M. A. Jackson

Vs

Collector of Customs

Civil Appeal No. 2885 of 1989

(S.P. Bharucha, S.C. Sen, M. Jagannadha Rao JJ)

08.07.1997

JUDGMENT

M. JAGANNADHA RAO, J.-

1. This appeal has been preferred by the appellant against the judgment of the Customs, Excise and Gold Control Appellate Tribunal (Special Bench at New Delhi) (hereinafter called the CEGAT) dated 30-11-1988 dismissing the appeal of the appellant with a slight modification in favour of the appellant.

2. The facts of the case are as follows :

> The appellant returned to India in 1984 from Dubai on transfer of residence availing benefits of the Transfer of Residence Rules, 1978. While coming back from Dubai, she brought along with her, one used Volvo car 244 GLE Model 1982 which was under her use in Dubai. This car had been purchased by the appellant's husband on 10-3-1982 under Invoice No. 216/10-3-1982 from one Mohd. Abdul Rahman AC Bahar, Sharjah for 38,000 Dirhams (UAE) which included 10% dealer's commission and sea-freight charges from Sweden to Dubai, apart from duty, clearance, transport and bank charges at the rate of 7%. The appellant filed a Bill of Entry 213/612-1984 at the Inland Container Depot, Bangalore. The Customs authorities assessed the value of the car at Rs. 53,305.44 and assessed duty at 150% (Rs. 79,958.16), Auxiliary duty at 40% (Rs. 21,322.18) and Additional duty of Customs (Rs. 24,915.75), in all, Rs. 126196.09. According to the appellant, the above assessable value was arrived at by giving 15% discount as against normal discount at 20% otherwise available in the Middle East countries and depreciation was worked out only at 35.5% instead of 38%. The appellant paid the duty under protest on 8-12-1984 and obtained clearance of the vehicle on the same date. The appellant wrote a detailed letter on 30-1-1985 requesting refund of alleged excess amount of duty paid by her.

3. A show-cause notice dated 17-6-1985 was issued by the Superintendent of Customs, Bangalore, under Section 28(1) of the Customs Act, 1962 asking the appellant to show cause against alleged short levy of customs duty of Rs. 1,40,174.70 which was worked out on the basis that the assessable value of the car was Rs. 1,21,603 rather than Rs. 53,605.44 p. The appellant sent a reply stating that the duty payable had already been paid, that the value of the car in UAE was always 20% higher than the actual price of the vehicle in the country of origin and that in the absence of the manufacturer's price which was not readily available, she had paid the duty as assessed, under protest, to avoid demurrage and that no details have been given in the show-cause notice as to how

the basis of alleged short levy was arrived at.

4. After 2 years and 3 months, the appellant received an order dated 21-8-1997 from the Assistant Collector of Customs, Inland Container Depot, Bangalore. In that order, it was mentioned that a comparison was made with a "price list" and accordingly, the assessable value was reworked at Rs. 96,850 as against the proposed assessable value of Rs. 1,21,603 mentioned in the show-cause notice. The order stated that the additional duty payable was Rs. 89,715.51 rather than Rs. 1,40,163.75 proposed in the show-cause notice. An appeal was preferred before the Collector (Appeals), Madras contending, inter alia, that there was no reason to reject Volvo's letter dated 5-11-1985, that the appellants were not shown the World Car Catalogue or Auto Car Magazine. The appeal was dismissed in B.Cus. 959/87 dated 16-11-1987.

5. The appellant filed an appeal before the CEGAT contending that the price lists referred to in the order of the Collector were not disclosed to the appellant, there was no short levy of duty and the additional levy was time barred. The appellant contended that there was no reason not to accept the invoice price submitted by the appellant or Volvo's letter dated 5-11-1985. However, the CEGAT dismissed the appeal by Order No. 560 of 1988(A) dated 21-11-1988. It is against the said order that this appeal has been preferred under (sic S. 129-B) of the Customs Act, 1962.

6. We have heard the arguments of the learned counsel for the appellant. He submitted that no reasons were given by the authorities as to why the manufacturer's certificate dated 5-11-1985 was not accepted. The price stated in the Auto Car Magazine was not even referred to in the show-cause notice, nor was a copy thereof furnished to the appellant at any time either before the Assistant Collector or the Collector (Appeals) or before the CEGAT. Only an extract of the prices mentioned in the Auto Car Magazine was given to the CEGAT. It is contended that there are no grounds for raising the assessable value.

7. In this special leave petition no reply has been filed by the respondents to deny the fact that the magazine which was referred to in the order of the Assistant Collector or in the order of the Collector was not supplied to the petitioner. The magazine was not referred to in the show cause notice. A reading of the order of the CEGAT shows that an extract of the price list of the magazine was placed before the CEGAT. Though an extract from the magazine was placed before the CEGAT for the first time, the CEGAT accepted the use thereof by the Customs authorities in their orders. So far as the certificate regarding price issued by the manufacturer submitted by the petitioner was concerned, the CEGAT ignored the same as it was issued 4 years after the actual purchase of the car by the importer.

8. In our view, once it is admitted that the price mentioned in the magazine was not mentioned in the show-cause notice issued to the petitioner, any reliance on the said price mentioned in the magazine by the Customs authorities must be held to be illegal. Further it is clear that though this point was taken in the grounds of the appeal before the appellate authorities, a copy of the magazine was never made available to the petitioner. The fact that an extract of the relevant portion thereof was produced before the CEGAT for the first time, does not in our opinion cure the defect. So far as the manufacturer's certificate is concerned, neither in the orders of the Customs authorities nor in the order of the CEGAT is there a finding that the price mentioned in the said certificate was nor the correct one or that the certificate was obtained collusively from the foreign manufacturer. We may also point out that there is no finding by the Customs authorities that the price which has been adopted by the Customs authorities was referable to a car of identical make, model, facilities or gadgets as the one imported. For the aforesaid reasons, the order of the CEGAT and of the Customs

authorities cannot be supported.

9. We, accordingly, set aside the orders of the CEGAT as well as the Customs authorities insofar as they are against the appellant and quash the show-cause notice issued on 17-6-1985 under Section 28(1) of the Customs Act, 1962. The appeal is allowed but in the circumstances without costs.