

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications Nos. 741 to 746 of 2014

Date	Order with signature of Judge
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Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Applicant(s)	:	Collector of Customs, Through Mrs. Masooda Siraj, Advocate.
Respondent(s)	:	Mr. Gabor Toth in SCRA No. 741 of 2014 and five other cases through Mr. Adnan Moten Advocate.
Date of hearing	:	16.03.2021.
Date of Order	:	16.03.2021.

ORDER

Muhammad Junaid Ghaffar, J.- Through these Reference Applications, the Applicant Department has impugned order dated 26.09.2014 passed by the Customs Appellate Tribunal at Karachi, in Customs Appeal No. K – 228 to 233 of 2014, proposing the following questions of law:-

- 1) Whether on the facts and circumstances of the case the learned Member (Technical) of the Appellate Tribunal erred in law to emulate the quota ceiling of a privilege person, to purchase the liquor from the Duty Free Shop / Diplomatic Bonded Warehouse, with the customs value determined under Section 25 of the Act?
- 2) Whether on the facts and circumstances the quota ceiling of a Booklet is to be debited with reference to the C & F / customs value or the retail / sale price of the liquor?
- 3) Whether the goods, imported for personal use can be regarded as an import of commercial level as prescribed in Section 25 of the Act read with Chapter-IX of the Customs Rules, 2001?
- 4) Whether an item (liquor), the import of which is prohibited in terms of para 5(i) read with Sr. No.14 of Appendix-A of the Import Policy Order, and whose sale is restricted, can be termed as general import at same commercial level in terms of Section 25 of the Act read with Article-VII of GATT Code of Valuation?
- 5) Whether in terms of special PCT 9903 of the Tariff read with Para 5(i) and Sr. No.14 of the Appendix-A of the Import Policy Order, the respondent person can import liquor without proper Import Authorization from the Ministry of Commerce?

2. Learned Counsel for the Applicant has read out the order of the Tribunal and submits that the Tribunal as well as Collector of Customs (Appeals) were not justified in setting aside the assessment order as the Respondents are not entitled in law for availing the benefit of privileged persons, whereas, the prices were to be determined on the basis of Circular dated 31.05.1997. On the other hand, learned Counsel for the Respondents has supported the impugned order.

3. We have heard both the learned Counsel and perused the record. It appears that initially the Assistant Collector concerned had passed an assessment order under Section 80 of the Customs Act, 1969 dated 26.12.2013 upon filing of Goods Declaration by the Respondents. The finding of the said Officer reads as under: -

4. The matter is disposed off as per following details:

- i. Despite the fact that inflation has affected prices of liquor worldwide, assessment has been made conservatively, on the basis of prices fixed in the year 1997 vide Order No. S-6-56/97-Bond-II dated 31st May 1997.
- ii. Quota of US\$ 200 / month is allowed to each expatriate family and US\$ 100 to each individual with effect from the date of filing of goods declaration.
- iii. If the expatriate employees / importers or clearing agent feel aggrieved by this decision / assessment order, they can file appeal before the Collector of Customs (Appeals) under Section 193 of the Customs Act, 1969 within 30 days of the date of communication of thereof.

4. The said order was then impugned by the Respondents before the Collector of Customs (Appeals), who vide order dated 05.03.2014 set aside the assessment order against which the Department preferred Appeals before the Appellate Tribunal, which has maintained the order of the Collector of Customs (Appeals) through the impugned order. When the initial assessment order is examined, it appears that the assessment of the goods in question was finalized pursuant to circular dated 31.05.1997 and while confronted, learned counsel for the Applicants is unable to satisfy as to how the assessment can be made and sustained on the basis of a Circular issued by Assistant Collector of Customs and that too issued way back in the year 1997.

5. It needs to be appreciated the law of valuation¹ and assessment of goods imported was changed with effect from 01.01.2000, from the concept of notional value of the goods to the transactional value. In the instant matter admittedly a Goods Declaration has been filed on behalf of the Respondents; therefore, the assessment ought to have been made under section 25 of the Customs Act, 1969, and not on the basis of a circular 31.05.1997. As to the entitlement of Respondents or otherwise, in the very order of assessment passed by the officer as above, there is nothing to that effect; therefore, even if the two orders in favor of the Respondents are set aside, this question would remain unanswered. The question of valuation in the given facts is a question of law, as otherwise nothing has been adduced to justify the assessment in terms of a circular of the year 1997. Accordingly, this contention is misconceived and is hereby repelled. We do not see that any question of law, except one arises out of the order of the Tribunal and it is "*whether in the facts and circumstances of the case the assessment of the goods could have been made on the basis of circular dated 31.05.1997*" and the answer of this question is in negative; against the Applicant and in favour of the Respondents and as a consequence thereof, all these Reference Applications stand dismissed. Let copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office shall also place copy of this order in all connected Reference Applications.

Judge

Judge

Riaz, P.S.

¹ Section 25 of the Customs Act, 1969 by implementation of Transactional Value concept