CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 879 of 2011

(Arising out of Order-in-Original No. 57/2011/CC(I) dated 21/09/2011 passed by Commissioner of Customs (Import), Nhava Sheva)

Commissioner of Customs (Import)
Nhava Sheva
Jawahar5lal Nehru Custom House, Post Uran, District Raigad Sheva, Pin- 400707 **.....Appellant**

VERSUS

Jagat Malkani **.....Respondent**
A-502, Lovekush Tower, Sindhi Society, Chembur, Mumbai – 400 071.

Appearance:

Ms. P. Vinita Sekhar, Authorized Representative for the Respondent

Shri Arun Jain, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. Sanjiv Srivastava, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87134/2019

Date of Hearing: 04.01.2019

Date of Decision: 04.01.2019

Per: S.K. MOHANTY

Revenue has assailed the impugned order dated 21.09.2011 passed by the Commissioner of Customs (Import), Raigad, on the ground that the car imported by the respondent should appropriately be classifiable under CTH 87032299, as against the classification claimed under CTH 87029099.

2. Briefly stated, the facts of the case are that the respondent had filed the Bill of Entry No. 779278 dated 11.02.2009 for clearance of one unit of "Chrysler 300C Sedan RHD car, 3000cc Diesel Operated with seating capacity of 12 persons including driver" and claimed classification under CTS 87029099, where basic duty @ 10% is leviable. Modification was also carried out in the vehicle, changing the seating capacity from the original version by the supplier, who is not a manufacturer of the car but is a dealer of Chrysler vehicles. The matter was adjudicated vide order dated 21.09.2011, holding that the imported car as per the Bill of Entry dated 11.02.2009 is to be classified under CTH 87021019 for the purpose of assessment. The fact is not under dispute that the said car was registered with the Transport Authority in Madhya Pradesh State, certifying seating capacity of the same as 11+1 persons. Though, the car in question was originally manufactured with 5 seater capacity, it was converted before sale to the respondent to have 12 seater capacity and not put to use before conversion. The fundamental principal of assessment of imported goods is that same should be assessed in the form, it is presented for assessment after importation. Since, at the time of import, the car was having capacity to carry 12 persons including driver, which has also been accepted by the examining officer by the department, we are of the view that the car should appropriately be classifiable under CTH 8702 as claimed by the respondent. We also find that the Ld. Adjudicating Authority vide the impugned order dated 21.09.2011 had elaborately discussed the factual aspects regarding classification of the goods under CTH 8702 for the purpose of assessment. Thus, we do not find infirmity in the adjudication order passed by the Ld. Commissioner of Customs.

3. Therefore, we do not find any merits in the appeal filed by the Revenue. Accordingly, the same is dismissed.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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