

Mrs. Sima Khatib Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-02-2004

Reported in : (2004)(113)LC895Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Mrs. Sima Khatib

Respondent : Cc

Judgement :

1. Heard both sides. The appellant had purchased a Mercedes Benz Car of Model 190D from M/s Gargash Enterprises, Dubai at a price of Dirhams 83.100/- on 23/06/1993. Subsequently, she imported the said car to India in the year 1996 and filed a Bill of Entry bearing No. 11473 dt.

29/03/1996 for its clearance. After first examination, the customs assessed the value of the car as DM 42,545/- and the value of other optional items such as metallic paint, central locking system, tinted glass, air-conditioner, Audio system etc. as DM 11/040/- on the basis of the price list of Mercedes Benz, Germany released on 2nd January, 1993. Accordingly, the car inclusive of the optional items was assessed as Rs. 9,07,300/- and the fair value of the car cover was taken as Rs. 700/- and the appellant was asked to pay custom duty of Rs. 10,00,507/- in foreign currency and clear the car.

2. The appellant claimed assessment on a lower price of DM 32,964/- (F.O.B.) stating that the purchase price of the car was only Dirhams 83,100/- because this model of car was discontinued from 1993. She also submitted a copy of a letter from Mercedes Benz to M/s Gargash Enterprises, Dubai confirming that the value of the above car was DM 32,964/-. The order in original passed by the Additional Commissioner did not accept the plea of the appellant for assessment at a lower price. Subsequent appeal to the Commissioner (Appeals) has also been turned down. The appellant had inter alia submitted to the Commissioner (Appeals) that either the purchase price be accepted as the basis of valuation or alternatively, trade discount of 15% may be allowed from the manufacturer's price list. In the impugned order the Commissioner (Appeals) has held that since the list price of the manufacturer has been adopted, which is the net price, the claim for 15% discount has been correctly rejected as there was no material to show that the manufacturer was offering trade discount on the list price.

3. Shri K.M. Mondal, learned Consultant for the appellant states that the appellant had purchased the impugned car at a genuine price and therefore, the same should be accepted for assessment as transaction value. He also states that even though the manufacturer's list price was higher and the same did not mention the amount of discount, the documents produced by the appellant including the letter from the manufacturer clearly establish that the car in question was sold at a lower price on account of the fact that the model was discontinued and such discontinued models were being sold on stock lot basis to clear the stock. He cites the decision of the Apex Court in the case of Eicher Tractors Ltd. v. CC Mumbai in support of his arguments for acceptance of the transaction value. He also cites earlier decision of the Tribunal in the case of Lt. Col. Harinder Singh Bedi v. C.C. Bombay which allows discount of 15% on manufacturers' Tourist price to arrived at manufacturer's net price.

The learned D.R. supports the orders passed by the lower authorities and cites the earlier decision of the Tribunal in the case of Meera Luthra v. C.C. Bombay which disallowed 15% discount since manufacturer's list price was used in lieu of the Car World Catalogue Price.

4. After hearing both sides and perusal of case records including the cited case laws, we are of the opinion that the price at which the appellant has purchased the impugned car in the year 1993 cannot be considered as the 'transaction value' nor can the valuation of the impugned car be done by the first method of valuation i.e. Transaction Value method. Transaction value' has been defined in Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 to be "the price actually paid or payable for the goods when sold for export to India adjusted in accordance with the provisions of Rule 9." The definition of the 'transaction value' includes a significant phrase -"when sold for export to India". In the instant case, the impugned car was admittedly sold to the appellant in the year 1993 at Dubai as evident from the Invoice dtd. 23/06/1993 submitted by the appellant herself. Subsequently, the appellant has used the car abroad and only in the year 1996, she has exported the same to India. It is, therefore, clear that the impugned car was not 'sold for export to India' in the year 1993 and the price which was paid for the car cannot, therefore, be deemed to be the 'transaction value' of the car cannot, therefore, be deemed to be the 'transaction value' of the car which was used abroad subsequent to its purchase during the period from 1993 to 1996, and which was only subsequently imported to India only in the year 1996. The impugned invoice represents the price paid for a local sale at Dubai and its does not represent the price for any sale for export. Moreover, the appellant herself has imported the car which was in her use and such personal export from Dubai to India by the appellant does not involve any sale. In other words, the actual export and import of the used car in this case is not accompanied by a sale transaction. In view of the foregoing, the invoice price which the appellant has paid for a local sale at Dubai in the year 1993 does not meet the definition of 'transaction value' in Rule 4 for the purpose of assessment of the car imported in the year 1996 after its intervening use abroad. Consequently, since there is no transaction value available for import, the first method of valuation i.e. the Transaction value method cannot be applied in this case. In his order, the original authority has, therefore, rightly held that the transaction is not between the importer in India and the seller in another country and hence it was not possible to arrive at the assessable value applying the Transaction Value method.

5. We observe that the Customs Valuation law in India has been based on the WTO Agreement on Customs Valuation which is followed internationally by the WTO Member countries as well as others. It is relevant to note that the Technical Committee under the said WTO Agreement has issued a Compendium on Customs Valuation and one of the documents therein namely Study 1.1. deals with "Treatment of Used Motor Vehicles". It recognizes that valuation treatment of used motor vehicles gives rise to practical problems. In paragraph 19 of the said document, it is recognized that adjustment in the prices could be allowed allowing depreciation either on the basis of time elapsed since purchase of a vehicle or on the basis of use (in terms of KMs run) since the date of purchase. In paragraph 22 of the said document, it is also envisaged that valuation based on catalogue price of new vehicles of the same make and model can be done. The said document having been issued by the Technical Committee under the WTO Agreement which is the basis of the Customs Valuation law in India, can certainly be adopted for practical guidance as long as it is not contrary to the Indian law.

Valuation of the impugned car done by the lower authorities based on the catalogue/list price applying the method of depreciation cannot, therefore, be faulted on that count.

6. Coming to the second argument of the learned Consultant that the vehicle in question was a discontinued model and that the same was being sold at a lower price compared to the list price as evidenced by the letter from the manufacturer, we find force in the same. The aforesaid document of the Technical Committee does note that valuation of used cars poses major difficulties and the Customs has to be satisfied as to the veracity of the declared purchased price since the trade in used and secondhand goods offers greater opportunity for fraud, particularly through the use of false invoices. Therefore, the method adopted by the lower authorities for valuation of used cars based on catalogue prices or manufacturer's list prices allowing depreciation therefrom the preference to purchase invoices produced by individual importers is in order. However, in the instant case, the appellant has established the bona fides of the purchase price by producing additional evidence from the dealer as well as from the manufacturer to establish that she had indeed purchased the car at a price lower than the list price on

account of the car being of a discontinued model. As such, considering the evidence on record in this particular case, we are inclined to accept the plea that the price at which the appellant had purchased the car in the year 1993 can form the basis for working out the customs value for assessment purposes after allowing the normal depreciation and adding the value of any additions and alterations, if any, made subsequent to its purchase. Accordingly, we set aside the impugned order passed by the lower authorities and remand the case to the Original Authority for re-determination of the customs value of the impugned car based on the purchase price in preference to the list price. The appeal is allowed in the above terms.

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