

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application No. 341 of 2017

Date Order with signature of Judge

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

Applicant: The Collector of Customs,
Through Ms. Masooda Siraj, Advocate
alongwith Mr. Tariq Aziz, Principal
Appraiser, Port Qasim.

Respondent: M/s. Dogar Traders & another

Date of hearing: 04.03.2021.

Date of Order: 04.03.2021.

O R D E R

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant Department has impugned Order dated 22.03.2017 passed by the Customs Appellate Tribunal in Customs Appeal No.K-1495 of 2016. Though various questions of law have been proposed; however, while arguing the matter, learned Counsel for the Applicant has pressed Questions No. (i) & (viii), which reads as follows:-

- i. Whether the second proviso to section 181 of the Customs Act, 1969 imposing fine and penalty in lieu of confiscation on any goods or class of goods in mandatory and whether the word “shall” used for imposition of fine in lieu of confiscation can be ignored?
- viii. Whether the Appellate Tribunal rightly held the Section 181 of the Customs Act, 1969 does not specify the amount or value on the basis of which the owner of the goods was given option to pay fine in lieu of confiscation of goods?

Learned Counsel submits that the Tribunal was not justified in remitting the fine and penalty imposed by the authorities below, whereas, the findings recorded at para 10 & 11 are not in accordance with law and the provisions of Section 181 of the Customs Act 1969. She has prayed that at least the observations at Para Nos.10 and 11 be set-aside.

We have heard learned Counsel and perused the record. It appears that respondent had imported a consignment declaring the same as “**submersible pump**” under HS Code 8413.7010, which was examined by the department and initially declared description was affirmed; however, subsequently another joint examination was carried out and it was observed that though the Pump in question is a “centrifugal pump”; but is not “submersible pump”; hence would be classified under HS Code 8413.7090 attracting a higher rate of customs duty. Show Cause Notice was issued and goods were confiscated with an option to redeem the same against imposition of fine and penalty under Section 181 of the Customs Act, 1969 read with SRO 499(I)/2009 dated 13.06.2009. In Appeal, the learned Tribunal has remitted the fine and penalty.

On perusal of the Order of the Tribunal, we are of the view that to the extent that this was a case of interpretation of a Tariff Heading, and therefore, element of *mens rea* was missing and a case of mis-declaration ought not to have been made out appears to be correct and justified; however, the finding recorded in Paras-10 & 11 are not relevant for the present purposes, and therefore, while dismissing this Reference Application, we do not affirm such finding in the impugned order and leave it open to be decided in an appropriate case. With these observations, since no question of law is made out, this Reference Application is dismissed in limine; however, the impugned order stands modified accordingly.

Let copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969.

J U D G E

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