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

Customs Appeal No. 50841 of 2017

[Arising out of the Order-in-Appeal No. CC(A) Cus/852/2014 dated 23.11.2016, passed by Commissioner of Customs (Appeals) New Delhi]

C & C Product **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri Priyadarshan Manish and Shri Raj Rajeshwari, Advocate for the Appellants
Shri Amresh Jain, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandaran, Member (Technical)

Date of Hearing/ Decision: 06.12. 2017

FINAL ORDER No. 58413 /2017

Per: B Ravichandaran:

The appellant is aggrieved by the order dated 23.11.2016 of Commissioner of Customs (Appeals), Airport, New Delhi. The appellant imported 60 numbers of electrical tricycle without battery in CKD condition along with spare parts. They filed Bill of Entry on

19.3.2014 claiming classification under CTH No. 8703 9010, 8708 9900 and 4011 9900 of Customs Tariff Act, 1975. The assessing authority held that the said goods cannot be allowed to be cleared as importation is in violation of Import Export Policy applicable to relevant time. More specifically, it is held that new vehicle imported is not meeting the requirement of Centre Motor Vehicle Rules (CMVR), 1989. Type approval certificate is required to be used in India for any vehicle which is a mandatory requirement which is not fulfilled in this case. Accordingly, the original authority ordered confiscation of the imported goods under section 111(d) and (m) of Customs Act, 1962 and imposed penalty of Rs. 5 lakh on the appellant under section 112 (a) of the Customs Act, 1962.

2. On appeal, the said order was upheld by the impugned order.

3. Learned Counsel appearing for the appellant submitted that for customs purpose, the imported goods were declared as motor vehicle. This is because the consignment is in CKD condition which when assembled in India can make a functional motor vehicle. However, such classification of imported goods as 'motor vehicle' is not applicable to the Policy provisions. He drew our attention to the license notes under Chapter 87. Note 2 states that new motor vehicle for the purpose of said chapter shall mean a vehicle that is not being manufactured / assembled in India. He submitted that in the present

case, the components in CKD condition are to be assembled in India and as such, the import consignment are not new vehicles. As such, the provisions of Centre Motor Vehicle Rules are not violated and no violation of any other provision has been committed by the appellant.

4. Learned DR, Shri Amresh Jain strongly contested the appeal. He submitted that vehicle imported is considered as new vehicle under Rule 2(a) of General Rules for the Interpretation for customs classification. This position has been admitted. However, the appellant had tried to make a distinction for Policy stating that the imported goods are not new vehicles. He submitted that such dual approach is not permissible. It is the case of the Revenue that vehicle which is imported in CKD condition is necessarily to be used in India only after registration with competent Motor Vehicle Authority. For such registration, requirement of CMVR are to be fulfilled. The assessing authority cannot ignore the policy condition and Motor Vehicle Regulations which are allied Act provisions which the Customs authorities are bound to enforce. Even if, the goods were allowed to be cleared now, the same cannot be registered as, admittedly, requirement of CMVR are not fulfilled.

5. We have heard both the sides and perused the appeal record. The only point of dispute is whether the impugned goods under consideration were imported in violation of policy. There is no

dispute of Customs duty liability. Considering the policy as mentioned in licensing Notes under Chapter 87, we note that the new imported vehicle is defined as not manufactured or assembled in India.

6. View of the appellant is that present products will be assembled in India to make a vehicle. We find such narrow view of the issue will not lead to proper appreciation of the licensing condition. Admittedly, the goods imported are motor vehicle brought in CKD condition for the ease of import and transport. Necessarily, these items are to be used as motor vehicle in India and are governed by Motor Vehicle Rules. There is no dispute on this aspect. When the appellant intended to import 'motor vehicle' the requirement of Motor Vehicle Rules are to be complied. The Policy stipulations clearly make out that various conditions including Type Approval Certificate by the competent authority is a mandatory requirement for any vehicle imported into India. We also note that the present vehicle (in CKD condition) was imported having a electric capacity of more than 250 watt which as per mandatory requirement is to be registered with the Motor Vehicle Authority.

7. Considering these stipulations of Policy and the conditions of CMVR, we are of the considered view that the imported goods are in violation of Import Policy Notes applicable during the relevant time. Accordingly, we find no reason to interfere with the impugned order.

8. We note that counsel pleaded for consideration of reduction of penalty as goods have been completely confiscated by the department. Considering the plea of the appellant, we find it fit and proper to reduce the penalty to Rs.2,00,000/- (Rupees Two lakh only). Except for this modification of penalty, we reject the appeal.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra) **(B Ravichandaran)**
President **Member (Technical)**

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