

IN THE HIGH COURT OF SINDH, KARACHI

Present

Muhammad Shafi Siddiqui, J
Mahmood A. Khan, J

SCRA Nos.948 of 2015

[Collector of Customs v. M/s Abdullah Traders]

alongwith

SCRA Nos.949 to 1036 of 2015 [As per Annexure `A` to this Order]

For the Applicants	Mr. Iqbal M. Khurram Advocate
For Respondent	Nemo.
Date of hearing	<u>21.10.2021.</u>

ORDER

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Muhammad Shafi Siddiqui, J.- The show cause notices issued somewhere in December, 2012 disclosed that in scrutiny it was found that the respondents imported stainless steel sheets/coils (magnetic) 400 series and the goods were released by the customs officials and while the goods were released a short payment of duties and taxes belatedly was unveiled/exposed as the Valuation Ruling applicable at the relevant time in terms of Section 25-A of Customs Act 1969 was not applied. The recourse of Section 32 & 32 (3A) of Customs Act 1969, was then followed, punishable under clause 14 of Section 156(1) of the Customs Act, 1969 was adopted.

The show cause notice was resulted into passing of Order-in-Original on 22.6.2013 against the respondents which order-in-original was then assailed before the Collector of Customs Appeals. The appeal was decided in favour of the applicants vide order-in-appeal dated 6.11.2013 which order-in-appeal was then assailed before the Customs Appellate Tribunal, Karachi. The Tribunal vide judgment dated 28.10.2014 allowed the appeal in favour of the respondents by reversing the findings of the Collector of Customs Appeals.

The questions of law proposed by the applicant are as under:-

- 1). *Whether the learned Appellate Tribunal has erred in law not to consider that the Valuation Ruling No.Misc./25/2007-IV-A/3711 dated 10-12-2007, reviewed on 01-09-2008 which was issued by the competent authority by virtue of the powers conferred under Section 25-A & 25-D of the Act, hence, had the legal implication to be implemented across the board in letter and spirit?*
- 2). *Whether the learned Appellate Tribunal has erred in law not to consider that the Valuation Ruling was not issued for the specific period, whereas the same was applicable till it is reviewed by the competent authority in terms of Section 25-D of the Act, moreover, the provision of Sub-section (4) of Section 25 of the Act, confirms the afore stated position?*
- 3). *Whether the learned Appellate Tribunal has erred in law not to consider that the provisions of Section 32(3A) of the Act has been inserted in the Customs Act, specifically to give the legal coverage to audit including post importation audit to recover the short levied Government dues in relevant cases, moreover, the provision of Section 3DD of the Act, and Section 32(3A) of the Act, prescribe for conducting audit?*
- 4). *Whether the learned Member (Judicial) of the Honourable Appellate Tribunal sitting Single has right to decide a technical and valuation issue involved in the instant case without the association of Member (Technical)?*
- 5). *Whether in view of the established facts & relevant provisions of law, the findings of learned Appellate Tribunal are not perverse for non-reading of the available record to the detriment of revenue and the consequent benefit to the respondent importer, who has made an attempt to deprive the Government from its legitimate revenue?*

We have heard learned counsel and perused the materials available on record.

The respondents in these references have imported a number of consignments during 09-04-2010 to 18-06-2010 as recorded in para 9 of the impugned judgment. The insistence of the applicant's counsel for the applicability of referred Valuation Ruling is taken

into consideration in light of Section 25-A of the Customs Act 1969 in its original form. Section 25-A then substituted by Finance Act, 2007 assented on 30 June 2007 for its applicability with effect from 1st July, 2007. For the purpose of present proceedings sub section 4 of Section 25-A pressed into service, however, this sub section 4 was inserted by Finance Act, 2010 assented on 30 June, 2010 with its applicability w.e.f. 1st July, 2010. Sub section 4 of Section 25-A is reproduced as under :

“(4) The customs value determined under sub-section (1) or, as the case may be, under sub-section (3), shall be applicable until and unless revised or rescinded by the competent authority.”

As discussed above, the goods declaration for the release of the consignments were filed prior to the insertion of sub section 4 of Section 25-A. Learned counsel for the applicant does not controvert these facts. Thus at the relevant time when the goods were cleared and/or goods declarations were filed, benefit of sub section 4 of Section 25-A was not available with the applicant for enforcing earlier Valuation Ruling dated 10.12.2007 which was reviewed on 1.9.2008 issued by the competent authority under Section 25-A and 25-D of the Act. Undoubtedly before insertion of sub section 4 the continuity of an earlier time lapsed Valuation Ruling could not have been enforced. In the earlier regime, the value of goods imported was required to be assessed on the basis of 90 days data prior or after the import. The goods were imported much beyond the period mentioned above. In the earlier regime they should have either issued fresh Valuation Ruling or should have endorsed reasons for continuity of the earlier Valuation Ruling which is not the case of the applicant. It was only in sub section 4 that it was clarified for continuity of existing Valuation Ruling until and unless revised or rescinded by the competent authority. For the convenience of such recourse the department applied sequential method of Section 25 which was acceptable in the previous regime prior to the

amendment carried out in terms of insertion of sub section 4 under Section 25-A.

We are afraid that sub section 4 could not be pressed into service in respect of consignments which were imported in earlier regime i.e. in between 09-04-2010 to 18-06-2010 as mentioned in para 9 of the impugned order to which no challenge was made. The only question arises is whether the learned Appellate Tribunal has erred in law not to consider the Valuation Ruling No.Misc./25/2007-IV-A/3711 dated 10-12-2007, reviewed on 01-09-2008 which was issued by the competent authority by virtue of the powers conferred under Section 25-A & 25-D of the Act.

The answer to the above question is in Negative in favour of the respondents and against the applicant.

Copy of this order under the seal of this court be sent to the Appellate Tribunal in terms of Section 196(5) of the Customs Act 1969.

JUDGE

JUDGE

Karachi;

Dated: _____ .10.2021