

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Special Customs Reference Application ("SCRA") No. 71 / 2016

Date Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
 Mr. Justice Mahmood A. Khan**

Applicant: **The Collector of Customs,
 Model Customs Collectorate of Exports,
 3rd Floor, Custom House, Karachi
 Through Mr. Iqbal M. Khurram, Advocate.**

Respondent: **M/s Island Textile Mills limited,
 through Mr. Imran Iqbal Khan, Advocate.**

Date of hearing: **22.02.2021**

Date of Order: **22.02.2021**

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application the Applicant Department has impugned order dated 09.11.2015 passed by the Customs Appellate Tribunal in Customs Appeal No. K-1173/20210 and had though proposed various Questions of Law; however, on 21.09.2020 notice was issued only on Question No.1 which reads as under:-

"1) Whether on the facts and circumstances of the case, the Customs Appellate Tribunal has erred in law to ignore the explicit provisions of rule 307A(1) of SRO 450(I)/2001 dated 18.06.2001 which have exclusive relevance to the recovery of Customs Duty and Taxes exempted due to the fact that the Respondent failed to give proper account of 526,733 kg of imported PSF claimed to have been burnt in the wake of arson / riot incidents in December, 2007, therefore, right to avail benefit of SRO 450(I)/2001 dated 18.06.2001 was forfeited under rule 307A(I) supra?

2. Learned Counsel for the Applicant as to the condonation application submits that there is delay only of one day, whereas, the Tribunal has erred in law by accepting the claim of the Respondent in terms of SRO 450(I)/2001 dated 18.06.2001 read with Rule 307A (2)(d) (wrongly mentioned rule 307A(1) in the proposed quesiton. He further submits that the Respondent had failed to report the incident of fire within time; hence, is not entitled for the benefit of the duty and tax remission as above.

3. On the other hand, Learned Counsel for Respondent has supported the order and submits that the incident of fire and damage to the factory is an admitted fact, whereas, the insurance claim was also settled in favour of the Petitioner; hence, no case is made out, whereas, the respondent was entitled for remission of duty and taxes applicable on the damaged goods.

4. We have heard both the learned Counsel and perused the record. For reasons so assigned in the condonation application the delay of one day in filing of this Reference Applications is hereby condoned by exercising powers conferred under section 196(8) of the Customs Act, 1969, read with section 5 of the Limitation Act, 1908.

5. As to the merits of the case it would be appropriate to refer to the relevant findings of the Tribunal recorded in the impugned order after discussing the facts and law. The same reads as under:-

15. "The extent of damage and circumstances under which the goods were damaged were never challenged or disputed by the Regulatory Collectorate. Rather the Collector while adjudicating the case has also admitted that the goods were burnt but since the Rules does not specifically deal with this situation on the pretext that the goods in respect of which remission is sought have to be physically presence. Since the goods have been destroyed / burnt hence no remission of duty and taxes can be allowed. A question arises as to whether the DTRE user had any intention of not exporting the finished goods made out of the imported inputs. The respondent Collectorate failed to prove the same. Since, the goods were destroyed because of arson and riots as such question of obtaining approval of the Collector or for that matter ensuring the physical presence of goods does not arise. Since the gods have been destroyed which has been proven by the appellant and admitted by the Adjudicating Collector, as such, denial of remission of duty and taxes to the appellant is illogical and harsh. Keeping in view that the surveyors M/s. Nanjee & Company (Pvt.) Limited, Karachi had categorically explained the circumstances and extent of damage to the factory, admission by the collector while adjudicating the case, the goods were destroyed, therefore, in view of spirit of clause (d) of sub-rule (2) of Rule 307-A of the Customs Rules, I hold that the appellant is entitled for the remission of duty and taxes. Accordingly, the Order-in-Original No. 05/2010 dated 30.09.2010 is set aside and the appeal is allowed with no order as to cost."

6. It seems that insofar as the incident of fire on the relevant date is concerned, there appears to be no dispute and such fact is a matter of record which even otherwise, cannot be interfered with by us in our Reference jurisdiction. The Tribunal has been pleased to observe that once it has come on record that the goods were destroyed due to fire, then benefit of Rule 307A(2)(d)¹ ought to have

¹ "307A. Unaccounted-for-un-exported goods.--(1) If a DTRE user fails to account for the duty and tax free acquire input goods, or he fails to account for his finished goods manufactured therefrom [or he fails to account for his un-exported same-state-goods or he

been granted. In terms of SRO 450 a person who has been granted the facility of duty and tax remission (DTRE) has to account for all of such goods on which such benefit has been granted, whereas, under this rule the unaccounted goods are dealt with and Rule 307A(2) deals with the permission of the Regulatory Collector for disposal of such goods within the prescribed utilization period and clause (d) thereof permits destruction of such goods after approval of the Regulatory Collector if the said goods are *not fit for consumption or sale*. Insofar as the goods in question are concerned, admittedly they are or for that matter, were, never fit for consumption, once, they were destroyed in the fire. The Regulatory Authority ought to have exercised the discretion conferred upon under the said Rule, as the law permits remission of duty and taxes, whereas, the present case is of an exceptional nature when in December, 2007 an incident happened and the Respondent's factory including various other factories were destroyed in riots. In our considered view the Tribunal's order is correct in law and ought not to be interfered with as no cogent reasons have been assigned by the authorities below for refusing to exercise such discretion.

7. Accordingly, the Question proposed as above is answered against the Applicant and in favour of the Respondent, and as a consequence, thereof, this Reference Application is dismissed. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

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fails to consume the duty and tax free acquired input goods in exports in full except wastage, if not covered under valid extension], he shall be liable to pay duties and taxes including additional duties or additional tax and penalties leviable on such goods under the relevant Acts or the ordinance.

(2) Notwithstanding sub-rule (1), a DTRE user may with the permission of the Regulatory Collector dispose of the input goods or output goods within the prescribed utilization period in the following manner, namely:-

- (a) -----
- (b) -----
- (c) -----
- (d) Destruction after approval of the Regulatory Collector if goods are not fit for consumption or sale with remission of duty and taxes; and"