ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Special Custom Reference Application No. 358 to 373 / 2024

Date	Order with signature of Judge

HEARING OF CASE.

1) For orders on office objection No. 08, 09 & 13.
2) For hearing of CMA No. 1613/2024.
3) For hearing of main case.

18.12.2024.

Mr. Muhammad Rizwan Saeed, Advocate for Applicant.
Mr. Saad Fayyaz, Advocate for Respondent No. 1.

All these connected Reference Applications have impugned a common Judgment dated 05.03.2024 passed in Customs Appeal No. K-114 to 129 of 2024 by the Customs Appellate Tribunal, Karachi proposing various Questions of law; however, perusal of the record including the Judgment of the Tribunal and the objections filed by the Applicant in the Tribunal, it appears that there is only one legal Question which is relevant and can resolve the controversy and i.e., *"Whether the Applicant (department) was justified in law to make re-assessment of the goods declaration ("GD's") under Section 80(3) of the Customs Act, 1969 after out of charge / release of the goods*".

Heard learned Counsel for the parties are perused the record. It appears and as stated the Applicant imported various consignments of Grafolin Injections for kidney transplant claiming certain exemption of duties and taxes under Serial No. 23 of the 5th Schedule to the Customs Act, 1969 ("Act"). All consignments in question were released by granting the said exemption. Thereafter, through a message in the inbox of the Web Portal the Respondent was informed that some re-assessment was made purportedly in terms of Section 80(3) of the Customs Act, 1969 ("Act"). It reads as under:-

> "DURING PRV IT WAS OBSERVED THAT THE GOODS "GRAFALON INJECTION" DOES NOT COVER THE BENEFIT OF S.NO. 23(2) PART-II TABLE-C OF FIFTH SCHEDULE OF THE CUSTOMS ACT, 1969. HEARING WAS CONDUCTED ON THE 7TH JULY-2022. MR IMRAN DANISH CELL NO. 0300-8286989 APPEARED ON BEHALF OF THE IMPORTER BUT HE FAILED TO JUSTIFY THE POINT OF VIEW. THEREFORE, THE GD RE-

ASSESSED IN TERMS OF SECTION 80(3) OF THE CUSTOMS ACT, 1969 AS ORDERED IN CASE FILE NO. SI/MISC/85/2022-AFU/JIAP."

From perusal of the aforesaid post release verification, it reflects that powers have been exercised under Section 80(3) of the Act after release of the goods and the GD's have been re-assessed. This admittedly has been done without issuance of any show cause notice as provided under Section 32 of the Act. It may be noted that an identical legal issue regarding implication of Section 80(3) of the Act in a situation wherein the goods have been released and are out of charge of Customs has already been dealt with by a Division Bench of this Court speaking through one of us[1] in the case reported as ***Harris Silicones***[2] in the following terms:-

> "2. We have heard both the learned Counsel and perused the record. The averment to the effect that a direct demand has been created through some re-assessment appears not to have been disputed in the comments as it has been stated that "*answering respondent re-assessed the goods under section 80 of the Customs Act, 1969*" and that "*the answering respondent is empowered to proceed the case through demand notice for the payment of evaded duty and taxes*". Perusal of sub-section (1) and (3) of Section 80[3] of the Act, reflects that on receipt of a Goods Declaration under section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon, whereas, sub-section (3) provides that ***if during checking of Goods Declaration***, it is found that any statement in such declaration or documents or information furnished is incorrect in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be re-assessed to duty and taxes. It has been further provided that in case of Computerized system, if any re-assessment is being made a proper notice and opportunity of hearing is to be provided. It appears to be an admitted position that neither any hearing notice was issued; nor, any other opportunity was provided to the Petitioner, whereas, even no reasoned order was ever passed. Notwithstanding this, in it is pivotal to note that in terms of s.80 (3) powers can only be exercised ***during checking of Goods Declaration***, and not thereafter. Here sub-section (3) cannot be read in isolation to sub-section (1) as it refers to a Goods Declaration filed under section 79[4] of the Act, which requires filing of a true declaration of goods,

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[1] Muhammad Junaid Ghaffar, J,

[2] Messrs Harris Silicones and Glass (Pvt.) Ltd. V. Federation of Pakistan (2022 P T D 1163),

[3] **80. Checking of goods declaration by the Customs.-** (1) On the receipt of goods declaration under section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.
(2) ……..
(3) If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty taxes and other charges levied thereon:
Provided that in case of reassessment, a notice shall be served to the importer through Customs Computerized System and opportunity of hearing shall be provided, if he so desires.

[4] 79. Declaration and assessment for home consumption or warehousing.-[(1)The owner of any imported goods shall make entry of such goods for home consumption or warehousing or for any other approved purposes, within fifteen days of the arrival of the goods, by,-

giving therein complete and correct particulars of such goods, duly supported by requisite documents required for clearance of such goods in such form and manner as the Board may prescribe and is further required to assess and pay his liability of duty, taxes and other charges thereon, *in case of a registered user of the Customs Computerized System*. It is this self-assessment of the GD and payment of duty and taxes by the Importer in the Customs Computerized System that can be re-assessed in terms of sub-section (3) ibid after it has been presented in terms of section 79 read with sub-section (1) of section 80 of the Act. It is not that this power would continue to be available at all times. It stops once the GD has been assessed to duty / taxes and consignment has been released. Thereafter, no re-assessment can be made under Section 80(3) ibid. The only way out is either through a proper show cause notice issued under Section 32 of the Act, or by way of an Appeal in terms of s.193 ibid and lastly in exceptional circumstances[5] by way of re-opening of the assessment order in terms of s.195 of the Act. Insofar as the purported re-assessment order, if it may be so called, as it is not even an order; but only a calculation and change of HS codes is concerned, it could not have been done in the manner it has been so done. No jurisdiction or authority vested in the officer to re-asses the GD's in terms of section 80(3) of the Act, after the goods were out of charge and cleared by the Customs. Notwithstanding this, admittedly, this is a case of a computerized assessment system and in that case the very provision and the proviso thereof, on which respondent has placed reliance, requires that in case of reassessment, a notice shall be served to the importer through Customs Computerized System and opportunity of hearing shall be provided, if he so desires. This is also lacking in this matter. We are at a loss to understand as to how the Respondent department has acted in derogation of law and the Act itself. Not only this, even the Petition has been contested before us as reflected from the comments without any justifiability and support from the Act.

3. The august Supreme Court has consistently maintained[6] that demand notices in absence of statutory show cause notices were without lawful foundation. It was observed that in the absence of the pre-requisite show cause notice no demand notice requiring payment of any alleged short levy could be issued. The superior Courts have maintained[7] the primacy of the show cause notice in proceedings emanating from section 32 and have also illumined that the said instrument is required to be issued within the statutorily mandated time frame[8]. This we have already reiterated in somewhat identical facts[9].

4. In view of hereinabove facts and circumstances of the case, we are of the considered view that the impugned action of the Respondent department whereby re-assessment of the petitioners GD's[10] has been made in terms of section 80(3) of the Act, after release of the goods cannot be sustained and is hereby set-aside. The demand so created in the computer system is also set-aside, and the

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(a) filing a true declaration of goods, giving therein complete and correct particulars of such goods, duly supported by commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance of such goods in such form and manner as the Board may prescribe ; and

(b) assessing and paying his liability of duty, taxes and other charges thereon, in case of a registered user of the Customs Computerized System:

[5] Subject to judgments of the Courts on this issue

[6] Per Mian Muhammad Ajmal J. in Assistant Collector Customs & Others vs. Khyber Electric Lamps & Others reported as 2001 SCMR 838.

[7] Collector of Customs (Preventive) Karachi vs. PSO reported as 2011 SCMR 1279.

[8] Lever Brothers Pakistan Limited vs. Customs, Sales Tax & Central Excise Appellate Tribunal & Another reported as 2005 PTD 2462; Union Sport Playing Cards Company vs. Collector of Customs & Another reported as 2002 MLD 130.

[9] Judgment dated 16.10.2020 in CP No.3240-2020 (Shoe Planet (Pvt.) Ltd v Collector of Customs)

[10] bearing No. i) KAPE-HC-3969-19-07-2013, ii) KAPE-HC-21640-14-09-2013, iii) KAPE-HC-41030-16-11-2013, iv) KAPE-HC-48861-07-12-2013

Respondent department shall immediately recall and or reconcile the same in the computer system."

In the aforesaid judgment it has been held by the Court that it is pivotal to note that in terms of s.80 (3) powers can only be exercised ***during checking of Goods Declaration***, and not thereafter. It has been further held that it is not that this power would continue to be available at all times. It stops once the GD has been assessed to duty / taxes and consignment has been released. Thereafter, no re-assessment can be made under Section 80(3) ibid and the only recourse available is either through a proper show cause notice under Section 32 of the Act, or by way of an Appeal in terms of s.193 ibid and lastly in exceptional circumstances if so permitted, under Section 195 of the Act. However, no jurisdiction or authority is vested in the officer to re-assess the GDs in terms of section 80(3) of the Act, after the goods were out of charge and cleared by the Customs.

Since the ratio of the above judgment is fully applicable to the facts and circumstances of this case, the Question rephrased by us is answered against the Applicant and in favor of the Respondent and as a consequence thereof, all these Reference Applications are hereby ***dismissed***. Let copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office to place copy of this order in all connected files.

J U D G E

J U D G E

Arshad/