

IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

Special C.R.A. No. 577 of 2016

Special C.R.A. No. 578 of 2016

Special C.R.A. No. 579 of 2016

Special C.R.A. No. 580 of 2016

Special C.R.A. No. 581 of 2016

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Zulfiqar Ahmed Khan.

21.09.2020:

Mr. Muhammad Khalil Dogar, advocate for applicant(s).

O R D E R

1. The above five Special Customs Reference Applications have been filed against a combined impugned order dated 22.08.2016 passed by the Customs Appellate Tribunal, Bench-II, Karachi in Customs Appeals No.K-1623 to 1628/2016, whereby, the applicant has proposed five common questions, which according to learned counsel for the applicant(s), are questions of law arising from the impugned order as referred to hereinabove. The questions read as follows:-

“1. Whether in terms of Section 194-B of the Act, the learned Appellate Tribunal have jurisdiction to pass order for provisional assessment/release of a consignment, under Section 81 of the Act?

2. Whether in terms of Section 194-B of the Act, the learned Appellate Tribunal have jurisdiction to pass order for a future consignment for which GD was not filed and is/was not part of the appeal filed under Section 194-A of the Act?

3. Whether in terms of Section 194-B of the Act, the learned Appellate Tribunal has powers to pass an injunction order like

Honourable High C Whether in terms of Section 194-B of the Act, the learned Appellate Tribunal have jurisdiction to pass order for provisional release of the imported goods?

4. Whether in the light of facts & circumstances of the case and considering the Honourable High Court's judgment/order passed in the D-6918/2015, D-1082/2016 and many other, including the reported judgment of M/s. PM International v/s Federation of Pakistan & others (2010 PTD 239) the Appellate Tribunal has not made an error of law to ignore the Honourable High Court's orders/directions on the identical facts and proposition o flaw?

5. Whether the Appellate Tribunal has justification to equate provisional release and "stay of recovery" at par?"

2. Before the learned counsel for the applicant could make his submission on the merits of the case and the questions proposed hereinabove, he was confronted to assist the Court as to whether, the combined impugned order passed by the Customs Appellate Tribunal in the instant case, is a final order in appeals as per Section 194B (3) of the Customs Act, 1969 or above references have been filed against some interim order, as prima facie, it appears that in terms of Section 196 of the Customs Act, 1969, a Reference would only lie against the final order in appeal, and not against some interim order as may be passed by the Appellate Tribunal during pendency of main appeal. In response to such query, learned counsel for the applicant(s) has candidly stated that the impugned order is an interim order, whereby, the request of the respondents for provisional release of the consignment(s), under Section 81 of the Customs Act, 1969 has been allowed, whereas, the main appeals are still pending, and have not finally disposed of. It has been however submitted by the learned counsel that though in terms of Section 196 of the Customs Act, 1969, a reference would lie against final order in

appeal, however, the questions proposed hereinabove are questions of law arising from the impugned order.

3. We have heard the learned counsel for the applicant and perused the impugned order and the relevant provisions of law. It will be advantageous to reproduce the relevant provisions of Section 194B and the provisions of Section 196 of the Customs Act, 1969, which read as follows:-

194B. Orders of Appellate Tribunal.-

- (1)
- (2)
- (3) The Appellate Tribunal shall send a copy of every order passed by it under this section, disposing of an appeal, to the [officer of Customs] and in valuation cases also to the Controller, Valuation, and the other party to the appeal.
- (4) Save as otherwise expressly provided in [section 196], an order passed by the Appellate Tribunal in appeal shall be final.
(underlining for emphasis)

196. Reference to High Court. – [(1) Within ninety days of the date on which the aggrieved person or Collector [or Director of Intelligence and Investigation] or Director of Valuation, as the case may be, was served with order of the Appellate Tribunal under sub-section (3) of section 194B, the aggrieved person or any officer of Customs not below the rank of an Additional Collector [or Additional Director], authorized by the Collector or Director in writing], may prefer an application, in the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.]
(underlining for emphasis)

- (2) The statement to the High Court, referred to in sub-section (1), shall set out the facts, the determination of the Appellate Tribunal and the question of law, which arises out of such order.
- (3) Where, on an application made under sub-section (1), the High Court is satisfied that a question of law arises out of the order, referred to in sub-section (1), may proceed to hear the cases.
- (4) A reference to the High Court under this section shall be heard by a Bench of not less than two judges of the High Court and, in respect of the reference, the provisions of section 98 of the Code of Civil Procedure, 1908 (Act V of 1908), shall apply so far as may be, notwithstanding anything contained in any other law for the time being in force.

(5) The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.

(6) Notwithstanding that a reference has been made to the High Court, the duty shall be payable in accordance with the order of the Appellate Tribunal:

Provided that, the amount of duty is reduced as a result of the judgment in the reference by such officer as authorized by the Collector or] the High Court, and any amount of duty is found refundable, the High Court may, on application submitted by the Collector, within thirty days of the receipt of the judgment of the High Court, that he wants to prefer petition for leave to appeal to the Supreme Court, make an order authorizing the Collector to postpone the refund until the disposal of the appeal by the Supreme Court.

(7) Where recovery of duty has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months following the day on which it is made unless the reference is decided, or such order is withdrawn by the High Court earlier.

(8) Section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to an application made to the High Court under sub-section (1).

(9) An application under sub-section (1) by a person other than [such officer as authorized by the Collector] the Collector shall be accompanied by a fee of one hundred rupees.]

(10) Notwithstanding anything in this Act where any reference or appeal was preferred with the approval of Collector by the officer below the rank of Collector, and the reference or appeal is pending before appellate forum or the Court, such reference or appeal shall be deemed to have been preferred and shall be deemed always to have been so preferred by the Collector.]

4. From perusal of hereinabove provisions of sub-section (3) & (4) of Section 194B of the Customs Act, 1969, it is clear that the Customs Appellate Tribunal is required to send the copy of every order passed by it under this section, **disposing of an appeal**, to the officer of Customs, and in valuation cases, also to the Director, Valuation, and the other party to the appeal, whereas, there is no mention of any interim order, including an order on stay application or any other interim order e.g. order for provisional release of the

consignment during pendency of the main appeal. Similarly, perusal of sub-section (4) of Section 194B of the Customs Act, 1969 reflects that, otherwise expressly provided under Section 196 of the Customs Act, 1969, reference would lie before the High Court **only against final order passed by the Customs Appellate Tribunal in terms of Section 194-B of the Customs Act, 1969**, meaning thereby, that an appeal could be filed only against a final order as may be passed by the Customs Appellate Tribunal, and not against an interim order, including an order on stay application or an order in terms of Section 81 of the Customs Act, 1969, for provisional release of the consignment.

5. Section 196 of the Customs Act, 1969 provides that any aggrieved party, within 90 days from the date of service of an order of the Customs Appellate Tribunal passed under Section 194B(3) of the Customs Act, 1969, may file a reference application in the prescribed form along with statement of case, in the High Court, stating questions of law arising out of such order. However, there is no mention of any interim order, including the order on the stay application or an order entertaining any application for provisional release of consignment in terms of Section 81 of the Customs Act, 1969, against which, a reference could be filed under Section 196 of the Customs Act, 1969.

6. While confronted with hereinabove factual and legal position as emerged after perusal of Section 194B and Section 196 of the Customs Act, 1969, learned counsel for the applicant(s) could not dispute the above said legal position and candidly stated that a reference in terms of Section 196 of the Customs Act, 1969 can be filed against an order passed by the Customs Appellate Tribunal on the main appeal and not against an interlocutory order.

7. In view of hereinabove facts and circumstances of the case, and the legal position as emerged from the perusal of the statutory provisions of Section 194B and Section 196 of the Customs Act, 1969, we are of the opinion that above Special Customs Reference Applications filed against an interlocutory order, are misconceived and not maintainable, therefore, are hereby dismissed in limine along with listed applications.

8. It is clarified that while deciding the instant Reference Applications, we have not dilated upon the questions proposed therein or the merits of the case, however, the same may be entertained and decided in some appropriate case, in accordance with law.

JUDGE

JUDGE

Nadeem/A.S.