CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 52746 of 2016

(Arising out of order-in-original No. 23/2016/D.P./Pr. Commr/5358 dated 24.02.2016 passed by the Principal Commissioner of Customs (Import), New Delhi)

DATE OF HEARING : 04.01.2017
DATE OF DECISION : 06.01.2017

Shri Sunil Bhatia …. **Appellant**
(Rep by Sh. Pradeep Sharma, Adv.)

VERSUS

CC, New Delhi …. **Respondent**
(Rep. by Sh. Govind Dixit, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50155/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeal is filed by the assessee-Appellant against the order-in-original no. 23/2016 dated 24.02.2016 passed by the Principal Commissioner of Customs (Import), New Delhi.

2. It is the second round of litigation before this Tribunal as earlier the Tribunal vide its Final Order No. C/A/56256-56258/2013 dated 02.05.2013 has remanded the matter for

denovo proceedings. In the second round of litigation, the Department has again confirmed the demand. Being aggrieved, the assessee-Appellant has filed the present appeal.

3. The brief facts of the case are that the assessee-Appellant is used to import the new cars from abroad. The present dispute is related to the brand new car of Chrysler 300C 3.0CRD V6 Saloon SRT right hand drive model from M/s ADC (Export) Service Ltd, UK, at the declared invoice value of Sterling Pound 23330 (Rs. 20,02,881/-) which includes the cost of transportation, insurance and freight to New Delhi. The Bill of Entry dated 08.07.2008 was produced before the competent authority. The car in dispute was manufactured in Austria but was imported from the United Kingdom. Since the car was imported in contravention of the conditions specified in the Import Policy of the Government of India, the same was liable to confiscation under Section 111(d) of the Customs Act, 1962 and the assessee-Appellant was also held liable for penalty under Section 112 of the Customs Act, 1962.

4. During the course of arguments, Shri Pradeep Sharma, learned counsel for the assessee-Appellant, submits that the assessee-Appellant has already paid the duty difference, penalty, interest etc. and the possession of the car was taken over. He also submits that in the denovo adjudication proceedings, the Principal Commissioner of Customs (Import) vide impugned order rejected the declared assessable value of the car of Rs.

20,02,881/- under the provisions of Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 read with the provisions of Section 14(1) of the Customs Act, 1962 and re-determined the value of the car as Rs. 34,66,552/- in terms of Rule 9 of the Valuation Rules and demanded the differential duty amounting to Rs. 16,70,083/- under Section 28(1) of the Customs Act, 1962 with interest and levied the penalty too.

5. It is the submission of the learned counsel for the assessee-Appellant that the adjudicating authority did not issue any show cause notice to the assessee-Appellant as per the directions of the Tribunal. The adjudicating authority did not consider the written submissions and decided the issue without applying the mind. He also submitted that the price determined by the Department includes the VAT and other charges. He further submitted that the quantum of fine and penalty are excessive and the redemption fine was imposed in an arbitrary manner without considering the provisions of Section 125 of the Customs Act, 1962. Lastly, he made a request that the determined value may kindly be accepted and relied upon the ratio laid down in the following cases :

(i) Eicher Tractors Ltd. Vs Commissioner of Customs, Mumbai, 2000 (122) ELT 321 (SC);

(ii) Valdilal Dairy International Ltd. Vs Commissioner of Customs, Bombay, 2005 (180) ELT 436 (SC);

(iii) Tolin Rubbers Pvt. Ltd. Vs Commissioner of Customs, Cochin, 2004 (163) ELT 289 (SC);

(iv) Commissioner of Customs, Calcutta vs South Indian Television (P) Ltd., 2007 (214) ELT 3 (SC); and

(v) Commissioner of Customs vs JD Orgochem Ltd., 2008 (226) ELT 9 (SC)

On the other hand, Shri Govind Dixit, learned DR for the Department, relied upon the order of the lower authority and submitted that the assessee-Appellant has undervalued the price of the car.

6. After hearing both parties and on perusal of the record, it appears that the assessee-Appellant vide Bill of Entry No. 150770 dated 08.07.2008 had imported the new Chrysler car declaring the assessable value as 23330 British Pound equivalent to Rs. 20,02,881/-. The car was not imported from the country of manufacture but was imported from the UK, so no manufacturing invoice was produced by the importer in spite of the fact that the impugned car was imported from the place other than the manufacture. Admittedly, the impugned car is of Austria origin, but has been shipped by the supplier to UK from where it was imported to India. On the official website of the car manufacturer, the value of the identical model was shown as 32505 British Pound. Thus, it is evident that the car was imported by producing the Bill of Entry of under-valuation. Therefore, the Department has taken the price of the impugned car as was available on the official website of the manufacturer. When it is so, then we find

no reason to interfere with the impugned order which is hereby sustained along with the reasons mentioned therein.

7. Regarding the allegation that no show cause notice was issued as per the direction of this Tribunal, it appears that the importer assessee-Appellant vide his letter dated 10.07.2008 had stated that he did not require any show cause notice and accordingly no show cause notice was issued to him. In fact, the importer did not cooperate with the authorities as appears from the material on record. Other allegations are general in nature. The case law cited by the learned counsel for the assessee-Appellant are distinguishable in the peculiar facts and circumstances of the case.

8. In view of the above, we find justification for charging the difference of the duty, penalty along with interest. In other words, the impugned order is hereby sustained in toto.

9. In the result, the appeal filed by the assessee-Appellant is dismissed.

(Pronounced in the open court on 06.01.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay