

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal

Special Customs Reference Application No.136 of 2017

M/s OBS Pakistan (Pvt.) Limited
Versus
The Customs Appellate Tribunal & another

Date of Hearing: 27.03.2023
Applicant: Through Mr. Pervez Iqbal Kasi Advocate.
Respondents: Through Mr. Khalid Mehmood Siddiqui
Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This Special Customs Reference Application impugns a judgment dated 06.03.2017, passed by Customs Appellate Tribunal Bench-III, was admitted for hearing for consideration of following two questions of law vide order dated 24.08.2022:-

- A) *Whether in the facts and circumstances of the case the Appellate Tribunal erred at law by allowing recovery which at best could only be demanded by invoking the provisions of Section 32(3) of Customs Act, 1969, which charge was not leveled in the show-cause notice?*
- B) *Whether in the facts and circumstances of the case the Appellate Tribunal erred at law by not ruling that the respondents should have filed appeals in terms of section 193(1) Customs Act, 1969 against the subject assessments, instead of allowing recovery under provisions of Section 32 of the Act?*

2. We have heard the learned counsels and perused material available on record.

3. The MCC Appraisalment (West), Customs House, Karachi vide its contravention report dated 07.09.2015 in pursuance of a clarification issued by FBR dated 16.05.2015 observed that "Methyldopa" USP 34 was cleared by the applicant/appellant who claimed benefit of customs duty

under S. No.1083 of Table-I to SRO 659(I)/2007 dated 30.06.2007 which resulted in short realization of revenue, which benefit was not available to the applicant. In fact the exemption of customs duty was available to the commodity “Alanine”, which is a raw material. It was followed by a show-cause notice served upon the applicant/appellant and it was then followed by Order-in-Original dated 28.01.2016 and the order of the Tribunal dated 06.03.2017, impugned in this Reference. The conclusion drawn by the Tribunal is as under:-

“07. Record of the case has been carefully examined and the arguments put forth by the appellant as well as the respondent have been duly considered. Main dispute in the case is that impugned goods namely “METHYLDOPA USP 34”, a chemical, were imported by the appellant and benefit of concessionary duty under Pak-China FTA notified vide SRO 659(I)/07 dated 30.06.2007 (S.No.1083 of its Table) was claimed. The respondent had denied this concessionary treatment after an exhaustive deliberation and this denial is based on the classification of the impugned goods and clarification issued by the Federal Board of Revenue. Perusal of the given literature and record in general clearly reveals that the impugned chemical Methyldopa falls under PCT heading 2922.5000 and it finds no mention in the concessionary FTA notification SRO 659(I)/07. The concession on import from China is, however, available to a similar chemical namely Alanine which is classifiable under PCT 2922.4910 and it enjoys the concessionary rate of customs duty in terms of the said notification. Pima facie, the respondent is found to have established its case on technical and factual grounds. Appellant’s contention is correct that the two chemicals viz. methyldopa and alanine are two different chemicals and all the arguments built later find no substance. The appellant had thus deliberately, willfully and unduly attempted to avail an exemption which did not belong to the impugned goods. This act of the appellant attracts the provisions of sections 32(1)(2) and 32A as invoked by the respondent in the show-cause notice. In view of the facts before this Tribunal the appeal is found to have no merit hence the same is hereby dismissed. Impugned order is held as lawfully founded factually correct.

08. Judgment passed and announced accordingly.

4. The notification of 30.06.2007 at Serial No.1082 and 1083 disclose description of the goods as “Alanine”. In the light of the above findings of the Appellate Tribunal, the questions framed do not appear to be the

questions of law arising out of the impugned judgment of the Tribunal. Jurisdiction of this Court cannot be invoked for reappraisal of the facts as to the goods imported by the applicant and the order of the Tribunal is final as far as question of facts are concerned, which were determined by it in terms of paragraph 7 of the judgment, referred and reproduced above. The same has attained finality as far as the goods imported by the applicant is concerned under the identified Sr. No.1082/1083.

5. Since the jurisdiction of this Court under section 196 of Customs Act, 1969 is limited to the extent of question of law, which we do not see arising out of the impugned judgment, specially in terms of two questions put forth by the applicant for determination of this Court and on the basis of which this Reference was admitted for hearing, this Special Customs Reference Application is dismissed and the two questions, which are not based on law but on facts and in terms of the conclusion are decided already by the Tribunal, are decided accordingly against the applicant and in favour of the respondents.

6. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal Bench-III, Karachi, as required by section 196(5) of Customs Act, 1969.

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