IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. C/75937/2018

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AA/586/2018 dated 09/03/2018 passed by the Commissioner of Customs (Appeals), Kolkata.)

M/s. Jasprit Singh Dandona Appellant (s)
Vs.
CC (Port), Kolkata
Respondent (S)

Appearance:
Shri P. A. Augustian, Adv. For the Appellant (s)
Shri A. K. Singh, A. C. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing: -08.10.2018
Order No. FO/76831/2018

PER BENCH

The facts of the case in brief are that the appellant imported one used Vehicle RHD, Hummer H-3, vide Bill of Entry No.2593843 dated 25/07/2017. The declared price of the car is 8000 US$ and Bill of Entry shows the year of manufacture 2008 and the country of Origin South Africa. A Show Cause Notice dated 30/08/2017 was issued.

2. The Adjudicating Authority passed the following order:-

(i) He re-determined the assessable value of "Used Vehicle RHD, Hummer H3, Petrol, 3700CC, Colour Black, Chasis No. ADMDN13E384430791, YOM: Feb-2008, Engine No. M84430791" imported vide bill of entry No. 2593843 dated 25-07-2017 as Rs.6,98,031/- by applying Rule 9 of the CVR"2007.

(ii) He confiscated the Goods under Section 111(m) and 111(D) of Customs Act, 1962 for mis-declaration of value and Policy violation regarding import of Old and used vehicle.

(iii) As goods are found to be 'Prohibited', as discussed above, I absolutely confiscate the "Used Vehicle RHD, Hummer H3, Petrol 3700CC, Colour Black, Chasis No. ADMDN13E384430791, YOM: Feb-2008, Engine No. M84430791", imported vide bill of entry No. 2593843 dated 25-07-2017, under section 111(d) of the Customs Act, 1962.

(iv) He impose the personal penalty of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only/-) on Mr. Jaspreet Singh Dandona of Flat No. 401, 4th floor, Orchard Palace Building, Near Mehboob Studio, Mumbai 400050 having Permanent Account Number (PAN) FHBPS6650H, Passport Number : Z3579457, under Section 112 (a)(i) of the Customs Act, 1962 for intentionally importing the goods which are prohibited to import at Kolkata Port, as discussed above.

3. Hence the present appeal before the Tribunal.

4. It was found that the vehicle was not imported from the country of manufacture i.e. South Africa but it was imported from Dubai, UAE.

5. The Ld. Counsel P. A. Augustian, Advocate reiterates the grounds of appeal and submitted that both the authorities below have failed to appreciate that as per the practice followed in all the Customs House, when vehicle is imported by an NRI, even if the vehicle is not in their possession prior to import as contemplated under Import Policy, if they complied with other conditions of staying in abroad for more than 2 year, such vehicles are allowed to clear on payment of nominal amount

of redemption fine and penalty. Moreover as an NRI, appellant is free to import car through any authorized port in India. There is no reason given in the impugned order regarding deviation from existing practice and to order for absolute confiscation of the car.

6. The Ld. DR appearing on behalf of the Revenue submits that the cause of facts and circumstances and the contacts of the appellants it take colour of prohibition and confiscation of goods is justified. He reiterated the findings of the Adjudicating Authority and the Commissioner (Appeals).

7. Heard both sides and perused the appeal records.

8. We find that according to Circular No. 25/15 dated 15/10/2015, the value declared shall be examined with respect to Engineering Certificate as the part of loading but the same is not available. It is the case of the Revenue that the imported vehicle is an old and used and therefore, may be re-conditioned, re-furnished and there may be a change in the condition of the vehicle brought out prior to importation.

It is also the case of the Revenue that the goods declared in the Bill of Entry does not correspond in respect of value declared. The imported is not disputing to pay the Customs Duty. The only prior is that the car may be ordered to be released on payment of appropriate Customs Duty and redemption fine. In the present case, the Adjudicating Authority upholding that the goods are liable for confiscation ordered for absolute confiscation of the seized goods.

9. In this regard, we find that the import of car is not prohibited. Therefore, the Adjudicating Authority ordering for absolute confiscation

has not given justified findings for absolute confiscation. In this regard, we find from several Tribunal's decisions and Hon'ble High Court's decisions where the goods are not prohibited, absolute confiscation is not warranted. We rely on the decision of the Hon'ble CESTAT, Mumbai in the case of Yakub Ebrahim Yuseph v. CC, Mumbai (Supra) held that regarding absolute confiscation of such goods which are not prohibited in detail by referring all the previous decision made by the Apex Court, various High Courts and other judicial forums in this regard and held as follows:-

"The prohibition relates to goods which cannot be imported by any one, such as arms, ammunition, addictive substance viz. drugs. The intention behind the provisions of Section 125 is clear that import of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole. This would not apply to a case where import/export of goods is permitted subject to certain conditions or to a certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied with. In such a situation, the release of such goods confiscated would not cause any danger or detriment to public health."

The above view is also supported by the Hon'ble High Court of Calcutta in its decision in the case of CC (Preventive), West Bengal v. India Sales International reported in 2009 (241) E. L. T. 182 (Cal.).

10. The above citation is squarely applicable to the facts of the present case. Further we find that an identical issue of import of car, the Tribunal in the case of Subramanyam Lyyer Ratnam v. Commissioner of Customs, Bangalore (Supra) held that absolute

confiscation is unjustified by relying the Hon'ble Madras High Court's order in Sunshine International & Another v. CC, Madras-1993 (42) ECC 282 (Mad.). The Hon'ble Madras High Court held that "Customs Authorities cannot take a different view with regard to import of goods as to whether to confiscate completely or to grant an option to pay a fine". Even it is held that the car is liable for confiscation, the subject car should be released on a nominal redemption fine as done by adjudicating authorities/appellate authorities all over India.

11. Further, this Tribunal's Bench in the case of Sarguroh Azam Gulzar Khan v. Cc (Seaport-Import), Chennai in the Final Order No. 181/2010, dated 11-2-2010 also held that absolute confiscation is not warranted. Therefore, we hold that the Adjudicating authority in the present case ordering for absolute confiscation is not justified. Accordingly, we hold that the order of absolute confiscation ordered by the adjudicating authority is modified into an order of confiscation with an option for redemption of vehicle on payment of redemption fine and appropriate customs duty on such clearance.

12. In view of the forgoing discussion, we modify the order of absolute confiscation to confiscation with an option to redeem the vehicle on payment of appropriate redemption fine and customs duty and uphold the penalty imposed on the appellants under Section 112 (a) of the Customs Act and remit the matter to the adjudicating Authority only of the purpose of determining the redemption fine under Section 125.

Since the seized goods are lying for more than a year, the Adjudicating Authority is directed to pass the Denevo Order within one month from the date of communication of this order. The appeal is disposed of in the above terms.

(Operative part of the order was already pronounced in the open court.)

Sd/-	Sd/-
(V. PADMANABHAN)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Pooja