

IN THE HIGH COURT OF SINDH, KARACHI

SCRA No.16 of 2006
SCRA No.198 of 2006

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

*BEFORE: Irfan Saadat Khan,
Zulfiqar Ahmed Khan, JJ*

SCRA No.16 of 2006

M/s. Esskay & sons,
Applicant : through Ch. Muhammad Iqbal,
Advocate.

Vs.

The Collector of Customs
& others Respondents : through Ms.Afsheen Aman, Advocate
a/w Mr. Muzaffer Ali, Advocate.

SCRA No.198 of 2006

M/s. Zohra Impex,
Applicant : through Ch. Muhammad Iqbal,
Advocate.

Vs.

The Collector of Customs
& others Respondents : through Ms.Masooda Siraj, Advocate
a/w Mr.Javed Hussain, Advocate.

Date of hearing : 10.02.2022

Date of decision : 14.02.2022

JUDGEMENT

Irfan Saadat Khan,J. These Special Customs Reference Application (SCRAs) bearing No.16/2006 was admitted for regular hearing on 22.03.2006 to consider the following question of law.

“Whether the show cause Notice issued to the applicant under section 32 of the Customs Act, 1969 against the alleged mis-declaration is not sustainable in law?”

The SCRA bearing No.198/2006 was admitted for regular hearing on 17.11.2006 to consider the following question of law.

“Whether or not, in the circumstances of the case, the notice under Section 32 of the Customs Act, 1969 is justified?”

Since the issue involved in both these SCRA's are same hence these matters were heard together and are being disposed of by this common judgment.

2. Briefly stated the facts of the case are that the Applicants are the importers, who imported certain items, however, during examination the department found that there was a mis-declaration so far as weight of the consignment is concerned. Show cause notice was then issued to the Applicants in respect of which replies were furnished. The department however did not accept contention of the Applicants and through Orders-in-Original came to the conclusion that since there was mis-declaration so far as weight of the items of the consignment was detected and a mis-declaration has been found therefore, proceedings under Section 32 of the Customs Act, 1969 (hereinafter referred to as the Act, 1969) were initiated against the Applicants. Appeals thereafter were preferred and the Tribunal, after coming to the conclusion that there was an untrue declaration in respect of the description, quantity and value of the imported goods with the motive to evade custom duties and taxes, affirmed the Orders-in-Original and dismissed the appeals. It is against those orders of the Tribunal that the present SCRA's were filed.

3. Ch. Muhammad Iqbal, Advocate has appeared on behalf of the Department and stated that as per Custom General Order (CGO) No.12 of 2002 dated 15.6.2002 if an importer opts for first appraisal for determination of correct description PTC Heading quantity of goods, proceeding under Section 32 of the Act, 1969

cannot be invoked. He in this regard placed reliance on the decisions given in the case of *Akhter Hussain ..Vs.. Collector of Customs Appraisal Customs House Karachi and 3 others (2003 PTD 2090)* and *Syed Muhammad Razi ..Vs.. Collector of Customs Appraisal Customs House Karachi and others (2003 PTD 2821)*. He therefore, stated that the answer to the question raised in the instant Reference Applications may be answered in favour of the Applicant and against the Respondent/Department by answering the question in SCRA No.198/2006 in negative and in affirmative in SCRA No.16/2006.

4. Ms. Masooda Siraj and Ms. Afsheen Aman, Advocates have appeared on behalf of the Department/Respondent and stated that since a mis-declaration with regard to the specification of the goods / quantity was detected by the department hence the department was quite justified in applying provisions of Section 32 of the Act. They therefore, supported the Orders-in-Original as well as the orders passed by the Tribunal and requested that the answer to the question raised in the instant SCRA may be given in favour of the Department and against the Applicants.

5. We have heard all the learned counsel at some considerable length, and have also perused the decisions relied upon by the learned counsel appearing for the Applicants and the law as well as CGO.

6. In our view the issue raised in the instant matter stands covered by the decision given in the case of *Syed Muhammad Razi (supra)*. Relevant extract of the decision is given hereunder:-

“The above request was allowed by all the concerned Customs officials and thereafter it does not lie with the Customs officials to

allege that notwithstanding, the clear instructions contained in Customs General Order No. 12 of 2002, they were justified in holding that there was a mis-declaration as contemplated under section 32 of the Customs Act and the initiation of proceedings in the said section was warranted. The Central Board of Revenue is the apex body in the tax hierarchy of Federation and the instructions/directions issued by C.B.R. from time to time are binding on the customs officials and any action/omission in violation of such directions/instructions is unwarranted and shall always be liable to be struck down. It is therefore, held that in the wake of clear instructions contained in Customs General Order No. 12 of 2002 that on option of first appraisement system, the importer may not be charged for misdeclaration under section 32 of the Customs Act, 1969, the impugned action on the part of Customs officials whereby imported goods assessed to duty and taxes were not allowed to be released and show-cause notice was issued are not sustainable in law and are liable to be struck down as illegal and without lawful authority.”

7. We, therefore, by following the above observations of the learned bench answer the question raised in SCRA No.16/2006 in affirmative i.e. in favour of the Applicant and against the Department and in SCRA No.198/2006 in negative i.e. in favour of the Applicant and against the Department.

8. These two SCRA stands disposed of in the above terms.

JUDGE

JUDGE

SM