

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

SCRA 136 of 2018 : Mehran Spice and Food Industries vs.
The Customs Appellate Tribunal &
Another

For the Applicant : Mr. Muhammad Abbas, Advocate

For the Respondents : Mr. Kafil Ahmed Abbasi
(Deputy Attorney General)

Mr. Muhammad Khalil Dogar, Advocate

Date of hearing : 04.02.2021

Date of announcement : 04.02.2021

JUDGMENT

Agha Faisal, J. Briefly stated, the applicant had exported a consignment, inter alia of spices, to the United Arab Emirates, vide Bill of Export dated 21.11.2014. Constituents of the said consignment were re-imported into Pakistan approximately one year and eight months later, on 06.08.2016. The Adjudicating Authority confiscated the goods in view of the fact that no edible goods can be imported into Pakistan, if the remaining shelf life is less than fifty percent. Upon seeking advice, the Ministry of Commerce directed that the consignment should not be released as it had less than half of the shelf life remaining. The claim for exemption in respect of duty and taxes was also denied as the requirement of re-import within one year, per Section 22 of the Customs Act, 1969, was admittedly not met. The proceedings culminated in an Order-in-Original dated 02.08.2017 and the subsequent impugned Judgment dated 31.03.2018 and as a consequence thereof the consignment stood confiscated, hence this Reference.

2. In order to illustrate the rationale whereupon the impugned judgment was predicated, it is considered expedient to reproduce the relevant findings herein below:

"9. Arguments heard and record perused. Briefly, M/s Mehran Spice and Food Industries, Karachi exported 1045 Cartons of spices and Kheer Mix to UAE on 21.11.2014. The supplier in UAE rejected 525 cartons of Biryani Masala and Bomboy uiryani Masala. These Cartons were re-imported in Pakistan on 06.08.2016 (i.e. after approximately one year and eight months). The appellants claimed exemption of duty and taxes on the re-imported cartons under section 22 of the Customs Act, 1969. Moreover the date of expiry was mentioned on each packet which was due to by expired after 3 years. The manufacturing date was 05.11.2014 and expiry date was 04.11.2017.

10. The adjudicating authority confiscated goods out rightly on account of provisions of Import Policy to the effect that no edible goods can be imported in Pakistan if there is less than 50% of remaining shelf life at the time of importation. The contention of the appellants is that the shelf life of the spices is five years but they printed three years on demand of the foreign buyer. On importation the sample were sent to HEJ, which reported that the given sample is with low microbiological load and thus fit for human consumption. The Collector sent the case for the advice of Ministry of Commerce, which advised that the consignment should not be cleared as it has less than 50% shelf life.

11. The second point was that the if it is importable in terms of the shelf life, even then it could not have re-imported free of duty and taxes under section 22 of the Customs Act, 1969 as the said section grants exemption of duty and taxes if the goods are re-imported within one year. The goods were exported on 21.11.2014 with expiry date of three years. Now when the case is being heard by this Tribunal, more than three years have lapsed (in January, 2018) so these spices have expired their life. Only on this account the goods cannot be released as these have not remaining shelf life now. The contention of the appellants does not carry weight that these are not edible products and hence Import Policy is not applicable on them. These spices are used for food cooking and these are edible products. The contention of appellant that this case should have been adjudicated by the Superintendent or PA and not by the adjudication authority (Additional Collector) as it involved technical violation of import policy, does not hold good as the case involved determination of duty and taxes also under section 22 of the Customs Act, 1969. As per contention of the respondents, the goods were re-imported after one year, hence did not fall under the ambit of section 22. The adjudicating authority was empowered and has rightly adjudicated the case.

12. In view of what has been discussed and observed above, alongwith interpretation of legal provision, the goods are confiscated out rightly as it has expired its shelf life expired on 03.11.2017 and cannot be released under the provisions of import policy. However, there is no mens-rea involved and section 32 cannot be invoked as far as application of section 22 is concerned, hence the penalty imposed is remitted. The order-in-original is amended to the above extent."

3. Learned counsel for the applicant argued that the consignment did not contain edible goods; hence, the stipulation of remaining shelf life ought not to apply. It was further stated that the three years' shelf life printed upon the packaging, in the consignment, was merely for the benefit of the importer and was otherwise irrelevant. It was also argued that the appropriate officer ought to have been permitted duty / tax free release of the consignment even if the one-year stipulation of re-import was not complied with. Learned counsel for the respondents supported the impugned judgment and after drawing attention to the salient features thereof submitted that the same merited no interference in reference proceedings.

4. We have heard the respective learned counsel and have also perused the documentation to which our surveillance was solicited.

5. The consignment under scrutiny is of spices and the assertion that the same does not fall within the definition of edible items is facetious at best; hence, cannot be sustained. The packaging admittedly demonstrates the shelf life of the goods and there is no cavil to the fact that more than half the said period had already lapsed when the consignment was imported into Pakistan. The contentions with respect of the edible items and their shelf life are matters of evidence and the same have been comprehensively considered and adjudicated in the impugned judgment. No question of law arises to be addressed by us in such regard. The argument of the Applicant is also belied

from the fact that the shelf life of three years was by itself declared on the goods; hence, by conduct of its own, the Applicant admits that it was an edible product. Mere reliance on some list issued by the Ministry of Commerce does not help the case of the Applicant; as such lists, at best are persuasive and not conclusive.

6. In so far as the re-import is concerned, it is an admitted position that the same took place beyond the one year stipulated period and no justification has been articulated before us as to why the duty/tax exemption should have been applied when the applicant prima facie did not qualify for the same. Even otherwise, in view of the justified confiscation of the goods, the issue of duty, taxes and exemption in such regard becomes superfluous. In this respect as well, we are constrained to observe that no question of law appears to arise from the impugned judgment.

7. Various argumentative and narrative questions were proposed in the reference under consideration, however, it is our considered view that the same did not arise from the impugned judgment. The only question of law before us is *“whether the Appellate Tribunal has correctly interpreted and applied the law while rendering the impugned judgment and ordering for the outright confiscation of the consignment”*. This question is answered in affirmative, hence, in favour of the respondents and against the applicant. This reference application stands disposed of in the above terms. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required by section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE