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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-1999

Reported in : (1999)(113)ELT154TriDel

Appellant : Rahul Misra

Respondent : Commissioner of Customs

Judgement :
1. This is a case of import of a car purported to be under the transfer of residence. The appellant filed a Bill of Entry for the car declaring the FOB price of the car as Rs. 18,35,260/-. The Department accepted this as a transaction value of the car and after allowing the depreciation for retention of the car in the foreign country and its use they assessed the car to duty.

2. Shri J.S. Sinha, ld. Counsel appearing for the appellant submits that this car was a replacement car inasmuch as the appellant was in a foreign country for a longer period and purchased this car in exchange of his old car. He submits that he did not have the manufacturer's invoice and therefore, it was incumbent on the Department to take Parkar's Price Catalogue for purpose of assessment after allowing the appellant a trade discount of 15%, VAT and road licence. He submits that these discounts and concessions were not provided to him. He also submits that he was in a foreign country for more than six years and the car should be considered in his constructive possession for more than one year though he had got this car in exchange of his old car about less than a year. He submits that the Department did not consider this aspect and thus denied them the benefit of

transfer of residence rules in so far as the import of this car and assessment thereof is concerned.

3. Shri Shiv Kumar, ld. JDR submits that the value for purpose of assessment was the value declared by the importer of the car that this value was declared in Bill of Entry and there was no claim for any trade discount or VAT or road tax. He submits that the Department accepted the declared value as the transaction value correctly and assessed it to duty after allowing the normal depreciation for retention of the car in the foreign country. He submits that there is nothing wrong in the course adopted by the authorities below in so far as valuation of the car and assessment thereof is concerned. Ld. DR submits that valuation aspect was not questioned by the appellant before the lower authorities and the only aspect agitated was the ITC angle.

4. We have heard the rival submissions. We have perused the Bill of Entry. We find that in the Bill of Entry a particular value was declared by the importer himself. They had not claimed any trade discount, VAT or road tax. Unless these items are claimed, we agree with the lower authorities that the transaction value was the correct value as it was in conformity of the Parker's Price Catalogue. There is a specific mention of this fact in the brief facts narrated in the impugned order. Thus looking to the fact that the value was declared by the importer; that the value was more or less as the one reflected in Parker's Price Catalogue. Therefore, there was no legal infirmity in the acceptance of this value for purpose of assessment.

5. Insofar as the deduction of trade discount of 15% now claimed as also the deduction of VAT and road tax is concerned, we find that these items are not claimed in the Bill of Entry and therefore, there was no question of these items being considered separately.

6. Insofar as the continuous use of the car, for one year in terms of the transfer of residence rule is concerned we note that the admitted position is that there was an exchange of the car and the car was in use only for a period much less than 1 year and therefore, there has been no mistake in denial of the benefit of the transfer of residence rule.

7. Having regard to the above findings, we do not find any legal infirmity in the impugned order, the same is, therefore, upheld and the appeal is rejected.