

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application ("SCRA") Nos. 288 to 295 of 2020

Date Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon**

Applicant in all SCRAs: The Collector of Customs,
Through Additional Collector
of Customs MCC
Appraisement (West), Customs
House, Karachi,
Through Mr. Khalid Mehmood
Rajpar, Advocate.

Respondent in all SCRAs: M/s. Unique Industries,
Through M/s. Imran Iqbal
Khan, Aneel Zia and Saima
Syed, Advocates.

Date of hearing: 30.01.2024.
Date of Judgment: 30.01.2024.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant (department) has impugned a common Judgment dated 09.01.2020 passed by the Customs Appellate Tribunal in Customs Appeal Nos.K-659/2019 to K-666/2019 and had proposed various questions of law; however, on 07.04.2022 these Reference Applications were admitted for regular hearing on Questions No. i, iii and v, which reads as under:-

- i. Whether keeping in view the law settled by the Hon'ble Supreme Court of Pakistan in the case of Collector of Customs V/s. Syed Rehan Ahmed (2017 PTD 381), in the absence of any Division Bench, constituted under sub-section (2) & (3) of Section 194-C of the Act, the learned Member (judicial) of the Appellate Tribunal, sitting singly, has erred in law to decide the appeal / pass the impugned Judgment without having jurisdiction?
- iii. Whether keeping in view the facts and circumstances of the case an order passed with reference to a "refund claim" filed under Section 33 of the Act, falls within the jurisdiction of the Appellate Tribunal in terms of Section 194-A(1) of the Act?

- v. Whether the duties and taxes paid as per declaration / assessment in terms of Section 79(1) and 80(3) of the Act and there is no appeal against such assessment in terms of Section 193 of the Act, can be terms as an over payment was made through “in-advertence”, error or mis-construction in terms of Section 33 of the Act?

2. Heard learned Counsel for the parties and perused the record. Insofar as Question No.(i) as above is concerned, the Applicant department has failed to appreciate the law; rather has misunderstood the relevant provision inasmuch as admittedly, the duty, tax, penalty or fine in each individual Appeal before the Tribunal was not above Rs. 5.0 Million; hence the provision of Section 194-C (3) of the Customs Act 1969, which requires such matters to be decided by a Two Member Bench will not be attracted.

3 Insofar as Question Nos.(iii) & (v) as above are concerned, apparently these questions have no discussion in the impugned order. It appears that they were never raised before the Tribunal; nor we have been assisted in any manner that they were ever raised by the Applicant department. No supporting documents, including any cross objections so filed before the Tribunal have been shown to us. It is pertinent to note that the established law on this point is that the High Court will only consider question of law which has arisen out of order of the Tribunal or question which was raised before the Tribunal and was dealt with by the Tribunal or question which was not raised before the Tribunal but was dealt with by the Tribunal or that question which was raised but has not been dealt with by the Tribunal¹. Therefore, both these questions do not arise out of the order of the Tribunal as required under Section 196 of the Customs Act, 1969.

4. In view of the above facts and circumstances, the proposed question No.(i) is answered against the Applicant and

¹ Commissioner of Income Tax v National Refinery Limited (2003 PTD 2020) CIT v. Gohar Ayyub Khan (1995 PTD 1074) & Iram Ghee Mills (Pvt.) Ltd v. Income Tax Appellate Tribunal (1998 PTD 3835)

in favor of the Respondent, whereas, the remaining questions do not arise out of the order of the Tribunal. Accordingly, all these Reference Applications are ***dismissed***. Let copy of this order be sent to the Customs Appellate Tribunal in terms of Section 196(5) of the Customs Act, 1969.

Office to place copy of this order in the connected Reference Applications.

JUDGE

JUDGE

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