

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application No.20 of 2022

Order with Signature of Judge(s)

1. For orders on office objections Nos.1 and 7.
2. For hearing of main case.
3. For hearing of CMA No.396 of 2022.
4. For hearing of CMA No.428 of 2022.

27.04.2022.

Mr. Aamir Raza, Advocate for the applicant.
None for the respondent.

This Special Customs Reference Application (**SCRA**) has been filed against the order of the Customs Appellate Tribunal (**CAT**) dated 21.09.2021 by raising the following questions of law:

- a) In view of the fact that the description of the bicycle viz a viz size of bicycle imported by the respondent importer was grossly mis-declared in order to avoid duty and taxes applicable thereon, the Appellate Tribunal was justified in holding that no case of mis-declaration is made out against the importer?
- b) In view of the fact that the value being dependent upon the size of frame, whether the Appellate Tribunal justified that the appellant above named had failed to discharge the onus of establishing that the price declared by the importers was not correct?
- c) Whether the respondents were guilty of mis-declaration thus causing loss of revenue to the government and were rightly penalized under clause (14) of Section 156 of the Customs Act, 1969 thus confiscating the goods.
- d) Whether, as far as the matter of valuation of impugned goods as per frame basis is concerned, the learned Appellate Tribunal has passed a speaking order as required under section 24A of the General Clauses Act, 1897?
- e) Whether, as an outcome of the impugned order, the respondent is entitled for refund of duty/taxes and redemption fine without fulfilling the requirements of section 19A of the Customs Act, 1969?

Briefly stated, the facts of the case are that the respondent imported a consignment vide IGM No.62 dated 15.02.2017 containing “CKD

Bicycles”, however on examination the customs department found that the description and size of the bicycles is different from that declared by the respondent. Proceedings thereafter were initiated under Sections 32(1), (2) & 79(1) of the Customs Act, 1969, Section 33 of the Sales Tax Act, 1990, and Section 148 of the Income Tax Ordinance, 2001, punishable under clause (14) of Section 156(1) of the Customs Act, 1969 read with SRO 499(1)/2009 dated 13.06.2009. A show cause notice was then issued to the respondent in respect of which a reply was furnished by the respondent. Order in Original No.ONO-661907-30032017, dated 30.03.2017 was then passed by the concerned officer. Appeal was then preferred by the respondent before the CAT who, after finding the averments of the department not correct, allowed the appeal. It is against this order of the CAT that the instant SCRA has been filed.

Mr. Aamir Raza Advocate has appeared on behalf of the applicant and stated that on physical examination of the bicycles their sizes were found different from the one disclosed by the respondent in its IGM No.62 dated 15.02.2017 hence, according to him, there was a deliberate suppression of the value by the respondent to evade the legitimate amount of duty and taxes. He, therefore, stated that the action taken by the department, under the above referred provisions of the law, were in accordance with law and hence the answer to the questions may be given in favour of the department and against the respondent.

Nobody has appeared on behalf of the respondent despite service.

The matter has been heard and record has been perused.

The record reveals that while the goods were confiscated an option was given to the importer to redeem the confiscated goods after paying 35% redemption fine, as clearly prescribed under SRO 499(1)/2009 dated

13.06.2009, in addition to the payment of duty and taxes chargeable thereupon. The CAT, while disposing of the matter, has categorically observed that difference in the sizes of the bicycles was due to the style of measurement of the consignment. It has clearly been mentioned by the CAT in its order that the department has miserably failed to point out or to justify the guilty intention of the respondent of the mis-declaration. The record further reveals that the goods were examined more than once and the contravention made out by the customs authorities against the respondent due to their own style of measurement, but if the measurement style of the respondent and as disclosed by the consigner is seen there is no difference in the sizes and the measurement worked out by the department so as to make out a case of false and incorrect declaration which was uncalled for. Since the difference in sizes is due to difference in opinion between the department and the respondent, therefore, the CAT has categorically observed that the same could not be made the basis of contravention or mis-declaration. It is also noted that the respondent also offered the departmental authorities to explain the method of measurement but no heed was paid by them in this regard. It is also a matter of record that bicycles were imported in kilograms and not on the basis of size measurements and the difference in size, as noted by the CAT, was due to measurement of the frames of the bicycles, which according to the CAT was not the correct method of measurement. Had the bicycles been imported on size basis then it could have been said that the contention of the department is correct but here in the instant case the CAT has observed that the frames of bicycles were imported in kilograms and not by virtue of sizes. It is also observed that the department was duly asked to show that whether their method of measurement was in accordance with law or not by way of any notification, SRO etc. but no such evidence was produced. It was also observed by the CAT that since onus was not discharged by the department, therefore, the

case of mis-declaration was not proved against the respondent. The CAT, being the last facts finding authority, has since categorically observed that mis-declaration on the part of the respondent has not been proved by the department, we are of the view that no interference in these findings is warranted as the CAT after thrashing out the case has come to the conclusion with regard to the fact that no discrepancy is found in the description of the goods.

We, therefore, in view of what has been stated above, do not find any reason to interfere with the findings of fact recorded by the CAT and also do not find the questions proposed to be the questions of law, as in our view, the decision of the CAT is based on facts. The instant SCRA stands dismissed alongwith listed applications.

Judge

Judge