CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87338 of 2022

(Arising out of Order-in-Appeal No. 885(Gr.V)/2022(JNCH)/Appeals dated 24.08.2022 passed by Commissioner of Customs (Appeals), Nhava Sheva, Taluka Uran, Raigad.)

Ganesh Ramchandra Surose **.....Appellant**
R No.64, Mamta Welfare Society
Bhagat Singh No.1, Goregaon (W)
Mumbai – 400 104.

VERSUS

Commissioner of Customs, Nhava Sheva-V **.....Respondent**
JN Custom House (JNCH)
Nhava Sheva, Taluka-Uran
District Raigad
Maharashtra - 400 707.

<u>Appearance:</u>

Shri Ashok Kumar, Advocate for the Appellant
Shri D.S. Mann, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87467/2023

Date of Hearing: 05.06.2023
Date of Decision: 05.06.2023

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants had filed the Bill of Entry (B/E) before the customs authorities for clearance of one '2008 RHD Hummer H3 SUV Car'. The appellant had claimed that the import was made under the "Transfer of Residence for Permanent Settlement Scheme". For claiming the transfer of residence benefit, the Import Policy under Chapter 87, condition No. 3(I)(a) attached thereto provides that the imported vehicle should have been in possession of the importer for a minimum period of one year abroad. The appellant in this case, had purchased the said car in UAE on 29.04.2020 and returned to India on 25.06.2020. Since, the car was in his possession for two months only in UAE, the said condition prescribed in the import policy was not fulfilled.

Therefore, the department had initiated proceedings against the appellant, seeking for rejection of declared value, confiscation of the vehicle, imposition of redemption fine and penalties. The show cause notice dated 13.05.2021 issued in this regard was adjudicated by the learned Additional Commissioner of Customs vide Order-in-Original No. 167/2021-22/ADC/GR.5(F,I,V)/CAC/NS-V/JNCH dated 27.09.2021. In the said order, the adjudicating authority had rejected the declared assessable value by the appellant and re-determine the same at Rs.9,56,932/-; confiscated the vehicle under Section 111(d) and Section 111(m) *ibid*, providing the option to redeem the same on payment of redemption fine of Rs.90,000/- (for the purpose of re-export only); imposed penalties of Rs.5,00,000/- and Rs. 10,00,000/- under Section 112 (a) (i) *ibid* and Section 114AA ibid respectively. Appeal filed against the said original order dated 27.09.2021 was rejected by the learned Commissioner of Customs (Appeals), Mumbai-II vide the Order-in-Appeal No. 885(GR.V)/2022(JNCH)/Appeals dated 24.08.2022 (for short, referred to as "the impugned order"). Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Heard both sides and perused the records.

3. The case of the Department is that the used car in question was imported by the appellant in contravention of the provisions of import policy condition of Chapter 87 of the ITC-HS to Foreign Trade Policy, as applicable to individual on 'Transfer of Residence'. The department had claimed that all import of second-hand or used vehicles are subject to prescribed import policy conditions as follows:

> *"<u>Condition Serial No.1</u>*
> *(I) A second-hand or used vehicle (including all vehicles other than Railways or Tramway) for the purposes of this chapter shall mean a vehicle that –*
> *(a) has been sold, leased prior to importation into India; or*
> *(b) has been registered for use in any country according to the laws of that country prior to importation into India;*
>
> *(II) the import of second-hand vehicle or used vehicles shall be subject to the following conditions: -*
> *(a) The second-hand or used vehicle shall not be older that three years from the date of manufacture*
> *(b) The second hand or used vehicle shall:*
> *(i) have right hand steering and controls;*
> *(ii) have a speedometer indicating the speeding kilometers; and*
> *(iii) have photometry of the headlamps to suit 'keep left' traffic*
> *(c) In addition to the conditions specified in (a) and (b) above, the second hand vehicle or used vehicle shall conform to the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder…..*

<u>Condition Serial No.3</u>
(I)The conditions at Sl. Nos. 1 & 2 above shall not be applicable in import of passenger cars/jeeps/multi-utility vehicles etc. on payment of full customs duty by the following categories of the importers

(a) Individuals coming to India for permanent settlement after two years of continuous they are brought provided, has been in the possession of the individual for a period of minimum one year abroad…"

3.1 As the imported vehicle was in the possession of appellant only for a period of two months and that he was not fulfilling the policy condition No. 3(I)(a), which stipulates that the vehicle must have been in the possession of the individual for a period of minimum one year abroad, the learned Commissioner (Appeals) has rejected the appeal filed by him.

4. On careful examination of the above import policy conditions and the factual matrix of the case, it transpires that the appellant had stayed in abroad for more than two years and had purchased a vehicle for his use; however, he did not possess the vehicle for the minimum period of one year, but had it in his possession only for two months. We also find that the appellant-importer had submitted the chartered engineer certificate dated 10.08.2020, wherein the fair value of the imported car was estimated to be Rs.9,56,932/-, which was accepted by the original authority as the assessable value in passing the original order. Since, the appellant had declared the imported car with complete details and requested for examination of the same under first check basis before assessment of goods for subjecting it to chartered engineer's examination, we do not find any ground to sustain the claim of under-valuation in terms of Section 111(m) *ibid*.

5. Further, it has also been confirmed by both the authorities below that the Customs department did not adopt any mechanism for re-assessment of imported used car, and had accepted the chartered engineer's certificate for valuation of goods and for its residual life. Insofar as clause (d) in Section 111 *ibid* is concerned, it has been mandated that importation of the goods, contrary to any prohibition imposed by or under the Customs Act, 1962 or any other law, is liable for confiscation. It is not the case of Revenue that any prohibition has been imposed under the parent Act, which has been contravened by the appellant, while importing the goods into India. Though, the prohibition or restriction has been contained in the ITC HS of the Foreign Trade Policy for each of the HS Code, in respect of Chapter 87 entries, there

is no item shown as 'Prohibited' or as 'Restricted' and the DGFT had only prescribed certain policy conditions to be fulfilled in respect of the subject imports made by the appellant. Thus, under such circumstances, the action on the part of the customs department in confiscating the goods and allowing it for redemption only for export, is not proper and justified. In other words, the goods having been imported under the scheme for Transfer of Residence, the appellant had fulfilled the conditions partly in respect of continuous stay of the importer abroad, but did not fulfil for the condition of minimum period for which it should have been in the possession of the importer. Thus, we find that in the present set of facts, for the violation in respect of the import policy condition, the redemption fine and penalty imposed on the appellant requires to be modified.

6. In view of the above discussions, the appeal filed by the appellant is disposed off in the following manner:

(i) the impugned goods viz. 'one used Hummer brand H3 SUV/car of 2008 model' is to be assessed to import duty at the effective rate, on the basis of the assessable value determined in the impugned order;

(ii) confiscation of the imported goods and imposition of redemption fine are upheld for home consumption clearance (personal use), subject to compliance with Motor Vehicles Act, 1988 and Regulations made thereunder;

(iii) the quantum of penalty imposed under section 112(a)(i) *ibid* is reduced to Rs.2.00 lakhs (Rupees Two lakhs only); and

(iv) the quantum of penalty imposed under section 114AA *ibid* is reduced to Rs.3.00 lakhs (Rupees Three lakhs only).

(Operative portion of the Order pronounced in the Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sm