(2015) 01 DEL CK 0314

In the Delhi High Court

Case No : CUSAA No. 3 of 2015 and C.M. Nos. 1682, 1681 of 2015

Jang Bahadur Singh Gujral APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 319 ELT 629

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Pradeep Jain and Ashish Batra, for the Appellant; Kamal Nijhawan, Sr. SC and Sumit Gaur, Advocates for the Respondent

Judgement

C.M. No. 1682/2015

Exemption is allowed subject to all just exceptions.

The application is disposed of.

CUSAA 3/2015 and CM No. 1681/2015

1. Issue notice. Mr. Kamal Nijhawan, Advocate accepts notice.

2. With the consent of the parties, the matter was heard finally. The substantial question of law urged by the appellant is whether the direction to pay Rs. 55 lakhs by the CESTAT was justified in the circumstances as a principal condition for the hearing of the appeal before it. The appellant had imported a Lexus 460 on 17-5-2007 from Dubai. It was subject to seizure thereafter by the customs authorities on the pretext of non-production of typed certificates. This ultimately culminated in an order by this Court in appeal Nos. 6 and 9 of 2008 on 17-10-2008 and ultimately the car was released. Subsequently, show cause notice was issued on 16-5-2012 alleging under-valuation of the car. The customs authorities sought to invoke the extended period of limitation on the ground of mis-declaration. The show cause notice was confirmed by the order-in-original dated 27-12-2013. In the appeals before the CESTAT stay of the direction to pay

the differential duty and penalty at over Rs. 55 lakhs was sought. By the impugned order CESTAT granted partial relief and ordered deposit of Rs. 55 lakhs. The appellant contends that the impugned order was harsh. It is urged by the counsel that the determination of the Customs Commissioner is prima facie untenable. It is firstly contended that the extended period of limitation could not have been invoked, in the circumstances, given that the car had been seized earlier and suffered adjudication proceedings. On that occasion, it was open to the Customs authorities to have it properly valued, and subject the assessee to appropriate proceedings. Not having done so, it was contended by the counsel that it was not open to the Customs Department to, at the fag end of the five year limitation period, invoke its wide and sweeping power. It was significantly and more substantially contended that the valuation ultimately determined by the Commissioner of Customs at Rs. 64 lakhs (as on the time of importation) is baseless. Learned counsel relied upon the findings and contended that the enquiry from the foreign exporter reveal that the imported car was not under-valued, or at least to the extent the Customs department alleged. The learned counsel for the Revenue contends that this Court should not interfere with the order of CESTAT, which has given significant relief to the appellant. It is submitted that the independent chartered engineer had given an opinion that the fair value of the car would be about $ 63,000. It was based upon this material that the Commissioner, after considering the appellant''s arguments, confirmed the show cause notice. This Court has considered the submissions. During the course of the present adjudication proceedings, the Commissioner had elucidated responses from the foreign supplier and was informed that the car was shifted from Japan to Saddige Motors and its declared value was 7,70,000 Yen (equivalent to $ 65671). The declared value at which the car was imported and upon which duty was paid by the appellant was $ 64,700. Having regard to these materials on the record, the report of the independent chartered engineer, which indicated the value of the car at $ 63,000, prima facie appears to us to be based on application of a different price matrix. Considering these circumstances this Court is of the opinion that prima facie, the extended limitation period on the ground of mis-declaration assuming that the appellant did indulge in such activity, may not be alleged by the Revenue. Having regard to these circumstances, this Court is of the opinion that, in the interest of justice the direction contained in impugned order requires to be partially modified. Instead of Rs. 55 lakhs, the appellant shall pre-deposit Rs. 10 lakhs as a condition for hearing of its appeal. Two weeks'' time is granted for the purpose. After ensuring compliance, the CESTAT shall proceed to hear the appeal in accordance with law on its merits. Appeal is allowed in the above terms. Order dasti.