
Order with signature of Judge

1. For orders on CMA No.1930/08.
2. For Katcha Peshi.

01.12.2009

Mr. Usman Shaikh, Advocate for the applicant.

>>>>>> <<<<<<<

At the very commencement of the hearing of this case the learned counsel for the applicant filed a statement containing the following questions of law which are stated to be arising from the impugned order dated 19.5.2008 of the Customs Excise and Sales Tax Appellate Tribunal:

1. Whether the Hon'ble Member Technical is empowered to hear and decide the question of law under the Customs Act 1969? If not what is its effect?
2. Whether the learned Member has not appreciated the documentary evidence on record? If not what is its effect?

3. Whether the impugned show cause notice is in accordance with the law as learned adjudication officer was himself not sure that whether the Appellant should be charged under Section 32 or Section 81 of the Customs Act 1969? If not what is its effect?

The learned counsel for the applicant was asked to show as to what was the question of law involved in the appeal before the Tribunal which the Member Technical was not competent to decide. He argued that the facts and circumstances dealt with by the Tribunal in para 11 of its order were basically questions of law and, therefore, the Member Technical was not competent to decide the same. He further argued that the Member Technical has not given any finding on the fact that though the applicant has declared the imported consignment to be weighing 88729 KGS but Karachi Port Trust weigh bridge showed that the consignment weighed 80860 KGs and that the customs duty ought to have been charged on the weight certificate given by KPT and not on the declared weight of the consignment.

For ease of reference, paragraph 11 of the impugned order is as follows:

"11. To begin with, the appeal is time barred by four days for which no explanation has been given by the appellants. The appellants contention that the supplier has charged a sum of US\$ 10921.58 instead of US\$ 12921.58 has not been substantiated, in fact the bank contract provided by the appellants shows that the correct value of the goods was US\$12921.58. The assessment in the instant case was made at US\$ 350/metric ton on the basis of evidence available with the respondents. The contention of the appellants before the different adjudicating forum that they received a special price from the supplier, the concept of special price has no link or connection with the valuation method under section 25 of the Customs Act, 1969, thus, the argument lacks substance as it was not a transactional value. The argument of the appellant that the goods were classifiable under heading 7404.000 customs duty @ 10% instead of PCT heading 2619.000

customs duty @ 20% is not correct. As per the declaration on the bill of entry and examination report, the goods were classifiable under PCT heading 2619.000. As per importer's/supplier's own statement in letter dated 18.08.2003, the imported Dross has been recovered from industrial process which was "waste material drawn during the manufacture of Ingots, Sows, etc." as such it cannot be termed as refined copper. Thus, the appeal lacks merit and is dismissed accordingly."

A bare perusal of this paragraph shows that the Tribunal has decided all the questions which were basically of facts and nothing therein is shown to us having any implication of question of law nor any such question of law was made out before us.

So far as the question of weight of the consignment is concerned, the Tribunal has given a finding on page 11 of its decision (Para 9) that duties and taxes are assessed on declared weight and not on the assessed weight. Learned counsel for the applicant was asked to show law with regard to such finding of the Tribunal but he was unable to do so.

Under sub-section (1) of section 196 of the Customs Act, 1969, the High Court is required only to deal with such a reference which gives rise to questions of law arising out of the order of the Tribunal. Incidentally, the matter argued before us, as reflected above, shows that neither any question of law was considered by the Tribunal nor any question of law seems to arise from the impugned order.

Such being the position, there is no option left but to dismiss this Customs Reference Application, which is, accordingly, dismissed in limine. The listed application is also disposed of.

J U D G E

J U D G E

Aamir/PS