In the High Court of Judicature at Madras

Dated : 06.8.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Civil Miscellaneous Appeal (NPD) No.1423 of 2015 & M.P.No.1 of 2015

Mr.Ranjit Sundaramurthy ...Appellant

Vs

1.The Customs, Excise & Service Tax Appellate Tribunal, Haddows Road, Shastri Bhavan, Chennai-6, by its Assistant Registrar

2.The Commissioner of Customs, (Seaport-Imports), Custom House, No.60, Rajaji Salai, Chennai-1. ...Respondents

APPEAL under Section 130(1) of the Customs Act, 1962 against the Final Order No.40410/2015 dated 15.4.2015 in C/40759/2014 passed by the first respondent herein viz. the Customs, Excise & Service Tax Appellate Tribunal, Chennai dismissing the appeal filed by the appellant for non compliance with the pre-deposit order passed by the first respondent/ Tribunal in Misc.Stay Order No.40272/2015 dated 12.2.2015 in C/Stay/ 40992/2014 in C/40759/2014-DB.

For Appellant : Mr.N.Viswanathan
For Respondent-2 : Mr.V.Sundareswaran, Senior Panel Counsel

Judgment was delivered by V.RAMASUBRAMANIAN,J

This appeal is filed under Section 130(1) of the Customs Act, 1962 challenging an order passed by the Customs, Excise and Service Tax Appellate Tribunal, refusing to entertain a statutory appeal on the ground of non compliance with an order imposing a pre-deposit condition.

2. Heard Mr.N.Viswanathan, learned counsel for the appellant. In view of the limited nature of the dispute raised in the appeal, we directed Mr.V. Sundareswaran, learned Senior Panel Counsel to take notice for the second respondent.

3. The appellant imported a Nissan GTR car, under a bill of entry dated 3.11.2008. It was allegedly imported for personal use. After declaring that it was a brand new car, duty was paid claiming benefit under S.No.344(2) of Notification No.21/2002 dated 1.3.2002.

4. After the Directorate of Revenue Intelligence gathered information that the car was undervalued at the time of import, the appellant was issued with a show cause notice dated 6.5.2011. After the appellant submitted his reply, an Order in Original was passed on 15.2.2013, the operative portion of which requires to be extracted in view of the nature of dispute raised in this appeal. The operative portion reads as follows :

"Accordingly, I pass the following order :

ORDER

i) I reject the declared value of the subject vehicle i.e 63000 USD (CIF) as per Rule 12 of the

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

ii) I re-determine the value of the subject vehicle as USD 98936 as per Section 14 of the Customs Act, 1962 read with Rule 3(1) read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

iii) I confirm the demand of differential duty of Rs.46,85,350/- (Rupees forth six lakhs eighty five thousand three hundred and fifty only) as per proviso to Section 28(1) of the Customs Act, 1962.

iv) I confirm the demand of interest on differential duty under Section 28AB of the Customs Act, 1962.

v) I order confiscation of the subject vehicle under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962, which is in the possession of Shri Sunil Bhatia, owner of M/s.Platinum Auto, S-54, Link Square Mall, Near KFC, Linking Road, Bandra (West), Mumbai.

vi) I impose a penalty of Rs.46,85,350/- (Rupees forth six lakhs eighty five thousand three hundred and fifty only) on Shri Ranjit Sundamurthy under Section 114A of the Customs Act, 1962.

vii) As penalty is imposed under Section 114A, I do not impose any penalty of Shri Ranjit Sundaramurthy under Section 112(a) of the Customs Act,1962.

viii) I impose a penalty of Rs.5,00,000/- (Rupees five lakhs only) on Shri Alberto Bestonso *under Section 112(b) of the Customs Act, 1962.*

ix) I also impose a penalty of Rs.5,00,000/- (Rupees five lakhs only) on Shri Ranjit Sundaramurthy under Section 114AA of the Customs Act, 1962."

5. The appellant filed a statutory appeal before the Commissioner of Customs. The Appellate Authority passed an order on 15.1.2014, modifying the order of the Original Authority. The operative portion of the order of the Appellate Authority reads as follows :

"In view of the above discussions and facts and legal position stated therein, I modify the lower authority's order pertaining to the appellant as follows :

(1) The vehicle under import is held to be new one and not used.

(2) The value of the car is determined at Rs.49,84,163/- (A.V.). The group may calculate the correct duty as discussed supra and the difference of duty may be collected under Section 28(1) of the Customs Act, 1962.

(3) Appropriate interest on the differential duty may be collected under Section 28AB of the Customs Act, 1962.

(4) The differential duty so arrived should be imposed as penalty under Section 114A of the Customs Act, 1962. However, the appellant is given an option to pay the reduced penalty @ 25% so imposed if the same is paid within one month

> *from the date of receipt of this order.*
>
> *(5) The penalty imposed of Rs.5,00,000/- on the appellant under Section 114AA of the Customs Act, 1962 is upheld.*
>
> *Order accordingly with the above modifications."*

6. As against the said order, the appellant filed a further appeal under Section 129A of the Customs Act, 1962 before the first respondent. Along with the appeal, the appellant filed an application for waiver of pre-deposit condition. It is pertinent to point out here that what the appellant actually sought was a waiver of penalty, due to the fact that the duty itself was not assessed and also due to the admitted fact that the vehicle was seized from the custody of a third party.

7. However, on the miscellaneous application for waiver, the Tribunal passed an order on 4.2.2015 directing the appellant to deposit Rs.10 lakhs within four weeks. After the expiry of the period of four weeks, the Tribunal passed an order dated 15.4.2015, dismissing the appeal on the ground that the condition was not complied with. Aggrieved by the said order, the appellant is before us.

8. The case of the appellant before the Tribunal was that since the vehicle was not in his custody and was already seized from the custody of a third party, he was entitled to the benefit of Section 129E and that the question of making a deposit of Rs.10 lakhs did not arise, when the quantum of penalty itself was stipulated only as Rs.5 lakhs. In any case, the penalty of

Rs.5 lakhs is secured on account of a bank guarantee already furnished to the extent of Rs.8.02 lakhs.

9. However, the Tribunal rejected the said contention on the short ground that the appellant did not raise this point at the time when the conditional order was passed. Therefore, the appellant is before us.

10. A careful look at the orders of the Original Authority as well as the Commissioner of Customs (Appeals) shows that the only amount quantified to be payable by the appellant is a penalty of Rs.5 lakhs. The other things such as duty payable, interest on duty, etc., have not yet been quantified. In such circumstances, the appellant was right in contending that his application was not actually an application for waiver of pre-deposit condition, but for waiver of penalty. The fact remains that the appellant is entitled to the benefit of Section 129E in view of the admitted position that the vehicle was seized from the custody of a third party.

11. Once these things are actually borne out by records, it was not correct on the part of the Tribunal to take a stand that at the time of passing the conditional order, the plea regarding bank guarantee was not raised. Even if the plea regarding the bank guarantee was not raised, this was not a case where a pre-deposit condition, even if it is leviable, cannot be twice the amount of penalty, which was the only item that was assessed even in the order on appeal. Therefore, we are of the considered view that the appellant is entitled to succeed.

12. Accordingly, the civil miscellaneous appeal is allowed and the order of the Tribunal is set aside. The Tribunal shall take up the appeal for hearing and dispose it of in accordance with law. The appellant shall keep the bank guarantee alive till the Tribunal disposes of the appeal. No costs. Consequently, the above MP is closed.

06.8.2015

Internet : Yes

To

1.The Assistant Registrar, Customs, Excise & Service Tax Appellate Tribunal, Haddows Road, Shastri Bhavan, Chennai-6.

2.The Commissioner of Customs, (Seaport-Imports), Custom House, No.60, Rajaji Salai, Chennai-1.

RS

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J

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