(2011) 02 MAD CK 0527

In the Madras High Court

Case No : Writ Petition No. 265 of 2011 and M.P. No. 1 of 2011

Shri Nadeem Gubitra — APPELLANT

Vs

The Commissioner of Customs, The Additional Director General and The Assistant Director — RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:
Customs Act, 1962 — Section 114, 128, 28

Citation : (2011) 02 MAD CK 0527

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : B. Satish Sundar, for the Appellant; S. Yashwanth, for the Respondent

Judgement

M. Jaichandren, J.—This writ petition has been filed challenging the impugned order of the first Respondent, dated 27.12.2010, directing the Petitioner to furnish a bond for Rs. 1 crore and a bank guarantee for a sum of Rs. 65,00,000/- in favour of the first Respondent, for the provisional release of the vehicle in question.

2. The Petitioner has stated that he had purchased the Maserati Car, bearing Registration No. MP-09-CD-9399, by way of a sale letter, dated 16.7.2010, from one Imtiaz N. Khatri. He had also submitted that he had paid the differential duty amount of Rs. 52,02,233/- demanded by the Directorate of Revenue Intelligence, Ahmedabad.

3. The main contention of the learned Counsel appearing for the Petitioner is that, u/s 28(1) of the Customs Act, 1962, it is only the original importer of the vehicle, who would be liable to pay the differential duty, if any. Therefore, it is not open to the Respondents to demand the payment of differential duty from the Petitioner.

4. In the counter affidavit filed on behalf of the first Respondent it had been

submitted that the Maserati Car, which is the vehicle in question, had been imported by one Clifford Annette, in the year, 2008. He had undervalued and misdeclared the value of the vehicle and therefore, he is liable to pay the differential duty of Rs. 52,02,233/- He is also liable to pay the penalty, u/s 114 of the Customs Act, 1962.

5. It had also been stated that the Petitioner has not shown sufficient evidence to substantiate his claim that he is the owner of the vehicle. It had also been submitted that there is an appeal remedy available to the Petitioner, u/s 128 of the Customs Act, 1962. However, it has been stated that the adjudication proceedings is pending before the first Respondent, in respect of the issue in question.

6. In view of the averments made in the affidavit filed in support of the writ petition and in the counter affidavit filed on behalf of the first Respondent, and in view of the averments made by the learned Counsels appearing for the parties concerned, it is noted that the Petitioner had paid the differential duty of Rs. 52,02,233/-, as 4 demanded by the first Respondent. It has been deposited in the customs treasury. He had also placed before this Court a sale letter, dated 16.7.2010, signed by one Imtiaz N. Khatri, said to be the owner of the vehicle in question, showing prima facie proof of the purchase of the vehicle by the Petitioner.

7. In such circumstances, the first Respondent is directed to release the vehicle bearing Registration No. MP-09-CD-9399, on the Petitioner furnishing a personal bond for a sum of Rs. 1 crore, to the satisfaction of the first Respondent. The Petitioner shall also produce the vehicle in question before the first Respondent, as and when it is required for further investigation and for passing appropriate orders, as per law. The Petitioner shall not alienate the vehicle in question, till the adjudication process is completed by the first Respondent. The first Respondent shall release the vehicle, within ten days from the date of the receipt of a copy of this order. The release of the vehicle shall be subject to the final orders to be passed by the first Respondent in the adjudication proceedings.

The writ petition is ordered accordingly. No costs.