(2014) 09 MAD CK 0314

In the Madras High Court

Case No : T.C. (A) No. 2576 of 2011

Haren Choksey APPELLANT

Vs

Customs, Excise and Service Tax RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : (2014) 310 ELT 639 : (2014) 48 GST 494

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—It is a case of import appeal filed by one of the importers.

2. It is the case of the appellants having been accused with violating the EXIM policy by importing BMW 5 series luxury cars in contravention of ''Transfer of Residence'' facility of baggage rules. The appellants are alleged to have misdeclared the year of manufacture and model number and tampered with the chassis number of the imported cars to avoid paying customs duty due as per the provisions. Therefore, the adjudicating authority imposed a fine and penalty of Rupees Eight lakhs on the appellant, against which, he preferred an appeal before the learned Tribunal.

3. The Tribunal passed an order modifying the imposition of fine and penalty by order dated 10.5.2011. The appellant is before us contending that a different order was passed by a different bench on 3.6.2009 on the same matter allowing the appeal in part by reducing the fine and penalty.

4. The earlier order not having been withdrawn and the impugned order grossly at variance with the earlier one, the appellant is before this court challenging that two orders cannot be passed in respect of one appeal.

5. Under Right to Information Act, the details of the first order dated 3.6.2009 issued to the assessee has been obtained and the same is extracted hereunder:

Appeals partly allowed by reducing it to Rs. 6 lakhs and reducing penalties as under:

Mangal Singh Brothers..... Rs. 2 lakhs

Manil Malhotra.... Rs. 3 lakhs

Haren Choksey.... Rs. 2 lakhs

6. Thereafter, second order came to be passed by the Tribunal two years after the hearing on 3.3.2011 and the date of pronouncement was 10.5.2011, reducing the penalty originally imposed by the adjudicating authority from eight lakhs to six lakhs, which is in contradiction to the earlier order passed on 3.6.2009 through which the penalty was reduced to two lakhs as mentioned above. For better clarity, paragraph-8 of the order dated 10.5.2011 is extracted hereunder:

8. As such, the confiscation of the impugned vehicle and the imposition of penalties on all the three appellants who have filed the present three appeals are justified. However, considering the fact that the differential duty amount has been quantified as Rs. 11,65,453/- and that in addition there is a contravention of the EXIM Policy, we reduce the penalty imposed on Shri Namit Naresh Malhotra from Rs. 11,00,000/- to Rs. 5,00,000/- (Rupees five lakhs only) and we reduce the penalty imposed on M/s. Mangal Singh Brothers from Rs. 10,00,000/- to Rs. 4,00,000/- (Rupees four lakhs only). Considering the fact that Shri Haren Choksey is a repeated offender and has been penalised in several similar cases in the past as per the tabular data submitted by the learned counsel himself, we are of the view that a higher penalty is called for in his case and hence we reduce the penalty of Rs. 8,00,000/- imposed on him to an amount of Rs. 6,00,000/- (Rupees six lakhs only). All the three appeals are dismissed except for reduction in the penalty amounts as indicated above.

7. Aggrieved by the order of the Tribunal dated 10.5.2011, the appellant has filed the present appeal. On admitting the appeal, the following substantial questions of law have been formulated:

(a) Whether the Tribunal is right in rehearing and passing order afresh in an appeal that was disposed of by the Tribunal almost two years back?

(b) Whether the proceedings of the Tribunal pursuant to its becoming Functus Officio have any legal sanctity and are liable to be quashed?

Whether the Tribunal is right in recording a finding that the Appellant is a habitual offender when no such charge is laid against the appellant and without putting the appellant on notice before recording such a finding?

8. From the facts narrated above, we find that by virtue of the earlier order dated 3.6.2009 the appeal was partly allowed by reducing the penalty to Rs. 2,00,000/-, whereas, by the impugned order, the penalty was reduced from Rs. 8,00,000/- to Rs. 6,00,000/-.

9. We hold that there cannot be two orders by the Tribunal, with two different results. In any event, before passing the impugned order, there is no mention that the earlier order recorded on 3.6.2009 allowing the appeal in part has been withdrawn. The error apparently has not been noticed by the Tribunal while deciding the appeal for the second time. The error as above requires to be corrected.

10. In such view of the matter, we set aside the order of the Tribunal and remand the matter back to the Tribunal to verify and record as to whether the earlier order is supported by reasons and if so, has it been withdrawn for any reason. The Tribunal after recording reasons as above is entitled to dispose of the appeal appropriately.

11. The 1st substantial question of law is answered in favour of the assessee and since the matter is remitted back to the Tribunal, we deem it fit not to answer the other questions of law as it is academic.

12. With the above direction, the appeal is disposed of. No costs.