are opined sufficient to falsify retraction of the statement of appellant. The retracted statement is held to be an afterthought to manipulate evidence. There is no other evidence on record to prove the appellant’s innocence as far as the knowledge of fraudulent import by Shri Sumit Walia is concerned.

7. Coming to the violation of principle of natural justice, it is observed from the order under challenge that three opportunities of personal hearing were awarded to the appellant, that too, with reasonable time for appearance but the appellant fail to appear. No reason has been put forth by the appellant for not receiving

those notices also for not marking appearance before the Commissioner (Appeals). The intentional absence cannot be ruled out.

8. Coming to the challenge of show cause notice being hit by jurisdiction for the reason that DRI Officers not being competent to issue the same, it is observed that the decisions relied upon by the appellant i.e. in the case of **M/s. Mangli Impex,** reported in **2016 (335) ELT 605**, I hold that the said decision is no more applicable. The latest decision of Hon'ble Apex Court in the case of **Cannon India Pvt. Ltd. Vs. Commissioner of Customs reported as 2021 (376) ELT 3.** The said decision clarifies that the show cause notices issued for confiscation of the goods do not debar the officer of DRI to be competent. It is only the show cause notices for demanding differential duties as issued under Section 28 of the Customs Act, 1962, that the DRI Officers were not held to be the proper officers. The present case relates to confiscation of the land rover in question.

9. As far as appellant is concerned, it relates to the imposition of penalty in terms of Section 112 (b) of Customs Act which reads as follows:-

> **SECTION 112**. **Penalty for improper importation of goods, etc.**- Any person, -
>
> (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
>
> (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or

has reason to believe are liable to confiscation under section 111,
shall be liable to in the case of –

(i) …………….
(ii) …………….
(iii) …………….
(iv) ……………..
(v) ………………

10. The appellant cannot deny acquiring possession of the Land Rover which is found to have been imported with a tampered chassis which is a stolen car but has been imported as a new car that too under-valuing its cost.

11. Accordingly, I do not find any infirmity in the order under challenge, when the penalty of Rs. 8,00,000/- has been imposed upon the appellant. The order under challenge is upheld. Consequent thereto, the appeal in hand is hereby dismissed.

[Order pronounced in the open Court on 09.03.2022]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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