

IN THE HIGH COURT OF SINDH, KARACHI
SCRA No.491 of 2016

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

*BEFORE: Irfan Saadat Khan,
Arshad Hussain Khan, JJ*

The Collector of Customs,
Applicant : through Mr. Muhammad Khalil
Dogar, Advocate.

M/s. Urooj Autos.,
Respondent : through Dr. Shah Nawaz Memon,
Advocate.

Date of hearing : 20.01.2022

Date of decision :

JUDGEMENT

Irfan Saadat Khan, J. This Special Customs Reference Application (SCRA) was admitted for regular hearing on 19.11.2018 to consider the following questions of law.

1. “Whether in the light of facts and circumstances of the case, the Appellate Tribunal has erred in law to give direction for assessment of the genuine parts, consignment as per one and half years’ old Valuation Ruling, which was meant for the non-genuine parts?
2. Whether in terms of Rule 389 of the Customs Rules, 2001, and the law settled by the Hon’ble Supreme Court of Pakistan in the case of Junaid Traders v. Additional Collector of Customs, Appraisement-I (2012 SCMR 1876) the Appellate Tribunal has erred in law to scrap the actual value invoice found from the respondent importer’s container?
3. Whether the Appellate Tribunal was not duty bound to correctly determine the facts, particularly with reference to the specification of the auto parts i.e. genuine or non-genuine?
4. Whether in the light of facts and circumstances of the case the findings of the Appellate Tribunal are not perverse, unjust and non-reading/misreading of record.”

2. Briefly stated the facts of the case are that the Respondent imported certain consignments and sought clearance of the same on the basis of self-declaration. The goods, however, were examined by the Customs Authorities and it was found that the goods were got released by the importer on the basis of suppressed value. Show cause notice dated 09.09.2015 then was issued to the respondent, which was duly replied. The Customs Authorities then vide Order-in-Original (O&O) dated 17.11.2015 ordered for confiscation of the goods. Being aggrieved with the said order appeal was preferred before the Tribunal, bearing Custom Appeal No.K-1756/2015, and the Tribunal vide order dated 06.5.2016 accepted the appeal by giving directions to the Customs Authorities to comply with the statutory provisions of Section 25-A, of the Customs Act, 1969 (hereinafter referred to as the Act, 1969) and to assess the subject impugned goods in accordance with the Valuation Ruling No.661/2014 dated 29.03.2014, as amended on 27.08.2014. The penalty / fine imposed by the Customs Authorities were, however remitted by the Tribunal. It is against this order of the Tribunal that the present SCRA was filed and the above referred questions of law, as mentioned above, were admitted for regular hearing on 19.11.2018.

3. Mr. Muhammad Khalil Dogar, Advocate has appeared on behalf of the Department and stated that when the invoices furnished by the Respondent were retrieved and when upon physical examinations of the goods discrepancies were detected thus the department was justified in invoking the provisions of Section 25 of the Act, 1969. He stated that the Respondent had made incorrect declaration of the goods and had not paid the

correct amount of duty and taxes, as required from them. He stated that on physical examination of the consignment huge discrepancy was detected, as according to the working made by the department the value of the goods was found to be that of US\$.103805, in comparison to the declared value of US\$.11236.8, which bears a difference of 824% in the duty. He stated that the Customs Authorities have properly issued a show cause notice in this behalf, calling explanation from the respondent, and when the Respondent has failed to satisfy the difference in the declared value of the consignment, thereafter O&O was passed, wherein detailed description of the suppressed goods, duty and taxes have been discussed by the department. He stated that the reliance of the Tribunal on Section 25-A of the Act, is not in accordance with law as the case of the Respondent falls under the provision of Section 25 of the Act, which clearly empowers the department to determine the difference in the value retrieved by the department and the value determined, after physical examination of the goods. According to the learned counsel, the importer was under the legal obligation to declare true value of the goods and to pay the correct amount of duty and taxes on the imported items but in the instant matter the declared value was found to be lessor then which was determined on the basis of physical examination of the goods. He stated that the Respondent was duly confronted about the discrepancy in the declared value, who has failed to satisfactorily explain the same. He stated that it seems that the Respondent has deliberately and with ill-intention has filed fake and fabricated invoices and thus the provisions of Sections 16, 32(1), 79(10) and 80 of the Act, 1969 read with other penal provisions were rightly applied by the department. He stated that even an option was

given to the Respondent to redeem the goods on payment of 30% redemption fine but that option was also not exercised by the Respondent. He, therefore, finally submitted that since the Tribunal has failed to appreciate these aspects, going to the roots of the case, therefore, the questions raised in the instant matter may be answered in favour of the department and against the Respondent.

4. Dr. Shah Nawaz Memon, Advocate has appeared on behalf of the Respondent and stated that the order of the Tribunal is in accordance with law. He stated that the Customs Authorities have applied Section 25 of the Act without considering the provision of Section 25-A of the Act, which has an overriding effect over Section 25 of the Act. He stated that no suppression of goods was made by the Respondent as in the G.D and the invoices the goods were duly declared as non-genuine parts, hence the department went wrong and applied the duty and taxes as that of the genuine parts by illegally determining the value of genuine parts and then applying the said valuation duty and taxes on non-genuine parts imported by the respondent. He stated that complete explanation with regard to import of non-genuine parts was given in the reply to the show cause notice and in the submissions made before the Assessing Authority which was not considered, whereas the Tribunal after considering these aspects has categorically found out that the Respondent has not suppressed the duty and the taxes. He stated that in his view the questions of law raised by the department are pure and simple questions of fact and therefore, the same may be answered in favour of the Respondent. Learned counsel has also invited our attention to the decision in SCRA No.29/2010 dated 29.3.2011 (one of us namely Irfan Saadat

Khan.J., was a member in the said decision) in which case, it was observed that “*the contention of the Tribunal after examining the documents on record is finding of fact, which could not be agitated before the High Court.*” He stated that this order of the High Court subsequently was affirmed by the Hon’ble Supreme Court of Pakistan in Civil Appeal No.629/2011, vide order dated 23.01.2017. The learned counsel in the end, in support of his above contentions, has placed reliance on the following decisions;

- i. *Collector of customs, port Muhammad Bin Qasim...Vs...Messrs Zymotic Diagnostic International, FA Isalmabad (2008 SCMR 438).*
- ii. *Messrs International Petrochemicals (Pvt.) Ltd., ..Vs.. Deputy Collector of Customs, (Preventive) Custom House, Karachi and 2 others (2017 PTD 370).*
- iii. *Punjab Beverages (Pvt.) Ltd., ..Vs.. Appellate Tribunal (Customs, Excise & Sales Tax) and 2 others) (2002 PTD 2957).*

5. We have heard both the learned counsel at some length, and have also perused the decisions relied upon by the learned counsel appearing for the Respondent.

6. Before proceeding any further we would like to reproduce hereinbelow the provision of Section 25A of the Act, 1969, upon which reliance was placed by both the learned counsel:-

“25-A. Power to determine the customs value.--

(1) Notwithstanding the provisions contained in section 25, ²[the Collector of Customs on his own motion or] ³[***] the Director of customs valuation.[on his own motion or] on a reference made to him by any person [or an officer of Customs], may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in section 25, whichever is applicable [:]

[Provided that notwithstanding anything contained in any provision of this Act and any decision or judgment of any forum, authority or court, while determining the customs value under this section, the Director may incorporate values from internationally acclaimed publications, periodicals, bulletins or official websites of manufacturers or indenters of such goods.]

(2) The Customs value determined under sub-section (1) shall be the applicable customs value for assessment of the relevant imported or exported goods *[:]

[Provided that where the value declared in a goods declaration, filed under section 79 or section 131 or mentioned in the invoice retrieved from the consignment, as the case may be, is higher than the value determined under sub-section (1), such higher value shall be the customs value.]”.

[(2A) In case of any conflict in the customs value determined under sub-section (1), the Director General of Valuation shall determine the applicable customs value.]

[(3) * * *]

[(4) the customs value determined under sub-section (1) [, or the case may be under sub-section (2A)] [***] shall be applicable until and unless revised or rescinded by the competent authority.]

7. The controversy between the Applicant and the Department arose when an invoice from the container was found. From that invoice the Department came to the conclusion that the parts imported by the Respondent were genuine and thereafter since the Respondent, according to the department, has concealed the true facts in the G.D worked out tax liability upon the Respondent on the basis of the said invoice. In the O&O it seems that the Customs Authority, on the basis of the facts as mentioned in the show cause notice, finalized the case and imposed the duty and the tax upon the Respondent without making some homework on his own and to ascertain the facts in their true perspective. The Tribunal,

however, on the other hand examined the factual aspects of the matter in detail and thereafter came to the conclusion that before making the assessment neither any confirmation was sought from the shipper nor any attempt was made to get the spare parts examined, so as to ascertain whether the parts were genuine or non-genuine. It could be seen from the order of the Tribunal that they noted that the consigner has written a letter by clearly mentioning that due to mistake at their end an incorrect declaration about the goods were made and clarified that the said parts were not genuine.

8. The Tribunal has highlighted this point and then came to the conclusion that when the letter from the consigner was produced by the Respondent to the Customs Authorities, inspite of making the assessment, rather they acted in a perfunctory manner whereas they should have got the goods examined either from the market or got some confirmation from other importers about the veracity with regard to the description of the parts that whether these were genuine or non-genuine, since it is an admitted position that the difference in duty rates was quite substantial in respect of both the parts. It would also not be out of place to mention that it was in this background that the Tribunal has reached to a factual finding that the method of assessment and the imposition of the duty and the tax was not in accordance with law, as mentioned either under Section 25 or 25-A of the Act, 1969, and thus the Respondent was not liable to be punished under the provisions of Section 32 and 156(1)(4) of the Act, 1969.

9. It is a settled proposition of law that Tribunal is always considered to be the last fact finding authority, which has

emphatically opined that the Respondent has submitted all the required commercial documents including commercial invoice, packing list and bill of lading to the custom authorities. In all these documents it has categorically been mentioned that the goods imported were non-genuine spare parts. It may also be noted that the Valuation Ruling upon which reliance was placed by the Tribunal, talks about the duties and the taxes of the spare parts, hence, we are of the view that when the Tribunal has reached to the conclusion and have factually opined that the parts imported by the Respondent were non-genuine therefore, they were justified in directing the department to adopt the valuation and to impose the duty and the taxes as per the Valuation Ruling No.661/2014 dated 29.3.2014. It may further be noted that the learned Tribunal while deciding the matter also came to the conclusion that the department has miserably failed to refer any provision of law / rules or notification to justify that the value declared by the Respondent was either not correct or that the invoices received were in any way not descriptive of the items imported by the Respondents. The Tribunal has categorically observed that the invoice retrieved could not be termed as conclusive evidence so as to attract the provision of Section 25(1)(b) of the Act, 1969.

10. From the order of the Tribunal it is evident that the documents presented and relied upon by the Respondent were admissible in terms of Section 2(kka) of the Act, 1969. It may further be noted that the Tribunal has given a factual finding that the examination report furnished by the Examination Staff of the Custom Department has also not been objected, with regard to the quantity of the items imported, but the difference between the

department and the Respondent was only with regard to the fact that whether the parts imported were genuine or non-genuine which aspect, according to the Tribunal, has satisfactorily been explained by the Respondent. It is also a matter of record that the price of the items, as determined by the Directorate General Valuation, is in consonance with the rates as declared by the Respondent in the various documents furnished by them and in the G.D as well pertaining to non-genuine parts.

11. Hence, in view of the findings of facts, as recorded by the Tribunal in the instant matter, we do not deem it appropriate to interfere with these findings of the Tribunal, as it is settled proposition of law that while exercising advisory jurisdiction the points of facts determined by the Tribunal cannot be interfered with. In the instant matter also the observations given by the Tribunal are based on the factual aspects determined by them. We therefore, under the circumstances answer the questions as under:-

Question Nos.1, 2 & 4 in negative.

Question No.3 in our view is a question of fact, therefore answered in affirmative as the Tribunal has determined the specification of the parts on the facts presented before it.

12. As a result of the above discussion, the instant SCRA is decided in favour of the Respondent and against the Applicant/Department.

JUDGE

JUDGE