

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

SCRA 282 of 2010 : Trans World International Inc (TWI) vs.
Customs, Federal Excise & Sales Tax
Tribunal & Others

For the Applicant : Mr. Anwar Kashif Mumtaz, Advocate

For the Respondent : Mr. Qazi Ayazuddin Qureshi
Assistant Attorney Sindh

Mr. Khaleeq Ahmed, Advocate

Date/s of hearing : 30.01.2023

Date of announcement : 30.01.2023

ORDER

Agha Faisal, J. The applicant is aggrieved by concurrent judgments, of three consecutive statutory forums of adjudication, rendered there against culminating in the judgment rendered by the learned Customs, Federal Excise & Sales Tax Appellate Tribunal dated 02.06.2010 (“Impugned Judgment”), hence, this reference.

2. Briefly stated, the applicant had imported a consignment of television cameras and equipment and filed a home consumption bill of entry, while claiming exemption from duties / taxes. The applicant submitted indemnity bond / undertaking stipulating that the applicant would obtain and submit the relevant exemption certificate within fifteen days, however, *admittedly* none was ever obtained / submitted. During the adjudication proceedings, in a departure from its initial stance, the applicant pleaded qualification for exemption from income tax per clause (v) of SRO 593(I)/91 dated 30.06.1991 (“SRO 593”). Eventually the proceedings resulted in an order in original and an order in appeal being delivered there against. The same fate befell the applicant in appeal before the Tribunal.

3. While various question were proposed by the applicant, however, the only question agitated before us, being crucial to this determination, was whether the applicant was automatically qualified for exemption from payment of income tax under clause (v) of SRO 593, therefore, the question for determination herein is phrased as follows:

“Whether in the facts and circumstances of the case the applicant was entitled to exemption from payment of income tax under clause (v) of SRO 593(I)/91.”

4. Admittedly, the release of the consignment was sought and obtained by the applicant on the basis of indemnity bond / undertaking expressing that the pertinent *exemption certificate* would be obtained and submitted before the revenue authorities within fifteen days. It is also a matter of record that no exemption certificate was ever granted to the applicant and consequently none was ever submitted before the revenue authorities. Instead the subsequent course of action adopted, in contradiction of the indemnity bond / undertaking, was to claim exemption under SRO 593. The respective adjudication fora did not accept the applicant’s claim, hence, the three consecutive decisions there against and the same issue that has been argued before us.

5. Clause (v) of SRO 593 provided for exemption to *“persons who import plant or machinery for execution of a contract with the Federal Government or a Provincial Government and produce a certificate from the Government”*. At the risk of repetition, it merits reiteration that three consecutive fact finding forums have found that the applicant did not qualify under the exemption belatedly claimed.

6. Despite our repeated queries, the applicant’s counsel remained unable to demonstrate the import of any plant and machinery in the execution of any contract with the Government and furthermore failed to demonstrate the existence of any pertinent exemption certificate. Under such circumstances, it is patently clear that the applicant’s counsel remained unable to persuade us to take any view inconsistent with that maintained by the three consecutive forums of adjudication.

7. Therefore, in view of the foregoing, we do hereby answer the question framed for determination herein in the negative, in favor of the respondent department and against the applicant. This reference application is disposed of accordingly.

8. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE
JUDGE