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2024 INSC 933

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(Arising out of SLP (C) No.16123 OF 2018)

NALIN CHOKSEY **APPELLANT**

VERSUS

THE COMMISSIONER OF CUSTOMS, KOCHI **RESPONDENT**

O R D E R

Leave granted.

2. Being aggrieved by the judgment dated 03.04.2018 passed by the High Court of Kerala at Ernakulam in Customs Appeal No.18/2009, the appellant is before this Court. By the said judgment, the High Court allowed the Customs Appeal filed by the respondent-Department answering the questions in favour of the Revenue and against the appellant herein.

3. Briefly stated, the facts are that one Sri Jalaludheen Kunhi Thayil had imported the vehicle in question being a Porsche Carrera Car on 28.06.2002. The said car was later sold

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to one Sri Shailesh Kumar in the year 2003. Subsequently, the appellant herein is stated to have purchased the said car in the month of October, 2004. It is stated that in the year 2006, the appellant, along with the importer Sri Jalaludheen Kunhi Thayil, the first possessor Sri Shailesh Kumar and a broker named Sri Haren Choksey who was the brother of the appellant, was served with the Show-Cause Notice dated 27.06.2007 demanding short-levied customs duty to the tune of Rs.17,92,847/-. The said Show-Cause Notice was issued under Section 28(1) read with Section 124 of the Customs Act, 1962 ["Customs Act"] and stated that it was a case of deliberate misdeclaration of model and the year of manufacture, along with tampering with the chassis number of the imported car for the purpose of under invoicing and under valuation of the vehicle and evading the payment of the differential duty of customs amounting to Rs.17,92,847/-. The appellant replied to the same by letter dated 24.07.2007. This was followed by an order-in-original dated 29.01.2008 passed by the Commissioner of Customs, Cochin. The Commissioner of Customs confirmed the demand of duty of Rs.17,92,847/- being the duty short-

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levied and short-paid on the imported vehicle and ordered the confiscation of the car with an option of redemption of the confiscated car on payment of fine and the differential duty. The demand was raised jointly and severely against the importer and the appellant.

4. Being aggrieved by the said order, the appellant herein preferred Appeal No. C/311/2008 before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore ("Appellate Tribunal"), which was allowed in favour of the appellant herein *vide* Final Order No.1235/2008 dated 23.09.2008. The Appellate Tribunal held that the appellant herein is a bonafide purchaser who had not purchased the car from the original importer and therefore, he had no role in the import of the car or in the misdeclaration or in any offence connected with the import. Consequently, the appeal preferred by the appellant was allowed.

5. Being aggrieved by the said order of the Appellate Tribunal, the Department filed the Customs Appeal No.18/2009 before the High Court of Kerala. As already noted, by the impugned order dated 03.04.2018, the High Court set aside the

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order passed by the Appellate Tribunal by allowing the said appeal. The High Court, while answering the questions of law in favor of the respondent herein, observed that the payment of short-levy of duty is a necessary consequence of redemption of the goods under Section 125 of the Customs Act and since the appellant herein had exercised the option to redeem the goods, he was liable to pay the customs duty despite being a subsequent purchaser. Hence, this appeal before this Court.

6. We have heard learned counsel for the appellant and learned senior counsel for the respondent-Department and perused the material on record.

7. During the course of submissions, learned counsel for the appellant Sri Shashibhushan P. Adgaonkar drew our attention to Section 28 as well as Section 124 of the Customs Act and submitted that what is in issue herein is with regard to the non-payment of the import duty in respect of the Porsche Carrera car. The appellant is not the importer of the car but only a subsequent purchaser. The liability to pay customs duty is on the importer and not on a subsequent purchaser. Further, the said car is a motor vehicle within the meaning of the Motor

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Vehicles Act, 1988. The appellant herein is in fact not the owner of the car (goods) within the meaning of Sections 124 and 125 of the Customs Act, 1962 inasmuch as the appellant herein does not fall within the scope and ambit of the expression 'owner' as defined under Section 2(30) of the Motor Vehicles Act, 1988. This is because the appellant is not the registered owner in terms of Section 39 and other relevant provisions which are under Chapter IV of the Motor Vehicles Act, 1988. In the absence of there being any registration certificate issued in the name of the appellant herein incorporating his name as owner of the vehicle, the appellant cannot be construed to be the owner of the motor vehicle in question. Therefore, according to learned counsel for the appellant, the very initiation of the proceeding by the issuance of the summons and Show-Cause Notice to the appellant is vitiated. In the circumstances, the impugned order may be set aside and the Show Cause Notice impugned as well as the proceedings against the appellant herein may be dropped was the submission on behalf of the appellant.

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8. *Per contra*, learned senior counsel Sri Rupesh Kumar appearing for the respondent-Department drew our attention to Section 28 as well as Section 124 of the Customs Act and contended that the vehicle in question was seized when it was in the possession of the appellant herein, and while it may be that the vehicle has not been registered in the name of the appellant as per the provisions of the Motor Vehicles Act, 1988 but the fact remains that the appellant is the owner of the vehicle, that is the good, having regard to the fact that he had admittedly purchased the same.

9. Therefore, the vehicle in question was rightly confiscated from the appellant's possession as insufficient customs duty was paid by the importer and the other subsequent purchaser, under Section 125 of the Customs Act. Thus, the appellant was liable to pay the differential customs duty and all other payments to the Department herein. Supporting the impugned judgment, learned senior counsel submitted that there is no merit in this appeal.

10. We have examined the arguments advanced at the bar in light of the facts of the present case. It is noted that the Show-

Cause Notice was issued, *inter alia*, to the appellant herein under Section 28(1) read with Section 124 of the Customs Act, 1962 on the premise that there had been a confiscation of the goods, i.e., the car in question and if the appellant was interested in redeeming it, an option was available under Section 125 to pay the redemption fine and seek release of the car. That according to the respondent Department, the appellant has not complied with the provisions under the Customs Act and instead has sought to evade the customs duty payable by him; that in fact the vehicle in question was seized from the possession of the appellant herein and thereafter confiscated and therefore he was liable to pay the custom duty as well as the redemption fine.

11. We have considered Section 28(1) of the Customs Act in order to ascertain whether the appellant herein is the importer of the car in question. On a reading of the definition of the expression 'importer' under clause (26) of Section 2 of the Customs Act. The definition reads as under:

> "Section 2 – Definitions. - In this Act, unless the context otherwise requires, -
>
> x x x x

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> (26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer;"

12. As per the above inclusive definition, an "importer" can include an owner, a beneficial owner or any person holding himself out to be the importer. But these personae would fall under the above definition only during the time between the importation of goods and the time when they are cleared for home consumption. Admittedly, the appellant was not the importer of the car in question, nor was the appellant involved in the process of importation of the car. The car was neither imported for his benefit nor on his behalf. It was Sri Jalaludheen Kunhi Thayil who was the importer from whom no recovery of the differential duty had been made. The appellant herein is only a subsequent purchaser of the said vehicle from a person who had purchased the same from the importer. Thus, the appellant cannot be charged for paying customs duty under Section 28 of the Customs Act as an importer or owner of the goods within the meaning of the definition of importer.

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13. We have also considered the reliance of the learned senior counsel for the respondent on Section 125 of the Customs Act. The relevant portion is as follows:

> "125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:
>
> Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed:
>
> Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.
>
> (2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods."

14. It is undisputed that there is a confiscation of the car in question in this case and the import of the said car is not

prohibited. Also, as per the aforesaid definition, the owner of the goods, or where such owner is not known, the person from whose possession or custody such goods have been seized, shall be given the option to pay a fine in lieu of confiscation and where such fine is imposed on the owner or the other person, they shall be also liable to pay any duty and charges payable in respect of such goods. However, firstly, the appellant is not the owner of the car coming within the definition of importer under the customs Act as discussed above. Secondly, in order that the appellant is to be construed to be the owner of the vehicle in question, it is necessary to advert to the provisions of the Motor vehicles Act, 1988, which defines 'owner' under Section 2(30) of the said Act. The said section reads as under:

> "2. Definitions. - In this Act, unless the context otherwise requires,
>
> x x x
>
> (30) "owner" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;"

15. A reading of the above would indicate that when a motor vehicle stands registered in the name of a person, he would be the owner of the said motor vehicle. Section 49 of the Motor Vehicles Act, 1988 deals with the necessity for registration. Admittedly, in the instant case, the car in question has not been registered in the name of the appellant herein but the registration certificate continues to be in the name of the original importer Sri Jalaludheen Kunhi Thayil. Therefore, the latter is the owner of the vehicle in law. It may be that there has been a transfer of the vehicle from Sri Jalaludheen Kunhi Thayil to Sri Shailesh Kumar from whom the appellant has purchased the vehicle. However, there is no ownership in law which can be recognized insofar as the appellant herein is concerned inasmuch as his name has not been entered in the registration certificate concerning the vehicle in terms of the provisions of the Motor Vehicles Act, 1988. Hence, the appellant herein cannot be construed to be the owner of the vehicle and hence, he does not fall within the scope and ambit of Section 125 of the Customs Act, 1962. Further, the argument that the

appellant can be made liable to pay the duty because the seized car was in the possession of the appellant cannot also be accepted, since as per Section 125(1) of the Customs Act, the possessor of the car can be made liable only when the owner of the goods is not known. However, in the instant case, it is an admitted position that the ownership of the vehicle in law is still with the importer Sri Jalaludheen Kunhi Thayil and thus, the owner of the vehicle is known.

16. Consequently, the very initiation of the proceedings against the appellant herein under the provisions of Customs Act by summoning him by issuance of Show-Cause Notice and subsequent seizure and confiscation of the vehicle in question are not in accordance with law and are unlawful.

17. Hence, the impugned judgment of the High Court, Show-Cause Notices and other proceedings initiated against the appellant herein being not in accordance with law stand quashed. The order of the Appellate Tribunal dated 23.09.2008 stands restored.

18. It is however clarified that the quashing of the proceedings as against the appellant herein would not come in the way of

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respondent-Department proceeding against the proper person, namely, the importer and owner of the car in question.

19. The appeal is allowed and disposed of in the aforesaid terms.

20. No costs.

. . . . . J.
[B.V. NAGARATHNA]

. . . . . J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI;
NOVEMBER 27, 2024.

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