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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 3792/2016**

DIRECTORATE OF REVENUE INTELLIGENCE & ANR ..... Petitioners
Through: Mr. Satish Aggarwala, Advocate.

versus

GURMEET SINGH SONI ..... Respondent
Through: Mr. Pradeep Jain, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **01.06.2016**

1. The short question that arises for consideration in this writ petition by the Directorate of Revenue Intelligence ('DRI') and the Commissioner of Customs, Respondent Nos. 1 and 2 respectively is whether the Customs & Central Excise Settlement Commission ('CCESC') was justified in allowing the application filed by the Respondent Gurmeet Singh Soni by its impugned order dated 8th September 2015 thereby granting him the benefit of Notification No. 21/2002-Customs dated 1st March 2002; settle the differential customs duty of Rs. 7,92,228; permit the amount to be appropriated from the amount of Rs. 9,35,789 already deposited; determine the interest on the settled duty amount at Rs. 1,43,560 and permit it to also be adjusted from the amount deposited; impose fine of Rs. 10,000 in lieu of confiscation; levy penalty of Rs. 20,000 and grant immunity from prosecution.

2. The background facts are that the DRI, Delhi Zonal Unit, New Delhi received information regarding that certain syndicates including one of Mr. Jatin Ahuja had been fraudulently importing high end luxury cars on large scale from the various foreign clients by misdeclaring the cars as new cars and availing the benefit of Customs Notification No. 21/2002 dated 1st March 2002. Such cars were in fact sold and registered in the country of export prior to being exported to India. They thus fell in the category of second hand cars attracting a higher rate of customs duty than what was actually paid at the time of import.

3. It is stated that searches were conducted at the various premises of Mr. Jain Ahuja on 26th April 2011 and several incriminating documents, laptop, pen drives etc. were recovered. From the scrutiny of the various documents, it was found that one BMW X6 35D had been imported under Bill of Entry (B/E) No. 229959 dated 24th September 2008 in the name of Respondent, Gurmeet Singh Soni, a resident of Shahdara, Delhi. The invoice No. 9903 dated 19th September 2008 raised by M/s. A.K. International (IE) Limited, United Kingdom (U.K.) on Mr. Soni in respect of the said car was also recovered. It showed the CIF value of the said car as USD 44000. The said car was cleared on payment of concessional rate of basic customs duty at 60% by declaring it as a new car.

4. Based on the above facts, a show-cause notice ('SCN') was issued to the Respondent and others calling upon to show cause as to why the assessable value should not be re-determined at Rs. 43,59,215.55; the benefit of Notification dated 1st March 2002 as amended, should not be denied; the car should not be confiscated under Section 111 (d) and 111 (m) of the Customs Act, 1962 ('CA'); differential customs duty of Rs. 31,47,519 and interest thereon under Section 28AA of the CA should not

be recovered; penalty under Sections 112, 114A and 114AA of the CA should not be levied; and differential customs duty of Rs. 5 lakhs deposited by M/s. Suparna Holdings Private Limited during the course of investigation should not be appropriated towards differential duty to the government account.

5. The Respondent then filed a Settlement Application No. 4252 of 2015 before the CCESC, New Delhi on 26th December 2014. The Respondent admitted the duty liability on account of undervaluation to the tune of Rs. 5,64,699 but contested the allegation concerning wrong availment of the exemption notification.

6. The DRI, in response to the above application, filed a detailed report before the CCESC dated 3rd February 2015.

7. By the impugned order dated 8th September 2015, the CCESC gave directions in the manner indicated hereinbefore.

8. Mr. Satish Aggarwala, learned counsel for the Petitioner draws attention to the order passed by the Supreme Court on 20th January 2014 in Special Leave Petition (Civil) No. 243-244 of 2014 (***Commissioner of Customs, Chennai v. Rohan Anirudha Seolekar)*** where the question involved concerned the import of a vehicle which had been registered in U.K. prior to its import and whether the Notification No. 21/2002-Cus dated 1st March 2002 would be applicable. It is submitted out that since the issue in the present petition is also being considered by the Supreme Court in the above SLP, the hearing of the present petition should be deferred to await the decision of the Supreme Court.

9. The Court finds that the view taken by this Court in ***Commissioner of***

Customs (Import & General) New Delhi v. Buhariwal Logistics 2016 (332) ELT 278 (Del) on the very same issue concerns importing of high end luxury cars from U.K. In that case the car was registered in the U.K on 28th March 2008 and after a few days i.e. on 4th April 2008, was cleared by the Customs in India on payment of duty on the basis that it was a new car. In those circumstances, the Court in that case was not prepared to accept the case of the DRI that the purchaser of the car had acted in connivance with the importer and he was aware of all the facts at the time of import. It was held that the Department had failed to discharge its *prima facie* onus of showing the involvement of the purchaser of the car with its importer. The Court's attention has also been drawn to the decision of the High Court of Bombay in ***Commissioner of Customs (Import) & Noshire Moody 2014 (300) ELT 205 (Bom)*** where it is noted that registration of the car in the U.K. was "only to comply with the requirement of the licensing authorities in the U.K. who require registration even for the purposes of exportation."

10. In the instant case, the facts reveal that the car in question was manufactured in Germany on 17th July 2008 and taken to the U.K. While the date on which the car was registered in the U.K. is not available, the registration of the car should have been taken between 17th July 2008 and 19th September 2008 while the invoice was raised by M/s. A.K. International (IE) Limited, United Kingdom (U.K.) on the Respondent. Given the proximity of the date of import and date of manufacture of the car, it cannot be said the said car ceased to be a new car and became a 'second hand' car at the time of its import.

11. Consequently, the impugned order of the CCESC giving the benefit of the Customs Notification No. 21/2002-Cus dated 1st March 2002 and

determining the differential customs duty as Rs.7,92,228 cannot be said to be perverse warranting any interference by this Court. The other directions issued by the CCESC regarding interest, penalty, fine in lieu of confiscation and grant of immunity from prosecution also do not require interference by this Court.

12. The writ petition is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JUNE 01, 2016
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