

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Special Customs Reference Application (“SCRA”) Nos. 148 to 152 / 2019

Date Order with signature of Judge

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

Applicant: The Collector of Customs,
 Through Additional Collector of Customs
 (Law), Model Customs Collectorate,
 Port Muhammad Bin Qasim, Karachi
 Through Mr. Aamir Raza Advocate.
 Mr. Tariq Aziz Principal Appraiser Port
 Qasim Authority.
 Mr. Samad Hamdani DC Port Qasim
 Authority.

Respondents: M/s Aisha Steel Mills Limited & Others.

Date of hearing: 02.03.2021

Date of Order: 02.03.2021

ORDER

Muhammad Junaid Ghaffar, J: Through these Reference Applications the Applicant Department has impugned order dated 06.11.2018 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K-651 to K-656 of 2017 proposing the following Questions of Law:-

- “1. Whether the impugned order amounts to giving benefit to the respondent of his own wrong i.e. mis-declaring the PCT of the consignment and availing benefit of SRO 565(I)/2006?
2. Whether the consignment imported by the respondent importer was in accordance with Declaration made at the time of Import?
3. Whether the mis-declaration of PCT heading to hoodwink the Custom examination / assessing staff falls within the meaning of Section 32 of the Customs Act, 1969 and whether such consignment to have been released?
4. Whether the letter dated 01.12.2015 issued by IOCO was ignored by the adjudicating authority as well as the appellate authority resulting in miscarriage of justice?
5. Whether the adjudicating authority as well as appellate authority ignored to consider the assessment order without examining the goods, the subject matter of the case and passed a perverse order?

6. Whether the learned Adjudicating Authority as well as appellate forum failed to appreciate that "Hot Rolled Coils / Sheets in Prime Quality" were different as compared to "Prime Hot Rolled Alloy Steel Sheets in Coil Specification grade" attracting the different PCT headings thus the importer was guilty of mis-declaration?
7. Whether the impugned order is illegal, in violation of Section 32 of the Customs Act, 1969 and amounts to opening the door to defeat PCT heading by importer thus causing the Exchequer a huge financial loss?"

2. We have heard the learned Counsel for the Applicant and perused the record. The relevant findings of the Tribunal reads as under:-

"13. From the above discussion, it is concluded that MCC Port Qasim after through physical examination, Mill Test Certificate and other import documents accepted the declaration of the importer as non-alloy steel sheets and allowed clearance thereof under PCT heading 7208 with benefit of SRO 565(I)/2006. It is also very pertinent to mention that the Collectorate officials through their physical examination of the impugned consignment have verified the declaration of the importer and thereafter, the assessment was made by the assessing officials in the light of the examination report before release of the consignment. It is also observed in this case that charge of fiscal fraud and collusion has been mentioned in the show cause notice. The department was asked how they have colluded with the staff. If so, whether the any inquiry was initiated against the examination staff or any show cause notice was issued. The DR stated that no such proceedings were started. If no action as required has been initiated against the examination staff then how the department is taking the plea that examination report is wrong. The department has not commented on the validity or legality of examination report at all. The case making Collectorate i.e. MCC (Port Qasim) in their reply to the show cause notice during adjudicating stage has stated *"That as regards the contents of Para 9 it is respectfully submitted that in order to ascertain the physical attribute of the goods, the consignment of the respondent was examined physically and the assessment was made in light of the examination report after completion of all formalities."* It is settled procedure and practice that in case of physical examination of the assignment, description and quantity etc. of the goods is determined on the basis of physical examination and subsequently the assessment of goods for the purpose of ascertaining the leviable duties and taxes is finalized. It is observed that in the instant case no such mis-declaration or discrepancy was detected either by the examination staff or the assessing officials. The adjudicating officer has rightly pointed out in his order that the Collectorate is responsible for assessing the impugned goods and not the IOCO (Input output Co-efficient Organization), hence if the Collectorate endorses that the goods were correctly classified under the relevant PCT heading after physical examination, the IOCO should not have any objection in issuance of quota under SRO 565(I)/2006. It is clear that MCC (Port Qasim) being satisfied through physical examination, mill test certificate and other import documents accepted the declaration of the importer as "non-alloy" steel sheets allowed clearance thereof under PCT heading 7208 with benefit of SRO 565(I)/2006 after confirming and verifying by the Peoples Steel Mills. It is surprising to note that while the MCC-(Port Qasim) took action on the letter of IOCO but completely ignored their own physical examination and assessment on the basis of examination report. The adjudication authority has mentioned that the course of hearing the representative of IOCO categorically informed that they have neither

physically examined the goods nor were associated in the process of assessment and release. It was further added by IOCO that MCC-(Port Qasim) never informed them that the respondent importer's goods were found as non-alloy steel during physical examination. More importantly in their expert opinion keeping in view the mill test report, People Steel Mill in their opinion declared the goods of importer as "non-alloy" steel. At subsequent stage charge of mis-declaration of description on the importer is without any fore of law and does not stand on legal grounds as neither the declaration of importer nor import parameters of the goods were denied or proven to be either false or fabricated nor their goods were tested.

14. In view of the above we feel that the order of the learned adjudicating authority is correct and is upheld, thus the appeal fails."

3. Perusal of the aforesaid findings reflects that the Tribunal has come to the conclusion that no case for mis-declaration was made out as the consignment in question was released by the Collectorate after conducting its physical examination and so also on the basis of mill test report issued by M/s Peoples Steel Mills, Karachi, whereas, the case was made out subsequently, on the ground that the invoice of the goods had some other declaration, including some application by the Respondents before the Input output Co-efficient Organization (IOCO) for exemption which was regretted. The Tribunal has further noted that if at all there was a case of fraud or connivance, then as to what action had been initiated against the staff which conducted the examination of goods and accepted the declaration of the Respondents; and even extended the benefit of exemption under relevant SRO, and to this the Applicant's representative conceded that no action of any such nature was initiated. On perusal of the record, we are of the view that the order of the Tribunal is correct and is based on proper appreciation of facts and law, whereas, even otherwise, as to the physical examination and the actual description of the goods which are no more available a factual probe is needed which we cannot enter into in our Reference Jurisdiction. Accordingly, no Question of Law is arising out of the order of the Tribunal; hence, these Reference Applications are dismissed. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office is directed to place copy of this order in all above connected SCRAs.

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