(2015) 10 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 51027 Of 2015

M/s. Stupa Consulting Pvt. Ltd. APPELLANT

Vs

Commissioner Of Customs New Delhi RESPONDENT

Date of Decision : 21-10-2015

Acts Referred:
Customs Act, 1962 — Section 112(a), 114A, 114AA

Citation : (2015) 10 CESTAT CK 0016

Hon'ble Judges : Ashok Jindal, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Kamaljeet Singh, B B Sharma

Final Decision : Disposed Of

Judgement

1. The appellant is in appeal against the impugned order imposing the Redemption fine and imposition of penalty under section 112(a) and 114A of the

Customs Act, 1962.

2. The facts of the case arc that an intelligence was received by DRI that one Shri Sumit Walia was importing high end luxury cars from various

foreign suppliers by mis-declaring as new whereas in reality all such cars were sold and registered in the country of export prior to export thereof and

thus fell in the category of second hand cars thereby attracting higher duties of Customs, than paid by them. It was further revealed that they were

involved in under-invoicing the value of these vehicles at the time of import and thus, evading differential customs duty on the same. In consequence

thereof, residential premises of Shri Sumit Walia was searched and various documents were found. It was also found that Shri Sumit Walia imported

Land Rover Range Rover 3.6 TDV8 car bearing Chassis No. SALLMAM238A290383 under Invoice No.9855 dated 3.6.2008 of M/s. A K international (IE) Ltd., Royal House, England. The price of the car was 391 OOUSD and duty was discharged on concessional rate of basic Customs

duty (B.C.D) as new car. The said car was purchased in the name of Shri Vikas Sharma who filed Bill of Entry for claims of the car. After

conducting investigation, it was revealed that the impugned car was registered in the name of M/s. Stupa Consulting Pvt. Ltd. and the premises of

M/s. Stupa Consulting Pvt. Ltd. was searched. The car was recovered from their possession and same was seized vide Panchnama dated 31.5.2013.

It reveals that the car was purchased by M/s. Stupa Consulting Pvt. Ltd. from Shri Vikas Sharma. In these set of facts, the show cause notice was

issued to the appellant along with other co-noticees for confiscation of car and demanding differential duty from the importer and imposing penalty on

various appellants along with co-noticee for alleged importation of car. Matter was adjudicated. Car was held liable for confiscation and allowed to be

redeemed on payment of redemption fine of Rs.16 lakh. A penalty of Rs.67,59,211/- was imposed on the appellant under section 112(a) and section

114A of the Customs Act, 1962 and penalty of Rs.5 lakh was also imposed on the appellant under section 114AA of the Customs Act, 1962.

Aggrieved from the said order, appellant is before me.

3. Shri Kamaljeet Singh, Advocate, learned Counsel for the appellant submits that appellant is a bonafide purchaser of the car as he purchased the car

in good faith and have no role on illegal importation of the car by Shri Sumit Walia or Shri Vikas Sharma. He further submits that initially the car was

imported by Shri Sumit Walia in the name of Shri Vikas Sharma and was registered on 30.7.2008 and later on sold to the appellant in October, 2009

and same was transferred in the name of appellant on 31.10.2009. He further submits that no statement of the appellant was recorded at the time of

seizure of the car. Director of the appellant company was out of town and therefore, show cause notice was issued immediately without recording any

statement of the appellant. He also submits that since the appellant has no direct connection with the import of impugned car, therefore, the appellant

purchased the car in bonafide belief and car was cleared by Customs by importer and there was no reason of further assessment of the car by

Customs. He further submits that the impugned car was the new car as CBEC Circular No.1/2005-Cus dated 11.1.05 which clarifies that a new imported vehicle for the purpose of this chapter shall mean a vehicle that has not been registered for use in any country and same is registered in UK

only for technical formality for its onward exportation. He relied on the decision of Hon'ble High Court of Bombay in the case of CC vs. Noshire

Moody [2012-TIOL-321-HC-MUM-CUS] and decision of this Tribunal in the case of Rahul Bhandare vs. CC (Imports) [2012 (285) ELT 225 (Tri)].

4. He further submits that for imposition of redemption fine, he is a bonafide purchaser of car, therefore, redemption fine is not imposable in the light

of decision of Hon'ble Kamataka High Court in the case of CCE vs. Five Star Shipping Co. [2012 (278) ELT 196 (Kar)] wherein it was held that the

car which is cleared by the Customs department and after such clearance, the purchase was effected by the bona fide purchaser, such bona fide

purchaser is not liable to pay redemption fine even if the car was under valued and the original importer is liable to pay the differential duty. In

alternative, he submits that of Rs.16 lakh was excessively high and not commensurate with the evidence, which clearly established that the appellant is

a bona fide purchaser. He further submits that in identical set of facts in the case of Shri Vishvas Uday Singh Laad, this Tribunal vide Final Order

No.55023-55024/2014 dated 17.12.2014 reduced the redemption fine imposed to 23% of imposed by the adjudicating authority and set aside the

penalty imposed on the appellant. Therefore, in this case also, redemption fine be reduced to 23% and penalties be waived.

5. On the other hand, learned AR relied on the observations made by the adjudicating authority in the impugned order.

6. Heard the parties. Considered the submissions.

7. On perusal of the record, and thorough consideration of the submissions made by both the sides, we find that the impugned car was imported by

Shri Sumit Walia in the name of Shri Vikas Sharma on 6.6.08 and the car was cleared or home consumption. On 11.6.2008. It was registered in the

name of importer Shri Vikas Sharma. On 30.7.2008 whereas the appellant has purchased the car from Shri Vikas Sharma in October, 2009 and same

was transferred in the appellants name on 31.10.09. These facts show that appellant has purchased the car after clearance from the Customs as bona

fide purchaser of the car. Therefore, we hold that the appellant is a second purchaser of the car after importation in India and is bona fide purchaser of the car. It is also the contention of the appellant that car is not old car and is not excisable as impugned car has been imported by Shri Sumit Walia

or the importer Shri Vikas Sharma. Therefore,the said appellate order has attained finality. We also find that in similar set of facts of the case of Shri

Vishvas Uday Singh Laad (supra) this Tribunal has observed as under:-

10. On perusal of the record and facts of the case, we find that initially the car was imported by Shri Sumit Walia in the name of Shri

Tarun Kumar on 04.04.2008. We find that initially the car was imported for sale to M/s. Oswal in Ludhiana and the same was later on

purchased by the Appellant No.2 on 21.04.2008. The appellant has purchased the car after the clearance from the customs as a bona fide

purchaser of the car and has taken the loan of Rs.60 lakhs for purchase of the car. In these circumstances, we hold that the appellant is a

subsequent purchase of the car after importation in India and bona fide purchaser of the car. Further, we find that Appellant No.2 has

contended the valuation of the car and submitted that the car is not an old car is not acceptable as the impugned order has not been

challenged by Shri Sumit Walia and Shri Tarun Kumar, therefore, the said part of the order has attained finality. In these circumstances, we

are not agreeing with the contentions of the Id. counsel of the Appellant No.2 that the car is new one and the value of the car is declared

correctly.

11. We further find that the contention that the car cannot be confiscated as appellant is a bona fide purchaser. We hold that the car has

been confiscated for under-valuation and mis-declaration and the said part of the order has not been challenged by the importer. In these

circumstances, the impugned car is liable for confiscation. We also find that the redemption fine imposed is highly excessive. Therefore, we

reduce the redemption fine to Rs.5 lakhs. On payment of such redemption fine, the car shall be released to Appellant No.2. Further we find

that the appellant is the bona fide purchaser of the car and no statement of the appellant has been recorded and no role of the appellant

has been discussed. Therefore, we hold that penalties under sections 112(a) and 114AA were not imposable on the appellant. In these

circumstances, the appellant is entitled to take the possession of the car on payment of redemption fine of Rs.5 lakhs.

8. As in the case of Vishvas Uday Singh Laad, this tribunal has come to a conclusion that the car is requested to confiscated for under valuation and

mis-declaration and said order was not challenged by the importer. In these circumstances, imported car is liable for confiscation but also it was

further observed that redemption fine imposed on the car is highly excessive and therefore is reduced. Following the precedent decision of this

Tribunal on identical facts, in this case also we hold that car is liable for confiscation and redemption fine imposed on the car is excessively high. Â Â

Therefore redemption fine is reduced to Rs.3,50,000/- (Rupees Three lakh fifty thousand only).

On such payment of redemption fine car shall be released to the appellant. Further, we find that appellant is a bona fide purchaser of the car and no

statement of the appellant was recorded and having no role in illegal importation of the car. In these circumstances, penalty on the appellant under

various provisions of the Customs Act namely, 112(a), 114AA & 114A was not imposable on the appellant.

9. In the result, following order is passed:-

A) Car is liable for confiscation

B) Car can be redeemed on payment of redemption fine of Rs. Three lakh and fifty thousand only by the appellant.

C) No penalty is imposable on the appellant.

10. In these terms, appeal is disposed of.

(Dictated and pronounced in the open court)