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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P. (C) 3629/2016 & CM 15537/2016**

DIRECTORATE OF REVENUE INTELLIGENCE
& ANR ..... Petitioners

Through: Mr. Satish Aggarwala, Advocate.

versus

JAY POLYCHEM INDIA LTD & ANR. ..... Respondents

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') is justified in allowing the application filed by the Respondent, Jay Polychem India Ltd. , by its impugned order dated 31st August 2015 thereby granting the benefit of Notification No. 21/2002-Customs dated 1st March 2002 to the Respondent to settle the differential customs duty at Rs 7,44,174 the amount to be appropriated from the amount of Rs. 30 lakhs already deposited; the interest on the settled duty amount was Rs. 2,79,974 which is also to be adjusted from the amount deposited; imposed fine of Rs. 75,000 in lieu of confiscation; penalty of Rs.75,000 and Rs. 20,000; and granted immunity from the prosecution to the Respondent.

2. Background facts to the present writ petition are that the DRI, Delhi

Zonal Unit, New Delhi received information regarding a syndicate of persons including one Mr. Jatin Ahuja fraudulently importing high end luxury cars on a large scale from various foreign clients by mis-declaring these cars as new cars whereas such cars were sold and registered in the country of export prior to being exported to India and thus fell in the category of second hand cars, thereby attracting higher rate of custom duties than what was paid.

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. Some imported cars were also recovered. From the scrutiny of the various documents, it was found that one Ferrari 599 GTB F1 HGTE was imported by Bill of Entry No. 556107 dated 24th August 2009 in the name of Respondent. The invoice No. 44376 dated 19th August 2009 raised by M/s. A.K. International (IE) Limited, United Kingdom (U.K.) upon the Respondent in respect of the said car was also recovered where the cost, interest and freight ('CIF') price for the said car was declared as GBF 184842 and the duty was discharged on concessional rate of basic customs duty at 60% by declaring as a new car.

4. Based on the above facts, a show-cause notice ('SCN') was issued to the Respondent and others calling upon them to show cause as to why the assessable value should not be re-determined at Rs. 1,57,56,213.87; 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. 89,76,347 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. 30 lakhs deposited by M/s. Jay Polychem India 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. 4499-4500/2014 before the Settlement Commission on 19th November 2014. The Respondent admitted the duty liability on account of undervaluation to the tune of Rs. 3,73,298 but it contested the allegation concerning wrongful availment of the exemption notification.

6. The DRI, in response to the above application, filed a detailed report before the Settlement Commission dated 30th December 2014.

7. By the impugned order dated 31st August 2014, the Settlement Commission gave directions in the manner as 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 again concerns the import of a vehicle which had been registered in the U.K. prior to its import and whether the Notification No. 21/2002-Cus dated 1st March 2002 would be applicable. It is pointed out that the issue in the present petition is under consideration by the Supreme Court in the above SLP (C) No. 243-244 of 2014, and therefore, the issue arising in the present petition should be deferred.

9. The Court finds that a view has been 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 concerning 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 a few days thereafter, it was cleared by Customs in India on 4th April 2008 on payment of duty on the basis that it was a new car.

10. 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."

11. In the instant case, the facts a recorded by the CCESC in the impugned order read thus:

> "15. As per information provided by M/s. Ferrari New Delhi vide their letter dated 13th March 2013, it is seen that the production date of the car was 08.07.2009 and the finishing date was 23.07.2009, previous owner was Graypaul Motors Ltd. Society, Nottingham and purchasing date was 27.07.2009, previous owners end date 17.08.2009 and the current owner was Gurpal Chawla K.S. Farm, Rajokri 122001 and purchase date 17.08.2009. These details indicate that the car was manufacture on 23.07.2009 and after its manufacturer it was sold to M/s. Graypaul Motors Ltd., Society Nottingham on 27.07.2009 who subsequently sold it on 17.08.2009 to Shri Gurpal Chawla, K.S. Farm, Rajokri. The said report does not speak anything about M/s. A.K. International, UK or M/s Jay Polychem India Ltd. which indicates that the fact of sale

to M/s. A.K. International (IE) Ltd. UK by the UK based authorized dealer was not available in the database maintained by Ferrari."

12. The CCESC has also noted in para 29.6 of the impugned order that on a scrutiny of the documents it transpired that the car in question was manufactured by M/s. Ferrari Italy on 8th July 2009 and finished on 23rd July 2009. It was subsequently shipped to the U.K. and purchased by M/s. Graypaul Motors Ltd., Society Nottingham on 27th July 2009. It was sold to Gurpal Chawla on 17th August 2009 and then exported through M/s. A.K. International (IE) Ltd. to M/s. Jay Polychem India Ltd. under B/E dated 19th August 2009. Given the proximity of the date of manufacture and the date of import of the car, it cannot be said that the said car ceased to be a new car and became a 'second hand' car at the time of its import.

13. 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 to the tune of Rs 7,44,174 cannot be said to be perverse and warranting any interference by this Court. Other directions issued by the CCESC regarding interest, penalty and fine in lieu of confiscation and granting immunity from prosecution to the Respondent also do not require interference by this Court.

14. The writ petition and the application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JUNE 01, 2016/*mg*