

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.354 of 2013

Collector of Customs
Versus
M/s A.R. & Company

Date	Order with signature of Judge
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1. For orders on CMA 2191/13
2. For hearing of main case
3. For orders on CMA 657/14

Dated: 23.09.2021

Mr. Muhammad Khalil Dogar for applicant.

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Applicant has proposed amended five questions and on their strength applicant's counsel has been heard.

This matter is pending since 2013 and has never been fixed except once i.e. on 15.09.2021 when applicant's counsel made a request for adjournment and hence today it has been heard on the following amended/proposed questions:-

1. Whether the learned Customs Appellate Tribunal has wrongly decided that the whole proceedings started/decided in a most mysterious way?
2. Whether, the learned Customs Appellate Tribunal has wrongly held that the respondent violated the instructions issued by the Federal Board of Revenue for the in-bonding and ex-bonding of goods in question?
3. Whether the learned Customs Appellate Tribunal has failed to consider that the respondent has committed the gross

misappropriation of goods and violation of Sections 2(s), 6, 19, 32, 97 and 104 of the Customs Act, 1969?

4. Whether the learned Customs Appellate Tribunal has failed to consider that the respondent has imported the goods without any import authorization as confirmed by Ministry of Commerce?
5. Whether the learned Customs Appellate Tribunal has failed to consider that the respondent has never supplied the goods to any ship or vessel, which were imported as ship store?

Out of the above we only feel that questions No.3 and 4 at the most are relevant. The controversy started for the first time when a show-cause notice dated 30.09.2005 was issued to the respondent by the Additional Collector Preventive on receipt of some information pertaining to illegal removal of alcoholic drinks by the management of Diplomatic Bonded Warehouse namely M/s A.R. and Co. (respondent) having Diplomatic Bond at Plot No.C-12/1, Block-4, KDA Scheme, Kehkashan, Clifton, Karachi.

The show-cause notice apparently does not suggest any substantive provision of Customs Act, 1969 being violated in terms of facts and circumstances of the case. The respondent apparently was operating a Diplomatic Bonded Warehouse. In pursuance of such show-cause notice Order-in-Original was passed on the strength of alleged investigation conducted by the Directorate of Intelligence and Investigation to the effect that the goods were not supplied to any ship as ship store by confirmation from relevant shipping companies by the owner of Diplomatic Bonded Warehouse. It was observed in the order that Directorate of Intelligence also did not find any evidence at the gate of the port which could substantiate that the owner of the warehouse has filed bills of export in order to cover the illegal removal from the bonded warehouse. Thus, it is claimed that respondents evaded

the customs duties and taxes on the goods illegally removed from the Diplomatic Bonded Warehouse. Besides, the duties and taxes, personal penalty of the equivalent amount was also imposed. The Order-in-Appeal No.473 of 2006 dated 30.10.2006 was also decided in favour of the applicant department and consequently the respondent preferred a Custom Appeal No.K-511 of 2006 before the Customs Appellate Tribunal who passed impugned order whereby the aforesaid two orders were set aside and hence this Reference is filed by the customs department.

The primary question would remain as to whether Tribunal has failed to consider that the “respondent” has committed gross misappropriation of goods in violation of sections 2(s), 6, 19, 32, 97 and 104 of Customs Act, 1969. The Tribunal rested its findings on the strength that although there was no fair opportunity given to the respondent, yet there was no independent evidence which could be said to be available on record to establish the fact that it was the respondent who misappropriated the goods from Diplomatic Bonded Warehouse.

In-bonding and ex-bonding in the Diplomatic Bonded Warehouse involve intricate and complex procedure, which under normal circumstances make it impossible for the importer to cause misappropriation, unless the officials of the customs are also involved and there is no denial to this fact that at all time the goods in the Diplomatic Bonded Warehouse remain in actual physical possession and custody of the customs authorities. In such a situation when none of the customs officials were looped into this investigation, rather one way investigation claimed to have been carried out that the owner of the Diplomatic Bonded Warehouse removed the subject goods, it is difficult to conceive. None of the officials from the customs department came in support of such investigation and in the absence of any concrete

evidence, the amount of penalty imposed on the respondent and on the clearing agent was not found in consonance with law.

The allegations of the nature, as highlighted in the show-cause notice, which culminated into the Oder-in-Original, are thus based on surmises and conjectures which under the specific customs law are not sustainable. Both the Oder-in-Original and Order-in-Appeal are devoid of such considerations and that was taken into consideration by the Tribunal vide its judgment/order, impugned in this reference application. The two proposed questions No.3 and 4, as pressed, are thus answered in negative, although none of the amended proposed questions of law arises out of the impugned order/judgment of the Tribunal. Resultantly instant Special Customs Reference Application is dismissed in limine along with listed applications.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal Bench-I, Karachi, as required by section 196(5) of Customs Act, 1969.

Judge

Judge