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. IV

DATE OF HEARING : 24/10/2017.
DATE OF DECISION : 24/10/2017.

Customs Appeals No. 50438 and 50914 of 2015

[Arising out of the Order-in-Appeal No. CC (A) CUS/513/2014 dated 30/09/2014 and No. CC (A) CUS/512/2014 dated 29/09/2014 both passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

Ms. Kuldeep Kaur] Appellants
Shri Jang Bahadur Singh Gujral]

Versus

CC, New Delhi (ICD, TKD) Respondent

Appearance

Shri P.A. Augustian, Advocate – for the appellants.

S/Shri S. Nunthuk and R.K. Manjhi, Authorized Representative (DRs) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 57401-57402/2017 Dated : 24/10/2017

Per. B. Ravichandran :-

Both the appeals are against order dated 29/09/2014 and 30/09/2014 of Commissioner of Customs (Appeals), New Delhi. The main appellant Ms. Kuldeep Kaur filed a bill of entry on 24/02/2009 for import of a passenger car Toyota Land Cruiser

200 Series V8 4.5 D4-D RHD Model 2008. The declared value for the said car is Rs. 32,37,557/-. The appellant claimed benefit under Notification 21/2002-CUS dated 01/03/2002. The bill of entry was assessed and the car was cleared on payment of the customs duty of Rs. 34,83,899/-. Later on, certain investigations were conducted by the officers. On completion of investigation, the Revenue held a view that the imported car was cleared with mis-declaration of its nature and value. It was alleged that the car was not a new one and, as such, the concession available to the new cars should not have been extended to the same. Further, the value was sought to be enhanced based on the manufacturer's data available in their website for similar vehicle. Accordingly, proceedings were initiated against the main appellant and the second appellant to demand and recover the differential duty and impose penalties. The Original Authority upheld the views of the Revenue and confirmed the differential duty of Rs. 21,76,422/- and imposed penalties of Rs. 7 lakhs on the main appellant and further penalty of Rs. 2 lakhs on the second appellant. The imported vehicle was also ordered to be confiscated with an option to redeem on payment of refine of Rs. 10 lakhs in terms of Section 125 of the Customs Act, 1962.

2. The learned Counsel for the appellants submitted on the following lines :-

(a) the appellants filed all the required documents at the time of assessment by the Customs officers. Even on enquiry later on by the authorities, the customs authorities in England have clarified that the goods have been imported into UK on 15/01/2009 and was registered on that day. The goods were again shipping to India and the bill of lading was issued on 27/01/2009 and the shipment was actually carried out on 05/02/2009. The goods cannot be considered as used vehicle. He relied on certain judicial decisions in this regard ;

(b) regarding valuation, it is submitted that the import value of the vehicle from Japan into UK has been verified and certified by the Customs Authorities in UK. Even otherwise the Customs have directly proceeded to rely on the internet price of the vehicle available in the website of the manufacturer without any basis. He contended that vehicle was imported on duty free basis into UK and thereafter to India. There were large number of similar vehicles which were imported around the some time in various ports in India. These price were very much available with Customs Authorities for comparison and for assessment. Even if the authorities are having reason to not to accept the invoice value the correct position would have been to compare the value of assessment in respect of identical or comparable goods which were very much available with the authorities. Straight way relying on the internet price is not legally tenable.

(c) The learned Counsel also contested penalties on the second appellant on the ground that he is nowhere connected and cannot be brought for penal action for abetting.

3. The learned AR supported the findings of the lower authorities and submitted that the vehicle was manufactured in August 2008 itself. As such, it cannot be said that the same is manufactured and registered on the same day namely 15/01/2009. The certificate issued in September 2009 by one Shri Gilliespe of UK cannot be relied upon as examined by the Original

Authority. Regarding valuation, he submitted that the authorities have taken the value declared by the manufacturer in their official website and there can be no grievance on this ground.

4. We have heard both the sides and perused the appeal record. On the issue regarding whether or not the imported vehicle is new or used, we note that admittedly, the vehicle was manufactured in August 2008. The same was imported into UK on 15/01/2009 and registered by the UK Authorities on the same day. Thereafter, the said vehicle was shipped to India on 27/01/2009 as evidenced from the bill of lading issued for shipment of the said vehicle. In this connection, we have perused the finding in the impugned order. The impugned order held that the vehicle has been manufactured in August 2008 and the registration in UK was done on 15/01/2009. The certificate of Shri Gilliespe to the effect that the vehicle is brand new unregistered is not correct. Holding the certificate as false the lower authorities held that the vehicle is a used one. We find that perusal of order passed by the lower authority no evidence is coming out to hold this vehicle is a used one. Admittedly vehicle is imported into UK on 15/01/2009. There is no evidence that the prior to that date the vehicle has been used. The same is shipped to India on 27/01/2009 i.e. within two weeks of its importation into UK.

5. In a similar situation, we note that Hon'ble Delhi High Court in the case of **Directorate of Revenue Intelligence vs. Jay Polychem India Ltd. – 2016 (337) E.L.T. 510 (Del.)** and in

the case of **Directorate of Revenue Intelligence vs. Gurmeet Singh Soni – 2016 (338) E.L.T. 25 (Del.)** held that considering the proximity of the dates involved in the shipment of the vehicle, the same cannot be considered as "second hand" at the time of import. As already noted, in the present case there is no evidence of actual usage of the vehicle except an inference that the same has been registered only on 15/01/2009 when the manufacture in Japan is in August 2008. We note that there is no evidence of usage of the vehicle prior to import into UK. The Customs in UK has also assessed the vehicle as new at the time of its import into UK. Accordingly we hold that the findings of the lower authorities regarding usage of the vehicle is not sustainable.

6. On valuation we note that the lower authorities have proceeded to reject the invoice value and relied on the internet value declared by the manufacturer. In this connection, we note that when there are prima facie grounds to question the validity of invoice value, the reasons for the same are to be recorded and thereafter the assessing officer has to proceed in terms of Valuation Rules to ascertain the correct value for the purpose of custom duty. In the present case the appellant is said to have sold the car with much higher price in India. This was given as one of the main reason for rejecting the declared value. We find that import value cannot be inferred or determined based on sale value, if any, in India. Admittedly, similar/identical goods have been imported during the period of dispute and were subjected to assessment by the customs authorities. Large number of such

cases have been submitted by the appellant before the lower authorities and also before us. We note that without due examination of availability of comparable or identical goods direct reference to internet value is not legally acceptable. Accordingly, we direct the Original Authority to re-determine the value, in case the rejection of transaction value is justified, by fresh consideration of the facts. To this limited extent, the matter is remanded back to the Original Authority for a fresh decision within a period of two months from the date of receipt of this order after providing adequate opportunity to the appellant to submit their side of the case. The confiscability and redemption fine and penalty will depend on the clear finding on mis-declaration of value, if any, established and violation of import policy, if any.

7. In view of the above findings, the appeals are allowed by way of remand for determining the correctness of declared value of the imported car and other connected issues, as above.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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