

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Special Custom Reference Applications No. 314 of 2013**

**Present:**

**Mr. Justice Aqeel Ahmed Abbasi.**

**Mr. Justice Muhammad Junaid Ghaffar.**

**Khyzar Iqbal ..... Applicant**

**Versus**

**The Deputy Collector (GR-VI),**

**Customs House Karachi ..... Respondent**

**Date of hearing: 17.02.2015.**

**Date of judgment: 29.05.2015**

**Applicant: Khyzar Iqbal applicant in person.**

**Respondent: Through Mr. Kashif Nazeer Advocate  
Assisted by Mr. Ilyas Ahsan Appraising Officer  
(Legal).**

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J:-** Through instant Special Custom Reference Application, the applicant has impugned the order dated 22.7.2013 passed by the Customs Appellate Tribunal, Karachi, in Customs Appeal No. K-160 of 2010, whereby, the appeal preferred by the applicant has been dismissed. The applicant has proposed the following question which according to the applicant is a question of law arising out of the order of Customs Appellate Tribunal dated 22.07.2003:-

*“Whether in the circumstances of the case and under the law, the Hon’ble Tribunal Excise & Sale Tax Appellate Bench-III, Collector appeal and Deputy Collector GR-VI has not erred in holding that the value of the goods APE Piston, Break shoe and Ig. Switch cannot be determined under section 25(1) of the Customs Act, 1969 when there is no evidentiary proof in respect of the import.”*

2. Briefly, the facts of the case are that the applicant had imported a consignment of Auto parts including APE Piston, brake shoes and IG switches and filed Goods Declaration No. KAPR-HC-42121 dated 18.12.2008 out of which APE Piston was assessed @ US \$ 1.55 per piece on the basis of Valuation Ruling No. MISC/31/2007/VI-A 138 dated 13.11.2008, whereas the remaining parts were assessed @ US \$ 1.50 Kg on the basis of some uniform criteria agreed upon by the Association of Importers and the Department. Thereafter the applicant had paid duty and taxes and the consignment was released. Subsequently the applicant made an application before the Director General of Customs Valuation seeking review of the Valuation Ruling dated 13.11.2008 in terms of Section 25-D of the Customs Act, 1969, in respect of APE Pistons. The Director General of Customs Valuation vide order dated 27.8.2009 passed Order in Review No. 220 of 2009 and disposed of the Review Application of the applicant, who thereafter, made an application to the concerned Collectorate seeking refund of Rs. 72,326/- on the basis of the Order in Review as aforesaid. Such application for refund was regretted vide Order in Original dated 19.11.2009, against which an appeal was preferred before the Collector of Customs (Appeals), Karachi who vide Order in Appeal No. 3289 of 2010 dated 5.3.2010 was pleased to dismiss the same, against which the applicant had approached the Customs Appellate Tribunal, at Karachi, by filing an appeal under Section 194-A of the Customs Act, 1969 which has also been dismissed vide impugned Order as aforesaid.

3. Applicant appeared in person and contended that the respondents including the Collector (Appeals), as well as the Customs Appellate Tribunal, have erred in law by holding that the assessment of the goods in question i.e.

APE piston on the basis of Valuation Ruling dated 13.11.2008 was correct as the Valuation Ruling dated 13.11.2008 was in respect of 70 CC Motorcycle parts, and not for APE piston which was in fact meant for Auto Rickshaw and Scooter. The applicant further contended that the Director General Valuation in his order dated 27.8.2009 had directed the department to assess the value of the goods in question on the basis of work back method / market inquiry, as in an earlier round of litigation, the goods of the applicant were assessed on the basis of work back method in terms of Section 25(7) of the Customs Act, 1969 and as per directions of the Hon'ble Supreme Court vide order dated 28.1.2009 passed in Civil Petition No. 454-K of 2008 filed by the Collector of Customs against the judgment passed by this Court in Customs Appeal No. 57 of 2007 dated 6.8.2008 in respect of another brand of piston of Auto Rickshaw.

4. Conversely Mr. Kashif Nazeer learned Counsel duly assisted by Mr. Ilyas Ahsan Appraising Officer Legal, contended that the refund application of the applicant was not maintainable as the applicant had paid the duty and taxes after assessment of the goods in terms of Valuation Ruling dated 13.11.2008 and had cleared the consignment from Port without making any objection or representation to the Department, hence, request of Refund after assessment / valuation of goods was an afterthought. Learned Counsel contended that the applicant had preferred Review Application in respect of valuation of other items and even the Director General Valuation, while passing the Order in Review dated 27.8.2009, had not given any finding or direction with regard to the assessment of APE piston, as contended by the applicant. Learned Counsel further submitted that insofar as the order of Hon'ble Supreme Court dated 28.01.2009 passed in Civil Petition NO. 454-K of 2008, is concerned, the same

was in respect of another brand of piston, and was a consent order, whereas, according to learned Counsel, examination report placed on record by the applicant himself does not reflect that even any piston of Auto Rickshaw has been imported by the applicant. Per learned Counsel, even otherwise, this requires a factual inquiry that as to whether what kind of piston was imported by the applicant, which this Court under its Reference jurisdiction cannot look into, hence, submits that instant Reference Application does not give rise to any question of law and is liable to be dismissed in limine.

5. We have heard the applicant and the learned Counsel for the respondent and perused the record. Since a short controversy is involved in the instant matter, by consent instant Reference Application is being disposed of at Katcha peshi stage.

6. From perusal of the record, it appears that the applicant had imported a consignment of Auto parts consisting of various items, including APE piston, and other parts of 70 CC Motorcycle. The goods declaration filed by the applicant was duly assessed by the respondent department on the basis of Valuation Ruling dated 13.11.2008 in respect of APE Piston @ US \$ 1.55/PC, whereas other items i.e. brake shoe and IG Switches were assessed @ US \$ 1.50 Kg on the basis of some agreed formula of assessment. It is to be noted that insofar as present controversy is concerned, the same is in respect of APE Pistons. Thereafter, the applicant made an application to the Collector of Customs Appraisal, dated 26.12.2008, and contested the assessment made by the Customs Authorities. However, subsequently on 30.12.2008 the applicant paid the duty and taxes on the basis of such assessment, and thereafter, filed a Review Application before the Director General, Customs

Valuation, Karachi, which was decided vide Order dated 27.8.2009. The applicant filed a refund application which was disallowed vide Order in Original dated 19.11.2009 against which an appeal was preferred before the Collector of Customs (Appeals) which was also dismissed vide order dated 5.3.2010. The applicant thereafter preferred further appeal before the Customs Appellate Tribunal which has also been dismissed vide Impugned Order dated 22.7.2013, against which instant reference application has been preferred under Section 196 of the Customs Act, 1969. The main contention of the applicant in this case is that the transactional value of the applicant should have been accepted for assessment purposes in terms of Section 25(1) of the Customs Act, 1969. The applicant has also vehemently relied upon the Order in Review dated 27.8.2009 passed by the Director General, Customs Valuation, Karachi on the basis of which the applicant had filed its refund application. It would be advantageous to refer to the concluding para of the aforesaid Order in Review dated 27.08.2009 passed by the Director General, Customs Valuation, Karachi, which reads as under:-

“In view of the aforesaid facts, circumstances and legal position, it is hereby directed that:-

- i) The complainant goods comprising of piston meant for 70 CC motorcycle when imported by him should be assessed after due verification of import documents to duties and taxes on the basis of transaction value as directed in order in review No. 133/2008 dated 16.2.2009.
- ii) Regarding complainant request to accept customs value of US\$ 0.35 for 70 CC motorcycle piston the case is remanded to the Director of Customs Valuation for determining customs value of the said item under section 25-A of the Customs Act, 1969. The Director should take all the stakeholders including the complainant on board. The Customs value maybe determined within a month. The Customs value so determined may also be

transmitted to the Collector Customs Appraisement Karachi for further process at his end.

- iii) If the complainant feel aggrieved with the value so determined he can file a review application before the Director General Customs Valuation under Section 25-D of the Customs Act, 1969.
- iv) This order in Review is valid only for piston meant for motorcycle 70 CC because the complainant aggrieved in his review application about its value determined in valuation ruling dated 13.11.2008.”(emphasis supplied)

7. From perusal of the aforesaid order, it reflects that insofar as the findings and decision of the Director General, Customs Valuation, Karachi is concerned, the same was in respect of piston and other parts of 70 CC motorcycle and not in respect of APE piston for Auto Rickshaw as being contended by the applicant. The Director General Customs Valuation, Karachi has not given any directions for making assessment of the goods in question in terms of Section 25(1) of the Customs Act, 1969, hence, the contention of the applicant in this regard appears to be misconceived and contrary to record. On careful examination of the material placed before us, it clearly reflects that the applicant has not been able to justify acceptance of its transactional value within the contemplation of Section 25(1) of the Customs Act, 1969 as the applicant did not discharge the initial burden to justify the valuation of imported goods, whereas such onus of doing so, was on the applicant and not on the respondent department. Whereas, even perusal of the Order in Review dated 27.08.2009, also does not support the contention of the applicant that the dispute regarding value of APE Piston was decided by the Director General, Customs Valuation, Karachi. Moreover, on perusal of the order passed by the Customs Appellate Tribunal, it appears that the Customs Appellate Tribunal, while dealing with the objection raised by the applicant in this regard, has dealt

with the same in accordance with the relevant provisions of the Customs Act 1969, and we tend to agree with such finding of the Customs Appellate Tribunal in this regard. It would be relevant to refer to the findings of the Customs Appellate Tribunal recorded in its order dated 22.7.2013 which reads as under:-

“We have examined the case record and heard the arguments of the both sides. The main issue in this case is that the appellant has challenged the assessment made under Valuation Ruling dated 13.11.2008 of his consignment’s one item and claimed refund on a past and closed transaction for the reason that the impugned valuation ruling was cancelled in the Review Order No. 133/2008 dated 16.2.2009 and his transition value was accepted in the Review Order 220/2009 dated 27.8.2009 but on the other had it is evident from record that the import of appellant was on 18.12.2008, at that time, the impugned valuation ruling was in field and GD was completed under section 80 by an appropriate officer and duty and taxes were paid on 30.12.2008 accordingly. After clearance of consignment an application was filed by the appellant for refund, during the process of hearings on refund application, the appellant was asked for furnishing of the document for making his claim admissible but he failed to produce the documents and information about the price adjustments along with corroborative documents as envisaged in subsection 2 of Section 25 of the Customs Act, 1969, there is no question to accept the declared value as customs value in terms of Section 25(1) of the Customs Act, 1969. In view of the above discussion, we prefer not to interfere in the order of Collector of Customs (Appeals) and uphold the same. The appeal of appellant is dismissed as no order to cost.”

8. Similarly the Collector of Customs (Appeals) while dismissing the appeal vide order dated 5.3.2010 has observed as follows:-

“I have examined the case record thoroughly including the relevant Valuation Ruling and Review Orders and given deep consideration to the arguments made before me. Clearly, when the impugned goods were imported, Valuation Ruling dated 13.11.2008, issued by the Directorate General of Customs Valuation in terms of Section 25-A of the Customs Act, 1969, was in the field and, like all other consignments of identical goods, the goods imported by the appellant were assessed to duty / taxes in accordance with the parameters provided under the above mentioned ruling. Therefore, after clearance of the goods in terms of the aforesaid ruling the transaction became past and closed and subsequent setting aside of the ruling through a Review order did not have anything to do with the

meaning of Section 19-A *ibid*, that the incidence of tax paid on the goods in respect of which any refund is claimed had not been passed on to the consumer. Clearly, the appellant has not claimed that he had not passed on the incidence of tax to the consumer. Therefore, the refund claim is not admissible. I, therefore, do not find any weight in the argument advanced by the authorized representative and hold that the impugned order is correct in law and on facts and there is no reason to interference with the same. The appeal is rejected accordingly.”

9. In our view, both the forums below i.e. the Collector of Customs (Appeals) and the Customs Appellate Tribunal have passed well reasoned orders and the applicant has not been able to bring on record any substantial issue or question which could persuade us to interfere with the impugned orders which otherwise appear to be unexceptionable.

10. Insofar as the contention of the applicant with regard to the earlier round of litigation is concerned, after perusal of the judgment of this Court dated 6.8.2008 passed in Customs Appeal No. 57/2007 and the order of the Hon’ble Supreme Court in Civil Petition No. 454-K/2008 dated 28.1.2009, it appears that the Hon’ble Supreme Court had disposed of the matter, by consent of the parties, whereby the matter was remanded to the Collector of Customs (Appraisalment), Karachi for redetermination of value of “Kokai Brand Piston” of the basis detective value method in terms of sub-section (7) of Section 25 of the Customs Act, 1969. On remand, the applicant could not bring any substantial material, whereby the assessment could be finalized under Section 25(7) of the Customs Act 1969, (Work Back Method) in compliance of the order of the Hon’ble Supreme Court. Thereafter, the Collector of Customs (Appraisalment), vide Order in Original dated 16.05.2009 finalized the assessment of the goods in question on the basis of some agreed prices of assessment, to which the applicant had also consented. Therefore in our view,



the finding of the Hon'ble Supreme Court as recorded in the aforesaid order is not applicable to the case of applicant, which besides being a consent order, was otherwise in respect of another type and brand of goods; hence, would not be of any assistance to the applicant in the instant matter. It is also important to note, that from perusal of the goods declaration and the examination report endorsed thereto, it does not reflect that as to whether the piston imported by the applicant was for Auto Rickshaw / Scooter or for Motorcycle. It has been noted that the applicant after having got the consignment duly assessed on the basis of valuation Ruling and seeking release of the same, has attempted to re-agitate a past and closed matter under the garb of refund claim which was never determined in accordance with law. Moreover, such fact is otherwise dependent on factual inquiry which cannot be undertaken by this Court under its reference jurisdiction in terms of Section 196 of the Customs Act, 1969. Reliance in this regard may be placed to the case of *Messers Gold Trade Impex through Partner and another Vs. Appellate Tribunal of Customs, Excise and Sales Tax Through Collector of Customs and 2 others* (2012 PTD 371) and *Collector of Customs, Karachi Vs. Messers Qasim International Container Terminal (Pak) Ltd.*, (2013 PTD 392).

11. in view of hereinabove facts and circumstances of the instant case, we are of the view that no substantial question of law has been raised by the applicant, whereas the case of the applicant is based on factual determination, which have already been decided by the lower forums against the applicant, whereas, the applicant has failed to show any illegality or perversity in such findings of fact, which could be interfered with by this Court to meet the ends

of justice. Accordingly instant Reference Application is hereby dismissed in limine with no order as to cost.

12. Copy of this judgment under the seal of this Court may be sent to the Registrar of the Customs Customs Appellate Tribunal, in terms of Section 196(5) of the Customs Act, 1969 for information.

Dated: 29.05.2015

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