IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No.71290 of 2013

(Arising out of Order-in-Appeal No.27/Cus(Apprg.)/Kol(P)/2013 dated 30.07.2013 passed by Commissioner of Customs (Appeals), Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

Jitendra C Naviani
44/45, Mittal Chambers, Nariman Point, Mumbai-400021

Respondent

APPERANCE :

Shri S.Chakraborty, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO…75446/2023

DATE OF HEARING : 10.05.2023
DATE OF DECISION : 10.05.2023

Per Ashok Jindal :

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the DRI was investigating a case of fraudulent import of high end cars. During the course of investigation, they recorded the statement of Shri Suresh Sripat Halde, who was engaged in clearance of such vehicles from the Customs. Shri Halde gave a list of vehicles and the list contained a Lexus LS 460 Car imported by the respondent having office in Mumbai. The car was imported vide Bill of Entry No.376162 dated 16.11.2007 from Kolkata Port. The respondent was summoned to produce import documents, who provided invoices, bill of lading, bank remittance advice, challan for

payment of Customs duty along with car insurance policy and RTO registration certificate on 25.09.200. Scrutiny of the documents revealed that the vehicle was sold, shipped and subsequently cleared in India by M/s Pride City General Trading LLC of Dubai. The vehicle was sold for US$ 62337 vide Invoice No.PJ/2007/JAP/1012 dated 20.06.2007 for import clearance Invoice No. PJ/2007/JAP/1012 dated 20.06.2007 for US$ 8679 was issued. The respondent remitted the total US$ 71016 against these invoices to M/s Pride City General Trading LLC on 25.07.2007. The Customs House Agent submitted the import documents, which revealed that the vehicle was shipped from Yokohama, Japan to Kolkata in container No.PCIU 2198908, on board vessel Kota Kamil 1604 under the cover of Bill of Lading No.YOKCCU070000007, issued by M/s PIL (U.K.) Ltd., in the name of the respondent. The Bill of Entry was filed on the basis of above mentioned invoices, which have been issued by M/s Lexus Japan (Export Division), 1 Toyota Cho Toyota City, Japan in the name of the respondent.

2.1 Clearance of the vehicle was allowed on payment of Customs duty. Reference was made on 17.08.2010 by DRI to M/s to M/s Toyota Kirloskar Motor Pvt. Ltd., an authorized Indian dealer of original equipment manufacturer, M/s Toyota Motor Corporation to verify the declared description, who responded that the impugned vehicle was manufactured in Japan in June, 2007 and with the country Model as United Kingdom and the same was first registered in August, 2008. However, subsequently rectified as August 2007. In reply, another reference letter dated 11.05.2012 to verify the genuineness of the invoice submitted at the time of assessment, it was informed that M/s Lexus Japan (Export Division) does not exist and they have not generated the referred export invoice dated 10.07.2007. Thereafter, the statement of the respondent was recorded and the vehicle was seized and the value of the vehicle was proposed to be re-determined under Rule 9 of the Customs Valuation Rules, 2007 on the basis of value available on Parker's website www.parkers.co.uk as the vehicle was meant for U.K.. It was proposed that as the vehicle was used, therefore, the benefit of Notification No.21/2002-Cus dated 01.03.2002 is not available. Accordingly, the vehicle was liable for confiscation and redemption fine and penalty are imposable.

2.2 The adjudicating authority examined the issue and the documents and rejected the declared value and held that as the prices of the goods sold in other markets or territories cannot be the basis for determination of assessable value of the identical or similar goods in India. Therefore, he held that the proposed method of valuation do not conform with the provisions of Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962, as neither the vehicle was manufactured in U.K. nor it was imported from that country. Only it was the country Model for U.K. that do not hold good for valuation. He further held that the better option for valuation would have been manufacturer's price available at their site. Thus, neither the declared value is correct nor the method proposed in the show-cause notice stand to the legal test, only option left for valuation of it, is either taking the value of two invoices as transaction value or taking shelter of the value available at the manufacturer's site. Since the respondent did not provide correct information at the time of clearance of the car, therefore, the declared value cannot be taken. Hence, he took the value available at the manufacturer's site. He further held that the vehicle was old and used, therefore, denied the benefit of Notification No.21/2002-Cus dated 01.03.2002 and held that the respondent is liable to pay duty as per valuation adopted by the adjudicating authority and also held that the vehicle is liable for confiscation. Consequently, redemption fine and penalty were also imposed.

2.3 Against the said order, the respondent filed an appeal before the ld.Commissioner (Appeals), who examined the issue and held the lower authority has held that the value proposed in the show-cause notice is not acceptable and the declared value is also not acceptable and they do not stand to legal test and only option left for valuation is taking shelter of the value available from the manufacturer's website. Therefore, he held that as the value assessed by the adjudicating authority was not proposed in the show-cause notice, therefore, the said value cannot be taken as correct assessable value. He also held that the Department has failed to prove any additional payments other than the payment declared by the respondent.

2.4 He further held that at the time of clearance of the vehicle by the Customs Officials, it was opined that the car is a new one. Moreover, the admitted fact is that the car was manufactured in June 2007 and first time, it was registered in August, 2007 and the vehicle was imported in July, 2007. In that circumstances, it was held by the ld.Commissioner (Appeals) that although the vehicle was registered , the respondent is entitled for the benefit of Board's Circular No.1/2005-

Cus dated 11.01.2005, wherein it was observed that the temporary registration for moving the vehicle from showroom or the factory to the Airport shall not interfere with the Notification No.21/2002-Cus dated 01.03.2002. Therefore, he held that the vehicle is not liable for confiscation and the declared value is to be accepted.

2.5 Against the said order, the Revenue is before us.

3. Heard the ld.A.R. for the Revenue and perused the records.

4. On perusal of records, we find that the adjudicating authority has held that the proposed value in the show cause notice is not acceptable. The said order was not challenged by the Revenue before any authority. Therefore, the said part of the order attains finality as there is no proposal in the show-cause notice to take valuation available from the manufacturer's website. Therefore, the ld.Commissioner (Appeals) has rightly held that the value adopted by the ld.Adjudicating authority is not acceptable in the absence of any other value of the said goods available at that time. Therefore, the declared value is to be accepted. We do not find any infirmity in the above observations.

5. We further take note of the fact that it is the fact that the vehicle was manufactured in June 2007 as declared by the manufacturer and the registration was in August 2007, which was manufactured by the respondent vide Invoice of June, 2007 and the Bill of Lading was also available of July 2007. In that circumstances, the vehicle was registered only for the purposes of transportation for the Port. Therefore, it cannot be held that the vehicle was old and used. In that circumstances, the ld.Commissioner (Appeals) has rightly given the benefit of Notification No.21/2002-Cus dated 01.03.2002 Sl.No.344.

6. Therefore, we hold that the goods are not liable for confiscation as the facts are not controverted by any cogent evidence. We, therefore, find that at the time of import, the vehicle was physically examined and found new one. In that circumstances, we hold that the respondent is entitled to the benefit of Notification No.21/2002-Cus dated 01.03.2002 Sl.No.344. Consequently, we do not find any infirmity in the observations made by the ld.Commissioner (Appeals) in the impugned order.

7. In view of this, we hold that the vehicle is not liable for confiscation, redemption fine and penalty are not imposable.

8. In conclusion, we do not find any infirmity in the impugned order and the same is upheld.

9. The appeal filed by the Revenue is dismissed.

(Dictated and Pronounced in the open court.)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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