

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Special Customs Reference Application No.63 of 2015**

Along with

SCRA Nos.64 to 75 of 2015

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Date	Order with signature of Judge(s)
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Hearing of case

For hearing of main case.

**16.12.2020**

Mr. Iqbal M. Khurram, Advocate for the applicant.

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All these Special Customs Reference Applications have been filed by the applicant/department impugning the order dated 22.09.2014, passed by the Customs Appellate Tribunal, Karachi in Appeal Nos.189 to 196 of 2013 and 87 to 106 of 2013, proposing following question of law, which according to the applicant rise out of the order of Tribunal:-

- 1) *Whether the learned Appellate Tribunal has not erred in law not to consider that the respondent had grossly mis-declared the value of the imported goods as US\$ 0.723/kg which was determined at US\$ 1.52/kg in the light of Valuation Ruling No.420/2012 dated 28-01-2012?*
- 2) *Whether the learned Appellate Tribunal has not erred in law not to consider that the respondent vide their representation dated 29-02-2012 before Chairman FBR had stated that they disagree with the rejection of review reference No.261/2012 dated 23-02-2012 under Section 25-D of the Act, therefore, would file appeal before learned Appellate Tribunal. However, instead of filing the appeal before the learned Appellate Tribunal the respondent filed appeal before learned Collector (Appeals) which is against the provisions of Section 25-D of the Act. Moreover, in the garb of such mis-representation availed the benefit of Section 81 of the Act?*
- 3) *Whether the learned Appellate Tribunal has not erred in law not to consider that the Valuation Ruling bearing No.420/2012 dated 28-01-2012 was issued by the competent authority under Section 25-A of the Act, and had the legal force regarding its application all over the Customs Sections so that uniform and transparent assessment be made.*
- 4) *Whether the learned Appellate Tribunal has erred in law, not to consider the order passed by the Honourable Supreme Court of Pakistan's judgment in the case of Collector of Sales Tax & Central Excise, Lahore v/s Zamindara Paper & Board Mills, etc. (PTCL 2007 CL 260) & Supreme Court's order dated 10-11-2003, in the case of Sadruddin Alladin v/s Collector of Customs in Civil Petition*

**No.775-K/2003, where it was held that the merit of the case cannot be scrapped on sheer technicalities?**

**5) Whether in view of the established facts & relevant provisions of law, the findings of learned Appellate Tribunal would not be beneficial to all such importers, who made an attempt to deprive the Government for its legitimate revenue?**

Learned counsel for the applicant has read out the impugned order and submits that it is the case of the department that the final assessment in question was made within the limitation period as provided in Section 81 of the Customs Act, 1969. In support he has referred to para-10 of the impugned order. He has prayed for setting aside the same.

We have heard learned counsel for the applicant and perused the record. It appears that vide order dated 11.03.2019, counsel for the applicant had sought time to rephrase the questions of law; however, till date no compliance has been made and while confronted learned counsel submits that time and again the department has been approached; but no response has been received. We have examined the impugned order and according to us, there is only one question which arises out of the order of the Tribunal and that is **“whether in the facts and circumstances of the case provisional assessment was finalized within time as provided under Section 81 (2) of the Customs Act, 1969.”**

Perusal of the order of Tribunal reflects that insofar as certain appeals are concerned, the respondent’s counsel (Appellant before the Tribunal) candidly admitted that in at least 15 cases, the final determination was done within time as provided in Section 81 and out of 28 cases before the Tribunal, the impugned order was passed in respect of 13 appeals only as mentioned in para-1 of the impugned order. Insofar as the remaining cases are concerned, in para-13 of the impugned order the Tribunal has mentioned the details of the goods declaration, date of provisional assessment under Section 81, date of final determination by the department and the delay in number of days as to limitation provided under Section 81 *ibid*.

Firstly, we may observe that such exercise is a factual exercise which we cannot disturb in our Reference jurisdiction, and secondly, even otherwise, nothing has been brought on record to

dispute the factual finding as recorded by the Tribunal and the admitted delay in finalization of the assessments in hand. The only argument which was addressed before the learned Tribunal and reiterated before us as well, was that since the matter was referred to the Valuation Department and once the advice was received, the provisional assessment was finalized, and therefore, it was within time.

We are afraid this contention is misconceived inasmuch as, and rightly observed by the learned Tribunal as well, that this is an internal matter between the concerned Collectorate and the Valuation Department; and in any case cannot be made basis to enlarge the statutory period of limitation of six (06) months as provided at the relevant under Section 81 of the Customs Act, 1969. The Tribunal has given its judgment after relying upon the law settled in this regard by various Courts including the cases reported as ***SUS Motors (Pvt.) Ltd., Vs. Federation of Pakistan (PTCL 2011 CL575), Salman Tin Merchant, Karachi Vs. Collector of Customs, Karachi (2014 PTD 438) and M/S Wall Master Vs. The Collector of Customs Appraisement, Karachi (2006 CL 15) Messrs Hassan Trading Company Vs. Central Board of Revenue, Government of Pakistan, Islamabad & others), 2006 P T D 1276 (Messrs Dewan Farooque Motors Ltd., Karachi Vs. Customs, Excise and Sales Tax Appellate Tribunal, Karachi & others), and 2011 P T D 235***, and in our considered view, law already stands settled, that if the provisional assessment is not finalized within the period provided in Section 81 *ibid* such provisional assessment attains finality. The above question is answered in negative; against the applicant and in favour of the respondent. All these Reference Applications stand dismissed.

A copy of this order be sent to the Tribunal in terms of Section 196(5) of Customs Act, 1969. Office is directed to place a copy of this order in the connected cases listed above.

JUDGE

JUDGE

Hyder/PA