

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI**Special Custom Reference Application No. 308 of 2020***(Director, DG, I&I (Customs), Hyderabad
versus Paracha Traders and another)*

Date

Order with signature of Judge

Present : **Mr. Justice Muhammad Junaid Ghaffar**
Mr. Justice Jawad Akbar SarwanaHearing

- 1.For order on office objection
- 2.For hearing of main case

16.05.2024

Mr. Khalid Rajpar, Advocate for Applicant
Mr. Zulfiqar Ali Shah, Advocate for Respondent

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Through this Reference Application, the Applicant/ department has impugned Judgment dated 24.01.2020 passed by the Customs Appellate Tribunal, Bench-I, Islamabad, in Custom Appeal No.H-1474/2016, by proposing the following questions of law:-

- (1) Whether under the facts and circumstances of the case, non-duty paid/smuggled foreign origin (seized) cloth is not liable to outright confiscation in terms of clauses (8) & (89) of subsection (1) of Section 156 of the Customs Act, 1969?
- (2) Whether, the impugned judgment passed by the learned Appellate Tribunal, is not based on mis-reading and non-reading of evidence?

Heard learned counsel for the parties and perused the record. It appears that the goods in question were seized on the ground that they were smuggled; a show cause notice was issued and in response thereof, the Respondent contested the same on the ground that the goods were imported and duty paid and in support thereof produced a Goods Declaration. However, there was some discrepancy in it as noted by the Adjudicating Authority as to quantity of the goods actually imported and quantity of the roles and weight as mentioned in

GD. Relevant findings of the Adjudicating Authority reads as under:-

27. I have gone through record of the case and heard the written as well as verbal submissions of the department as well as the defendants. Consequently I do conclude as under:-

(i) The claimants of goods have submitted that the seized goods were earlier imported into the country legally through NLC Dry Port, MCC, Quetta and presented relevant GD. The contents of the GD indicate that 14,000 rolls of cloth weighing 22,684 kgs were imported. Whereas the goods seized comprises of 4,739 rolls weighing 22,520 kgs meaning thereby that the balance amount of 9,261 rolls had weight of 164 kgs which is incomprehensible. The claimants have tried to provide legal cover to the seized goods which cannot be substantiated on the basis of reasons mentioned above. Hence I am constrained to agree with the stance of the seizing agency. Accordingly, the seized goods are confiscated outright in terms of clauses (8) & (89) of section 156(1) of the Customs Act, 1969 for violation of section 2(s) and 16 of the Customs Act, 1969 read with section 3(1) of the Import and Export (Control) Act, 1950.

(ii) It has been established that the seized Hino Trailer bearing Registration No.C-2799, Chassis No.EF1JMB-10148 and Model of 1997 has been used for the transportation of smuggled goods. Therefore, the seized vehicle bearing registration No.C-2799 is also confiscated in terms of section 157(2) of the Customs Act, 1969. However, an option under section 181 of the Customs Act, 1969 readwith Board's letter 10(17)L&P/05 dated 26th June, 2006 is given to the owner of the seized vehicle to redeem the same on payment of fine equivalent to 20% of Customs Value of the vehicle. Personal Penalty of Rs.300,000/- (rupees three hundred thousand only) is imposed on the owner of the vehicle under clauses (8) and (89) of section 156(1) of the Customs Act, 1969".

Record reflects that the Tribunal while allowing the appeal has not considered the above findings of the Adjudicating Authority as to how the discrepancy in the quantity of seized goods and the quantity of goods declared in the GD can be reconciled. Relevant findings of the Tribunal are reproduced herein below: -

"7. During the arguments the counsel for the appellants briefly explain the facts and legal grounds of the appeal. He stated that the appellant is an importer and import said confiscated cloth weighing 22684 Kgs got cleared from Quetta Dry Port after payment of duty and taxes on 19.01.2016 the consignment was coming from Quetta to Karachi but seized by the customs staff of Hyderabad and made the seizure on the basis of number of rolls of the said cloth, nothing more than mere "Assumption" the weight of the consignments is approximately the same and laboratory also confirmed the description is same as has been stated in the said GD. The learned counsel stated that the unit of measurement UOM of fabric under Pakistan Customs Tariff is in kilogram and not in Roll so there is nor any evasion of duty and taxes and neither any misdeclaration from appellant. The valid import documents are burden of proof under section 187 of the Customs Act, 1969. The case is made by the respondents only on "Presumption" and it is settled authority that there is no presumption in tax law and the said act of the respondents is malafide, misuse of powers and harassment to the importer/taxpayer the adjudicating authority instead passed the arbitrary impugned ONO in

clear negation and violation of express and specific word and spirit of the law.

8. In view of the above discussion facts and legal grounds, we set aside the impugned Order in Original No.21/2016 dated 13.05.2016 and allowed the appeal of the appellant”.

From perusal of aforesaid finding of the Tribunal, it appears that the Tribunal has merely reproduced the arguments of the Respondent’s counsel and has not appreciated the actual issue in hand including the above finding of the Adjudicating Authority. If the Tribunal was of the view that the discrepancy as pointed out in the order in original is incorrect, then it ought to have done so on its own with a clear cut finding with supporting reasons. Admittedly, this is not so.

In view of the above, we are left with no option, but to set aside the judgment passed by the Tribunal and remand the matter to the Customs Appellate Tribunal, for deciding it afresh considering the findings of the Adjudicating Authority as to the discrepancy as noted in the Order-in-Original. Accordingly, the impugned judgment is set aside and the matter is remanded to the Tribunal to decide the same in accordance with law, after hearing the parties and considering the above findings of the Adjudicating Authority.

The Reference Application stands allowed in the above terms. Office to send the copy of this order to the Tribunal, as required under Section 196(5) of the Customs Act, 1069.

J U D G E

J U D G E

Ashraf