IN THE HIGH COURT OF SINDH, KARACHI

Spl. Cus. Ref. Appln. No. 173 of 2016

Date	*Order with signature of Judge*

Before:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Maalik Gaddi.

1. ***For orders on office objection Nos. 4, 10, 17 & 20.***
2. ***For hearing of Main Case.***
3. ***For orders on Misc. No. 1082/2016.***

16.09.2016:

Sardar Faisal, advocate for the applicant.

O R D E R

Aqeel Ahmed Abbasi, J.: Through instant reference application, following questions have been proposed, which according to learned counsel for the applicant, are questions of law arising from the impugned order dated 06.01.2016, passed by the Customs Appellate Tribunal Bench-I, Karachi in Customs Appeal No.H-651/2015: -

> *"**I.*** *Whether on facts and circumstances of the case the learned Customs Appellate Tribunal has mis read the facts and evidence while passing an order of fireworks which was never claimed by the Applicant?*
>
> ***II.*** *Whether in the light of the judgments of the Superior Courts the Reference Application be remanded to Learned Customs Appellate Tribunal for denovo consideration of appeal in accordance with law?'*

2. Learned counsel for the applicant, after having readout the impugned order passed by the Customs Appellate Tribunal and the orders passed by the two authorities below, submits that the Appellate Tribunal was not justified to concur with the findings of two authorities below, which was based on misreading and non-reading of facts and the evidence. It has been contended by the learned counsel that the subject consignment, which was seized by the respondent infact, did not belong

to the applicant, who only claimed to have imported blankets from China, whereas, it has been wrongly held that such blankets are of Korean origin. It has been prayed that the impugned order may be set-aside and the matter may be remanded to the Tribunal to rectify such factual error.

3. We have heard the learned counsel for the applicant, perused the record and the impugned order passed by the Customs Appellate Tribunal as well as the orders of two authorities below in the instant reference application. We have also gone through the contents of the Show Cause Notice, which was issued to the applicant before passing the Order-in-Original, which reflects that the applicant was specifically confronted with the articles seized by the seizing authority, which included the blankets and fireworks items, which according to seizing authority were banned items. It has been categorically held by the adjudicating officer that such articles were not locally manufactured and were of Korean origin, whereas, the applicant could not place on record the relevant documents regarding payment of duty and taxes on such articles. Such finding of facts has also been duly approved by the Collector of Customs as well as by the Customs Appellate Tribunal. It will be advantageous to reproduce such finding of the Customs Appellate Tribunal, which reads as follows:-

> *"**3.** A show cause notice was issued and case was adjudicated vide order-in-original No.27/2012 dated 22.05.2012. The learned Adjudicating Officer passed an order for out right confiscation of foreign origin banned items i.e. (i) Golden Fire Works (ii) Phoolghari Fire Works (iii) Anar Fire Works as well as importable Plastic Car Toys from China on basis of non-claimant. The appellants aggrieved filed an appeal before the Collector Customs (Appeals), Karachi who passed the impugned order-in-appeal No.9381/2014 dated 07.11.2014 as follows:*
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> > "I have examined the record of the cases and heard the rivals. The appellants have failed to produce evidence of lawful import of the impugned goods. There are no grounds to interfere with the order. The appeal is rejected."
>
> ***4.** The appellants aggrieved and pleaded that the impugned orders are based on whimsical grounds and established practice as well as violative to the ruling of Superior Court passed in the case of Collector Vs. M/s. A. R. Hosiery Works reported as PCTLR 2007 P. 734 wherein held that Section 32 of the Customs Act did not cause every*

declaration, it only revolves around the evasion of taxes where no evasion of taxes is involved, the application of penal clause are unlawful. The Tribunal has also passed orders in cases of M/s.Al-Aamir Enterprises Vs. Additional Collector, Preventive, Appeal No.K-715/2009 dated 14.05.2012 & Raees Ahmed Vs. Collector, Appeal No.H-719/2002 & K-720/2002 dated 29.10.2004 where held that the goods which are freely available in the markets cannot falls or treated under section 2(s) of the Customs Act, 1969 and cases of M/s. Khawaja Shah Rukh Majeed Vs. Collector, Appeal No. 69/1995 & M/s. Furrukh Majeed Vs. Collector Appeal No.K-07(45)/1996 held that goods purchased/resold in local market cannot be seized on the plea of foreign origin goods. The ex parte decision is clear negation of principles of natural justice. He referred the instructions of Federal Board of Revenue given to the adjudicating officer in cases vide File No.434/62 Standing order No.45/62 in light of Customs General Manual Order relating to Customs Tariff for compliance. The criteria have been laid down for use of discretionary powers in the case of M/s. Walayat Ali Mir vs PIA, SCMR 1995 P.650. The learned Collector Appeal while conferring the order of the Adjudicating Officer on the aspect of Sales Tax invoice/verification of the importers EMAN ENTERPRISES C/O Haji Idrees Khan has erred. Provisions of Sales Tax Act for registration, voluntary registration, admissibility of tax and tax unpaid is sole function of Inland Revenue/IR for taking any coercive action. It is prayed that respondents be directed for release of seized goods in views of law and rulings of Superior Courts. The imposition of 20% fine on duty paid consignment is misuse of discretionary powers which is liable to be set aside.

***5**. The departmental representative assorted and argued the case as discussed in the impugned orders as well as grounds taken in the show cause notice.*

***6**. The record of case perused. It appears from the record that the different items of the works were recovered are banned items, therefore, not declared by the appellants properly as per their descriptions. As regards to other items which were confiscated on basis of non-claimants, hence, I have no option, except not to interfere in the impugned orders and confirm the same. the appeal is dismissed and case is disposed of accordingly."*

4. Learned counsel for the applicant has not been able to show as to how such concurrent findings as recorded by the two authorities below on facts suffer for any error or illegality or can be termed as perverse. Moreover, factual error if any, would have been sought rectification by the applicant before the Adjudicating Authority or before the Collector (Appeals) and even before the Customs Appellate Tribunal by filing rectification application to such effect, however, it appears that neither

any rectification has been sought nor it has been argued before the Appellate Tribunal on behalf of applicant. The applicant's request before this Court to rectify the factual error or to remand the matter back to the Customs Appellate Tribunal to examine these facts once again appears to be misconceived and contrary to the scope of Section 196 of the Customs Act, 1969, which is limited only to the extent by examining the questions of law arising from the order passed by the Appellate Tribunal in appropriate cases, and not to examine the disputed questions of facts. Learned counsel for the applicant while confronted with above legal position could not controvert the same, however insisted that the decision of the Appellate Tribunal as well as the orders of two forums below are based on misreading and non-reading of evidence, however, while asked to refer to any such evidence or material which according to him has either been ignored or the finding as recorded by the Appellate Tribunal is perverse, the learned counsel, instead of responding to such query, argued that the seizure of the subject articles is otherwise contrary to law and decisions of Superior Courts.

5. We are of the considered opinion that no question of law arises from the impugned order passed by the Customs Appellate Tribunal in the instant case, whereas, the questions as proposed are neither the question of law nor there has been any finding recorded by the Customs Appellate Tribunal relating to proposed questions which are based on facts. As regards merits of the case, it appears that no question has been proposed by the applicant, therefore, we are not inclined to record our finding as to the propriety of the treatment meted out by the Adjudicating Officer or the Appellate Authorities in the instant case. We do not find any substance in the instant reference application, which is devoid of any merits, hence, the same is hereby dismissed in limine alongwith listed application with a cost of Rs.10,000/- (Rupees Ten Thousand only) to be deposited in the account of High Court Clinic within seven days of this order.

6. Before parting with this order, we may observe that the dismissal of instant reference application in above terms would not operate as a bar for applicant from seeking rectification of any factual error, if any, before the relevant forums in accordance with law.

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A.S.