

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Special Customs Reference Application (“SCRA”) Nos. 669 to 730 / 2016 (62 cases)

Date Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

Applicant: **The Collector of Customs MCC**
Port Muhammad Bin Qasim Karachi.
Through Mrs. Masooda Siraj, Advocate.

Respondent: **M/s. Ghani Glass Limited,**
40-L, Model Town Extension, Lahore.

Date of hearing: **18.01.2021**

Date of Order: **18.01.2021**

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant has impugned two separate but identical Judgments dated 23.07.2016 passed in Customs Appeal No. K-22 to K-52/2015 (31 cases) and Custom Appeal No. K-53 to 83/2015 (31 cases) by the Customs Appellate Tribunal, Karachi, and had proposed as many as 17 Questions of Law; however, vide order dated 15.12.2020, Counsel for the Applicant was confronted with directions to file appropriate brief Questions of Law through statement. Today, she submits that though amended questions have not been filed; however, she under instructions will only press Question Nos. 1, 2, 6, 8, 11 & 12 which read as under:-

- “1) Whether the Honourable Customs Appellate Tribunal erred in considering and appreciating the record and so also the same is based upon mis-reading and mis-interpretation of Section 81 of the Customs Act, 1969?
- 2) Whether the Honourable Customs Appellate Tribunal has also erred in considering the facts and circumstances of the case which crystal clearly confirming that the importer’s consignments were imported, assessed and cleared when the Ruling No. 540/2013 of US\$ 25/MT was very much in field was applicable on the imported goods?
- 6) Whether the Honourable Customs Appellate Tribunal has also erred in considering the facts that the Valuation Ruling No. 553/2013 was

suspended only within 20 days of its issuance by the Honourable High Court of Sindh vide order dated 30.05.2013 passed in Suit No. 699/2013 filed by the local manufacturer M/s I.C.I. Pakistan Ltd. Thus, the same could not be considered for the assessment on importers goods / GDs?

- 8) Whether the Honourable Customs Appellate Tribunal has also erred in considering the very vital point that mere reading of contents of the suspended Valuation Ruling No. 553/2013 are absolutely confirming that the Valuation Ruling No. 540/2013 was not separately rescinded rather the new valuation Ruling No. 553/2013 substituted the valuation ruling?
- 11) Whether the Honourable Customs Appellate Tribunal has also erred in considering the fact that considering the periods covered by the aforesaid three Valuation Rulings as mentioned above, the Valuation Ruling No. 540/2013 covers the period from after the Valuation Ruling No. 553/2013 was suspended?
- 12) Whether the Honourable Customs Appellate Tribunal's uphold the observations of the learned Collector Appeals that after suspension of Valuation Ruling No. 553/2013 the Valuation Ruling No. 540/2013 could not be revived is without substance and against the express provisions of Section 25-A(4) of the Customs Act, 1969?"

Learned Counsel for the Applicant has read out the order of the Tribunal and submits tht the Tribunal has seriously erred in passing the impugned order inasmuch as the earlier Valuation Ruling No. 540/2013 automatically stood revived when one of the local manufacturers¹ of the product² in question filed Suit³ and by way of an interim order⁴ the new Valuation Ruling bearing No.553/2013 dated 10.05.2013 was suspended; hence, the provisional assessment was correctly finalised, and therefore, the proposed Questions be answered in favour of the Applicant.

We have heard the learned Counsel for the Applicant and after going through the record we are not inclined even to issue any notice to the Respondents inasmuch as though the Applicant had preferred Appeal before the Tribunal; however, the order of the Collector (Appeals) dated 26.08.2014 passed on the Appeal filed by the Respondent was as such not against the Applicant Department or for that matter did not warrant filing of an Appeal. The relevant findings of the Collector Appeals in the said order is as under:-

¹ ICI Pakistan Limited.

² Soda Ash

³ No. 699/2013

⁴ Dated 30.5.2013

“3 I have examined the case record. The Valuation Ruling No. 540/2013 dated 22.01.2013, stands rescinded / inoperative in view of the issuance of subsequent Valuation Ruling No. 553/2013 dated 10.05.2013. However, the operation of Valuation Ruling No. 553/2013 was suspended by Hon’ble High Court of Sindh vide order dated 30.05.2013 in Suit No. 699 of 2013, which is still pending before the Hon’ble Court. The respondent Collectorate erred in inferring that the suspension of Valuation Ruling No. 553/2013 has ipso facto revived previous Ruling No. 540/2013. Therefore finalization of assessment by the respondent as per Valuation Ruling No. 540/2013 is bad in law and therefore set aside. At the same time it shall not be construed that the provisional determination stands finalized by efflux of time provided under section 81 of the Customs Act. The matter is still pending before Hon’ble Court. Therefore, in view of the dispensation provided under second proviso to sub-section (2) of Section 81 of the Act, time limit to finalize provisional determination has not been exhausted. The respondent shall wait for decision of the Hon’ble Court, thereafter, they can finalize the provisional assessment of value in accordance with the Valuation Ruling, whichever is held applicable. The appeal stands disposed of accordingly.”

Perusal of the aforesaid order reflects that the learned Collector Appeals had correctly observed that by mere suspension of the subsequent Ruling⁵ the earlier Ruling⁶ cannot by inference stands revived as it was only an order having interim arrangement, whereas, the matter was still pending and the final outcome of the validity or otherwise of the said Ruling was yet to be decided. To that extent the findings of the learned Collector was in favour of the Applicant Department; however, we do not understand as to why they preferred further Appeal before the Tribunal. In fact, instead of waiting for the final outcome of the proceedings in the pending Suit, the Applicant approached the Tribunal with an appeal, wherein, the Respondent taking benefit of the same filed a memo of cross objections in terms of Section 194-A (4) of the Act which upon its filing has to be treated as an Appeal presented within the time specified in sub-section (3) *ibid* and has to be disposed of by the Appellate Tribunal finally. The Collector further observed that the limitation period for finalization of assessment under Section 81(2) of the Customs Act, 1969 would not apply in this matter inasmuch as till such time the fate of the Suit and the suspension of the subsequent Ruling is finally decided. This was against the respondent who never preferred an appeal to the Tribunal; but instead filed cross objections. The relevant findings of the Tribunal as to the cross-objections of the Respondent and the decision thereon reads as under:-

⁵ No.553/2013

⁶ No.540/2013

“16. The strength of the judgments passed by the Superior Courts noted above are in conformity of aforesaid observations made thereon, and judgments passed in Customs Appeal Nos. K-53 to 83 of 2015, by this bench having same controversy as involved in these present appeals, I am of the considered view that the proceedings in the subject cases and orders passed during the hierarchy of Customs are infested with patent deficiencies and violation of statutory requirements regarding demise of a Valuation Ruling due to its revision after 90 days, observance of the period of limitation as well as finalization of provisional assessment. The violation of mandatory statutory requirements indulged into by the assessing officers are tantamount to substantive illegalities. The Order-in-Appeal also suffers from mis-interpretation of the relevant provisions of sub-section (2) & (4) of Section 81 of the Customs Act, 1969. As such the subject appeals are without any merit or substance and are hereby rejected / dismissed with no order as to cost.

17. Judgments passed and announced accordingly.”

Perusal of the aforesaid findings reflects that through it has been held that the Order-in-Appeal (passed by the Collector Appeals) also suffers from mis-interpretation of the relevant provisions of sub-section (2) and sub-section (4) of Section 81; however, the final conclusion is only to the extent that the Appeal filed by the Applicant Department has been dismissed. Insofar as the cross-objections are concerned, there is no final conclusion in favour of the Respondent. Firstly, it is of utmost relevance that the order passed by the Collector Appeals was never set aside. Secondly, though it has been observed that the Collector Appeals erred in reaching the conclusion in respect of interpretation of Section 81 of the Act; however, in the given facts and circumstances of this case until the order of the Collector Appeals was completely set aside; mere observation by the Tribunal to this extent could not suffice so as to give benefit of the impugned order in favour of the Respondent. We have not been assisted as to whether the Respondent has also impugned this order. Be that as it may, even if it is so, then the same would be dealt with in accordance with law as and when the matter comes before the Court.

Insofar as the present reference applications filed by the applicant department are concerned, we do not see any questions of law arising out of the order of the Tribunal in question. The appeal was against the order of Collector which in fact was in favour of the Applicant, whereas, the appeal against it stands dismissed. There is

no finding in favour of the Respondent as the said order has not been set-aside. As a corollary, it is the order of the Collector Appeals which is in field and is required to be implemented keeping in view the changed circumstances and the order of disposal of the Suit in question⁷, whereby, the Suit has not been pressed; therefore, the interim order of suspension of the subsequent Ruling also stands recalled. The stay order granted by the Tribunal is insignificant in the instant case as appeal was not decided on merits and was finally withdrawn by respondent No.1, resulting in the withdrawal of the stay order, as if it never existed⁸.

In these circumstances, in our considered view no questions are required to be considered and answered as subsequently, there are certain new developments including disposal of the Suit; hence, these Reference Applications being misconceived are hereby dismissed in limine, whereas, the Applicant department may proceed accordingly.

All Reference Applications are dismissed. Let copy of this order be sent to the Tribunal in terms of section 196(5) of the Act and a copy shall also be placed in all connected files.

J U D G E

J U D G E

Arshad/

⁷ "Through this Suit, the Plaintiff has challenged the Valuation Ruling No. 553/2013. The Ruling was in fact related to the Soda Ash imported in Pakistan. Learned Counsel for the Plaintiff took the plea in this case that the previous Ruling No. 471/2002 was passed on proper evidence and justification. Now, learned Counsel for the Plaintiff placed on record a copy of notice issued on 12.02.2018 to the Plaintiff and some other companies which shows that on the basis of filing review petition under Section 25D of the Customs Act against the Valuation Ruling No. 996/2016, the hearing has been fixed on 22.02.2018 at 11:30 a.m. and all the parties mentioned in the notice have been communicated to send their authorized representatives before the Director General Customs Valuation for further proceedings. Learned Counsel for the Plaintiff submits that due to changed circumstances, he does not want to proceed the Suit on instructions of the Plaintiff provided that after hearing, the department will pass speaking order on the available evidence. Learned Counsel for the Tax Department admits that notices have been issued for the hearing and he confirms that the Valuation Ruling will be passed after taking into consideration all relevant facts and documents and hearing the parties. By consent the Suit is disposed of accordingly along with pending application."

⁸ Order dated 21.3.2019 of the Hon'ble Supreme Court [Secretary Revenue Division, Islamabad v. Iftikhar Ahmed Tabassam (Civil Appeal No.227-L of 2010)]