CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 86766 of 2021

(Arising out of Order-in-Appeal No. 730 (Gr.VB)/2021 dated 08.09.2021 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

Munnayikkattil Rasheed **Appellant**
Munnayikkattil House, Ezhur,
Tirur PO,
Malappuram

Vs.

Commissioner of Custom, Nhava Sheva-V **Respondent**
JNPT Custom House, Nhava Sheva, Raigad 400 707.

Appearance:

Shri P.A. Augustian, Advocate, for the Appellant
Shri Bhushan Kamble, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

Date of Hearing: 28.02.2022
Date of Decision: 28.02.2022

FINAL ORDER NO. A/85271/2022

PER: SANJIV SRIVASTAVA

This appeal is directed against order in appeal No 730 (Gr. VB)/ 2021 (JNCH)/ Appeals dated 08.09.2021 of Commissioner of Custom (Appeals), Nhava Sheva, upholding the order in original 209/2021-22/DC/NS-V/CAC/JNCH dated 10.05.2021 of the Assistant Commissioner Gr. VB NS-V, JNCH. By his order, the Assistant Commissioner has held as follows:

"ORDER

1) I reject the assessable value of Rs. 663322.85 declared by the importer in Bill of Entry No. 8317606 dated. 29.07.2020 and re-determine the assessable value to Rs. 957672/-as determined by CE vide ref: SAI NS/ESKAY-MUNNAYIKKATTL/066/2020-21 dated 06/08/2020

2) For non-compliance of Policy Condition the goods are totally confiscated under section 111(d) of the Custom Act, 1962

3) 1 impose Penalty of Rs.3,00,000/- under section 112(a) of the Customs Act 1962 on the Importer M/s. Munnayikkattil Rasheed for import of prohibited /restricted goods.

This order in original is issued without prejudice to any other action that may be taken in respect of the above goods and/ or the persons / firms mentioned in the notice under the provisions of the Act and / or any other law for the time being in force, in the Republic of India."

2.1 Appellant imported one used RHD car model, Toyota FJ Cruiser SUV by declaring the assessable value at ₹6,63,322.85 and declared the duty of ₹13,53,178.70. He also filed an affidavit wherein he stated that he had stayed in Dubai for more than 10 years and that the above car was purchased out of his earning and was for his personal use only.

2.2 Revenue on scrutiny of import documents found that the appellant had not fulfilled the policy condition no. 3(l)(a) as per which the car must have been in possession for a minimum period of one year abroad.

2.3 Further on the basis of the valuation done by the Chartered Engineer to whom the matter was referred the declared value was rejected and was re-determined at ₹9,57,672/-.

2.4 The matter was considered by the Group Assistant Commissioner and adjudicated as per the order in original indicated in para 1, above.

2.5 Aggrieved appellant preferred the appeal to Commissioner (Appeal) which was dismissed as per the impugned order.

2.6 Hence this appeal.

3.1 We have heard Shri P.A. Augustian, Advocate for the appellant and Shri Bhushan Kamble, Assistant Commissioner, Authorized representative for the Revenue.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 The issue to be decided in this appeal are

- whether the revenue is correct in rejecting the declared assessable value of the used car imported by the appellant;

- whether the imported car is liable for absolute confiscation or should be allowed the option for redemption;
- whether the importer is liable to penalty and if yes the quantum of penalty.

4.3 In present case the declared value has been rejected and the value of the car imported has been enhanced based on the findings recorded by the Chartered Engineer without application of mind by the adjudicating authority. The declared value could be rejected only if the importer fails to furnish any documents evidencing the actual transaction value. It is rather surprising that the Revenue has placed reliance on the chartered engineer report when the Revenue is also not disputing the fact that the car was a used car and hence contents of the report of the chartered engineer is highly imaginary and lacks credence which has to be ignored. A report does not take into consideration the appearance of the car *per se* since there were documents evidencing the date of original purchase as well as the subsequent purchase which has been completely ignored by the chartered Engineer. Chartered Engineer certificate can be a ground for rejection of the declared value and enhancement of the same, but the same needs to be considered along with the submissions made by the appellant by the adjudicating authority. The order of adjudicating authority should be based on proper appreciation of all the facts and submissions. Hence for this purpose the matter needs to be remanded back to the adjudicating authority for redetermination of the value of the imported goods.

4.4 The car which was imported, the importation of the same was not prohibited. It is not the case of the revenue that there was any prohibition insofar as the importation of the car was concerned at any point of time and admittedly, the only violation, if at all, was the non-usage of the said car for a period of one year abroad, before importation. That *ipso facto* cannot make the car liable for absolute confiscation. Learned Counsel also admits that there are certain violation of the policy restrictions for which the car should have been confiscated but allowed for redemption against a redemption fine in terms of Section 125 of the Customs Act, 1962. We are of the view that this also needs to be examined by the concerned adjudicating authority and as far as possible the importer should be given the option to redeem.

4.5 While considering the case in remand proceeding adjudicating authority should take note of the following decisions and record his findings

- Century Metal Recycling Pvt Ltd [2019 (367) ELT 3 (SC)]
- Sunil Kumar Gupta [2002 (145) ELT 73 (T-Mum)]
- Sima Khatib [2004 (166) ELT 119 (T-Mum)]
- Naufal Pazhayapura Kunhamu [2011 (269) ELT A108 (SC)]
- Ankineedu Maganti [2012 (275) ELT 551 (Ker)]
- D Souza Lawrence [2007 (215) ELT 400 9T-Bang)]

4.6 Since we are remanding the matter back to the original authority he should re-determine the liability to penalty and quantum of penalty in remand proceedings.

5.1 In view of the discussions as above we set aside the impugned order and remand the matter back to reconsider the issue as per our observation made in para 4.2 to 4.6.

5.2 Since the matter is in respect of the car imported by the individual for his personal use and absolutely confiscated by the revenue, the matter in the remand proceedings should be finalized in three months of the receipt of this order.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(P. Dinesha)
Member (Judicial)

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