

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 540 of 2017

DATE ORDER WITH SIGNATURE OF JUDGE(S)

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

Applicant: **The Collector of Customs**
Through Mr. Muhammad Khalil Dogar,
Advocate.

Respondent: **Malik Traders Group**
Through Mr. Muhammad Arif Motan and
Muhammad Adnan Motan, Advocates.

Date of hearing: **19.01.2021**

Date of Order: **19.01.2021**

ORDER

Muhammad Junaid Ghaffar J.- Through this reference application, the Applicant has impugned Judgment dated 05.06.2017, passed by the Customs Appellate Tribunal, Karachi, in Customs Appeals Nos.K-2056/2016 and K-2165/2016 proposing the following questions of law, which according to the applicant purportedly arise out of the order of the Tribunal:-

- i. Whether learned Appellate Tribunal erred in law by not considering that the respondent has mis-declared the description and classification of the goods under PCT heading 8483.6099 instead of under PCT heading 8483.6092?
- ii. Whether to learned Appellate Tribunal erred in law by not considering the documentary evidence (catalog/literature scanned) confirming that the imported goods are Universal Joints of various sizes/types instead of cross for Agriculture rotavator?
- iii. Whether the assessable value of imported item is US\$ 2.5/kg as per valuation Ruling No.661/2014 dated 2905.2014?
- iv. Whether the learned Appellate Tribunal erred in law by not considering that it is case of deliberate mis-statement and submission of fake documents as such not considering of amended provisions of Section 79(1) and 32(1)(2) & (3) of the Customs Act, 1969?

2. Learned Counsel for the Applicant has read out the Judgment and submits that the Appellate Tribunal has erred in dismissing the appeal filed by the applicant and by deciding the issue in favour of the respondent, as according to the learned Counsel due to wrong classification of the goods in question, the respondent had made an attempt to evade duty and taxes; warranting an action in terms of section 32 of the Customs Act 1969. He has prayed for answering the questions in favor of the Applicant.

3. Learned counsel for the respondent has supported the impugned Judgment and submits that no question of law arises out of the order of the Tribunal as the classification of the goods in question has been determined pursuant to a factual probe; hence, the Reference application is liable to be dismissed.

4. We have heard both the learned counsel and perused the record. It appears that the Respondent imported a consignment of cross for agriculture rotavator and claimed assessment under HS Code 8483.6099 @ 20 customs duty, whereas, Applicant assessed the goods under HS Code 8483.6092 @ 35% customs duty. Matter was finally decided in favor of the Respondent by the Tribunal. After going through the Judgment of the Tribunal as well as the order of the adjudicating authority, it appears that the issue of classification of the goods in question has been determined after thorough factual investigation inasmuch as the matter was referred to two local manufacturers of auto industry namely Gandhara Nissan Limited and Suzuki Motors Limited. Both of them have given their input regarding the classification of the goods in question. Though the question of classification is a mixed question of fact and law; however, in the present case the forums below have determined the classification of the goods in question pursuant to a factual determination; hence, in our reference jurisdiction we cannot look into this factual dispute. Even otherwise, it is a matter of record, and as noted in para 10 of the impugned Judgment that the Department was classifying under reference goods in HS Code 8483.6099 under Valuation Ruling No.728/2015 and in the instant matter it was only after a

joint examination that the classification of these goods was changed which was then disputed by the respondent. Therefore, even otherwise in our view it wasn't a case wherein any proceedings under s.32 of the Act for imposition of fine and penalty could sustain.

5. In our considered view, the impugned order has been passed on appreciation of facts and so also on the ground that such assessment and classification as claimed by the respondent was also being followed by the Department and, therefore, in our considered view, no question of law arises out of the Judgment of Tribunal which could be decided under advisory jurisdiction of this Court under Section 196 of the Customs Act, 1969. Accordingly, we hold that no question of law arises out of the order of the Tribunal, and as a consequence thereof, this Reference Application being misconceived is hereby dismissed. Let copy of this order be sent to the Appellate Tribunal in terms of Section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE