

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application Nos. 123/2013 a/w
SRA No. 124, 125, 126, 127 of 2013
C.P No. D-2805 of 2013

DATE

ORDER WITH SIGNATURE OF JUDGE

Hearing/Priority.

1. For orders on CMA No. 3386/2016.
 2. For hearing of main case.
 3. For hearing of CMA No. 1224/2013.
-

29.10.2020.

Mr. Sohail Muzaffar, Advocate for Applicants in all Reference Applications and for Petitioner in CP No.D-2805/2013.

Mr. Khilji Bilal Aziz, Assistant Attorney General.

Mr. Iqbal M. Khurram, Advocate for Respondents.

In all these connected Reference Applications, though several questions of law have been proposed to be arising out of the impugned order of the Customs Appellate Tribunal dated 20.2.2013; however, it is only one question that “*whether the applicants were liable to pay regulatory duty on the export of brass and aluminum scrap pursuant to SRO __ (I) dated 13.03.2010 issued under Section 18(3) of the Customs Act, 1969*”, which is relevant. The connected petition also raises the same issue.

It appears that one of the exporters (not out of present Applicants), being aggrieved at the relevant time, filed a Constitution Petition before this Court Impugning Notification dated 13.03.2010 on two grounds. First, that the goods for which export declarations have already been filed prior to 13.03.2010, no regulatory duty is payable at the time of export. Second, in respect of which firm contracts and letters of credit were already established for export purposes before issuance of Notification dated 13.03.2010, again the regulatory duty was not payable. A learned Division Bench of this Court¹ accepted such contention of the petitioner on both the grounds and the petition was allowed. The said judgment was impugned before Hon’ble Supreme Court by the department and the Hon’ble Supreme Court² has partly agreed with the contention of the exporter and partly with the department by holding that insofar as the Goods Declarations, which

¹ 2011 PTD 2760 Saifuddin v. Federation of Pakistan

² 2017 PTD 1974 (Collector of Customs (Export) and others v. Saifuddin).

have been filed before issuance of notification dated 13.03.2010, no regulatory duty is payable; however, the second issue as to the authority of the Federal Government to levy such regulatory duty and payment of the same on contracts and letters of credit established before 13.03.2010, the Hon'ble Supreme Court has decided the same against the exporter(s) / respondent and in favour of the department³.

In view of the above, since the question as above regarding levy of regulatory duty on exports of brass and aluminum scrap stands decided finally by the Hon'ble Supreme Court in the aforesaid judgment; therefore, the question is answered accordingly. All these Reference Applications including the Petition are disposed of in these terms. The department to act and proceed accordingly. Office is directed to place copy of this order in all above connected matters.

Judge

Judge

Avaz P.S.

³ *This appeal is partly allowed. It is dismissed to the extent that where goods declarations were filed before date of notification i.e. 13.3.2010, no regulatory duty was payable by the respondent. However, where goods declarations were filed on or after such date, the respondent was liable to pay regulatory duty as envisaged by the notification and to this extent, the appeal is allowed.*