

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal.

Special Customs Reference Application No.239 to 267 of 2014

Collector of Customs
Versus
M/s. Lake View Forest (Pvt.) Ltd.

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Date of hearing: 16.08.2021

Date of Decision: 23.08.2021

Mr. Muhammad Khalil Dogar, Advocate for the Applicants.
Mr. Imran Iqbal Khan, Advocate for Respondent.

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ORDER

Muhammad Shafi Siddiqui, J.- By this common Order we intend to dispose of all the above 29 Special Customs Reference Applications, as common question of law is involved. These Special Custom References are filed by the Department on the question that after the consignment is out of charge, the recourse of re-assessment is available under Section 80(3) of the Customs Act, 1969.

2. Brief facts of the case are that respondent imported several consignments of Soft Wood Swan Ash Timber (CBM). The consignments were assessed to duties and taxes by the Customs and clearance was allowed under HS Code 4407.2900 in the year 2009 and onward. Later in scrutiny the goods declaration found to have been involved in less payment of duties and taxes by clearing the goods at unit value of US \$ 196.06/CMB as against Valuation Ruling dated 10.11.2007 issued under Section 25-A(1) of the Customs Act, 1969, which provides unit value @ US \$327/CBM.

3. On the aforesaid question of law we have heard learned counsel and perused the record.

4. To understand the scheme of the Customs Act in respect of the goods declaration we need to understand that the declaration is filed under Section 79 of the Customs Act, 1969 for the assessment under Section 80 of the Customs Act, 1969 or in case provisional assessment is required it is then under Section 81 of the Customs Act, 1969. Two material issues were essentially considered at the time of assessment that whether PCT Heading was rightly claimed and what could be the value of goods for the assessment. The scheme of the Customs Act reveals that the subject is governed in terms of Section 25 of the Customs Act and in case it could not be determined under Section 25, then the recourse is available by applying valuation ruling if available in terms of Section 25-A whereafter it is finalized under the Customs Act, 1969. After the assessment and the release of the consignment, the goods are made out of any charge of the Customs. In case the aforesaid process is required to be revisited, (in appropriate cases), the mechanism is available under the law such as Section 32, 193 and 195 of the Customs Act, 1969. In the instant case, however, in respect of the past and closed transaction, since goods were assessed and released, the recourse was made by officer sub-ordinate to the Collector by issuing show-cause notice in terms of Section 80(3) of the Customs Act, 1969. Section 80(3) is reproduced below:-

80. Checking of goods declaration by the Customs.-

- (1)
- (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.*

Primarily it provides that 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 re-assessed to duties and taxes as levied thereon.

5. The show-cause notice available at page-43 itself reveals that during “post scrutiny” of goods declaration it was exposed that the importer has paid less revenue at the time of clearance of the goods.

6. The event of post scrutiny of the goods declaration after assessment and release of goods, is not covered by Section 80(3), as undertaken. It is applicable at the time of original checking of the goods declaration in his hands and goods are yet to be assessed and released and not at belated stage when even the goods have been released. This situation (for appropriate cases) is catered by Section 32, 193 and 195 of the Customs Act, 1969 where under a show cause and/or an appeal within 30 days could have been preferred, or the Board or the Collector of Customs or the Collector of Custom (Adjudication) may, within his jurisdiction, call for the examination of the records of any proceedings under the act for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by a subordinate officer respectively, could have been followed, however, none of them were invoked. Surprisingly the applicant opt to invoke Section 80(3) of the Customs Act which is “then” shown to have been followed by consequences. It is thus under above referred provisions when the competent authority is of the view that the assessment was not made in accordance with law, the past and closed transaction could be reopened but not in the manner as done in the instant case. Prima-facie it is neither a case of mis-declaration as correct PCT was claimed by the consignee nor this is a case of mis-declaration in terms of its value declared, to make out a case under Section 32 of the Act.

7. Without prejudice applicant’s case is that Section 80(3) of Act was rightly invoked under the given facts and circumstances. In the instant case,

if at all, there was any illegality in the assessment of the goods, it could be attributed to the sub-ordinate officers of the Customs and hence the implication of Section 32 of the Customs Act, 1969 would not be attracted to penalize the respondent or their directors. The purported action by Customs was triggered under Section 80(3) of the Customs Act, 1969 does not have a legal cover in view of the goods being out of charge and the recourses which could have been made were under Section 32, 193 and 195 of the Customs Act, 1969 which were not directly invoked.

8. Only question pops out of references is whether after assessment and release of consignment, could there be a re-assessment under Section 80(3) of the ibid Act, 1969? This question is answered in negative in favour of respondent and against the applicants. Consequently, we do not see any reason to interfere with the orders of the Tribunal and consequently the instant Special Customs Reference Applications are dismissed.

Copy of this order be sent to Appellate Tribunal in terms of Section 195(5) of Act and additional copies be made available in all connected references.

JUDGE

JUDGE

Ayaz Gul