JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Custom Reference No.07/2018
Additional Collector, Model Customs, Collectorate of Customs, Islamabad
Versus
M/s Safi Airways and another

Date of Hearing:	23.01.2019
Date of Order:	23.01.2019
Applicant by:	Mr. Adnan Haider Randhawa, Advocate.
Respondents by:	Moulvi Ejaz ul Haq, Advocate Mr. Ishtiaq Ahmed, Principal Appraiser, Model Customs Collectorate, Islamabad.

MIANGUL HASSAN AURANGZEB, J:- The questions of law which were framed for our consideration are as follows:-

i. *Whether on the facts and in the circumstances of the case the learned Appellate Tribunal was justified to set aside the Order-in-Appeal No.13/17 dated 23.01.2017, which was passed by the authorities with jurisdiction inasmuch as the consignment was [imported] and consumed in Pakistan and the subsequent claim of the Respondent No.1 for refund on the basis that the same was re-exported was not justified and rightly turned down as there was no export involved, no export GD filed and no indemnity bond or bank guarantee was in existence?*

ii. *Whether on the facts and in the circumstances of the case, the learned Tribunal has not wrongly interpreted Section 1 (b) of the Import Policy Order, 2013 while giving its benefit to the Respondent No.1?*

2. The facts essential for our consideration are that respondent No.1 (M/s Safi Airways) imported an engine part (engine starter) for an air craft which had been grounded at the Islamabad International Airport. For the import of the said item, respondent No.1 filed Goods Declaration ("G.D.") No.8672, dated 14.04.2015. The imported item was fitted in the air craft and this fact was confirmed by the Civil Aviation Authority. Subsequently, respondent No.1 applied for refund of duties and taxes amounting to Rs.2,256,717/- on the ground that the imported item had been temporarily imported. After respondent No.1 made a claim for a refund, notice dated 02.10.2016 was issued to respondent No.1 calling upon it to show cause as to why action

should not be taken against it for claiming a baseless refund. The proceedings pursuant to the said show cause notice culminated in order-in-original dated 21.11.2016 passed by the Deputy Collector Customs (Import), Islamabad, whereby the rejection of respondent No.1's claim for refund was rejected. Respondent No.1 preferred an appeal before the Collector of Customs (Appeals), Islamabad against the said order-in-original. Vide order dated 24.01.2017, the Collector of Customs (Appeals) dismissed respondent No.1's said appeal. Aggrieved by the said appellate order dated 24.01.2017, respondent No.1 preferred an appeal before the Customs Appellate Tribunal, Islamabad (respondent No.3). Vide judgment dated 12.10.2017, respondent No.3 allowed the said appeal and set-aside the order-in-appeal dated 24.01.2017 and order-in-original dated 21.11.2016. Aggrieved by the said judgment dated 12.10.2017, the applicant has filed the instant reference under Section 196 of the Customs Act, 1969.

3. Learned counsel for the applicant submitted that since respondent No.1 has not been issued any licence by the Ministry of Defence as required under the Import Policy Order, 2013, for the import and export of goods, it had no valid claim for the refund of the taxes and duties paid by it in order to release the item imported through G.D. No.8672, dated 14.04.2015; that respondent No.1 had consciously declared the purposes of the import of the item to be for *"home consumption"* and not for *"temporary import-cum-export"*; and that the order-in-original and the first order-in-appeal were based on the correct appreciation of the law, whereas the order-in-appeal passed by respondent No.3 suffered from errors of the applicable law.

4. On the other hand, learned counsel for respondent No.1 submitted that the engine part had to be imported in an emergency; that the aircraft in which the imported item had to be installed, had been grounded at the Islamabad International Airport; that due to time constraints, respondent No.1 could not arrange the furnishing of a bank guarantee or an indemnity bond in order to secure the release of the imported item; that the

imported item was admittedly re-exported as confirmed by the Civil Aviation Authority; and that respondent No.1 has been correctly held entitled to the refund of the taxes and duties paid to the Customs authorities to secure the release of the imported item.

5. We have heard the contention of the learned counsel for the applicant as well as the learned counsel for respondent No.1 at great length.

6. The facts leading to the filing of the instant reference have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

7. Admittedly, in the G.D. No.8672, dated 14.04.2015 filed by respondent No.1, the import of the item in question was stated to be for *"home consumption"* and not for *"temporary import-cum-export"*. The imported item was released after payment of the applicable taxes and duties. The item imported was fitted into the air craft which had been grounded, and this fact has been confirmed by the Civil Aviation Authority. The imported item has admittedly been taken out of Pakistan. Although there is no export G.D. on the record but the Civil Aviation Authority has confirmed the export of the said item.

8. In order to justify its claim for the refund of the tax and duties paid by respondent No.1, it relies on paragraph 12(b) of the Import Policy Order, 2013, which reads as follows:-

> ***"12. Temporary Import.--**Temporary import-cum-export of goods in respect of the following shall be allowed by the respective Collectors of Customs against submission of indemnity bond or bank guarantee to the satisfaction of custom authorities to ensure re-export of the same within the specified period, namely:--*
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> *(b) airlines and shipping lines shall be allowed to import items on import-cum-export basis except those mentioned in Appendix-A, B and C, unless specifically allowed under this Order."*

9. As per serial No.31 of Part II of Appendix B, the items permitted for import are *"aircraft, spacecraft in new and old condition and their used/overhauled engines and parts"*. One of the conditions on which such items could be imported is if the importers are public sector agencies, private sector airlines,

private flying clubs, charter and aviation services and charitable foundations having valid licences issued by the Ministry of Defence.

10. Now respondent No.1 admittedly does not hold a licence issued by the Ministry of Defence. Therefore, it was not entitled to take the benefit of paragraph 12 of the Import Policy Order, 2013, on the export of the item imported through G.D.No.8672, dated 14.04.2015. It is pertinent to appreciate that respondent No.1 neither furnished an indemnity bond nor a bank guarantee to the satisfaction of the Customs authorities to ensure the re-export of the imported item within a specified period. Had it been respondent No.1's intention to export the imported item by taking the benefit of paragraph 12 of the Import Policy Order, 2013, it would certainly not have declared the purpose of the import to be for *"home consumption"* but *for "temporary import-cum-export"*. We are of the view that respondent No.1 being fully aware of the fact that it was not entitled to take the benefit of paragraph 12 of the Import Policy Order, 2013, read with serial No.31, Part II of Appendix B thereof, did not furnish an indemnity bond or a bank guarantee but paid all applicable taxes and duties for the release of the imported item. Respondent No.1's claim for the refund of the taxes and duties after the imported item had been taken out of Pakistan, in our view, is nothing but an afterthought and wishful thinking.

11. Respondent No.3 could not ignore the requirement to furnish an indemnity bond or a bank guarantee for the release of the imported item if the importer was to take the benefit of paragraph 12(b) of the Import Policy Order, 2013. The principle of strict construction of fiscal laws also applies to fiscal policies. By giving a go-bye to the requirement of the furnishing of an indemnity bond or a bank guarantee, respondent No.3 has also ignored the well settled principle that a thing required to be done in a particular manner must be done in that manner and none other. Furthermore, another important aspect of the case which respondent No.3 appears to have ignored is that respondent No.1, in its G.D.No.8672, dated 14.04.2015 had declared the

purpose of the import of the item to be for *"home consumption"*. Learned counsel for respondent No.1 was unable to explain as to why such a declaration had been made by respondent No.1 if its intention had been to temporarily import the imported item and take the benefit of paragraph 12(b) of the Import Policy Order, 2013.

12. For the reasons mentioned above, we hold that the judgment dated 12.10.2017 is not sustainable and is liable to be set-aside. We, therefore, order accordingly. The order-in-original dated 21.11.2016 and the order-in-appeal dated 24.01.2017 are restored. The reference stands answered in the above terms.

(CHIEF JUSTICE) **(MIANGUL HASSAN AURANGZEB)**
JUDGE

APPROVED FOR REPORTING

*Qamar Khan**