(2015) 10 CESTAT CK 0017

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 52184 Of 2015

Ms. Suchita Agarwal APPELLANT

Vs

Commissioner Of Customs (Import And General) New Delhi RESPONDENT

Date of Decision : 21-10-2015

Acts Referred:

Customs Act, 1962 — Section 77, 111, 111(d), 111(m), 112A, 114AA, 124, 125, 125(1)

Citation : (2015) 10 CESTAT CK 0017

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

Bench : Division Bench

Advocate : M K Gupta, Sunil Kumar, Ranjan Khanna

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order imposing the Redemption fine of Rs.10 lakhs and various penalties under Customs Act, 1962.

2. The facts of the case are 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 these 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. 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. It was found that Shri

Sumit Walia imported one Toyota Land Cruiser diseal car in the name of Shri Krishan Kant. The bills of entry was filed in the name of Shri Krishan

Kant. The price of the car was declared as USD 64700. The duty was discharged on the basis of concessional rate of Basic Customs duty as a new car. As the importer Shri Krishan Kant could not produce the certificate from the country of manufacture therefore, the car was confiscated and a

redemption fine of Rs.2 lakhs was imposed and a penalty of Rs. One lakh was also imposed which was paid by the importer Shri Krishan Kant and

thereafter the car was sold to the present appellant on 31.5.08. On further scrutiny, the car was seized by DRI on 11.5.13 from the possession of the

appellant and given on supardinama on the same day to Shri Pawan Sharma, Manager of the M/s. Jagat Floor Mills Pvt. Ltd. On the said day, the

statement of the appellant was recorded who stated that she did not know about the said car and car belongs to her husband Shri Jagat Mohan

Aggarwal and all the details about the cars will be with her husband only. Thereafter a notice for appearance was given to Shri Jagat Mohan

Aggarwal for his appearance on 20.5.13, but before that a show cause notice dated 13.5.13 was issued for confiscation of the car in question and for

proposing imposition of redemption fine and penalty on the appellant. The said show cause notice was adjudicated and the impugned order is passed

holding the car liable for confiscation and redemption fine of Rs.10 lakhs was imposed on the appellant and penalty of Rs.10 lakh under section 112A

and Rs.5 lakh under section 114AA of the Customs Act, 1962 was also imposed. Aggrieved from the said order, the appellant is before us.

3. The learned Counsel for the appellant appeared before us and submits that at the time of import of car the importer claimed concession under

Notification No. 21/02-Cus dated 1.3.2002 as new brand car but as the car was imported from a country other than the country of manufacture and

the declared value of the car was more than USD 40000, therefore in terms of para 7 of Import Licensing Note of Chapter 87 of ITC (HS), the

importer was required to submit Type Approval Certificate. The importer, however, failed to comply with this condition. The matter was adjudicated

and for violation of Policy provision, the car was confiscated under section 111(d) of the Act and a Redemption fine of Rs.2 lakh and a penalty of Rs.

One lakh were also imposed on the importer. On payment of redemption fine and penalty, the car was released to the importer, Shri Krishan Kant.

The said order was challenged by the Revenue before this Tribunal for enhancement of Redemption fine and penalty and this Tribunal held that

redemption fine and penalty was very liberally imposed in case of import of car violating policy norm and remanded the matter back to the adjudicated authority for consideration of enhancement of redemption fine and penalty. Thereafter, the car has been seized in the impugned proceedings on the

ground that car is an old one and imported by Shri Sumit Walia in the name of Shri Krishan Kant and the impugned order has been passed.

4. He submits that reconfiscation of car by the impugned order is against the settled position that once the goods are confiscated and allowed to be

redeemed by the Customs authorities, then the department cannot initiate another proceedings to reconfiscate the goods as per the decision of the

Hon'ble Apex Court, is the case of Mohan Meakin Ltd. M cement Ltd. [2000 (115) ELT 3 (SC),] Therefore, the impugned order qua confiscation of

the car and imposition of penalty on the appellant is to be set aside. He further submits that the car is not liable for confiscation under section 111(d)

and 111(m) of the Customs Act. He further submits that the appellant is a bonafide purchaser of the car. Therefore, the said car cannot be

confiscated in the light of the decisions in the case of Five Star Shipping Co. (P) Ltd. [2007 (219) ELT 168 (Tri-Mum)].

5. In alternative, he submits that redemption fine imposed on the car is highly excessive being bonafide purchaser of the car and cannot be made liable

to pay the short payment of duty. Consequently, he prayed that penalty on the appellant are not imposable.

6. On the other hand, I find the learned AR supported the impugned order and submits that the car was found to be mis-declared during the course of

DRI investigation and the same was found to be old car as the same was registered in the country of export. Therefore, the car was mis declared and

consequently, the same was held liable for confiscation. In these circumstances, the redemption fine and penalties are rightly imposed.

7. Heard the parties and considered the submissions.

8. In this case it is admitted fact that at the time of importation, the car was confiscated and allowed to be redeemed on payment of redemption fine

and penalty imposed on the importer and the car was cleared by the importer, Shri Krishan Kant on payment of the penalty. The appellant is the

bonafide purchaser of the car in question.

9. We find force in the contention of the learned Counsel that once the car is confiscated and allowed to be redeemed on payment of redemption fine

and penalty, the car cannot be reconfiscated. The said issue came before the

Hon'ble Apex Court in the case of Mohan Meakin Ltd. (supra) wherein

the Hon'ble Apex Court has held as under; in para 5 and 6:

4. We have heard learned Counsel for the parties. It is seen that under Section 111 of the Act, the goods which were brought in

contravention of Clauses (a) to (p) of that Section are liable for confiscation.

5. Relevant sections for the purpose of our consideration are Sections 111(d) and 111(m) of the Act which read thus:

111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to

confiscation -

X X X X X

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being

imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of

baggage with the declaration made under Section 77 in respect thereof;

Section 125 of the Act empowers the authorities after adjudication to release the goods to the person from whose possession the same has

been seized, on collection of redemption fine in lieu of confiscation. But such redemption of the goods is subject to the owner being called

upon to pay any duty and charge that is payable in respect of such goods. The proviso to Section 125(1) also makes it obligatory on the

adjudging authority to evaluate the fine which shall not exceed the market price of the goods confiscated (emphasis supplied). Therefore,

there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value

of the goods and then to levy any duty or charge payable on such goods apart from the redemption fine that he intends to levy on sub-

clause (1) of that Section.

6. In the instant case, it is an admitted fact that after issuing a notice as contemplated under Section 124 of the Act, to the importer of the

goods in question and adjudication proceeding under Section 125 had been conducted and the goods in question were released on

payment of redemption fine, in such an event it matters little whether the adjudication was under which sub-clause of Section 111 because

whichever is the sub-clause, there was an obligation on the adjudicating authority to find out the market value of the goods so imported and

to collect all duty and other charges payable on the goods in question before releasing the goods on payment of redemption fine. Having

released the goods thus into the market and permitting the sale of the same, in our opinion it is not open to the Collector to initiate another

proceedings under another clause of Section 111 to recover the so-called differences in valuation of the imported goods from the ultimate

bona fide purchaser for value. if the Collector failed to make a proper enquiry as to the market value of the goods and released the same

after a half-hearted adjudication, we fail to see why a subsequent purchaser be saddled with the liability of undervaluation, more so in the

background of the fact that the appellant had no role to play either in the import or earlier adjudication proceedings In this background,

we are of the opinion that the action of the Department to initiate proceedings against the appellant, who is a bona fide purchaser of the

redeemed goods for value, is unjust and hence not sustainable in the facts and circumstances of this case.

10. Admittedly in this case, the car is reconfiscated which is not permissible in the light of decision of the Hon'ble Apex Court in the case of Mohan

Meakin Ltd. (supra). Therefore, we hold that the confiscation of car is not sustainable, the confiscation of the car is set aside.

11. Further the appellant is a bona fide purchaser of the car and have no role in importation of car, no penalty is imposable on the appellant.

Consequently, penalties imposed on the appellant are set aside.

12. With these terms, the appeal filed by the appellant is allowed with consequential relief.

(operative part of the order pronounced in the open court)

