IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 52 OF 2018
WITH
CUSTOMS APPEAL NO. 54 OF 2018

Sanjay Ghodawat .. Appellant

v/s.

Commissioner of Customs (Adjn) & Anr. ..Respondents

Mr. Ashok Singh a/w Mr. R.N. Gaonkar for the appellant
Mr. Sham Walve a/w Mr. Ram Ochani for the respondents

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 21st NOVEMBER, 2018.

P.C.

1. These appeals present same facts. For the sake of convenience, we have recorded the facts as arisen in Customs Appeal No.52 of 2018. At the request of the learned Counsel for the parties, we have taken up the appeals for final disposal at the admission stage.

2. Leave to amend the cause title in Customs Appeal No.52 of 2018, which may be carried out forthwith. Re-verification is dispensed with.

3. The appellant has challenged the order dated 24th January, 2017

passed by the Customs, Excise and Service Tax Appellate Tribunal ("the Tribunal" for short) and a further order dated 3rd July, 2017 under which the appellant's application for rectification came to be rejected.

4. The appellant had purchased an imported car. The Customs Authorities were of the opinion that there was mis-declaration in the process of importation of car, leading to evasion of customs duty. The proceedings were initiated against the importer, in which the appellant was also a co-noticee. The Adjudication Authority passed an order dated 7th October, 2005 confirming duty demand. The Adjudication Authority also ordered confiscation of the car and offered redemption fine in lieu of confiscation. In so far as the appellant is concerned, his directions were as follows :-

> *"I offer an option to Shri. Sanjay Ghodawat to redeem the said vehicle on payment of a fine of Rs.1,00,000/- (Rupees one lakh only) in terms of Section 125 of the Customs Act 1962 within 30 days of receipt of this order. The vehicle may be released on payment of fine and the differential duty of Rs.4,92,020/- and the interest due."*

5. The appellant challenged the said order before the Tribunal. Before the Tribunal, the appellant took two prong position viz. (i) not

being an importer, he could not be fasten with redemption fine (ii) the imposition of duty with interest upon him was wrong.

6. The Tribunal by the impugned order dated 24th January, 2017 has only considered the question of redemption fine, though the Tribunal did make a passing reference to the appellant's second contention. With respect to the redemption fine, the Tribunal was of the opinion that since the car was provisionally released to the appellant, it is his liability to pay the redemption fine. The Tribunal also noted that the redemption fine was not excessive. On such findings, the appellant's appeal was dismissed.

7. The appellant filed an application for rectification before the Tribunal and mainly contended that the question of legality of imposition of duty with interest liability on the appellant was not adjudicated by the Tribunal. By further order dated 3rd July, 2017 the Tribunal rejected such application by mainly observing that the consideration of the contention of the appellant, would require review of the appeal.

8. Having heard the learned Counsel for the parties and having

perused the documents on record, insofar as the appellant's grievance about the imposition of redemption fine on the appellant is concerned, we do not intend to interfere. The appellant admittedly had not challenged the confiscation of the vehicle. The redemption fine is only in the nature of an option. If the appellant wishes to avoid the consequences of confiscation of the vehicle, he could avail of the opportunity of paying redemption fine. In other words, the redemption fine is not an imposition of liability, it is merely an option which the appellant can exercise or refuse.

9. Regarding the appellant's challenge to imposition of duty liability on him, in our opinion, the Tribunal ought to have been adjudicated such an issue. From the first order of the Tribunal itself, it is clear that such a contention was raised and orally argued before the Tribunal. Despite this, the Tribunal failed to decide the same in its order. The appellant applied for rectification. At least in the rectification application, the Tribunal could have redressed the appellant's grievance. The appellant was clearly not asking for review of the order.

10. Under the circumstances, the appellant's appeals are restored to the Tribunal only to the extent for deciding the appellant's challenge to

the imposition of duty with interest on the appellant as has been done by the Adjudication Authority. The Tribunal would decide only this issue.

11. The learned Counsel for the Department submitted that if the appellant had executed a bond for provisional release of the Car, the duty liability can also be fastened upon the appellant. All contentions of both sides including the above noted contention of the Department are kept open. We have not expressed any view on either side.

12. Both the appeals are disposed of accordingly.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**