

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application Nos. 87 & 176 of 2006

DATE

ORDER WITH SIGNATURE OF JUDGE

For Hearing of main case

20.02.2023.

Ms. Masooda Siraj, advocate for the Applicant along with Mr. Jawaid Hussain advocate

Mr. Hanif Faisal Alam, advocate for Respondents

Through these Reference Applications the Applicant department has impugned two separate orders dated 20.03.2006 passed in Customs Appeal No. K-603/2005 and order dated 08.05.2006 passed in Customs Appeal K-259/2000 by the then Customs, Central Excise & Sales Tax Appellate Tribunal Bench-III Karachi. It appears that both these Reference Applications were admitted to regular hearing on the same question of law which reads as under: -

“Whether in the facts and circumstances of the case, the learned Customs, Excise and Sales Tax Appellate Tribunal Karachi Bench-I, was justified in holding that the Respondents is entitled to the benefit of refund of the Customs duty and sales tax in terms of Notification No.1076(I)/95 dated 5th November, 1995?”

2. Learned counsel for the Applicant submits that the Tribunal erred in law while accepting the appeal(s) inasmuch as the Respondents were not entitled to the benefit of SRO 1076(I)95 dated 05.11.1995 as the goods of the Respondents were never released provisionally; nor the matter was pending in any court of law; and therefore, question be answered in favor of the department. In support she has relied upon the case of *Nishat Mills*¹.

3. On the other hand, learned counsel for the Respondents submits that CBR after various representations issued letter dated 20.05.1996, whereby, the condition of the goods being provisionally released; or by way of any orders of the court was done away with, and the benefit of SRO 1076(I)95 dated 05.11.1995 was extended to all concerned; hence the Tribunal was fully justified in passing the impugned orders. He further

¹ 2006 PTD 2726

submits that in Special Customs Reference Application No.176 of 2006, the Tribunal while allowing the appeal has also discussed and relied upon certain Special Exemption Orders issued by CBR in favor of similarly placed persons, and therefore, the said benefit was also available to the present Respondents; hence, both these Reference Applications do not merit any consideration and are liable to be dismissed.

4. We have heard both the learned counsel and perused the record.

5. It appears that, the Respondents had imported Ring Spinning Frames and got them cleared upon payment of leviable statutory duties and taxes² and admittedly, never challenged such imposition of duties and taxes. It further appears that various other textile mills while importing the same machines had disputed the levy of duties and taxes upon denial of respective exemptions on the ground that Ring Spinning Frames were being manufactured locally; and ultimately approached various High Courts of the country and obtained ad-interim release orders. Finally, the matters were decided against the Textile Mills, and thereafter, a settlement was reached between the Textile Mills and CBR and accordingly SRO 1076(I)/95 was issued and the preamble of the same which for the present purposes is relevant reads as under:-

"... Notification No. SRO 1076(1)/95, dated 5th November, 1995. In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), and sub-section (1) of section 13 of the Sales Tax Act, 1990, the Federal Government is pleased to exempt ring spinning frames falling under PCT heading 8445.2000 imported during the period commencing from the 14th June, 1984, and ending on the 30 June, 1995, and **release of which had been allowed provisionally either in terms of interim orders from various courts of law or by customs authorities** from payment of so much of the customs duty and sales tax as is in excess of thirty percent of the leviable rates of customs duty and sales tax at the time of filing of home consumption or ex-bond bill of entry subject to the following conditions, namely: (emphasis supplied)

6. From perusal of the aforesaid preamble of the said SRO, it appears that the benefit of the same was only available to those persons who had imported the machines in-question between 14.06.1984 to 30.06.1995 and release of which *had been allowed provisionally; either in terms of interim orders from various courts of law or by the Customs Authorities*. As to the period mentioned in the SRO there appears to be no dispute; however, insofar as the condition of provisional release is concerned, the respondents do not qualify. It further appears that

² In SCRA 87-2006 on 18.11.1984 and in SCRA 176-2006 on 11.3.1995

pursuant to the above Notification, the Respondents then approached the department seeking benefit of SRO 1076 and filed refund claims which were dismissed against which their appeals were allowed by the learned Customs Tribunal through impugned orders. The only reason which prevailed upon the learned Tribunal while allowing the Appeals a letter dated 20.05.1996 issued by CBR to field Collectors which reads as under:-

"GOVERNMENT OF PAKISTAN
CENTRAL BOARD OF REVENUE

C.No.6/6/Mach/96

Islamabad, the 20th May 1996

From: Khalid Naseem, Secretary
Islamabad, the 20th May, 1996

To: The Collector of Customs
(Appraisement/Preventive)
Custom House, Karachi.

The Collector of Customs
Custom House, Nabha Road,
Lahore.

The Collector of Customs and Central Excise
Peshawar, Rawalpindi, Faisalabad, Multan,
Hyderabad, Quetta and Gujranwala.

Subject: **REFUND OF CUSTOMS DUTY ON IMPORT OF RING
SPINNING FRAMES UNDER SRO.1076(1)/95**

I am directed to refer to the above subject and to say that the cases of the Importers which had paid the duty but have not entered in litigation with the department may be processed for refund.

2. *The refund will be allowed only to those Importers (i) who were subjected to statutory duty merely on the ground that ring spinning frames were being manufactured locally and (ii) who otherwise were eligible for concessions in accordance with SRO.1076(1)/95.*

(KHALID NASEEM)
SECRETARY(MACHINERY)
Ph: 215314"

7. From perusal of the above, it appears that it is kind of a clarification in respect of SRO 1076, whereby, it was clarified that (i) importers who had paid duty of Ring Spinning Frames; but had not entered into any litigation were entitled for refund on the condition that they were subjected to statutory duty merely on the ground that ring spinning frames were being manufactured locally and (ii) who otherwise were eligible for concession in accordance with SRO 1976(I)/95.

8. From perusal of the above clarification, it appears that it is partly in line with the SRO 1076 already issued, and partly beyond the scope of the said SRO. In fact, when read as a whole, it is against the Respondents case inasmuch as while extending benefit in para (i), it has been further stated in para (ii) *that it will apply on those who otherwise*

were eligible for concession under SRO 1076. The Respondents admittedly, are not covered by the said SRO to the extent of provisional release of their consignments, and this fact has been admitted by their Counsel before us. Per settled law, CBR cannot issue any guidelines or clarification which are against the very spirit of a Notification or provisions of law. It is also settled that such clarifications are merely administrative and are not binding insofar as conduct of any judicial proceedings are concerned. The Board's views as to the interpretation of law do not have the force of law³. Even otherwise, the contents of this letter/clarification of C.B.R. in paragraph 2 is to be read as a whole and the portion of it cannot be separated for the wishful meaning to be taken by appellants⁴. Nonetheless, it is to be appreciated that SRO 1076 by itself provides certain conditions to be fulfilled and the first and foremost is, that the consignments of ring spinning frames ought to have been released provisionally; either by way of ad-interim orders from the courts of law; or on its own by the Customs authority. Insofar as, the present Respondents are concerned, admittedly none of their consignment in question were released provisionally, rather they had accepted the levy of statutory duty and taxes without raising any objections, and therefore, in our considered view, they were not entitled for benefit under SRO 1076 notwithstanding any clarification from CBR as above. More so when the contents of S.R.O. No.1076/95 specifically makes mention of its applicability in particular circumstances, as detailed therein no other meaning of them can be taken⁵.

9. In view of hereinabove facts and circumstances of the case the proposed question is answered in *negative*; in favor of the Applicant and against the Respondents. Both these Reference Applications are **allowed** and the impugned orders dated 20.03.2006 and 08.05.2006 passed by the Tribunal in both the Appeals are hereby set aside.

10. 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.

J U D G E

J U D G E

³ Central Insurance v CBR (1993 SCMR 1232); Collector of Customs v Sheikh Spinning (1999 SCMR 1442)
Assistant Collector of Customs v B.R.Herman (PLD 1992 SC 485)

⁴ Nishat Mills Limited v Collector of Customs (2006 PTD 2726)

⁵ Nishat Mills Limited v Collector of Customs (2006 PTD 2726)

Amjad/PA