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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/490 , 491 , 492 / 2009 AND C / 377 / 2009 –SM[BR] Date 26/07/2010

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

To :
C.C.(PREVENTIVE)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

C.C.(PREVENTIVE) Appellant

Vs

SHRI SURJEET SINGH, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 799 – 802 / 2010-SM[BR] dated 19.7.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
SHRI SURJEET SINGH,
C/O HOTEL MAJESTIC,
PHASE NO.9, MOHALI (PUNJAB)

[2] SHRI MANINDER SINGH
G-14, PALIKA BHAWAN
R.K.PURAM NEW DELHI

[3]SHRI JAGDISH MALIK
A-14, NARIANA VIHAR
NEW DELHI-28.

[4] SHRI JAGDISH MALIK
B-15, NARAINA VIHAR,
NEW DELHI-28.

2. Adv. / Consult SHRI V.R. SETHI ADV,
401, SATYAM CINEMA BUILDING
RANJIT NAGAR, DELHI.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 19.7.2010

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Customs Appeals No.490, 491, 492 of 2009-SM

Arising out of the order in appeal No.CC(A)Cus/Prev/97/09 dated 28.4.09; CC(A)Cus/Prev/94/09 dated 24.4.09 and CC(A)Cus/Prev/89/09 dated 23.4.09 passed by the Commissioner of Customs (Appeals), New Delhi.

C.C. (Preventive) .... Appellant
New Delhi

Vs.

Shri Surjeet Singh .... Respondents
Shri Maninder Singh and
Shri Jagdish Malik

Customs Appeal No.377 of 2009-SM

Arising out of the order in appeal No. CC(A)Cus/Prev/89/09 dated 23.4.09 passed by the Commissioner of Customs (Appeals), New Delhi.

Shri Jagdish Malik .... Appellant

Vs.

C.C. (Preventive), New Delhi .... Respondent

Appearance:

Shri R.K. Gupta, Authorised Departmental Representative (SDR) for the Revenue and Shri V.R. Sethi, for the respondents -assessee

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 799 – 802/2010 SM (BR)

Per M. Veeraiyan:

1.1 Appeal No.C/377/09 is by Shri Jagdish Malik which is against the order of the Commissioner (Appeals) No.CC(A)CUS/Prev/89/09 dated 23.4.09 upholding the confiscation of the vehicle purchased by him from one Shri Balwinder Singh and imposing redemption fine of Rs.5 lakhs.

1.2 Appeals No.C/490, C/491/09 and C/492/09 are by the Department against the orders of the Commissioner (Appeals) by which the order of the original authority imposing penalties on the respondents were set aside by the Commissioner (Appeals).

1.3 As all these appeals arise out of the same order in original involving common facts and law, they are taken up together and are disposed of by this common order.

2. Heard the learned SDR on behalf of the Department in Appeals No.C/490/09, C/491/09 and C/492/09. Heard the learned Advocate on behalf of Shri Jagdish Malik appellant in Appeal No.C/377/09 and respondent in Appeal No.C/492/09. None appeared for the other respondents.

3.1 The relevant facts, in brief, are that one Shri Balwinder Singh who was working in Dubai returned to India and imported one used Toyato Lexus Car GS 300 having chassis No.JZS1610071657 and filed Bill of Entry No.377371 dated 1.8.2003 and cleared on payment of duty of Rs.11,29,600/-. The car imported under Residence Rules cannot be sold for two years. However, investigation revealed that Shri Balwinder Singh has sold the car to Shri Jagdish Malik for a sum of Rs.19 lakhs out of which Rs.16,65,320/- was paid by cheque and the balance in cash and the transaction took place in March/April, 2004. The sale transactions were arranged by one Shri Surjeet Singh who brought the car from Ludhiana to Shri Maninder Singh, a car dealer based in Delhi.

3.2 The original authority held that the vehicle has been sold in violation of the conditions of Import and Shri Jagdish Malik purchased the car knowing very well that the conditions of the Import have been violated and that Shri themselves

Maninder Singh and Shri Surjeet Singh knowingly involved themselves in unauthorised disposal of the car. Accordingly, the original authority confiscated the car but allowed the same to be redeemed on payment of fine of Rs.5 lakhs; he imposed penalty of Rs.2 lakhs on Shri Jagdish Malik; he also imposed penalty of Rs.1 lakh on Shri Balwinder Singh, Rs.50,000/- on Shri Maninder Singh , dealer and Shri Surjeet Singh, who acted as go-between the importer and the car dealer.

3.3 It appears that Shri Balwinder Singh did not file any appeal before the Commissioner (Appeals). Others filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) upheld the order of confiscation of the vehicle and the redemption fine. However, he set aside the penalties on Shri Jagdish Malik, Shri Maninder Singh and Shri Surjeet Singh on the ground that show cause notice invoked Section 112(a) of the Customs Act, 1962 whereas the penalties have been imposed by the original authority under Section 112 (b) of the Customs Act, 1962.

4. Learned SDR reiterates the grounds of appeal. He submits that vehicle has been disposed of in violation of the Import conditions. All the three persons Shri Jagdish Maik, Shri Maninder Singh and Shri Surjeet Singh were aware of the violations and therefore, penalties should have been sustained by the Commissioner (Appeals). Mere non-quoting of sub-section is no justification for setting aside the penalty as held by the Hon'ble Supreme Court in the case of C.C.E., Calcutta vs. Pradyumna Steel Ltd. reported in 1996 (82) ELT 441. He submits that the role of the respondents and the ingredients of offence against the respondents have been clearly brought out in the show cause notice. He also relies on the decision of the Hon'ble Supreme Court in the case of J.K.Steels Ltd. vs. UOI reported in 1978 (2) ELT J 355.

5. Learned Advocate on behalf of Shri Jagdish Malik submits that he is an innocent buyer of second hand imported car. He was not aware of the violations. Since the dealer assured to get the registration of the vehicle done, and the registration was not forthcoming, he made efforts to find out the reason for non-registration and came to know of the factual position only

in January, 2007. The vehicle could not be registered even now for want of customs clearance. He has paid the market value to the owner of the vehicle. He has suffered financially and he is not in a position to use the vehicle for want of registration. He seeks leniency and seeks reduction in redemption fine. No evidence of knowledge on the part of Shri Jagdish Malik about the violation by the importer has been relied upon, and therefore, penalty imposed on him should not be restored as pleaded by the Department. In the event of restoring the penalty, he, alternatively, submits that penalty could not exceed the penalty of Rs.50000/- imposed on the dealer who sold the vehicle.

6.1 I have carefully considered the submissions from both sides. It is not in dispute that the vehicle which was imported by Bill of Entry dated 1.6.03 has been sold in March/April, 2004 in violation of the conditions of the Import. Obviously, there is violation by Shri Balwinder Singh the importer in selling the vehicle before the stipulated time. The vehicle is liable for confiscation under Section 111 (o) of the Customs Act. Shri Balwinder Singh appears to have not filed appeal before the Commissioner (Appeals) and therefore, the sustainability of penalty imposed on him is not in dispute before me. The Commissioner (Appeals) has set aside the penalties on Shri Jagdish Malik, Shri Maninder Singh and Shri Surjeet Singh on the ground that the penalties have been imposed under Section 112(b) of the Customs Act, even though the show cause notice invoked Section 111(a) of the Customs Act, 1962. This reasoning of the Commissioner (Appeals) is not acceptable, as the role of the respondent and the ingredients of the offence against them have been clearly brought out in the show cause notice.

6.2 It is not disputed that Shri Jagdish Malik was aware that he was buying a second-hand imported car. He claimed that he has received he papers relating to the imported car only in January, 2007. In the given facts and circumstances of the case, such a claim appears to be an after-thought and does not deserve to be accepted. Shri Surjeet Singh who has brought the second-hand imported car to the dealer Shri Maninder Singh has not participated in the investigation. It is seen from the statement of Shri

Jagdish Malik that the cheque and cash, being sale proceeds of the vehicle were handed over to Shri Surjeet Singh who paid commission of Rs.50000/- to Shri Maninder Singh. Therefore, it is clear that they knew that there was violation of the import conditions in selling the vehicle. Therefore, the Commissioner (Appeals) was wrong in setting aside the penalties.

7. Regarding the redemption fine imposed, learned Advocate for Shri Jagdish Malik pleaded that the same is excessive. It is seen that the vehicle has been cleared on payment of duty of Rs.11,29,600/-. The vehicle has been purchased by Shri Jagdish Malik for a sum of Rs.19 lakhs. It is also claimed that the vehicle could not be used for want of registration till date due to dispute with the Department. Taking all these into account, I hold that some leniency in the quantum of redemption fine is justified

8. In view of the above, the appeals are disposed of as follows:-

a) Appeal No.C/377/09 is disposed of by upholding the confiscation of the vehicle but reducing the redemption fine from Rs.5 lakhs to Rs.2 lakhs.

b) Appeal No.C/492/09 of the Department is allowed and the order of the Commissioner (Appeals) setting aside the penalty on Shri Jagdish Malik is set aside and the order of the original authority in this regard is restored with the modification that the penalty be reduced from Rs.2 lakhs to Rs.50,000/-.

c) Appeal No. C/491/09 of the Department is allowed by setting aside the order of the Commissioner (Appeals) setting aside the penalty on Maninder Singh and restoring the penalty of Rs.50,000/- imposed by the original authority.

d) Appeal No.C/490/09 of the Department is allowed by setting aside the order of the Commissioner (Appeals) setting aside the penalty on Shri Surgeet Singh and restoring the order of the original authority with the modification that penalty imposed be reduced from Rs.1 lakh to Rs.50,000/-.

(M. Veeraiyan)
Technical Member

scd/