

IN THE HIGH COURT OF SINDH AT KARACHI**S.C.R.As. No. 440 and 441 of 2017***Present:***Mr. Justice Aqeel Ahmed Abbasi.****Mr. Justice Mahmood A. Khan****M/s. Chaudhry Steel Re-Rolling Mills (Pvt.) Ltd.****Vs.****The Customs Appellate Tribunal, Karachi & another**

Applicants : through Ms. Navin Merchant, advocate.

Respondents: through Ms. Masooda Siraj, advocate.

Date of hearing: 22.11.2019**Date of order: 22.11.2019****ORDER**

Applicants have initially formulated six questions in both these references, which according to learned counsel for the applicants, are question of law, arising from the common judgment dated 19.04.2017 passed by Customs Appellate Tribunal, Bench-1, Karachi, in Customs Appeals Nos. K-2002 and K-2003 of 2016, however, after having read out the proposed questions, learned counsel for the applicants submitted that she will press questions (b), (d) and (e) only, which according to learned counsel are legal questions of law, arising from the combined impugned judgment in both these cases. It has been contended by the learned counsel that questions proposed in these references have already been answered by the Divisional Bench of this Court in the case of Collector of Customs v. M/s. Chaudhry Steel Re-Rolling Mills (Pvt.) Ltd. & one another in Special Customs Reference Application No. 442 of 2018 vide order dated 22.08.2019. In support of her contention, learned counsel for the applicants has placed the copy of order passed in the aforesaid case, copy of which was also supplied to learned counsel for the respondents, who after perusal the same, could not controvert the factual

and legal position in respect of proposed questions already stand decided by this Court.

2. The proposed questions read as follows:-

- b) *Whether in the facts and circumstances of the case, the Customs Appellate Tribunal as well as the Additional Collector (Adjudication-I) erred in interpreting Section 27-Ad, which expressly permits mutilating, or scraping of goods at the request of the importer?*
- d) *Whether in the facts and circumstances of the case the Customs Tribunal was justified in upholding imposition of penalty on the applicant despite the fact that the element of mensrea was missing in the case and is also against the clear provisions provided under CGO 12 of 2002?*
- e) *Whether in the facts and circumstances of the case the Customs Tribunal as well as the Additional Collector was justified in enhancing value of the goods in question and applying the value of prime/secondary steel?*

3. Briefly the facts stated in these reference applications are that the applicant is a manufacturer of iron and steel products, bars, sheets and plates and importer of iron & steel re-meltable scrap from world-wide sources and they imported a consignment of Iron & Steel Scrap and accordingly filed Goods Declaration No.KAPPI-HC-3692 dated 19.07.2015 and KAPPI-HC-3549 dated 18.07.2015 by declaring the goods as per imports documents, i.e. Iron & Steel Remeltable scrap weighing 21,200 and 40490 Kgs and Iron & Steel Rollable Scrap weighing 200 and 2000 Kgs. The subject consignments were subject to first appraisalment system and the examination reports were prepared in the following terms:-

Examined the goods on the basis of G.D/DATA retrieved through WeBOC system. Upon physical examination the goods have been found Iron and Steel over size square Pipes/Structural Tubes Approx weight 1000 Kgs (1) Iron and Steel rerollable scrap approx. weight 5000 Kgs (Rest Iron & steel Remeltable scrap. Checked weight 10% vide QICT Slip No. 3236777 dated 19.07.2016. Found 21420 Kgs. vide image scanning No. 0019 dated 19.07.2016 group may check all PCT and all other aspect examination report pertains to only one container.

Container No. msku4213801 "iron and steel over size square pipes/structural tubes approx. weight 10000 Kgs (1) iron and steel rerollable scrap, approx. weight 4000 Kgs (2) rest in iron and steel Remeltable scrap wt. slip and scan attached. Group to proceed as per law"

Container No. tku143628 “examined the container on the basis of goods declaration retrieved through Weboc system; upon physical examination good have been found : iron and steel over size pipe approx. weight 10000 Kgs (1) iron and steel rerollable scrap approx. weight 200 Kgs (2) rest is iron and steel Remeltable scap. Checked weight 100% vide QICT Slip No. 3236777 dated 19.07.2016 found weight 21420 Kgs vide images scanning No. 0019 dated 19.07.2016, group to check pct and all other aspects. Examination report pertains to only one container.

The applicants approached the concerned officers and contended that they have imported a consignment of scrap and the oversized goods may be allowed/released after mutilation of the goods as per Section 27-A of the Customs Act, 1969.

However, such request was declined and Order-in-Original was passed against the applicants by creating demand towards duty and taxes as well as fair and penalty for mis-declaration.

4. It will be advantageous to reproduce hereunder the relevant finding of the Divisional Bench of this Court in the afore-cited case relating to application of provision of Section 27-A of the Customs Act, 1969, which reads as follows:-

“4. We have heard the learned counsel for the parties, perused the record and the impugned judgment passed by the Customs Appellate Tribunal as well as the order passed by the adjudicating officer in the instant case. We have also examined the provisions of Section 27A of the Customs Act, 1969 (after amendment through the Finance Act, 2010), which reads as follows:-

“27A. Allowing mutilation or scrapping of goods.-

At the request of the owner the mutilation or scrapping of goods as are notified by the Board, may be allowed, in the manner as prescribed by the rules and where such goods are so mutilated or scrapped they shall be chargeable to duty at such rates as may be applicable to the goods as if they had been imported in the mutilated form or as scrapped.

5. From perusal of herein above provisions of law, it is clear that no time frame has been given to an importer to make the request for mutilation or scrapping of the imported goods. On the contrary, the time frame which was earlier provided, appears to have been deliberately omitted to avoid unnecessary disputes and litigation in this regard. In this case, Order-in-Original has been passed against the applicant/department wherein it has been recorded that the goods imported by the respondent are substantially rerollable steel bars which according to Customs Authorities were oversized, whereas, are also in the scrap form and have lost tensile strength. Learned counsel for the applicant has not been able to

dispute the fact or position as stated in the Order-in-Original nor could assist the Court as to how the mensrea could be attributed to the respondent by importing scrap having oversized rerollable steel bars which have admittedly lost tensile strength and cannot be used as scrap for melting purposes.

6. In view of herein above facts and circumstances of the case, we are of the considered opinion that the finding as recorded by the adjudicating officer with regard to the description of the imported consignment, which have been duly affirmed by the Customs Appellate Tribunal, as a finding of fact, whereas, the provisions of Section 27A of the Customs Act, 1969, under the facts and circumstances of the instant case have been correctly interpreted and there seems no factual discrepancy or legal error in the impugned judgment passed by the Customs Appellate Tribunal, Bench-I, Karachi in the instant case, therefore, we do not find any substance in the instant reference application, which is accordingly dismissed along with listed applications. Consequently, the questions proposed herein above are answered in affirmative in favour of the respondents, and against the applicant/department.”

5. The precise controversy revolves around determination of fact to the effect that as to whether request for mutilation of oversized scrap of re-meltable and rerollable oversized bars and the pipes was permissible in terms of Section 27-A of the Customs Act, 1969 or not, particularly when the description of goods does not change even if it is oversized, whereas, there is no mis-declaration in respect of description, weight or PCT heading in the instant cases.

6. Since the facts and circumstances of the instant cases are admittedly similar, whereas, the legal issue involved in these references i.e. application of provision of Section 27-A of the Customs Act, 1969, is also similar to the legal issue decided by this Court in above cited decision of this Court, therefore, by respectfully following earlier decision of this Court, instant reference applications are allowed in similar terms. Consequently the order of the appellate tribunal is hereby set-aside and the proposed question (b) is answered in **affirmative** in favour of the applicants and against the respondents, whereas, the proposed questions (d) and (e) are answered in **negative** in favour of the applicants and against the respondents.

7. Learned counsel for the applicants, at this juncture, submits that amount of duty and taxes were paid by the applicants at the relevant point of time, therefore, respondents may be directed to issue Delay Detention Certificate to the applicants in accordance with law. Learned counsel for the respondents does not oppose such request. Accordingly, while disposing of these references, we would direct the respondents to consider the request of the applicants for issuance of Delay Detention Certificate strictly in accordance with law.

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