

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application ("SCRA") No. 54 of 2016

Date Order with signature of Judge

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

Applicant: M/s Al Qamar Enterprises
Through Mr. Sardar Faisal Zafar,
Advocate.

Respondent(s): The Additional Collector of Customs
(Adjudication) & others
Through Mr. Iqbal M. Khurram,
Advocate.

Date of hearing: 19.01.2023.

Date of Order: 19.01.2023.

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application under Section 196 of the Customs Act, 1969, the Applicant has impugned Order dated 07.11.2015 passed in Customs Appeal (New) No. K-833/2015 by the Customs Appellate Tribunal Bench-II, at Karachi and initially various questions of law were proposed; however, subsequently, through statement, the questions of law were reframed in the following terms:-

- i. Whether in the facts and circumstances of the case the invocation of the beneficial SRO 1125(I)/2011 dated 31.12.2011 and claiming their exemption there on, based on correct descriptions was in accordance with law?
- ii. Whether in the facts and circumstances of the case the beneficial SRO 638(I)/2005 dated 27.06.2005 which was not claimed at the time of filing of Goods Declaration can be claimed during the pendency of appeal before the Customs Appellate Tribunal?
- iii. Whether in the facts and circumstances of the case and after the perusal of the Order in Original transpires that the test report of HEJ Lab has not considered by the Adjudicating Authority while passing the Order in Original?
- iv. Whether in the facts and circumstances of the case the amendment made wide Finance Act 2011 in section 15 clause 'c' was not considered by the Customs Appellate Tribunal?
- v. Whether in absence of mens-res imposition of penalty is correct in law?
- vi. Whether in facts and circumstances of the case the imposition of penalty and redemption fine is correct in law?

2. Learned Counsel for the Applicant submits that the Applicant, at the time of filing of Goods Declaration had declared / mentioned complete and

correct description; whereas, the claim of exemption in terms of SRO 1125(I)/2011 was denied and through adjudication proceedings fine and penalty has been imposed. According to him, the declaration was correct and bonafide, therefore, neither any fine could have been imposed in lieu of confiscation nor penalty. He lastly submits that the Applicant had advised his agent to make a correct declaration; however, while filing Goods Declaration he has failed to do the same diligently.

3. On the other hand, learned Counsel for Respondents supports the impugned Order.

4. We have heard both the Counsel and have perused the record. Insofar as the contention that the Applicant had declared correct description is concerned, it may be noted that while doing so the Applicant claimed classification of the goods in question under HS Code 4002.1100 chargeable to the Customs Duty 1%, Sales Tax 2%, Additional Sales Tax 2% and Advance Income Tax 3%. Whereas, admittedly the declared description consists of 4 different items which were separately classifiable under various HS Codes including 4001.2900, 2836.5000, 2834.1010 and 3402.1300. These HS Codes attracted higher / different rates of duty and taxes as against the claimed HS Code. Hence, there is no correct or bonafide declaration in terms of Section 79 of the Customs Act; therefore, no exception can be drawn as to the adjudication proceedings and the imposition of fine and penalty; therefore, this Reference Application appears to be misconceived and Applicant's contention does not warrant any interference. The questions of law proposed are not relevant and the only question arising out is that ***“Whether in the facts and circumstances of this case, the Applicant while filing its Goods Declaration made an attempt to get the goods cleared under one HS code with low rate of duties and taxes”***, and the same is answered in the *affirmative*, against the Applicant and in favour of the Respondents. Resultantly, the Reference Application is dismissed.

5. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

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