

IN THE HIGH COURT OF SINDH, KARACHI

Present

Muhammad Shafi Siddiqui, J

Mahmood A. Khan, J

SCRA No.827 of 2015

[Collector of Customs v. M/s Uzair Enterprises]

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For the Applicant	Mr. Iqbal M. Khurram Advocate
For Respondent	Nemo
Dates of hearing	08.12.2021. -o-o-o-

JUDGMENT

Muhammad Shafi Siddiqui J.- The tribunal allowed the appeal of the respondent vide order dated 28.4.2015 after setting aside order-in-appeal dated 10.9.2014 and assessment order dated 27.11.2012. The conclusion as drawn by the tribunal in paras 6, 7 & 10 [Para 8 incorrectly written as para 10] are reproduced herein-below:

“6. *It is a case of value dispute where the appellant had established a Bank Contract to import 360 metric ton of betel nuts of the declared unit value of US\$0.60/kg. The GD in respect of the first partial shipment of 10.40 metric ton was filed for clearance of betel nuts of the transaction value of US\$0.60/kg. The Department did not accept the declared value and assessed the goods at the enhanced rate of US\$0.80/kg purportedly on the basis some import evidence*

7. *The perusal of the case record reveals that the respondent had applied the value of US\$0.80/kg without providing the evidence for rejecting the declared transaction value and without applying the provisions of Customs Act 1969 and the rules made thereunder on valuation of the goods in particularly rule 117 of Customs Rules notified vide SRO.450(1)/2001 dated 18.06.2001. Considering that transaction value was rejected without following the mandatory provisions of Customs Act 1969 on Valuation, the assessment order is unlawful. Moreover, the appeal was required to be decided within 120 days in terms of Sub-section (3) of Section 193A of the Customs Act 1969 and further extended period of sixty days unless the Board further extends at any time during the pendency of appeal in terms of first proviso of aforesaid Section. The case record reveals that appeal was filed in the office of Collector (Appeals) on 11.12.2012 and Order-in-Appeal was passed on 10.09.2014 i.e. after 635 days. There is nothing in the case record to establish that Board had given any extension in the time limit, it is,*

therefore, held that appeal was not decided in time and order passed by Collector (Appeals) is hopelessly barred by time.

10. In view of the foregoing discussion and observation, I have no other option but to set-aside the Order-in-Appeal No.9200/2014 dated 10.09.2014 and Assessment Order No.KCSI-HC-63987-14112012 dated 17.11.2012 for the impugned goods. Accordingly, the appeal is accepted with no order as to cost.

2. The tribunal in para 7 has concluded that the appeal was required to be decided within 120 days in terms of Sub-section 3 of Section 193A of Customs Act 1969 with further extendable period of 60 days unless the Board further extends it any time during pendency of appeal in terms of first proviso of aforesaid Section.

3. The appeal was filed on 11.12.2012 and the order-in-appeal was passed on 10.9.2014 i.e. after about 635 days. No justification was provided for such inordinate delay in terms of Section 193A of Customs Act 1969. No question has been proposed by the applicant in the memo of reference and in fact an attempt has been made to argue the case on merit on the proposed questions.

4. We are of the view that despite the fact that no question has been framed on the above, yet it takes us to irreversible conclusion that no explanation has been provided by the applicant for this inordinate delay and no Board's extension during pendency of the appeal which could legitimize the delay in the conclusion of the appeal is provided. In the absence of any contrary material, though it is not even attempted by the applicant, no other view than the view formed by the tribunal could be met, in so far as the issue of limitation is concerned. Ultimately it is only argued by the counsel that it was a technicality which should be avoided. The limitation is not the question of technicality, in fact, vested rights are being created on account of such lapse and on the basis of technicality such rights cannot be brushed aside.

5. Since no question has been proposed by learned counsel for the applicant on the findings of the tribunal in relation to Section 193A(3) of the Customs Act 1969, this reference has failed and consequently, the same is dismissed.

Copy of this judgment under the seal of this court be sent to the Appellate Tribunal in terms of Section 196(5) of the Customs Act 1969.

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