

M.A. JACKSON
v.
COLLECTOR OF CUSTOMS

JULY 8, 1997

[S.P. BHARUCHA, SUHAS C. SEN AND
M. JAGANNADHA RAO, JJ.]

Customs Act, 1962—Section 20(1)—Short levy of custom duty—Transfer of residence from Dubai to India—Car brought from Dubai to India—Determination of its price—Price mentioned in Auto Car Magazine not mentioned in show cause notice—Reliance on that price by Customs authority—Whether legal—Held, No.

Appellant returned to India from Dubai on transfer of residence and brought along with her one used car. The Customs authorities assessed the value of the car at Rs. 53,305.44 and assessed duty at Rs. 1,28,136. The appellant paid the duty under protest and obtained clearance of the vehicle on the same date. A show cause notice was issued u/s. 20(1) of the Customs Act, 1962 asking the appellant to show cause against alleged short levy of customs duty which was worked out on the basis that the assessable value of the car was Rs. 1,21,000 rather than Rs. 53,305.44 The appellant filed a reply. However, after 2 years and 3 months, the appellant received an order from the Assistant Collector of Customs, stating 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 and that the additional duty payable was Rs. 89,715.91 and not Rs. 1,41,163.75 proposed in the notice. Appellant filed an appeal alleging that appellant was not shown the World Car Catalogue or Auto Car Magazine and that there was no reason not to accept the Invoice price submitted by the appellant. This appeal was dismissed. This appeal had been filed u/s 745(L) of the Customs Act. The appellant alleged that there were no grounds for raising the assessable value and that no reasons were given by the authorities as to why the manufacturer's certificate was not accepted and that the price stated in the Auto Car Magazine was not even referred to in the show cause notice and only an extract of the prices mentioned therein was given to CEGAT for the first time.

A Allowing the appeal, this Court

B HELD : 1.1. Once it was admitted that the price mentioned in the Auto Car 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. Though this point was taken in the grounds of appeal before the appellate authorities, a copy of the magazine was never made available to the appellant. The fact that an extract of the relevant portion thereof was produced before CEGAT for the first time, did not cure the defect. So far as the manufacturer's certificate was concerned, neither in the orders of the Customs authorities nor in the order of CEGAT was there a finding that the price mentioned in the aid certificate was not the correct one or that the certificate was obtained collusively from the foreign manufacturer. There was no finding by the Customs authorities that the price which had been adopted by the Customs authorities was referable to a car of the identical make, model, facilities of gadgets as the one imported. The order of CEGAT and of the Customs authorities cannot be supported. [568-H; 569-A-C]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2885 of 1989.

E From the Judgment and Order dated 21.11.88 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. C/130/88-A in Order No. 560/88-A.

Rajiv Dutta for the Appellant.

F N.K. Bajpai and Narasimhan for the Respondent.

The Judgment of the Court was delivered by

G M. JAGANNADHA RAO, J. This appeal has been preferred by the appellant against the judgment of the Customs, Excise and Gold Control Appellate Tribunal (Special Bench A), 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.

The facts of the case are as follows :

H 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. 218/10.3.1992 from one Mohd. Abdul Rahman Ad Bahar, Sharjah for 38,000 Dirhanis (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 74, Appellant filed a Bill of Entry 216/8.12.1991 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. 70,979.19)/ Auxiliary duty at 40% (Rs. 21,322.18) and Additional duty of Customs (Rs. 24,915.75), in all, Rs. 1,88,108. According to the appellant, the above assessable value was arrived at by giving 15% discount as against normal discount at 50% 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. Appellant wrote a detailed letter on 30.1.1985 requesting refund of alleged excess amount of duty paid by her.

A show-cause notice dated 7.6.1985 was issued by the Superintendent of Customs, Bangalore, under Section 20 (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. 1,21,909 rather than Rs. 99,905.44. 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.

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

A duty payable was Rs. 99,719.91 rather than Rs. 1,40,163.75 proposed in the show cause notice. 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 appellant was not shown the World Car Catalogue or Auto Car Magazine. Appeal was dismissed in B.Cus. 999/87 dated 18.11.1987.

B 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 5.11.1995. However, the CEGAT dismissed the appeal by Order No. 980 of 1988(A) dated 21.11.1988. It is against the said order that this appeal has been preferred under Sec. 745 (L) of the Customs Act, 1962.

C 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 date 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.

D 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 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.

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H 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 not 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 the identical make, model, facilities of gadgets as the one imported. For the aforesaid reasons, the order of the CEGAT and of the Customs authorities cannot be supported.

We, accordingly, set aside the orders of the CEGAT as well as the Customs authorities in so far 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.

R.A.

Appeal allowed.