IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/53460/2015-CU(DB)

[Arising out of Order-in-Original No. 13/2015/DM/Pr. Commr/IMP/ICD/TKD dated 26.05.2015, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Jaspreet Singh Jolly ....Applicants

Vs.

C.C.E. New Delhi ....Respondent

Appearance:

Shri. P.A. Augustian, Advocate for the Appellant
Shri Yogesh Agarwal, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 03.04.2017

FINAL ORDER NO. 52743/2017-CU(DB)

Per Archana Wadhwa:

As per the facts on record, the appellant imported one Hummer H2 right hand drive each from Dollar Auto Works, Dubai, UAE. It has been alleged that the appellant failed to fulfill certain conditions as laid down in the Import Licensing Note of Para 2(II) (a) and Para 2 (II)(C) of ITC (HS) policy.

2. The proceedings were initiated against the appellant resulting in passing of an adjudication order by the Commissioner of Customs vide which he ordered confiscation of the car under Section 111(d) of Customs Act, 1962 and imposed redemption fine of

Rs.5,50,000/- and penalty of Rs.2,25,000/- under Section 112(a)(i) of the Said Act. The said order of the Commissioner was challenged before the Tribunal and Tribunal vide its final order no. 1197-1198/2008 dated 22.08.2008 upheld the confiscation of the vehicle but reduced the redemption fine and penalty to Rs.2 lakhs and Rs. 1 lakhs respectively. The said order of the Tribunal was put to challenge before the Hon'ble High Court by the Revenue. Hon'ble High Court vide its order dated 11.10.2012 observed that the Tribunal has not given any reasoning for reduction in the redemption fine and penalty. It was further observed that though the Tribunal has powers to do something, there ought to be the justification for the exercise of that authority and in the present case, the redemption fine and penalty imposed by the Commissioner was sufficient and not warranting any further reduction. Accordingly, the Hon'ble High Court vide this order dated 11.10.2012 set aside the order of the Tribunal and allowed Revenue's appeal by restoring the order of Commissioner (Customs).

3. In the meanwhile, the appellant was issued another show cause notice dated 17.11.2008 i.e. after the first order of Commissioner was passed on 24.03.2008, alleging under valuation of the car based upon certain investigations and accordingly proposing to enhance the value of the car. It is also seen from the said show cause notices that the Revenue had also filed an appeal before the Tribunal against the first order dated 24.03.2008 passed by the Commissioner on the issue of valuation. The fate of the said

appeal is not known but a fresh show cause notice dated 17.11.2008 issued by the Commissioner stand adjudicated by the present impugned order of the Commissioner being order no. 13/2015/DM/Pr. Commr/IMP/ICD.TKD dated 26.05.2015. Vide the said order the Principle Commissioner (Import) enhanced the value of the car from Rs.22 lakhs approx to Rs.41 lakhs approx and confirmed the customs duty to the extent of Rs.44 lakhs approx along with imposition of penalty of identical amount and redemption fine of Rs. 10 lakhs. The said order is impugned before the Tribunal in the present proceedings.

3. After hearing both the sides, we note that first adjudication in respect of the same very hummer car took place on 24.03.2008 and the said order of the Commissioner was appealed against before the Tribunal. Tribunal granted some relief to the importer in terms of its final order dated 22.08.2008. As such the first order of the Commissioner got merged with the order of Tribunal. Thereafter, Tribunal’s order was put to challenge by the Revenue before the Hon’ble High Court of Delhi to set aside the impugned order of the Tribunal and restored the order of the Commissioner. With the passing of the Delhi High Court order on 11.10.2012, all the proceedings relatable to the car came to a finality and the order of the Delhi High Court merged with the orders passed by the authorities below. In such a scenario, initiation of fresh proceedings against the same importer by way of fresh show cause notice alleging under valuation of the car can neither be appreciated nor be upheld. If the Revenue was of the view that there was

undervaluation of the car, the same should have been taken up by the Revenue in the first set of adjudication itself. However, having not adopted that as a ground in the first proceedings, the second alternative left with the Revenue was to challenge the first order of the Commissioner, which they seem to have done also as stated in para 8 of the subsequent show cause notices. There is no provision in the Customs Act to initiate fresh proceedings, after the final adjudication has taken place and that too, when the order stand merged with the order of the Higher appellate authority. Law of Estoppel, and law of Merger would apply in such case and repeated adjudication cannot take place each time on a new ground.

4. In view of the foregoing discussion, we are of the opinion that the present adjudication is beyond the jurisdiction of the Commissioner and the impugned order is not sustainable. Accordingly, the same is set aside and appeal is allowed with consequential relief to the appellant.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu