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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-07-1987

Reported in : (1987)(14)ECC360

Appellant : Collector of Customs and Central

Respondent : Ajit Singh and anr.

Judgement :

1. These are two appeals, one filed by the department and the other by Importer Ajit Singh against the order passed by the Additional Collector of Customs & Central Excise, Chandigarh. Since both the appeals are against the same order, they are being disposed of by a single judgment.

2. Briefly, the facts are that Ajit Singh imported a Mercedes Benz 240-D car made in West Germany, Four cylinders, 1979 Model and this was released without duty and fine subject to re-export on or before 26th January, 1984. As per the order appealed against, the car remained in customs custody for 28 days and was due for re-export out of India on or before 23rd February, 1984. On 25th February, 1985, in pursuance of secret information, officers of the Department of Revenue Intelligence at Amritsar detected the vehicle at the residence of Ajit Singh in his village Takhar in Goraya Distt. Jalandhar. Since Ajit Singh failed to produce any evidence, documentary or otherwise, in support of legal retention of the car in India over and above the stipulated period for re-export of the same, the car was seized under Section 110 of the Customs Act, 1962. In the order of adjudication passed by the Additional Collector, it was observed that although the vehicle was

liable to be confiscated, confiscation was not to be ordered in view of the fact that Show Cause Notice was not issued to the party within the prescribed time limit. However, duty was demanded holding that the GIF value of the car was Rs. 1,47,437/- with the Sharp radio cassette fitted therein being valued at Rs. 2,000/-. Personal penalty of Rs. 70,000/- was also imposed on Ajit Singh under Section 112 of the Customs Act for the offence of not re-exporting the vehicle within the prescribed period.

3. Heard S/Shri M.S. Rakkar and D.N. Raina advocates for Ajit Singh and Shri G.V. Naik, Jt. Chief Departmental Representative for the department.

4. The learned JCDR has reiterated the view taken in the order passed by the Central Board of Excise & Customs initiating review of the order-in-original passed by the Additional Collector of Customs & Central Excise, Chandigarh in this case. It is submitted that there are various decisions of High Courts in which it has been held that proceedings under Section 110 and 124 of the Customs Act, 1962 are independent of each other and that confiscation of goods can be ordered even where the Show Cause Notice is not issued within six months.

Accordingly, it is pleaded that the Tribunal should order confiscation of the vehicle.1. AIR 1975 MADRAS 43 - Collector of Customs and Central Excise Hyderabad v. Amruthalak-2. AIR 1975 (Pub. & Haryana) Muni Lal v. Collector of Central Excise, Chandigarh(Trib.) Sat Pal, Amritsar v. Collector of Customs & Central Excise, Chan- 6. Shri M.S. Rakkar strongly opposes the plea of the department as regards confiscation. He urges that the vehicle remained illegally in the Department's custody, as the Show Cause Notice was not issued within the required period of 6 months nor was there any extension of the time or issue of Show Cause Notice. In the circumstances, it is pleaded that the vehicle is not liable to confiscation and should be returned to the importer on payment of duty.

7. It is, however, urged that duty is being demanded on highly exaggerated value. It is submitted that the car was imported under carnet and the declared value was 2800. The department, however, has not indicated the basis on which it has raised its value, nor have they given the importer the deduction in value which is due on an old vehicle. It is also contended that the penalty merits being set aside as it has

been imposed by referring to Section 112 without specifying the clause objection 112, which is violated. The learned advocates relied on the following case law :-1. 1983 ELT 1477 (S.C.) - The Asstt. Collector of Customs AIR 1972 SC 689 and Superintendent Preventive Service Customs, Calcutta &2. 1979 ELT (J-538) Shri Jethanand Tahilram v. Union of India & Others.3. 1983 ELT 322 (Madras) B. Lakshmichand v. Government of India.

8. The facts of the case and the submissions made before us have been carefully considered. So far as the liability of the vehicle to confiscation is concerned, the learned advocates have relied on the judgments in the case of Charan Das Malhotra and Shri Jethanand Tahilram. In the case of Charan Das Malhotra, supra the Supreme Court held that the Collector cannot extend the period for giving notice of confiscation under Section 124(a) without giving opportunity of hearing to person whose articles are seized as contraband. We do not know how this judgment N becomes relevant here because in the circumstances of the case, there was no question of extension of period of Show Cause Notice without giving the importer an opportunity of hearing.

9. In the case of Shri Jethanand Tahilram v. Union of India and Ors.

cited by the learned advocates in their favour, the facts were that the proper officer of Customs had seized the impugned goods under Section 110(1) of the Customs Act while they were in possession of the Petitioner. No notice under Section 124(a) of the Act was given to the Petitioner within six months from the seizure of the goods. The Assistant Collector of Customs thereafter extended the period of the aforesaid notice ex parte which was quashed by the Calcutta High Court and the department was directed to return the goods to the Petitioner.

The department returned the goods to the Petitioner as a purported compliance of the aforesaid order, but, immediately thereafter, re-seized the goods near the Custom House. Hence, the petitioner went up before the High Court again who were pleased to order that in such circumstances, the seizure of the same goods over and over again in the hands of the same citizen will be a serious inroad on his fundamental right to hold his property guaranteed by Article 19(l)(f) of the Constitution. Accordingly, the department was directed to return the goods to the

petitioner forthwith. The whole issue that was decided was whether the goods can be re-seized in the stated circumstances under Section 110 of the Customs Act, 1962. The issue that is before us now is quite different and it is, whether in a matter where the department has failed to issue Show Cause Notice under Section 110 of the Customs Act within a period of six months or extended period as provided, it would be in order for the department to confiscate the goods under Section 124; So far as this issue is concerned, the law is well settled as a result of number of decisions of the Supreme Court/High Courts/CEGAT. Some of these have been rightly cited by the department in their favour. It is now well established that Section 124 of the Customs Act pertaining to issue of Show Cause Notice before confiscation of goods does not lay down any period within which notice has to be given. The period of six months laid down under Section 110(2) affects only the seizure of the goods and not the validity of the notice. In other words, where a notice has been given subsequent to the expiry of the period of six months, the validity of the proceedings under Section 124 and the liability of the vehicle to confiscation are un-affected. The proceedings under Section 110 and Section 124 of the Customs Act are independent of each other.

10. In the light of the foregoing discussion and the facts of the case, we hold that the vehicle is liable to confiscation under Section 111(d) of the Customs Act, 1962. The import of the car was permitted under carnet system which is a special facility for tourists, subject to an undertaking that the car shall be re-exported within the period specified. No leniency is merited in respect of those who have recourse to deliberate violation of not only the law but also their own legal undertaking. Besides, such leniency may encourage others to violate the law and that would undermine the facility offered. It is not the contention of the importer that import of cars is since being freely allowed. In the circumstances, we do not consider it a fit case to allow the importer to redeem the goods on payment of fine and we order absolute confiscation of the vehicle.

11. In view of the order of absolute confiscation passed by us, it is not necessary for us to go into the question of value of the vehicle for demand of duty.

12. Coming now to the imposition of penalty, we observe that in the order appealed against, the Additional Collector has failed to mention specifically the clause of Section 112 under which orders are passed.

On this issue, the judgment of the Madras High Court in the case of B.Lakshmichand 1983 (12) ELT 322 (Mad.), which has been cited by the learned advocate, is directly on the point. It has been held by the Madras High Court that if the penal action is proposed to be taken and proceedings initiated which are likely to culminate in the imposition of penalty, then the authorities must be clear in mind as to whether Clause (a) or Clause (b) of Section 112 will apply or both, and the order must make specific reference to the provisions failing which the order of penalty is not sustainable.

13. In respectful deference to this decision of the Madras High Court, we set aside the penalty in this case.

14. In the result, appeal No. C/2381/87 of the department is allowed and the Mercedes Car is absolutely confiscated. Appeal No. C/2752/86 is partly allowed inasmuch as the penalty is set aside.

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