

IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application No.334 of 2013

Date

Order with signature of Judge

PRESENT:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

HEARING OF CASE (PRIORITY):

1. For hearing of main case.
2. For hearing of CMA No.2123/2018.

Dated; 23rd January 2025

Mr. Shaiq Usmani, Advocate for Applicant.

Ms. Masooda Siraj, Advocate for Respondent.

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ORDER

Muhammad Junaid Ghaffar, J : -- Through this Reference Application the Applicant has impugned Order dated 18.09.2013 passed in Customs Appeal No.K-708/2013 by the Customs Appellate Tribunal Bench-III, Karachi; proposing following questions of law: -

- i. *Whether on the facts and circumstances of the case, the Learned Tribunal was right to hold that tug boats hired by Applicant were on the basis of bareboat charter and not time charter?*
- ii. *Whether on the facts and circumstances of the case the Learned Tribunal was right to hold that tugs hired by Applicant were imported into Pakistan in the light of the Hon'ble Supreme Court of Pakistan's judgment reported as PLD 1976 SC 618.*
- iii. *Whether on the facts and circumstances of the case, the Learned Tribunal after holding that tugs hired by Applicant were imported into Pakistan, was right to hold that import duty, taxes and penalties are payable by Applicant?*
- iv. *Whether on the facts and circumstances of the case, the Learned Tribunal was right to hold that for registration of vessel in Pakistan, the Mercantile Marine Department of Pakistan issue provisional certificate for completion of assessment under section 80 of the Customs Act, 1969 and after payment of leviable duty and taxes thereon issue final registration certificate?*
- v. *Whether the copies of provisional and final registration of tug boats issued under the Coasting Vessel Act, 1838, referred by the Learned Tribunal issued after coming into force of Pakistan Merchant Shipping Ordinance, 2001 are valid registration certificates when the Coasting Vessel Act, 1838 has been specifically repealed under section 610 read with the Schedule of the Ordinance, 2001.*

- vi. *Whether on the facts and circumstances of the case, the Learned Tribunal after holding that the tug boats hired by the Applicant were on the basis of bareboat charter was right to hold that benefits of Duty and Sales Tax under Notification No. S.R.O 567(1)/2006 dated 05-06-2006 and S.R.O No. 551(1)/2008 dated 11-06-2008 is not available to the Applicant?*
- vii. *Whether on the facts and circumstances of the case the tugs boats hired by the Applicant under time charterparty were required to pay income tax at the rate specified under clause 21 of the Second Schedule, Part II of the Income Tax Ordinance, 2001 as tonnage tax?*
- viii. *Whether, the owners of the vessel can restrict their liability of tax payment through agreement with the Applicant?*
- ix. *Whether, on the facts and circumstances of the case, the learned Tribunal was justified to pass impugned rectification order dated 29-10-2013?*

2. Learned counsel for the Applicant has contended that the forums below have erred in law and facts in holding that the Tugs in question were on bareboat charter and not time charter as they were under the ownership of the charterer; that the Applicant was not liable to file any Goods Declaration, which was only done on the instructions of the Customs Department; that the case of the Applicant falls under section 43 of the Customs Act, 1969, as proper manifest was filed when the Tugs arrived at Port; that the contract of time charter is available at page 137 of instant file which reflects that it was for two year period and was not under the control and ownership of the present Applicant; hence, the Applicant is not liable to pay any duty and taxes as determined by the forums below.

3. Conversely, learned counsel appearing on behalf of the Respondent department has placed reliance on judgment dated 16.10.2024 passed in Special Customs Reference Application No.324 of 2015¹ by this Bench, wherein, after a detailed discussion in respect of a Dredger, this Court has held that the Applicant was not entitled for

¹ Port Qasim Authority v. The Director General, Intelligence & Investigation-FBR, and others

any exemption under the relevant SRO's as the requirement of registration have not been met, whereas a similar exemption has been claimed in this case, hence, on merits the Reference Application is liable to be dismissed.

4. Heard learned counsel for the parties and perused the record. Insofar as the argument of the learned counsel for the Applicant that they were compelled to file a Goods Declaration is concerned, there is nothing on record to suggest that it was so. Notwithstanding this, ignorance of law is no excuse. Record reflects based on an agreement with Respondent No.4, the Applicant brought (if not imported) the tugs in question which were berthed at the Applicants Port, and the Applicant filed Goods Declarations which are available at page 199 onwards seeking clearance of the three Tugs in question and not only this, also claimed exemption from duty and taxes under the SRO 450(I)/2001, dated 18.06.2001, SRO 551(I)/2008, dated 11.06.2008 and SRO 567(I)/2006 dated 05.06.2006. The Goods Declaration further reflects that the Applicant claims itself to be a consignee of these Tugs and, therefore, the argument now raised that the said Goods Declaration were filed under compulsion, cannot be investigated at this stage of the proceedings in this Reference Application.

5. Insofar as exemption from duty and taxes on the import of tugs in question is concerned (i.e. proposed questions (iii) & (iv)), the same already stands decided by this Bench against the Applicant in the case of the Applicant vide judgment dated 16.10.2024 passed in Special Customs Reference Application No.324 of 2015. To that extent the matter stands settled to the effect that until the tug is duly registered as required in law, no exemption can be claimed by the Applicant.

6. Accordingly, in view of above position, Question No.(iii) & (vi) are answered against the Applicant and in favour of the Respondents for the reasons so assigned in our judgment dated 16.10.2024 passed in Special Customs Reference Application No.324 of 2015. The remaining questions need not to be answered. As a consequence thereof, this Reference Application is hereby ***dismissed***. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

JUDGE

JUDGE

Farhan/PS
