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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-03-1994

Reported in : (1995)LC398Tri(Delhi)

Appellant : Bal Krishan

Respondent : Collector of Customs

Judgement :

1. This appeal arises out of and is directed against the Order-in-Original No. 48/83 dated 15-9-1983 passed by the Collector of Customs, New Delhi.

2. Facts: On 17-7-1981 Mercedez Benz Van bearing Registration No.CHA-2519, Chassis No. 309126-13-135-920; Engine No. 615-912-10-014133 made in Germany fitted with Radio Blaupunkt make, four bank, left hand-drive, was seized by the DRI Officers from the possession of the appellant since he could not produce any documents to show the legal import/iicquisition/possession of the said vehicle. On detailed examination it was found that the vehicle in question had been imported by one Mr. Wolfgang Blob, a German Tourist through Land Customs Station, Attari Road on 10-6-1980 under Carnet-de-passage No. 035893 Kd. and that though the said Carnet was discharged, the Car was not actually re-exported and unlawfully kept in India. Accordingly, show cause notice was issued for confiscation of the said vehicle under Sections 111(d) and 111(o) of the Customs Act, 1962, in addition to imposing penalty under Section 112 of Act. In reply to the show cause notice as well as during the personal hearing before the Adjudicating Authority it has been pleaded on behalf of the party that the appellant

had purchased the said vehicle from one Ramgopal of Chandigarh for Rs. 30,000 and same was transferred in the name of the appellant on 20-3-1991. It was contended that he purchased the car in accordance with law and that he did not act or abet in any action which rendered the car liable to confiscation or to attract penalty under the Customs Act. On adjudication, the Collector disbelieved the statement of the appellant that he purchased the said car against cash payment on the Road side without any verification with regard to the identity of its holder/seller since the said Ramgopal neither appeared nor traced.

Collector observed that purchase of the car and that too with a duplicate registration Book is a wilful action on the part of the appellant who being allured by the element of profit entered the deal with someone which was in utter disregard of the law. The very purchase, possession, acquisition and use of the tainted car by the appellant by itself is an offence under the Customs Act. He held that appellant was connived with and abetted the other persons including Mr.

Wolfgang and Ramgopal after the importation of the car for the retention into India which was liable to confiscation from the day of its import. Accordingly, he ordered for absolute confiscation of the vehicle in question valued at Rs. 1,15,000 under Sections 111(d) and 111(o) of the Customs Act in addition to imposing personal penalty of Rs. 28,750 under Section 112 of the Act.

3. Shri Harbans Singh, learned Advocate, appearing for the appellant, submitted that he is not contesting the impugned order on confiscation of the car as such, but there is no justification for absolute confiscation as well as imposition of penalty. He said that appellant was neither an Importer nor an abetter but only a bona fide purchaser.

There is no evidence to show that the appellant had come in contact with Mr. Wolfgang Blob, a German National who had imported the vehicle under Carnet-de-passage. Since the car had already been registered in favour of Shri Ramgopal at Chandigarh by the Transport Authority of Union Territory of Chandigarh, same was purchased on bona fide belief on payment of cash and on obtaining necessary documents in the normal practice of the trade of the vehicle, it was duly registered in the name of the appellant. He submitted that it is not just and proper

for the Department to dispose of the goods by way of auction sale when the confiscation order was under challenge before the Tribunal. Since the Department has already auctioned the car on 25-9-1990 for Rs. 42,300 he requested that Department may be ordered to refund a sum of Rs. 30,000, the price which the appellant had paid and balance of Rs. 12,300 may be adjusted by way of redemption fine. He said that car was over-valued by the Department at Rs. 1,30,000 as against Rs. 30,000 which resulted in penalty. Since car was sold at Rs. 42,300 the penalty is not sustainable even on this ground.

4. Shri G. Bhushan, learned SDR, appearing for the Revenue, justified the action of the Department in ordering for absolute confiscation and imposition of penalty. While reiterating the findings given in the impugned order, he submitted that car was registered in Chandigarh on the basis of the bogus N.O.C. purportedly issued by Registration Authority, Calcutta. Then the car was registered in Delhi on basis of bogus N.O.C. statedly issued by Chandigarh Registration Authority.

Further, the Carnet-De-Passage was cancelled on the basis of Wrong declaration made to the Automobile Association and such declaration was supported by forged documents purportedly issued by Delhi Customs.

Since entire transaction is illegal and vehicle has been transferred in the name of the appellant on the basis of bogus 'No. Objection Certificate' and registration, department is justified in ordering for absolute confiscation and imposing penalty. Since the vehicle in question is of foreign make, the appellant should have obtained all the Customs papers/legal documents, i.e., proof of duty payment etc. with reference to legal impartation of the vehicle to avoid penal action. He said that it is settled law that any person who is found in possession of illegally imported goods, the liability extends even in the hands of a third person who may not have anything to do with the actual import relying upon the decision of the Supreme Court in the case of Assistant Collector of Customs, Calcutta v. Sita Ram - AIR 1966 SC 955. He said that one Shri Ram Gopal with whom the appellant is supposed to have purchased vehicle was never produced by the appellant and all the addresses of Shri Ram Gopal at Calcutta and Chandigarh were found to be bogus. He said that the person who is in possession of the illegal importation

should come out with real facts as it was within his knowledge how the vehicle came to be procured from Shri Wolfgang Blob by Ram Gopal and then to him relying upon the ratio of the decision in the case of D. Bhoormal - AIR 1974 SC 81.

5. We have carefully considered the arguments advanced on both sides and perused the records including detailed written submissions filed by both sides. The illegal importation or vehicle required to be re-exported as in the instant case will not become legalised or regularised in the hands of the subsequent purchaser claiming to be the bona fide purchaser unless it was regularised/legalised on payment of necessary customs duty. In the absence of valid documents for retaining the foreign vehicle which was required to be re-exported the Department was not only justified in ordering for confiscation but fully justified ordering for absolute confiscation even in the hands of third person as the goods were liable to be confiscated on facts and circumstances as it was rightly argued by the Departmental Representative. But as regards penalty we feel there is a distinction between confiscation and personal penalty. Although both of them are penal in nature, penalty cannot be equated at par with the confiscation/redemption fine. Apart from that they are imposable under different sections. Penalty is mainly depending upon the personal involvement of the person concerned in that illegal importation. Even if the appellant acted innocently or acted under bona fide belief the goods cannot be released as the goods were liable for confiscation in the absence of valid documents. Since transaction itself is void and it confers no rights the party cannot claim the goods on the plea of bona fide purchaser. The person who carry on business and trade and that too must be in the very line of business must be well versed with the law relating to such transaction and if he acted inadvertently he has to pay the price for it as regards confiscation. But sufficient evidence was not brought on record to show that he was connived with or abetted the persons who were involved or played any role in obtaining bogus 'No Objection Certificate' or registration while transferring the said vehicle into his name. Under these circumstances, we feel the benefit of doubt has to be given to the party. In the view we have taken, we uphold the impugned order to the extent of ordering for confiscation of the vehicle but set aside the penalty.

7. With due respects to Hon'ble Member (Judicial) my views and orders in the matter are as follows: 8. A perusal of the order-in-original shows that at the adjudication stage, the appellant had submitted, inter alia, "that he did not contest the confiscation of the vehicle which may be decided on merits" (vide paragraph-33). In the Appeal Memorandum also, the main thrust of the appellant's contention was that he had acquired the same vehicle in the normal course in lawful consideration and had neither any knowledge nor reason to believe that the said vehicle had been illegally kept in the country and was liable to confiscation. It was prayed that "in case the car was confiscated the appellant should be allowed to redeem the same on payment of fine and duty". As regards the value, it was submitted that the value given in the Garnet is 3,500 DM only.

Furthermore, it was contended on behalf of the appellant that the imposition of penalty on the appellant was not sustainable both on facts and in law.

9. At the time of hearing also, the learned Counsel had mainly emphasized that there was no charge of mis-declaration of the description of the seized vehicle in the show-cause notice and the Mercedez-Benz Van is also known as Daimbler Benz and that the learned Collector had failed to take notice of the general trade practice that the vehicles are purchased and sold either through brokers or through direct contact with the parties and the identity of the holder/seller is not subject to verification in all cases. The purchaser is concerned with the transfer of his car in his favour. Further the learned Collector had failed to appreciate that the duplicate registration book fully covers the seized vehicle and that the adjudicating authority has erred in holding that the purchase/possession/acquisition or use of a vehicle was by itself not an offence under the Customs Act. Moreover, the learned Collector had wrongly held that the appellant had connived with other persons including Mr. Wolfgang Blob and Ramgopal after importation of the vehicle for its retention in India and that the car was liable to confiscation from the day of its import, as there was no material on record to connect the appellant either with Mr. Wolfgang Blob or Mr. Ramgopal at the time of import of the car.

10. That the learned Collector ought to have given in any case, an option to redeem the seized vehicle and there was no ground for directing absolute

confiscation and imposition of penalty.

11. During the course of the hearing both the sides had been given liberty to file written submissions also. It had also transpired during the course of hearing that the learned Counsel had objected on the Department's action of auctioning the car during the pendency of the appeal, particularly when a stay order had (also) been granted in their favour. In the hearing and in the written submission it was reiterated that though confiscation of the car was not disputed, there was no justification for absolute confiscation thereof and there was no valid cause for imposition of penalty.

12. The Departmental Representative on the other hand had emphasized during the course of oral hearing as well as written submissions that the vehicle of foreign make was imported under the Garnet-De-Passage/Triptyque System at Attari, and the vehicle had been transferred from Calcutta to Chandigarh and to Delhi on bogus and fictious 'no objection certificates' and its discharge was obtained through bogus endorsement and this was clearly proved from the enquiries made from the Transport Authorities at Calcutta, Chandigarh, Delhi and from the Indian Automobile Associations, Bombay and the Delhi Customs Authorities. In short, at every stage, forged documents were used to give the whole deal a 'legal' outlook with the only aim to retain the car in India without payment of customs duty. In the circumstances absolute confiscation was justified. Further, the vehicle was examined and assessed with the help of M/s. Supreme Motors Ltd., Asaf Ali Road, New Delhi in the presence of the appellant, Shri Bal Krishna and was valued at Rs. 1,15,000 approximately.

13. The learned Departmental Representative also drew attention to the discussion and findings portion of the order and emphasized that the fact that the appellant had entered into a roadside transaction with an unknown person and agreed to purchase the foreign vehicle at a small price without proper verification of antecedents and without looking about the compliance or otherwise with the customs requirements shows that he was aware that he was entering into a transaction about a tainted vehicle.

14. As regards the interim order of the Tribunal it only waived the pre-deposit and did not stay the operation of the order or give any direction for non-disposal of the vehicle through auction.

15. Since the appellant could neither produce nor help in tracing any person said to be Ramgopal; and the transfer of the vehicle was done on fake papers, no reliance could be placed even on his submission that vehicle was purchased for Rs. 30,000 or on the basis of a sale deed.

16. In the above circumstances, the Collector was justified in confiseating the vehicle absolutely and imposing penalty on the appellant on the grounds mentioned in his order.

17. I have considered the above submissions. The main point to he noted is that the foreign vehicle was imported duty-free and without import licence by its foreign owner on the basis of a conditional exemption from duty and licence granted under savings 11(m) of the Import Trade Control Order. This provision reads as follows: "11. Savings. - (1) Nothing in this Order shall apply to the import of any goods: (m) being vehicles as defined in Article 1 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 the 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: (i) Such vehicles or component parts are re-exported within the period specified in the said notification or within such further period as the Customs Authorities may allow; (ii) the provisions of the said notification or of the Trip-tyque' or 'Garnet-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 components shall be deemed to be goods the imports of which has been prohibited under the Customs Act, 1962 (52 of 1962) : Provided that nothing in these exceptions shall prejudice the application to any goods of any other prohibition or regulation affecting the import of goods that may be in force at the time such goods are imported." 18. Therefore, once the vehicle was not re-

exported and the conditions subject to which the above exemption was granted were not fulfilled it was no longer saved from the requirement of the import licence/C.C.P.and payment of the customs duty. The net consequence of violation of the conditions of the Garnet-De-Passage or the Triptyque was that the vehicle became liable to confiscation and the importer became liable to pay duty and penalty. The learned Collector was therefore fully justified in confiscating the vehicle. The appellant has also not challenged the confiscation as such, but insisted that instead of absolute confiscation only conditional confiscation with an option to redeem the same ought to have been given. However, the importation of the vehicle becomes 'prohibited' ipso facto by virtue of non-fulfilment of the conditions of the Garnet-De-Passage. Further, the charges were of a very serious nature (and included, inter alia, those relating to bogus documents and endorsements) and were duly established during the course of enquiry and crosschecking with various regional transport authorities, Automobile Associations and the Customs Authorities. Hence in the circumstances of the case, absolute confiscation was justified.

19. The second part of the appellant's contention that, in so far as he was concerned, the transaction was legal and proper and during the normal course of business and he had no knowledge about non-compliance with these customs formalities is also not borne out by the facts. Once it was shown that in a series of transactions either bogus documents or incorrect or false endorsements were resorted the onus shifted entirely on the appellant to establish his bonafides and the character of the transaction; and in these respects, the submissions of the Department have strong force.

20. It is also required to be seen how a prudent man acting prudently would have behaved in the above circumstances. Once the appellant himself was a man in the line, so to say, and the purchase was being made not from an established or known dealer but from an unknown person in a roadside transaction in respect of a foreign car at an almost throw-away price, anyone acting prudently would have readily sensed that there was something 'amiss' or 'fishy' and would have prudently made enquiries about the person or at least the goods and tried to find out whether it was a case of legal importation and the customs formalities had

been duly complied with and in fact taken precaution of asking the purchaser to show the relevant documents and satisfy himself about the validity of the documents and the bonafide nature of the offer. The appellant had apparently failed to take any such precaution and acted negligently. Not only that he has not been able to show his bonafides and his claim of innocence does not carry conviction in the circumstances of the case. On the contrary, the Department has been able to prove the charges.

21. Consequently I hold that absolute confiscation of the vehicle as well as imposition of penalty on the appellant were fully justified.

Hence I reject the appeal.

In view of the difference of opinion between the Member (Judicial) and the Vice President, the matter is submitted to the Hon'ble President for reference to a third Member on the following point: "Whether in the facts and circumstances of the case, imposition of penalty on the appellant was justified or not." Arguing on the point of difference, ld. Counsel, Sh. Harbans Singh, submitted that the charge against the appellant in the show cause notice and the finding of the Collector in the impugned order is that there has been his connivance in the illegal import of the car in which case Sec. 112(a) of Customs Act, 1962 is relevant. But the ld. Counsel urged no evidence has been led to show that appellant knew Mr.

Wolfgang, who imported the car or that the appellant had forged any document relating to the car. Ld. Counsel argued that the finding that the appellant had apparently not taken certain precautions while purchasing the car cannot be the basis for holding that there has been his complicity in the illegal import of the car and at the time of its import.

23. Sh. M.M. Mathur, ld. JCDR contended that in this case the nature of goods imported has to be seen. It is a car and it is not the same case as a road-side purchase of smuggled goods. It is in this context that the circumstances surrounding the purchase assumed importance as found in Hon'ble VicePresident's order in determining appellants' liability to penalty. According to ld. JCDR, it was also significant that appellant had, during the adjudication

proceedings, offered to clear the car on payment of redemption which shows knowledge of the unauthorised import of the Car. For the proposition that penalty in such circumstances is justified under Customs Act, the Id. JCDR relied upon case law reported in AIR 1966 SC 955 - Assistant Collector of Customs v. Sita Ram. In reply, Id. Counsel pointed out that the offer to pay redemption fine is not determinative of the issue, it being only an alternative submission and the case law cited is inapplicable as it dealt with a case where the person was found dealing in illegally imported goods.

24. The submissions made have been carefully considered. In this case as has been observed by the Hon'ble Vice President in his order there are circumstances which raise strong suspicion that the appellant could not have been unaware of the questionable import of the car into India.

But it is at the same time well-settled that suspicion, however strong, cannot take the place of evidence. The department has not been able to show with the evidence that the appellant had connived with the illegal import of the car at the time of its import or in forging the related documents which is the charge against him in the show cause notice. The department also could not trace Mr. Wolfgang, who had imported the car under carnet procedure or Ram Gopal. In these circumstances of the case, one is inclined to agree with the order proposed by the Hon'ble Member (Judicial) that the appellant be given the benefit of doubt and penalty on him be set aside. The order proposed by Hon'ble Member (Judicial) is, therefore, concurred with.

25. In view of the majority opinion, the benefit of doubt is extended to the appellants. While the confiscation of vehicle is upheld but the penalty imposed on the appellants is set aside.

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