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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/475 /2005 Date 19/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S RAJDEEP SINGH
24-C, POCKET B, SIDHARTHA EXTENSION
NEW DELHI – 110014.

M/S RAJDEEP SINGH Appellant

Vs

COMMISSIONER OF CUSTOMS, AMRITSAR Respondent

I am directed to transmit herewith a certified copy of Final order No. C/137/08-CUSTOMS DT.17.06.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar

(Customs Appeal Branch)

Copy to :

1. Respondent
   COMMISSIONER OF CUSTOMS, AMRITSAR
   AMRITSAR
2. Adv. / Consult MR. PRABHAT KUMAR. ADV.
   B-51 (BASEMENT), SARVODYA ENCLAVE,
   NEW DELHI – 110 017.
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Customs Appeal No. 475 of 2005

[Arising out of the Order-in-Appeal No. 45/Cus/Appeal/Ldh/ 2004 dated 30/12/2004 passed by The Commissioner of Customs, Amritsar.]

For Approval and signature :
Hon'ble Shri S.N. Jha, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Rajdeep Singh — Appellant

Versus

CC, Amritsar — Respondent

Appearance

Shri Prabhat Kumar, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.N. Jha, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 27/05/2008.
DATE OF DECISION: 17/06/2008.

Final Order No. 137/08-Cus. Dated : 17.06.2008

Per. Rakesh Kumar :-

The facts of this case are that the Appellant during transfer of residence from UAE to India in January 2000 imported a used Toyota Corolla Car of 1996 make and Model DX 4A/T (AEPBK), under Transfer of Residence Rules. According to the Appellant, the car had been purchased by him from M/s Everest Used Cars, UAE in U.S. $ 4000 plus U.S. $ 480 freight vide invoice No. 1560 dated 10/7/1999 and based on this value, the C&F value of the car was U.S. $ 4480/-. The Customs authorities did not accept this value and directed the Appellant to produce the Manufacturer's price list. The appellant was able to produce 1998 World Car Catalogue and after deducting the permissible depreciation from the price of a Toyoto Corolla car of model nearest to this model in 1998 catalogue, worked out the CIF value as Rs.

2,63,360/- and duty liability as Rs. 3,00,698/-. But even this price, which was much higher than the invoice price, was not accepted by the Customs, who determined the price, on the basis of the price of a model in 1996 as Parker's Car guide, as JY1507000 i.e. Rs. 4,10,979/- and duty payable on this value worked out to Rs. 4,24,897/- and in this regard, the Deputy Commissioner passed an order dated 04/11/2000. The appellant paid duty under protest on the value as determined by the Deputy Commissioner but filed an appeal before the CC (Appeal), who vide the impugned order upheld the Deputy Commissioner's order.

2. Heard both the sides.

2.1 Shri Prabhat Kumar, the learned counsel for the appellant assailed the impugned order on the following grounds :-

(i) The invoice dated 10/07/99 of M/s Everest Used Cars, UAE is a genuine invoice and the price mentioned in it should have been accepted for the purpose of assessment of duty. There was no reason to reject the transaction value as the conditions for accepting the declared transaction value, as mentioned in sub-rule (2) of Rule 4 of the Customs Valuation Rules, 1988 are satisfied in this case. In this regard, Hon'ble Supreme Court's judgement in the case of **Commissioner of Customs, Calcutta vs. South India Television (P) Ltd.** reported in **2007 (214) E.L.T. 3 (S.C.)** and **Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai** reported in **2000 (122) E.L.T. 321 (S.C.)** were cited.

(ii) While the model of the Appellant's car is DX 4A/T (AEPBK), the model whose price has been adopted is Toyota Corolla Saloon 1996 model AE-110. The Deputy Commissioner has, therefore, erred in rejecting the invoice price and forcing the appellant to pay duty on the basis of car catalogue price of some different model of car.

(iii) Judgement of this Tribunal in the case of **Segu Mohammed Hanas vs. Commissioner of Customs, Cochin** reported in **2006 (196) E.L.T. 218 (Tri. – Bang.)** was cited wherein it was held that when in case of import of used car, invoice of purchase of car in foreign country has been produced and there is no evidence indicating that the purchase invoices produced by the appellant was bogus and there is no allegation of any deliberate attempt on the part of the appellant to under value the car, the transaction value can not be discarded as the conditions mentioned in rule 4 (2) of the valuation rules are satisfied. This judgement is squarely applicable to the facts of this case.

2.2 The learned departmental representative defended the impugned order citing the Tribunal's judgement in case of **Indu Khanna vs. Commissioner of Customs, New Delhi** reported in **2000 (115) E.L.T. 520 (Tribunal)**, wherein it was held that in case of import of a used car by a person on transfer of residence, when there is no evidence of the purchase price of the car, the department is justified in determining its value based on its price in the Parker's car guide.

3. After giving careful consideration to the submission of both the sides, we note that while there is no dispute that the car imported by the appellant is a used car of 1996 model [Toyota Corolla DX 4 A/T (AEPBK)], the dispute is about its assessable value – while the appellant claims its assessable value as Rs. 1,97,978/- CIF based on the C&F price of U.S. $ 4,480/- mentioned in the invoice dated 10/07/97 of M/s Everest Used Cars, UAE, from whom the car was purchased, the Revenue has rejected this value and has determined the

been deliberately under declared, the invoice price has to be accepted as the Transaction value under Rule 4 (1) ibid and adoption of Rule 8 ibid (best judgement method) is not proper. Same view with regard to valuation of used imported car has been taken in the cases of **D'souza Lawrence vs. Commissioner of Customs (Appeals), Cochin** reported in **2007 (215) E.L.T. 400 (Tri. – Bang.)** and **Geetha Premraj vs. Commissioner of Customs, Cochin** reported in **2004 (176) E.L.T. 342 (Tribunal)**. The above judgements of this Tribunal are squarely applicable to the facts of this case.

4. The learned departmental representative has cited the Tribunal's judgement in case of Indu Khanna (Supra) wherein the Tribunal held that for determination of assessable value of a 1983 model used Mercedes Benz car, imported by the appellant, the method adopted by the customs based on that model's price in Parker's Car Guide cannot be faulted. But this was done as there was no evidence of purchase price. In the present case, sale invoice issued by M/s Everest Used Cars, UAE mentioning the C&F price of the car has been produced by the appellant and there is no allegation that the

price mentioned in this invoice has been mis-declared or it does not reflect the true transaction value. Therefore, Tribunal's judgement in Indu Khanna's case (Supra) is not applicable to the facts of this case.

5. In view of the above circumstances, the impugned order is not sustainable and the same is set aside. The appeal is allowed with consequential relief.

(Pronounced in open court on 17-06-2008)

(S.N. Jha)
President

(Rakesh Kumar)
Member (Technical)

PK