

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

(Extraordinary Reference Jurisdiction)

**Special C.R.A. No. 705 of 2019**

**Special C.R.A. No. 706 of 2019**

**Special C.R.A. No. 707 of 2019**

**&**

**Special C.R.A. No. 708 of 2019**

Date	Order with signature of Judge
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**Present:**

**Mr. Justice Aqeel Ahmed Abbasi**

**Mr. Justice Mahmood A. Khan.**

**Fresh Case**

**18.11.2019:**

Mr. Khalid Rajpar, advocate for the applicant(s).

**ORDER**

1. Since these References have been filed against the combined impugned judgment dated 29.05.2019 passed by the Customs Appellate Tribunal in Customs Appeal Nos. K-07/2015 [Re: *M/s. Mehtab Exports*]; 08/2015 [Re: *M/s. Azhar Exports*]; K-09/2015 [Re: *M/s. Aziz textile*]; & K-10/2015 [Re: *M/s. Tariq Enterprises*], whereas, common questions have been proposed, therefore, these References are being heard and decided through common order.

2. Following questions have been proposed in these References, which according to learned counsel for the applicant(s), are questions of law arising from the aforementioned combined impugned judgment and require opinion of this Court:-

*I. Whether in admissible amount of rebate is payable in terms of SRO 212(I)/2009 dated 05.03.2009?*

*II. Whether the Appellate Tribunal erred in law not to consider the provisions of rebate law/rules and Rule 459 of the Customs Rules framed under SRO 450(I)/2001 dated 18.06.2001?*

*III. Whether the Gloves of weight 06 grams per pair qualify for rebate @ Rs. 0.41 per pair?*

*IV. Whether the respondent made true and correct declaration on Goods Declarations (GDs) filed under Section 131(1) of the Customs Act, 1969?*

*V. Whether the findings of the Tribunal are not perverse for non-reading and mis-reading of the available record before the Appellate Tribunal?"*

3. On 24.10.2019, when the matters were taken up at katcha peshi stage, learned counsel for the applicant(s) requested for time to place on record copy of order passed by a Divisional Bench of this Court in other identical Reference, involving similar questions of law, which was filed by the department against the earlier decision of the Customs Appellate Tribunal, as referred in Para 6 of the impugned judgment in Appeal No. 1299/2011 [*Re: Aziz textile v. Additional Collector & others*], whereas, today, learned counsel for the applicant(s) has placed on record copy of order dated 14.05.2015 passed by a Divisional Bench of this Court in Special Customs Reference Application No. 77/2015 [*Re: The Collector of Customs (Exports) v. M/s. Mumtaz Ghani Textile (Pvt) Ltd*] and has candidly submitted that the legal controversy agitated through instant Reference Applications has already been decided by this Court against the Customs Department, however, department has filed Civil Petition being No.361-K of 2015 before the Hon'ble Supreme Court, wherein, leave to appeal has been granted vide order dated 29.10.2015, whereas, operation of the aforesaid judgment has been suspended. It has been prayed by the learned counsel for the applicant(s) that either instant Reference Applications may be adjourned *sine-die*, or the same may be decided in terms of earlier decision of this Court in the aforesaid Reference Application.

4. We have heard the learned counsel for applicant(s), perused the record with his assistance and also gone through the combined impugned judgment passed the Customs Appellate Tribunal in these cases, as well as the Order dated 14.05.2015 passed by a Divisional Bench of this Court in Special Customs Reference Application No. 77/2015 [Re: *The Collector of Customs (Exports) v. M/s. Mumtaz Ghani Textile (Pvt) Ltd*], wherein, under similar circumstances, following question was proposed:-

*“III. Whether the respondent No. 1 made true and correct declaration of G.Ds filed under Section 131(I) of the Customs Act, 1969”*

5. In order to examine as to whether the legal issues raised through instant reference applications are similar to the legal question as already decided by this Court in Spl.C.R.A. No.77/2015, it will be advantageous to reproduce hereunder the relevant finding of the Customs Appellate Tribunal in these references, which reads as follows:-

*“6. It is observed that an identical case of PVC dipped gloves the learned Single Bench of this Tribunal in Appeal No.1299/2011 (Aziz Textile V.S Additional Collector & Others) has held:-*

*“6. I have examined the case record and heard the rival parties. The case has been made out by the Directorate of Post Clearance on export of three consignments of Textile Articles of Surgical Tapes, Bed Sheets, Terry Towels and PVC dipped Cotton Gloves on the ground that both bank credit advice and Forms “E” were neither furnished nor they were authentic, consider to be fake. During the hearing proceedings, the counsel for appellant argued that the case is based on presumptions and supposition. The bank credit advices and Form “E” within respect to the export of impugned goods are genuine and this could be verified. Upon this, the respondent no.3 was directed to verify the BCA and Form “E” and to submit a report in this regard. The Respondent No.3 submitted the requisite report on 03.10.2013. The departmental representative informed the court as well as*

*in the report submitted that the BCA's and form "E" has not been verified from the concerned Bank and found to be genuine.*

*7. In view of the report submitted and as stated by the departmental representative, the charges framed against the appellant stand mitigated as the requisite documents confirming exports, receipt of foreign exchange remittances has been found genuine and no further grounds to proceed against them. This being so, the appeal is allowed and disposed off in above terms as no order to cost."*

*7. In another identical case the Division Bench of this Tribunal vide Customs Appeal No.K-610/2014-4808 has held on 08.12.2014:-*

*"14. The fact of the matter is that admittedly, exported goods were PVC gloves (knit writs style). The value of such gloves and admissibility of duty drawback on their exports is on per 'pair' basis and not on the basis of 'weight' as further clarified by the Federal Board of Revenue vide its letter dated 29.03.2013, both the forums below traveled beyond the allegations leveled in the Show Cause Notice, which being unacceptable in the eye of law is not warranted. DR has also not denied that appellant has obtained raw material from the local market and after 210 days of the export, the appellant claimed the drawback as mentioned in the G.Ds.*

*15. The upshot of above discussion is that this Tribunal is of the unanimous opinion that the allegations leveled in the show cause notice against the appellant/exporter lack appropriate basis and are unmaintainable. Therefore, this appeal is accepted. The order in appeal dated 05.04.2014 and order in original dated 02.09.2013 are hereby set aside and the show cause notice is vacated."*

*8. In the light of above referred two decisions, we tend to agree with the contention of appellant.*

*Accordingly, appeal is accepted."*

6. In the order passed by the Divisional Bench of this Court in the identical Reference, i.e. Spl.C.R.A. No.77/2015 [Rs: *The Collector of Customs (Exports) v. M/s. Mumtaz Ghani Textile (Pvt) Ltd.*] under similar facts and circumstances, the Divisional Bench of

this Court, while examining the scope of the provisions of SRO 212(I)/2009 dated 05.03.2009 and the clarification issued by the Federal Board of Revenue [FBR] vide letter C. No. 3(33)DRD/2008/40367 dated 29.03.2013 has decided the legal issue in the following terms:-

*“4. It will be advantageous to reproduce the relevant finding of the Appellate Tribunal on the subject controversy as detailed in para Nos. 12 to 15 of the impugned order, which reads as follows:-*

*12. This Tribunal has minutely scanned the record of the case, Show cause notice was issued on 15.04.2013. The relevant part i.e. the allegation against the appellant has been mentioned in Para No. 2 & 3 of the show cause notice which are reproduced as under:-*

*i. On Scrutiny of the case made in terms of Section 26, 32 & 13(I) of the Customs Act, 1969 read with Rule 459 of the Customs Rules, 2001 and other provisions of law, it has been found that net weight of the exported gloves (made of PVC with knit wrist) comes to 5 to 6 gram/pair which is quite irrational being not in conformity with the normal/routine practice.*

*ii. You are therefore, called upon to show cause as to why your claim should not be rejected being inadmissible on the ground mentioned above. Your written reply to the show cause notice should reach this office within 7 days of the receipt thereof.*

*13. About the discrepancy of weight, the matter was referred to the Federal Board of Revenue, which vide letter dated 29.03.2013 categorically explained that the duty drawback rates notified in SRO 212(I)/2009 dated 05.03.2009 are on per pair basis without any size, weight and grammage. The clarification of FBR is reproduced as under:-*

*Government of Pakistan  
(Revenue Division)  
FEDERAL BOARD OF REVENUE*

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C.No.3(33)DRD/2008/40367 Islamabad the March 29, 2013

From: Dr. Tahir Qureshi,  
Secretary (DRD)

To The Collector,  
Model Customs Collectorate of PaCCS,  
Customs House, Karachi.

SUBJECT: CLARIFICATION REGARDING DUTY  
DRAWBACK @ 0.41 PER PAIR ON PVC  
GLOVES (KNOT WRIST STYLE) IN TERMS  
OF SRO 212(i)/2009 DATED 05.03.2009.

I am directed to refer to your letter C.No.MCC(Export)/Pt-I] dated 25.03.2013 on the subject noted above.

It is clarified that the duty drawback rates notified in the gazette notification vide Schedule VII of SRO 212(I)/2009 dated 05.03.2009 are on "per pair" basis and the PVC gloves (knit wrist style) mentioned at Sr. No. 1 of the Schedule VII of SRO 212(I)/2009 dated 05.03.2009 is notified without any size, weight and grammage.

Sd/-

(Dr. Tahir Qureshi)

Secretary (Duty Remission & Drawback)

14. The fact of the matter is that admittedly, the exported goods were PVC gloves (knit wrist style). The value of such gloves and admissibility of duty drawback on their exports is on per 'pair' basis and not on the basis of 'weight' as further clarified by the Federal Board of Revenue vide its letter dated 29.03.2013, both the forums below travelled beyond the allegations leveled in the Show Cause Notice, which being unacceptable in the eye of law is not warranted. DR has also not denied that appellant has obtained raw material from the local market and after 210 days of the export, the appellant claimed the drawback as mentioned on the GDs.

15. The upshot of above discussion is that this Tribunal is of the unanimous opinion that the allegations leveled in the show cause notice against the appellant/exporter lack appropriate basis and are unmaintainable. Therefore, this appeal is accepted. The order in appeal dated 05.04.2014 and order in original dated 02.09.2013 are hereby set aside and the show cause notice is vacated."

5. From perusal of hereinabove findings as recorded by the Appellate Tribunal, while placing reliance on the clarification issued by the Federal Board of Revenue on 29.03.2013 regarding duty drawback @ 0.41 per pair on

*PVC Gloves (Knit Wrist Style) in terms of SRO 212(I)/2009 dated 05.03.2009, whereby, it has been clarified that the duty drawback rates notified in the gazette notification vide Schedule VII of the SRO 212(I)/2009 dated 05.03.2009 are on “per pair” basis and the PVC gloves (knit wrist style) mentioned at Sr. No. 1 of the Schedule VII of SRO 212(I)/2009 dated 05.03.2009 is notified without any size, weight and grammage.*

6. *In view of hereinabove position duly clarified by the Board itself, which otherwise reflects correct legal position, any contrary view by the departmental authority without assigning any valid reasons is not warranted in fact and law. we are of the view that instant reference application does not contain any merits, whereas, question proposed hereinabove, is a question of fact, which has been decided by the Customs Appellate Tribunal in accordance with law, whereas, the applicant has not been able to point out any perversity or error in such finding of facts as recorded by the Appellate Tribunal in the instant case. This Court while exercising its reference jurisdiction in terms of Section 196 of the Customs Act, 1969 can only examine such legal question, which arise from the impugned order passed by the Appellate Tribunal, whereas, any factual finding, unless found to be perverse or contrary to record, cannot be disturbed in a reference jurisdiction. Reliance in this regard can be placed in the case of Commissioner of Income Tax v. Electronic Industries Ltd. Karachi 1988 PTD 111 and E. M. Oil Mills & Industries Ltd. v. Commissioner of Income Tax, Audit Division II, Companies III, Karachi 2011 PTD 2708 . Accordingly, we do not find any substance in the instant reference application filed by the applicant, which is hereby dismissed in limine alongwith listed application.”*

7. Since the facts of instant Reference Applications are admittedly similar to the facts of above Spl. C.R.A. No.77/2015, whereas, the legal issue relating to interpretation of the aforesaid SRO 212(1)/2009 dated 05.03.2009 and the clarification issued by the FBR vide letter No.3(33)DRD/2008/40367 dated 29.03.2013 is also identical to the facts and the law in these References, therefore,

by respectfully following earlier decision of the Divisional Bench of this Court as referred to hereinabove, we would decide instant Special Customs Reference Applications in similar terms by answering the "**Question IV**" in "**AFFIRMATIVE**" against the applicant and in favour of the respondent.

Instant Reference Applications stand disposed of in the above terms alongwith listed application(s).

**J U D G E**

**J U D G E**

**A.S.**