CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85510 of 2022

(Arising out of Order-in-Original No. F. No. DRI/ADJ/SCN/22/2021 ADG DRI-ADJN-MUMBAI dated 22.09.2021 passed by the Additional Director General (Adjn.), DRI, Mumbai-II)

Savitha Nisar **.... Appellant**
Pallathukadavil House, Thuravumkara, Kanjoor,
P.O. Kanjoor, Aluva, Ernakulam, Kerala – 683575

Versus

Addl. Director General (Adjn), Mumbai **.... Respondent**
Directorate of Revenue Intelligence,
Mumbai Zonal Unit, 2nd Floor, New Custom House,
Ballard Estate, Mumbai - 400001

Appearance:

Shri Stebin Mathew, Advocate for the Appellant

Shri S.K. Hatangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85828 / 2022

Date of Hearing: 11.08.2022
Date of Decision: 11.08.2022

Per: Dr. Suvendu Kumar Pati

Imposition of stringent condition for provisional release of vehicle bearing Registration No. KL-41 M4536 of Toyota Fortuner brand, seized under Section 10 of the Customs Act, 1962 with a proposal for confiscation under Section 121 of the Customs Act, 1962 on the ground that the same was purchased from the sale proceeds of smuggled goods, allegedly done by her husband, is assailed in this order.

2. I have heard from both sides on the other date and perused the case records including "LCR (Lower Court Record) that was specifically called for verification of the documents produced before the Additional Director General (Adjn.), DRI. On specific direction made by this Bench on dated 03.08.2022, appellant also submitted proof of receipt of money of more than Rs.10.00 lakhs against sale of her old vehicle along with her Income Tax Return copy of the relevant year, in which her independent income of more than Rs.37.00 lakhs has been reflected for the relevant year. Documents furnished before this Bench are taken as additional evidence. Income Tax Return, proof of receipt of Rs.10,50,000/- against sale of old vehicle vis-à-vis loan statement of the HDFC Bank to the tune of Rs.26,96,567/- clearly indicate that the appellant had her own independent source of income and the seized vehicle was purchased from her own source of income. It is apparently for this reasons, the learned adjudicating authority had allowed provisional release of vehicle but imposed a condition of Bank Guarantee of Rs.17.00 lakhs for such release of vehicle. As could be found from the documents available on records, depreciated value of the said vehicle was taken as the amount for which Bank Guarantee was directed to be secured by the appellant. Seeking modification of the said condition, appellant has approached this forum.

3. It is a settled principle of law that has been developed after a guideline was issued by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in *2010*

SCC 283, though in the context of seizure of vehicle by the Police, that whatever may be the situation, order for release of vehicle may be passed immediately by taking a proper bond and guarantee as well as security for return of the said vehicle, if required at any point of time. In the instant case, there appears to be no requirement for any security for return of the vehicle, since prima facie it was established to have been purchased from the own source of income of the petitioner/appellant, who is not otherwise found to have any link with alleged smuggling done by her husband. Further, as has been held by the Hon'ble High Court of Jammu & Kashmir in the case of *Farooq Ahmad Dar Vs. Union Territory of Jammu & Kashmir* on 23.08.2021, severe harsh condition cannot be imposed for release of seized vehicle. This being the position of law, imposition of condition like furnishing bank guarantee to the tune of Rs.17.00 lakhs appears to be exabarant and the same is required to be modified to surety from cash security imposed by the adjudicating authority. Hence the order.

The Order

The appeal is allowed and the order passed by the Additional Director General (Adjn.), DRI, Mumbai in OIO No. F. No. DRI/ADJ/SCN/22/2021 ADG DRI-ADJN-MUMBAI dated 22.09.2021 for release of seized vehicle bearing Registration No. KL-41 M4536 (Toyota Fortuner) is modified to the extent that instead of furnishing a Bank Guarantee of Rs.17.00 lakhs, an indemnity bond of Rs.10.00 lakhs with one surety of the like amount be taken from the appellant against such provisional release of the vehicle.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Sinha