IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/87111/16-Mum

(Arising out of Order-in-Appeal No. MUM-CUSTM-SGN-67/2016-17 dated 30.6.2016 passed by Commissioner of Customs (Appeals), Mumbai-I)

Abhijeet Infrastructure Ltd. **Appellant**

Vs.

Commissioner of Customs (Import), Mumbai **Respondent**

Appearance:

Ms. Nishta Sikroria, Advocate, for appellant
Shri Chatru Singh, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 20.2.2018
Date of Decision: 20.2.2018

ORDER No. A/85311/2018

The facts of the case are that M/s. Precision Car India Pvt. Ltd. imported a Hybrid Porshe car on 29.10.2010 and cleared the same on payment of duty on 29.11.2010. The said vehicle was sold by the importer on 3.12.2010 to an authorized dealer M/s. Shreyans Motors Pvt. Ltd. for a value of Rs.77 lakhs. Thereafter the appellant purchased the said car from M/s. Shreyans Motors Pvt. Ltd. for a value of Rs.84 lakhs. The car was seized by the Customs authority on 4.5.2011. The department issued a show cause notice dated 26.6.2012 alleging that the importer had violated the condition for import of Hybrid car as provided under para 7 of Import Licensing Notes to Chapter 87 of ITC(HS) Classification of Export and Import conditions stated at serial No.2(2c). The car was provisionally released on payment of Rs.6.25 lakhs towards fine and on execution of provisional release bond. The show cause notice was adjudicated wherein the car was confiscated with an option of redemption on payment of fine of Rs.6.25 lakhs and a penalty of Rs.1 lakh was also imposed under Section 112(b) of the Customs Act, 1962. Being aggrieved by the order-in-original, the appellant filed appeal before the Commissioner (Appeals) who upheld the order of the original authority except imposition of penalty of Rs.1 lakhs which was waived. Therefore, the appellant is before me.

2. Ms. Nishta Sikroria learned counsel appearing on behalf of the appellant, submits that even if there is any violation of the Foreign Trade Policy, the appellant is not party to that violation for the reason that they are the *bona fide* buyer of the car from an authorized dealer. They have no role either in import of the car or clearance thereof. Therefore, if at all any violation is there, the same cannot be attributed to the appellant. Therefore, the redemption fine should not have been imposed on the appellant. She submits that the importer who violated the condition of FTP has already been penalized. Therefore, the appellant was wrongly fastened with

the redemption fine. She placed reliance in the Hon'ble Supreme Court judgment in the case of *Mohan Meakins Ltd. vs. CCE, Kochi – (2000) 1 Supreme Court Cases 462*. She submits that on the last occasion, while hearing the matter, the Bench has proposed to come out with a settlement. In that regard, she was allowed to take instruction from her client. Accordingly, she submitted a letter dated 14.12.2017 wherein the appellant is ready for a settlement on a payment of redemption fine upto Rs.4 lakhs.

3. Shri Chatru Singh, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the impugned order. He submits that since there was a violation of the Foreign Trade Policy, the goods are undoubtedly liable for confiscation. Therefore, the order of confiscation is legal and proper. Once the goods have been confiscated, the redemption fine is inevitable. He submits that the redemption fine imposed by the lower authority is very reasonable. Therefore, the same does not require any change. He placed reliance on the following judgments:-

(i) *Sachidananda Banerjee, ACC, Calcutta vs. Sitaram Agarwala – 1999 (110) ELT 292 (SC)*;

(ii) *Sumant Sood vs. CC, Chennai – 2001 (134) ELT 817 (Tri.-Del.)*.

4. On careful consideration of the submissions made by both the sides, I find that the fact is not under dispute that the appellant is not the importer of the goods. They have not done the clearance from the Customs. Therefore, if at all any violation was done, it is by the importer and not by the appellant. The appellant is a *bona fide* buyer of the car from an independent dealer of the car. They have also paid the appropriate value of the car. Therefore, it cannot be said that due to any violation occurred at the time of clearance of the goods, they have been unduly benefitted. However, since there is a violation of the FTP and since the goods were available, it has been confiscated. To this extent, I do not find any error in the order of the lower authority. But it also cannot be brushed aside that the appellant is not the party to any violation of the condition of FTP. Since the confiscation of goods is legal and proper, the same has been maintained. Looking to the overall facts and circumstances and *bona fide* of the appellant, I am of the view that a lenient view should be taken. I also take a note that in the last hearing, this Bench has given an option to the appellant to come out with a settlement. Taking into consideration the same and overall facts and circumstances of the case, I reduce the redemption fine from Rs.6.25 lakhs to Rs.4,00,000/- (Rupees four lakhs only).

5. The impugned order is modified to the above extent. Appeal is partly allowed.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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