

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Special Custom Reference Application Nos.132 to 147 of 2014 (16 cases)
Collector of Customs v Shabbir Ahmad

<i>Date</i>	<i>Order with signature of Judge</i>
-------------	--------------------------------------

For Hearing of main case.

15.01.2021:

Mr. Khalid Rajper, Advocate for applicant.

>>>> <<<<<

Through these Special Customs Reference Applications, the Applicant department has impugned order dated 18.11.2013 passed in Custom Appeal No. K-70/2013 and other connected matters¹ as listed above, proposing the following questions of law:

- 4) Whether the authorities, in exercise of powers conferred under Section 16 read with first proviso to Section 181 of the Act, & Section 3 of the Import & Exports (Control) Act, 1950, read with Import Policy Order, can allow release of the banned item (i.e. C.N.G. Cylinders), irrespective of its usage?
- 5) Whether in the light of facts & circumstances of the case the Appellate Tribunal erred in law to hold that the provisions of S.R.O. 1119(I)/2011 dated 28.12.2011 read with S.R.O.84(I)/2012 dated 01-02-2012 are only applicable to the C.N.G. Cylinders for vehicles?
- 6) Whether in the light of facts & circumstances of the case the Appellate Tribunal erred in law by reading the notification with imported words which are not part of the statute?
- 7) Whether in view of the established facts & relevant provisions of law the findings of the Appellate Tribunal are not perverse for non-reading and / or mis-reading of the available record to the detriment of revenue and the consequent benefit to the respondent importer?

Learned Counsel for Applicant Department, has at the very outset, placed before us order dated 27.01.2020 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No.716 of 2014 and submits that the Hon'ble Supreme Court of Pakistan has now set aside the judgment dated 05.03.2013, passed by a learned Division Bench of this Court in C.P.No.D-4320 of 2012 and other connected matters, through which the impugned show cause notice(s) dated 19.11.2012 were set aside. Per learned Counsel the Appellate Tribunal has decided the appeal through impugned order pursuant to the judgment of the learned Division Bench of this Court which now stands set aside; hence, these reference applications be allowed by remanding the matter to the Tribunal for deciding the same on merits.

¹ Custom Appeal Nos.K-60 to 69 of 2013 and K-71 to 75 of 2013

We have heard the learned counsel for the Applicant and perused the record. Record reflects that present petitioner had imported CNG Storage Cylinders and one out of two consignments was withheld by the Customs and a show cause notice was issued on 19.11.2012 and being aggrieved approached this Court by filing a petition which was allowed vide judgment dated 5.3.2013. At the same time, it appears that various other show cause notices were also issued in respect of past clearances and were adjudicated against the Respondent against which appeals were preferred by the Respondent before the Tribunal. From the record, contention of learned counsel for the Applicant Department appears to be correct as the learned Tribunal in paragraph 8² of the impugned order had allowed the appeal(s) of the respondent pursuant to the judgment passed by the learned Division Bench of this Court in C.P. No. D-4320 of 2012, which now stands set aside by Hon'ble Supreme Court of Pakistan in the following terms:-

“Learned ASC for the appellants, at the outset, submits that the High Court while rendering the impugned order has ignored that a show cause notice with regard to the controversy laid before the Court had already been issued, and in fact Order-in-Original was also passed in pursuance thereof, and therefore the Court ought to have refrained from proceeding in the matter any further. He refers to the counter affidavit filed by the appellants before the High Court in response to the petition filed by the respondents, wherein the fact of issuance of show cause notice as well as pendency of the proceedings was mentioned clearly. In view of the foregoing, we find that the High Court ought not to have proceeded in the matter and would therefore, allow the appeal and set aside the impugned judgment.”

In view of the herein above facts and circumstances of this case, the impugned order is liable to be set aside and it is so ordered and matter is remanded to the learned Tribunal for deciding the case in accordance with law on merits and without being influenced by the earlier judgment of the Division Bench of this Court which stands set-aside. All these Special Customs Reference Applications are allowed in the above terms. Let copy of order be sent to the Customs Tribunal in terms of 196(5) of the Customs Act, 1969 and be also placed by the office in all connected matters listed today.

J U D G E

J U D G E

² On the basis of above observations and ratio decidendi made by the Apex Court in the judgment passed in Constitution Petition No.4320/2012 wherein all proceedings pending against the show cause notice dated 19.11.2013 stands terminated with immediate effect. The present appeal is therefore disposed of in the same manner and observations made thereon, appeal is accordingly allowed with no order as to cost.