IN THE HIGH COURT OF SINDH AT KARACHI

SPL. CUS. R. A. NOs.132 to 153 of 2016

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

Collector of Customs _____ **Applicant**

Versus

M/s Ahmed Crockery _____ **Respondent**

Date of hearing:	17.08.2016
Date of order:	17.08.2016
Applicant:	Through Mr. Muhammad Khalil Dogar, Advocate.
Respondent:	Nemo for the respondent.

O R D E R

Aqeel Ahmed Abbasi, J. Since common questions have been proposed in the aforesaid Reference Applications, which according to learned counsel for the applicant, are question of law, which arise from the impugned judgment passed by the Customs Appellate Tribunal, Karachi Bench-I, in Customs Appeal No. K-1049 to 1070 of 2015 in the case of both the respondents, therefore, instant Reference Applications are being heard and disposed of at Katcha Peshi stage with the consent of the learned counsel for the applicant through common order.

2. Following common questions have been proposed by the applicant in the instant Reference Applications:-

i. *Whether in the light of facts & circumstances of the case the Appellate Tribunal has erred in law by not considering the actual facts of the case that as per explicit provisions of Section 80(3) of the Act, the checking/re assessment is to be made without prejudice to any other action including the issuance of the Show Cause Notice in terms of Section 32 of the Act?*

ii. *Whether the Appellate Tribunal has erred in law by not considering the actual fact that without re assessment under Section 80(3), the recoverable amount cannot be calculate?*

iii. *Whether in the light of facts & circumstances of the case the Appellate Tribunal has erred in law by not considering the fact that assessment proceedings of GD are displayed to importer/user of the WeBOC in "**real time**" in terms of Section 155-E and in the instance case, the importer instead of awaiting the proceedings in terms of Section 32 of the Act 1969 filed an appeal in terms of Section 193 of the Act?*

iv. *Whether in the light of facts & circumstances of the case the Appellate Tribunal has erred in law by not considering that the provisions of Section 32/32A and Section 195 of the Customs Act, 1969, have independent of each other and different areas of jurisdiction, thus, for recovery of lost revenue in terms of Section 32/32A of the Customs Act, 1969, there is no question to re-open the case under Section 195 of the Customs Act. No G.D. can be termed as past & closed till 5 years?*

v. *Whether the findings of the Tribunal are not perverse for non-reading and mis-reading of the record available before the Appellate Tribunal?*

3. Learned counsel for the applicant after having readout the proposed questions and the impugned order passed by the Customs Appellate Tribunal in the aforesaid cases submits that the precise controversy involved in the instant case revolves around determination of a legal controversy as to whether imported goods once cleared by the Customs Authorities on presentation of G.Ds under Section 80 of the Customs Act, 1969, which were also out of charge can be re-assessed in terms of Section 80(3) of the Customs Act, 1969 without prejudice to proceedings under Section 32 of the Customs Act, 1969, as according to

learned counsel, Customs Authorities are empowered to re-assess such goods in terms of Section 80(3) before invoking the provision of Section 32 of the Customs Act, 1969. It has been requested that question of law may be re-formulated so that the subject controversy may be decided by this Court in the instant reference application. Accordingly, following common question is re-formulated for opinion of this Court in the aforesaid Reference Applications:-

> "***Whether under the facts and circumstances of the case the Customs Appellate Tribunal was justified to hold that the Customs Authorities are not empowered under Section 80(3) of the Customs Act, to re-open an out of charge goods declaration duly assessed under Section 80 of the Customs Act, 1969 without invoking the provision of Section 195 of the Customs Act, 1969 or issuing Show Cause Notice in terms of Section 32 within the stipulated period of limitation on the allegation of mis-declaration?"***

4. Learned Counsel for the applicant argued that though the goods declaration in the aforesaid cases were submitted in terms of Section 79 which were duly assessed by the respondent department under Section 80 of the Customs Act, however, subsequently, on checking of such goods declaration on the basis of data available with the respondent department in respect of value of the similar goods, the imported goods have been re-assessed in terms of Section 80(3) of the Customs Act, 1969, and there was no need to issue any Show Cause Notice in terms of Section 32, as according to learned counsel, the provision of Section 80(3) of the Customs Act can be invoked at any stage without prejudice to any other action in this regard. It has been prayed that the question proposed hereinabove may be answered in negative in favour of the respondent.

5. We have heard the learned counsel for the applicant, perused the impugned judgment passed by the Customs Applicant Tribunal in aforesaid Reference Applications as well as the orders passed by the Authorities below with the assistance of the learned counsel for the applicant. The facts as stated in the memo of reference as argued by the learned counsel for the applicant are not disputed, which reflects that admittedly, the goods imported by the respondent were duly assessed for duty and taxes on submission of goods declaration under Section 79 of the Customs Act by invoking the provisions of Section 80 of the Customs Act, whereafter, the goods were admittedly out of charge. However, after a lapse of about more than one year such G.Ds have been re-assessed by the Customs Authorities on the pretext that the value declared by the respondent was not in consonance with the value of the similar goods imported by the other importers during the relevant period. It has also come on record that, in addition to re-assessment of duty and taxes under the purported exercise in terms of Section 80(3) by the Customs Authorities intimating the recoverable amount through computer message, the Customs Authorities have also forwarded a contravention report to the office of Adjudication Collectorate and Show Cause Notice had also been issued in this regard to the respondent in respect of same goods declaration and the subject consignment. Such steps taken by the Customs Authorities on the pretext that the goods imported by the respondent have been mis-declared and required to be re-assessed in terms of Section 32 of the Customs Act in terms of contravention report prepared in this regard, reflects that the subject goods declaration could not be re-assessed in terms of Section 80(3), particularly, when such goods were out of charge after checking and assessment by the Customs Authorities in terms of Section 80 of the Customs Act, 1969. This factual

and legal aspect of the matter has been duly examined by the Collector of Customs (Appeals) as well as by the Customs Appellate Tribunal in both the cases with due care and caution. It will be advantageous to reproduce the relevant finding of the Customs Appellate Tribunal as contained in Para 7 and 8 of the impugned order, which reads as follows:-

> *"7. We have gone through the record of the case and heard parties to the dispute in our view the Order-in-Appeal passed by the Collector (Appeals) is absolute in conformity with the provisions of Customs Act, 1969 as contained in Section 80, 32 and 179 of the Act. The appellant department is not empowered under Section 80(3) of the Customs Act to reopen 'an out of charge' GD. The importers filed GDs under Section 79 and the Customs Department assessed the same under Section 80 during the processing of GD. Once the assessment is finalized and the GD is cleared under Section 80 of the Act, it can only be reopened under Section 195 by the Board or the Collector within two years or an appeal must be filed under Section 193 within 30 days before the Collector (Appeals) or a Show-Cause Notice be issued under Section 32(3) of the Customs Act.*
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> *8. In the instant case the Customs did not undertake the right course of action and opted to reopen the GD by sending a view message, which action is not warranted under the Customs law. This Appellate Tribunal came to know through the Preliminary Objection on Maintainability of the subject appeal filed by Respondent No.1 that the appellant department had also forwarded a contravention report to the office of Adjudication Collectorate and Show-Cause Notice had also been issued in this regard. This action of the appellants renders this appeal infructuous as the right course of action has now been adopted by the Customs by referring the case to the Adjudication Collectorate. In light of the above discussions, the appeal is dismissed with no order to cost."*

6. From perusal of hereinabove facts and circumstances of the case and after examination of the legal provision and the finding as recorded by the Appellate Tribunal in above referred paras, we are of the opinion that the impugned judgment passed in the instant Reference Applications does not suffer from any factual or legal error, hence, the same does not require any interference by this Court under Section 196 of the Customs

Act, 1969, as it depicts correct legal position. Accordingly, the questions proposed hereinabove is answered in affirmative against the applicant in favour of the respondent.

Both the above Reference Applications are dismissed in limine along listed applications.

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