ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 62 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For hearing of main case.
3. For hearing of CMA 865/2013.

05.08.2026

Ms. Afsheen Aman, advocate for the applicant.

This reference is pending since 2013 without any progress. The only question pressed for determination is whether the Assistant Collector had jurisdiction to adjudicate the *lis* at the relevant time.

Learned counsel places on record a copy of the Customs Act, 1969 demonstrating that at the relevant time 2010-11 the Assistant Collector was empowered to adjudicate cases involving confiscation of goods or imposition of penalty not exceeding Rs.300,000/- (three hundred thousand rupees). The Order-in-Appeal demonstrates the relevant quantum to admittedly the Rs.527,800. This is prima facie in access of jurisdiction as demonstrated by the learned counsel herself. The learned Tribunal has deliberated the issue and observed as follows:

> *"7. The learned Collector (Appeals) after the deliberation and hearing both the parties passed the order and resolved, specific three issues and main contention raised in the issues and observations as under:-*
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> *"I have examined the entire case record and have given very careful consideration to arguments advanced before me. Admittedly, the goods, through having marks of Thailand origin on them, have been shipped from China and, therefore, there is strong possibility of the same being of China origin. Even if it is presumed that the Exchequer: customs value of the goods has been determined @US$ 4.65/kg (that is 8.17% higher than the declared transaction value) without any evidence or compliance of the mandatory provisions of law contained in Section 25 of the Act read with the Customs Rules, 2001 meaning thereby that the aforesaid determination of customs value of the goods is without any legal effect; the rate of customs duty on goods of both origins is 0% and the amount of sales tax and income tax paid at the import stage is adjustable at post-importation stage. Under the circumstances, no mala fide can be attributed to the appellant and the judicial for a have repeatedly held (for example, Lahore High Court vide judgment reported as 2009 PTD 201 and Appellate Tribunal, Karachi vide order reported as 2010 PTD (Trib) 1886) that unless mens rea is conclusively established against an*

importer, penal action should not be taken against him. Moreover, it is apparent from the record that the Assistant Collector who passed the impugned order did not have jurisdiction to do so inasmuch as the amount of duty/taxes involved on the goods imported in this case worked out to Rs.527,800/- os per department's own version whereas the adjudicating officer, being an Assistant Collector, was empowered to adjudicate only those cases in which the total amount of duty/taxes involved is Rs. 300,000/- as per sub-section (1) of Section 179 of the Act. Therefore, the order passed by him is void ab initio and of no legal effect as per verdlets of the superior courts in the judgments reported as PLD 1995 Kar 687, PLD 1975 SC 331, PLD 1971 SC 197 and PLD 1973 SC 236. The same is, therefore, held to be nullity in the eyes of law. For the foregoing reasons, I hold that the impugned order is not maintainable in law. The same is, therefore, set aside and the appeal is allowed accordingly

8. The appellant at the time of filing the subject appeal, facts and grounds, mentioned thereon failed to controvert the aforesaid three subject issues on the legal ground. All grounds were taken up before the Collector (Appeals) at the time of hearing except one point of contention about the filing of appeal before the Collector (Appeals) against the impugned Order-in-Original which was passed on 30.12.2010, whereas the appeal was filed on 23.02.2011. That issue was not taken up by the present appellant before the Collector (Appeals) nor made any application or objection before the Collector (Appeals) on the ground that the appeal was time barred and not filed in accordance with the procedure and law,

9. Even otherwise, it is the settled law that whether the exercise of jurisdiction by any authority, court or Tribunal is made subject to existences of specific contention, then such power cannot be exercised in the absence of that condition. Whether the executive authority, exercise its jurisdiction, contrary to statutory requirements such exercise of jurisdiction is patently illegal. The Hon'able apex courts on the point of jurisdiction concurred with the Hon'able High Court of Sindh at Karachi in Special Customs Reference Application No.101/2009 in the case of Collector Customs V/s M/s. Kapron Overseas Supplies Co. (Pvt.) Ltd., has in so many words and observations as under:-

> *"it is the trite law that exercise of jurisdiction by an authority has a mandatory requirement and its non fulfillment would entail the entire presence to be coram-non-judice.*

10. By now, it is well settled that any order which suffers from patent illegality or is without jurisdiction, deserves to be knock down, and if the basis on the void order or subsequent orders have been passed either by the same authority or by another authority, the whole series of such orders together with the superstructure of the rights and obligations built upon them, must, unless same statutes or principles of law recognizing as legal the changed position of the parties is in operation fall to the ground because such orders have as little foundation as the void order on which they were founded.

11. In view of the foregoing narrations, observations and arguments made thereon and the judgments delivered by the superior judicial fora and provisions relating thereto those are mandatory in nature for implementation by all subordinate judicial officers and regarding this the violation of mandatory, statutory requirements denied by the officers of the department are tantamount to substantive illegalities and make the whole proceedings and superstructure built on such proceedings as null and void, ab initio and as such I do not find any illegality or infirmity of law in the order passed by the learned Collector (Appeals) which merits the test of warrant under the law. Therefore, the subject appeal is dismissed as devoid from the law.

12. Orders passed accordingly".

Learned counsel has not been able to demonstrate any infirmity in the order impugned. In view of the facts and circumstances as aforesaid, the question was answered against the applicant department and in favour of the respondent. The reference application is disposed of in the above terms.

A copy of this decision may also be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge

M. Khan