

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application ("SCRA") Nos. 1137 & 1138 of 2015

Date Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Justice Ms. Sana Akram Minhas,

Applicant: Collector of Customs, MCC
Appraisement (East)
Through Mr. Khalid Rajpar, Advocate.

Respondent(s): Creative Electronics Limited. Nemo;
though duly served.

Date of hearing: 07.08.2023.

Date of Judgment: 07.08.2023.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant department has impugned two separate (but identical) Judgments dated 22.01.2015, passed by the Customs Appellate Tribunal, Karachi, in Customs Appeal Nos. K-656/CU/2014 & K-657/CU/2014 and had proposed various questions of law; however, on 05.09.2022 these Reference Applications were admitted for deciding the proposed questions No. 2 & 3, which reads as under: -

i. Whether in the light of facts & circumstances of the case, the Appellate Tribunal erred in law to hold that it is not a case of mis-declaration of classification despite the fact that Classification Committee vide Public Notice 08/2014 held the declared PCT heading as incorrect and determined PCT heading attracting higher duty rate and concession claimed under Serial No. 21 of SRO 575(I)/2006 dated 05.06.2006 with the intention to evade revenue amounting to Rs.72717871/- is not unlawful within the meaning of Sections 32 & 79(1) of the Customs Act, 1969?

ii. Whether in the facts and circumstances of the case have the honourable Appellate Tribunal not erred in law by declaring the Order in Original time barred by not considering that the Federal Board of Revenue in exercise of power in terms of Section 179(4) of the Customs Act, 1969 extended the time up to 30.06.2014 vide order No.5(6) Cus. Jud/2014 dated 09.4.2014 for adjudication of the case within this extended time?

2. At the very outset we have confronted the Applicants Counsel in respect of the proposed question No.(ii) as the same now stands decided by

the Supreme Court¹ against the department in various cases under the Sales Tax Act, 1990 as well as The Customs Act, 1969, as both the statutes have analogous provision insofar as passing of an Order in Original is concerned and the Applicant's Counsel has made his best possible efforts by referring to Para-15 of the Order-in-Original dated 24.05.2014 and has contended that since some petition was filed by the Respondents, and restraining orders were operating; therefore, Order-in-Original was not passed within the prescribed limitation under Section 179(3) of the Customs Act, 1969. However, on perusal of the said paragraph of the Order-in-Original it does not reflect that any such observation was recorded by the Adjudicating Officer with any specific dates of filing of the petition; date of the interim order and final adjudication date of the Petition. In that case we cannot look into this and examine the factual aspect of the matter, as now the Appellate Tribunal, being the last fact finding forum, has been pleased to consider this and has held that Order-in-Original was passed beyond the limitation period as provided under Section 179 *ibid*. It has been further held by the Tribunal that reliance placed on any extension granted by FBR was also of no help as admittedly it was so done after expiry of the stipulated period for passing of the Order in Original.

3. In *Super Asia (Supra)* it has been held that wherever, the legislature has provided certain period for passing of an Order; then the said direction is mandatory and not directory and in that case non-compliance of such a mandatory provision would invalidate such act. In *Mujahid Soap (Supra)* it was held that since adjudication was beyond time as prescribed in Section 179(3) of the Act; therefore, the said decision is invalid. Both these views have been followed and affirmed in the case of *A.J. Traders (Supra)*.

¹ *Mujahid Soap & Chemical Industries (Pvt.) Ltd., v Customs Appellate Tribunal* (2019 SCMR 1735); *The Collector of Sales Tax v Super Asia Mohammad Din* (2017 SCMR 1427) and respectfully followed in the case of *A.J. Traders v Collector of Customs* (PLD 2022 SC 817),

4. In view of the above, question No. (ii) as above, is answered against the Applicant and in favour of the Respondents and as a consequence thereof, answer to Question No.(i) would be an academic exercise; hence, deem it appropriate no to answer the same. Both these Reference Applications are hereby **dismissed**. Office to place copy of this order in the connected Reference Application. Office is further directed to sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

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