(2011) 04 DEL CK 0300

In the Delhi High Court

Case No : Writ Petition (Civil) No. 11035 of 2009

Kuldeep Kaur APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:
Customs Act, 1962 — Section 110, 110A

Citation : (2011) 04 DEL CK 0300

Hon'ble Judges : Dipak Misra, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Kanchan Kaur Dhodi, for the Appellant; Mukesh Anand, R.C.S. Bhadoria, Shailesh Tiwari, Jayendra for Respondent Nos. 2 to 4, Vipin Singhania and P.K. Jha, for the Respondent

Judgement

Sanjiv Khanna, J.—The Petitioner, Ms. Kuldeep Kaur, a resident of Delhi, had imported a Toyota car vide bill of entry No. 770385 on 24th February, 2009 under Open General Licence Scheme. The car was allowed to be imported on payment of customs duty amounting to Rs. 34,83,890/-.

2. The car was registered in Maharashtra. It is the claim of the Petitioner that they were in possession of the car and using the same. This aspect, however, is controverted and denied by the Respondent Nos. 2 to 4. It is not necessary to adjudicate and decide the said controversy in the present writ petition as the said aspect has to be dealt with and decided by the Respondent Nos. 2 to 4. It is the case of the Petitioner that in April, 2009 she sold the car to Respondent No. 5, Mohd. Farooq, for consideration of Rs. 73 lacs but complete consideration has not been paid. Therefore, registration of the car was stalled.

3. On 15th July, 2009, the officers of the Directorate of Revenue Intelligence, Mumbai zonal unit seized the car from possession of the Respondent No. 5 vide panchnama dated 15th July, 2009. It is alleged that the car was under-valued and accordingly appropriate customs duty was not paid.

4. The Petitioner states that after the car was seized, the Respondent No. 5 informed the Petitioner and asked her to get the car released. As the Petitioner had imported the car, she got in touch with the Respondent Nos. 2 to 4 and furnished documents with regard to the purchase value of the car. The Petitioner claims that several documents have been produced and were sent to the said Respondent Nos. 2 to 4 to justify the purchase value of the car and that the car was not under-valued and accordingly correct customs duty has been paid.

5. The Respondent Nos. 2 to 4 have controverted the said statement and stated that the car was seized u/s 110 of the Customs Act, 1962 (Act, for short). According to them, the car was under-valued and the CIF value of the car was Rs. 54,12,000/- as per the rate of exchange prevailing on 24th February, 2009, i.e., the date of bill of entry. It is also mentioned in the seizure memo that the value of the car was Rs. 1,10,00,000/- at the time of import. Other allegations made in the counter affidavit have been referred to below.

6. The car was subsequently released u/s 110A of the Act on payment of Rs. 28,50,000/- and bank guarantee of Rs. 13,80,000/-. The said amount was paid by the Respondent No. 5 and the Respondent No. 5 had also furnished bank guarantee.

7. During the course of hearing, learned Counsel for the Respondent Nos. 2 to 4 has stated that the bank guarantee has expired and has not been renewed.

8. Learned Counsel for the Petitioner has submitted that ultimately it is the Petitioner who will have to bear the additional duty, interest or penalty if chargeable on the car in view of the contention of the Respondent Nos. 2 to 4 that the car was under-valued. It is also stated by her that the car was imported in Delhi and the duty was also paid in Delhi. In view of the aforesaid facts, we reject the contention of the Respondent Nos. 2 to 4 that this Court does not have territorial jurisdiction to entertain the present writ petition as substantial part of cause of action had arisen in Delhi.

9. In view of the release of the car pursuant to the order u/s 110A of the Act, part relief has already been granted to the Petitioner. However, an order u/s 110A of the Act is only an interim order. Respondent Nos. 2 to 4 are required to bring the proceedings to a logical end by deciding and determining whether or not there was any under- valuation at the time of import and pass an order under the Act after following the due procedure. Learned Counsel for the Respondent Nos. 2 to 4 has submitted that for this show cause has to be issued to the Petitioner and after considering the reply, an adjudication order is to be passed. We fail to understand why the said course has not been resorted to. Learned Counsel for the Respondent Nos. 2 to 4 is also unable to answer why adjudication order has not been passed.

10. The Respondent Nos. 2 to 4 in their counter affidavit have made number of allegations that there have been clandestine imports of high end cars in the name of third parties by resorting to diverse fraudulent means and in breach of

provisions imposed for import of such cars under the foreign trade policy and the provisions of the Act. It is alleged that there have been mis-declarations. It is alleged that some of the cars which were imported were second hand but were mis-declared as new as new cars attracted duty at 113%, whereas in the case of old cars duty was payable at 165%. Name of the alleged operator behind the Petitioner has been mentioned. It is alleged that the operators behind the Petitioner were arrested. These are all aspects which have to be decided and considered by the Respondent Nos. 2 to 4 while passing the adjudication order. However, the proceedings must be brought to a logical end and cannot be left in abeyance.

11. In view of the aforesaid discussion, it is directed that the Respondent Nos. 2 to 4 should issue show cause notice within a period of four weeks from the date copy of this order is received by them. Along with the show cause notice, the said Respondents will also enclose relevant documents. The Respondent Nos. 2 to 4 can also rely upon the affidavit filed by the Respondent No. 6, M/s Toyota Kirloskar Motor Company Private Limited or other documents and material available with them. Reply will be furnished within three weeks thereafter. The Respondents after considering the reply and after giving hearing to the Petitioner or their authorized representative, will pass an adjudication order as required and contemplated by the Act. In case there is any third party involvement, show cause notice can be issued to the said party also. In case there is any violation of any law, it will be open to the Respondent Nos. 2 to 4 to take appropriate action in accordance with law as may be considered just and proper. We also clarify that we have not passed any stay order or direction prohibiting the Respondent Nos. 2 to 4 from acting in accordance with law and taking action as may be required, including filing of criminal prosecution.

The writ petition is accordingly disposed of. No costs.