William Murphy Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-09-1988

Reported in : (1989)(22)LC385Tri(Mum.)bai

Appellant : William Murphy

Respondent : Collector of Customs

Judgement :
1. This appeal arises out of and is directed against the order-in-original bearing No. S/43-UB-117/88-89 P dated 27-7-1988 passed by the Addl. Collector of Customs (General).

The appellant Shri Murphy William, holder of Passport No. R 143191 is a British National. He presented an application for import of 2 vehicles through the Port of Bombay under Triptique system. He was in possession of 2 Carnet-de-Passages issued by the Carnet issuing authority of Holland (Netherlands).

3. The cars which were 2 stations wagons 10 seaters each were shipped from Dubai and since the name of the customer was mentioned as M/s.William Murphy India in the invoice and C/o. Airfreight Pvt. Ltd. Sahar, Cargo Complex and since the appellant happens to be a tourist having his base at U.K. and carnets were obtained at Netherlands and since 2 vehicles were imported by 2 carnets, some doubt was felt by the Customs regarding the bonafide of the importation and particularly when the appellant was not representing or leading any group of tourists.

The appellant was asked to produce the registration book for the vehicles. It appears by his letter dated 12-7-1988 addressed to the Collector the Appellant stated : "I have obtained a translation of the Dubai Traffic Police document and enclosed a copy for you. As you will see, some-how, the vehicle left Dubai unregistered. In the circumstances, I owe you an unreserved apology as it is now obvious that you were completely right and only doing your job properly." On further enquiry, by the Customs, it transpired that the appellant's wife had brought three vehicles for tourism purposes in May, 1986 all of which were Toyota Land Cruiser 10 seaters. These vehicles were imported on 14-5-1986 and were reported to have been exported on 18-5-1986. It further appears that the appellant himself had imported a vehicle under carnet system on 16-7-1986 and the same was exported to Nepal on 20-7-1986. The appellant appears to have been questioned as to what became of those vehicles and he seems to have answered that he was no more the owner of the said vehicles.

4. Since the vehicles imported did not bear any registration number the carnets produced were not treated as valid to cover the importation of the vehicles in question. Therefore, the violation of Imports & Exports (Control) Order was explained to the appellant since he waived written show cause notice. He was called upon to show cause as to why the vehicles should not be confiscated an why penalty should not be imposed on him. A personal hearing was also given to the appellant. The appellant was told that there was mis-declaration regarding the registration of the vehicle and he was further told that he had brought 2 vehicles both registered in his name. The appellant according to the Addl. Collector's order admitted that there had been a mis-declaration.

But then he contended that he had 2 carnets and as such there was no violation of the law. He also requested to allow the vehicles to reship to Dubai.

5. The Addl. Collector, on consideration of all the facts and circumstances of the case, ordered confiscation of both the vehicles but allowed re-export to U.K. on payment of fine of Rs. 50,000/-. He also imposed a penalty of Rs. 10,000/- on the appellant and hence this appeal.

6. During the hearing of this appeal initially Shri S.U. Balani contended that since the appellant produced 2 carnets there was no reasonable cause for the department to entertain any suspicion as to the import of the vehicles. He further contended that there was no restriction as to the number of vehicles that could be imported under the carnet system. All that was required was for the production of carnet and the same had been produced.

7. Continuing the arguments Shri Patel submitted that the Addl.

Collector had given the following reasons for ordering confiscation and imposing penalty.

Firstly, that the appellant initially took a stand that the vehicles were registered in Holland where the carnets were issued. But later changed his stand by his letter dated 18-7-1988 wherein he had admitted the offence of mis-declaration of registration.

8. Shri Patel contended that the above finding of the Addl. Collector is irrelevant. The registration of the vehicles is not an obligation under the carnet system or not contemplated under the Import Policy or under the Import Control Order. The Addl. Collector had relied on the executive instruction of the Government of India which has no statutory force and therefore on the reasoning of non registration of the vehicles, the vehicles cannot be ordered to be confiscated.

9. Continuing his submission Sh. Patel pointed out that in his order the Addl. Collr. has observed that the appellant had deliberately misled the carnet issuing authority for the purpose of obtaining duty free concession under Not. No. 296 dt. 2-8-1976. Sh. Patel urged that there was no basis for the Addl. Collr. to hold that the appellant had deliberately misled the carnet issuing authority. The appellant had explained in his letter dt. 12-7-1988 and also by production of telex messages as to how he was misled by the Dubai party regarding the registration. Elaborating his contention Shri Patel submitted that the Dubai party sent a clearance certificate issued by the Police which was in Arabic language and the appellant bonafidy believed that the certificate contained the registration number. But later he got the documents translated in English and he realised that the registration number was

not there and it is because of this he tendered his apology to the Asstt. Collr. in his letter dated 12-7-1988. Having regard to the explanation offered by the appellant Sh. Patel urged that the observation of the Addl. Collr. that the appellant had misled the carnet issuing authority for the purpose of obtaining duty free concession under Not. No. 296 dt. 2-8-1976 was erroneous. He further urged that even the Not. No. 296 dt. 2-8-1976 did not contemplate that the vehicle should be registered.

10. The further submissions of Shri Patel was that in his order the Addl. Collector has observed that the appellant being a resident of UK he should normally apply for carnet in UK and for registration of vehicle in UK. But the cars were directly shipped from Dubai without being registered at Dubai and thereby violated the procedure of carnet which clearly lays down that the vehicle has to be identified with registration number of the vehicle. Shri Patel submitted that it was not the requirement of carnet system that a British National should obtain carnet only in Britain or that the vehicle to be covered by carnet should be registered in UK only. Therefore, that part of the Addl. Collector's order was again irrelevant in considering the question of violation of the Import Control Order. Shri Patel also submitted that the Addl. Collector has further observed in his order that the appellant had not explained as to why he required 2 vehicles when only his wife had accompanied him. Shri Patel contended that it is not the number of members which is relevant. The appellant had orally explained that he was to proceed to Nepal where he was expecting others from abroad and hence the necessity for 2 vehicles. Shri Patel further submitted that the Federation of India Automobile Association, Bombay had issued a certificate granting guarantee for the vehicle being driven by the wife of the appellant. In the said circumstance and particularly when there was no restriction as to the number of vehicles that could be brought under Carnet system the Addl. Collector committed an error in taking into consideration the Import of 2 vehicles.

11. Shri Patel further submitted that since the appellant was misled by the Dubai agency, the Addl. Collector ought to have allowed re-exportation to Dubai and not to U.K. The re-exportation to U.K.would cause undue harship and he would be required to pay customs duty whereas if he reship to Dubai he will not have to

incur any expenditure, since he has made arrangements for registration of the vehicles at Dubai. In that connection Shri Patel also relied on the telex messages that were exchanged between the appellant and the supplier of the cars. Finally Shri Patel submitted that even if the Addl. Collector was justified in ordering confiscation no fine should have been imposed and there was no justification what-so-ever for imposing the penalty on the appellant. He prayed that the 2 vehicles may either be allowed to be cleared or allowed to be reshipped to Dubai without payment of fine and penalty.

12. Shri Mondal appearing for the Collector while fully supporting the order of the Addl. Collector submitted that there was every justification for the department to suspect the bonafide of the import.

He submitted that the appellant being a British National it would have been easier for him to obtain the carnets there and no explanation is forthcoming as to why he approached the FIAA at Netherlands. He further submitted that the carnets produced contained the particulars of the vehicles including the registration number. The registration Nos.are CHT 304V and CHT305V. But then, the imported vehicles did not bare any registration number. Further, in the invoice produced the appellant was described as M/s. William Murphy India. That was not the name and address of the appellant. Shri Mondal contended that in the guise of availing the facility under carnet system 2 new vehicles were imported which were not even registered at Dubai from where they were shipped.

Shri Mondal also contended that the appellant was required to give a declaration. He did declare that the vehicles had registration numbers.

In fact they did not bear any registration number and therefore the Addl. Collector was wholly justified in holding that there was mis-declaration by the appellant. Shri Mondal further submitted that in order to avail of the benefit of Not. No. 296 dated 2-8-1976 the vehicles imported should correspond in all resect with those described in the Tryptyque/Carnet- de-Passage En-Douance. Shri Mondal urged that the Carnets produced contained the registration numbers of the vehicles but the vehicles imported did not bear the registration numbers.

Therefore, it cannot be said that the vehicles imported correspond in all respect with those described in the carnets. He urged that the above requirement is a statutory requirement. He submitted that the learned advocates' contention that the Addl. Collector relied on the executive instruction as to the registration and there has no statutory requirements is wholly incorrect. Shri Mondal further submitted that the importation of the vehicle under carnet system was in pursuance of Geneva Convention which was approved and accepted and rectified by the Government subject to some modification. According to the articles of the convention the vehicle to be imported should be in the private use during the temporary visit by the owner of the vehicle and before the import it should be in the possession of the importer and it should be registered in his name. It is because of this requirement the carnet contained the registration numbers. Shri Mondal also submitted that the appellant's explanation that it was the responsibility of the Dubai supplier to get the registration cannot be accepted since the requirement of registration would not be legitimate function of the seller but it would be the obligation of the buyer. In order to get the registration one should reside in the country atleast temporarily.

According to the passport entry of the appellant before the shipment of the vehicles he had not visited Dubai but on the other hand he visited Dubai around 22/23-6-1988 and he would have known whether the vehicles were registered or not when he made a declaration by production of the carnets. But he made a mis-declaration. Shri Mondal submitted that since the vehicles were not covered by the carnets produced, the duty liability would be Rs.16.5 lakhs. Even then, the Addl. Collector shown a concession and allowed reshipment on a paltry sum of Rs. 50,000/-.

13. Shri Mondal further submitted that article 28 of the Convention empowered the contracting State to initiate proceedings in the event of fraud, contravention or abuse of the carnet system and even provide for imposition of any penalty against the person using the temporary importation papers. Shri Mondal finally submitted that the appellant was not a bonafide tourist. He had mis-used the benefits provided under the International Convention. This was not the first time he was visiting India. Earlier also he had brought a vehicles and he would have known the

procedure and in the circumstances the contention of the other side that the Addl. Collector committed an error in imposing penalty is un-tenable. The Addl. Collector, on the facts and circumstances of the case ought to have ordered absolute confiscation and no leniency should have been shown in the matter of penalty.

14. Shri Patel in reply submitted that temporary registration of the vehicles are done in the absence of the person and therefore the presence of the appellant in Dubai was not necessary. He also submitted that there was no restriction to sell the vehicles if once the imported vehicles are exported out of India.

15. I have carefully considered the submissions made on both the sides and perused the available records. In order to appreciate the rival contentions it is necessary to understand what is Carnet De Passages En Douane and how it originated.

16. The contracting State desiring to facilitate the development of International Traffic, adopted by the United Nations Conference on Road and motor transport held at Geneva from 23rd August to 19th Sept., 1949 have decided to conclude a Convention and have agreed upon the provisions contained in the Convention. Article 2 of the Convention requires each of the Contracting States to grant temporary admission without payment of import duties and import taxes and free of import prohibitions and restrictions subject to re- exportation and to the other conditions laid down in the Convention, to vehicles owned by persons normally resident outside its territory which are imported and utilised, for their private use on the occasion of temporary visit, either by the owners of the vehicles or by other persons normally resident outside its territory.

Such vehicles should be covered by temporary importation papers guaranteeing payment of import duties and import taxes, and if the case should arise, of any Customs penalties incurred, subject to the special provisions made in paragraph 4 of Article 27.

17. Article 6 allowed each Contracting State to authorise Associations, such as those affiliated to an international organisation to issue either directly or through

corresponding associations the temporary importation papers covered by the Convention. It further provided that temporary importation papers may be valid for a single country or Customs Territory, or for several countries or Customs Territories.

"Temporary importation papers valid for the territories of all or several of the contracting States shall be known as Carnets De Passages En Douane and shall conform to the standard form contained in Annexure I of this Convention." Thus Article 7 allowed the Contracting State of fix the period of validity of temporary importation papers in accordance with its legislation or regulations.

"Temporary Importation papers issued by authorised associations shall be made out in the name of the persons who own the vehicles temporarily imported or who have the possession or control of them provided that, if the vehicle has been hired, the papers shall be made out in the name of the hirer." 20. The form prescribed in Annexure-I requires furnishing of the following particulars : (2) This carnet may be used in the following countries (list of Countries to be mentioned).

It should also contain the description of vehicle. The description should include the country of registration and registration number besides the number of the Chassis, Engine, colour, type etc. This should bare the signature of the holder, signature of the Secretary General of the Internation Organisation and the signature of the authorised official of the issuing association.

21. The convention provided for ratification of the Convention by other States who are not party to the Convention. The Government of India accepted the Convention by an instrument of ratification subject to minor modifications which are not relevant for our purpose.

22. From the various articles of the Convention and the form prescribed, it is clear that the authorised Association should issue the Carnet De Passages En Douane (hereinafter referred to as 'the Carnet'). In the prescribed form.

23. As seen earlier the prescribed form requires specifying the country of registration as well as the registration number of the vehicle to which the Carnet

was issued.

24. Having regard to that requirement,the contention of Shri Patel that the registration of the vehicles before import was not a necessary condition cannot be accepted. It is not all vehicles that are allowed temporary importation. It is only those vehicles whose registration are specified in the Carnet alone can be allowed temporary importation. The Government of India's instruction on which the Addl. Collector had relied only reiterated the requirements of the Convention and it was nothing new. Therefore, Shri Patel's contention that the Government of India's instruction is administrative or executive and it cannot over-ride the statutory requirements of the Import Control Order or exemption Notification No. 296, dated 2-8-1976, has no force.

(m) being vehicles as defined in Article I of the Customs Convention on the Temporary Importation of Private Road Vehicles or the component parts thereof referred to in Article 4 of the said Convention and are exempt from payment of Customs duty under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 296 dated the 2nd August, 1976 as subsequently amended by Notification No. 53-Cus., dated the 1st May, 1977, provided that - (2) the provisions of the said notification or of the Triptyque' or 'Carnet-De-Passage' permit are not contravened in relation to such vehicles or component parts; failing which the provisions of this Order shall apply to such vehicles or component parts and such vehicles or components shall be deemed to be goods the imports of which has been prohibited under the Customs Act, 1962."
26. The notification No. 296 which exempts from payment of customs duty in respect of vehicles which are imported under Carnet specifies certain conditions: Among other things the importer should satisfy the proper officer that the vehicles and component parts, which he has imported) correspond in all respects with those decribed in the Triptyque or Carnets-De-Passages-En-Douane and for this purpose produce the said vehicles and component parts for examination and record of particulars, by such officer. Thus it is clear that the vehicle imported should correspond in all respect with those described in the Carnet.

27. The appellant had produced two Carnets in respect of two station wagons imported by him. While giving the description of the vehicles, the country of registration as well as the registration numbers were given in the Carnets. But then, the imported vehicles did not bear the registration numbers at all. Therefore, Shri Mondal was justified in contending that there was no scope to grant exemption from payment of duty since the vehicles did not correspond in all respect with those described in the Carnets. Shri Patel was not right in contending that the requirement of registration is not a statutory requirement either under the Imports (Control) Order or under the Exemption Notification No. 296. The benefit of Imports (Control) Order as well as the benefit of the Exemption Notification from payment of customs duty would be available only to those vehicles which correspond in all respects with those described in the Carnet. The Customs, therefore, could confiscate the vehicles in question since on a material aspect they do not correspond with the description contained in the Carnets. As observed by me earlier, it is not all vehicles that are brought by a foreign tourist which are allowed to be imported without payment of duty or without insisting upon the requirements of Imports (Control) Regulations. But it is only these vehicles in respect of which Carnets are issued that are allowed the above concessions.

28. Shri Patel, for the appellant had contended that the appellant was misled by the Dubai party regarding the registration. He urged that the particulars regarding the registration number were given by the Dubai party to the appellant and those particulars were furnished by him to the Carnets issuing authority at Holland (Netherlands). In this connection, Shri Patel had also relied upon certain telexes exchanged between the appellant Shri William Murphy and Mr. Masroor Khan. These telexes were issued on 11-7-1988. Before that the appellant had made declaration in Form 'X' and also in form 'FT'. Among other things the appellant declared the registration mark and maker's name. It appears that the appellant having made this declaration furnishing the particulars of the registration mark and maker's name took back the forms undertaking to produce them later. It is on record that something during 22/23-6-1988 the appellant had visited Dubai. The appellant had not stated the purpose of his visit. Since the purchases of the vehicles admittedly were made at Dubai on 12-6-1988 and since the Carnets were issued on 15-6-1988 one would expect the appellant to make some enquiry at

Dubai when he visited on 23-6-1988. Therefore, his explanation that the appellant was mislead by the Dubai party, is rather difficult to accept. He also did not produce the copies of the telexes stated to have been received, on the basis of which he furnished registration Nos. to carnet issuing authority.

29. The argument of Shri S.U. Balani that the Customs authority had no justification to entertain any doubt or suspicion, also cannot be accepted. Admittedly, the appellant was a British National. He got the Carnets not from any of the association of Great Britain but from Netherlands. The vehicles were not at Netherlands when the Carnets were issued. The vehicles were at Dubai. The appellant and his wife alone had come to India. But the vehicles imported were not only two but were ten seaters each. Further, during the previous visits, the wife had imported three vehicles under Carnets and the appellant had also imported one. This was just in the year 1986. In the circumstances, if the customs authority had entertain suspicion, no exception can be taken. It is necessary to point out here that the subsequent action was not on the ground of suspicion but was based on facts. The Additional Collector had passed the order after due compliance with the procedural requirements and after affording reasonable opportunity to the appellant.

30. It may be that a British National need not obtain Carnets from his own country and he could obtain Carnets from other countries. But then, the vehicles which are imported should correspond in all respects with the particulars entered in the Carnets. As observed by me earlier, the make and the registration numbers are vital factors to avail the benefit of Import restrictions and Customs duty concession. It is the owner of the vehicle who is entitled for the benefits.

31. On consideration of all the aspects I am of the view that the Addl.

Collector was justified in ordering confiscation of the vehicles.

32. Having regard to the Customs duty involved which is nearly Rs. 16 lakhs, if the Addl. Collector has imposed a fine of Rs. 50,000/- for reshipment, it cannot be considered as unreasonable or harsh. But then, since the vehicles have been shipped from Dubai the Addl. Collector could have allowed reshipment to Dubai

instead of UK. I, therefore, modify the Addl. Collector's order to that extent. The reshipment to Dubai on payment of fine of Rs. 50,000/- is allowed. The only other aspect that remains for consideration is about the penalty of Rs. 10,000/- imposed on the appellant. Shri Patel submitted that there was no mala fide on the part of the appellant. Shri Mondal on the other hand contended that the appellant had earlier visited India. His wife also had visited India. He was fully acquainted with the Garnet system and he would have been aware of the requirement of the registration.

Therefore, it cannot be contended that there was no mala fide in the appellant's action.

33. It has come on record that the earlier vehicles brought by the appellant and his wife were re-exported. The conduct of the appellant cannot be considered as contumacious requiring imposition of penalty.

I, therefore, set aside the penalty on the appellant.

34. Subject to the above modification this appeal fails and the same is rejected. The appellant be allowed to re-export the vehicle to Dubai on payment of fine of Rs. 50,000/(Rupees fifty thousand). He shall exercise this option within a period of two weeks from the date of communication of this order. Since the appellant had not paid or deposited the penalty the question of refund does not arise.