

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.**D-4297 of 2020** alongwith
Special Customs Reference Application Nos.831 to 840 of 2019
ICI Pakistan Limited v The Additional Collector & Others

DATE

ORDER WITH SIGNATURE OF JUDGE

Priority.

1. For hearing of CMA No. 18062/20 (stay)
 2. For hearing of main Case.
-

22.12.2020.

Mr. Ovais Ali Shah, Advocate for the Petitioner.
Mr. Salman Aziz, Advocate for Applicants in Reference Applications.
Dr. Shahab Imam, Advocate for respondents
Mr. Ahmer Assistant Attorney General for Federations.

Through above listed Reference Applications, the Applicant has impugned Judgment dated 09.07.2019 passed in Customs Appeal No.K-987/2015 and other identical connected matters proposing the following questions of law:-

- a. Whether the Customs Appellate Tribunal after announcing a short order accepting the Applicants' Customs Appeal No.K-987/2015 has erred by issuing a final adverse order against the Applicant?
- b. Whether the Customs Appellate Tribunal has erred in holding that the goods imported by the Applicant, Wannate 8019, fall for classification under PCT Heading 3824.9091 as opposed to PCT heading 3909.5000?
- c. Whether the Customs Appellate Tribunal has erred in not extending the benefit of SRO-659(I)/2007 to the Applicant on goods imported under PCT Heading 3909.5000 and alternatively under PCT heading 3824.9091?
- d. Whether the Customs Appellate Tribunal erred by holding that the benefit of SRO 1125(I)/2011 was not available to the Applicant on the subject consignment?
- e. Whether the Customs Appellate Tribunal has erred by holding that officers of Customs have the jurisdiction to recover and adjudicate upon alleged short paid sales tax on imports?
- f. Whether penalties and fines can be imposed on the Applicant under the legal and factual circumstances of the case?

On 07.09.2020, the Applicant's Counsel was confronted as to Question No. "a" and the anomaly in this matter, wherein, the Tribunal had passed a short order on 09.07.2019 by allowing the Appeals, and thereafter while recording the Reasons, not only dismissed the Appeals; but there was no mention of any short order. The Court was of the opinion that since the issue could not be looked into under s.196 of the Customs Act, therefore, a writ petition may be an appropriate remedy.

Thereafter the Applicant filed Petition No.4297/2020 by impugning the said order(s) and the manner in which proceeding had culminated before the Tribunal, whereby, the reasons were recorded as against its own short order.

On 23.11.2020 learned Counsel for the Petitioner was confronted with the case reported as PLD 2015 SC 322 (*The State v. Daniyal alias Dani*), wherein, in somewhat similar circumstances, the Hon'ble Supreme Court after coming to the conclusion that if a short order has been signed by a Court (in that case High Court) then the reasons cannot go against the very short order; however, ultimately the matter was remanded for deciding it a fresh, and today learned Counsel has conceded that after setting aside both the orders (short order and reasons) of the Tribunal, matter be remanded for a decision afresh. On the other hand, learned Counsel for department has argued that since huge revenue is involved and matter has been adjudicated upon by the Tribunal against the petitioner, they may be directed to deposit the amount with the department.

We have heard the learned Counsel and perused the record. Insofar as the contention of respondents Counsel is concerned we are unable to agree with that as the Tribunal had admittedly allowed the appeals by means of a short order, and thereafter, while recording reasons / final judgment, has altogether ignored such order and has in fact even failed to record such fact in the detailed judgment as if such short order was never passed. Admittedly, there is a certified copy of the same on record and cannot be ignored or brushed aside by this Court. In fact, it is a case of serious lapse on the part of the learned Members of the Bench as well as office of the Tribunal.

In the circumstances, since the issue already stands decided by the Hon'ble Supreme Court in the case of *The State v Daniyal (Supra)*¹, this Petition is allowed by following the said dicta laid down by the Hon'ble Supreme Court and the short order dated 09.07.2019 as well as the Reasons / detailed judgment dated 09.07.2019 are hereby set-aside.

¹ It goes without saying that in a case where the judgment is reserved a Court is well within its jurisdiction to fix the matter for rehearing of any point which needs further elaboration but if a judgment is announced with a final verdict regarding the fate of an accused person and such announcement is through a short order to be followed by detailed reasons and such short order is actually signed by the Members of the Bench then the Court is left with no jurisdiction to change the verdict subsequently or even to fix the case for rehearing on the merits or even on the question of sentence unless such Court possesses review jurisdiction which may even be exercised suo motu. In the case in hand the matter was that of a criminal appeal and in such a matter the High Court of Sindh, Karachi had no review jurisdiction available to it and, therefore, once the above mentioned short order had been passed by it deciding the fate of the respondent and of his appeal then the High Court was subsequently bereft of any jurisdiction to order rehearing of the matter for the purposes of considering alteration of its earlier announced judgment.

Question No. "a" in the Reference Applications is answered in the affirmative which for the present purposes is the only question arising out of the order of the Tribunal. Matter is remanded to the Tribunal for decision of the matter afresh after affording opportunity of hearing to both the parties. Since the Tribunal is non-functional presently, till such time the Appeal is finally decided, no coercive measures be adopted by the department for recovery of impugned demand(s). It shall be ensured that the matter is not placed before a bench comprising any of the members who have passed the order in question.

Reference Applications and Petition alongwith pending applications stand disposed of in the above terms. Let copy of this order be issued to the Tribunal in terms of s.196(5) of the Customs Act, 1969.

Office to place copy of this order in all listed files.

Judge

Judge

Ayaz P.S.