THE HIGH COURT OF SINDH AT KARACHI

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

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

Special Customs Reference Application No.928 of 2015

Collector of Customs, MCC Appraisement East
Versus
M/s. Hi-Tech Impex & Another

Special Customs Reference Application No.929 of 2015

Collector of Customs, MCC Appraisement East
Versus
M/s. New World Impex & Another

Special Customs Reference Application No.930 of 2015

Collector of Customs, MCC Appraisement East
Versus
M/s. Faisal International & Another

Special Customs Reference Application No.931 of 2015

Collector of Customs, MCC Appraisement East
Versus
M/s. Ali Enterprises & Another

Special Customs Reference Application No.932 of 2015

Collector of Customs, MCC Port Muhammad Bin Qasim
Versus
M/s. Ali Enterprises & Another

Special Customs Reference Application No.933 of 2015

Collector of Customs, MCC Port Muhammad Bin Qasim
Versus
M/s. Sana Enterprises & Another

Special Customs Reference Application No.934 of 2015

Collector of Customs, MCC Port Muhammad Bin Qasim
Versus
Ashfaq Ahmed & Another

For the Applicant	**Mr. Iqbal M. Khurram, Advocate**
Date of hearing:	**07.04.2021**
Date of Order:	**07.04.2021**

O R D E R

Muhammad Junaid Ghaffar, J.- Through these Reference Applications, the Applicant has impugned a common Order dated 17.11.2014, passed by the Customs Appellate Tribunal, at Karachi, in Customs Appeals Nos.K-729 to K-735/2014 proposing the following questions of law: -

a) Whether Section 80(2) & (3) of the Customs Act, 1969 is in any way rectify the act of mis-declaration if any committed by the party?

b) Whether the provisions of Section 80(2) & (3) of the Customs Act, 1969 nullifies the effect of Section 32 of the Customs Act, 1969?

c) Whether the Appellate Tribunal has rightly interpreted the provisions of Section 80(2) & (3) of Customs Act, 1969?

d) Whether the Impugned order is a result of mis-reading of Law?

e) Once a declaration has been given by a party and that declaration was found to be not correct in any material particular, can the provisions of Section 32 in the instant case be attracted?

f) Whether Section 80(3) of the Customs Act, 1969 in any way or manner prevents the assessing authority from re-assessing the goods declaration?

g) Whether the recovery notice in view of re-assessment requires a Show Cause Notice to be issued to the party concern?

h) Whether the Sales Tax and Income Tax at the import stage can be recovered as customs duty?

i) Whether any illegality has been committed by the assessing authority while re-assessing the goods and whether the provisions of Section 34(A) of the General Clauses Act has any relevance to the instant case?

2. Learned Counsel for the Applicant submits that the Tribunal was not justified in passing the impugned order inasmuch as the department has the authority to re-assess any consignment in terms of Section 80(3) of the Customs Act, 1969, even after clearance of the same; hence the proposed questions of law be answered in favour of the department by setting aside the impugned order.

3. We have heard the learned Counsel for the Applicant and perused the record. Notice was ordered and despite being served, nobody has affected appearance on behalf of the respondents. Since these matters are pending since 2015, we deem it appropriate and necessary to decide them on the basis of available record, as nobody has turned up despite being served.

4. It appears that the respondents were aggrieved by the order of re-assessment made by the department, by way of an alert in the computer system, whereby after clearance of their consignments, the assessment value was enhanced. The value declared and assessed on 23.1.2013 at the time of clearance and processing of Goods Declarations was USD 1.20/KG and through impugned re-assessment dated 24.3.2013 it was enhanced to USD 1.87/KG[1]. Admittedly this was done behind the back of the Respondents and without any notice or hearing. They impugned such re-assessment before the Collector of Customs (Appeals), who vide order dated 13.06.2014 though agreed with the contention of the respondents that no such re-assessment can be made in terms of section 80(3) of the Customs Act, 1969 ("**Act**"); however, at the same time observed that the Appeals are premature. The relevant finding of the Collector of Customs (Appeals) reads as under:

> "4. I have examined the facts of the case and have gone through the record besides considering the verbal and written arguments of the both parties. In the instant case appellant imported a consignment of "PVC Coated Textile Fabric in Rolls" under HS Code 5903.1000 from China vide machine No.KCSI-HC-95561-17-01-2013 was declared at the rate of unit value of US$ 1.20/kg whereas the same were correctly assessable at the rate of unit value US$ 1.87/kg. Therefore, the impugned goods were assessed at US$ 1.87/kg. The main plea of the appellants Counsel is that after releasing of the impugned goods, reassessment of the same is a clear violation of law. The department representative in his written reply submitted that considering the provisions of Section 32 & 80(3) of the Act, which empowers the customs authorities to recover the short levied amount within five years from the date of payment and in the case of clearance through PaCCS / WeBOC from the date of detection in terms of Section 32(5)(e) of the Act. He further stressed that provisions of Section 80(2) of the Act, very clearly & loudly says that the G.Ds assessment can also be checked after clearance of goods. The provision of Section 80(3) of the Act, further says that "---without prejudice to any other action which may be taken under the Act (the goods) be re-assessed to duty". So if the importer is not willing to accept the re-assessment the respondents have every right to recover the re-assessed duty / taxes by invoking the provisions of Section 32 of the Act. As such the words "---any other action which may be taken under the Act". In view of foregoing facts and circumstances, I am inclined to rule that respondent's plea carries weight and the appellant's contention regarding past & closed transaction and double jeopardy is incorrect. However, it needs to be kept in mind that operation of section 80(3) comes into play while checking goods declaration meaning thereby that goods have not been yet ordered to be cleared. In case goods have been cleared detection of short payment of liability on account of inadvertence or due to false statement comes within the ambit of section 32 of the Act. Therefore, any demand after clearance of the goods should be determined after serving due notice under the relevant sub-section of section 32 and within the prescribed period. No

[1] **"Re-assessed at US $ 1.87/KG as per the orders of higher authorities"**

> notice was served to the appellants before determining payment of duty and taxes in this case under section 32 of the Act, though the respondents in their comments have shown every intention to proceed under section 32 of the Act. The appeal is therefore pre-mature and rejected accordingly."

5. The respondents were still aggrieved; hence they filed further Appeals before the Tribunal and through impugned order, while allowing all the Appeals the Tribunal has declared the re-assessment orders as illegal, void and as a consequence thereof have been set aside. The conclusion of the Appellate Tribunal is as under:

> "20- To what have been stated/discussed and observed herein above, particularly the interpretation of the law and legal preposition discussed in the light of prescribed law and observations made thereon and to follow the ratio decidendi, I hold that the re-assessment orders and view messages dated 24.03.2013 passed by the respondent no. 1 in GD Nos. KCSI-HI-95561-17012013, KCSI-HC-11933-27042013, KCSI-HC-105881-07022013, KCSI-HC-111270-16022013, KCSI-HC-108618-12022013, KCSI-HC-112233-19022013 & KCSI-HC-97274-21012013 and as well as the orders in appeal Nos.8740 to 8746/2014 dated 13.06.2014 passed by the respondent no. 2 suffers from grave legal infirmities, therefore are declared to be illegal, null and void and hereby set-aside and appeals are allowed as prayed."

6. Insofar as the argument by the learned Counsel for the Applicant to the effect that the department is authorized to re-assess a Goods Declaration even after clearance of the goods under Section 80(3) of the Act is concerned, we are afraid such contention is wholly misconceived. In this matter the Collector of Customs (Appeals) had given his finding against the Applicant as to exercising jurisdiction and powers of re-assessment under Section 80(3) ibid; however, such finding was never challenged any further. In that case after passing of impugned order by the Tribunal in the Appeals of the respondents the department cannot agitate the said issue any more which they had accepted by not filing any Appeal against the order of the Collector of Customs (Appeals). Merely for the fact that the Appeals were held to be premature by the Collector (Appeals), it would not mean that the entire finding in the said order is in favor of the Applicant. It has been clearly held that the Applicant cannot invoke its powers under section 80(3) of the Act, for making a re-assessment in respect of Goods Declarations which have been assessed and cleared by it. In fact, it was the case of the Applicant that they will

be issuing show cause notices in terms of s.32 of the Act, which they never did. How then present Reference Applications have been filed and various questions have been proposed is a bit surprising.

7. Perusal of sub-section (1) and (3) of Section 80[2] of the Act, reflects that on receipt of a Goods Declaration under section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon, whereas, sub-section (3) provides that ***if during checking of Goods Declaration***, it is found that any statement in such declaration or documents or information furnished is incorrect in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be re-assessed to duty and taxes. It has been further provided that in case of Computerized system, if any re-assessment is being made a proper notice and opportunity of hearing is to be provided. It appears to be an admitted position that neither any hearing notice was issued; nor, any other opportunity was provided to the Respondents, whereas, even no reasoned order was ever passed. Notwithstanding this, in it is pivotal to note that in terms of s.80 (3) powers can only be exercised ***during checking of Goods Declaration***, and not thereafter. It is not that this power would continue to be available at all time. It stops once the GD has been assessed to duty / taxes and consignment has been released. Thereafter, no re-assessment can be made under Section 80(3) ibid. The only way out is either through a proper show cause notice under Section 32 of the Act, or by way of an Appeal in terms of s.193 ibid, and lastly in exceptional circumstances[3] by way of an order in terms of s.195 of the Act. The Collector (Appeals) has rightly held that insofar as the re-assessment in question is concerned, it could not have been

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[2] **80. Checking of goods declaration by the Customs.-** (1) On the receipt of goods declaration under section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.
(2) ……..
(3) If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty taxes and other charges levied thereon:
Provided that in case of reassessment, a notice shall be served to the importer through Customs Computerized System and opportunity of hearing shall be provided, if he so desires.

[3] Subject to judgments of the Courts on this issue

done in the manner it has been done; however, at the same time he has erred in observing that the Appeals were premature. The order of re-assessment is in fact an order under section 80 of the Act and in terms of section 193 of the Act, an appeal is provided to the Collector of Customs (Appeal) against such re-assessment order[4]. It is immaterial as to the substance or format of the order; but at all times, notwithstanding its illegality, it remains an order within s.80 of the Act; hence, an appeal, if preferred would be maintainable. It may not have reasons for doing so; resulting it to be an order not in accordance with law; but till such time it is in field, the aggrieved person cannot be made remedy less on the ground that since it is not an order, therefore, the remedy of Appeal is not available being premature.

8. Lastly, we may observe that the learned Tribunal in the impugned order has unnecessarily indulged in dilating upon various legal issues which were never a subject matter in these proceedings; as a consequence thereof, the Applicant has been compelled to propose various questions of law; however, in our considered view there is only one legal question in this matter that *"whether a re-assessment order can be passed under section 80(3) of the Act, once the consignment has been released and cleared from Customs";* and the same is answered in negative; against the Applicant and in favor of the Respondents. The Reference Applications stands dismissed; however, we have not concurred with the observations of the learned Tribunal while arriving at this decision; the same being extraneous to the issue in hand and not germane to the present proceedings. As a consequence, thereof order of the Collector Appeals stands restored subject to hereinabove observations.

9. Office is directed to send copy of this order to the Appellate Tribunal in terms of Section 196(5) of the Act and shall also place a copy of the same in all connected Reference Applications.

JUDGE

JUDGE

Khuhro/PA

[4] P.M. International v Federation of Pakistan (2010 PTD 1293)