(2012) 04 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition NO. 2426 of 2012

Commissioner of Customs (Import) APPELLANT

Vs

Noshire Moody RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:
Customs Act, 1962 — Section 127C(5)

Citation : (2012) 192 ECR 376 : (2013) 22 GSTR 195

Hon'ble Judges : Mridula Bhatkar, J;D R.D.Y. Chandrachud, J

Bench : Division Bench

Advocate : A.S. Rao, for the Appellant;

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—These proceedings arise from a decision of the Settlement Commission under the provisions of Section 127-C(5) of the Customs Act 1962. The Respondent imported a Ferrari under a bill of entry dated 14 February 2008 at Nhava Sheva. He claimed the benefit of an exemption notification 21/2002-CUS dated 1 March 2002 on the basis that it was a brand new vehicle. The DRI commenced an investigation on intelligence information which it received that the vehicle was second hand and was registered with the Driver and Vehicle Licensing Agency (DVLA) in the United Kingdom prior to its importation. The benefit of the exemption notification was alleged to be wrongly claimed on that basis. A notice to show cause was issued to the Respondent on 21 December 2009 by the Additional Director General in the DRI. The Respondent made an application before the Settlement Commission on 18 August 2010, by which he accepted a further duty liability of Rs.61.32 lacs over and above the duty paid in the amount of Rs.72.61 lacs at the time of import. Interest thereon was also paid. Before the Settlement Commission, the contention of the jurisdictional commissioner was that the vehicle was registered in the United Kingdom and that in order to suppress the fact that the vehicle was already registered and was being shipped from United Kingdom, instead of Italy which was the country of manufacture, the Respondent had produced a fake invoice dated 24 December 2007 to hide the identity of the U.K. Ferrari dealer.

2. The Settlement Commission has in its order noted that notification 21/2002-CUS dated 1 March 2002 uses the words "new, which have not been registered anywhere prior to importation". In the U.K. registration of motor vehicles bought for export is a requirement mandated under law. The Central Board of Excise and Customs issued a circular on 11 January 2005, circular 1/2005 to deal with this situation by which field formations were directed

to verify whether the registration is a formality or not and to compare the date of dispatch of the car with the date of registration and that such temporary registration was not interfering with the Notification benefit.

3. The Settlement Commission noted that the purpose and intent of the exemption under the notification as brought out in a budget speech of the Finance Minister and a budget explanation note of 2001-02 is to discourage the import of second hand cars by fixing a higher rate of duty. The CBEC circular, however, clarifies that a mere documentary registration for enabling transit and shipment of a vehicle will not disqualify the motor vehicle from exemption. In this background, the Settlement Commission observed that unless the exemption notification were to be given a workable meaning so as to exclude registration for transit, the notification would become unworkable for import of motor vehicles from such countries where temporary registration is mandatory before exportation of the vehicle. Insofar as the facts are concerned, the Settlement Commission has noted that the car was imported by the U.K. dealer of Ferrari, Italy and sold to M/s. Hyperformance Cars Ltd., U.K. on 18 December 2007. The car was entered for export to India at the relevant port on 20 December 2007 and the consignment left for India on 30 December 2007 under a bill of lading. There is a finding of fact that the car was not used in the U.K. and was registered in the U.K. on 11 January 2008 only to meet the transit requirement from Italy to India through the U.K.

4. On these facts as found by the Settlement Commission, the finding that the benefit of the exemption under notification 21-CUS/02 dated 1 March 2002 was admissible cannot be faulted. On the issue of undervaluation the Settlement Commission has noted that the redetermined assessable value of the car is Rs.1.18 Crores. The Respondent admitted the allegation of undervaluation by accepting the redetermined value of Rs.1.18 Crores. The differential duty liability after extending the benefit of the notification was also admitted and the differential duty was paid in full together with interest of Rs.13.63 lacs. The duty, as observed by the Settlement Commission, was deposited even prior to the issuance of a notice to show cause. On these facts, the Settlement Commission determined the differential customs duty liability at Rs.61.32 lacs in accordance with law and also recorded that the entire interest had been paid. A penalty of Rs.3 lacs and Rs. 2 lacs was imposed respectively, in lieu of confiscation and upon the Respondent, invoking the show cause notice, while granting immunity

from penalty in excess of the aforesaid amount.

5. Counsel appearing on behalf of the Revenue submits that the car which was imported was not a new car within the meaning of the exemption notification. Whether a vehicle is or is not new is a pure finding of fact. The facts which have been found by the Settlement Commission indicate that the car was in fact a new car which was transshipped from the manufacturer in Italy to the Ferrari dealer in the U.K. who sold the car to a dealer in the U.K. The Respondent purchased the car from the dealer in the U.K. The Settlement Commission has noted that the registration of the car in the U.K. was only to comply with the requirement of the licensing authorities in the U.K. who require registration even for the purposes of exportation. The car was not used in the U.K. The finding that the vehicle was a new motor vehicle is not perverse or contrary to the evidence. The Respondent made a fair and candid disclosure and accepted the undervaluation and paid the differential duty together with interest. In this view of the matter, no case for interference has been made out having regard to the limited scope for interference in an order passed by the Settlement Commission. The order of the Settlement Commission is not shown to be perverse or contrary to law. The Petition is accordingly dismissed. There shall be no order as to costs.