(1990) 02 MAD CK 0046

In the Madras High Court

Case No : Writ Petition No. 1792 of 1990

A. Ratnam APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Citation : (1996) 83 ELT 40

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Advocate : Shri R. Thiagarajan, for the Appellant; Shri P. Narasimhan, S.C.G.S.C. and T. Srinivasamoorthy, A.C.G.S.C., for the Respondent

Judgement

S. Ramalingam, J.—By consent of parties, the writ petition itself is taken up for final disposal.

2. One person by name Noni Eraehchsson imported a car AUDI-80, Model 1988 (Non-A. C.) bearing registration number GKS-70 through

Bombay Part. This was allowed to be cleared on payment of a duty of Rs. 3,45,000/- on 7-12-1988. According to the petitioner, the horse

power of the vehicle is only 1595.

3. Later on this car was sold to Leather and Leather Finishes Private Limited, Bangalore, from whom M/s. Aviation Travels Private Limited

purchased the vehicle. The petitioner purchased on 19-12-1989 this vehicle from M/s. Aviation Travels Private Limited. The car is now garaged

with M/s. V. S. T. Service Station Private Limited for some repairs.

4. On 16-01-1990, the Directorate of Revenue Intelligence, Madras, issued a notice to the petitioner stating that the horse power of the vehicle

has been mis declared as 1590-1595, but the actual c. c. of the car is 1781-1800 attracting higher levy of customs duty. An order u/s 111(a) of

the Customs Act was issued asking the petitioner not to part with the vehicle. This was followed by the impugned order dated 12-2-1990 in which

the petitioner has been called upon to execute a bond with bank guarantee equivalent to the differential duty of Rs. 4,75,818.68 together with a

simple bond to cover ITC angle, fine and penalties if any that may be imposed. Challenging the correctness of this order, the present writ petition

has been filed.

5. The contention of the petitioner is that there was no mis-declaration, that the horse power of the vehicle was correctly given as 1590, that the

customs duty levied thereon had been paid in full on 7-12-1988, and that the assumption of the respondents that there is a mis-description

regarding the horse power is unwarranted, Mr. P. Narasimhan, learned senior Central Government Standing Counsel states that in similar

circumstances, the High Court in Bombay had passed orders directing the party to furnish a bank guarantee for release of the vehicle and prays,

similar order may be made.

6. But, having regard to the fact that the vehicle had been allowed to be cleared from the Customs as early as 7-12-1988 on payment of duty of

Rs. 3,45,000/- and the question whether there is mis-description regarding the horse power is yet to be adjudicated upon, and the remedy of the

Department in such circumstances is to file an appeal against the orders of the concerned Assessing Authority who allowed clearance of the vehicle

on payment of a sum of Rs. 3,45,000/-, this court considers that in the interest of justice, the order dated 12-2-1990 shall not be implemented, but

at the same time, there will be a direction in this writ petition directing the petitioner to file an affidavit before the 3rd respondent undertaking to

produce the vehicle in question whenever called upon to do so by the 3rd respondent and also undertaking not to alienate the vehicle without

clearance from the 3rd respondent and make an inventory of all the spare parts available in the vehicle. The petitioner will also offer a personal

bond in the prescribed form for a sum of Rs. 4,75,818.68. On fulfilling the above obligations, the vehicle would be released to the petitioner,

subject to further orders to be made in the appeal that may be filed by the Department against the adjudication made by the Assessing Officer at the time of clearance of the vehicle.

7. The writ petition is ordered on the above terms. However, there will be no order as to costs.