

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application No.1233 of 2015

Collector of Customs
Versus
Ms. Shazia Aman

Date	Order with signature of Judge
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1. For hearing of main case
2. For hearing of CMA 3281/15

Dated: 07.12.2021

Mr. Iqbal M. Khurram for applicant.
None for respondents.

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This Special Customs Reference Application is filed by the department on the following questions:-

1. Whether the learned Appellate Tribunal erred in law to entertain an appeal, which was filed after 395 days from the date of issue of the Order-in-Original?
2. Whether on the facts and circumstances of the case the learned Appellate Tribunal has not erred in law to hold no recovery action can be taken against an importer where duty/taxes have been short levied due to non-application of the customs value (Valuation Ruling) in terms of Section 25-A of the Act?
3. Whether the Appellate Tribunal had jurisdiction to dispose of an appeal which relates to an Order-in-Original passed under section 179 of the Act and attained finality prior to amendment under Section 194-A(1) of the Act?

4. Whether the Valuation Rulings, issued on 10.07.2008, 15.07.2009 and 27.04.2010, applied on the GDs of the relevant periods can be termed as have been applied retrospectively?
5. Whether in the presence of Section 25-A(4) of the Act the Appellate Tribunal erred in law to hold that the Valuation Ruling shall be treated as expired after 90 days?
6. Whether the provisions of Section 32 of the Act cannot be invoked without the Collector's orders opening of the GD under Section 195 of the Act?
7. Whether the learned Appellate Tribunal erred in law to hold that the officers of Customs Clearance Colectorates have no jurisdiction to initiate action to recover the short levied amount under section 32 of the Act in a case where the customs value was not correctly determined?
8. Whether the findings of the Tribunal are not perverse for non-reading and mis-reading of the record available before the Appellate Tribunal?

However, the primary questions which were raised during course of arguments are (i) whether time was lawfully condoned by the Appellate Tribunal for filing appeal? and (ii) whether it was not lawful to apply Valuation Ruling No.Misc/11/2007-IVC-1537 dated 15.07.2009 and another Valuation Ruling No.Misc/11/2007/1343 of 27.04.2010 for the clearance of goods in question being beyond 90 days pre/post ?

This Special Reference Application is pending since 2015 and the applicant has not been able to satisfy this Court as to the questions proposed/framed and hence the matter is finally taken up today.

The common Order-in-Original in the case of (1) M/s New Lighthouse (Pvt.) Ltd, (2) M/s Habib Enterprises, (3) M/s Umair International and (4) M/s Jam International was passed in respect of

goods imported by them wherein Order-in-Original was passed on 28.11.2011. This is registered as Order-in-Original No.67 of 2011. Respondent was not party to the proceedings. In terms of paragraph 7 of the Order-in-Original was applied mutatis mutandis in the case of respondent as well. However, it is not disclosed if the respondents or any of its counsel was heard. The applicant has not been able to demonstrate as to how the Order-in-Original was served upon the respondent. This point was discussed in the judgment of the Appellate Tribunal in paragraphs 10 and 11 which are reproduced as under:-

“10. Before going further it is appropriate to observe that, whether the subject appeal is maintainable? According to the above arguments extended before the Court and circumstance caused and created before filing the appeal, it is evident that the appellant has filed time barred appeal by 241 days behind the statutory time for filing the same. It is also observed from the impugned order that the learned adjudication officer passed the impugned order and also applies mutatis mutandis on two other cases including the case of present appellant. It is also evident that the copy of the same impugned order was not dispatched through registered A.D to the concern parties, only the copy was forwarded for information to the Collectorate only which is patently violative from the spirit of Section 215 of Customs Act, 1969 and the arguments extended by the appellant in this regard have legal strength for our consideration. On the point the superior courts including the Hon’ble Supreme Court of Pakistan where the lordship held the judgment reported as 2002 SCMR 343, which stipulates as under:-

“where aggrieved party was neither served nor was aware of institution of proceedings affecting his rights, period of limitation provided by law would commence from the date the aggrieved party became aware of such proceeding or adverse order. Order appealed against found to be a nullity, about which affected party had no earlier knowledge. --- Plea of limitation that it started from the date of order could not be pressed against such party, as he would be entitled to challenge same within the prescribed time counting to period from date of his knowledge.”

11. In view of the above and ratio decidendi observed by the superior courts we are of a considered view that the subject delay caused during the filing of the appeal hereby condoned and the matter should be decided on merits.”

We therefore cannot form a different view than the above as it would lead to a factual controversy as well.

Insofar as merit of the case is concerned, record shows that the goods were cleared under section 80 of the Customs Act, 1969 as final assessment by the competent authority during the period from February 2009 to January 2010. The department made a case of short levy of customs duty and other taxes on account of Valuation Ruling of 10.07.2008, which was subsequently reviewed by the competent authority under section 25(d) of Customs Act, 1969 on 15.07.2009 and 27.04.2010. The record further shows that as against assessment Order no appeal was preferred under the provisions of Customs Act, 1969 and hence the proceedings under the garb of Valuation Ruling would not be sustainable under the law for which they may have recourse of appeal under the law.

Notwithstanding above, the Valuation Ruling such as one dated 10.07.2008 is not applicable as the valuation is to be issued on the basis of data of 90 days, either before or after, import in terms of Rule 107(A) of Customs Rules 2001. It has not been disclosed as to what the exact dates of the clearance of the goods are however subsequent valuation rulings, as reviewed, are of 15.07.2009 and 27.04.2010 respectively. In the absence of a clear date of clearance of the goods, the applicability of Valuation Ruling of 15.07.2009 and 27.04.2010 would be farfetched.

Subsection 4 to Section 25A of Customs Act, 1969 was amended by Finance Act 2010 and assented on 30.06.2010 which was subsequent to the last ruling relied upon, hence by the time goods were cleared the regime of availability of 90% data, pre or post, was applicable as the applicability of last issued Valuation Ruling was introduced after 30.06.2010. Even the show-cause notice is silent as to the date of clearance of the goods.

In view of the above the two questions framed by this Court, as referred above, are answered in affirmative i.e. in favour of respondent and against the applicant, in result whereof this Special Customs Reference Application is dismissed along with listed application.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal Bench-I, Karachi, as required by section 196(5) of Customs Act, 1969.

Judge

Judge