

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. No. 561 / 2011

Date

Order with signature of Judge

HEARING OF CASE

For regular hearing.

22.08.2023.

Mr. Muhammad Rashid Arfi, Advocate for Applicant.

Respondent has been served through publication; and service has been held good; however, nobody has turned up. In response to the order passed on the last date of hearing, Applicant's Counsel has placed before us copy of SRO No. 1374(I)/1998 dated 17.12.1998 issued under Section 181 of the Customs Act, 1969.

Through this Reference Application, the Applicant Department has impugned Judgment dated 19.05.2011 passed by the Customs Appellate Tribunal Bench-II, Karachi in Customs Appeal No. K-664 of 2010 proposing the following Questions of Law:-

- i. Whether the Appellate Tribunal erred in law to hold that as per SRO No. 499 (I)/2009 dated 13.06.2009 read with 2nd proviso to Section 181 of the Customs Act, 1969, the pitch of fine is based on the 'duties & taxes' instead of customs value of the confiscated goods?
- ii. Whether the Appellate Tribunal erred in law and failed to appreciate that the question before the honourable Court in the case of PTCL 2005 CS 343 where different then the questions of the appeal before the Tribunal?
- iii. Whether the Appellate Tribunal erred in law and failed to appreciate that in an established case of mis-declaration and evasion it is prerogative of the adjudication authority to redeem the confiscated goods as per redemption fine which he deems appropriate as per circumstances of the case?
- iv. Whether the impugned order passed by the Appellate Tribunal Bench-II, Karachi based on misreading / non-reading of evidence / record is sustainable under the law?"

Insofar as Question No. 1 is concerned, it appears that the Tribunal has partly allowed the Appeal of the Respondent¹, by placing reliance on the case reported as **Weave and Knit (Pvt.) Ltd²** whereby, a learned Division Bench of this Court was pleased to hold that quantum of fine in lieu of confiscation of goods has to be paid on the differential amount of duties and taxes, allegedly attempted to be evaded and not on the total assessed value of the goods. In the instant matter, the Respondents Appeal has been allowed only to this extent by the Tribunal.

Insofar the present case is concerned, it may be of relevance to note that subsequently, SRO No.1374(I)/1998 has been superseded by another SRO and presently SRO No. 499 (I)/2009 dated 13.06.2009 is in field. To the extent of validity and applicability of SRO 499 to the present case in hand, there appears to be no dispute. In SRO 1374 it was provided that minimum redemption fine has to be imposed **on duties and taxes attempted to be evaded**, whereas, in SRO 499 which is the applicable SRO in hand, fine is now to be imposed on the **customs value** of the goods. It could be seen that there is a material difference in the language employed in the two SRO's, in respect of as to on what amount the redemption fine has to be imposed.

After going through both these SROs and the Judgment passed by this Court, it appears that Tribunal was misdirected in placing reliance on the case of **M/s Weave and Knit (Pvt.) Ltd.**, (supra) inasmuch as the SRO under consideration before the learned Division Bench of this Court was materially different as it employed a different parameter for imposition of redemption fine in terms of Section 181 of the Act. Earlier it was on the duty and taxes attempted to be evaded, whereas, in the later SRO it is on the customs value of the goods. Insofar as reduction in the amount of penalty is concerned, though no reasoning has been assigned by the

¹ By directing that redemption fine imposed in lieu of confiscation may be computed on the amount of duty and taxes involved with a further reduction of penalty from Rs. 80,000/- to Rs. 25,000/-

² Weave and Knit (Pvt.) Ltd., Karachi Vs. Additional Collector of Customs ([PTCL 2005 CL 343](#))

Tribunal, but an inference can be drawn that it has been so done as the quantum of fine was being reduced. Since, that quantum was incorrectly reduced, we do not see any reason to sustain the reduction of penalty as well.

The provisions of Section 181 of the Act and its proviso along with SRO 566(I)/2005 dated 6.6.2005 and SRO 574(I)/ dated 6.6.2005 (the earlier SRO's under section 181 *ibid*) and the powers of FBR to prescribe conditions in respect of confiscation and redemption fine came for scrutiny before the Hon'ble Supreme Court in the case of ***Collector of Customs, Peshawar***³, and it was held that the requirement to give option to pay fine in lieu of confiscation in respect of confiscated goods is not absolute and is subject to the Notification issued by FBR under Section 181, and the order of the Tribunal for imposition of redemption fine in lieu of outright confiscation of smuggled goods was held to be unlawful and in violation of section 181 *ibid*.

Accordingly, Question No. 1 is answered in the affirmative in favour of the Applicant Department and against the Respondent. In view of this, remaining questions need not be answered. The impugned order of the Tribunal stands set aside and this Reference Application stands allowed.

Let copy of this order be sent to Customs Appellate Tribunal, Karachi in terms of sub-section (5) of Section 196 of the Customs Act, 1969.

J U D G E

J U D G E

Arshad/

³ 2017 SCMR 585