

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.18 OF 2023

WITH

INTERIM APPLICATION (L) NO.14158 OF 2023

IN

CUSTOMS APPEAL NO.18 OF 2023

Commissioner of Customs,)
JNCH, Nhava Sheva-V JNPT, Customs House,)
District- Raigad, Maharashtra-400 707)Appellant

V/s.

Modern Trading & Logistics LLP)
Shop No.4, Patel Compound Body Lane, Opp. Tardeo)
RTO, Mumbai Central, Mumbai 400 034)Respondent

Mr. Mataprasad Sharma i/b. Ms. Maya Majumdar for appellant/applicant.
Mr. Mutahhar Khan a/w. Mr. Kenneth Martin i/b. Advani Law LLP for respondent.

**CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.**

DATED : 14th AUGUST 2024

ORAL JUDGMENT (PER K.R. SHRIRAM, J.) :

1 Mr. Khan states that respondent has (a) paid duty of Rs.18,16,713/-, (b) submitted Bond equal to value of goods including duty amount and (c) submitted Bank Guarantee equal to 50% of duty. Mr. Khan, on instructions states that the Bank Guarantee has been renewed and will be kept renewed as per the requirements of provisional release. Statement accepted as undertaking to this Court.

2 In view of the statement made by Mr. Khan, Mr. Sharma states that the interim application can be disposed.

3 Interim application accordingly disposed.

4 Respondent had filed a bill of entry dated 3rd January 2019 for clearance of one Motor Vehicle "Toyota Hiace Commuter Van 2750cc" having invoice value of USD 40,200 (C&F). The assessable value of the vehicle was Rs.28,74,545/- having declared duty of Rs.18,16,713/-. The vehicle was seized by SIIB(I) on 6th February 2019 on the belief that the vehicle was liable for confiscation under Section 111 (d) of the Customs Act, 1962 (the Act). The vehicle was examined by SIIB(I) and since the preliminary investigation revealed it to be a second hand vehicle and not new as declared by the Importer, appellant held that the import is in violation of the policy condition (1)(II)(d)(iv) of Chapter 87 of the Customs Tariff Act, 1975 (the Tariff Act).

5 Respondent requested for provisional release of the vehicle on payment of duty. By a letter dated 15th February 2019 the Deputy Commissioner of Customs informed the appraising group with copy to respondent that they have no objection for provisional release of the vehicle as per provisions of Circular No.35/2017-Cus dated 16th August 2017 on payment of customs duty of Rs.18,16,713/- and on other conditions mentioned therein.

6 Aggrieved by the conditions imposed vide letter dated 15th February 2019, respondent filed an appeal before the Commissioner (Appeals), JNCH, which was rejected by an order in appeal dated 15th May

2019. Against the said order, an appeal was preferred to the Customs Excise and Service Tax Appellate Tribunal (CESTAT), which appeal was allowed by an order dated 7th December 2022. The CESTAT held that the inclusion of condition (1)(II)(d)(iv) of Chapter 87 of the Tariff Act was redundant and superfluous and allowed the appeal by expunging the said condition as requirement of provisional release. Aggrieved by the said order, this appeal has been preferred.

7 Appellant proposes the following two substantial questions of law :

A) Whether the CESTAT was right in deciding that fulfilment of policy condition (II)(iii) of Chapter 87, i.e., on arrival of vehicle at the Indian Port but before clearance for home consumption, submit the vehicle for testing by the Vehicle Research and Development Establishment, Ahmednagar of the Ministry of Defence, Govt of India or Automotive Research Association of India, Pune as redundant?

B) Whether the CESTAT was right in relying upon decision of High Court of Kerala in Commissioner of Customs v. Ankineedu Maganti [2012 (275) ELT 551(Ker.)]?

8 It is true that separate policy conditions have been notified for new vehicles and for used vehicles. The condition, which is subject matter of the appeal, came up for consideration before the CESTAT in **Ankineedu Maganti v/s. Commissioner of Customs, Cochin**¹, which was subsequently

1 2010 (262) ELT 484 (Tri-Bang.)

upheld by the Hon'ble Kerala High Court in *Commissioner of Customs vs. Ankineedu Maganti*². The Court held that the type of approval certificate mentioned in the policy condition of Chapter 87 to be issued by the Vehicle Research and Development Establishment (VRDE), Ahmednagar under the Ministry of Defence or at the Automotive Research Association of India (ARAI), Pune was only to ensure that the import of any goods, post clearance, would not be in breach of the essential requirements of law subject to which motor vehicles will be registered for operation on roads. The policy condition is not just for the sake of regulating imports and exports of the country but to ensure that the imported goods are compliant with the regulatory measures and that the vehicle complies with all the stipulations for operation and running on Indian roads. We would agree with the view expressed by the Hon'ble Kerala High Court in *Ankineedu Maganti* (Supra).

9 In the case at hand, the CESTAT not only followed the judgment of the Hon'ble Kerala High Court but also noted the factual aspect that the vehicle has already been registered with the competent authority under the Motor Vehicles Act, 1988. If the vehicle did not comply with the stipulations for operation and running on Indian roads, certainly the vehicle would not have been registered under the Motor Vehicles Act, 1988.

2 2012 (275) ELT 551 (Ker.)

10 In the circumstances, in our view, no substantial question of law arises.

11 Appeal dismissed.

(JITENDRA JAIN, J.)

(K.R. SHRIRAM, J.)