

# **IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application **279 of 2017**

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DATE

ORDER WITH SIGNATURE OF JUDGE

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Present: ***Mr. Justice Muhammad Junaid Ghaffar***  
***Mr. Justice Agha Faisal***

**Applicant:** **The Collector of Customs**  
**Through Ms. Masooda Siraj, Advocate.**

**Respondent:** **M/s. Astrontech Inc.,**  
**Through Dr. Muhammad Khalid Hayat alongwith Mr.**  
**Muhammad Arshad, Advocates.**

**Date of Hearing:** **20.01.2021.**

**Date of Order:** **20.01.2021.**

## **O R D E R**

**Muhammad Junaid Ghaffar J.-** Through this reference application, the Applicant Department has impugned judgment dated 06.03.2017, passed by the Customs Appellate Tribunal, Karachi, in Customs Appeal No. K-1240/2016, proposing the following questions of law:-

- i. Whether in view of the fact that according to lab test report the goods were found to be synthetic Rubber SBR and match the description given in the Valuation Ruling No. 579/2013, whether the goods were liable to be assessed in terms of such Valuation Ruling?
- ii. Whether in view of the facts and circumstances of the case, the Appellate Tribunal was correct in holding that the applicant were failed to finalize the assessment within time as provided under Section 81(2) of the Customs Act, 1969?
- iii. Whether in view of categorical undertakings dated 23.07.2015 and 25.07.2015 furnished by the Respondent No.1 for provisional release of the warehoused goods under section 81 of the Customs Act, 1969 whereby the Respondent importer bound himself for payment of disputed amount to the sum of Rs.12,41,091/- in respect of each Ex-Bond Goods Declaration the Respondent No.1 is bound to pay such indemnified amount?
- iv. Whether keeping in view of the "Explanation" provided under Section 81 of the Customs Act, 1969, on completion of final determination under Sub Section 4 of the Section 81 of the Customs Act, 1969, whether the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of final determination?

- v. Whether the Honorable Appellate Tribunal was correct in declaring the goods different from SBR (Synthetic Rubber High Styrene Butadiene) whereas the la test report confirms the description of the goods SBR?

2. Learned Counsel for the applicant has read out the impugned order and submits that it is the case of the department that the provisional assessment was finalized within the statutory period, whereas, even otherwise the respondent had given specific undertaking at the time of provisional assessment to abide by the final assessment order. She further submits that the Valuation Ruling was correctly applicable as the goods imported by the respondents are covered by Valuation Ruling No.579/2013 dated 13.09.2013.

3. On the other hand, learned Counsel for the respondent has supported the impugned order and submits that it is dependent on a factual determination; hence, no question of law arises out of the order in question.

4. We have heard both the learned Counsel and perused the record. Insofar as the proposed questions of law are concerned, the one relating to delay in finalization of the provisional assessment under Section 81 of the Customs Act, 1969 within the statutory period is concerned, in the impugned order it has been observed by the learned Tribunal as follows:-

“12. It is further noted that the respondent in their comments or in the arguments advanced against this appeal orally during the course of hearing proceedings reveals that the respondent had never categorically defended their act of finalization of assessment beyond the statutory limit of 180 days under the laid-down limitation of Section 81.....”

5. The above observations reflect that the department had conceded to the effect that assessment in question was finalized beyond the statutory limit of 180 days as laid down under Section 81 (ibid). Though

learned Counsel has disputed this finding; however, in our considered view this would not give rise to a question of law and perhaps at most was a matter of rectification as learned Tribunal has recorded this finding pursuant to the oral arguments made during course of hearing on behalf of the Applicant department. Therefore, this question that whether the assessment was finalized within the statutory period or not, neither arises out of the order of the Tribunal; nor in view of the above facts can now be agitated by the Applicant.

6. Insofar as other question that whether goods in question i.e. High Styrene Rubber is similar or identical to SBR as notified in the Valuation Ruling it may be noted that this is purely a question of fact and cannot be adjudicated upon by us in our reference jurisdiction, whereas, the Tribunal has decided this factual aspect of the matter after a threadbare discussion and considering even the Laboratory Tests carried out by the Applicant itself; hence, we cannot dilate upon this issue in our reference jurisdiction.

7. In view of hereinabove facts and circumstances of this case, the proposed question No.(i) is answered in negative; question No.(v) in affirmative, whereas, rest of the questions do not arise out of the order of the Tribunal. Accordingly, this Reference Application is dismissed. Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.

Judge

Judge